

## FRANCHISE DISCLOSURE DOCUMENT



**Massage Heights Franchising, LLC**  
a Texas limited liability company  
13750 US Hwy 281 North, Suite 925  
San Antonio, Texas 78232  
Phone: (210) 402-0777  
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[www.messageheights.com](http://www.messageheights.com)  
[www.messageheightsfranchise.com](http://www.messageheightsfranchise.com)

The franchise being offered is to own and operate a retail location (“**Retreat**”) that provides convenient, professional, affordable resort-quality therapeutic massage and skincare services to the general public through membership-based programs that help to achieve a balanced and healthy lifestyle in a spa retreat environment under the name MASSAGE HEIGHTS, BODY + FACE (“**MH Business**”). MH Businesses also offer certain lotions, massage oils, facial products, and other branded products to both members and the general public to improve customers’ general well-being.

The total investment necessary to begin operation of a franchised MH Business is between \$472,199 and \$551,771. This includes between \$123,540 to \$127,621 that must be paid to the franchisor or its affiliates.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Suzanne Lozano at 13750 US Hwy 281 North, Suite 925, San Antonio, Texas 78232 and 210-402-0777.

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

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

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

**Issuance Date: April 19, 2024**

## How to Use This Franchise Disclosure Document

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

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

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

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

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

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

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

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

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

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

### Some States Require Registration

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

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

## Special Risks to Consider About *This* Franchise

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

1. **Out-of-State Dispute Resolution**. The franchise agreement requires you to resolve disputes with the franchisor by mediation and/or litigation only in Texas. Out-of-state mediation or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate or litigate with the franchisor in Texas than in your own state.
2. **Mandatory Minimum Payments**. You must make minimum advertising and other payments, regardless of your sales levels. Your inability to make the payments may result in termination of your franchise and loss of your investment.
3. **Spousal Liability**. Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

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



**NOTICE REQUIRED  
BY STATE OF MICHIGAN**

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

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

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

(g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

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

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

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

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

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

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

**The fact there is a notice of this offering on file with the attorney general does not constitute approval, recommendation, or endorsement by the attorney general.**

Any questions regarding this notice should be directed to the Department of Attorney General, State of Michigan, 670 Williams Building, Lansing, Michigan 48913, telephone (517) 373-7117.

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

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## ITEM 1

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

To simplify the language in this Franchise Disclosure Document, “**Franchisor,**” “**MH Franchising,**” “**we,**” “**us,**” or “**our**” means Massage Heights Franchising, LLC. “**Franchisee,**” “**you,**” and “**your,**” means the person who licenses the franchise from Massage Heights Franchising, LLC and its owners if you are a business entity.

#### **The Franchisor**

MH Franchising (f/k/a Massage Heights Corporate, LLC) is a Texas limited liability company formed on January 10, 2007. We operate under the names Massage Heights Franchising and Massage Heights, and no other names. Our principal business address is 13750 US Hwy 281 North, Suite 925, San Antonio, Texas 78232. We began offering MH Business franchises (“**MH Franchises**”) in 2007. We previously offered area representative business franchise opportunities from 2007 through 2019. As of the Issuance Date of this Franchise Disclosure Document, we no longer offer area representative business franchises nor are there currently any operating area representative franchises.

We award franchises, at our discretion, for the right to independently own and operate a massage and facial spa retreat that provides professional therapeutic massage and facial services to the general public through membership-based programs and sell related products and services under the name MASSAGE HEIGHTS, BODY + FACE. We have not operated, nor do we currently operate, any businesses or franchises like those described in this Franchise Disclosure Document, or in any other line of business. However, we reserve the right to do so.

Our agent for service of process in Texas is Suzanne Lozano at 13750 US Hwy 281 North, Suite 925, San Antonio, Texas 78232. Our agents for service of process for other states are identified by state in **Exhibit D**. If a state is not listed, we have not appointed an agent for service of process in that state in connection with the requirements of franchise laws. There may be states in addition to those listed above in which we have appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.

#### **Parent, Predecessors and Affiliates**

We have no predecessors. Our parent company is SWG International, LLC (“**SWG I**”), with its principal place of business at 5900 Balcones Drive, Suite 100, Austin, Texas 78731. SWGI does not offer or sell franchises in any line of business or provide products or services to MH Businesses. MH Franchising and its four affiliates are subsidiaries of SWGI. These four affiliates have directly or indirectly (i) offered franchises in this line of business or other lines of business; or (ii) provided products or services to MH Businesses.

SWG IP, LLC (“**SWG IP**”) is a Texas limited liability company with a principal place of business at 5900 Balcones Drive, Suite 100, Austin, Texas 78731. SWG IP owns the intellectual property and trademarks for the Massage Heights franchise system and has licensed them to us since July 26, 2005.

Summit Franchise Supply, LLC (“**Summit**”) is a Texas limited liability company with a principal place of business at 5900 Balcones Drive, Suite 100, Austin, Texas 78731. Summit is the approved supplier of the Retreat Development Package (defined in Item 5), massage lotions and oils, our “Heights at Home and “Heights at Work” products and uniforms and has been since January 2007. Summit, through its predecessor, offered membership-based massage franchises from February 2005 through January 2007.

Elevated Brands, LLC (“**Elevated Brands**”) is a Texas limited liability company with a principal place of business at 5900 Balcones Drive, Suite 100, Austin, Texas 78731. Elevated Brands is a brand management company that provides franchise brand development services and has done so since February 2016.

SWG Holdings, LLC (“**SWG**”) is a Texas limited liability company with a principal place of business at 5900 Balcones Drive, Suite 100, Austin, Texas 78731. SWGH is a holding company for companies that own franchise businesses other than the Franchise.

## **The Franchise**

We offer MH Franchises for the right to operate a MH Business in a designated geographic area (“**Territory**”) under the Massage Heights name, design mark, trade dress and other authorized names and marks (“**Marks**”), using a system of distinct operating procedures, methods, and standards that we have developed (“**System**”), which may be changed or modified by us throughout your ownership of your MH Business. Each MH Business operates a retail location (“**Retreat**”) that must be approved by us and operated according to the brand standards, specifications, operating procedures, and rules outlined in the System. At a scheduled session date and time, Massage Heights’ massage therapists provide specific treatments, including Swedish massage, deep tissue massage, reflexology, and other massage techniques. Massage Heights’ skin therapists provide facial services. Massage therapists and skin therapists also administer aromatherapy and our trademarked “Elevations” experience, which includes add-on services such as hot stone therapy, foot scrubs, CBD treatments, face enriching, refining, and purifying skin treatments, chemical peels, and microdermabrasion. These membership-based services provide members and guests with convenient, professional, affordable, resort-quality massage services and facial services that help to achieve a balanced and healthy lifestyle in a spa retreat environment. MH Businesses also offer certain lotions, massage oils, facial products, and other branded products to both members and the general public to improve customers’ general well-being.

You must operate your MH Business according to our standard business operating practices and sign our standard franchise agreement (“**Franchise Agreement**”) which is attached to this Franchise Disclosure Document as **Exhibit B**.

## **The Market and Competition**

While you will offer your products and services to the general public, your target market will be mid-level income to affluent consumers of all ages with a variety of needs. Our services are not seasonal in nature. MH Businesses presently focus on serving the needs of adults in all urban and suburban areas. The therapeutic massage service and facial service sectors remain competitive and well developed in most markets and your MH Business will compete with other businesses offering therapeutic massage, facial services, and similar services, such as spas, health retreats, resorts, independents, and other chains and franchises offering similar services.

## **Industry-Specific Regulations**

In some states, your MH Business may be required to comply with a variety of laws and regulations, including those related to health clubs, and/or massage therapy and skin care licensing. Some of these laws and regulations may require special certification, licensing, and registrations before your MH Business can begin providing massage and facial services. Most states require that your Retreat and each massage therapist and esthetician (skin therapist) be licensed by the state agency regulating massage therapists and estheticians. You must ensure that only licensed therapists and estheticians perform any services for which a license or specialized training is required in your state. We have the right to require

you to perform background checks and other due diligence on your employees at your cost and we may mandate the service provider.

You must also comply with laws that apply generally to all businesses. It is important that you comply with all laws and regulations in your area and that you become educated regarding massage and skin care services and requirements. You should investigate whether there are any regulations and requirements that may apply in the geographic area in which you are interested in locating your MH Business and you should consider both their effect and the cost of compliance. There may be other federal, state and/or local laws or regulations pertaining to your Retreat with which you must comply. For example, state licensing and certification requirements may apply to persons who perform services for you or at your Retreat and certain states require the purchase of bonds to operate a Retreat that offers prepaid membership services. Health club laws may also regulate other aspects of your MH Business, including your agreements with your customers. You are responsible for obtaining any required bonds. In some jurisdictions, you may be required to have the supervision of a doctor or medical professional.

You are responsible for obtaining all required licenses and permits and ensuring that your employees and others that provide products and services to customers on behalf of your MH Business you operate have all required licenses and permits. You must use our form of membership agreement, but it is your responsibility to seek local counsel to ensure it complies with all laws applicable to your MH Business. You must submit any changes to our form membership agreement to us for approval and if approved, we will upload the revised membership agreement to the point-of-sale (“**POS**”) system for use by your Retreat.

You alone are responsible for investigating, understanding, and complying with all laws, regulations, and requirements applicable to you and the MH Franchise you operate, despite any advice or information that we may give you. You should consult with a legal advisor about whether these and/or other requirements apply to your MH Business you operate. Failure to comply with laws and regulations is a material breach of the Franchise Agreement.

*[Remainder of page intentionally left blank.]*

## **ITEM 2 BUSINESS EXPERIENCE**

### **Executive Leadership Team**

#### **Co-Founder and Chief Executive Officer: Shane Evans**

Since February 2024, Ms. Evans has served as our Chief Executive Officer in our corporate headquarters in San Antonio, Texas. Ms. Evans has also served as a member of the Board of Managers since January 2007, including serving as the Vice Chairperson since May 2021. She served as our Chief Executive Officer from April 2019 to May 2021, as our President from June 2014 to April 2019, and as our Vice President and Chief Operating Officer from January 2007 to June 2014. In each of these roles, Ms. Evans operated out of our corporate headquarters in San Antonio, Texas. Since its formation in January 2017, Ms. Evans has also been the Chair of the Board of Managers and the Chief Operating Officer for our parent company, SWG International, LLC, in Austin, Texas. Additionally, she has had ownership interests in various MH Businesses since 2004, all located in San Antonio, Texas. Ms. Evans began serving as a member of the Board of Directors of the International Franchise Association based out of Washington, D.C. beginning in February 2023. She also served on the Board of Directors of the Massage Heights Family Fund, a non-profit organization in San Antonio, Texas, from November 2013 – July 2022.

#### **Chief Financial Officer: Ginger McNab**

Since March 2022, Ms. McNab has served as our Chief Financial Officer in Glendale, Arizona and our corporate headquarters in San Antonio, Texas. Prior to that, Ms. McNab served as Vice President of Finance for Well Biz Brands Inc., from July 2021 to March 2022 in Glendale, Arizona and Denver, Colorado. Prior to that, Ms. McNab served as Vice President of Finance for Lunchbox Wax Holdings, LLC from September 2019 to July 2021 in Scottsdale, Arizona and Boise, Idaho. From September 2017 to September 2019, Ms. McNab took a personal leave of absence. Prior to that, Ms. McNab was the Corporate Controller for Massage Envy, LLC in Scottsdale, Arizona from March 2007 to September 2017. As of July 2022, Ms. McNab serves on the Board of Directors of the Massage Heights Family Fund, a non-profit organization, in San Antonio, Texas. As of April 2023, Ms. McNab serves on the Board of Directors of the Arizona Chapter of the AFA, Air Force Association, a non-profit organization, in Phoenix, Arizona.

#### **Chief Operations Officer: Russell Hoff**

Mr. Hoff has been working with us since March 2009 in our corporate headquarters in San Antonio, Texas. Mr. Hoff has served as our Chief Operations Officer since September 2022. Prior to that, he served as our Vice President of Operations from August 2021 to September 2022, as our Senior Director of Operations from January 2021 to July 2021, and as our Director of Operations from October 2012 to December 2020. He has also been involved in managing franchise sales, working with franchise service organizations, coordinating discovery days, and approving franchise candidates. As of July 2022, Mr. Hoff also serves on the Board of Directors and is an officer of the Massage Heights Family Fund, a non-profit organization, in San Antonio, Texas.



**Chief Marketing Officer: Ashley Schuetz**

Since December 1, 2022, Ashley Schuetz has served as our Chief Marketing Officer in our corporate headquarters in San Antonio, Texas. Ms. Schuetz previously worked in our marketing department from February 2012 through October 2020 in the roles of Field Marketing Manager, Director of Marketing, and Vice President of Marketing. Experienced in all aspects of franchise marketing, Ms. Schuetz has developed marketing programs to drive consumer and franchise development growth. She also served as the Vice President of Marketing at BlueSprig from October 2020 through December 2022. Ms. Schuetz became a Certified Franchise Executive in March 2019.

**Chief Information Officer: Aaron Scholl**

Since January 2022, Mr. Scholl has served as our Chief Information Officer in Indianapolis, Indiana and our corporate headquarters in San Antonio, Texas. Prior to that, from January 2021 to December 2021, Mr. Scholl served as an IT advisory consultant for us through LumArc Custom Solutions in Indianapolis, Indiana. LumArc Custom Solutions is owned by a Massage Heights franchisee who also owns Woven Brands, LLC whose proprietary workplace-management platform software, Woven, is a software required to be used by Massage Heights Businesses. Since December 2016, Mr. Scholl has also served as the owner of Stravero, LLC in Indianapolis, Indiana.

**Vice President of Franchise Development: Austin Alexander**

Since October 2023, Mr. Alexander has overseen our franchise development in Andover, Minnesota and our corporate headquarters in San Antonio, Texas. Mr. Alexander served as the Director of Franchise Development from October 2023 to February 2024 and as Vice President of Franchise Development since March 2024. From February 2023 to October 2023, Mr. Alexander served as the Director of Franchise Development for Self Esteem Brands in Woodbury, Minnesota. Prior to that, from October 2020 to December 2023, Mr. Alexander served as Director of Business Development at Lift Brands in Chanhassen, Minnesota. From 2017 to 2021, Mr. Alexander owned and managed a Snap Fitness 24/7 franchise location in Clinton, Connecticut.

**Board of Managers****Chairperson: David Humphrey**

Since June 2014, Mr. Humphrey has served as Chairperson of our Board of Managers in our corporate headquarters in San Antonio, Texas. Mr. Humphrey also served as the Vice Chair of the International Franchise Association (“IFA”) from February 2022 through February 2023 and the Chair of the IFA from February 2023 through February 2024. The IFA is based out of Washington, D.C. From April 2015 until February 2022, Mr. Humphrey was the Chief Executive Officer of a franchisee group operating over 100 Planet Fitness gyms, under the name ECP-PF Holdings Group, Inc. d/b/a Ignite Fitness Holdings, headquartered in Orange, Connecticut. In February 2022, he transitioned into the role of Vice-Chair for Ignite Fitness Holdings. Mr. Humphrey has also served as a member of the Board of Directors of Handel's Enterprises, LLC d/b/a Handel's Homemade Ice Cream, a franchisor based in Atlanta, Georgia, since March 2021 and Uni K Wax Holdings, LLC, a franchisor based in Aventura, Florida, since September 2023.

**Vice Chairperson: Shane Evans**

See Ms. Evans' business experience above.



**Board Manager: Glenn Franson**

Mr. Franson has served in various roles in our company since 2008. Mr. Franson has served as a member of our Board of Managers since March 2008. He also served as the Chief Executive Officer from March 2008 to March 2016 and the President from March 2008 to June 2014. In each of these roles, Mr. Franson operated out of our headquarters in San Antonio, Texas. Additionally, Mr. Franson has served as the Chief Executive Officer of Elevated Brands, LLC in San Antonio, Texas since February 2016. He also has been the President of Summit Franchise Supply, LLC since 2018, and he held that role from May 2008 until October 2017 as well. Mr. Franson has had an ownership interest in various MH Businesses located in Austin, Texas and San Antonio, Texas. He also served on the Board of Directors of the Massage Heights Family Fund, a non-profit organization in San Antonio, Texas, from November 2013 – July 2022.

**Board Manager: Roy Terracina**

Mr. Terracina has served as a member of our Board of Managers in our corporate headquarters in San Antonio, Texas since July 2015. Since July 2021, Mr. Terracina has also served as Chair of the Board of Directors and Chief Executive Officer of Audazzio, a technology startup company headquartered in San Antonio, Texas. Additionally, he has served as Chairperson of the Board for Our Lady of the Lake University in San Antonio, Texas since September 1995, as Vice Chair of U.S. Global Investors in San Antonio, Texas since January 1995, and as a Member of the Board of Directors of The Najim Family Foundation in San Antonio, Texas since January 2009. He also has been a member of the Board of Managers of TGP Franchising, LLC headquartered in Dallas, Texas since April 2016, with an ownership interest in the company since November 2015. Mr. Terracina also has an ownership interest in AT2, LLC in San Antonio, Texas, which has operated MH Businesses in Austin, Texas since June 2017.

### ITEM 3 LITIGATION

#### Pending Actions:

Massage Heights Franchising, LLC f/k/a Massage Heights Corporate, LLC v. v. Eric Oliver, OMG MH Holdings, LLC, and MH Alden Bridge, LLC (No. 2022CI22792) (District Court of Bexar County, Texas, 45th Judicial District Court). On November 21, 2022, MH Franchising filed a lawsuit against Eric Oliver, individually and as the personal guarantor of various franchise entities, including but not limited to MH Alden Bridge, LLC (“Alden Bridge”), a former franchisee, and its holding company, OMG MH Holdings, LLC (“OMG”) for breaching the franchise agreements beginning in 2019 by, among other things, voluntarily abandoning and/or discontinuing operations at several locations, failing to obtain and maintain required insurance, failing to comply with operational standards and pay contractually owed royalties and fees, and failing to defend and indemnify MH Franchising. MH Franchising seeks monetary relief in excess of \$1,000,000.00. The litigation is pending.

#### Prior Actions:

Hayes v. Massage Heights Corporate, LLC (01-19-0004-2416), Demand for Arbitration (filed Dec. 2, 2019). A Florida franchisee filed an arbitration demand against MH Franchising, alleging breach of contract, fraud in the inducement, fraud, fraudulent concealment, and misrepresentation relating to the accommodation of the franchisee’s hearing disability. MH Franchising denied the franchisee’s claims and counterclaimed for damages due to the franchisee closing the MH Business prior to the franchise agreement term. The arbitrator issued an award on November 23, 2020, finding that both the franchisor and franchisee breached the franchise agreement and denying all other claims. As a result, the arbitrator awarded the franchisee \$344,933.15, the amount of the franchisee’s damages after offsetting damages to MH Franchising.

Busch Management Group, LLC v. Massage Heights Franchising, LLC (No. 2020-23498) (District Court of Harris County, Texas, 157th Judicial District). On April 15, 2020, a Texas area representative filed suit against MH Franchising alleging breach of contract and seeking injunctive relief to restrain MH Franchising from: declaring that the area representative is in default of and terminating the Area Representative Agreement. The parties reached a settlement agreement whereby the parties agreed to terminate the Area Representative Agreement and to reduce MH Franchising’s royalty payments to the area developer to 25% for a period of 36 consecutive months commencing on April 20, 2020. On or about July 28, 2020, the area representative dismissed all claims in the lawsuit with prejudice.

*Massage Heights Franchising, LLC v. Relax Investments, LLC, Steven McFadden, and Trisha McFadden* (1-18-0002-7596), Demand for Arbitration (filed July 19, 2018). MH Franchising filed a demand for arbitration in San Antonio, Texas against a regional developer and its two entity members located in Iowa (collectively, “**Respondent**”), seeking a declaratory judgment that the initial term of the Regional Developer Agreement expired and could not be renewed because Respondent did not meet the development schedule. Respondent counterclaimed, asserting Iowa code violations, breach of contract, and unjust enrichment and seeking an injunction requiring the continuation of the Regional Developer Agreement. On August 21, 2019, the arbitrator found the Area Development Agreement was subject to renewal and awarded Respondent attorneys’ fees, expenses, and other relief, offset by the renewal fee owed to us for a total damage award of \$88,137.50. Respondent’s renewed Regional Developer Agreement expanded the development schedule with no renewal rights.

Except as provided above, no litigation information is required to be disclosed in this Item.

## ITEM 4 BANKRUPTCY

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

## ITEM 5 INITIAL FEES

### *Initial Franchise Fee*

You must pay us the following initial franchise fee (“**Initial Franchise Fee**”) for each MH Franchise unit (“**Unit**”) purchased at the same time:

MH Franchise Unit	Initial Franchise Fee
1	\$49,500
2	\$42,500
3 or more	\$34,500 each

All Initial Franchise Fees are uniform and due at the time of signing each franchise agreement. To qualify for the discounted Initial Franchise Fee on the second and subsequent Units, the Franchise Agreements and Initial Franchise Fees must be executed and paid at the same time. The Initial Franchise Fee will be paid by means of cashier’s check, money order or wire transfer. The Initial Franchise Fee will be deemed to have been fully earned by us and non-refundable when paid.

Active-duty military, honorably discharged veterans of the United States armed forces, law enforcement, healthcare providers, and emergency service personnel receive a \$5,000 discount on our Initial Franchise Fee for the first MH Franchise purchased.

During our last fiscal year, which ended December 31, 2023, we collected an Initial Franchise Fee of \$49,500 per unit except for one MH Franchise where the Initial Franchise Fee was waived for an existing franchisee who closed a MH Business due to property damage in 2020 and opened a new MH Business in 2023 to replace the closed one.

### *Initial Advertising Program*

You must pay us \$15,000 at the time you submit your final construction plans and specifications for your Retreat, which we will use to conduct an initial advertising program (“**Initial Advertising Program**”) and to market your MH Business prior to your Retreat opening and during the first 30 days after opening. All of the funds paid by you will be used to conduct the Initial Advertising Program and are non-refundable. See Item 11 for more information regarding the Initial Advertising Program.

### *Software Setup Fee*

You must pay us a “**Software Setup Fee**” of \$500 for the setup of required operations software and other technologies which include the POS system, our proprietary operations software (“**AnchorPoint**”), email and network support, and additional software licenses for outbound consumer messaging and electronic forms, and may include future hardware, software, websites, applications, and platforms that we may developed and implement in our sole discretion. This fee is non-refundable,

payable upon the signing of the Franchise Agreement.

### ***Retreat Development Package***

Franchisees must purchase a “**Retreat Development Package**” of startup items from Summit. This payment is due when you sign the lease or purchase agreement for your Retreat. The Retreat Development Package will be delivered to your Retreat at a designated time during the build-out process prior to the opening of your Retreat. The Retreat Development Package typically includes massage tables, massage chairs, initial operational and retail product inventory, and massage equipment. The Retreat Development Package also includes facial services supplies and equipment, but it does not include operational or retail professional products which must be purchased from our approved suppliers. Shipping and scheduling will be arranged by Summit. We estimate the cost of the Retreat Development Package to range from \$58,540 to \$62,621 depending on the size of your particular Retreat. You may also be required to pay sales or use tax for the Retreat Development Package. The Retreat Development Package payments are not refundable under any circumstances.

### ***Financial Assurances***

Some states have imposed a financial assurance requirement. Please refer to the Addendum in **Exhibit E** to this Franchise Disclosure Document.

## **ITEM 6 OTHER FEES**

### ***Recurring Fees***

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Royalty	6% of Gross Revenue <sup>(2)</sup>	Bi-weekly	The Royalty fee is based on Gross Revenue during the previous month. The Royalty fee is an ongoing payment that allows you to use the Marks and the other intellectual property of the System and pays for ongoing support and assistance from us. It will be due bi-weekly on the days we specify in the Brand Standards Manual.
Brand Fund Contribution <sup>(3)</sup>	3% of Gross Revenues	Bi-weekly, with Royalty	Beginning the 9 <sup>th</sup> month after you open your MH Business, you must contribute 3% of your Gross Revenue to the “ <b>Brand Fund.</b> ” This contribution will be used for system-wide promoting and building of the Massage Heights brand. We reserve the right to increase this contribution up to 4%.

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Social Media and Website Management <sup>(4)</sup>	Currently \$350 per month	Due on the 15 <sup>th</sup> of each month	Collected for each MH Business to pay for certain social media and website management services and web landing page optimization services. This fee is subject to change.
Technology Fee <sup>(5)</sup>	Currently \$550 per month	Due on the 15 <sup>th</sup> of each month	We may change or update software and you must pay for updates, new software, or increases from third-party vendors. This monthly fee may increase each year. The “ <b>Technology Fee</b> ” includes the POS software, email, and network support along with additional software licenses for outbound consumer messaging and electronic forms, and may include future hardware, software, websites, applications, and platforms that we may develop and implement in our sole discretion. You are required to sign our Use and License Agreement attached to this Franchise Disclosure Document in <b>Exhibit G</b> .
Promotional Package Fee	Approximately \$200 for each seasonal promotion	As incurred	We may put together promotional packages that will include specific holiday promotional materials. We estimate each package to cost less than \$200 but the actual cost will depend on the size of your Retreat and the materials included. This fee may increase each year.
National Franchise Convention or Business Meeting Fee	Currently up to \$700 per person	Annually	Payable to us to help defray the cost of your attendance at the annual convention or business meetings. This fee is non-refundable and is due even if you do not attend the convention. This fee may increase each year.
Therapist Professionalism Fees	Currently \$350 per year	Due on January 15 each year	You are required to pay us this fee each year for: (i) a continuing education unit credited course that is available to all of your therapists (\$200 per year), and (ii) the use of an employment verification database for therapists (\$150 per year). We will remit the respective fees to the designated vendors. This fee may increase each year.

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Rapid Response	Currently \$109 per month	Due on the 15 <sup>th</sup> of each month	You must retain the designated vendor and use its services when investigating potential violations of our then-current conduct policy, which we reserve the right to modify at any time (currently Misconduct Prevention Policy). You are required to pay this fee to us, which we will remit to the vendor. This fee may increase each year.

***Potential Special Circumstances Fees***

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Initial Training Extension Fee	\$500 plus expenses, including travel, lodging and meals	On demand	This fee is due if we are unable to complete initial training in the specified time frame due to your lack of knowledge, failure to attend, or other factors in your control. You must pay all travel, lodging, and meal expenses incurred by our staff or other representative for the period of the extended training.
Additional Persons Fee for Initial Training Program	\$500 per person per day	As incurred	If you request additional attendees to attend the Initial Training Program, or components of the Initial Training Program, you must pay \$500 per person per day fee for each additional attendee. You must pay all attendees' travel, lodging, meals, and personal expenses during training.
Additional Training and Assistance Fees	Currently \$500 per person per day plus expenses, including travel, lodging and meals	On demand	If you replace your Designated Retreat Director, Lead Massage Therapist, Lead Skin Therapist, or if we determine the need for or if you request additional training or assistance to you or any member of your staff, we may require this fee plus all travel, lodging, and meal expenses incurred by our staff or other representative. This fee may increase each year.

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Refresh Training	Currently \$500 per person per day plus expenses, including travel, lodging, and meals	On demand	We require franchisees to attend refresh training courses periodically (currently, approximately every three years) for which we may charge this fee plus all travel, lodging, and meal expenses incurred by our staff or other representative. This fee may increase each year.
Local and Regional Advertising Cooperatives <sup>(6)</sup>	Established by cooperative members	Established by cooperative members	The cooperative will establish rules approved by us.
Payment Service Fees	Up to 4% of total charge	As incurred	If payment is made to us by credit card for any fee required, we may charge a service charge of up to 4% of the total charge. This fee may increase each year.
Customer Issue Resolution	Reasonable costs we incur for responding to a customer complaint, which varies	On invoice	Payable if a customer of your MH Business contacts us with a complaint and we provide a gift card, refund, or other value to the customer as part of our addressing the issue.
Unauthorized Advertising Fee	\$500 per occurrence	On invoice	Payable if you violate your obligation to obtain our prior approval of all advertising and promotional plans and materials before use if the plans and materials were not created by us or previously approved by us during the 6 month period leading up to the proposed use.

### Relocation, Transfer, Renewal, and Termination Fees

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Relocation Fee	Our costs up to \$5,000	Upon relocation	You must reimburse us for our reasonable expenses if we permit you to relocate your MH Business. We will provide you with copies of our invoices for our expenses from any third-party providers upon request.
License Transfer Fee	25% of the then-current Initial Franchise Fee or \$10,000 if we are not then offering franchises for sale	\$1,000 non-refundable deposit at time you request our consent to transfer your license and the remaining balance before transfer completed.	Payable only in connection with the transfer of your MH Business or a transfer of ownership of your legal entity. For a transfer to a wholly owned entity or reallocation of ownership interest, we will charge you a reduced transfer fee of \$1,500 to cover our administrative and legal costs to facilitate the transfer.
Transfer Training Fee	Currently \$2,000	At the time you sign the Franchise Agreement	Payable only if you are purchasing a Retreat that is already open and operating. This fee may increase each year.
Onsite Transfer Training Fee	Currently \$1,850 plus travel, lodging and meals for our representatives	Fee at time of scheduling; costs upon invoice	If you request or if we determine the need for onsite training or assistance at your Retreat once your transfer is finalized, we may require this fee plus all travel, lodging, and meal expenses incurred by our staff or other representative. To be paid by transferee. This fee may increase each year.
Broker Fees	Our actual cost of the brokerage commissions, finder's fees, or similar charges	As incurred	If you transfer your MH Business to a third party or purchaser, you must reimburse all of our actual costs for commissions, finder's fees, and similar charges.
Renewal Fee	25% of the then-current Initial Franchise Fee or \$10,000 if we are not then offering franchises for sale	At the time you sign the renewal franchise agreement	Payable if you qualify for a renewal franchise and choose to enter into a renewal franchise agreement.
De-Identification	All amounts incurred by us related to de-identification	As incurred	Payable if we de-identify the MH Business upon its termination, relocation, or expiration.



### Noncompliance, Audit and Late Fees

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Default Fee	\$500 per incident	On demand	Payable if you are in default of your Franchise Agreement. This fee is in addition to any other fees we may charge, including late fees, and other rights or remedies available to us. This fee is intended to offset the damages that we incur as a result of your default and is not intended as a penalty.
Local Advertisement Payment <sup>(4)</sup>	The greater of 3% of Gross Revenue or \$2,000 per month	As incurred	Local advertising requirements are discussed in Item 11. If you fail to spend your " <b>Minimum Local Advertisement Requirement</b> " on local advertising each month, you must pay us the difference between the amount you spent and the Minimum Local Advertisement Requirement, which will be contributed to the Brand Fund.
Makeup Training Session for Failure to Attend Convention or Business Meeting	Currently up to \$700 per person plus expenses, including travel, lodging and meals	On demand	If you fail to attend the annual convention or business meeting, we may charge you an additional fee (currently up to \$700 per person) to attend a make-up training session, plus your travel, lodging, and meals expenses. This fee may increase each year.
Insurance Placement	You must reimburse our costs plus a 20% administrative fee	On demand	If you fail to obtain insurance, we may obtain insurance for you, and you must reimburse us for the cost of insurance obtained plus 20% of the premium for an administrative cost of obtaining the insurance.
Audit Expenses	Cost of audit and inspection, any understated amounts, and any related accounting and legal expenses	On demand	You must pay any expenses related to an audit and inspection, including any travel, lodging, meals, software, copy costs. You must pay this if an audit if you do not submit the required reports, the audit reveals that you understated weekly Gross Revenue by more than 2% for the audited period, or if the audit reveals that you are noncompliant with any other provision of the franchise agreement.

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Management Fee	Currently \$500 per day plus expenses, including travel, lodging, and meals	As incurred	If you default under the Franchise Agreement or the Designated Retreat Director dies or becomes disabled, we can designate a temporary manager to manage your Retreat until you cure the default or find a replacement designated retreat director, which may be you or one of your owners, as applicable. This fee may increase each year.
Late Payment Fee	\$100 per occurrence	As incurred	Payable if any payment due to us or our affiliates is not made by the due date.
Interest	Lesser of 18% per annum or highest commercial contract interest rate allowed by law	As incurred	This fee is charged on any late payments to us or our affiliates, including Royalty fees, advertising contributions, and product purchases. Interest accrues from the original due date until payment is received in full.
Late Reporting Fee	\$100 per occurrence and \$100 per week	As incurred	Payable if you fail to submit any required report, documentation, or financial statement when due. You will continue to incur this fee until you submit the required information.
Insufficient Funds Fee	\$100 per incident	As incurred	Payable if any check or electronic funds transfer (“EFT”) is not successful due to insufficient funds, stop payment or any similar event.

### **Legal Fees**

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Indemnification	Will vary under circumstances	As incurred	You must indemnify and reimburse us for any expenses or losses that we or our representatives incur related in any way to your MH Franchise.

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Legal Costs, Accounting Fees, and Other Professional Fees	Will vary under circumstances	As incurred	You must reimburse us for any legal, accounting, or other professional fees that we incur as a result of any breach or termination of your Franchise Agreement. You must reimburse us if we are required to incur any expenses in enforcing our rights against you under the Franchise Agreement.
Liquidated Damages <sup>(7)</sup>	Will vary under the circumstances	Within 15 days after termination of the Franchise Agreement	Due only if we terminate the Franchise Agreement before the end of the term because of your material breach, or you terminate the Franchise Agreement without legal cause.

**Notes:**

- All fees paid to us or our affiliates are uniform and not refundable under any circumstances once paid. Fees paid to vendors or other suppliers may be refundable depending on the vendors and suppliers. We currently require you to pay fees and other amounts due to us or our affiliates via electronic funds transfer (“EFT”) or other similar means. You are required to complete the EFT authorization (in the form attached to this Franchise Disclosure Document in **Exhibit G**). We can require an alternative payment method or payment frequency for any fees or amounts owed to us or our affiliates under the Franchise Agreement. All fees are current as of the Issuance Date of this Franchise Disclosure Document. Certain fees that we have indicated may increase over the term of the Franchise Agreement.
- Gross Revenue.** The term “**Gross Revenue**” means the total selling price of all services and products sold at or from or through the MH Business you operate, whether or not sold or performed at or from the MH Business you operate, including the full redemption value of any gift certificate or coupon sold for use at a MH Business (fees retained by or paid to third-party sellers of such gift certificates or coupons are not excluded from this calculation), and including all proceeds from any business interruption insurance and all income, revenue and consideration of every other kind and nature related to your MH Business operation, whether for cash or credit and regardless of collection in the case of credit. (See the Franchise Agreement for a complete definition of Gross Revenues). If your records and procedures are insufficient to permit a proper determination of Gross Revenues, we may prepare and deliver an estimate to you of Gross Revenue for the period under consideration. You will immediately pay us any amount shown to be due on account of such estimate.
- Brand Fund Contribution.** We reserve the right to increase this contribution up to 4% upon 30 days’ written notice.
- Local Advertising Payment and Social Media and Website Management.** We may require you to pay all or any portion of your Minimum Local Advertisement Requirement to us, our affiliates, or our designated required vendors or suppliers. We currently collect \$350 per month from franchisees for each MH Business to pay for certain social media management services, and web landing page optimization services, all of which are provided by our designated required vendors or suppliers for the benefit of each franchisee’s MH Business. We may increase or decrease the amount we collect from franchisees or the purpose for which those amounts are collected, provided that the total amount that we collect from you on an annual basis will not exceed your Minimum Local Advertisement Requirement for that year. You agree to use all required vendors or suppliers

for services that we require.

5. **Technology Fee.** We will provide you with certain technology services in exchange for your monthly Technology Fee, which may change from time to time based on changes to the technology services we provide and/or our costs to provide these services. The current Technology Fee is \$550 per month beginning the month you begin operations. We reserve the right to license, sublicense, and create software and technology that MH franchisees must pay for and use. We can change the software and technology that must be used by our franchisees at any time, which may result in changes to the Technology Fee.
6. **Local and Regional Advertising Cooperatives.** If a local or regional advertising cooperative is established, contribution amounts will be established by the cooperative members, subject to our approval. We anticipate that each franchisee-owned MH Business and each MH Business we own will have one vote for each MH Business it operates in the designated market. Each MH Business we own that exists within the cooperative's area will contribute to the cooperative on the same basis as franchisees. Members of the cooperative will be responsible for administering the cooperative, including determining the amount of contributions from each member.
7. **Liquidated Damages.** Liquidated damages are determined by multiplying the combined monthly average of Royalties and Brand Fund contributions (without regard to any fee waivers or other reductions) that are owed by you to us, beginning with the date you open your MH Business through the date of early termination, multiplied by the lesser of: (i) 36, or (ii) the number of months remaining in the term of the Franchise Agreement, except that liquidated damages will not, under any circumstances, be less than \$30,000.

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**ITEM 7  
ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Paid
	Low	High			
Initial Franchise Fee	\$49,500	\$49,500	Lump Sum	When you sign the Franchise Agreement	Us
Retreat Development Package <sup>(1)</sup>	\$58,540	\$62,621	Lump Sum	When you sign your lease or purchase agreement for your Retreat	Affiliate
Utility and Security Deposits <sup>(2)</sup>	\$3,500	\$6,500	As Incurred	Before Opening	Landlord and/or Utility Companies
Leasehold Improvements and Professional Design Fees <sup>(3)</sup>	\$256,000	\$286,000	As Incurred	Before Opening	Landlord, Construction Contractors, or Third Parties
Exterior Signage <sup>(4)</sup>	\$8,250	\$11,000	As Incurred	Before Opening	Third Parties
Equipment <sup>(5)</sup>	\$3,300	\$6,400	As Incurred	Before Opening	Third Parties
Technology System <sup>(6)</sup>	\$33,786	\$40,339	As Incurred	Before Opening	Third Parties
Software Setup Fee	\$500	\$500	Lump Sum	When you sign the Franchise Agreement	Us
Facial Services Expenses <sup>(7)</sup>	\$2,173	\$6,311	As Incurred	Before Opening	Third Parties
Business Licenses and Permits <sup>(8)</sup>	\$150	\$2,100	As Required	Before Opening	Governmental Agencies
Professional Fees <sup>(9)</sup>	\$1,000	\$8,000	As Incurred	Before Opening	Third Parties
Initial Training Expenses <sup>(10)</sup>	\$3,500	\$3,500	As Incurred	As Incurred	Third Parties
Initial Advertising Program <sup>(11)</sup>	\$15,000	\$15,000	As Incurred	When you submit your final construction plans and specifications for your Retreat	Us
Additional Funds- 3-months <sup>(12)</sup>	\$37,000	\$54,000	As Incurred	As Incurred	Third Parties
<b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>(13)</sup></b>	<b>\$472,199</b>	<b>\$551,771</b>			

**Notes:**

These projected initial expenses are our best estimate of the costs you may incur in establishing and operating a MH Franchise. We do not offer direct or indirect financing for these items. All expenditures paid to us or our affiliates are uniform and non-refundable under any circumstances once paid. All expenses payable to third parties are non-refundable, except as you may arrange for utility deposits and other payments.

1. **Retreat Development Package.** The Retreat Development Package typically includes massage tables, massage chairs, initial operational and retail product inventory, and equipment (e.g., massage and skincare equipment). See Item 5 for more information regarding the Retreat Development Package.
2. **Utility and Security Deposits.** This estimate does not include deposits required by your telecommunications services company or other public utilities company.
3. **Leasehold Improvements and Professional Design Fees (net of landlord tenant improvement allowance).** Building and construction costs will vary depending upon the pre-existing condition of the premises for the Retreat, the size of the premises, local construction costs, and the extent and quality of improvements desired by you over and above our minimum requirements. This estimate includes the Build'M fee (required vendor), architect/engineer, permits, construction costs, lighting, millwork, and flooring. This estimate also includes tenant improvement allowances ("TIA"), which is a negotiated sum a landlord may be willing to spend to customize the leased space for the needs of a tenant. If offered, the range of the TIA may vary depending upon the condition of the leased space. You should investigate whether TIA are regularly offered in your area. Professional retreat design fees will vary based on the size, structure, layout and may include preliminary layout, construction documents, architectural and engineering plans. Leasehold improvements and professional design fees are based upon TIA of \$25 per square foot to \$35 per square foot for a 2200- 2400 square foot location.
4. **Exterior Signage.** This estimate is for a single exterior sign. The type and size of the signage installed will be based upon the zoning and property use requirements and restrictions. These estimates assume you purchase your exterior signage. There could be an occasion where certain signage is not permitted because of zoning or use restrictions.
5. **Equipment.** This estimate includes appliances and other items that are not included in the Retreat Development Package.
6. **Technology System.** This estimate includes the cost of obtaining the required technology system, including computer and tablet hardware, monitors, printers, networking equipment, sound system, sound masking system, scenting machine equipment, phone system, surveillance, and installation, and our required customized software (See Items 5, 6, and 11 for more information).
7. **Facial Services Expenses.** Facials may be offered in dual use therapy rooms unless local and state regulations require separate rooms. The costs are determined by the number of rooms being designated as dual use and this estimate range assumes there will be two rooms designated as dual use. Certain facial equipment and supplies are included in the Retreat Development Package that must be purchased from Summit. This estimate is for the remaining retail and back bar operational products that you will need.
8. **Business Licenses and Permits.** You must obtain the required licenses and permits that are required by your city, county, and state to operate your MH Business. Certain states may require that you file and post a bond to sell memberships or if you are classified as a health spa. It is your responsibility to verify whether or not your state requires such bond and provide us with the bond documentation.

9. **Professional Fees.** We strongly recommend that you hire a lawyer, accountant or other professional to advise you on this Franchise offering, the lease for your Retreat and to assist you in setting up your MH Business. Rates for professionals can vary significantly based on area and experience.
10. **Initial Training Expenses.** We currently provide training at our franchising office located in San Antonio, Texas, at designated Retreats, or at your Retreat. We also provide training through an online platform. You must pay for airfare, meals, transportation costs, lodging, and incidental expenses for all Initial Training Program attendees. Initial training is provided at no charge for up to four people which must include you (or your Managing Owners), your initial Designated Retreat Director, and your initial Lead Massage Therapist (each defined in Item 15). This estimate includes the travel and living expenses including airfare that you will incur when you and three other people attend the Initial Training Program. It does not include any wages or salary for you or your employees during this training. You must employ a Lead Massage Therapist at all times who will train all other massage therapists who work at your MH Business. Your Lead Massage Therapist must be hired prior to the start date of “**Camp 3**” of the Initial Training Program (described in Item 11) and must attend all position-specific components of the Initial Training Program. If additional initial training is required, or more people need to be trained, an additional fee may be assessed.
11. **Initial Advertising Program.** The Initial Advertising Program will be spent towards generating awareness within the local trade area of the opening of your Retreat and promoting introductory massage, as well as memberships. Money will be allocated to execute an integrated marketing plan which may include promotional introductory offers, direct mail, saturation mail, radio, print advertising, outdoor advertising, public relations, pay per click and remarketing campaigns, digital and social marketing, online business listings, call tracking and events both in-Retreat and off-site including ribbon cutting and grand opening event. These marketing plans will include marketing tactics for both consumer-facing and team member recruitment. Item 11 contains more information regarding the Initial Advertising Program.
12. **Additional Funds – 3 Months.** These amounts represent our estimate of the amount needed to cover your expenses for the initial three-month startup phase of your MH Business. They include administrative, utilities, three months of the \$550 monthly Technology Fee, three months of the \$350 monthly social media and local franchise page website management services fee and other items. In addition, they include an estimated \$1,000-\$5,000 for initial employee recruitment costs. They also include an estimated amount of \$7,950-\$10,300 for three months of initial inventory, which includes office supplies, opening marketing kit, brochures, flyers, business cards, recruiting materials, gift cards and certificates, stationery, table signs, forms, membership cards, decals, pre-opening and grand opening banners, pens and other marketing materials not included in the grand opening advertising program that you will pay to third parties. Additionally, we have included fees in the amount of \$480 for the first three months of scenting and sound system fees that you will pay to our required or designated vendors, including \$80 per month for scenting machine equipment and services and \$80 per month for overhead music and on-hold music. These amounts also include an estimate of \$2,500 to \$5,000 for insurance premiums for three months. Please note that if you have had prior issues or claims from previous operations unrelated to the operation of a MH Business, your rates may be significantly higher than those estimated above. Also included in these amounts are an estimated \$22,000-\$30,000 for lease payments. This range includes three months’ rent at a monthly rate of approximately \$3.30 per square foot to \$3.80 per square foot. Your actual rent payments may vary, depending upon the size of your Retreat and your market’s retail lease rates. Retreats will typically be between 2,200 and 2,400 square feet in size with at least eight massage rooms and nine tables. Your actual rent payments may vary, depending upon the size of your Retreat and your market’s retail lease rates. Retreats typically are located in shopping malls and strip malls. If you purchase instead of leasing the premises for your Retreat then the purchase price, down payment, interest rates and other financing terms will determine your monthly mortgage payments. The figures in this table do not include standard pre-opening expenses, Royalties, or advertising fees payable under the Franchise Agreement or debt service and assume that none of your expenses are offset by any sales generated during the startup phase. These figures are estimates, and we cannot guarantee that you will not have additional expenses starting your MH Business. We relied on the experience of our affiliates in operating MH Franchises similar to the type offered under this Franchise estimates. You must bear any deviation or escalation in costs

from the estimates that we have given.

13. **Figures May Vary.** These are estimates of your initial startup expenses for one MH Business. You should review these figures carefully with a business advisor before making any decision to purchase the Franchise.

## ITEM 8

### RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

You must operate your MH Business according to our System and specifications. This includes purchasing or leasing all goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, and real estate related to establishing and operating your MH Business under our specifications, which may include purchasing these items from: (1) our designees, (2) approved suppliers, and/or (3) us or our affiliates. You must not deviate from these methods, standards, and specifications without our prior written consent, or otherwise operate in any manner which reflects adversely on our Marks or the System.

#### Standards and Specifications

You must establish and operate your MH Business in compliance with your Franchise Agreement and the brand standards and specifications of the System contained in confidential brand standards documents.

The brand standards documents consist of one or more manuals, policies and procedures, guides, and other written materials, which we may periodically provide or modify (collectively, “**Brand Standards Manual**”). The Brand Standards Manual states our specifications, brand standards, and guidelines for all products and services we require you to obtain in establishing and operating your MH Business and approved and designated vendors for these products and services. We will notify you of new or modified specifications, standards, and guidelines through periodic amendments or supplements to the Brand Standards Manual or through other written communication (including electronic communication such as email or through a system-wide intranet). We will issue electronic copies of our brand standards and specifications to you and approved and proposed suppliers.

You must purchase, install, maintain in sufficient supply, and use only fixtures, furnishings, equipment, signs, and supplies that conform to the brand standards and specifications described in the Brand Standards Manual or otherwise in writing. You must at all times maintain an inventory of approved products in sufficient quantities and variety to realize the full potential of your MH Business.

#### Technology System

You must use the computer hardware and software (including proprietary software) that we periodically designate to operate your MH Business (“**Technology System**”) as further described in Item 11. The Technology System also includes the POS system that we designate. You must obtain the Technology System, software licenses, maintenance and support services, collaboration tools, online scheduling/booking services, native phone apps, and other related services from the suppliers we specify (which may be limited to us and our affiliates).



## **Insurance**

You must obtain and maintain throughout the term of the Franchise Agreement (including any renewal or interim periods), at your sole cost, the insurance coverage that we currently require and satisfy other insurance-related obligations, including: (i) a Commercial General Liability Policy with \$1,000,000 per occurrence/\$2,000,000 aggregate; (ii) Business Interruption Insurance for no less than six (6) months; (iii) a Professional Liability Policy with \$1,000,000 per occurrence/\$2,000,000 aggregate; (iv) a Sexual Abuse and Molestation Policy with \$250,000 per occurrence/\$500,000 in the aggregate (any policy purchased with less than \$500,000 per occurrence may not be an eroding policy); (v) an Employment Practices Liability Policy with \$100,000 aggregate; Auto Liability and Property Insurance for \$1,000,000 per occurrence; and Worker's Compensation and Employer's Liability (even if not required in your state) for \$100,000 per occurrence for bodily injury, \$100,000 per occurrence for bodily injury by disease, and a \$500,000 policy limit for bodily injury by disease. If your professional, sexual abuse and molestation, and/or general liability insurance is on a claims-made form, then you must purchase tail insurance coverage based on then-current requirements extending for a period of at least three years following the date of the policy's expiration, or the sale, non-renewal, termination, or other closure of your Franchised Business.

All insurance policies you purchase must provide for 30 days' prior written notice to us of a policy's material modification or cancellation and must contain endorsements by the insurance companies waiving all rights of subrogation against Franchisor. The Commercial General Liability, Business Interruption, Professional Liability, and Sexual Abuse and Molestation insurance policies must (a) name us and any affiliates we designate as additional named insureds with primary and unconditional coverage, and (b) cannot condition Massage Heights Franchising to waive any conflicts of interest to obtain coverage. No insurance policy you purchase may be an 'expense-only' policy.

The insurance company must be authorized to do business in the state where your MH Business is located and must be approved by us. It must also be rated A-VIII or better by A.M. Best and Company, Inc. (or similar criteria as we specify) or a similar reporting company if such rating is unavailable in your area. We may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, changing economic conditions, or other relevant changes in circumstances. If you fail to obtain or maintain the insurance we specify, we may, but not be required to, obtain the insurance for you and your Retreat on your behalf (See Item 6). The cost of your premiums will depend on the insurance carrier's charges, terms of payment, and your insurance and payment histories. If we obtain insurance on your behalf, you must reimburse us for the cost of insurance obtained plus 20% of the premium for an administrative cost of obtaining the insurance.

## **Purchases from Approved Suppliers**

We estimate that approximately 75% of purchases required to open your MH Business and approximately 75% of purchases required to operate your MH Business will be from us or from other approved suppliers or under our specifications.

We are currently an approved supplier of the software that you will use for your MH Business. During our last fiscal year, ended December 31, 2023, our total revenue was \$9,825,555. Our revenue from required purchases by franchisees was \$700,279 which represents approximately 7.12% of our total revenue for 2023. Some of our Board of Managers have an interest in MH Franchising.

Our affiliate, Summit, is the only approved supplier for the Retreat Development Package and initial and ongoing equipment and supply purchases. Our parent company, SWGI, also owns 100% equity interest in Summit. During our last fiscal year, ended December 31, 2023, Summit's unaudited revenue from required purchases by franchisees was \$1,736,282.24. Some of our members of our Board of Managers have an interest in SWGI, Summit's parent company, and one is the President of Summit.

You must use our designated suppliers of scenting machines, overhead music, on-hold music, and sound masking equipment, and IT-related computer and network hardware procurement, including tablets, as well as installation of the related software and technology, scenting and music equipment. Additionally, you must also use our designated vendors to conduct background checks and other due diligence on the massage therapists and estheticians who provide services to guests at your MH Business. If we have designated vendors, you must also use our designated vendor(s) for construction management, construction, architect, site visit, space plans/layout and design.

We have negotiated price terms and other purchase arrangements with suppliers for some items that we require you to lease or purchase in developing and operating your MH Business. During our last fiscal year, ended December 31, 2023, some of our suppliers paid us a rebate, which totaled \$20,472.87, which represents .002% of our total revenue of \$9,825,555. During its last fiscal year, ended December 31, 2023, some suppliers paid Summit a rebate, which totaled \$2,826.05, which represents .0016% of Summit's total revenue of \$1,736,282.24.

We do not have purchasing and distribution cooperatives as of the Issuance Date of this Franchise Disclosure Document. We may negotiate alternative purchase arrangements with suppliers and distributors of approved products for the benefit of our franchisees and may receive rebates on volume discounts from our purchase of products that we resell to you. We do not provide material benefits, such as renewing or granting additional franchises to franchisees, based on their use of designated or approved suppliers. There are no caps or limitations on the maximum amount of rebates we may receive from our suppliers as the result of franchisee purchases.

### **Approval of New Suppliers**

We will provide you with a list of approved required and optional suppliers in the Brand Standards Manual which will be updated, as necessary. If you want to use or sell a product or service that we have not yet evaluated, or if you want to purchase or lease a product or service from a supplier or provider that we have not yet approved (for services and products that require supplier approval), you must notify us and submit to us the information, specifications, and samples we request. We will use commercially reasonable efforts to notify you within 30 days after receiving all requested information and materials whether you are authorized to purchase or lease the product or service from that supplier or provider. We may charge a fee to evaluate the proposed product, service, or supplier. We apply the following general criteria in approving a proposed supplier: (1) ability to purchase the product in bulk; (2) quality of services; (3) production and delivery capability; (4) proximity to other Massage Heights franchisees to ensure timely deliveries of the product or services; (5) dependability of the supplier; and (6) other reasonable factors of our choosing. We may also require the supplier to sign a supplier agreement with us. We may periodically re-inspect approved suppliers' facilities and products and may revoke our approval of any supplier, product or service that does not continue to meet our specifications. We will send written notice of any revocation of an approved supplier, product, or service. We do not provide material benefits to you based solely on your use of designated or approved sources.

## ITEM 9 FRANCHISEE'S OBLIGATIONS

This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items in this Franchise Disclosure Document.

Obligation	Section in Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	Definitions and Sections 7 and 8	Item 11
b. Pre-opening purchases/leases	Sections 8 and 9	Items 8 & 11
c. Site development and other pre-opening requirements	Section 8	Items 6, 7 & 11
d. Initial and ongoing training	Sections 7 and 8	Item 11
e. Opening	Section 8	Item 11
f. Fees	Sections 3, 5, 6, 7, 8, 11, 12, 15, 17 and Attachment A	Items 5 & 6
g. Compliance with standards and policies/Brand Standards Manual	Definitions and Sections 7, 8 and 9	Item 11
h. Trademarks and proprietary information	Section 10	Items 13 & 14
i. Restrictions on products/services offered	Sections 8 and 9	Items 8 & 16
j. Warranty and customer service requirements	Section 8	Item 11
k. Territorial development and sales quotas	Section 4 and Attachment A	Items 11 & 12
l. Ongoing product/service purchases	Sections 8 and 9	Item 16
m. Maintenance, appearance, and remodeling requirements	Sections 3, 8 and 15	Item 7, Note 3
n. Insurance	Section 12	Item 8
o. Advertising	Section 11	Item 11
p. Indemnification	Section 12	Not Applicable
q. Owner's participation/ management and staffing	Section 8	Item 15
r. Records and reports	Section 6	Items 6 & 17
s. Inspections and audits	Sections 6 and 8	Item 6
t. Transfer	Section 15	Item 17
u. Renewal	Section 3	Item 17
v. Post-termination obligations	Sections 10, 14 and 17	Item 17
w. Non-competition covenants	Section 14	Item 17
x. Dispute resolution	Section 20	Item 17
y. Guaranty	Attachment B	Item 15

## ITEM 10 FINANCING

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

## ITEM 11 FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING

**Except as listed below, MH Franchising is not required to provide you with any assistance.**

### Pre-Opening Obligations

Before you open your MH Business, we (or our designee) will provide the following assistance and services to you:

1. Designate your Territory (See Section 7.3(a) of the Franchise Agreement).
2. Provide you with written site selection guidelines and criteria, provide you with site selection assistance to determine an acceptable location for your Retreat, as outlined in the Brand Standards Manual (See Section 7.3(b) of the Franchise Agreement), and authorize the Retreat site.
3. Reviewing and authorizing a lease for the Retreat (See Sections 7.3(b) and 8.2 of the Franchise Agreement). We will review the lease, but you are solely responsible for negotiating the business and legal terms of the lease. You may not negotiate a lease or purchase agreement prior to receiving our written consent of the site for the Retreat.
4. Provide an initial training program ("**Initial Training Program**") for up to four people at no charge, one of which must be you (or your Managing Owner if you are an entity), one of which must be your initial Designated Retreat Director (defined in Item 15) (See Section 7.3(c) of the Franchise Agreement), and one of which must be your initial Lead Massage Therapist (defined in Item 15). The Initial Training Program is comprised of in-person training at our headquarters in San Antonio, Texas, or another location we specify, or through an online platform in our discretion, and training at your location. We also require that all other owners and owners' spouses that will participate in the operation of your MH Business attend the Initial Training Program. We provide a representative to conduct onsite assistance for pre-opening and opening assistance for a maximum of five business days, three of which will occur prior to your opening of your Retreat to the public; one of which will occur on the opening date; and one of which will occur the day after the opening date. If you request additional representatives or request that our representative stays for more than five business days, we may charge you a daily fee and you must reimburse us for all additional lodging, food, and transportation costs we incur during the additional time period (See Section 7.3(c) of the Franchise Agreement). We will provide training to you (or your Managing Owner(s) if you are an entity) and your initial Designated Retreat Director and initial Lead Massage Therapist on the System, System guidelines, procedures, methods of training and operation, advertising, sales techniques, promotional ideas, marketing plans, customer relations, instructions on quality standards, practical experience in the operation of a MH Business and operational and brand standards (See Section 7.3(c) of the Franchise Agreement). We will not train or assist in training your employees or independent contractors, except as it relates to ensuring brand standards are met. You are responsible for training your employees and independent contractors. You are responsible for hiring, training,

directing, scheduling, and supervising your employees and independent contractors in the day-to-day operations of your MH Business.

5. Provide you with mandatory and suggested specifications and layouts for your MH Business, including requirements for dimensions, design, image, interior, layout, décor, and operating assets (See Sections 7.3(e) of the Franchise Agreement). You must submit final construction plans and specifications to us for our approval before you begin construction at the premises, and you must construct your MH Business in accordance with those approved plans and specifications (See Section 7.3(e) of the Franchise Agreement).

6. Provide you with specifications for all initial and replacement furniture, fixtures, equipment, inventory, and suppliers required to operate your MH Business (See Section 7.3(f) of the Franchise Agreement).

7. Identify the operating assets, approved products, and other items that you will use to develop and operate your MH Business (See Section 7.3(g) of the Franchise Agreement).

8. Provide you with access to our Brand Standards Manual. The Brand Standards Manual contains approximately 467 pages. The Table of Contents for the Brand Standards Manual is attached to this Franchise Disclosure Document as **Exhibit F** (See Section 7.3(h) of the Franchise Agreement).

9. Provide you with assistance or management with your Initial Advertising Program (See Section 7.3(i) of the Franchise Agreement).

10. Assist in the establishment of an advertising cooperative, if any (See Section 7.3(j) of the Franchise Agreement).

We do not provide the above services to renewal franchisees and may not provide all of the above services to franchisees that purchase existing MH Businesses.

### ***Site Selection***

You must select the site for the Retreat and obtain our consent. We do not typically sell, lease, or sublet real estate that we own or rent to our franchisees. We will consult with you on our current site selection guidelines and provide other site selection counseling as we deem advisable (See Section 7.3(b) of the Franchise Agreement). In evaluating a proposed site, we consider such factors as general location and neighborhood, traffic patterns, parking, size, layout, and other physical characteristics. You may not relocate the Retreat without our prior written consent. Before leasing or purchasing the site for the Retreat, or relocation of the Retreat, you must submit to us, in the form we specify, a description of the site, together with other information and materials that we may reasonably require, including a letter of intent or other evidence that confirms your favorable prospects for obtaining the site, a site inspection, and a demand study. We will have 30 days after we receive the information and materials to evaluate the proposed site. If we disapprove of the proposed site, you must select another site, subject to our consent. If we do not respond with an approval of your request for the site for your Retreat, the site will be deemed disapproved. You must purchase or lease, at your expense, the site for the Retreat within 120 days after signing the Franchise Agreement, or in the case of relocation, within 120 days of notifying us of your request to relocate your Retreat ("**Relocation Request**"). Proposals regarding location of the Retreat must be submitted to us within 90 days from the date of the Franchise Agreement or Relocation Request, or such longer time frame specified by us in writing. You must deliver to us any traffic, competition, and demographic or similar location information relating to any proposed site that we reasonably request for

review within 90 days from the date of the Franchise Agreement or Relocation Request, or such longer time frame specified by us in writing, but at least 20 days before any proposed lease or site purchase agreement signing date. We may terminate the Franchise Agreement if you and we cannot agree on an acceptable location (or in the case of relocation, replacement location) for your Retreat. You must submit for our review any sale or lease contract before you sign it. Although we will consult with you on your site, assist you in finding an acceptable location, and require that your site be subject to our final authorization, you have the ultimate responsibility in choosing, obtaining, and developing the site for your Retreat.

### ***Schedule for Opening***

You must open your MH Business within twelve months from the effective date of your Franchise Agreement (See Section 8.2(d) of the Franchise Agreement). If you purchase multiple Franchises at the same time, we require that you open each additional MH Business within twelve months of opening the previous MH Business. Your failure to meet your opening obligation is a material breach of the Franchise Agreement and you may be subject to default, or termination of the Franchise Agreement. The typical length of time between signing the Franchise Agreement or the payment of any fees and the opening of a MH Business can vary from nine to twelve months. Some factors which may affect this timing are your ability to acquire a Retreat through lease or purchase negotiations, your ability to secure any necessary financing, your ability to comply with local zoning and other ordinances, your ability to obtain any necessary permits and certifications, the timing of the delivery of equipment, tools and inventory and the time to convert, renovate or build the Retreat. If you do not open your MH Business(es) according to this schedule but are diligently working to do so within the required period, we may grant additional time to open your MH Business, though we are under no obligation to do so.

You must comply with all applicable ordinances, building codes and permit requirements and with any lease requirements and restrictions. You must apply for all required business licenses and permits within 20 business days after signing the Franchise Agreement. If you do not receive all required licenses, permits, and certifications necessary to operate the MH Business before the opening of the MH Business, we may terminate the Franchise Agreement and we will not refund any part of your Initial Franchise Fee (See Item 5).

You may not open (or in the event of transfer, begin operating) your MH Business until: (1) we notify you in writing that all of your pre-opening obligations have been fulfilled; (2) you have completed the Initial Training Program to our satisfaction; (3) all amounts due to us have been paid; (4) we have been furnished with Certificates of Insurance for all insurance policies required by the Franchise Agreement and/or the Brand Standards Manual, or other documentation of insurance coverage and payment of premiums that we request; (5) we notify you that all approvals and conditions set forth in the Franchise Agreement have been met; (6) you have received all required permits and licenses; (7) you have ordered, received and installed your equipment, supplies, inventory and Technology System; and (8) you have complied with all aspects of our professional and ethical conduct program. You must be prepared to begin operating your MH Business immediately after we state that your MH Business is ready for opening.

### ***Refresh of Retreat***

If you are acquiring an existing MH Business or entering into a successor franchise agreement, you are required to bring the Retreat into compliance with our then-current specifications and standards (the “Refresh”). We will provide you with the requirements to complete the Refresh and you must complete the Refresh on or before the date established by us. All costs associated with the Refresh will be paid by you.



## Continuing Obligations

During the term of the Franchise Agreement, we (or our designee) will provide the following assistance and services to you:

1. Inform you of mandatory specifications, standards, and procedures for the operations of your MH Business, as described in Item 8 (See Section 7.4(b) of the Franchise Agreement).
2. Provide advice regarding the Retreat's operation based on reports or inspections. Advice will be given during our regular business hours via written materials, electronic media, telephone, or in person at our franchising office, or at your MH Business (See Section 7.4(a) of the Franchise Agreement).
3. Research new products, services, and training methods and provide you with information concerning developments of this research (See Section 7.4(c) of the Franchise Agreement).
4. Allow you to continue to use confidential material and Marks (See Sections 7.4(d) and 10 of the Franchise Agreement).

## Optional Assistance

During the term of the Franchise Agreement, we (or our designee) may, but are not required to, provide the following assistance and services to you:

1. Develop private label goods or merchandise for resale at the Retreats (See Section 7.6(c) of the Franchise Agreement).
2. Modify, update, or change the System, including the adoption and use of new or modified trade names, trademarks, service marks, or copyrighted materials, new products, new equipment, or new techniques (See Section 7.6(c) of the Franchise Agreement).
3. Make periodic visits to a MH Business or attend periodic telephonic or virtual meetings for the purpose of assisting in all aspects of the operation of a MH Franchise, prepare written reports concerning these visits outlining any suggested changes or improvements in the operation of a MH Franchise, and detailing any problems in the operations discovered as a result of any visit. If provided at your request, you must reimburse our expenses and pay our then-current training charges (See Section 7.6(c) of the Franchise Agreement).
4. Maintain and administer the Brand Fund and use these funds, in part, to develop promotional and advertising programs for MH Businesses (See Section 7.6(c) of the Franchise Agreement). We may dissolve the Brand Fund upon written notice.
5. Hold periodic system-wide conference calls or virtual meetings as well as national or regional conferences, business meetings, or workshops to discuss business and operational issues affecting MH Businesses, including, but not limited to, industry changes, new services and/or merchandise, and marketing strategies. You must attend any conferences, business meetings, or workshops we offer (See Section 7.6(a) of the Franchise Agreement) and pay the conference, business meeting or workshop fee, if any, and all travel, lodging, and meal expenses.
6. Provide additional assistance and training regarding your MH Business (See Training Section below) (See Section 7.6(b) of the Franchise Agreement).

7. Develop a referral program in which you and any other eligible participants, if any, may receive a referral fee for sending us an actualized lead, as described in the Brand Standards Manual (See Section 7.6(c) of the Franchise Agreement).

8. A representative of ours may, at our sole discretion, provide additional assistance (See Section 7.6(c) of the Franchise Agreement). There may be additional charges for these services. (See Item 6).

9. We may provide you with a monthly newsletter, at our discretion (See Section 7.6(c) of the Franchise Agreement).

10. We may provide you with assistance in establishing prices for the products and services offered through your MH Business.

### **Advertising and Promotion**

Except for the portion of local advertising you personally conduct, we have full discretion, designation, and control over all advertising and promotional programs (including the creative concepts, materials, endorsements, and media used for the programs as well as the geographic, market, and media placement and allocation of the programs) and all other brand development activities.

#### ***Initial Advertising Program***

We will plan and execute the Initial Advertising Program, which will be used to market your MH business prior to the opening of your Retreat and during the first 30 days of operation. Franchisee is required to pay us a non-refundable \$15,000 Initial Advertising Program fee at the time you submit your final construction plans and specifications for your Retreat. We will use these funds to work with our approved vendors and personnel to plan and implement marketing tactics for your MH business.

#### ***Brand Fund***

We have established a Brand Fund for marketing, developing, and promoting the System, the Marks, and MH Franchises. You must contribute 3% of your MH Business's monthly Gross Revenue to the Brand Fund during the term of the Franchise Agreement ("**Brand Fund Contribution**") beginning the ninth month after you open your MH Business. We may increase this contribution up to 4% upon 30 days' written notice.

You must pay the Brand Fund Contribution at the same time that you pay your Royalty, based on the amount of Gross Revenue you generated in the previous reporting period. We will deposit the Brand Fund Contributions in a separate bank account, commercial account, or savings account. The Brand Fund is administered by us, or one of our affiliates, at our discretion. Your contribution to the Brand Fund will be in addition to all other advertising requirements set out in this Item 11.

Each franchisee will contribute to the Brand Fund, but certain franchisees may contribute on a different basis depending on when they signed their Franchise Agreement. Outlets that are Franchisor-owned and/or owned by the Franchisor's founders, directly or indirectly, in whole or in part, may, but are not required to, contribute to the Brand Fund on the same basis as franchisees.

We have complete discretion on how the Brand Fund will be utilized. We may use the Brand Fund for local, regional, or national marketing, advertising, sales promotion and promotional materials, public



and consumer relations, website development and search engine optimization, the development of technology for the System, and any other purpose to promote and protect the Massage Heights brand. We may reimburse ourselves, our authorized representatives, or our affiliate from the Brand Fund for administrative costs, salaries for those individuals in charge of administering and maintaining the Brand Fund, independent audits, reasonable accounting, bookkeeping, reporting and legal expenses, taxes and all other reasonable direct or indirect expenses that may be incurred by us or our authorized representatives and associated with the programs funded by the Brand Fund. We do not guarantee that advertising expenditures from the Brand Fund will benefit you or any other franchisee directly, on a pro rata basis, or at all. We are not obligated to spend any amount on advertising in the geographical area where you are or will be located. We will not use the Brand Fund contributions for advertising that is principally a solicitation for the sale of Franchises, but we reserve the right to include a notation in any advertisement indicating “Franchises Available,” or similar phrasing, or include information regarding acquiring a Franchise on or as a part of materials and items produced by or for the Brand Fund.

We assume no fiduciary duty to you or other direct or indirect liability or obligation to collect amounts due to the Brand Fund or to maintain, direct or administer the Brand Fund. Any unused funds in any calendar year will be applied to the following year’s funds, and we reserve the right to contribute or loan additional funds to the Brand Fund on any terms we deem reasonable.

The Brand Fund is not audited. We will provide an annual unaudited accounting for the Brand Fund that shows how the Brand Fund proceeds have been spent for the previous year upon written request.

During our most recent fiscal year, ended December 31, 2023, the Brand Fund was spent as follows: 20% on digital & advertising, 6% on creative & production, 17% on brand reputation, 23% on industry relations, and 34% for administrative costs.

***Local Advertising***

In addition to the Brand Fund Contribution and the Initial Advertising Program expense, once the Retreat is open and operating, you must spend the following on local advertising (“**Minimum Local Advertisement Requirement**”):

Time Period	Minimum Local Advertisement Requirement
First 30 days of operation of your Retreat	None (advertising is conducted through the Initial Advertising Program)
Beginning the 31 <sup>st</sup> day after opening your Retreat	You must spend a minimum of the greater of 3% of your Gross Revenue or \$2,000 per month on local advertising. The amount will be calculated in the same manner that you calculate your Royalty and Brand Fund Contribution, which is based on the amount of Gross Revenue you generated in the previous reporting period.

If you fail to spend your Minimum Local Advertisement Requirement by the end of the year, you must pay the difference to the Brand Fund. We may require you to pay all or any portion of your Minimum Local Advertisement Requirement to us, our affiliates, or designated suppliers. We currently collect \$350 per month from franchisees for each MH Business to pay for certain social media management services,

and web landing page optimization services, all of which are provided by our designated suppliers and/or vendors for the benefit of each franchisee's MH Business. We may increase or decrease the amount we collect from franchisees or the purpose for which those amounts are collected, provided that the total amount that we collect from you on an annual basis will not exceed your Minimum Local Advertisement Requirement for that year. You must use all required suppliers and/or vendors for services that we require.

You must, at your sole cost and expense, issue and offer such rebates, giveaways, and other promotions in accordance with advertising programs established by us, and further agree to honor the rebates, giveaways, and other promotions issued by other MH Businesses under any such program, so long as such compliance does not contravene any applicable law, rule, or regulation. You will not create or issue any gift cards or gift certificates, and you will only sell gift cards or gift certificates that have been issued or sponsored by us and which are accepted at all MH Businesses, and you will not issue coupons or discounts of any type except as we approve.

We may require you to participate in any local or regional advertising cooperative for MH Franchises that we establish. We will define the area of each local and regional advertising cooperative, based on our assessment of the area. We anticipate that each franchisee-owned MH Business and each MH Business we own in the designated area will have one vote. Franchisees in each cooperative will contribute an amount to the cooperative for each MH Business that the franchisee owns that exists within the cooperative's area. Any cooperative contributions will be credited towards your Minimum Local Advertisement Requirement. Each MH Business we own that exists within the cooperative's area will contribute to the cooperative on the same basis as franchisees. Members of the cooperative will be responsible for administering the cooperative, including determining the amount of contributions from each member. We require that each cooperative operates with bylaws or some form of governing documents. Each cooperative must prepare annual unaudited financial statements, and such statements will be provided for review to each member of such cooperative. We reserve the right to form, change, dissolve, or merge any advertising cooperative formed in the future. If we elect to form such cooperatives, or if such cooperatives already exist near your Territory, you must participate in compliance with the provisions of the Brand Standards Manual, which we may periodically modify at our discretion.

We may, in our discretion, establish a mandatory local and/or national philanthropy program in which you will host a charitable event for a charity, non-profit, or foundation ("**Charitable Organization**") ("**MH Philanthropy**"). If we provide you with the choice of the Charitable Organization, the charitable organization must reasonably align with our brand standards. If we implement the MH Philanthropy program, we will not require you to pay Royalties on the Gross Revenue that you earn during the charitable event.

### ***Marketing Resources, Pre-Approvals for Marketing Materials, and Internet Marketing***

You must order all marketing materials, which include but are not limited to sales, advertising, and promotional materials from our designated suppliers. It is a material breach of the Franchise Agreement to use other marketing material without obtaining our prior written approval, which may be granted or denied in our sole discretion. We will review your request and we will respond in writing within 14 days from the date we receive all requested information. Our failure to notify you in the specified time frame will be deemed disapproval of your request. Use of logos, Marks, and other name identification materials must follow our approved standards. You may not use our logos, Marks, or other name identification materials on items to be sold or services to be provided without our prior written approval. If we approve the items or services that will be sold in your MH Business, those items or services must be included in your Gross Revenue and will be subject to Royalties, Minimum Local Advertisement

Requirement, and the Brand Fund Contribution. Your use of materials is a default of your Franchise Agreement.

If you wish to advertise online, you must follow our Brand Standards Manual. Our online policy may change as technology and the internet changes. Under our online policy, we may retain the sole right to market on the internet, including all use of websites, domain names, URLs, linking, advertising, and co-branding arrangements. We may restrict your use of social media. We may not allow you to 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.

You will provide us with content for your internet marketing. We retain the right to approve any linking or other use of our website. You must use our designated vendors for all digital online marketing (search engine optimization, pay per click, reputation management, etc.), approved local marketing management, and reporting systems.

### ***System Website***

We have established a website for MH Businesses (“**System Website**”). We have established local pages for each MH franchisee on our System Website. Your page will include information relating to your specific Retreat location and select content that we provide from our System Website. You must notify us whenever any information on your webpage changes or is inaccurate. At your request, we will update or add information that we approve to your webpage. All such information will be subject to our approval prior to posting. We may request that you provide content for our internet marketing, and you must follow our intranet and internet usage rules, policies, and requirements. We may change the requirements relating to your page at any time. You may not establish or maintain any other website without our prior written approval. We intend that any franchisee website will be accessed only through our home page.

### ***Franchisee Advisory Council***

We formed a Franchisee Advisory Council in February 2011 (“**FAC**”). The FAC consists of up to four U.S. franchise members, one Canada franchise member, and up to two Franchisor members. The four U.S. franchise members of the FAC are elected by all franchisees in the System. The members from Canada and the Franchisor members are chosen by us. We have the power to form, change or dissolve the advisory council in our sole discretion.

### **Technology System**

We estimate the cost of purchasing the Technology System, including the hardware and software, will range from \$33,786 to \$40,339. Additional costs may be incurred for installation and the initial setup. You must use the POS system we designate. The current POS system is web-based and licensed through us. You must pay us a Software Setup Fee in the amount of \$500 when you sign the Franchise Agreement. You must use this software and enter into the “Use and License Agreement” which is attached to this Franchise Disclosure Document in **Exhibit G**. You must use the POS system to process credit card transactions, prepare sales reports, and other back-office reports such as revenue reports based on service, sales, product sales, and membership sales. You must also purchase the following computer equipment, software, and licenses from our approved suppliers: (a) two to four computers, monitors, printer, scanner, barcode scanner, receipt printer, and credit card wiper/Chip card terminal; (b) three to five tablets, purchased and pre-configured through our supplier, are recommended for the lobby, plus one tablet per treatment room in your Retreat (you must purchase tablet accessories separately); (c)

operational and accounting software; (d) Microsoft Office; and (e) active and current anti-virus license with opened permission for current POS software for each computer for use in your MH Business. Your first Technology Fee payment will be due on the 15<sup>th</sup> of the first month after you open your MH Business and every month thereafter. You must also obtain scenting machine equipment and services, as well as sound system, sound masking system, phone system, surveillance, and installation, from our designated suppliers.

The Technology System will manage the workflow of your MH Business, coordinate the customer ordering experience, track inventory, labor, and other information. You must record all Gross Revenue on the Technology System. You must store all data and information in the Technology System that we designate, and report data and information in the manner we specify. The Technology System will generate reports on the Gross Revenue of the MH Business you operate. You must also maintain a high-speed internet connection at the MH Business you operate.

We are not required to provide you with any ongoing maintenance, repairs, upgrades, updates, or support for the Technology System (See Section 8.3(aa) of the Franchise Agreement). The required software providers' ongoing maintenance and technical support is part of the monthly Technology Fee. You must arrange for installation, maintenance, and support of the Technology System and other software at your cost. There are no limitations on the costs of such required support, maintenance, repairs, or upgrades relating to the Technology System. The cost of maintaining, updating, or upgrading the Technology System or its components will depend on your repair history, costs of computer maintenance services in your area, and technological advances. We estimate the annual cost will range between \$1,000 and \$4,000, but this could vary (as discussed above). We may revise our specifications for the Technology System periodically. You must upgrade or replace your Technology System if specifications are revised. In addition to offering and accepting Massage Heights gift cards and loyalty cards, you must use any payment vendors and accept all payment methods that we determine. We may also prohibit certain credit card vendors or payment methods.

We (or our designee(s)) have the right to independently access the electronic information and data relating to your MH Business, and to collect and use your electronic information and data in any manner, including to promote the System and the sale of MH Franchises. This may include posting financial information about each franchisee on an intranet website. There is no contractual limitation on our right to receive or use information through our proprietary data management and intranet system. We may access the electronic information and data from your Technology System remotely, in the MH Business you operate, or from other locations.

## **Training**

Your MH Business must have a Managing Owner (if you are an entity), a Designated Retreat Director, and a Lead Massage Therapist (all defined in Item 15) who meet our criteria. You (or your Managing Owner, if you are an entity), your Designated Retreat Director, and your Lead Massage Therapist must be qualified and must complete the pre-opening components of the Initial Training Program (including all required position-specific and management course components) to our satisfaction at least 30 days prior to the opening of your MH Business or commencing their duties.

An Initial Training Program is provided at no charge for up to four people for you (or your Managing Owner if you are an entity), your initial Designated Retreat Director and your initial Lead Massage Therapist. The Initial Training Program currently consists of approximately 69 hours of classroom training at our office in San Antonio, Texas, online, or at another location that we designate, and an additional 87.5 hours of on-the-job training held online, in a Retreat we designate, or at your Retreat.

Within the first year of opening your Retreat, you must hire a Lead Skin Therapist (defined in Item 15), and then employ one at all times, who will train all other skin therapists who work at your MH Business.

If you are acquiring an existing MH Business, you must pay us a transfer training fee in the amount of \$2,000 (“**Transfer Training Fee**”) at the time you sign your Franchise Agreement. You must also attend and complete a transfer training program, to our satisfaction at our discretion, that currently consists of approximately 69 hours of classroom training at our office in San Antonio, Texas, at another location that we designate, or through an online platform in our discretion (“**Transfer Training Program**”). You (or your Managing Owner if you are an entity) must complete a portion of the Transfer Training Program prior to signing your Franchise Agreement. You must sign a confidentiality agreement prior to attending the pre-signing portion of the Transfer Training Program. You must attend any remaining applicable portions of the Transfer Training Program within 30 days after signing your Franchise Agreement. The location will be designated either in-person at our office in San Antonio, Texas, at another location, or through an online platform.

We do not provide any onsite training at the Retreat if you are acquiring an existing MH Business. If you request onsite training or assistance at your Retreat once your transfer is finalized, or if we determine the need for onsite training or assistance at your Retreat once your transfer is finalized, you must pay an onsite transfer training fee, which is currently in the amount of \$1,850 (“**Onsite Transfer Training Fee**”) at the time such onsite training is scheduled with us. You must also pay for all travel, lodging, and meal expenses incurred by our representative.

You must pay a \$500 per person per day fee for training each additional person who attends the Initial Training Program or the Transfer Training Program.

As part of the Initial Training Program, we will provide a representative to conduct onsite pre-opening and opening assistance for a maximum of five days. You are responsible for providing training to your employees, and we may provide curriculum in order to support and ensure compliance with brand standards. Onsite trainings may be held in San Antonio, Texas or at your Retreat. You will not receive any compensation or reimbursement for services or expenses for participation in the Initial Training Program. You are responsible for all your and your attendees’ expenses to attend any training program, including lodging, transportation, food, and similar expenses.

If you replace your Designated Retreat Director, Lead Massage Therapist, or Lead Skin Therapist, your new Designated Retreat Director, Lead Massage Therapist, or Lead Skin Therapist must attend and complete, to our satisfaction, all position-specific course components of our training program that we require, within 30 to 60 days of being hired. Your Designated Retreat Director must be qualified according to our System Standards. Although we do not charge for the Initial Training Program for your initial Designated Retreat Director, or initial Lead Massage Therapist, you may be charged fees (currently \$500 per person per day) for training of replacement Designated Retreat Directors, Lead Massage Therapists, or Lead Skin Therapists.

We plan to provide the training listed in the table below. The in-person components of the Initial Training Program are generally offered once monthly. We reserve the right to vary the length and content of the Initial Training Program based upon the experience and skill level of the individual attending the Initial Training Program.

## TRAINING PROGRAM

Subject	Hours of Classroom Training <sup>(1)</sup>	Hours of On-The-Job Training	Location
<b>Franchisee/Managing Owner(s) Attends (Designated Retreat Director - optional)</b>			
<b>CAMP 1</b>			
Site Selection	1	0	Online or San Antonio, Texas
Onboarding & Construction Process	1	0	Online or San Antonio, Texas
Massage Heights History & Culture	1	0	Online or San Antonio, Texas
Franchise Communications & Franchise Business Consultant Relations	3	0	Online or San Antonio, Texas
Massage Heights Business Overview: Sales, Services & Products, Recruiting, Finances	3	0	Online or San Antonio, Texas
Marketing Overview	2	0	Online or San Antonio, Texas
Camp 1 Review	1	0	Online or San Antonio, Texas
<b>TOTAL</b>	<b>12</b>	<b>0</b>	
<b>Franchisee/Managing Owner(s), Designated Retreat Director and Lead Therapists Attend</b>			
<b>CAMP 2</b>			
MH University	31	0	Online
MH University Refresh	2	0	Online
MH Marketing: Local Retreat Marketing & Grand Opening Plan	2	0	Online
<b>TOTAL</b>	<b>35</b>	<b>0</b>	
<b>Franchisee/Managing Owner(s), Designated Retreat Director, and Lead Therapists Attend</b>			
<b>CAMP 3</b>			
MH Services & Fundamentals, including the Professional and Ethical Conduct Program	4	5	San Antonio, Texas
Guest Education & Membership Sales	6	0	San Antonio, Texas
Retail Sales & Goal Setting	2.5	.5	San Antonio, Texas
Retreat Operations, Opening and Closing Procedures	2.5	1	San Antonio, Texas
Retreat Management System Training	5.5	0	San Antonio, Texas
Retreat Setup & Quality Checks	1	1	San Antonio, Texas
MH Marketing: Grand Opening & Post-Grand Opening Prep	2	0	Online
<b>TOTAL</b>	<b>23.5</b>	<b>7.5</b>	
<b>Franchisee/Managing Owner(s), Designated Retreat Director, and Lead Therapists Direct</b>			
<b>CAMP 4</b>			
Franchisee Training Employees	0	40	Your Retreat/Online
<b>TOTAL</b>	<b>0</b>	<b>40</b>	



Subject	Hours of Classroom Training <sup>(1)</sup>	Hours of On-The-Job Training	Location
<b>Franchisee/Managing Owner(s), Designated Retreat Director, and Lead Therapists Attend</b>			
<b>CAMP 5</b>			
5 Days Onsite for Opening	0	40	Your Retreat
TOTAL	0	40	
Total for Initial Training Program	70.5	87.5	

**Notes:**

1. The training subjects may vary, and the training may be less than the times indicated above. We may conduct parts of the training virtually, depending on the number and experience of the attendees.
2. Although the individuals instructing the training programs will vary, all our instructors will have significant relevant work experience in their designated subject area. Russell Hoff, our Chief Operating Officer, currently oversees our training program and Leti Garcia, our Senior Director of Franchise Support, along with Nichole Keiser, our Director of Training, provides instructor coordination and support. Together they bring more than 52 years of sales, marketing, management, and training experience. All our instructors will be our employees or contractors and will have at least 2 years of experience in their designated subject area.
3. You must hire only licensed massage therapists and licensed estheticians, who have been trained in accordance with your state’s requirements. You will hire massage therapists and estheticians as your employees and train them in accordance with our standards and procedures, including how to perform our Elevations experience.
4. The Brand Standards Manual will be our primary source of training materials during the Initial Training Program.

***Ongoing Training***

We may require that you (or your Managing Owners if you are an entity), your Designated Retreat Director, your Lead Massage Therapist and/or your Lead Skin Therapist periodically) attend up to five days of refresher training courses (“**Refresh Training**”) or other additional training courses each year (currently required approximately every three years). Some of these courses may be optional while others may be required. If you appoint a new Designated Retreat Director, Lead Massage Therapist, or Lead Skin Therapist, that person must attend and successfully complete the position-specific components of the Initial Training Program (or a substantially similar training program at our discretion) before assuming responsibility for the management of your MH Business. Any new Replacement Designated Retreat Director is required to attend and complete Camp 3 within 30 – 60 days of their hire date.

You must ensure that your employees are properly trained to operate your MH Business according to our brand standards. If we conduct an inspection of your MH Business and determine you are not operating in compliance with the Franchise Agreement, our System, or our brand standards, we may require that you attend additional training. You may also request that we provide additional training (either at our office, at your Retreat, or through an online platform, at our discretion). We may charge reasonable fees for these training programs (currently \$500 per person per day). You will also need to pay for the cost of travel, room and board, and other personal expenses for each person attending.

In addition to participating in ongoing training, if we hold an annual convention or business meeting of all franchisees, (up to four days per year), you must attend at a location we designate and pay

a convention or business meeting fee (See Item 6). You are responsible for all travel and expenses for your attendees. This fee is non-refundable and is due even if you do not attend the convention. If you fail to attend the annual convention or business meeting, we may charge you an additional fee (currently up to \$700 per person) to attend a make-up training session.

## **ITEM 12 TERRITORY**

You may operate an MH Business only at the approved location designated in the Franchise Agreement. If you have not identified an approved location for the Retreat when you sign the Franchise Agreement, as is typically the case, you and we will agree on the approved location in writing after you select and we approve the approved location. You are not guaranteed any specific approved location. You may not conduct your business from any other location. You may not relocate the Retreat without our prior written approval. We may approve a request to relocate the Retreat in accordance with the provisions of the Franchise Agreement that provide for the relocation of the Retreat, and our then-current site selection policies and procedures. We may require you to relocate your Retreat upon the renewal of your Franchise Agreement.

Except as provided below, during the term of the Franchise Agreement neither we nor any affiliate will establish or operate, or franchise any entity to establish or operate, a business using the Marks and System at any location within your Territory, which is a certain geographic area surrounding the Retreat that is generally an area equal to a 1.5-mile radius around your Retreat, but may be smaller or larger, in our sole discretion, depending on population density, demographics, market trends and traffic flows. Your Territory will be designated by a map and/or geographic description on an attachment to your Franchise Agreement.

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

We are a membership-based business. To the fullest extent permissible under applicable law, you must honor the memberships of clients of other franchised MH Businesses or of other MH Businesses operated by us and/or our affiliates and allow their members to use your location without additional charge or as stated in the Brand Standards Manual. The process for administration of the transactions between the MH Businesses, including collections and payments for the guests and members who use locations in this manner, will be handled in accordance with the procedures stated in the Brand Standards Manual, which we reserve the right to change.

You are prohibited from using other channels of distribution and advertising including the internet, wholesale, mail order/catalog sales, telemarketing, or other direct marketing forms, as well as discount websites offering products or services at reduced prices and soliciting sales or accepting orders outside your Territory without our prior written consent, which we may deny in our discretion. You may not establish an account or participate in any social networking sites or blogs or mention or discuss the Franchise, us, or our affiliates, without our prior written consent and as subject to our online policy. Our online policy may completely prohibit you from any use of the Marks in social networking sites or other online use. Otherwise, except as provided here in Item 12, we place no restrictions upon your ability to serve customers provided you do so from the Retreat under our policies. You may accept customers from outside your Territory.

You do not receive the right to acquire additional MH Franchises within the Territory. You are not



given a right of first refusal on the sale of existing MH Franchises.

You do not need to satisfy any sales quota or market penetration in order to maintain your rights to your Territory. We are not required to pay any compensation for soliciting or accepting orders inside the Territory.

We expressly reserve the right, among others:

1. To use, and to license others to use, the Marks and System for the operation of MH Businesses at any location other than in the Territory, regardless of proximity to the Territory;
2. To use the Marks and the system to sell any products or services, similar to those which you will sell, through any alternate channels of distribution within or outside of the Territory. This includes, but is not limited to, retail locations and other channels of distribution such as television, mail order, catalog sales, wholesale to unrelated retail outlets, or over the internet. We exclusively reserve the internet as a channel of distribution for us, and you may not independently market on the internet or conduct e-commerce. We will not pay you any compensation for our solicitation and acceptance of orders within your Territory.
3. To use and license the use of other proprietary and non-proprietary marks or methods which are not the same as or confusingly similar to the Marks, whether in alternative channels of distribution or in the operation of a business offering massage and facial services, or related wellness or exercise facilities, or related products and services, at any location, including within the Territory, which may be similar to or different from the MH Business operated by you. Although we reserve the rights described, neither we nor any affiliate, operates, franchises or has plans to operate or franchise a business under a different trademark that sells or will sell goods or services similar to those offered by you or our other Franchises;
4. To engage in any transaction, including to purchase or be purchased by, to merge or combine with, to convert to the System or be converted into a new system with any business, 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, provided that in such situations the newly acquired businesses may not operate under the Marks in the Territory;
5. To own, acquire, establish and/or operate, and license others to establish and operate, MH Businesses using any proprietary marks or systems (including the Marks and system) at any airport, train station, other transportation facility, hotel, arena, ballpark, stadium, racetrack, other sports facility, cruise ship, casino, or other entertainment facility, grocery store, corporate campus, college campus, or military base, within any outlet mall or other regional mall, within or outside the Territory;
6. To implement multi-area marketing programs which may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs;
7. To operate and use any websites utilizing a domain name incorporating one or more of the words “Massage Heights” and/or “Massage” or similar derivatives thereof. We retain 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. You 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 our prior written approval. You must use only our designated or approved vendors for all digital online marketing (SEO, PPC, reputation management, social media, scheduling/booking services, native phone applications, etc.), approved local marketing management and approved reporting systems. We intend that any franchisee website developed exclusively or primarily for purposes of promoting your MH Business be accessed only through our home page. You will provide us with content for our internet marketing and sign any internet and intranet usage agreements we require. We must approve any linking or other use of its website or require the removal of any website utilizing the Marks upon notice to you; and

8. To open or sell a MH Business inside the Territory at any time following the termination or expiration of the Franchise Agreement.

*[Remainder of page intentionally left blank.]*

## ITEM 13 TRADEMARKS


The Franchise Agreement and your payment of Royalties grant you the non-exclusive right and license to use the System, which includes the use of the proprietary Marks. You may also use other future trademarks, service marks, and logos we approve to identify your MH Franchise. We use the Marks under a ten-year renewable license agreement with their owner, SWG IP.

The Marks are owned by SWG IP and are licensed to us. SWG IP has granted us an exclusive license (“**Trademark License**”) to use the Marks to franchise the system around the world. The Trademark License will automatically renew for subsequent ten-year periods provided we are not in default of the Trademark License. If the Trademark License is terminated, SWG IP has agreed to license the Marks directly to our franchisees until each Franchise Agreement expires or is otherwise terminated. SWG IP has registrations with the United States Patent and Trademark Office (“**USPTO**”) for the following Marks:

Registered Mark	Registration Number	Registration Date	Register
<b>MASSAGE HEIGHTS</b>	3,108,570	June 27, 2006	Principal
MASSAGE HEIGHTS	3,437,048	May 27, 2008	Principal
<b>ELEVATIONS</b>	3,460,861	July 8, 2008	Principal
	3,463,132	July 8, 2008	Principal
MASSAGE HEIGHTS	3,511,031	October 7, 2008	Principal
	3,511,891	October 7, 2008	Principal

Registered Mark	Registration Number	Registration Date	Register
HEIGHTS AT HOME	3,511,899	October 7, 2008	Principal
<b>SIMPLY BETTER</b>	4,121,582	April 3, 2012	Principal
<b>LIVE. LIFE. BETTER.</b>	4,121,890	April 3, 2012	Principal
ELEVATE THE EVERYDAY	4,342,716	May 28, 2013	Principal
<b>MASSAGE HEIGHTS BODY + FACE</b>	4,346,349	June 4, 2013	Principal
<b>ELEVATIONS</b>	4,346,910	June 4, 2013	Principal
<b>MASSAGE HEIGHTS</b>	4,817,211	September 22, 2015	Principal
 <b>MASSAGE HEIGHTS</b>	5,463,665	May 8, 2018	Principal
OUTSIDE THE ROOM	7,109,128	July 11, 2023	Principal

We have filed the following trademarks with the USPTO:

Mark	Serial No.	Filing Date	Status
ELEVATE YOUR EVERYDAY	97,131,491	November 18, 2021	Pending
ELEVATE EVERYDAY	97,131,487	November 18, 2021	Pending
THE POWER OF FEELING GOOD	97,846,754	March 20, 2023	Published
 <b>MASSAGE HEIGHTS</b> body + face	98,428,221	February 29, 2024	Pending

We do not have federal registrations for the applied for trademarks in the second chart above. Although the “Massage Heights – Body + Face” trademark notated in the second chart is pending, each of its components is registered and enforceable under federal trademark law. These Marks currently have protection under common law and are in the registration process. Unregistered common law trademarks generally do not have the same legal benefits and rights as federally registered trademarks. If our right to use this Mark is challenged, you may have to change to an alternative trademark, which may increase your expenses.

All required affidavits and renewals have been filed for the registered service. There are no currently effective adverse material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, and no pending infringement, opposition, or cancellation proceedings or material litigation, involving the Marks. Except for the Trademark License agreement, no agreement significantly limits our right to use or license the Marks in a manner material to your MH Business. We do not know of either superior prior rights or infringing uses that could materially affect your use of the Marks in any state.

Your right to use the Marks is derived solely from your Franchise Agreement and is limited to your conduct of business in compliance with the Franchise Agreement and all applicable specifications, standards, and operating procedures we prescribe during the term of your Franchise Agreement. Any unauthorized use of the Marks by you will constitute a breach of your Franchise Agreement. Your use of the Marks and any goodwill established by them will be for our exclusive benefit, and your Franchise Agreement does not confer any goodwill or other interests in the Marks upon you. All provisions of your Franchise Agreement applicable to the Marks will apply to any additional proprietary trade and service marks and commercial symbols authorized for use by, and licensed to you under, your Franchise Agreement. You may not at any time during or after the term of your Franchise Agreement contest, or assist any other person in contesting, the validity or ownership of any of the Marks.

You must use the Marks as the sole identification of your MH Business while also identifying yourself as the independent owner of the franchise in the manner we prescribe. You may not use any Mark as part of any corporate or trade name, or with any prefix, suffix, or other modifying words, terms, designs, or symbols, or in any modified form. You also may not use any Mark with the sale of any unauthorized service or in any manner we have not expressly authorized in writing. You must prominently display the Marks on or with franchise posters and displays, service contracts, stationery, other forms we designate, and in the manner we prescribe including a conspicuous sign in your Retreat that you are an independently owned and operated licensed franchisee of MH Franchising; to give any notices of trade and service mark registrations and copyrights that we specify; and to obtain any fictitious or assumed name registrations that may be required under applicable law. You may not use the Marks in the sale of unauthorized services or products or in any manner we do not authorize. You may not use the Marks in any advertising for the transfer, sale, or other disposition of the MH Business, or any interest in your MH Business. All rights and goodwill from the use of the Marks accrue to us.

If it becomes advisable at any time, in our sole discretion, for us and/or you to modify or discontinue using any Mark and/or use one or more additional or substitute trademarks or service marks, you must comply with our directions to do so within a reasonable time after receiving notice. We will not reimburse you for your direct expenses of changing signage, for any loss of revenue, or other indirect expenses due to any modified or discontinued Mark, or for your expenses of promoting a modified or substituted trademark or service mark.

You must immediately notify us of any apparent infringement of, or challenge to, your use of any Mark, or any claim by any person of any rights in any Mark. You may not communicate with any person

other than us and our counsel about the apparent infringement, challenge, or claim. We and our affiliates have sole discretion to take any action as we deem appropriate and the exclusive right to control any litigation or USPTO or other proceeding arising out of any apparent infringement, challenge, or claim, or otherwise relating to any Mark. You must sign any instruments and documents, render any assistance, and perform any acts that our or our affiliates' counsel deems necessary or advisable to protect and maintain our or our affiliates' interests in any litigation or USPTO or other proceeding related to any Mark, or otherwise protect and maintain our interests in the Marks.

If you are in compliance with the Franchise Agreement, we will defend you against any claim brought against you by a third party alleging your use of the Marks in accordance with the Franchise Agreement, infringes upon that party's intellectual property rights. We may require your assistance, but we will exclusively control any proceeding or litigation relating to our Marks. We have no obligation to pursue any infringing users of our Marks or protect you against unfair competition arising out of your use of the Marks. If we learn of an infringing user, we will take the action appropriate, but we are not required to take any action if we do not feel it is warranted. You must not directly or indirectly contest our right to the Marks. We may acquire, develop, and use additional marks not listed here, and may make those marks available for your use and for use by other franchisees.

We will indemnify you against, and reimburse you for (1) all damages for which you are held liable in any judicial or administrative proceeding arising out of your use of any Mark in compliance with your Franchise Agreement; and (2) the costs incurred in defending any claim brought against you or in any proceeding in which you are named as a party arising out of your use of any Mark in compliance with your Franchise Agreement, provided that you have timely notified us of the claim or proceeding, and have complied with the Franchise Agreement.

## **ITEM 14 PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

The information in the Brand Standards Manual is proprietary and is protected by copyright and other laws. The Brand Standards Manual and the limitations of the use of it by you and your officers, employees and independent contractors are described in Item 11 and Sections 7, 8 and 10 of the Franchise Agreement. The designs contained in the Marks, the layout of our advertising materials, the content and format of our products, as well as any other writings and recordings in print or electronic form are also protected by copyright and other laws. Although we have not applied for copyright registration for the Brand Standards Manual, our advertising materials, the content and format of our products, or any other writings and recordings, we claim common law and federal copyrights in these items. We grant you the right to use this proprietary and copyrighted information ("**Copyrighted Works**") for your operation of your MH Business, but such copyrights remain our sole property.

During the term of your Franchise Agreement, we will allow you to use our proprietary information relating to the development, marketing, and operation of a MH Business, including methods, techniques, specifications, procedures, policies, marketing strategies and information comprising the System and the Brand Standard Manual.

There are no effective determinations of the United States Copyright Office or any court regarding any Copyrighted Works of ours, nor are any proceedings pending, nor are there any currently effective agreements between us and third parties pertaining to the Copyrighted Works that will or may significantly using our Copyrighted Works.

Our Brand Standards Manual, electronic information and communications, sales and promotional materials, the development and use of our System, standards, specifications, policies, procedures, information, concepts and systems, knowledge of and experience in the development, operation and franchising of MH Businesses, formulations for and packaging of products, our training and techniques, information concerning product and service sales, operating results, financial performance and other financial data of MH Businesses and other related materials are proprietary and confidential (“**Confidential Information**”) and are our property to be used by you only as described in the Franchise Agreement or the Brand Standards Manual. Where appropriate, certain information has also been identified as trade secrets (“**Trade Secrets**”). You must maintain the confidentiality of our Confidential Information and Trade Secrets and adopt reasonable procedures to prevent unauthorized disclosure of our Confidential Information and Trade Secrets.

We will disclose parts of the Confidential Information and Trade Secrets to you as we deem necessary or advisable for your MH Business during training and in guidance and assistance furnished to you under the Franchise Agreement, and you may learn or obtain from us additional Confidential Information and Trade Secrets during the term of the Franchise Agreement. The Confidential Information and Trade Secrets are valuable assets of ours and are disclosed to you on the condition that you, and your owners, if you are a business entity, and employees agree to maintain the information in confidence by entering into a confidentiality agreement that we can enforce. Nothing contained in the Franchise Agreement will be construed to prohibit you from using the Confidential Information or Trade Secrets in the operation of other MH Businesses during the term of the Franchise Agreement.

You must notify us within three days after you learn about another’s use of language, a visual image, or a recording of any kind, that you perceive to be identical or substantially similar to one of our Copyrighted Works or use of our Confidential Information or Trade Secrets or if someone challenges your use of our Copyrighted Works, Confidential Information or Trade Secrets. We will take whatever action we deem appropriate, in our sole and absolute discretion, to protect our rights in and to the Copyrighted Works, Confidential Information or Trade Secrets, which may include payment of reasonable costs associated with the action. The Franchise Agreement does not require us to take affirmative action in response to any apparent infringement of or challenge to your use of any Copyrighted Works, Confidential Information or Trade Secrets or claim by any person of any rights in any Copyrighted Works, Confidential Information or Trade Secrets. You must not directly or indirectly contest our rights to our Copyrighted Works, Confidential Information or Trade Secrets. You may not communicate with anyone except us, our counsel or our designees regarding any infringement, challenge or claim. We will have discretion to take action as we deem appropriate regarding any infringement, challenge or claim, and the sole right to control exclusively any litigation or other proceeding arising out of any infringement, challenge or claim under any Copyrighted Works, Confidential Information or Trade Secrets. You must sign any and all instruments and documents, give the assistance, and do acts and things that may, in the opinion of our counsel, be necessary to protect and maintain our interests in any litigation or proceeding or to protect and maintain our interests in the Copyrighted Works, Confidential Information or Trade Secrets.

We have the right to inspect, copy, and use all records regarding the customers, suppliers and other service providers related in any way to your MH Business. This includes, without limitation, all databases (whether in print, electronic, or other form), all names, addresses, phone numbers, email addresses and customer purchase records. We may use or transfer the records in any way we wish, both before and after any termination, expiration, repurchase, transfer or otherwise. We may contact any or all of your customers, suppliers and other service providers for quality control, market research and such other purposes as we deem appropriate, at our sole discretion.



You must disclose to us all ideas, techniques and products concerning the development and operation of your MH Business that you or your employees conceive or develop during the term of the Franchise Agreement. You must grant to us an assignment of these ideas, techniques and products concerning the development and operation of your MH Business that you or your employees conceive or develop during the term of the Franchise Agreement in all massage and related facilities or businesses that you operate. We will have no obligation to make any lump sum or ongoing payments to you regarding any idea, concept, method, technique, or product. You must agree you will not use, nor will you allow any other person or entity to use these ideas, techniques, or products without obtaining our prior written approval.

No patents or patents pending are material to us at this time.

## **ITEM 15**

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

You must personally participate in the operation of your MH Business, or if you are a business entity, an equity interest owner you designate to communicate with us on the entity's behalf ("**Managing Owner**"), must personally participate in the operation of your MH Business. You must also appoint a "**Designated Retreat Director**" deemed qualified according to our brand standards to act as the operating manager for your MH Business you operate. The Designated Retreat Director is not required to have an equity interest in your entity. You (or your Managing Owner if you are an entity) and your Designated Retreat Director are required to attend the Initial Training Program to be properly trained to operate your MH Business according to our brand standards. We also require that all other owners and owners' spouses that will participate in the operation of your MH Business attend the Initial Training Program.

You must also employ a Lead Massage Therapist at all times who will train all other massage therapists who work at your MH Business ("**Lead Massage Therapist**"). Your Lead Massage Therapist must also attend position-specific components of the Initial Training Program.

Within the first year of opening your Retreat, you must hire a lead skin therapist, and then employ one at all times, who will train all other skin therapists who work at your MH Business ("**Lead Skin Therapist**"). Your Lead Skin Therapist must attend position-specific training programs that we require or that our designated vendors require, which will be conducted at a location we designate and which may require you to incur travel expenses.

If you are an entity, each direct and indirect owner, (i.e., each person holding a direct or indirect ownership interest greater than 5% in you) must sign an owner's agreement, the form of which is attached to the Franchise Agreement as Attachment B. We also require that the spouses of your entity's owners sign the owner's agreement. Any Designated Retreat Director, officer, director, manager, or other person owning less than a 5% ownership interest in the franchisee entity, must sign the "System Protection Agreement," the current form of which is attached to this Franchise Disclosure Document in **Exhibit G**. All of your employees, independent contractors, agents, or representatives that may have access to our Confidential Information must sign a confidentiality agreement (unless they already signed a System Protection Agreement), the current form of which is attached to this Franchise Disclosure Document in **Exhibit G**.



**ITEM 16**  
**RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You must sell or offer for sale only those services and products we authorize, and which meet our standards and specifications. You must follow our policies, procedures, methods, and techniques. You must sell or offer for sale all types of services and products specified by us. We may change or add to our required services and products at our discretion with prior notice to you (See Item 8). If we change or add to our required services and products, the changes or additions will remain in permanent effect, unless we specify otherwise. There are no limitations on our rights to make changes to the required services and products offered by you. The amount you must pay for the changes or additions will depend upon the nature and type of changes or additions. You must discontinue selling and offering for sale any services or products that we disapprove of. We reserve the right to establish minimum and maximum prices for services and products you sell or offer for sale unless otherwise prohibited by applicable law. You must also participate in all system-wide promotions and advertising campaigns that we create. You must use our designated vendors for specified services that we require systemwide.

You may not sell products through other channels of distribution such as wholesale, internet, or mail order sales. You may not establish an account or participate in any social networking sites, crowdfunding campaigns or blogs or mention or discuss the Franchise, us, or our affiliates, without our prior written consent and as subject to our online policy. Our online policy may completely prohibit you from any use of the Marks in social networking sites or other online use. You may not provide any goods or services related to the operation of your MH Business that we have not approved. Except as provided in Item 12, we place no restrictions upon your ability to serve customers provided you do so from the Retreat under our policies.

**ITEM 17**  
**RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

**These tables list important provisions of the Franchise Agreement and related agreements. You should read these provisions in the agreements attached to this Franchise Disclosure Document.**

Provision	Section in Franchise Agreement	Summary
a. Length of the term of the Franchise	Section 3	10 years.
b. Renewal or extension of the term	Section 3	If you are in good standing and you meet other requirements, you may add one renewal term of 10 years.

Provision	Section in Franchise Agreement	Summary
c. Requirements for Franchisee to renew or extend	Section 3	The term “renewal” refers to extending our franchise relationship at the end of your initial term and any other renewal or extension of the initial term. You must provide us with written notice of your intent to renew no less than more than twelve months prior to the expiration of the term. If we consent to such renewal or extension, your successor franchise rights permit you to remain as a franchisee after the initial term of your Franchise Agreement expires. We may require you to upgrade or to relocate your Retreat. You must be in substantial compliance with your current franchise agreement, sign our then-current franchise agreement and any ancillary documents for the renewal term, and this new franchise agreement may have materially different terms and conditions (which may include higher and/or different fees) from the Franchise Agreement that covered your initial term; sign a general release; provide proof of current licenses, permits and insurance; pay the renewal fee; upgrade the Retreat, technology, comply with the then-current lease requirements; and comply with all current requirements of the Brand Standards Manual.
d. Termination by Franchisee	Section 17	You may terminate the Franchise Agreement if you are in compliance with it and we are in material breach and we fail to cure that breach within 30 days of receiving written notice, subject to applicable state law.
e. Termination by franchisor without “cause”	Not Applicable	We can terminate without cause if you and we mutually agree to terminate.
f. Termination by franchisor with “cause”	Section 17	We can terminate upon certain violations of the Franchise Agreement by you.
g. “Cause” defined – curable defaults	Section 17	You have three days to cure health, safety, or sanitation law violations or failure to operate safely. You have 10 days to cure monetary defaults. You have 30 days to cure other defaults, so long as they are not listed in defaults which cannot be cured.

Provision	Section in Franchise Agreement	Summary
h. "Cause" defined – defaults which cannot be cured	Section 17	You engage in any conduct or practice that is fraudulent, unfair, unethical, or a deceptive practice; franchisee intentionally or negligently discloses to any unauthorized person the contents of or any part of the Brand Standards Manual, Confidential Information or Trade Secrets of ours; you provide notice to us that you will voluntarily abandon the MH Business within 30 days, or you voluntarily abandon the MH Business for a period of five consecutive days; you become insolvent or declare or are adjudged bankrupt; you are convicted of or plead no contest to any felony charge, or a crime involving moral turpitude; you relocate without our approval; a material judgment is obtained against you and remains unsatisfied; you have received three notices of default within a 12-month period; you sell or transfer the Franchise without complying with the transfer provisions; you fail to comply with guidelines regarding the Marks; you submit two or more times a report understating revenue by 2% or more; you fail to submit a report; you purport to sell, sell or offer for sale any unauthorized merchandise, product or service or engage in any unauthorized business or under the Marks or under a name or mark which is confusingly similar to the Marks; and you contest in any way the validity of or our ownership of the Marks or copyrighted materials; you take any action in which you purport to merge, consolidate, dissolve or liquidate your entity without our prior written consent; you fail to complete initial training; you make any material misrepresentation; you fail to open; you default under the Lease for the MH Business.
i. Franchisee's obligations on termination/non-renewal	Sections 14 & 17	Obligations include complete de-identification, payment of amounts due and return of the Brand Standards Manual, all Confidential Information, Trade Secrets, and records; and compliance with the restrictive covenants.

Provision	Section in Franchise Agreement	Summary
j. Assignment of contract by franchisor	Section 15	No restriction on our right to assign.
k. "Transfer" by Franchisee – defined	Section 15	Includes any voluntary, involuntary, direct or indirect assignment, sale, gift, exchange, grant of a security interest or change of ownership in the Franchise Agreement, the Franchise, or interest in the Franchise.
l. Franchisor approval of transfer by franchisee	Section 15	We must approve all transfers.
m. Conditions for franchisor approval of transfer	Section 15	If we have not exercised right of first refusal; proposed transfer is at least one year after opening; new owner must have sufficient business experience and financial resources to operate the franchise; new owner must not own, either directly or indirectly, an interest in more than 10% of the then-current open MH Franchises; you must pay all amounts due; new owner must complete the Initial Training Program; your landlord must consent to transfer of lease; you must pay transfer fees; you must sign a general release in favor of us; new owner must agree to upgrade, remodel, and refurbish the Retreat to our then-current standards; new owner signs a new franchise agreement in the then-current form and other required ancillary documents, including an owners agreement; you agree to not engage in a competitive business for two years within 15 miles of that franchise or another MH Franchise; pay all of our actual costs of transfer, including legal fees, commissions, finder's fees, placement fees and other costs; you execute a non-compete.
n. Franchisor's right of first refusal to acquire Franchisee's business	Section 16	We have 30 days to match any offer for your business.
o. Franchisor's option to purchase Franchisee's business	Section 16	We may, but are not required to, purchase your entity doing business as a MH Business, its inventory or equipment at fair market value if your MH Franchise expires without extension or is terminated for any reason. We have 30 days after the date of termination or expiration to exercise this option.
p. Death or disability of Franchisee	Section 15.9	The Franchise Agreement must be transferred or assigned to a qualified party within 180 days of death or disability, or the Franchise Agreement may be terminated. Your estate or legal representative must apply to us for the right to transfer to the next of kin within 120 calendar days of your death or disability.

Provision	Section in Franchise Agreement	Summary
q. Non-competition covenants during the term of the Franchise	Section 14	Neither you, your co-franchisees, nor any immediate family members of you or your co-franchisees may have an ownership interest in, loan money to, or perform services for a competitive business anywhere; you may not interfere with our or our other franchisees' MH Franchises, subject to applicable state law.
r. Non-competition covenants after the Franchise is terminated or expires	Section 14	You as an individual or as a representative of the Franchisee entity, if applicable, cannot have an interest in, own, manage, operate, finance, control, or participate in any competitive business within 15 miles of the Franchise, any MH Franchise, either opened or under development, or territory of either the Franchise or any MH Franchise, for two years. Further, you may not solicit any customer of the Franchise or any MH Franchise for two years, subject to applicable state law.
s. Modification of agreement	Sections 2.3 & 21.11	No modifications of Franchise Agreement during term unless agreed to in writing by both parties, but the Brand Standards Manual is subject to change at any time in our discretion.
t. Integration/merger clause	Section 21.11	Only the terms of the Franchise Agreement and attachments to Franchise Agreement are binding (subject to state law). Any representations or promises made outside the Franchise Disclosure Document and the Franchise Agreement and attachments to Franchise Agreement may not be enforceable.
u. Dispute resolution by arbitration or mediation	Section 20	Except for certain claims, all disputes must be mediated in the principal city closest to our principal place of business (currently, San Antonio, Texas), subject to applicable state law.
v. Choice of forum	Section 20	All disputes must be mediated, and if applicable, litigated in the principal city closest to our principal place of business (currently, San Antonio, Texas), subject to applicable state law.
w. Choice of law	Section 20.1	Texas law applies, subject to applicable state law.

**ITEM 18  
PUBLIC FIGURES**

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

## ITEM 19

### FINANCIAL PERFORMANCE REPRESENTATIONS

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

#### **Historical Financial Performance Representation**

As of December 31, 2023, there were 103 franchised MH Businesses and 1 company-owned MH Business in operation in the United States. Of the 103 franchised MH Businesses: (a) 100 were open and in continuous operation for 12-months or longer as of December 31, 2023 ("**Franchised Retreats**"), (b) 2 of the 103 businesses converted from company-owned to franchisee-owned in the 2023 calendar year (these businesses are included in the "Franchised Retreats"), and (c) 3 of the 103 MH Businesses first opened for business in the 2023 calendar year (the "**New Retreats**"). The New Retreats were excluded from the performance information presented in this Item 19.

This Item 19 presents certain historical data as provided to us by the Franchised Retreats through sales records and reports. We have not audited this information, nor independently verified this information. Written substantiation for the financial performance representation will be made available to you upon reasonable request.

For purposes of this Item 19 disclosure, we divided the Franchised Retreats into four categories (Tables 1 - 4): Top 10 Retreats (10 Franchised Retreats); Top 50 Retreats (50 Franchised Retreats); Bottom 50 Retreats (50 Franchised Retreats), Bottom 10 Retreats (10 Franchised Retreats), and all locations (100 Franchised Retreats). Tables 1 - 4 display results for the Franchised Retreats, broken down into these five categories. Table 1 shows the average Gross Revenue for the Franchised Retreats; Table 2 shows the average number of Prospects for the Franchised Retreats; Table 3 shows the average Annual Service Units for the Franchised Retreats; and Table 4 shows the average Member Base for the Franchised Retreats, and Table 5 shows the average monthly Member Retention for the 100 Franchised Retreats.

*[Remainder of page intentionally left blank.]*

### Franchised Retreats Open as of January 1, 2023

No. of Retreats	All Retreats	Top 10	Top 50	Bottom 50	Bottom 10
	100	10	50	50	10
<b>Table 1: Gross Revenue</b>					
2023 Average Revenue	\$1,039,409	\$2,172,272	\$1,394,761	\$684,787	\$441,071
# that Meet or Exceed Average	40	4	18	26	6
% that Meet or Exceed Average	40%	40%	36%	52%	60%
2023 Highest Revenue	\$2,938,639	\$2,938,639	\$2,938,639	\$945,896	\$524,563
2023 Median Revenue	\$947,687	\$2,078,788	\$1,219,648	\$731,445	\$460,489
2023 Lowest Revenue	\$305,995	\$1,618,660	\$949,479	\$305,995	\$305,995
<b>Table 2: Number of Prospects</b>					
2023 Average Prospects	1,831	3,469	2,412	1,249	710
# that Meet or Exceed Average	45	4	20	29	5
% that Meet or Exceed Average	45%	40%	40%	58%	50%
2023 Highest Prospects	4,462	4,462	4,462	1,721	918
2023 Median Prospects	1,728	3,160	2,225	1,336	710
2023 Lowest Prospects	462	2,809	1,736	462	462
<b>Table 3: Number of Annual Service Units</b>					
2023 Average Services	11,772	23,590	15,521	7,965	5,434
# that Meet or Exceed Average	39	5	20	26	6
% that Meet or Exceed Average	39%	50%	40%	52%	60%
2023 Highest Services	29,193	29,193	29,193	10,482	6,067
2023 Median Services	10,489	22,743	14,047	8,402	5,543
2023 Lowest Services	4,462	18,332	10,497	4,462	4,462
<b>Table 4: Membership Base</b>					
2023 Average Member Base	824	1,778	1,123	526	301
# that Meet or Exceed Average	37	4	17	29	6
% that Meet or Exceed Average	37%	40%	34%	58%	60%
2023 Highest Member Base	2,236	2,236	2,236	717	382
2023 Median Member Base	730	1,707	982	555	315
2023 Lowest Member Base	212	1,393	744	212	212

<b>Table 5: Membership Retention</b>	
2023 Monthly Average Retention	94.6%
# that Meet or Exceed Average	59
% that Meet or Exceed Average	59%
2023 Highest Retreat Retention	97.4%
2023 Median Retreat Retention	94.8%
2023 Lowest Retreat Retention	91.3%

**Notes:**

1. **“Gross Revenue”** means the total selling price of all services and products sold at or from or through the Franchised Retreats, whether or not sold or performed at or from the Franchised Retreat, including the full redemption value of any gift certificate or coupon sold for use at a Franchised Retreat (fees retained by or paid to third party sellers of such gift certificates or coupons are not excluded from this calculation), and including all proceeds from any business interruption insurance and all income, revenue and consideration of every other kind and nature related to the Franchised Retreat operation, whether for cash or credit and regardless of collection in the case of credit.
2. **“Prospects”** is defined as a non-member coming into the Franchised Retreat to receive a service.
3. **“Membership Base”** is defined as the total number of individual members who paid a monthly membership fee or paid the membership fee in-full.
4. **“Services”** is defined as the total number of one hour of services provided.
5. **“High”** refers to the highest data point in the range.
6. **“Low”** refers to the lowest data point in the range.
7. **“Number Meet/Exceed Average”** refers to the number of Franchised Retreats in the respective section that exceeded the reported average.
8. **“Percent Meet/Exceed Average”** is calculated as the total Franchised Retreats in the section that exceeded the reported average divided by the number of Franchised Retreats in the respective section for the 2023 Reporting Period.
9. **“Average”** means the sum of all figures in the data set, divided by the total number of Franchised Retreats.
10. **“Retention”** means the percentage of members who had an active membership on the 1<sup>st</sup> day of the month, who also had their membership on the last day of that month for the 2023 Reporting Period. The percentages provided are the average of each month’s retention percentage from January – December 2023.

The financial performance representation disclosed in this Item 19 does not contain any information about any operating costs or expenses that you will incur in connection with operating your franchised business. Operating costs and expenses may vary substantially. You should conduct an independent investigation of the costs and expenses you will incur in operating your franchised business before you sign a franchise agreement. Current or former franchisees, listed in **Exhibit C** to this Franchise Disclosure Document, may be one source of this information. We strongly encourage you to consult with an attorney or business advisor before purchasing a franchise.

**Some outlets have sold this amount. Your individual results may differ. There is no assurance you will sell as much.**



Other than the preceding financial performance representation, Massage Heights Franchising, LLC does not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Russell Hoff at 13750 US Hwy 281 North, Suite 925, San Antonio, Texas 78232 and 210-402-0777, the Federal Trade Commission, and the appropriate state regulatory agencies.

## ITEM 20 OUTLETS AND FRANCHISEE INFORMATION

**Table No. 1  
System-wide Outlet Summary for Years 2021-2023**

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2021	109	106	-3
	2022	106	102	-4
	2023	102	103	+1
Company-Owned*	2021	4	3	-1
	2022	3	3	0
	2023	3	1	-2
Total Outlets	2021	113	109	-4
	2022	109	105	-4
	2023	105	104	-1

\*These franchisees share common ownership with SWGI, Franchisor's parent company, but neither SWGI nor Franchisor have controlling interest or management in the franchisees.

**Table No. 2  
Transfers of Outlets from Franchisees to New Owners (other than the Franchisor) for Years 2021-2023**

State	Year	Number of Transfers
California	2021	1
	2022	1
	2023	1
Colorado	2021	1
	2022	0
	2023	0
Florida	2021	0
	2022	1
	2023	0
Iowa	2021	0
	2022	0

State	Year	Number of Transfers
	2023	0
Kansas	2021	0
	2022	2
	2023	0
Missouri	2021	3
	2022	0
	2023	0
New Hampshire	2021	0
	2022	0
	2023	0
Ohio	2021	0
	2022	0
	2023	1
Tennessee	2021	0
	2022	0
	2023	1
Texas	2021	4
	2022	6
	2023	5
Totals	2021	9
	2022	10
	2023	8

**Table No. 3**  
**Status of Franchised Outlets for Years 2021-2023**

State	Year	Outlets at Start of the Year	Outlets Added	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations- Other Reasons	Outlets at End of the Year
California	2021	12	0	0	0	0	0	12
	2022	12	0	0	0	0	0	12
	2023	12	1	0	0	0	0	13
Colorado	2021	6	0	0	0	0	0	6
	2022	6	0	0	0	0	0	6
	2023	6	0	0	0	0	1	5
Florida	2021	5	0	1	0	0	0	4
	2022	4	0	0	0	0	0	4
	2023	4	1	0	0	0	0	5
Georgia	2021	5	0	1	0	0	0	4
	2022	4	0	1	0	0	0	3

State	Year	Outlets at Start of the Year	Outlets Added	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations- Other Reasons	Outlets at End of the Year
	2023	3	0	0	0	0	0	3
Indiana	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	0	3
Iowa	2021	7	0	0	0	0	0	7
	2022	7	0	0	1	0	0	6
	2023	6	0	0	0	0	0	6
Kansas	2021	3	0	0	0	0	0	3
	2022	3	0	0	0	0	0	3
	2023	3	0	0	0	0	0	3
Michigan	2020	1	0	0	0	0	0	1
	2021	1	0	1	0	0	0	0
	2023	0	0	0	0	0	0	0
Missouri	2021	5	0	0	0	0	0	5
	2022	5	0	0	0	0	0	5
	2023	5	0	1	0	0	0	4
Nebraska	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
Nevada	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
New Hampshire	2021	1	0	0	0	0	0	1
	2022	1	0	1	0	0	0	0
	2023	0	0	0	0	0	0	0
New Jersey	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
New York	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	1
North Carolina	2021	4	0	0	1	0	0	3
	2022	3	0	1	0	0	0	2
	2023	2	0	0	0	0	0	2
Ohio	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Tennessee	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Texas	2021	49	1	0	1	0	0	49

State	Year	Outlets at Start of the Year	Outlets Added	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations- Other Reasons	Outlets at End of the Year
	2022	49	2	1	0	0	0	50
	2023	50	2*	1	1	0	0	50
Virginia	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Totals	2021	109	1	2	2	0	0	106
	2022	106	2	5	1	0	0	102
	2023	102	5*	3	1	0	0	103

\*Two locations converted from company-owned to franchisee-owned in 2023; three new outlets opened.

**Table No. 4**  
**Status of Company-Owned Outlets for Years 2021-2023**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Texas*	2021	4	0	0	0	1	3
	2022	3	0	0	0	0	3
	2023	3	0	0	0	2	1
Totals	2021	4	0	0	0	1	3
	2022	3	0	0	0	0	3
	2023	3	0	0	0	2	1

\*These franchisees have common ownership with Franchisor's parent company, SWGI, but neither SWGI nor Franchisor have controlling interest or management in the franchisees.

**Table No. 5**  
**Projected Openings as of December 31, 2023**

State	Franchise Agreements Signed Outlet Not Yet Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Florida	2	0	0
Missouri	1	0	0
Nevada	1	1	0
Texas	5	0	0
Totals	9	1	0

The names, addresses and telephone numbers of our current franchisees are attached to this Franchise Disclosure Document as **Exhibit C**.

The name and last known address and telephone number of every current franchisee and every franchisee who has had a franchise agreement terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under a franchise agreement during the one-year period ending December 31, 2023, or who has not communicated with us within ten weeks of the date of this Franchise Disclosure Document, is listed in **Exhibit C**. During the last three fiscal years, certain current and former franchisees have signed confidentiality clauses restricting their ability to speak openly about their experiences with the Massage Heights franchise system. In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experiences with the Massage Heights franchise system. You may wish to speak with current and former franchisees but be aware that not all such franchisees will be able to communicate with you. If you buy a Massage Heights franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

## **ITEM 21 FINANCIAL STATEMENTS**

**Exhibit A** contains the financial statements required to be included with this Franchise Disclosure Document: audited financial statements for the periods ending December 31, 2023, December 31, 2022, and December 31, 2021. Our fiscal year end is December 31.

## **ITEM 22 CONTRACTS**

Attached are the following agreements proposed for use in connection with our offering of franchises:

<b>Exhibit B</b>	Franchise Agreement
<b>Exhibit E</b>	State Addenda and Agreement Riders
<b>Exhibit G</b>	Contracts for use with the MH Franchise

## **ITEM 23 RECEIPT**

The last pages of this Franchise Disclosure Document, **Exhibit J**, are detachable documents, in duplicate. Please detach, sign, date and return one copy of the Receipt to us, acknowledging that you received this Franchise Disclosure Document. Please keep the second copy for your records.

**EXHIBIT A**  
**FINANCIAL STATEMENTS**

# Massage Heights Franchising, LLC

## Financial Statements

As of December 31, 2023 and 2022 and for the  
Years Ended December 31, 2023, 2022, and 2021

The report accompanying these financial statements was issued by  
BDO USA, P.C., a Virginia professional corporation, and the U.S. member of  
BDO International Limited, a UK company limited by guarantee.



# **Massage Heights Franchising, LLC**

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Financial Statements  
As of December 31, 2023 and 2022  
and for the Years Ended December 31, 2023, 2022, and 2021



# Massage Heights Franchising, LLC

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## **Independent Auditor's Report**

The Members and Managers  
Massage Heights Franchising, LLC  
San Antonio, Texas

### ***Opinion***

We have audited the financial statements of Massage Heights Franchising, LLC (the Company), which comprise the balance sheets as of December 31, 2023 and 2022, and the related statements of operations, changes in members' equity, and cash flows for the years ended December 31, 2023, 2022, and 2021, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for the years ended December 31, 2023, 2022, and 2021 in accordance with accounting principles generally accepted in the United States of America.

### ***Basis for Opinion***

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

### ***Responsibilities of Management for the Financial Statements***

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

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



### ***Auditor's Responsibilities for the Audit of the Financial Statements***

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

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

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

*BDO USA, P.C.*

San Antonio, Texas  
April 11, 2024

## **Financial Statements**

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# Massage Heights Franchising, LLC

## Balance Sheets

<i>December 31,</i>	2023	2022
<b>Assets</b>		
<b>Current Assets</b>		
Cash and cash equivalents	\$ 2,985,957	\$ 2,499,859
Restricted cash	1,044,127	881,236
Accounts receivable, net	538,496	296,059
Restricted assets - National Advertising Fund	4,854	80,833
Due from members	19,751	-
Other receivable, net	159,749	-
Prepaid expenses	206,531	143,105
<b>Total Current Assets</b>	<b>4,959,465</b>	<b>3,901,092</b>
<b>Property and Equipment, Net</b>	<b>75,021</b>	<b>71,158</b>
<b>Right-of-Use Asset</b>	<b>379,420</b>	<b>477,366</b>
<b>Due from Related Parties</b>	<b>1,463,238</b>	<b>1,471,750</b>
<b>Total Assets</b>	<b>\$ 6,877,144</b>	<b>\$ 5,921,366</b>
<b>Liabilities and Members' Equity</b>		
<b>Current Liabilities</b>		
Accounts payable and accrued expenses	\$ 855,034	\$ 1,846,675
Accrued expenses - National Advertising Fund	30,047	61,700
Deferred revenue, gift cards, and gift certificates	1,082,158	1,056,426
Deferred revenue, advertising fund	674,134	350,551
Deferred revenue, area developer fees, current	-	6,900
Deferred franchise fees, current	139,735	93,660
Lease liability, current	94,610	98,393
<b>Total Current Liabilities</b>	<b>2,875,718</b>	<b>3,514,305</b>
<b>Non-Current Liabilities</b>		
Lease liability, net of current	297,409	386,087
Deferred franchise fees, net of current	283,068	298,785
<b>Total Non-Current Liabilities</b>	<b>580,477</b>	<b>684,872</b>
<b>Total Liabilities</b>	<b>3,456,195</b>	<b>4,199,177</b>
<b>Members' Equity</b>	<b>3,420,949</b>	<b>1,722,189</b>
<b>Total Liabilities and Members' Equity</b>	<b>\$ 6,877,144</b>	<b>\$ 5,921,366</b>

*See accompanying notes to financial statements.*

# Massage Heights Franchising, LLC

## Statements of Operations

<i>Year ended December 31,</i>	2023	2022	2021
<b>Revenues</b>			
Franchise fees	\$ 116,892	\$ 224,551	\$ 139,122
Area development fees	6,900	20,770	27,780
Royalties	5,922,029	5,901,514	5,563,176
Other revenue	1,275,203	1,308,209	912,078
Advertising fund fees	2,504,531	2,887,232	2,305,303
<b>Total Revenues</b>	<b>9,825,555</b>	<b>10,342,276</b>	<b>8,947,459</b>
<b>Cost of Sales</b>			
Developer commissions and royalties	221,376	516,929	493,702
Other cost of sales	706,780	559,342	583,314
<b>Total Cost of Sales</b>	<b>928,156</b>	<b>1,076,271</b>	<b>1,077,016</b>
<b>Gross Profit</b>	<b>8,897,399</b>	<b>9,266,005</b>	<b>7,870,443</b>
<b>Operating Expenses</b>			
Payroll and related costs	2,964,161	2,754,800	2,250,802
Professional services	473,851	471,371	2,292,981
General and administrative	890,125	929,843	1,043,176
Marketing	367,658	569,924	194,461
Advertising fund expenses	2,504,531	2,887,232	2,305,303
Depreciation and amortization	21,739	19,001	16,990
<b>Total Operating Expenses</b>	<b>7,222,065</b>	<b>7,632,171</b>	<b>8,103,713</b>
<b>Operating Income (Loss)</b>	<b>1,675,334</b>	<b>1,633,834</b>	<b>(233,270)</b>
<b>Other Income (Expenses)</b>			
Gain from forgiveness of note payable	-	410,996	418,300
Other income (expense)	701,816	(6,543)	(10,605)
Franchise tax expense	(34,890)	(30,355)	(26,222)
<b>Total Other Income</b>	<b>666,926</b>	<b>374,098</b>	<b>381,473</b>
<b>Net Income</b>	<b>\$ 2,342,260</b>	<b>\$ 2,007,932</b>	<b>\$ 148,203</b>

See accompanying notes to financial statements.

**Massage Heights Franchising, LLC**  
**Statements of Changes in Members' Equity**

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	Members' Equity
<b>Balance, January 1, 2021</b>	\$ 75,965
Net income	148,203
<b>Balance, December 31, 2021</b>	224,168
Net income	2,007,932
Distributions	(509,911)
<b>Balance, December 31, 2022</b>	1,722,189
Net income	2,342,260
Distributions	(643,500)
<b>Balance, December 31, 2023</b>	\$ 3,420,949

*See accompanying notes to financial statements.*

# Massage Heights Franchising, LLC

## Statements of Cash Flows

Year ended December 31,	2023	2022	2021
<b>Cash Flows from Operating Activities</b>			
Net income	\$ 2,342,260	\$ 2,007,932	\$ 148,203
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	21,739	19,001	16,990
Amortization of right-of-use asset	97,946	72,625	-
Gain from forgiveness of note payable	-	(410,996)	(418,300)
Net allowance for credit loss	164,696	-	-
Reversal of legal reserves	(705,000)	-	-
Loss on disposal of property and equipment	-	-	2,543
Changes in operating assets and liabilities:			
Accounts receivable, net	(243,758)	(55,057)	12,677
Accounts receivable, National Advertising Fund	75,979	(10,643)	(5,221)
Due from members	(19,751)	-	-
Other receivables	(323,124)	294	(437)
Prepaid expenses	(63,426)	(94,957)	2,906
Due from related parties	8,512	(121,348)	6,156
Lease liability	(92,461)	(65,511)	-
Accounts payable and accrued expenses	(286,641)	(89,370)	969,296
Accrued expenses, National Advertising Fund	(31,653)	(2,300)	-
Deferred revenue, gift cards and certificates	25,732	194,151	1,732
Deferred revenue, advertising fund	323,583	(114,861)	226,149
Deferred revenue, area developer fees	(6,900)	(20,770)	(27,780)
Deferred franchise fees	30,358	84,645	58,753
<b>Net Cash Provided by Operating Activities</b>	<b>1,318,091</b>	<b>1,392,835</b>	<b>993,667</b>
<b>Cash Flows from Investing Activities</b>			
Purchases of property and equipment	(25,602)	(49,305)	(19,553)
<b>Net Cash Used in Investing Activities</b>	<b>(25,602)</b>	<b>(49,305)</b>	<b>(19,553)</b>
<b>Cash Flows from Financing Activities</b>			
Proceeds from notes payable	-	-	410,996
Distributions to members	(643,500)	(509,911)	-
<b>Net Cash Provided by (Used in) Financing Activities</b>	<b>(643,500)</b>	<b>(509,911)</b>	<b>410,996</b>
<b>Net Increase in Cash and Cash Equivalents and Restricted Cash</b>	<b>648,989</b>	<b>833,619</b>	<b>1,385,110</b>
<b>Cash and Cash Equivalents and Restricted Cash, beginning of year</b>	<b>3,381,095</b>	<b>2,547,476</b>	<b>1,162,366</b>
<b>Cash and Cash Equivalents and Restricted Cash, end of year (Note 8)</b>	<b>\$ 4,030,084</b>	<b>\$ 3,381,095</b>	<b>\$ 2,547,476</b>
<b>Supplemental Non-Cash Investing and Financing Disclosures</b>			
Lease liability arising from obtaining right-of-use asset	\$ -	\$ 549,991	\$ -
<b>Supplemental Cash Flow Disclosures</b>			
Cash paid for franchise tax	\$ 27,210	\$ 955	\$ 709
Cash paid for interest	-	5,284	-

See accompanying notes to financial statements.



# Massage Heights Franchising, LLC

## Notes to Financial Statements

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### 1. Nature of Business and Summary of Significant Accounting Policies

#### *Nature of Business and Affiliates*

Massage Heights Franchising, LLC (the Company), was organized as a Texas limited liability company in January 2007 for the purpose of franchising massage clinics and regional development rights and supporting the operations of the franchised retreats at locations throughout the United States. The Company commenced business on January 10, 2007.

SWG International, LLC (SWG) is the Company's parent. SWG is also the parent company to four other entities doing business in the franchise, massage, and personal services industries (see Note 3): SWG IP, LLC (SWG IP) is a Texas limited liability that licenses intellectual property and trademarks for the Massage Heights franchise. Summit Franchise Supply, LLC (Summit) is a Texas limited liability company that supplies massage equipment, massage lotions and oils, and uniforms. Elevated Brands, LLC (Elevated Brands) is a Texas limited liability brand management company that provides franchise brand development services. SWG Holdings, LLC (SWG H) is a Texas limited liability company that is a holding company for companies that own franchise businesses other than the Franchise. These entities are affiliates of the Company as a result of being under common control.

SWG is affiliated with certain entities as a result of the members of SWG having varying degrees of interests in those entities. These entities include: Hufstetler, Evans, and Franson, LLC (HEF); TLG TPC, LLC (TPC); KWB Stone Oak, LP (KWB); Northbound 35, LLC (NB35); AT2, LLC (AT2); AT2 Cedar Park, LLC (AT2 CP); ATZ Mueller, LLC (ATZ Mueller); ATZ SouthPark Meadows, LLC (ATZ SP); TGP Franchising, LLC (TGP); and MH Shavano Park, LLC (MH Shavano). KWB, HEF, MH Shavano, TPC, ATZ Mueller, and ATZ SP are each operating Massage Heights retreats. See Note 3.

These financial statements include the accounts of the Company only.

A summary of significant accounting policies follows:

#### *Basis of Accounting*

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (GAAP).

#### *Use of Estimates*

Preparation of the Company's financial statements in accordance with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of any contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

#### *Cash and Cash Equivalents*

The Company considers all highly liquid instruments purchased with an original maturity of three months or less to be cash equivalents.

# Massage Heights Franchising, LLC

## Notes to Financial Statements

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### ***Restricted Cash***

In November 2016, the Financial Accounting Standards Board (FASB) issued cash flow guidance requiring restricted cash and restricted cash equivalents to be included in the cash and cash equivalent balances in the statement of cash flows. Transfers between cash and cash equivalents and restricted cash are no longer presented in the statement of cash flows, and a reconciliation between the balance sheet and statement of cash flows must be disclosed. The standard does not change the definitions of restricted cash or restricted cash equivalents (see Note 7).

### ***Accounts Receivable***

Accounts receivable arise in the normal course of business through franchise sales and royalties earned. Accounts receivable due from franchisees are uncollateralized customer obligations due under normal trade terms requiring payment upon invoice. Accounts receivables are stated in the financial statements at the amount billed to the customer net of an allowance for credit losses.

The Company determines its allowance for credit losses using an expected loss methodology, which considers several factors, including historical collection experience, current counterparty credit information, current and future economic and market conditions, and a review of the current status of the counterparty's account balances. The Company writes off estimated credit losses when they are deemed uncollectable. Uncollectable accounts were deemed immaterial during the periods presented.

### ***Other Receivables***

Other receivables consist of amounts due from franchisees for transactions outside the Company's ordinary course of business. Other receivables are stated in the financial statements at the amount billed to the franchisee net of an allowance for credit losses. The allowance for credit losses on other receivables amounted to \$164,696 for the year ended December 31, 2023. No allowance was recorded in 2022.

### ***Prepaid Expenses***

Prepaid expenses consist of amounts for services paid in advance. These amounts will be charged to expense as the services are received over the next 12 months.

### ***Property and Equipment***

Property and equipment are stated at historical cost and are depreciated using the straight-line method based on the estimated useful lives of the related assets (which range from three to seven years). Additions that extend the lives of the assets are capitalized, while repairs and maintenance costs are expensed as incurred. Leasehold improvements are amortized over the life of the lease or service life of the improvement, whichever is shorter, using the straight-line method.

### ***Fair Value and Impairment of Long-Lived Assets***

Property and equipment and intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. The determination of recoverability is made based upon the estimated undiscounted future net cash flows, excluding interest expense. The amount of impairment loss, if any, is determined by comparing the fair value



# Massage Heights Franchising, LLC

## Notes to Financial Statements

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with the carrying value of the related assets. The amount of the impairment loss is equal to the excess of the asset's carrying value over its estimated fair value. No impairments were recorded during the years ended December 31, 2023, 2022, and 2021.

### **Revenue Recognition**

The Company recognizes revenues in accordance with FASB Accounting Standards Codification (ASC) Topic 606, *Revenue from Contracts with Customers* (ASC 606).

### **Franchise Revenues**

Franchise revenues consist primarily of royalties, advertising fund contributions, initial and successor franchise fees and upfront fees from area development agreements (ADAs), transfer fees, and software fees.

The Company's primary performance obligation under the franchise license is granting certain rights to use the Company's intellectual property, and all other services the Company provides under the ADA and franchise agreement are highly interrelated, not distinct within the contract, and are therefore accounted for under ASC 606 as a single performance obligation, which is satisfied by granting certain rights to use the Company's intellectual property over the term of each franchise agreement.

Royalties, including franchisee contributions to advertising funds, are calculated as a percentage of franchisee sales subject to royalties during the term of the franchise agreement. Under the Company's franchise agreements, advertising contributions paid by franchisees must be spent on advertising, marketing, and related activities. Initial and successor franchise fees are payable by the franchisee upon signing a new franchise agreement or successor franchise agreement, and transfer fees are paid to the Company when one franchisee transfers a franchise agreement to a different franchisee.

The franchise royalties, as well as the Company's advertising fund contributions, represent sales-based royalties that are related entirely to the Company's performance obligation under the franchise agreement and are recognized as franchise sales occur.

Additionally, under ASC 606, successor franchise fees are recognized as revenue on a straight-line basis over the term of the respective franchise agreement. Previously, successor fees are recognized as revenue upon execution of a new franchise agreement.

ADAs generally consist of an obligation to grant geographic exclusive area development rights. These development rights are not distinct from franchise agreements, so upfront fees paid by franchisees for exclusive development rights are deferred and amortized over the term of the agreement.

The Company charges software fees, which is a monthly fee for the maintenance and support of proprietary computer systems and software. Under the terms of the various franchise agreements in effect, each franchisee pays a monthly fee of \$350 to \$550 per month. The fees are billed and collected monthly and are recognized by the Company during the month that the service was provided. Software fees amounted to \$700,279, \$709,990, and \$723,967 for the years ended December 31, 2023, 2022, and 2021, respectively, which is included in other revenue in the statements of operations.

# Massage Heights Franchising, LLC

## Notes to Financial Statements

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### *National Advertising Fund*

The Company established a National Advertising Fund (NAF) for the creation and development of marketing, advertising, and related programs and materials, and to promote general brand recognition of the Massage Heights Franchise system, services, and products sold by franchisees. Advertising materials and services are provided to the franchisees through the advertising fund. Under the terms of the various franchise agreements in effect, each franchisee contributes 1% to 3% of gross revenues of the franchise to the advertising fund, which is reflected as national advertising fund revenue on the statements of operations.

The Company consolidates and reports all assets and liabilities held by the NAF within the financial statements. Amounts received or receivable by the NAF are reported as restricted assets and restricted liabilities within current assets and current liabilities on the balance sheets. The Company records all revenues of the NAF within franchise revenue and all expenses of the NAF within the operating expenses on the statements of operations.

### *Gift Certificates*

The Company offers “Massage Heights Franchising” gift certificates through the Company’s website. This revenue is recorded as a liability until the certificate is redeemed at a retreat. The Company settles the liability with the retreat during the Company’s biweekly franchise settlement process by paying the retreat the amount of the total redeemed gift certificates.

The Company’s franchisees also offer gift certificates for services for sale. All franchisee gift certificate sales are received by the franchisee and recorded as deferred revenue. The Company collects a royalty on the sale of the gift certificate at the point of sale. If the franchise gift certificate is redeemed by a different retreat from the one that sold the gift certificate, the settlement of the liability between franchisee is completed during the Company’s biweekly franchise settlement process.

The Company records deferred revenue for gift cards that have been sold but not yet redeemed. The deferred revenue for gift cards is reduced when funds are transferred to franchise locations upon redemption of the gift cards. For some of the gift cards that are sold, the likelihood of redemption is remote. When the likelihood of a gift card’s redemption is determined to be remote, the Company records a breakage adjustment and reduces deferred revenue by the amount never expected to be redeemed. The Company uses historic gift card redemption patterns to determine when the likelihood of a gift card’s redemption becomes remote. This breakage adjustment is recorded consistent with the historic redemption pattern of the associated gift card or on actual redemptions in periods where redemptions do not align with historic redemption patterns. As of December 31, 2023 and 2022, gift card liability amounted to \$1,082,158 and \$1,056,426, which is presented as deferred revenue, gift cards and gift certificates account in the balance sheets.

### *Contract Liabilities*

Contract liabilities consist of deferred revenue resulting from initial and successor franchise fees and area development fees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement. These contract liabilities are classified as deferred revenue, area development fees and deferred revenue, franchise fees in the balance sheets (see Note 4).



# Massage Heights Franchising, LLC

## Notes to Financial Statements

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### ***Fair Value of Financial Instruments***

For certain of the Company's financial instruments, including cash and cash equivalents, accounts receivable, accounts payable, and accrued expenses, the carrying amounts approximate fair value due to their short maturities.

### ***Income Taxes***

As a limited liability company, the Company's taxable income or loss is allocated to members in accordance with their respective percentage ownership. Therefore, no provision or liability for federal or state income taxes has been included in the financial statements. The state of Texas levies a franchise tax on Texas domestic limited liability companies.

The Company follows accounting policies under ASC 740, *Income Taxes*, regarding how uncertain tax positions should be recognized, measured, presented, and disclosed in the financial statements. The Company has analyzed its tax positions taken in and has concluded that, as of December 31, 2023, there are no positions that would call into question the Company's tax-exempt status. As such, the Company does not have an accrual for uncertain tax positions. The Company recognizes interest and penalties, if any, related to unrecognized tax positions in interest expense. For the years ended December 31, 2023 and 2022, the Company did not incur any interest expense or penalties. At December 31, 2023, the Company is no longer subject to income tax examinations by tax authorities for fiscal years ended prior to December 31, 2020.

### ***Concentrations***

The Company maintains cash balances in financial institutions participating in the Federal Deposit Insurance Corporation (FDIC) program whereby cash deposits are insured for up to \$250,000. Cash balances in financial institutions have at times exceeded the FDIC insured amounts. However, the Company has not experienced any related losses in such accounts.

### ***Leases (Topic 842)***

Leases are recorded in accordance with ASC 842, *Leases* (ASC 842). The Company leases office facilities which are accounted for as operating leases. The Company determines if an arrangement is a lease at inception and evaluates the lease classification (i.e., operating lease or financing lease) at that time. Lease arrangements with an initial term of 12 months or less are considered short-term leases and are not recorded on the balance sheet. During the year ended December 31, 2023, the Company did not incur any lease expense associated with leases with a term less of 12 months or less. The Company recognizes lease expense for these leases on a straight-line basis over the term of the lease.

Operating leases are included in right-of-use assets (ROU); lease liability, current; and long-term lease liability, net of current on the Company's balance sheet. ROU assets represent the Company's right to use an underlying asset for the lease term, and lease liabilities represent the Company's obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the commencement date based on the present value of lease payments over the lease term.

The Company uses U.S. Treasury risk-free rates over a period comparable to the remaining term of the lease, as the applicable discount rate on the commencement date, for determining the present

# Massage Heights Franchising, LLC

## Notes to Financial Statements

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value of lease payments. The Company considers the likelihood of exercising options to extend or terminate the lease when determining the lease term.

See Note 5 for additional information.

### **Accounting Pronouncement Adopted During the Year**

#### *Credit Losses (Topic 326)*

In June 2016, the FASB issued Accounting Standards Update 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, including subsequent amendments issued thereafter which clarify the standard. This standard significantly changes the impairment model for most financial instruments. Previous guidance required the recognition of credit losses based on an incurred loss impairment methodology that reflected losses once the losses were probable. In accordance with Topic 326, the Company is now required to use a current expected credit loss (CECL) model that immediately recognizes an estimate of credit losses that are expected to occur over the life of the financial instruments that are within the scope of this update, including trade receivables. The CECL model uses a broader range of reasonable and supportable information in the development of credit loss estimates.

On January 1, 2023, the Company adopted Topic 326. Management has assessed the impact of the adoption of Topic 326 on trade receivables and other receivables and determined that the impact of adopting Topic 326 did not have a material impact on the Company's financial statements. Management has considered factors such as trading cycle and accounts receivable turnover and concluded that the allowance for credit losses under the CECL model is not materially different from the previous incurred loss model. As a result, there was no material impact on the carrying value of on trade receivables or other receivables.

## **2. Property and Equipment**

Property and equipment consist of the following:

<i>December 31,</i>	<b>2023</b>	<b>2022</b>
Equipment	\$ 133,991	\$ 111,418
Furniture and fixtures	68,190	65,161
Leasehold improvements	45,565	45,565
Software	120,724	120,724
	<b>368,470</b>	<b>342,868</b>
Accumulated depreciation	<b>(293,449)</b>	<b>(271,710)</b>
<b>Total Property and Equipment, Net</b>	<b>\$ 75,021</b>	<b>\$ 71,158</b>

Depreciation expense amounted to \$21,739 and \$19,001 during the years ended December 31, 2023 and 2022, respectively, which is presented as depreciation and amortization in the statements of operations.



# Massage Heights Franchising, LLC

## Notes to Financial Statements

### 3. Due from Related Parties

Amounts due from related parties consist of the following:

<i>December 31,</i>	<b>2023</b>	<b>2022</b>
Summit Massage Supply, LLC	\$ 869,223	\$ 854,829
TGP Franchising, LLC	247,571	249,131
Elevated Brands, LLC	147,217	147,217
Massage Heights, LP	-	1,579
Massage Heights, E Commerce Members	5,657	5,657
Hufstetler, Evans, and Franson, LLC	8,000	8,000
Northbound 35, LLC	-	13,976
MH TPC, LLC	458	458
Massage Heights Family Fund	185,112	185,628
	-	5,275
	<b>\$ 1,463,238</b>	<b>\$ 1,471,750</b>

These balances are principally non-interest-bearing, unsecured advances from the Company to the affiliates, and do not have fixed repayment dates. The Company evaluates the collectability of the related-party receivables based upon historical experience and the specific circumstances of the individual counterparty, with an allowance for uncollectible amounts being provided if necessary. No allowance was deemed necessary as of December 31, 2023 and 2022.

### 4. Contract Liabilities

Contract liabilities consist primarily of deferred revenue resulting from initial and renewal franchise fees and national advertising fees and area development agreement (ADA) fees paid by franchisees, as well as transfer fees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement. These contract liabilities are classified as deferred revenue and deferred franchise fees in the balance sheets.

The following schedule reflects the change in contract liabilities:

<b>Balance, January 1, 2022</b>	\$ 800,882
Revenue recognized that was included in the contract liability at the beginning of the year	(227,586)
Increase, excluding amounts recognized as revenue during the period	176,600
<b>Balance, December 31, 2022</b>	749,896
Revenue recognized that was included in the contract liability at the beginning of the year	(120,292)
Increase (decrease), excluding amounts recognized as revenue during the period	467,333
<b>Balance, December 31, 2023</b>	<b>\$ 1,096,937</b>

# Massage Heights Franchising, LLC

## Notes to Financial Statements

The following schedule illustrates estimated revenues expected to be recognized in the future related to performance obligations that are unsatisfied (or partially unsatisfied) as of December 31, 2023:

2024	\$	813,869
2025		46,359
2026		46,359
2027		46,867
2028		40,697
Thereafter		105,786
<b>Total</b>	<b>\$</b>	<b>1,096,937</b>

### 5. Commitments and Contingencies

#### *Office Lease*

The Company leases its office space from a third party under an operating lease. For operating leases, the operating lease liabilities are initially and subsequently recognized based on the present value of the remaining lease payments using a discount rate that represents the risk-free rate of a five-year bond at the lease commencement date. As the lease does not provide an implicit rate and the Company does not have debt, the Company used the risk-free rate based on the information available at the lease commencement date in determining the present value of the lease payments.

The lease term for this lease includes the noncancellable period of the lease plus any additional periods covered by either a Company option to extend or to terminate the lease. The Company includes these options in the lease term when it is reasonably certain of exercising them. ROU assets are further adjusted for lease incentives including rent free periods. Operating lease cost for the year ended December 31, 2023 and 2022 was approximately \$104,000 and \$78,000 respectively, and is recognized on a straight-line basis over the lease term and is recorded in general and administrative expenses in the statement of operations.

The following is the weighted-average term and discount rate for operating leases:

<i>Year ended December 31,</i>	<b>2023</b>	<b>2022</b>
Weighted-average term (years)	<b>4.5</b>	<b>5.5</b>
Discount rate (%)	<b>1.37</b>	<b>1.37</b>

*The remainder of this page intentionally left blank.*



# Massage Heights Franchising, LLC

## Notes to Financial Statements

The following table displays a maturity analysis of the undiscounted cash flows related to operating leases as of December 31, 2023, along with a reconciliation to the discounted amount recorded on the December 31, 2023 balance sheet:

<i>Year ending December 31,</i>	
2024	\$ 99,250
2025	109,278
2026	110,307
2027	83,309
<b>Total Undiscounted Cashflows</b>	<b>402,144</b>
<b>Impact of Present Value Discount</b>	<b>10,125</b>
<b>Total Lease Liabilities Reported on Balance Sheet</b>	<b>\$ 392,019</b>

### *Litigation*

The Company may be party to various claims, legal actions, and complaints arising in the ordinary course of business. In the opinion of management, all matters are of such kind, or involve such amounts, that unfavorable disposition, if any, would not have a material effect on the financial position of the Company.

### **6. Other Income**

During the year ended December 31, 2023, the Company was awarded a reduction in legal settlement fees amounting to \$705,000, which was previously accrued for. This is included in other income on the statements of operations.

### **7. Management Agreement**

During 2014, the Company entered into a management agreement with the Company's chairman. The agreement provides for the issuance of membership units in the Company up to 3% of the outstanding membership units over the term of the agreement. The Company did not issue any membership units relating to the agreement for the years ended December 31, 2023, 2022 and 2021.

### **8. Cash and Cash Equivalents and Restricted Cash**

The balance in cash equivalents and restricted cash in the statements of cash flows consists of the following:

<i>Year ended December 31,</i>	<b>2023</b>		<b>2022</b>	
Cash and cash equivalents	\$	<b>2,985,957</b>	\$	2,499,859
Restricted cash		<b>1,044,127</b>		881,236
<b>Total Cash and Cash Equivalents and Restricted Cash</b>	<b>\$</b>	<b>4,030,084</b>	<b>\$</b>	<b>3,381,095</b>

# Massage Heights Franchising, LLC

## Notes to Financial Statements

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### 9. Subsequent Events

In preparation of its financial statements, the Company considered subsequent events through April 11, 2024, which was the date the Company's financial statements were available to be issued.

**EXHIBIT B**  
**FRANCHISE AGREEMENT**



**MASSAGE HEIGHTS FRANCHISING, LLC**

## **FRANCHISE AGREEMENT**

**License #:** \*\*\*

**Franchisee:** \*\*\*

**Date:** \*\*\*

**Territory:** \*\*\*

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### ATTACHMENTS:

- A. Franchisee Data Sheet
- B. Owners Agreement
- C. Statement of Ownership

## FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT (“Agreement”)** is effective as of the date identified in **Attachment A** to this Agreement (“**Effective Date**”), by and between **Massage Heights Franchising, LLC**, a Texas limited liability company, located at 13750 US Hwy 281 North, Suite 925, San Antonio, Texas 78232 (“**Franchisor**”) and the franchisee identified in **Attachment A** to this Agreement (“**Franchisee**”). If more than one person or entity is listed as the Franchisee, each such person or entity shall be jointly and severally liable for all rights, duties, restrictions, and obligations under this Agreement.

### RECITALS

**WHEREAS**, Franchisor is offering franchises for the use of the trademark MASSAGE HEIGHTS and MASSAGE HEIGHTS, BODY + FACE and related trademarks, design marks, trade dress, and service marks for the operation of a business offering professional therapeutic massage services and facial services to the general public through membership-based programs, and the sale of related products and services.

**WHEREAS**, the MH Businesses (defined below) 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, which may be may be changed or modified by Franchisor throughout Franchisee’s ownership of the MH Business.

**WHEREAS**, the distinguishing characteristics of the System (defined below) include the trademark “**MASSAGE HEIGHTS**,” “**MASSAGE HEIGHTS, BODY + FACE**,” and other trademarks, trade names, design marks, trade dress, confidential operating procedures, confidential Brand Standards Manual, standards and specifications for equipment, services and products, methods of service, management and marketing programs, and sales techniques and strategies used to identify a MH Business. All of these distinguishing characteristics may be changed, improved, modified, 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 trademarks 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 MH 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 MH 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:

**“Agreement”** - means this agreement, attachments, and all instruments in amendment hereof.

**“Affiliate”** - means any person or entity that controls, is controlled by, or is in common control with, Franchisor or Franchisee.

**“Brand Standards Manual”** - means, but is not limited to, collectively, all directives, books, pamphlets, bulletins, memoranda, order forms, packing slips, invoices, letters, email, 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, containing mandatory and recommended specifications, standards, advice, requirements, marketing information and procedures, operating procedures, instructions, policies, and rules prescribed from time to time by Franchisor relating to the operation of the MH Business and containing information relative to other obligations of Franchisee hereunder. The form and content of the Brand Standards Manual maintained by Franchisor shall prevail in the event of any dispute regarding the form of or content of the Brand Standards Manual between Franchisor and Franchisee.

**“Confidential Information”** - means the Brand Standards Manual, 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 MH Business including, without limitation, all databases (whether in print, electronic or other form), all names, addresses, phone numbers, email addresses, customer purchase records, customer information, customer lists, manuals, promotional and marketing materials, marketing strategies, and any other data which Franchisor designates as confidential.

**“Franchise”** - shall mean the business operations conducted or to be conducted using the System and in association therewith the Marks.

**“Gross Revenues”** – means the total selling price of all Services and Products sold at, from, or through Franchisee’s MH Business, whether or not sold or performed at the Retreat Franchisee operates, including the full redemption value of any gift certificate or coupon sold for use at any MH Business (fees retained by or paid to third-party sellers of such gift certificates or coupons are not excluded from this calculation) and including all proceeds from any business interruption insurance and all income revenue and consideration of every other kind and nature related to the MH Business operation, whether for cash or credit and regardless of collection in the case of credit. 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;

(ii) all customer refunds made by the MH Business (exclusions will not include any reductions for credit card user fees, returned checks, or reserves for bad credit or doubtful accounts); and

(iii) all tips received by massage therapist and estheticians.

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 collection 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 Services or Products shall be valued at the retail prices applicable and in effect at the time that they are received. If Services or Products have been discounted, Gross Revenues includes the full retail price of Services and/or Products provided, unless discounts are approved by Franchisor.

**"Lease"** - means any agreement (whether oral or written), including without limitation any offer to lease, license, or lease agreement, under which the right to occupy a Retreat has been obtained and any amendment made thereto from time to time. Franchisee acknowledges and agrees that before any Lease will be accepted by Franchisor, the Lease must incorporate the "Required Terms" (as defined in Section 8).

**"Managing Owner"** – means, if Franchisee is an entity, the shareholder, member, partner, or owner designated by Franchisee in **Attachment C** (subject to Franchisor's approval) as the person that is principally responsible for communicating with Franchisor about the MH Business and that shall personally participate in the operations of the MH Business.

**"Marks"** - shall mean the trademark "MASSAGE HEIGHTS," "MASSAGE HEIGHTS, BODY + FACE," and other trademarks 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.

**"MH Business"** - means the business operations conducted or to be conducted by Franchisee consisting of the sale of Products and Services using the System and in association with the Marks.

**"Products"** - means all supplies, material, equipment, and ancillary items sold, leased, prepared, or otherwise dealt with in connection with the MH Business or associated with the Marks.

**"Retreat"** - means the retail store front, commercial facility, or other approved location from which Franchisee sells Products and provides Services in connection with the MH Business.

**"Site Selection Assistance"** - means all services provided by Franchisor relating to the selection and authorization of Franchisee's Retreat. Franchisor's Site Selection Assistance is more fully defined in the Brand Standards Manual, and Franchisor has the right to modify the site selection services offered by Franchisor periodically in Franchisor's discretion.



**“Services”** - means the sale and provision of professional therapeutic massage services and facial services to the general public and through membership-based programs, and related activities conducted, or otherwise dealt with in connection with the MH Business and associated with the Marks.

**“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, as may be modified from time to time by Franchisor.

**“Trade Secret(s)”** - shall mean information, including a 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 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 MH Business, Franchisor, and this Agreement.

1.2 Franchisee has, or has made, firm arrangements to acquire funds to commence, open and operate the MH 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.

1.4 There are no material financial obligations of Franchisee, whether actual or contingent, that 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 or subject to any litigation, legal proceedings, or 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 other than those which have been disclosed to Franchisor by Franchisee in writing.

1.6 Franchisee represents that it is not a party to or subject to agreements that might conflict with the terms of this Agreement and agrees not to enter into any conflicting agreements during the Term (as defined in Section 3.1, below) or any Renewal Terms (as defined in Section 3.1, below).

1.7 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 or in Franchisor's Franchise Disclosure Document. Franchisee acknowledges that the Franchise has been granted in reliance upon the information supplied to Franchisor in Franchisee's application for a Franchise.

1.8 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.

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 <https://www.state.gov/j/ct/rls/other/des/122570.htm>). Franchisee agrees not to hire (or, if already employed, retain the employment of) any individual who is listed in the Annex.

(a) 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.

(b) 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 1.8.

(c) Any misrepresentation under this Section or any violation of the Anti-Terrorism Laws by Franchisee, its owners, agents, its employees shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee has entered with Franchisor or any of Franchisor's affiliates.

(d) "**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 MH Business upon the terms and conditions of this Agreement in the Territory (defined below) described in **Attachment A**;

(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 other complementary and non-competing services or products.

2.2 The License does not include the right to sell Products to any vendor for resale.

2.3 Franchisee recognizes that variations and additions to the System may be required from time to time in Franchisor’s sole discretion. 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 modifications 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 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.

## 3. TERM OF THE AGREEMENT AND LICENSE

3.1 This Agreement and the License granted shall become effective on the Effective Date, expiring ten years from the Effective Date of this Agreement (“**Term**”), subject, however, to termination in accordance with the provisions of this Agreement. When the initial Term expires, Franchisee shall have the option to extend Franchisee’s rights to operate the MH Business for one additional term (“**Renewal Term**”) of ten years. If you are signing this Agreement as a renewal agreement, the references to “**Term**” shall mean any applicable renewal term of the renewal agreement. Franchisee must pay the Renewal Fee (as defined in Section 3.3(c)) and otherwise comply with the requirements set forth in this Section 3.

3.2 Franchisor may refuse to renew this Agreement in Franchisor’s reasonable discretion, including but not limited to, if:

(a) Franchisee has failed to remedy any breach of this Agreement specified by Franchisor in a written notice to Franchisee; or

(b) Franchisee has committed and received notice of three or more breaches of this Agreement during 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 nine months or more than twelve 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 As additional conditions to renewal, Franchisee shall be required to:

(a) Execute a new franchise agreement ("**Renewal Franchise Agreement**") and all other agreements in the form then being used by Franchisor in granting new franchises, which may have materially different terms and conditions from this Agreement. 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 MH Business (except as specified below). There shall not, however, be another initial franchise fee charged at the time Franchisee signs a Renewal Franchise Agreement. 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 RENEWAL 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 ARTICLE 3;

(b) 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 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 MH Business;

(c) Pay the renewal fee ("**Renewal Fee**") of 25% of the then-current initial franchise fee, or \$10,000 if we are not then offering franchises for sale, which is due and payable to Franchisor at the time of signing the Renewal Franchise Agreement;

(d) Upgrade the Retreat, technology and software systems, and vehicle (if any) used in operation of the MH Business to Franchisor's then current standards;

(e) Relocate the Retreat to a "Class A" location if one is available in Franchisee's Territory, as determined by Franchisor. A "Class A" location is typically regarded in the real estate industry as a building of the newest and highest quality that is well-located, among other characteristics;

(f) Comply with all other provisions contained in the Brand Standards Manual, as modified periodically by Franchisor in Franchisor's sole discretion;

(g) Provide proof of then current licenses, insurance and permits.

3.4 If Franchisee does not sign a Renewal 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 below, neither Franchisor nor any Affiliate will establish or license another person or entity to establish a MH Business using the Marks licensed to Franchisee within the Territory encompassed by the boundaries set forth in **Attachment A ("Territory")**, attached hereto and incorporated herein by reference. Except as otherwise specifically provided in this Agreement, this Agreement does not restrict Franchisor or its Affiliates from pursuing and does not grant rights to Franchisee to pursue any of Franchisor's or its Affiliates other business concepts other than the MH 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 (and Franchisor is not obligated to pay Franchisee if Franchisor exercises any of the rights specified in this Section within Franchisee's Territory):

(a) to use, and to license others to use, the Marks and System for the operation of MH Businesses at any location other than in the Territory, regardless of proximity to the Territory;

(b) to use the Marks and the System to sell any products or services similar to those that Franchisee will sell through any alternate channels of distribution within or outside of the Territory. This includes, but is not limited to, retail locations and other channels of distribution such as television, mail order, catalog sales, wholesale to unrelated retail outlets, or over the Internet. Franchisor exclusively reserves the Internet as a channel of distribution, and Franchisee may not independently market on the Internet or conduct e-commerce. Franchisor will not pay Franchisee any compensation for Franchisor's solicitation and acceptance of orders within Franchisee's Territory;

(c) to use and license the use of other proprietary and non-proprietary marks or methods which are not the same as or confusingly similar to the Marks, whether in alternative channels of distribution or in the operation of a business offering massage services, or related wellness or exercise facilities, or other related products or services, at any location, including within the Territory, which may be similar to or different from the MH Business operated by Franchisee;

(d) to engage in any transaction, including to purchase or be purchased by, or merge or combine with, to convert to the System or be converted into a new system with any business, including businesses operated by competitors, whether franchised or corporately owned and whether located inside or outside the Territory, provided that in such situations the newly acquired business may not operate under the Marks in the Territory;

(e) to own, acquire, establish, and/or operate, and license others to establish and operate, MH Businesses using any proprietary marks or systems (including the Marks and System) at any airport, train station, other transportation facility, hotel, arena, ballpark, stadium, racetrack, other sports facility, cruise ship, casino, or other entertainment facility, grocery store, corporate campus, college campus, or military base, within any outlet mall or other regional mall, within or outside the Territory;

(f) to implement multi-area marketing programs which may allow Franchisor or others to solicit or sell to customers anywhere. Franchisor also reserves the right to issue mandatory policies to coordinate such multi-area marketing programs;

(g) to operate or use any websites utilizing a domain name incorporating one or more of the words “**Massage Heights**” and/or “**Massage**” 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. Franchisee agrees to use only Franchisor’s designated vendors for all digital online marketing (SEO, PPC, reputation management, social media, scheduling/booking services, native phone applications, etc.), approved local marketing management and approved reporting systems. Franchisor intends that any franchisee website developed exclusively or primarily for purposes of promoting Franchisee’s MH Business be accessed only through Franchisor’s home page. Franchisee shall provide Franchisor with content for Franchisor’s Internet marketing, and shall sign Internet and intranet usage agreements, if any. Franchisor retains the right to approve any linking or other use of its website or require the removal of any website utilizing the Marks upon notice to Franchisee; and

(h) to open or sell a MH Business inside the Territory at any time following the termination or expiration of this Agreement.

Franchisor is not required to pay or compensate Franchisee for the exercise of any of the rights specified above, including within Franchisee’s 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 or wire transfer. The Initial Franchise Fee is in consideration of the pre-opening assistance Franchisor provides, Franchisor’s lost or deferred opportunity to enter into this Agreement with others, and offsets some of Franchisor’s expenses for franchisee recruitment. The Initial Franchise Fee shall be deemed to have been fully earned by Franchisor and non-refundable when paid.

5.2 Franchisee must pay Franchisor a non-recurring “**Software Setup Fee**” of \$500 for the setup of required operations software and other technology, which include the point-of-sale (“**POS**”) system, Franchisor’s proprietary operations software, email and network support, along with additional software licenses for outbound consumer messaging and electronic forms, and may include future hardware, software, websites, applications and platforms that Franchisor may develop and implement in

Franchisor's sole discretion. The Software Setup Fee is due upon execution of the Agreement and is non-refundable under any circumstances.

5.3 Franchisee must purchase computer equipment, software, licenses, and other technology from Franchisor or Franchisor's approved supplier. Franchisor may collect money from the Franchisee and pay the suppliers directly. Franchisee will be assessed a monthly, on-going "**Technology Fee**", which is currently \$550 per month, beginning the first month after the Franchisee opens the MH Business. The Technology Fee is due on the 15<sup>th</sup> of each month and is non-refundable under any circumstances. The Technology Fee is subject to annual increases on the anniversary of the execution of this Agreement. Franchisee is required to execute the "**Use and License Agreement**" attached to the Franchise Disclosure Document in **Exhibit G**.

5.4 When Franchisee signs the lease or purchase agreement for the Retreat, Franchisee shall purchase from Franchisor, or its affiliate, a package of startup equipment, furniture, fixtures, signage, supplies and inventory items necessary for the construction and opening of Franchisee's MH Business (the "**Retreat Development Package**"). The fee for the Retreat Development Package is fully earned by Franchisor, or its affiliate, and is non-refundable under any circumstances. The cost of the Retreat Development Package will vary depending on the size of Franchisee's Retreat. Franchisee shall be responsible for additional development expenses related to the development and construction of the Retreat.

5.5 Franchisee shall pay to Franchisor a royalty fee ("**Royalty**") equal to 6% of Gross Revenue commencing on the Effective Date and shall be paid bi-weekly on the date specified in the Brand Standards Manual. The Royalty is an ongoing payment that allows Franchisee to use the Marks and the other intellectual property of the System and pays for ongoing support and assistance from Franchisor.

5.6 Franchisee shall pay the Royalty to Franchisor every two weeks for the preceding two calendar weeks (or such other frequency mandated by Franchisor) on the day specified in the Brand Standards Manual. Franchisee shall not subordinate to any other obligation its obligation to pay the Royalty or any other fee or charge due Franchisor or any Affiliate of Franchisor under this Agreement.

(a) Franchisor currently accesses reports regarding Gross Revenues through the software program for the MH Business. In the event that the software is not functioning, or this feature is not available, Franchisee shall prepare monthly reports regarding Gross Revenues.

(b) Franchisee shall remit Royalties, Brand Fund Contributions, Technology Fees and other fees and amounts due to Franchisor hereunder via electronic funds transfer ("**EFT**"), direct debit or other similar means that Franchisor requires. The EFT Authorization is attached to the Disclosure Document in **Exhibit G**. 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. Franchisee also authorizes 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 or improperly 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, including Royalties, Technology Fees, and Brand Fund Contributions; or (b) the amount due based on information retrieved from the Franchisor approved computer system.

5.7 Franchisee will be required to pay Franchisor the cost of any seasonal, holiday or other promotional packages Franchisor puts together, which will vary depending on the size of Franchisee's Retreat and the materials included.

5.8 Franchisee must pay to Franchisor the monthly amount designated by Franchisor, currently \$109 per month, on the 15<sup>th</sup> day of each month, for certain "Rapid Response Investigation Services," which are provided by Franchisor's designated vendor. Franchisor reserves the right to make changes to the System and may increase or decrease the amount Franchisee must pay to Franchisor and Franchisor may change the purpose for which the amounts are collected in Franchisor's sole discretion.

5.9 Franchisee must pay to Franchisor the annual amount designated by Franchisor, currently \$350 per year, on the 15<sup>th</sup> day of January, to pay for certain therapist professionalism fees, which are provided by Franchisor's designated vendors. This fee currently includes: (i) a continuing education unit credited course that is available to all therapists (\$200/year), and (ii) the use of an employment verification database for therapists (\$150/year). Franchisor reserves the right to make changes to the System and may increase or decrease the amount Franchisee must pay to Franchisor and Franchisor may change the purpose for which those amounts are collected in Franchisor's sole discretion.

## **6. ACCOUNTING, RECORDS, AUDITS AND LATE PAYMENT CHARGES**

6.1 Franchisee shall keep such complete records of its MH Business as a prudent and careful businessperson would normally keep, including, but not limited to accounting records and records demonstrating compliance with this Agreement and the Brand Standards. Franchisee must use the accounting system and the pre-formatted template required by Franchisor, if any. Franchisee shall keep its financial books and records and submit reports in a particular format or manner as Franchisor may from time to time direct in the Brand Standards Manual or otherwise, including retention of all invoices, order forms, cash register tapes, check records, bank deposit receipts, sales tax records, refunds, cash disbursements, journals, and general ledgers. Franchisee shall prepare, maintain, and submit the records and reports required by Section 6 in a manner and format direct by Franchisor, which may include submission through a software program in a required format. 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 MH Business conducted under this Agreement. Franchisee shall maintain an accounting system which accurately reflects all operational aspects of the MH 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), monthly financial statements including a profit and loss statement, balance sheet, and trial balance. Franchisee shall keep and preserve full and complete records of Gross Revenues for at least seven years. The profits and loss statement, balance sheet, and trial balance must be submitted to Franchisor within 15 days of the end of each reporting month.



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 or other aspect of the MH Business. Franchisee shall submit Minimum Local Advertisement Requirement (as defined in Section 11.2(a)) statements to Franchisor once each quarter. Within ten business days of the filing with the Internal Revenue Service, Franchisee shall provide Franchisor with a copy of its federal tax return for the MH Business for the previous tax year.

6.4 The records required under this Section 6 pertain only to Franchisee's operation of the MH 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 MH 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 seven years after the end of the Term of this Agreement, including any Renewal 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, Brand Fund Contribution (as defined in Section 11.3(a)) 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. If (i) Franchisee fails to provide any required reports, (ii) the deficiency for any audit period discloses a deficiency in the amount of any Royalty, Brand Fund Contribution or other amounts due in excess of 2%, or (iii) the audit reveals any other noncompliance with this Agreement or the Brand Standards, then, Franchisee shall, in addition to paying the deficient amount to Franchisor pursuant to the preceding sentence if applicable, immediately pay to Franchisor the entire cost of the inspection or audit including travel, lodging, meals, salaries and other reasonable expenses incurred by the inspecting or auditing personnel and any legal expenses. For the purposes of this Section 6.5, an audit period shall be each fiscal year. If an audit discloses an overpayment of any Royalty, Brand Fund Contribution, or other amounts due, Franchisor shall credit the amount of the overpayment to Franchisee's payments of Royalty and Brand Fund Contribution next falling due.

6.6 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 payment fee of \$100 per occurrence plus a late interest charge equal to (i) 18% per annum; 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, Brand Fund Contributions, and other amounts payable to Franchisor when due shall constitute a material breach of this Agreement. Franchisee acknowledges that this Section 6.6 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 MH Business. Further, Franchisee acknowledges that failure to pay all such amounts when due shall, notwithstanding the provisions of this Section 6.6, constitute grounds for termination of this Agreement, as provided in this Agreement.

6.7 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.

6.8 Franchisee hereby authorizes Franchisor to make reasonable inquiries of Franchisee's bank, suppliers, and trade creditors concerning the MH Business and hereby directs such persons and

companies to provide to Franchisor such information and copies of documents pertaining to the MH Business as Franchisor may request.

6.9 Franchisee acknowledges and agrees that Franchisor owns all business records (“**Business Records**”) with respect to customers of, and/or related to, the MH Business including, without limitation, all databases (whether in print, electronic or other form), including all names, addresses, telephone numbers, email 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 in its sole discretion, to be in the best interest of the System.

6.10 To encourage prompt delivery of all Business Records, compliance confirmations, Certificates of Insurance, Gross Revenue statements and any other documentation or record that may be requested by Franchisor or Franchisee is required to have or maintain under this Agreement and Brand Standards, Franchisee shall pay, upon demand, a late report fee in the amount of \$100 per occurrence plus \$100 per week for each week that records and documentation required remain undelivered or reported. This fee is in addition to all other amounts owed (including any default fee), and remedies which may be available to Franchisor under this Agreement.

6.11 If Franchisee pays the Royalty or any other sums due to Franchisor under this Agreement with a check returned for insufficient funds or an EFT withdrawal is rejected due to insufficient funds, in addition to all other remedies which may be available, Franchisor may charge Franchisee an insufficient funds fee of \$100 per incident. Additionally, Franchisor shall have the right to require that Royalty payments and any other sums due to Franchisor under this Agreement be made by certified or cashier’s checks. For any payment Franchisee makes to Franchisor by credit card, Franchisor reserves the right to charge up to 4% of the total payment as a service charge. If Franchisee fails to pay the Royalty or any other sums due to Franchisor under this Agreement by the due date twice during the Term or any Renewal Term, 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 or any other sums due to Franchisor under this Agreement weekly.

6.12 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 home telephone number for purposes of disclosing it as required by law in the Franchise Disclosure Document. Franchisee acknowledges and agrees that, following the expiration or termination of this Agreement, Franchisor may also provide Franchisee’s contact information to any former clients of the MH Business, as needed, in order to resolve any outstanding customer or membership-related issues.

## **7. SERVICES AND ASSISTANCE**

7.1 The Initial Franchise Fee and Royalty 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, including training, rendered by Franchisor.

7.2 Franchisor shall offer Franchisee initial and continuing services as Franchisor deems necessary or advisable in furthering Franchisee’s MH 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 prior to Franchisee opening the MH Business include:

(a) Designating Franchisee's Territory as stipulated in Section 4 and **Attachment A**.

(b) Providing Franchisee with written site selection guidelines and criteria and provide Site Selection Assistance to determine an acceptable location for Franchisee's Retreat, as Franchisor has outlined in the Brand Standards Manual.

(c) Providing one initial training program ("**Initial Training Program**") for up to four people at no charge, including Franchisee (or its Managing Owner, if Franchisee is an entity), Franchisee's initial Designated Retreat Director, and Franchisee's initial Lead Massage Therapist. The Initial Training Program is usually conducted at Franchisor's headquarters (currently located in San Antonio, Texas), but may be held at Franchisee's location or elsewhere or through an online platform in Franchisor's discretion. The Initial Training Program shall include training on the System guidelines, procedures, methods of training and operation, advertising, sales techniques, promotional ideas, marketing plans, customer relations, instructions on quality standards, practical experience in the operation of a MH Business and operational and brand standards. In addition, Franchisor shall provide a representative to conduct on-site pre-opening and opening assistance for a maximum of five business days, three of which will occur prior to your opening of your Retreat to the public; one of which will occur on the opening date; and one of which will occur the day after the opening date. If Franchisee is a legal entity, each of Franchisee's owners and their respective spouses that that will participate in the operation of the MH Business must attend the Initial Training Program. Franchisee is responsible for providing training to its employees, and Franchisor may provide curriculum in order to support and ensure compliance with Franchisor's brand standards. Franchisor may charge Franchisee the then-current training fee (currently \$500 per person, per day), and Franchisee must reimburse Franchisor for all lodging, food and transportation costs Franchisor or its representative incurs, if: (i) Franchisee desires to have additional persons attend the Initial Training Program; (ii) Franchisee requests additional Franchisor representatives or additional training or assistance; or (iii) Franchisor otherwise determines the need for additional training or assistance.

(d) Providing a Transfer Training Program, if the MH Business was already open and operating on the Effective Date. You (or your Managing Owner if you are an entity) must attend an online training course prior to signing your Franchise Agreement and must attend online and in-person training courses we require within 30 days after signing your Franchise Agreement. Franchisor will designate the location for in-person training, as determined by Franchisor in its sole discretion.

(e) Providing Franchisee with mandatory and suggested specifications and layouts for its Retreat, including requirements for dimensions, design, image, interior, layout, décor, and operating assets. Franchisee must also use Franchisor's designated vendor for construction management, construction, architect, site visit, space plans/layout and design. Franchisee must submit final construction plans and specifications to Franchisor for its approval before Franchisee

begins construction at the premises and must construct the Retreat in accordance with those approved plans and specifications.

(f) Providing Franchisee with specifications for all initial and replacement furniture, fixtures, equipment, inventory, and suppliers required to operate a Retreat.

(g) Identifying the operating assets, approved products, and other items that Franchisee will use to develop and operate the Retreat.

(h) Providing Franchisee with access to Franchisor's Brand Standards Manual.

(i) Providing Franchisee with assistance or management of the grand opening marketing programs.

(j) Assisting in the establishment of an advertising cooperative in accordance with Section 11.4, if any.

7.4 Currently, the services provided by Franchisor to Franchisee after Franchisee opens the MH Business shall include:

(a) Providing advice regarding the MH Business' operation based on Franchisee's reports or inspections. Advice will be given during Franchisor's regular business hours and via written materials, electronic media, telephone, at Franchisor's headquarters, or at the Retreat. There are no additional charges for these services.

(b) Informing Franchisee of recommended and mandatory specifications, standards and procedures for the operations of the MH Business. There are no additional charges for these services.

(c) Researching new Products, Services, and methods of doing business, from time to time, and providing Franchisee with information concerning developments of this research. There are no additional charges for these services.

(d) Allowing Franchisee to continue to use confidential materials, including the Brand Standards Manual and the Marks.

7.5 If Franchisee believes Franchisor has failed to adequately provide pre-opening services to Franchisee as provided in this Agreement, Franchisee shall notify Franchisor in writing within 30 days following the opening of the MH 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.

7.6 During the Term, Franchisor (or Franchisor's designee(s)) may, but are not required to, provide additional assistance and services to Franchisee, such as:

(a) holding periodic system-wide conference calls, national or regional conferences, or workshops to discuss business and operational issues affecting MH Businesses;

(b) providing additional assistance and training regarding Franchisee's MH Business;

(c) modifying, updating, or changing the System; making periodic visits to a MH Business for the purpose of assisting in all aspects of the operation of a Massage Heights Franchise; developing private label goods or merchandise for resale at the Retreats; maintaining and administering the Brand Fund and use these funds to develop promotional and advertising programs and public relations coverage for MH Businesses; developing a referral program in which Franchisee and any other eligible participants, if any, may receive a referral fee for sending Franchisor an actualized lead; providing newsletters; or providing other additional assistance, in its sole discretion. There may be additional charges for this additional assistance.

## **8. FRANCHISEE'S DUTIES, OBLIGATIONS AND OPERATING STANDARDS**

8.1 Franchisee shall, consistent with the terms of this Agreement, diligently develop the MH Business and use its best efforts to market and promote the required Services and Products.

8.2 Franchisee shall complete the construction of Franchisee's Retreat, and shall maintain the Retreat, in accordance with the following requirements:

(a) Franchisee shall locate, lease, or otherwise acquire a site from which to operate the MH Business. The Retreat site is subject to Franchisor's written approval, which may be granted or denied in Franchisor's sole discretion. Franchisee must submit proposals regarding location (or relocation request) of the Retreat to Franchisor within 90 days from the execution of this Agreement (or relocation request), or such longer time frame specified by Franchisor in writing. If Franchisor does not respond with an approval of Franchisee's request for the site of Franchisee's Retreat within 14 days, the site shall be deemed disapproved. If Franchisor disapproves of the site, Franchisee must select another site, subject again to Franchisor's written consent. Franchisor may terminate this Agreement if Franchisee does not timely submit an acceptable location for Franchisee's Retreat.

i. Franchisee must purchase or lease, at Franchisee's expense, the approved Retreat site no later than 120 days after executing this Agreement (or from the date of an approved relocation request). Franchisee, its owners and the owner's spouses may be required to sign a personal guaranty on the Lease. While Franchisor will review the Lease, Franchisee is solely responsible for negotiating the business and legal terms of the Lease. Franchisee may not negotiate a Lease or purchase agreement prior to receiving Franchisor's written consent of the site for the Retreat.

ii. Franchisee agrees that Franchisor's approval of the Retreat site, Lease or purchase agreement 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 approval of the specific site for the Retreat indicates only that Franchisor believes that the site falls within Franchisor's minimum criteria as of the approval date.

iii. Once Franchisee's Retreat is open for business, Franchisee may only relocate the Retreat by complying with Franchisor's relocation procedures as set forth in the Brand Standards Manual. Franchisee may not relocate the Retreat without Franchisor's prior written consent. If Franchisor permits Franchisee to relocate the Retreat, Franchisee must sign a new Lease or Purchase Agreement for its replacement Retreat within 120 days of such approval and Franchisee must reimburse Franchisor for its reasonable expenses incurred in approving the relocation site not to exceed \$5,000. Franchisor will provide

Franchisee with copies of invoices for Franchisor's expenses from any third-party providers upon request.

(b) Franchisee shall, at Franchisee's sole cost and expense, complete the interior build-out, install, maintain in sufficient supply, and use only equipment, furniture, fixtures, equipment, signs and supplies as specified by Franchisor in the Brand Standards Manual or otherwise in writing, and required by this Agreement. Franchisee must at all times maintain an inventory of approved products in sufficient quantities and variety to realize the full potential of Franchisee's MH Business.

(c) If Franchisee leases the Retreat, Franchisee must deliver to Franchisor a copy of the proposed Lease for Franchisor's review and approval no less than 20 business days prior to signing the Lease, in a form acceptable to Franchisor. Franchisor will respond to Franchisee within 10 business days. Such Lease must incorporate the following terms ("**Required Terms**"):

i. A provision allowing Franchisee to occupy the premises for the minimum of the term of this Agreement.

ii. A provision allowing Franchisee to assign the Lease, without further consent by the landlord or with consent which shall not be unreasonably withheld, to (a) Franchisor, (b) Franchisor's affiliate or successor, or (c) another franchisee of either Franchisor, Franchisor's affiliate provided such franchisee meets the qualification standards of Franchisor[Landlord] as of the date of the Lease.

iii. A provision requiring the lessor to concurrently send Franchisor a copy of any written notice of a Lease default sent to Franchisee and granting Franchisor the right (but without any obligation) to cure any Lease default within 10 business days after the expiration of Franchisee's cure period (if Franchisee fails to do so).

iv. A provision requiring the lessor to concurrently send Franchisor a copy of any written notice of a Lease term or option expirations.

v. A provision evidencing Franchisee's right to display the Marks according to the specifications in the Brand Standards Manual (subject only to applicable law).

vi. A provision that the premises may be used only for the operation of the MH Business.

vii. A provision that Franchisor may be allowed to enter the premises upon termination or expiration of the Franchise to de-identify the premises as a Massage Heights location.

viii. A provision requiring the lessor to provide an exclusivity clause for massage services.

(d) Franchisee must open the MH Business within twelve months from the Effective Date of this Agreement and, if Franchisee purchases multiple MH Businesses on the Effective Date, Franchisee must open the second and all subsequent MH Businesses purchased within 12 months

from opening the previous MH Business that was purchased on the Effective Date. Failure to open the MH Businesses within these time frames is a material breach of this Agreement.

(e) Franchisee must at all times comply with Franchisor's standards, specifications, processes, procedures, requirements, and instructions regarding the Retreat's physical facilities, including the layout of the equipment, furnishings, fixtures, and treatment rooms and waiting room areas, restrooms, and front desk area. Franchisee must maintain the Retreat and any parking areas in good and safe condition, as specified in the Brand Standards Manual. Franchisee must remodel or upgrade the Retreat at its sole cost and expense in accordance with Franchisor's standards as set forth in the Brand Standards Manual, which may be modified by Franchisor at any time at Franchisor's discretion.

8.3 Subject to the terms of this Agreement, Franchisee shall strictly comply with the Brand Standards Manual and all present and future standards, policies, specifications, processes, procedures, requirements, and instructions of Franchisor regarding the operation of the MH Business and Franchisee must comply with the following requirements:

(a) Franchisee, during the Term (including any Renewal Terms) shall have access to Franchisor's confidential Brand Standards Manual. Certain specifications, standards, and operating procedures prescribed from time to time by Franchisor in the Brand Standards Manual or otherwise communicated to Franchisee in writing shall constitute provisions of this Agreement as if fully set forth herein. Failure to comply with the standards set forth in the Brand Standards Manual or otherwise communicated to Franchisee in writing shall constitute a material breach of this Agreement. Franchisor reserves the right to provide the Brand Standards Manual and updates to the Brand Standards Manual in electronic form or other form determined by Franchisor. Franchisor shall have the right to add to, delete, and otherwise modify, the Brand Standards Manual from time to time to reflect changes in authorized Products and Services, business image or the operation of the MH Business; provided, however, no such addition or modification shall alter Franchisee's fundamental status and rights under this Agreement. Moreover, changes in laws regulating the services offered by Massage Heights franchises may (i) require Franchisor to restructure its franchise program, (ii) require Franchisee's Designated Retreat Director (defined in Section 8.8) (if any) and key personnel to obtain additional licenses or certifications, (iii) require Franchisee to retain or establish relationships with additional professionals and specialists in the massage therapy industry, (iv) require Franchisee to modify Franchisee's ownership or organizational structure, and/or require Franchisee to obtain additional licenses or permits. Franchisee agrees, at Franchisor's request, to modify the operation of the MH Business to comply with all such changes, and to be solely responsible for all related costs. Franchisee acknowledges that compliance with the Brand Standards Manual is necessary to protect Franchisor's reputation and the goodwill of the Marks and to maintain the uniform quality of operation through the System; however, the Brand Standards Manual is not designed to control the day-to-day operation of the MH Business. Franchisee agrees not to deviate from these methods, standards and specifications without Franchisor's prior written consent, or otherwise operate in any manner which reflects adversely on Franchisor's Marks or the System. Franchisor will notify Franchisee of new or modified specifications, standards, and guidelines through periodic amendments or supplements to the Brand Standards Manual or through other written communication (including electronic communication such as email or through a system-wide intranet).



Some of the revisions to the Brand Standards 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; and (viii) Site Selection Assistance. Franchisee covenants to accept, implement and adopt any such modifications at its own cost. Franchisee hereby acknowledges that the Brand Standards Manual is accessible to Franchisee during the Term of this Agreement. The Brand Standards Manual shall at all times remain the sole and exclusive property of Franchisor. Upon termination of this Agreement for any reason whatsoever, Franchisee shall immediately cease use of the Brand Standards Manual and return the Brand Standards Manual together with all copies of any portion of the Brand Standards Manual that Franchisee may have made, to Franchisor.

(b) At least 30 days prior to opening the MH Business, or commencing their duties, Franchisee (or if Franchisee is an entity, its Managing Owner) and Franchisee's Designated Retreat Director (as defined in Section 8.8 below) and Lead Massage Therapist (as defined in Section 8.3(o) below) must attend and successfully complete the Initial Training Program all other required position-specific courses to operate the MH business according to Franchisor's System. Franchisee may have a total of four attendees for the training sessions at our franchising office. In addition, Franchisee's Lead Skin Therapist (as defined in Section 8.3(o) below) must attend and complete Franchisor's then-current position-specific training program. Franchisee shall be responsible for travel, meals, personal expenses and living expenses incurred for all attendees. If Franchisee, the Designated Retreat Director, or Lead Massage Therapist do not complete the Initial Training Program or position-specific courses within the specified time frame due to lack of knowledge, failure to attend, or other factors in Franchisee's control, Franchisor may charge Franchisee a training extension fee of \$500. Franchisor also may provide training through an online platform in Franchisor's discretion. If Franchisee desires to have additional persons attend the Initial Training Program, Franchisee must pay Franchisor \$500 per person per day, plus the cost of travel, lodging, meals, and other personal expenses for each person attending. Franchisor will not train or assist in training Franchisee's employees or independent contractors. Franchisee will be responsible for training its employees and independent contractors. Franchisee will be responsible for hiring, training, directing, scheduling, and supervising its employees and independent contractors in the day-to-day operations of the MH Business.

(c) Franchisee must remain in compliance with any and all programs and policies related to professional and ethical conduct as well as misconduct prevention, including reporting procedures.

(d) All replacement Designated Retreat Directors, Lead Massage Therapists and Lead Skin Therapists must attend and successfully complete all position-specific course components of Franchisor's Initial Training Program (for Designated Retreat Directors) or other appropriate training program as designated by Franchisor, within thirty (30) to sixty (60) days of being hired. Franchisee must pay Franchisor the then-current training fee (currently, \$500 per person, per day), plus pay all expenses of each person attending including any travel, lodging, meals, and other personal expenses for additional training of a new Designated Retreat Director, Lead Massage Therapist or Lead Skin Therapist.

(e) Franchisor may require Franchisee (or its Managing Owner, if Franchisee is an entity) and its Designated Retreat Director, to attend refresher or additional training courses. Franchisee

must pay Franchisor the then-current refresher training fee (currently, \$500 per person, per day), plus pay all expenses of each person attending including any travel, lodging, meals, and other personal expenses for refresher additional training. If Franchisor conducts an inspection of Franchisee's MH Business and determines Franchisee is not operating in compliance with this Agreement, the System, or Franchisor's brand standards, Franchisor may require Franchisee to attend remedial training, and Franchisee shall pay Franchisor the then-current training fee (currently, \$500 per person, per day), plus pay all expenses of each person attending, including any travel, lodging, meals, and other personal expenses, or all expenses of Franchisor's representatives if the training is conducted at or near the Retreat, including travel, lodging, meals, and other expenses.

(f) Franchisor may choose to hold an annual convention or business meeting at such location as Franchisor may reasonably designate. Franchisee, including each member of Franchisee's entity if Franchisee is an entity ("**Required Attendee**"), must attend mandatory annual conventions and business meetings, and Franchisor may charge each Required Attendee an annual convention or business meeting fee per person (currently \$700 per person) ("**Convention/Business Meeting Fee**"), regardless of whether or not the Required Attendee attends the annual convention or business meeting, to help defray the cost of holding the annual convention or business meeting. Franchisee may bring key personnel to annual conventions, and Franchisee shall pay all expenses of each person attending, including any convention fees and other personal expenses, such as travel, lodging, and meals. Franchisor may preclude Franchisee from attending any convention, conference, business meeting, or System call while Franchisee is in default of this Agreement. In addition to paying the non-refundable Convention/Business Meeting Fee, any Required Attendee who fails to attend any annual convention or business meeting must attend an additional makeup training at such location as Franchisor may reasonably designate, and each Required Franchisee must pay an additional makeup training fee per person (currently \$700 per person) as well as all expenses, such as travel, lodging, and meals.

(g) Any additional required Service or Product introduced into the System by Franchisor must be offered for sale on a continuing basis at the MH Business at the time and in the manner required by Franchisor. Franchisor shall provide Franchisee at least 30-days prior written notice of any new required Service or Product introduced into the System. All equipment, facilities, products, supplies, 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 MH Business as reasonably required by Franchisor.

(h) No service or product, except approved Services or Products, may be offered for sale from the Retreat, unless Franchisee receives the prior written consent of Franchisor (which may be granted or denied in Franchisor's sole discretion).

(i) 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 MH Business. Advertising and promotional materials, services, equipment, inventory, products, signage, and supplies produced or approved by Franchisor for use by Franchisee may be used only in the manner and during the period specified by Franchisor. Franchisor may create promotional packages that include specific holiday promotional materials that will be used by Franchisee at Franchisee's own cost.

(j) Equipment, Services, Products, inventory, supplies, signage and other items must be added, eliminated, substituted, and modified at the MH Business as soon as possible in accordance with changes in Franchisor's specifications and requirements.

(k) The MH Business and everything related to the MH 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 MH Business must be promptly made.

(l) No alterations of the MH Business materially affecting the image of the MH 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.

(m) The MH 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 MH Business. Franchisee is solely responsible for investigating, understanding, and complying with all applicable laws, regulations, and requirements applicable to the MH Business, notwithstanding any materials or information provided by Franchisor including Franchisee obtaining an independent legal review of the membership agreement. Franchisee must obtain all business licenses and permits required by federal, state, and local laws, ordinances, rules and regulations before operating its MH Business. Franchisee must apply for all required licenses and permits within 20 business days after signing this Agreement, and if Franchisee does not obtain all required permits and licenses and other certifications necessary to operate its MH Business before the opening of MH Business, Franchisor may terminate this Agreement.

(n) The employees, equipment, tools, supplies, inventory, products, and other items on hand at the MH 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.

(o) 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 meet such minimum standards as Franchisor may establish from time to time in the Brand Standards Manual or otherwise in writing. Franchisee must at all times employ a lead therapist who will train all other massage therapists and estheticians, if applicable, who work at the MH Business ("**Lead Massage Therapist**"). Within the first year of opening the Retreat, Franchisee must also hire a lead skin therapist who will train all other skin therapists who work at the MH Business ("**Lead Skin Therapist**"). Franchisee is responsible for its employees' training, wages, taxes, benefits, safety, work schedules, work conditions, assignments, discipline, and termination for compliance with all workplace laws. Franchisee will have sole authority and control over the day-to-day operation of the MH Business and its employees. At no time will the Franchisee or the Franchisee's employees be deemed to be employees of Franchisor or the Franchisor's affiliates. Neither this Agreement nor Franchisor's course of conduct is intended to be construed, to state, or to imply that Franchisor is the employer of Franchisee's employees and/or independent contractors, nor vice versa. Franchisee shall inform each employee or independent contractor that Franchisee is the employer or contracting party, and that Franchisor is not. Franchisee will post a conspicuous back

of house notice explaining to employees that Franchisee is the employer, not Franchisor. Each of Franchisee's employees shall acknowledge in writing that Franchisee alone is the employer and operates the MH Business. Franchisor will not have the power to hire, fire, or manage Franchisee's employees. Franchisee shall be solely responsible for all employment decisions and functions of the MH Business, including, without limitation, those related to hiring, firing, training, directing, scheduling, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, recordkeeping, supervision, and discipline of employees and independent contractors, regardless of whether Franchisee has received advice from Franchisor on the subject or not. Franchisee agrees that any direction received from Franchisor regarding employment policies should be considered as examples, and that Franchisee alone is responsible for establishing and implementing personnel policies, and that Franchisee should do so in consultation with local legal counsel well-versed in employment law. Franchisee is required at all times to comply with all applicable employment laws. Franchisor will not have any duty or obligation to operate the MH Business of the Franchisee, to direct the Franchisee's employees nor to oversee the Franchisee's employment policies and practices. In order to protect the brand image of a safe and comfortable environment for all MH Businesses, Franchisor may require Franchisee to conduct background checks of each of its employees at Franchisee's sole cost. Franchisor may designate the third-party service provider(s) Franchisee shall be required to use for such background checks. Franchisee will use its' legal name on all documents for use with employees and contractors, including but not limited to, employment applications, timecards, pay checks, and employment and independent contractor agreements and will not use the Marks on these documents.

(p) All debts and taxes arising in connection with the MH Business, except those duly contested in a bona fide dispute, must be paid when due.

(q) 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; and use its best efforts to promptly and fairly resolve customer disputes in a mutually agreeable manner. If a customer contacts the Franchisor with a complaint and Franchisor provides a gift card, refund, or other value to the customer as part of Franchisor's addressing the issue, Franchisee will reimburse all reasonable costs Franchisor incurs upon invoice by Franchisor.

(r) Franchisee must operate the MH Business 365 days a year, unless authorized otherwise by Franchisor in the Brand Standards Manual, or in writing, in Franchisor's discretion.

(s) Franchisee shall, at Franchisor's request, use credit card vendors, 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 MH Business. Franchisee shall acquire, at its expense, all necessary hardware and software used in connection with these non-cash systems.

(t) Franchisee agrees to maintain, at all times, credit-card relationships with the credit-card and debit-card issuers or sponsors, check or credit verification services, financial-center services, merchant service providers, and electronic-fund-transfer systems (together, "**Credit Card Vendors**") that Franchisor may periodically designate as mandatory. The term "Credit Card Vendors" includes, among other things, companies that provide services for electronic payment,

such as near field communication vendors (for example, “Apple Pay” and “Google Wallet”). Franchisee agrees not to use any Credit Card Vendor for which Franchisor has not given Franchisee its prior written approval, or as to which Franchisor has revoked its earlier approval or otherwise prohibited. Franchisor has the right to modify these requirements and designate additional approved or required methods of payment and vendors for processing such payments, and to revoke approval of any service provider. Franchisee agrees to comply with the then-current Payment Card Industry Data Security Standards as those standards may be revised and modified by the PCI Security Standards Council, LLC (see [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org)), or any renewal organization or standards that Franchisor may reasonably specify. Among other things, Franchisee agrees to implement the enhancements, security requirements, and other standards that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards.

(u) Franchisee shall comply with all terms and pay all fees that may be due under a software license agreement for any software that Franchisee is required to use in the operation of its MH Business as prescribed by Franchisor.

(v) Franchisee shall promptly pay to Franchisor any amount equal to all taxes levied or assessed, including, but not limited to, 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 Franchisee through the sale, license or lease of property or property rights provided by this Agreement.

(w) 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 Retreat, or any improvements thereon.

(x) Franchisee shall comply with the advertising requirements set out in Section 11.

(y) Franchisee shall not use any materials that are false or misleading.

(z) Franchisee shall ensure that all advertising, labeling, packaging, and other materials associated with the Services and Products fully conform to all applicable laws and regulations.

(aa) Franchisee shall conduct its business operations in accordance with all applicable laws and regulations, including but not limited to, consumer protection laws and regulations. Franchisee shall control the quality of the Services and Products to avoid quality problems or product liability claims or engaging in any other activity that could reflect adversely on Franchisee or Franchisor in the minds of consumers.

(bb) Franchisee shall agree to use in operating the MH Business the computer equipment, operating software and communications equipment designated by Franchisor. Franchisee must obtain the computer system, software license, maintenance and support services and other services related to the computer system from Franchisor or its designated supplier. Franchisor

shall have the right to specify or require that certain brands, types, makes, and/or models of communications, computer and technology systems, and hardware by used by, between, or among the MH Businesses, and in accordance with Franchisor's System, including without limitation: (a) back office and POS systems, data, audio, video (including managed video security surveillance), telephone, voice messaging, retrieval, and transmission systems for use at the MH Businesses, between or among MH Businesses, and between and among Franchisee's MH Business, and Franchisee, and Franchisor; (b) customer relationship management systems; (c) physical, electronic, and other security systems and measures; (d) printers and other peripheral devices; (e) archival back-up systems; (f) internet access mode (e.g., form of telecommunications connection) and speed; (g) front-of-the-house Wi-Fi and other internet service for customers; and (h) collaboration tools, online scheduling/booking services, native phone apps (collectively, all of the above are referred to as the "**Technology System**").

Franchisee acknowledges and agrees that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, Franchisee agrees that Franchisor will have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and Franchisee agrees to comply with those reasonable new standards that Franchisor establishes as if Franchisor periodically revised this Section 8.3 for that purpose. Although Franchisor cannot estimate the future costs of the Technology System, Franchisee agrees to incur the costs of obtaining the computer hardware and software comprising the Technology System (or additions or modifications) and required service or support. Franchisor has no obligation to reimburse Franchisee for any Technology System costs. Within 60 days after Franchisee receives notice from Franchisor, Franchisee agrees to obtain components of the Technology System that Franchisor designates and ensures that Franchisee's Technology System, as modified, is functioning properly. Franchisee must buy, use, and maintain the Technology System under Franchisor's standards and specifications, and Franchisee will have sole and complete responsibility for: (i) the acquisition, operation, maintenance and upgrading of the Computer System; (ii) the manner in which Franchisee's Technology System interfaces with Franchisor's computer system and those of Franchisor's other third parties; and (iii) any and all consequences that may arise if the Technology System is not properly operated, maintained and upgraded. Franchisee agrees to sign any software license agreement or similar document that Franchisor or its affiliates prescribe to regulate Franchisee's use of, and Franchisor's and Franchisee's respective rights and responsibilities with respect to, the software. Franchisor has the right to monitor and review Franchisee's email communications to ensure that Franchisor's national name, brand and system are not damaged.

Franchisee acknowledges and understands that computer systems are vulnerable to computer viruses, bugs, power disruptions, communication line disruptions, Internet access failures, Internet content failures, data-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. Franchisee agrees to comply with all applicable laws pertaining to the privacy of



customer, employee, and transactional information (“**Privacy Laws**”). If there is a conflict between Franchisor’s standards and policies and Privacy Laws, Franchisee will: (i) comply with the requirements of applicable law; (ii) immediately notify Franchisor in writing of said conflict; and (iii) promptly and fully cooperate with Franchisor in determining the most effective way, if any, to meet the standards within the bounds of applicable law.

(cc) Franchisee shall acquire, maintain, and upgrade hardware, software, information processing and communication systems, and Internet and other network access providers, as prescribed in the Brand Standards 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 proprietary software to schedule customer appointments, schedule therapists and track customer appointments, and shall sign Franchisor’s then-current form of software license agreement for such use. Franchisee shall utilize Franchisor’s required software, proprietary database management and intranet system, when available, for such other uses as prescribed by Franchisor periodically in the Brand Standards Manual, in Franchisor’s sole discretion. Weekly sales and Royalty reporting may occur through mandatory software including the automatic draft via electronic transfer of Royalties and Brand Fund Contributions.

(dd) In order to maintain critical communication with Franchisor, promote professional brand representation and support information security, Franchisee shall at all times and for the sole use of its MH Business, maintain the Massage Heights email account established for Franchisee by Franchisor on Franchisor’s database and intranet system. Franchisee shall check their Massage Heights email account regularly, at least once each day, unless Franchisee notifies Franchisor that it will be unable to do so for a period of time (such as due to sickness or vacation).

(ee) Franchisee may not sell products through other channels of distribution such as wholesale, Internet or mail order sales. Franchisee may not establish an account or participate in any social networking sites or blogs or mention or discuss the franchise, Franchisor or Franchisor’s affiliates, without Franchisor’s prior written consent and is subject to Franchisor’s then-current online policy. Franchisor’s online policy may completely prohibit Franchisee from any use of the Marks in social networking sites or other online use.

(ff) Franchisee shall use Franchisor’s then-current form of membership agreement; provided, however, that it is Franchisee’s sole responsibility to ensure that its membership agreements comply with all applicable state or local laws or regulations pertaining to the MH Business. Any such changes to the form of membership agreement must be submitted to Franchisor for approval.

(gg) If Franchisee is an entity, each owner holding an ownership interest greater than 5% in Franchisee must sign an Owners Agreement, the form of which is attached to this Agreement as **Attachment B**. Franchisor also requires that the spouses of the Franchisee entity owners sign the Owners Agreement. Any Designated Retreat Director, and if Franchisee is an entity, any officer, director, manager, or owner holding an ownership interest of 5% or less in the franchisee entity, must sign the Franchisor’s System Protection Agreement. All of Franchisee’s employees, independent contractors, agents, and representatives that may have access to Franchisor’s confidential information must sign a confidentiality agreement, unless they already signed a System Protection Agreement.

(hh) Franchisee agrees to retain Franchisor's then-current approved investigator for allegations of zero-tolerance policy violations in accordance with the Brand Standards Manual and to pay Franchisor's then-current supplier a monthly fee which Franchisor reserves the right to collect and pay directly to such supplier. Franchisee further agrees to use and pay for Franchisor's then-current supplier for its employees background checks, including, but not limited to, employment verification vendors.

8.4 In prescribing standards, specifications, processes, procedures, requirements or instructions under Section 8.3 or any other provision of this Agreement, Franchisor shall have the right to set minimum and maximum prices for Services and Products, unless otherwise prohibited by law including, without limitation, prices for promotions in which all or certain MH Businesses participate.

8.5 Franchisor and Franchisor's representatives shall have the right during business hours, to inspect, including, but not limited to, onsite and virtually, the MH 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 MH Business. Franchisor and Franchisor's representatives shall 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 document Franchisee's training, maintenance procedures and techniques used in delivering Services as it relates to the MH Business. Franchisee shall in all respects cooperate with Franchisor's rights under this Section 8.5; provided that Franchisor's exercise of these rights shall not unreasonably interfere with Franchisee's conduct of the MH Business. Franchisor shall not have control over the day-to-day managerial operations of the MH Business.

8.6 Franchisee agrees to participate in, and, if required, become a member of any advisory councils or similar organizations Franchisor forms or organizes for Massage Heights franchisees.

8.7 Franchisor may require Franchisee's compliance with the provisions of this Section 8 even if it does not require such compliance by all franchisees.

8.8 Franchisee (or its Managing Owner, if it is an entity) must personally participate in the operations of the MH Business. Franchisee shall also appoint a qualified and experienced designated retreat director ("**Designated Retreat Director**") having the required experience who shall have direct responsibility for all operations of the MH Business. Franchisee shall also designate a Lead Massage Therapist and Lead Skin Therapist.

8.9 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 MH 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 8.9 limits Franchisee's freedom to join any franchise or franchisee association of its choosing.

8.10 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 MH Business, and to access email and the Internet. If Franchisor determines that Franchisee requires additional computer training, Franchisor shall notify Franchisee in writing regarding the nature of the additional training

required, and Franchisee shall 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. Franchisee's failure to seek additional training or to pass the course shall constitute a default of this Agreement.

8.11 Franchisee may not open its MH Business until: (i) Franchisor notifies Franchisee in writing that all of Franchisee's obligations have been fulfilled; (ii) the Initial Training Program has been completed to Franchisor's satisfaction; (iii) all amounts due to Franchisor have been paid; (iv) Franchisor has been furnished with Certificates of Insurance for all insurance policies required by Section 12 or by the Brand Standards Manual, or other documentation of insurance coverage and payment of premiums that Franchisor may request, in Franchisor's discretion; (v) Franchisor notifies Franchisee that all approvals and conditions set forth in this Agreement have been met; (vi) Franchisee has obtained all necessary permits and licenses; (vii) Franchisee has provided Franchisor with a deed or fully executed copy of the Lease for Franchisee's Retreat negotiated in accordance with the terms of Subsection 8.2(c); (viii) Franchisee has ordered, received and installed all equipment, supplies, inventory, tools, products, uniforms and computer hardware and software required by Franchisor; and (ix) Franchisee has complied with all aspects of Franchisor's programs, policies, and procedures governing professional and ethical conduct as well as misconduct prevention. Franchisee shall begin operating the MH Business after Franchisor determines that the MH Business is ready for opening.

8.12 To ensure uniformity and compliance with the System, Franchisor may send a mystery shopper or similar third party to Franchisee's MH Business. Franchisor may, but is not obligated to, share the results of the mystery shopper with Franchisee.

8.13 The System utilizes a membership program, which may be modified by Franchisor. The current membership program provides that a member of any Massage Heights location or retreat shall enjoy full membership privileges and reciprocal benefits at all Massage Heights locations and retreats, which may include receiving certain services at no cost. Franchisee acknowledges and agrees to provide all eligible members of other Massage Heights locations and retreats with full access to Franchisee's Retreat and all available services at Franchisee's Retreat. Franchisee agrees to follow all membership and reciprocal benefits, standards and requirements as set forth in the Brand Standards Manual. Franchisee acknowledges it may provide more reciprocal benefits and services free of charge than other franchisees.

All Retreats must honor memberships purchased by Massage Heights customers. A customer who purchases a membership from Franchisee's Retreat may redeem services (or obtain discounted products or services) at another Retreat. Similarly, a customer who purchases a membership from another Retreat may redeem services (or obtain discounted products or services) at Franchisee's Retreat.

When a customer first purchases a membership from a Retreat, the customer will pay that franchisee in full for the monthly membership. If the customer then visits another Retreat to receive the services that were purchased as part of the membership, that Retreat must provide the services even though it did not receive any payment from the sale of the membership.

Franchisee agrees to comply with all policies and procedures that Franchisor specifies from time to time relating to customers who obtain services from multiple Retreats as part of a membership purchase. Franchisor has software to monitor sales and allocate payments to the Retreat where services

are provided (either in full or on a percentage basis), in which case Franchisor may require that the customer pay Franchisor for the membership (and Franchisor will then allocate the payments between the Retreats). Franchisor has policies regarding cooperation between franchisees relating to customers who redeem services from multiple Retreats. Franchisee agrees to comply with all policies and procedures that Franchisor specifies from time to time.

In addition to the membership model, Franchisor offers gift cards for products and services that may be redeemed at any Retreat. Franchisor may sell these gift cards on its website. Franchisor may offer gift cards at Franchisee's Retreat. Franchisee must honor all gift cards, even if the customer purchased the gift card from Franchisor's website or from another Retreat. If a customer purchases a gift card from one Retreat and redeems the products or services at another Retreat, Franchisor's current policy is that 100% of the gift card redemption amount is transferred to the Retreat where the gift card is redeemed. Franchisor may change its gift card policies at any time.

## **9. PURCHASE OF EQUIPMENT, INVENTORY AND SUPPLIES**

9.1 Franchisee must at all times maintain an inventory of approved massage related items at Franchisee's Retreat in sufficient quantities and variety to realize the full potential of the MH Business, and in accordance with the procedures and standards set forth in the Brand Standards Manual. Except as specifically set forth in the Brand Standards Manual, Franchisee must purchase all Products, services, equipment, inventory, supplies and software from Franchisor's designated or approved suppliers, manufacturers, and distributors. The standards and specifications for equipment, computer hardware and software, inventory, signage, supplies, massage facilities, Services and Products required by Franchisor shall be maintained in the Brand Standards Manual. Franchisor has the right to require Franchisee to discontinue purchasing any Products, services, equipment, inventory, supplies, hardware or software from any supplier, manufacturer or distributor and may designate or approve new suppliers, manufacturers, or distributors at any time in Franchisor's sole discretion.

9.2 Franchisor's affiliate or designee will coordinate the ordering, shipping and distribution of MH Business supplies, and Franchisee will be required to use that affiliate or designee for those services. Franchisee must use the online ordering system that Franchisor has established to obtain the majority of the products and supplies that Franchisee will use in operating its MH Business. The total purchase price for the products and supplies that Franchisee orders will cover the wholesale price of the products or supplies ordered, plus shipping handling and administrative costs. If the online ordering system is not functioning for any reason, Franchisor will provide instructions for placing and receiving Franchisee's orders while the system is down.

9.3 Franchisee acknowledges and agrees that Franchisor may receive periodic volume rebates or other revenue or consideration as a result of Franchisee's purchases of Franchisee's Products, services, equipment, inventory, supplies and hardware and software from designated or approved suppliers. Franchisee further acknowledges and agrees that Franchisor shall be entitled to keep for its own use and account such rebates and revenue. Franchisor may negotiate alternative purchase arrangements with suppliers and distributors of approved products for the benefit of franchisees, and Franchisor reserves the right to receive rebates on volume discounts from the purchase of products that Franchisor may re-sell to Franchisee. Franchisor does not provide material benefits, such as renewing or granting additional franchises to franchisees based on their use of designated or approved suppliers. There are no caps or limitations on the maximum amount of rebates Franchisor may receive from its suppliers as the result of franchisee purchases.

9.4 The names and addresses of Franchisor's required or approved suppliers, manufacturers, vendors, and distributors shall be maintained in the Brand Standards Manual. Franchisor reserves the right to approve all of the Products, supplies, Services, equipment, inventory, hardware, and software used in connection with Franchisee's MH Business.

9.5 Franchisee may request that Franchisor inspect a new product or service or approve or designate a new supplier by following the procedures. Franchisee shall pay the costs of the inspection and the test of a sample and all required fees and expenses for approval, as set forth in the Brand Standards Manual and modified periodically by Franchisor in Franchisor's discretion.

## 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 MH 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, the content and format of Products, the Brand Standards Manual and all artwork, designs and advertising materials created by Franchisor, and used with the Marks or in association with the MH 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 such 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 Subsection 10.1(b).

(c) Franchisee shall not 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, in its sole and absolute discretion, apply to register or 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 shall 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 shall 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.

**(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 MH Business and only in compliance with this Agreement and all applicable standards, specifications, and operating procedures prescribed by Franchisor in the Brand Standards Manual and elsewhere from time to time during the Term and any Renewal Term. Franchisee shall make every effort consistent with this Agreement 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 in and to the Marks and Copyrighted Materials.

(c) Franchisee shall 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 MH Business, upon reasonable notice to Franchisee, Franchisor or its agents shall have the right of entry and inspection of Franchisee's Retreat and MH Business and operating procedures pursuant to Section 8.5.



(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 Brand Standards Manual and otherwise given by Franchisor periodically.

(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:

© (year of first publication). SWG IP, LLC. All Rights Reserved.

(h) Franchisee will use the Marks with a superscript “®” or “TM”, 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 MH 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.

(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 During the Term, or any Interim Period, any improvements or additions to the System, patents, Copyrighted Materials, website or any other documents or information pertaining to or relating to the System or the MH Business, or any new trade names, trade and service marks, logos, or commercial symbols related to the MH Business or any advertising and promotional ideas or inventions related to the MH Business (collectively, the “**Improvements**”) that Franchisee conceives or develops shall become Franchisor’s property. Franchisee agrees to assign and do hereby assign to Franchisor, all right, title and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. 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 Massage Heights franchisees without any obligation to Franchisee for royalties or other fees. Franchisor may, in its discretion, apply 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 Franchisor’s property and Trade Secrets. 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. All Improvements created by Franchisee, or any other person or entity retained or employed by Franchisee, are Franchisor’s property, and Franchisor shall be entitled to use and license others to use such Improvements unencumbered by moral rights. If any of the Improvements are copyrightable materials, they shall be works made for hire within the meaning of the United States Copyright Act and, 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 Improvements from another person or entity necessary to ensure Franchisor’s right in the Improvements as required in this Section.

## **11. ADVERTISING AND PROMOTION**

11.1 **Initial Advertising Program.** Franchisor will conduct an initial advertising program (“**Initial Advertising Program**”) for the benefit of Franchisee’s MH Business. The Initial Advertising Program is intended to generate awareness within the local trade area surrounding the Retreat and to promote introductory massage services and memberships. Franchisor will develop and implement the Initial Advertising Program in Franchisor’s sole discretion and will conduct the program prior to opening and during the first 30 days that the MH Business is operating. Franchisee shall pay Franchisor \$15,000 for the Initial Advertising Program when Franchisee submits its final construction plans and specifications to Franchisor for Franchisee’s Retreat. The Initial Advertising Program payment is non-refundable. The Initial Advertising Program is in addition to the Minimum Local Advertisement Requirement, described below.

## 11.2 Minimum Local Advertisement Requirement.

(a) Beginning on the 31<sup>st</sup> day following the date that Franchisee opens the MH Business, Franchisee will be required to spend at least the greater of (i) 3% of the MH Business' Gross Revenues and (ii) \$2,000 per month on local advertising (the "**Minimum Local Advertisement Requirement**").

(b) If Franchisee fails to spend the Minimum Local Advertisement Requirement by the end of any year, Franchisee will be required to pay the difference between the amount that Franchisee actually spent on local advertising during the year and the minimum amount that Franchisee was required to spend on local advertising during the year directly to Franchisor or to the Brand Fund, if directed by Franchisor.

(c) All advertising conducted for the Minimum Local Advertisement Requirement must be in accordance with the Brand Standards Manual. Franchisee agrees to use all mandated vendors for mandated services that we require. Franchisor may require Franchisee to pay all or any portion of Franchisee's Minimum Local Advertisement Requirement to Franchisor, Franchisor's affiliates, or designated suppliers, in Franchisor's sole discretion in exchange for advertising services that Franchisor mandates regardless of whether Franchisee might be able to purchase such services on its own or for a lower price. Franchisor currently collects \$350 per month, on the 15<sup>th</sup> day of each month, from franchisees for each of their MH Businesses to pay for certain social media management services, website management services, and web landing page optimization services, all of which are provided by Franchisor's designated vendors for the benefit of each franchisee's MH Business. Franchisor may increase or decrease the amount that it collects from franchisees for the purpose for which those amounts are collected in Franchisor's sole discretion, provided that the total amount that Franchisor collects from Franchisee on an annual basis under this Section shall not exceed Franchisee's Minimum Local Advertisement Requirement for that year.

(d) Franchisor may list information in an online classified directory listing.

(e) Franchisee agrees to participate in all system-wide promotions and advertising campaigns that Franchisor creates.

(f) Franchisee agrees, at its sole cost and expense, to issue and offer such rebates, giveaways, and other promotions in accordance with advertising programs established by Franchisor, and to honor the rebates, giveaways and other promotions issued by other MH Businesses under any such program, so long as such compliance does not contravene any applicable law, rule, or regulation.

(g) Franchisee agrees it will not create or issue any gift cards or gift certificates and will only sell gift cards and gift certificates that have been issued or sponsored by Franchisor and which are accepted at all MH Businesses, and Franchisee will not issue coupons or discounts of any kind except as approved by Franchisor.

(h) All advertising and promotions by Franchisee shall be conducted in a dignified manner and shall conform to the standards and requirements set forth in the Brand Standards Manual or otherwise. Franchisee shall obtain Franchisor's prior approval of all advertising and promotional plans and materials prior to use if such plans and materials were not prepared by Franchisor or

previously approved by Franchisor during the 6 months prior to their proposed use. Franchisee shall submit such unapproved plans and materials to Franchisor, and Franchisor shall approve or disapprove such plans and materials within 14 days of Franchisor's receipt. Franchisee shall not use unapproved plans or materials until they have been approved by Franchisor and shall promptly discontinue use of any advertising or promotional plans or materials or websites, whether or not previously approved, upon notice from Franchisor. If Franchisee violates any provision of this Section 11.2(h), in addition to all other remedies available to Franchisor under this Agreement and applicable law (including injunctive relief), Franchisee will pay a fee upon Franchisor's demand in the amount of \$500 per occurrence ("**Unauthorized Advertising Fee**") to the Brand Fund to offset the damage caused by Franchisee's breach.

(i) Franchisor shall make available to Franchisee all advertising and promotion materials for the MH Business which are used by Franchisor and other franchisees. Franchisee may not develop advertising materials for use in the MH 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.

### 11.3 **Brand Fund.**

(a) Franchisor has formed an advertising fund for marketing of the System, the Marks and the MH Businesses ("**Brand Fund**"). Beginning the 9<sup>th</sup> month after opening the MH Business, Franchisee shall pay 3% of Franchisee's Gross Revenues for the preceding two weeks to Franchisor ("**Brand Fund Contribution**") bi-weekly on the date specified in the Brand Standards Manual. No action taken by Franchisor shall diminish Franchisee's obligations to pay the Brand Fund Contribution to the Brand Fund. The Brand Fund Contribution is in addition to all other advertising obligations Franchisee has in this Agreement.

(b) Franchisor reserves the right to increase the Brand Fund Contribution to up to 4% of Franchisee's Gross Revenues upon 30 days' written notice to Franchisee.

(c) Advertising materials and services will be provided to Franchisee through the Brand 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 Brand Fund. Franchisor reserves the right to use the Brand Fund Contribution from the Brand Fund to place advertising in national media or regional media (including broadcast, print, electronic, or other media) in the future. Franchisor may use any media for disseminating Brand Fund advertisements, including direct mail, print ads, the Internet, radio, billboards and television. Franchisee acknowledges that the Brand Fund is intended to maximize the general brand recognition of the System. Franchisor is not obligated to expend Brand Funds on Franchisee's behalf or benefit or expend Brand Funds equivalent or proportionate to Franchisee's Brand Fund Contributions on Franchisee's behalf or benefit.

(d) Franchisor may use the Brand Fund for advertising, public relations, market research, trade show attendance, goodwill retention programs such as gift card and prepaid membership reimbursement from expired or terminated franchises (to be indemnified by Franchisee under Section 12.2), promotion, POS materials, POS systems, photography, and illustrations to be used

in promotional materials, marketing of goods and services provided by Franchisor and outside vendors, including but not limited to marketing agencies, and administration of the Brand Fund, including but not limited to, salaries, overhead, the rental of office space, administrative, accounting, collection and legal costs and expenses. The Brand Fund will be administered by Franchisor, its affiliates or designees, at Franchisor's discretion. The Brand Fund will be used to promote the System, Services, and Products sold by franchisees and will not be used for advertising that is principally a solicitation for the sale of franchises; provided, however, that Franchisee acknowledges and agrees that Franchisor may undertake certain activities using funds from the Brand Fund that have the effect of increasing the visibility of, and interest in, the System by prospective franchisees, and Franchisor reserves the right to include a notation in any advertisement or website indicating "Franchises Available" or similar phrasing or information regarding acquiring a franchise. Franchisor does not guarantee that advertising expenditures from the Brand Fund will benefit Franchisee or any other franchisee directly, on a pro rata basis, or at all. Franchisor is not obligated to spend any amount on advertising in the geographical area where Franchisee is or will be located. Franchisor's accounting and marketing personnel or a representative designated by Franchisor will administer the Brand Fund. Each franchisee will be required to contribute to the Brand Fund, but certain franchisees may contribute on a different basis depending on when the franchisee signed its franchise agreement. Franchisor-owned outlets may, but are not required to, contribute to the Brand Fund. Franchisor may reimburse itself, its authorized representatives, or its affiliates from the Brand Fund for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting and legal expenses, taxes, and all other direct or indirect expenses associated with the programs funded by the Brand Fund. Franchisor assumes no fiduciary duty to Franchisee or other direct or indirect liability or obligation to collect amounts due to the Brand Fund or to maintain, direct or administer the Brand Fund. The Brand Fund will be maintained by Franchisor in a separate account. The Brand Fund is not audited. Once per year, an annual un-audited financial statement of the Brand Fund, at the expense of the Brand Fund, will be available 120 days after Franchisor's fiscal year end to Franchisee for review once a year upon request.

(e) The Brand Fund may be terminated at any time by Franchisor, in its sole discretion. In the event that the Brand Fund is terminated, any remaining balance in the Brand Fund will be expended as provided for in Section 11.3(d) or returned to Franchisee on a pro-rata basis. Except as set forth in the previous sentence, the Brand Fund Contributions collected by the Brand Fund are non-refundable.

(f) 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. Franchisor will EFT debit Franchisee for any costs associated with such promotional programs. 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 Minimum Local Advertisement Requirement obligations set forth in Section 11.2.

(g) Franchisor (and any designee of Franchisor) will have no direct or indirect liability or obligation to Franchisee or the Brand Fund or otherwise with respect to the management, maintenance, direction, administration or otherwise of the Brand Fund. Franchisee and Franchisor agree that their rights and obligations with respect to the Brand Fund and all related matters are governed solely by this Agreement and neither this Agreement or the Brand Fund creates a trust, fiduciary relationship, or similar arrangement between Franchisor and Franchisee.

#### 11.4 Local and Regional Advertising Cooperatives.

(a) Franchisor reserves the right to form a cooperative advertising association (“**Cooperative**”) for the purpose of jointly advertising and promoting Massage Heights franchises. Members of the Cooperative will be responsible for administering the Cooperative, including determining the amount of contributions from each member and preparing bylaws or other governing documents subject to the terms of this Agreement, Brand Standards Manual, and Franchisor’s approval.

(b) If, in connection with a Cooperative’s formation, governing documents 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. Local and regional advertising cooperative fees will be established by members of the Cooperative.

(c) Franchisee agrees (i) to join, participate in, and actively support any Cooperative established to include Franchisee’s MH Business, 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. Contributions Franchisee makes to the Cooperative will be credited toward Franchisee’s Minimum Local Advertisement Requirement.

(d) Franchisor shall have the sole right, in its discretion, to form, change, dissolve or merge any Cooperative.

#### 11.5 System Website.

(a) Franchisor may establish and maintain a system website and certain social media sites (“**Sites**”) that provide information about the System, the services and products that MH Businesses offer, and to offer online reservations for guests. Franchisor will have sole discretion and control over the Sites’ design and contents. Franchisor may use part of the Brand Fund’s revenues to pay or reimburse itself for the costs of maintaining and updating the Sites, except that Franchisor may not use Brand Fund contributions to pay for those components of the website that are devoted to the sale of Massage Heights franchises.

(b) The Sites may include a section that provides the address, telephone number and email address of each Retreat in the System, including Franchisee’s Retreat.

(c) Franchisee will not have any independent right to advertise its MH Business on the Internet, including discount websites offering Products or Services at reduced prices, or establish any Sites utilizing the Marks without the prior written consent of Franchisor, which may be



withheld in Franchisor's sole discretion. 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. Franchisee agrees to use only vendors approved or designated by Franchisor for all digital online marketing (SEO, PPC, reputation management, social media, scheduling/booking services, native phone apps, etc.), approved local marketing management and approved reporting systems. Franchisor intends that any Franchisee website developed exclusively or primarily for purposes of promoting the MH Business be accessed only through Franchisor's home page. Franchisee shall provide Franchisor with content for Franchisor's Internet marketing, and shall sign Internet and intranet usage agreements, if any. Franchisor retains the right to approve any linking or other use of its website or require the removal of any website utilizing the Marks upon notice to Franchisee. Franchisee must notify Franchisor whenever any of Franchisee's information included on any website changes or is inaccurate.

#### **11.6 Advisory Council.**

Franchisor has formed a franchisee advisory council ("FAC"), formerly known as the TEAM Council. The FAC consists of elected franchisee members and Franchisor members. Franchisor has the power to form, change or dissolve the FAC or any other council in its sole discretion. Franchisee agrees to participate in the FAC, if elected.

#### **11.7 Photo/Video Release.**

Franchisee acknowledges and authorizes Franchisor to use Franchisee's likeness in a photograph in any and all of Franchisor's publications, including printed and digital publications and on websites or social media sites. Franchisee agrees and understands that any photograph using Franchisee's likeness will become Franchisor's property and will not be returned. Franchisee agrees and irrevocably authorizes Franchisor to edit, alter, copy, exhibit, publish or distribute any photograph of Franchisee for any lawful purpose. Franchisee agrees and waives any rights to royalties or any other compensation related to Franchisor's use of any photograph of Franchisee. Franchisee agrees to hold harmless and forever discharge Franchisor from all claims, demands, and causes of action which Franchisee may have in connection with this authorization.

### **12. INSURANCE AND INDEMNITY**

12.1 Franchisee shall, prior to opening or operating the MH Business, purchase and at all times during the term of this Agreement (including any renewal or interim periods) maintain in full force and effect:

(a) Insurance policies, in such amounts and on such terms, as prescribed by the Brand Standards Manual, issued by an insurance company authorized to do business in the state where the Retreat is located, and must be acceptable to Franchisor, at all times during the Term of this Agreement and any Renewal Terms. The insurance company must be rated A-VIII "A" or better by A.M. Best & Company, Inc. or a similar reporting company if such rating is unavailable in Franchisee's area (or similar criteria as Franchisor specifies). If Franchisee's professional, sexual abuse and molestation, and/or general liability insurance is on a claims-made form, then Franchisee shall purchase tail insurance extending such policies for a period of at least three years

following the date of a replacement policy, or the sale, non-renewal, or termination of its Retreat. Insurance coverage must include, but is not limited to the following:

<b>Policy Type</b>	<b>Description</b>	<b>Minimum Coverage Requirements</b>
Commercial General Liability	Coverage against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the MH Business.	\$1,000,000 per occurrence \$2,000,000 aggregate
Business Interruption	Coverage to help replace lost income and pay for extra expenses if the MH Business is affected by a covered peril.	No less than six (6) months
Professional Liability	Coverage due to errors or omissions in the performance of services under this Agreement.	\$1,000,000 per occurrence \$2,000,000 aggregate
Sexual Abuse and Molestation	Coverage against actual or alleged abuse, molestation, mistreatment, or maltreatment of a sexual nature, including but not limited to, any sexual involvement, sexual conduct or sexual contact, regardless of consent.	\$250,000 per occurrence \$500,000 aggregate  Any policy purchased with less than \$500,000 per occurrence may not be an eroding policy.
Employment Practices Liability	Coverage that includes but is not limited to wrongful termination, discrimination (age, sex, race, disability, etc.) sexual harassment, wrongful discipline, failure to employ or promote and other employment related allegations.	\$100,000 aggregate
Auto Liability and Property	Coverage against all loss, liability, claim or expense of any kind whatsoever resulting from the use, operation, or maintenance of any automobiles or motor vehicles, owned, leased, or used by Franchisee, or Franchisee's officers, directors, employees, partners, or agents, in the conduct of the MH Business.	\$1,000,000 per occurrence
Worker's Compensation and Employer's Liability	Coverage for bodily and personal injury occurring to Franchisee's employees.	\$100,000 per occurrence for bodily injury, \$100,000 per employee for bodily injury by disease, and \$500,000 policy limit for bodily injury by disease  (Franchisees are encouraged to purchase

		increased liability coverage)
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**Tail Insurance**

If any of Franchisee’s liability insurance policies, including professional liability and sexual abuse and molestation coverage, are on a claims-made form, then Franchisee shall purchase tail insurance extending such policies for a period of at least three (3) years following a policy’s expiration and/or the transfer/sale, expiration, termination, or other closure of Franchisee’s MH Business as follows:

<b>Policy Type</b>	<b>Description</b>	<b>Minimum Coverage Requirements</b>
Commercial General Liability	Coverage against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the MH Business.	\$1,000,000 per occurrence \$2,000,000 aggregate
Professional Liability	Coverage due to errors or omissions in the performance of services under this Agreement.	\$1,000,000 per occurrence \$2,000,000 aggregate
Sexual Abuse and Molestation	Coverage against actual or alleged abuse, molestation, mistreatment, or maltreatment of a sexual nature, including but not limited to, any sexual involvement, sexual conduct or sexual contact, regardless of consent.	\$250,000 per occurrence \$500,000 aggregate  Any policy purchased with less than \$500,00 per occurrence may not be an eroding policy.

Franchisee will also be required to obtain industry specific riders to its policies as detailed in the Brand Standards Manual. Franchisor may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, changing economic conditions, or other relevant changes in circumstances. All insurance policies Franchisee purchases, except for employment related liability insurance policies, auto liability and property insurance policies, and worker’s compensation 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 with primary and unconditional coverage against any liability which may accrue against them because of the ownership, maintenance, or operation of the MH Business and cannot condition Franchisor to waive any conflicts of interest to obtain coverage. No insurance policies Franchisee purchases may be ‘expense-only’ policies. The policies must also stipulate that Franchisor shall receive a 30-day prior written notice of material modification or 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, or Franchisor’s designee, together with proof of payment within ten days of

issuance thereof. Franchisee shall also furnish Franchisor, or Franchisor's designee, with certificates and endorsements evidencing such insurance coverage within ten 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 or maintain the required insurance and to keep the same in full force and effect, Franchisor, or Franchisor's designee, 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 service charge of 20% of the premium to compensate Franchisor for the time and effort expended to secure such insurance, within 5 days of the date Franchisor delivers an invoice detailing such costs and expenses to Franchisee. Franchisee will be required to provide Franchisor any information needed to obtain insurance on behalf of 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. Even if workers' compensation or employer's liability insurance coverage is not required in Franchisee's state, Franchisor requires that Franchisee purchase these policies with limits that Franchisor requires. 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 Brand Standards 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.

(c) All liability insurance policies procured and maintained by Franchisee in connection with the MH Business will require the insurance company to provide and pay for attorneys to defend any legal actions, lawsuits, or claims brought against Franchisee, and, except for legal actions, lawsuits, and claims related to employment liability, 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.

12.2 Franchisee shall, during the Term and any Renewal Terms, and after the termination or expiration of this Agreement, indemnify and defend Franchisor, its Affiliates, parents, subsidiaries or related companies, divisions and partnerships, and their respective past and present stockholders, partners, directors, officers, employees, agents, attorneys and assignees, and the spouses of such individuals (collectively, "**Indemnified Parties**" or individually, "**Indemnified Party**") for, and hold the Indemnified Parties harmless against, any loss, liability, taxes, or damages (actual or consequential) and all reasonable costs and expenses (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) of defending any claim brought against any Indemnified Party or any action in which any Indemnified Party is named. Such claims or actions shall include, but are not limited to, the following:

(a) any claim concerning the use or operation of the MH Business;

(b) 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 Retreat or any other premises used by Franchisee to operate the MH Business is held, by Franchisee;

(c) any injury to, or loss of property of, any person in, or on, the Retreat or any other premises used by Franchisee to operate the MH Business;

(d) Franchisee's taxes, liabilities, costs or expenses of its MH Business;

(e) 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;

(f) any violation of any federal, state or local law, ordinance or regulation imposing requirements or prohibitions on Franchisee in the operation of the MH Business;

(g) 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;

(h) any loss of data including, but not limited to customer information, resulting from a breach of such data caused in whole or in part by Franchisee or Franchisee's negligence; and

(i) Franchisee's employment or other contractual relationship with Franchisee's employees, workers, managers, or independent contractors, including but not limited to any allegation, claim, finding or ruling that Franchisor is an employer or joint employer of Franchisee's employees.

(j) Franchisee's failure to pay the monies payable (to Franchisor or any of Franchisor's Affiliates) pursuant to this Agreement, or to do and perform any other act, matter, or thing required by this Agreement; and

(k) any action by Franchisor to obtain performance by Franchisee of any act, matter, or thing required by this Agreement.

Each Indemnified Party shall have the right to defend any such claim against it at Franchisee's expense and agree to settlements or take any other remedial, corrective or other actions.

12.3 Franchisee shall notify Franchisor within three days after receiving notice of any allegation, claim, demand, or cause of action based upon or arising from the MH Business.

12.4 Franchisor agrees to indemnify Franchisee against, and reimburse Franchisee for, all damages for which Franchisee is held liable in any trademark infringement proceeding arising out of Franchisee's use of any Mark pursuant to and in compliance with this Agreement, and for all costs Franchisee reasonably incurs in the defense of any such claim in which Franchisee is named as a party, so long as Franchisee has timely notified Franchisor of the claim, have not altered the Mark, and have otherwise complied with this Agreement.

12.5 Franchisor may require Franchisee's assistance, but Franchisor will exclusively control any proceeding or litigation relating to Franchisor's Marks. Franchisor has no obligation to pursue any infringing users of the Marks. If Franchisor learns of an infringing user, Franchisor will take the action appropriate, but Franchisor is not required to take any action if Franchisor does not feel it is warranted. Franchisee must notify Franchisor within three days if Franchisee learns that any party is using the Marks or a trademark that is confusingly similar to the Marks. Franchisor has the sole discretion to take such action as Franchisor deems appropriate to exclusively control any litigation or administrative proceeding involving a trademark licensed by Franchisor to Franchisee.

12.6 Franchisor and any other party which is indemnified by this Section 12 has the right to defend any claim brought under this Section 12 and such defense shall not be considered a waiver of the party's rights to indemnification under this Section 12.

### **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 guidance 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, employment, or joint-employment relationship exists between them. Franchisee shall conspicuously identify itself in all public records and 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 MH Business being conducted from the Retreat. This shall include, but not be limited to, all membership agreements between Franchisee and clients of the MH Business. It is expressly agreed that the parties intend by this Agreement to establish between Franchisor and Franchisee the independent contractor relationship of a 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. Franchisee agrees to clearly inform each of its employees and contractors that the Franchisee is the sole employer or contractual party, respectively. Franchisee agrees to explain to its employees and contractors the respective roles of a franchisor and franchisee and the relationship as Franchisor and Franchisee, and Franchisee will request that its employees and contractors sign any acknowledgement or disclosure explaining the differences between Franchisor and Franchisee. Franchisee will post a conspicuous notice that employees are employed by Franchisee and not Franchisor. Franchisee will use its legal name on all documents for use with employees and contractors, including but not limited to, employment applications, timecards, pay checks, and employment and independent contractor agreements and will not use the Marks on these documents. 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. Franchisee acknowledges that Franchisor has no responsibility to ensure that the MH Business is developed and operated in compliance with all applicable laws, ordinances, and regulations and that Franchisor shall have no liability in the event the development or operation of the MH Business violates any law, ordinance, or regulation.



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 MH 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, the Retreat, Franchisee's property, the MH 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). Franchisor shall have no liability in the event the development or operation of the MH Business violates any law, ordinance, or regulation.

## **14. RESTRICTIVE COVENANTS**

14.1 Franchisee acknowledges and agrees that:

(a) Franchisee's entire knowledge of the operation of the MH Business, the System, and the concepts and methods of promoting the MH 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) At all times during and after the Term and any Renewal Term, Franchisee, and Franchisees' owners, Designated Retreat Directors, 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 Retreat Directors, Lead Massage Therapists, Lead Skin Therapists, training class attendees, Franchisee owners, and those individuals who have access to the Confidential Information and Trade Secrets to execute such nondisclosure 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 agreements.

(c) 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 Retreat Directors or employees; (b) Confidential Information in Franchisee's possession free of any obligation of confidence at the time it was communicated to Franchisee; (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; (d) disclosure made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; (e) disclosure made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; or (f) disclosure made in cases of suit for retaliation based on the reporting of a suspected violation of law, disclosure of Confidential Information to an attorney and for use of the Confidential Information in such court proceeding, so long as any document containing the Confidential Information is filed under seal and Confidential Information is not otherwise disclosed except pursuant to court order.

14.2 Franchisee covenants and agrees that:

(a) During the Term and any Renewal Term of this Agreement, Franchisee, its owners, the immediate family members of the owners, Designated Retreat Directors, 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 offering massage services to the general public ("**Competitive Business**").

(b) Upon termination or expiration of the Term or any Renewal Term, or the transfer, sale or assignment of this Agreement by Franchisee, neither Franchisee as an individual, or as a representative of the Franchisee entity, the Designated Retreat Director nor Franchisee's owners, officers, directors, managers, members, or partners will manage, operate, finance, control, participate in, or 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 15 miles of the Territory or any other franchisee's territory (whether opened or under development); or (3) within 15 miles of any Franchisor or Affiliate-owned MH Business.

14.3 During the Term (and any Renewal Term) of this Agreement and for a period of two years thereafter, Franchisee, Franchisee's owners, officers, directors, managers, members, partners, and the Designated Retreat Director shall not attempt to attain an unfair advantage over other franchisees or Franchisor or any Affiliates thereof by, including but not limited to, public defamation, false or misleading public statements, soliciting any customer of Franchisor, other franchisees or any Affiliates.

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.

## 15. ASSIGNMENT

15.1 **Transfer by Franchisor.** 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 obligations 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 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 **Transfer by Franchisee.** 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 MH Business, and any shares, stock, membership or interest in any corporation, limited liability company, or other entity having an interest in the MH 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 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 any time determine to sell, in whole or in part, the MH Business, Franchisee shall obtain a bona fide, executed, written offer ("**Purchase Offer**") for the MH Business together with all real or personal property, leasehold improvements and other assets used by Franchisee in its MH 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 MH Business as provided in Section 16 below.

15.7 If Franchisee shall at any time determine to sell, in whole or in part, the MH Business, Franchisee understands that 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 is in full compliance with this Agreement and the Brand Standards Manual.

(b) The proposed transfer is at least one year after (i) the MH Business first opened for business or (ii) the Effective Date of this Agreement for the MH Business which was already opened, and Franchisee is in full compliance with this Agreement and paying to Franchisor all outstanding debts or amounts owing to Franchisor and any Affiliates or suppliers of Franchisor.

(c) At the time Franchisee requests Franchisor's consent to the transfer or assignment, Franchisee submits a Notice of Intent to Sell Franchise, together with a \$1,000 non-refundable deposit to Franchisor. The deposit will be applied to the License Transfer Fee upon completion of the transfer.

(d) Franchisee shall obtain a bona fide, executed, written offer ("**Purchase Offer**") for the MH Business together with all real or personal property, leasehold improvements, and other assets used by Franchisee in its MH 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 MH Business as provided in Section 16 below.

(e) The transferee executes (i) Franchisor's then-current form of franchise agreement (which, may 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) and (ii) all other documents as may be reasonably requested by Franchisor have been executed.

(f) Franchisee pays to Franchisor a transfer fee ("**License Transfer Fee**") equal to 25% of the then-current initial franchise fee, or \$10,000 if we are not then offering franchises for sale; and (ii) an amount equal to Franchisor's expenses actually incurred with respect to the granting of its approval, including but not limited to all of its legal costs with respect to the preparation and execution of the transfer agreement and above noted then-current form of franchise agreement.

(g) 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.

(h) The transferee does not own more than 10% of the total then-current open MH Businesses.

(i) The transferee provides a written acknowledgement that it is purchasing all of Franchisee's assets used in the MH Business in accordance with all applicable bulk sales legislation and assuming all of the liabilities of the MH 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.

(j) The transferee has adequate financial resources and meets all criteria established by Franchisor for franchisees, in Franchisor's discretion. 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 had a Designated Retreat Director in good standing for a period of one year or more. If the transferee requests or if Franchisor determines the need for onsite training or assistance at the Retreat once the transfer is finalized, Franchisor may require transferee to pay Franchisor's then-current onsite transfer training fee at the time of scheduling the training, plus all travel and living expenses for Franchisor's trainer(s) upon receipt of invoice.

(k) Franchisee shall, at Franchisor's request, prepare and furnish to the transferee and/or Franchisor such financial reports and other data relating to the MH Business and its operations as Franchisor deems reasonably necessary or appropriate for the transferee and/or Franchisor to evaluate the MH Business and the proposed transfer. Franchisee agrees that Franchisor may confer with and furnish to the proposed transferee information concerning the MH Business and the terms and conditions of the proposed transfer without any liability, except for intentional misstatements made to the proposed transferee by Franchisor.

(l) Franchisee and the transferee have entered into a binding agreement subject only to the rights of Franchisor set out in Section 16. They will deliver a copy of this binding agreement to Franchisor 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.

(m) 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, execute Franchisor's then-current form of Owners Agreement or other personal guarantees as Franchisor may request, jointly and severally guaranteeing the proposed transferee's performance of its obligations under the agreements to be entered into.

(n) 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 MH 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.

(o) The transferee agrees to upgrade, remodel, and refurbish the Retreat up to Franchisor's then-current standards for a Retreat.

(p) Franchisee agrees in writing to comply with all of its post-termination obligations set forth in this agreement including its post-termination covenant to maintain tail insurance as specified in Section 12.1 and its covenant not to compete set forth in Section 14.2.

(q) Franchisee reimburses Franchisor, upon receipt of Franchisor's invoice, for all brokerage commissions, finder's fees, placement fees and similar charges Franchisor incurs as a result of the transfer.

(r) The transferee has paid Franchisor the then-current transfer training fee (plus travel expenses).

15.8 Franchisee may transfer and assign all of its right, title and interest in and to this Agreement to a corporation, limited liability company or other business entity which is wholly owned and controlled by Franchisee with Franchisor's consent which shall not be withheld if Franchisee complies 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 Retreat and subject to the following (provided that such assignment shall in no way release Franchisee from any liability under this Agreement):

(a) No such corporation, limited liability company or other business entity may be owned in whole or in part by any person or entity that owns or holds an ownership interest (either directly or indirectly) in more than 10% of the total then-current open MH Businesses;

(b) Contemporaneously with such assignment Franchisee 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 Franchisor's then current form of Owners Agreement;

(c) No shares or membership interests 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 membership interests or offer or attempt to do so or permit the same to be done without Franchisor's prior written consent;

(d) The corporation, limited liability company, partnership or other business entity 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 Massage Heights Franchising, LLC. Reference is made to said Franchise Agreement and to the restrictive provisions of the articles of this corporation."

(e) 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 MH 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;

(f) 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;



(g) Franchisee shall pay Franchisor a reduced transfer fee of \$1,500 prior to the effective date of such transfer;

(h) Franchisee shall timely deliver a revised, updated, and accurate Statement of Ownership attached to this Agreement as **Attachment C** to Franchisor. The corporation, partnership, limited liability company or other business entity shall thereafter 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

(i) Franchisee agrees to devote its full time and best efforts to manage the day-to-day operations of the MH Business unless it has an operational partner or Designated Retreat Director.

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 third party approved by Franchisor, 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 180 days 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 MH Business or to appoint a representative or designee to operate the MH Business, for 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 MH Business, without the right to seek or require reimbursement by Franchisee's estate or personal representative, during the period of operation of the MH Business. 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 MH 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 MH 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 following the 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 entity doing business as the MH Business, and its assets, including, but not limited to, all inventory, improvements, furniture, fixtures, equipment and products. Franchisor’s right to purchase is assignable.

16.3 The purchase price for assets upon the occurrence of the events in Subsection 16.1(a) and 16.1(b) will be the fair market value of such assets. The fair market value shall be determined by a mutually agreed upon appraiser. If the Franchisor and Franchisee cannot agree on an appraiser within ten business days after the notice of a Purchase Offer has been delivered, Franchisor and Franchisee shall each have the right to appoint one appraiser, and the two appraisers so appointed shall then agree upon a third appraiser (“**Appointed Appraiser**”) to be appointed. The Appointed Appraiser shall then determine the fair market value. The purchase price for assets upon the occurrence of the event in Subsection 16.1(c) shall be equal to the Purchase Offer price.

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 this 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. Franchisor shall also have the right to substitute cash for any other form of consideration specified in the Purchase Offer or to pay in full the entire purchase price at the time of closing.

16.5 Franchisor will notify Franchisee if it intends to exercise its right to purchase (“**Notice of Intent**”) within 30 days following an event described in Subsection 16.1(a) or 16.1(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 in the case of an event under Subsection 16.1(a) or 16.1(b), and if possible, the fair market value as determined by mutually agreed upon appraiser, or Appointed Appraiser, if any. If Franchisor does not exercise its rights under this Section in the event of a sale under Subsection 16.1(c) within the 15-day period described above, Franchisee may, subject to the prior written permission of Franchisor and satisfaction of the other conditions to assignment set forth in Section 15, sell or dispose of the MH Business to the third party identified in the Purchase Offer, but not at a lower price nor on more favorable terms than set forth in the Purchase Offer.

16.6 If Franchisor provides Franchisee with its Notice of Intent to exercise its rights under this Section 16, Franchisor shall have 60 days from delivery of the Notice of Intent to secure financing, if any. The purchase and sale contemplated in this Section shall be consummated as soon as possible, but no later than 90 days from delivery of the Notice of Intent. In the event Franchisor is purchasing the assets

pursuant to Subsections 16.1(a) or 16.1(b), then 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 Retreat and to carry on and develop the MH Business for the exclusive benefit of Franchisor or its designee. If a sale or transfer under a Subsection 16.1(c) Purchase Offer is not completed within 90 days after the expiration of Franchisor's 15-day period to exercise its purchase right, Franchisee shall provide Franchisor notice of such failure to close. For each additional Purchase Offer Franchisee obtains, Franchisor shall again have the option to exercise its right of first refusal provided in this Section.

## **17. DEFAULT AND TERMINATION**

**17.1 Immediate Termination.** Franchisor shall have the right, at its option, to terminate this Agreement, effective upon written notice of default and termination to Franchisee, delivered as provided in Section 19, without the opportunity to cure the default, upon the occurrence of any of the following incurable events:

(a) Franchisee discloses to any unauthorized person the contents of or any part of Franchisor's Brand Standards Manual, Confidential Information or Trade Secrets of Franchisor.

(b) Franchisee gives written notice to Franchisor that it will voluntarily abandon the MH Business within 30 days, or with or without notice voluntarily abandons the MH Business for a period of five consecutive days, or any shorter period that indicates an intent by Franchisee to discontinue operation of the MH 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.

(c) Franchisee becomes insolvent, declares, or is adjudicated 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.

(d) 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 bond or other appeal bond has been filed); or if execution is levied against Franchisee's MH Business or any of the property used in the operation of the MH Business and is not discharged within five days; or if the real or personal property of Franchisee's MH Business shall be sold after levy thereupon by any sheriff, marshal or constable.

(e) Franchisee, the Designated Retreat Director, or any owner of greater than 10% of the Franchisee entity is convicted of or pleads no contest to any felony, or a crime involving moral turpitude, 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.

(f) Franchisee, the Designated Retreat Director, or any owner of greater than 10% of the Franchisee entity engages in any conduct that in Franchisor's reasonable discretion is fraudulent, unfair, unethical or a deceptive practice.

(g) Franchisee submits any information or document to Franchisor that is fraudulent, misleading or untrue.

(h) Franchisee submits any report, statement, financial statement, tax return, schedule or other information or supporting records required herein or requested by Franchisor more than five days late on two or more occasions during the term of this Agreement unless due to circumstances beyond the control of Franchisee.

(i) 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 five days after notification from Franchisor.

(j) Franchisee sells, transfers, or otherwise assigns the MH Business, an interest in the MH Business or Franchisee entity, this Agreement, or a substantial portion of the assets of the MH 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 understates its Gross Revenue by more than 2%, unless Franchisee demonstrates that such understatement resulted from inadvertent error.

(l) Franchisee sells or offers for sale any unauthorized merchandise, product or service or engages in any unauthorized business or under the Marks or under a name or mark which is confusingly similar to the Marks.

(m) Franchisee contests in any court or proceeding the validity of or Franchisor's ownership of the Marks or copyrighted materials.

(n) 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.

(o) Franchisee fails to successfully complete Franchisor's initial training program in accordance with Section 8.3(b).

(p) Franchisee receives from Franchisor three or more notices of default within a twelve (12) month period, regardless of whether such notices of default relate to the same or different defaults, or whether such defaults have been remedied by Franchisee.

(q) Any misrepresentation under Section 1 or any violation of Anti-Terrorism Laws by Franchisee, its Designated Retreat Director, its owners, officers, directors, managers, members, partners, agents or employees.

(r) Franchisee fails to cure any health, safety, or sanitation law violation within three days after receiving notice of such violation by Franchisor or any governmental agency or organization.

(s) Franchisee fails to open the MH Business in accordance with the opening deadline set forth in this Agreement.

(t) Franchisee relocates the Retreat without written approval from Franchisor.

(u) 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 equity interest in Franchisee, defaults under any term of the Lease of the Retreat or any other premises used by Franchisee to operate the MH Business or any other agreement material to the MH Business and such default is not cured within the time specified in such Lease or other agreement.

**17.2 Termination After 10-Day Cure Period.** Upon the occurrence of any event in this Section 17.2, Franchisor, in its sole discretion, has the right to terminate this Agreement by giving written notice of default and termination to Franchisee, delivered as provided in Section 19, stating the nature of the default at least ten (10) days prior to the effective date of termination; provided, however, Franchisee may avoid termination by immediately curing and providing proof of curing such default to Franchisor, to Franchisor's satisfaction, within the ten (10) day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee, effective immediately upon the expiration of the ten (10) day period or such longer period as applicable law may require.

(a) Franchisee fails to pay any amounts due Franchisor, its Affiliates, or approved suppliers within ten days after receiving notice that such fees or amounts are overdue.

(b) Franchisee fails, refuses, or neglects to maintain all required insurance.

(c) Franchisee fails, refuses, or neglects to submit any document, report, statement, financial statement, tax return, schedule or other information or supporting records required herein or requested by Franchisor.

(d) Franchisee fails, refuses or neglects to accurately report Gross Revenues, sales information or other information required by to be reported or requested Franchisor.

**17.3 Termination After 30-Day Cure Period.** Upon the occurrence of any other default by Franchisee that, in Franchisor's sole discretion, is curable, Franchisor, in its sole discretion, has the right to terminate this Agreement by giving written notice of default and termination to Franchisee, delivered as provided in Section 19, stating the nature of the default at least thirty (30) days prior to the effective date of termination; provided, however, Franchisee may avoid termination by immediately curing and providing proof of curing such default to Franchisor, to Franchisor's satisfaction, within the thirty (30) day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee, effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require.

**17.4** If Franchisor provides a written notice of default to Franchisee, Franchisor will have the right to impose a default fee of \$500 ("**Default Fee**") on Franchisee to compensate Franchisor for its costs incurred in prosecuting the default against Franchisee. The Default Fee will be payable to Franchisor on demand. Each Default Fee is in addition to all other applicable fees and costs, including late payment fees and interest, and any other rights and/or remedies that Franchisor may have including without limitation, any termination rights.

**17.5** Notwithstanding the foregoing, if the default is curable, but is of a nature which cannot be reasonably cured within the prescribed cure and Franchisee has commenced and is continuing to make

good faith efforts to cure the default during such prescribed cure period, Franchisee shall be given an additional reasonable period of time to cure the default, but in no event longer than 30 additional days.

17.6 If Franchisee is not in default of this Agreement, and Franchisor is in material breach and fails to cure that breach within 30 days of receiving written notice of the material breach from Franchisee, Franchisee shall have the right to terminate this Agreement. Notwithstanding the foregoing, if the breach is curable, but is of a nature which cannot be reasonably cured within such 30-day period and Franchisor has commenced and is continuing to make good faith efforts to cure the breach during such 30-day period, Franchisor shall be given an additional reasonable period of time to cure the same. Any other 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.

17.7 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.

17.8 Franchisee agrees to pay within five days of the effective date of termination or expiration of this Agreement all fees and other amounts owed to Franchisor and all costs or expenses incurred by Franchisor resulting from termination or expiration (including attorney fees, accounting fees and professional fees).

17.9 Upon termination or expiration of this Agreement, Franchisee is required to satisfy all of its debts and liabilities associated with the MH Business, including but not limited to, refunding amounts owed to customers for amounts pre-paid to Franchisee by customers, refunds of gift card values, and amounts owed to third parties such as Franchisee's landlord and vendors. Franchisee must provide Franchisor with access to debit Franchisee's bank account until such debts and liabilities have been fully satisfied.

17.10 Upon termination of this Franchise Agreement (i) by Franchisor due to Franchisee's material default of this Franchise Agreement or (ii) following Franchisee's purported termination without cause, Franchisee agrees to pay to Franchisor within 15 days after the effective date of this Franchise Agreement's termination, in addition to the amounts owed hereunder, liquidated damages equal to the average monthly Royalties and Brand Fund Contributions due and owing to Franchisor for the period preceding the effective date of termination multiplied by (a) 36, or (b) the number of months remaining in this Franchise Agreement had it not been terminated, whichever is less, but in no case will such damages be less than \$30,000.

17.11 All Royalty and Brand Fund 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 daily equivalent of the lower of: (i) 18% per annum; or (ii) the highest rate permitted by law, 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.

17.12 Should Franchisee, Guarantor(s), or any partnership or joint venture or corporation in which Franchisee has a controlling equity interest, be a franchisee pursuant to another franchise agreement or other agreement with Franchisor, respecting another franchised MH Business using the Marks, a default under this Agreement shall constitute a default under such other franchise agreement or other agreement and vice versa, with like remedies available to Franchisor. Should such other franchise agreement or other 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. 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.

17.13 Franchisee agrees that upon termination or expiration of this Agreement, to take the following required actions that include, but are not limited to:

(a) Immediately discontinue the use of all Marks, signs, structures, forms of advertising, telephone listings, websites, facsimile numbers, email addresses, the Brand Standards 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 Brand Standards 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 MH Business (all of which are acknowledged to be Franchisor's property). Under no circumstances shall Franchisee retain any printed or electronic copies of the Brand Standards Manual, customer lists, Confidential Information or Trade Secrets or portions thereof upon expiration or termination of this Agreement.

(c) Franchisee acknowledges that all telephone numbers, facsimile numbers, social media websites, Internet addresses and email addresses (collectively "**Identifiers**") used in the operation of Franchisee's MH Business constitute Franchisor's assets, and upon termination or expiration of this Agreement, Franchisee will take such action within five days to cancel or assign to Franchisor or Franchisor's designee as determined by Franchisor, all of Franchisee's right, title and interest in and to such Identifiers and will notify the telephone company and all listing agencies of the termination or expiration of Franchisee's right to use any Identifiers, and any regular, classified or other telephone directory listing associated with the Identifiers and to authorize a transfer of the same to, or at Franchisor's direction. Franchisee agrees to take all action required to cancel all assumed name or equivalent registrations related to Franchisee's use of the Marks. Franchisee acknowledges that, Franchisor has the sole rights to, and interest in, all Identifiers used by Franchisee to promote Franchisee's MH Business and/or associated with the Marks. Franchisee hereby irrevocably appoints Franchisor, with full power of substitution, as

Franchisee's 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. Franchisee further appoints Franchisor to direct the telephone company, postal service, registrar, Internet service provider, listing agency, website operator, or any other third party to transfer such Identifiers to Franchisor or Franchisor's designee. The telephone company, postal service, registrar, Internet Service Provider, listing agency, website operator, or any other third party may accept such direction by Franchisor pursuant to this Agreement as conclusive evidence of Franchisor's rights to the Identifiers and Franchisor's authority to direct their transfer.

(d) Make no representation nor state that Franchisee is in any way approved, endorsed or licensed by Franchisor or associated or identified with Franchisor or the System in any manner.

(e) 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.

(f) Franchisee shall, at Franchisor's option, immediately assign to Franchisor any interest in which Franchisee has in any Lease for the Retreat. In the event Franchisor does not elect to exercise its option to acquire the Lease for the Retreat, then, to the extent, if any, Franchisee is permitted to conduct any business at the Retreat 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 massage facilities operating under the System and Marks, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose including removing all displays of the Marks from the Retreat. In the event Franchisee fails or refuses to comply with the requirements of this Section 17.10(f), Franchisor shall have the right to enter the Retreat 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.

(g) 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.

(h) Provide Franchisor the option to purchase as set forth in Section 16.

(i) Comply with the provisions of Subsections 10.1(c) and (d), Section 12.1, Section 14, and Section 17.

(j) Franchisee must follow any procedures established by Franchisor to ensure the expiration of this Agreement or any renewal term thereof creates the least disruption possible to the Franchise System, including those procedures set forth in the confidential Brand Standards Manual.

17.14 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.

17.15 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.

17.16 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 Sections 10, 12, 14 and 16, hereof shall survive termination or expiration of this Agreement.

17.17 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 MH Business or which are situated on the MH 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.

17.18 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.

17.19 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 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.

17.20 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.

17.21 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.

17.22 THE PARTIES ACKNOWLEDGE AND AGREE 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.

17.23 To secure Franchisee's performance (and its owners' performance, if an entity) under this Agreement and indebtedness for all obligations owed and sums due to Franchisor or its affiliates, Franchisor shall have a lien upon, and Franchisee hereby grants to Franchisor a security interest in, the following collateral and any and all attachments, accessories, additions, accessions, and substitutions to or for it and the cash and non-cash proceeds derived from insurance or the disposition of such collateral: (a) all inventory, equipment, furniture, furnishings, fixtures, and supplies now leased, owned or after-acquired by Franchisee and the MH Business, including but not limited to all inventory, equipment, furniture, furnishings, fixtures, and supplies transferred to or acquired by Franchisee in connection with this Agreement; (b) all accounts of Franchisee and/or the MH Business now existing or subsequently arising, together with all chattel paper, documents, and instruments relating to such accounts; (c) all contract rights of Franchisee and/or the MH Business, now existing or subsequently arising; (d) all general intangibles of Franchisee and/or the MH Business, now owned or existing, or after-acquired or subsequently arising; (e) all of Franchisee's and/or the MH Business interests in the real estate where the Retreat is located; and (f) all improvements to any real estate associated with the Retreat. Franchisee hereby authorizes Franchisor to file and record financing statements, financing statement amendments, continuation financing statements, fixture filings and other documents that Franchisor deems necessary to evidence, perfect and continue the priority of security interests in and to these assets. Franchisee also agrees to execute and deliver any such documents to Franchisor upon its request.

17.24 Franchisor has the right (but not the obligation), under the circumstances described below, to enter the premises and assume the MH Business management (or to appoint a third party to assume its management) for up to 90 consecutive days at a time. If Franchisor (or a third party) assumes the MH Business management, Franchisee agrees to pay Franchisor (in addition to the Royalty and Brand Fund Contributions and other amounts due to Franchisor or its affiliates) an amount equal \$200 per day for the period of time that Franchisor or a third party manages the MH Business, plus Franchisor's (or the third party's) direct out-of-pocket expenses and all reasonable attorneys' fees and other costs incurred by Franchisor as a result of its exercise of rights under this Section 17.22. If Franchisor (or a third party) assumes the MH Business management, Franchisee acknowledges that Franchisor (or the third party) will have a duty to utilize only reasonable efforts and will not be liable to Franchisee or Franchisee's owners for any debts, losses, or obligations the MH Business incurs, or to any of Franchisee's creditors for any supplies, products, or other assets or services the MH Business purchases, while Franchisor (or the third party) manages it. Franchisor (or a third party) may assume the MH Business management under the following circumstances: (1) if Franchisee abandons, threatens to abandon, or fails to actively operate the MH Business, including, but not limited to, achieving certain customer service review or quality assurance scores as may be set forth in the Brand Standards Manual; (2) if Franchisee fails to comply with any provision of this Agreement and does not cure the failure within the time period specified by this Agreement or Franchisor; or (3) if the Designated Club Director dies or becomes disabled; or (4) if this Agreement is terminated and Franchisor is deciding whether to exercise the option to purchase the Franchisee's interests in the MH Business under Section 16. If Franchisor exercises its rights under this Section 17.22, it will not affect any other right or remedy Franchisor may have under this Agreement, including, without limitation, termination.

## **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 Retreat or any portion thereof through the exercise of the power of eminent domain at the earliest possible time. If the

Retreat or a substantial part thereof is to be taken, the Retreat 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 Brand Standards 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 Retreat, the new MH Business shall be deemed to be the MH Business licensed under this Agreement. If a condemnation, Lease termination or mortgage default takes place and a new Retreat does not, for any reason, become the MH Business as provided in this Section 18.1, then the License shall terminate upon notice by Franchisor.

18.2 If the Retreat is damaged for any reason, Franchisee shall expeditiously repair the damage. If the damage or repair requires closing the MH Business, Franchisee shall immediately notify Franchisor in writing, and shall:

(a) Relocate the Retreat as provided in Section 18.1; or

(b) Repair or rebuild the Retreat in accordance with Franchisor's then existing standards and general specifications and reopen the MH Business for continuous business operations as soon as practicable (but in any event within 12 months after closing the MH Business at the Retreat), giving Franchisor 30 days advance notice of the date of reopening.

(c) If the MH Business is not (or, in the opinion of Franchisor cannot be) reopened in accordance with this Section 18.2, or relocated pursuant to Section 18.1, the License shall terminate upon notice to Franchisee.

18.3 Franchisor will agree to extend the Term under this Section if: (i) the Retreat is relocated or rebuilt as a result of a Force Majeure Event that results in the MH Business being closed for between 60 and 180 days; and (ii) Franchisee applies for an extension of the Term within 30 days following the reopening of the MH Business. No event during the Term will excuse Franchisee from paying Royalty or Brand Fund Contributions as provided in this Agreement.

## 19. NOTICES

19.1 All notices required to be given under this Agreement shall be in writing and may be given to the party for whom it is intended by: personal delivery which shall be deemed delivered on the day of delivery; electronic mail to recipient's Massage Heights email account which shall be deemed delivered on the day of delivery, provided that the recipient acknowledges receipt of such electronic mail; prepaid certified mail which shall be deemed delivered on the third business day following the date of mailing; recognized overnight delivery or courier services which shall be deemed delivered on the next business day following the date of mailing. Any party may at any time give notice in writing to any other party of any change of address.

In the case of notice to the parties, the following address, or a substitute address as provided in writing, shall be used:

**To Franchisor:**

Massage Heights Franchising, LLC  
ATTN: Legal Department  
13750 US Hwy 281 North, Suite 925  
San Antonio, TX 78232  
Legal@MassageHeightsFranchising.com

**To Franchisee:**

The Address set forth in **Attachment A**

**20. GOVERNING LAW AND DISPUTE RESOLUTION**

20.1 **Governing Law.** 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 (and any dispute between the parties) shall be governed by and construed in accordance with the laws of the State of Texas, without reference to this state's conflict of laws principles. Notwithstanding the foregoing, the parties expressly agree that this Agreement is not intended to confer on any Franchisee that is not a resident of the State of Texas the benefit of any Texas law providing specific protection to franchisees residing or operating in the State of Texas.

20.2 **Internal Dispute Resolution.** For any claim or dispute arising out of or in any way relating to this Agreement, Franchisee must: (a) first bring such claim or dispute to Franchisor's Legal Department, after providing notice as set forth in Section 20.7 and (b) make every effort to resolve the dispute internally in good faith. Franchisor's Legal Department will have a period of 30 calendar days to try to resolve such matter. Franchisee must exhaust this internal dispute resolution procedure before Franchisee may bring Franchisee's dispute in mediation or before a third party.

20.3 **Mediation.** In the event that a claim or dispute is not otherwise resolved in accordance with Section 20.2, then, at Franchisor's option, all claims or disputes between Franchisee and Franchisor (or its affiliates) arising out of, or in any way relating to, this Agreement or any other agreement by and between Franchisee and Franchisor (or its affiliates), or any of the parties' respective rights and obligations arising from such agreement, which are not first resolved through the internal dispute resolution procedure set forth in Section 20.2 above, will be submitted first to mediation to take place in San Antonio, Texas at a location of Franchisor's choice, under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, Franchisee must have exhausted the internal dispute resolution procedure (described in Section 20.2 above) and must submit a notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of thirty (30) days following receipt of such notice within which to notify Franchisee as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. Franchisee may not commence any action against Franchisor or its affiliates with respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (a) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (b) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor. Each party will bear its own cost of mediation



and Franchisor and Franchisee will share mediator fees equally. Notwithstanding the foregoing, the parties will not be required to first attempt to mediate a controversy, dispute, or claim through mediation as set forth in this Section 20.3 if such controversy, dispute, or claim concerns an allegation that a party has violated (or threatens to violate, or poses an imminent risk of violating): (i) any federally protected intellectual property rights in the Marks, the System, Trade Secrets or Confidential Information, or specialized or proprietary software, training, or other materials; (ii) any of the restrictive covenants contained in this Agreement; and (iii) any of Franchisee's payment obligations under this Agreement.

**20.4 Injunctive Relief.** Franchisee acknowledges and agrees that irreparable harm could be caused to Franchisor by Franchisee's violation of certain provisions of this Agreement and, as such, in addition to any other relief available at law or equity, Franchisor shall be entitled to obtain in any court of competent jurisdiction, without bond, restraining orders or temporary or permanent injunctions in order to enforce, among other items, the provisions of this Agreement relating to: (a) Franchisee's use of the Marks, Trade Secrets and Confidential Information (including any proprietary software, training, or other materials used in connection with the MH Business); (b) the in-term covenant not to compete, as well as any other violations of the restrictive covenants set forth in this Agreement; (c) Franchisee's obligations on termination or expiration of this Agreement; (d) disputes and controversies based on or arising under the Lanham Act, or otherwise involving the Marks, as now or hereafter amended; (v) disputes and controversies involving enforcement of the Franchisor's rights with respect to confidentiality under this Agreement; and (e) to prohibit any act or omission by Franchisee or its employees that constitutes a violation of applicable law, threatens the System or threatens other franchisees of Franchisor. Franchisee's only remedy if such an injunction is entered will be the dissolution of the injunction, if appropriate, and Franchisee waives all damage claims if the injunction is wrongfully issued.

**20.5 Consent to Jurisdiction and Venue.** Subject to Section 20.3 of this Agreement, the parties expressly consent to personal jurisdiction in the State of Texas and agree that any actions arising out of or related to this Agreement must be initiated and litigated to conclusion exclusively in the state court of general jurisdiction closest to San Antonio Texas, or, if appropriate, the United States District Court for the Western District of Texas, San Antonio Division (unless settled by the parties after such action is initiated). Franchisee acknowledges that this Agreement has been entered into in the State of Texas, and that Franchisee is to receive valuable and continuing services emanating from Franchisor's headquarters in San Antonio, Texas, including but not limited to training, assistance, support and the development of the System. In recognition of such services and their origin, Franchisee hereby irrevocably consents to the personal jurisdiction and propriety of venue of the state and federal courts of Texas as set forth in this Section 20, and waives any objections it would otherwise have concerning such matters.

**20.6 Third-Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third-party beneficiaries of the provisions of this Agreement, including the dispute resolution provisions set forth in this Section 20, each having authority to specifically enforce the right to mediate claims asserted against such person(s) by Franchisee.

**20.7 Notice Requirement.** As a condition precedent to commencing an action for damages or for violation or breach of this Agreement, Franchisee must notify Franchisor within 90 days after the occurrence of the violation or breach, and failure to timely give such notice shall preclude any claim for damages.

**20.8 No Withholding of Payments.** Franchisee shall not withhold all or any part of any payment to Franchisor or any of its affiliates on the grounds of Franchisor's alleged nonperformance or



or rescind the effectiveness of any demand for performance or notice of termination under this Agreement.

20.14 **Survival.** Franchisor and Franchisee (and the Owners) agree that the provisions of this Section 20 shall apply during the Term of this Agreement and following the termination, expiration, or non-renewal of this Agreement. The parties agree to fully perform all obligations under this Agreement during the entire mediation or litigation process.

## 21. MISCELLANEOUS

21.1 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.

21.2 Franchisee must reimburse Franchisor for any legal, court or other professional fees or costs that Franchisor incurs as a result of enforcing its rights under this Agreement, or due to any action arising out of this Agreement.

21.3 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 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 an officer of the Franchisor, except that a waiver need be signed only by the party waiving.

21.4 If applicable law implies a covenant of good faith and fair dealing in this Agreement, the parties agree that the covenant shall not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement. Additionally, if applicable law shall imply the covenant, Franchisee agrees that: (i) this Agreement (and the relationship of the parties that is inherent in this Agreement) grants Franchisor the discretion to make decisions, take actions and/or refrain from taking actions not inconsistent with Franchisor's explicit rights and obligations under this Agreement that may affect favorably or adversely the Franchisee's interests; (ii) Franchisor will use its judgment in exercising the discretion based on Franchisor's assessment of Franchisor's own interests and balancing those interests against the interests of its franchisees generally (including Franchisor and its Affiliates if applicable), and specifically without considering the Franchisee's individual interests or the individual interests of any other particular franchisee; (iii) Franchisor will have no liability to Franchisee for the exercise of the Franchisor's discretion in this manner, so long as the discretion is not exercised in bad faith; and (iv) in the absence of bad faith, no trier of fact in any arbitration or litigation shall substitute its judgment for Franchisor's judgment so exercised.

21.5 This Agreement and all related agreements executed simultaneously with this Agreement constitute the entire understanding of the parties and supersedes any and all prior oral or written agreements between Franchisee and Franchisor on the matters contained in this Agreement; but nothing

in this or any related agreement is intended to disclaim the representations Franchisor made in the latest Franchise Disclosure Document that Franchisor furnished to Franchisee.

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, or 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, terrorist attacks, embargoes and civil commotion, epidemics, 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 and Brand Fund Contributions or other payments to Franchisor when due. Notwithstanding the foregoing, if there is a Force Majeure Event, Franchisor may, in its sole discretion, elect to waive one or more Royalty, Brand Fund Contributions, or other payments during the period of delay caused by the Force Majeure Event or such shorter period. Force Majeure Event should be construed narrowly and does not include general economic, market or societal conditions, or any changes thereto, even those that are the direct or indirect result of the Force Majeure Event. So, for example, in the event of a temporary government-imposed closure of the MH Business due to a Force Majeure Event, Franchisee may only be relieved of its obligations as necessary to comply with the government mandate or order, but not due to the economic or market conditions that result from that action. The party whose performance is affected by a Force Majeure Event shall give prompt notice of such Force Majeure Event to the other party, which in no case shall be more than 48 hours after the event, setting forth the nature thereof and an estimate as to its duration, and the affected party shall furnish the other party with periodic reports regarding the progress of the Force Majeure Event. Each party must use its best efforts to mitigate the effect of the Force Majeure Event upon its performance of the Agreement and to fulfill its obligations under the Agreement. Upon completion of the Force Majeure Event, the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement. However, if the Force Majeure Event continues for a period of 180 days or more, then the unaffected party may, at its option, terminate this Agreement by 30 days’ written notice to the party asserting such Force Majeure Event. A Force Majeure Event does not relieve a party from liability for an obligation which arose before the occurrence of the Force Majeure Event, nor does that event affect Franchisee’s obligation to pay money owed under the Agreement or to indemnify Franchisor, whether such obligation arose before or after the Force Majeure Event. A Force Majeure Event shall not affect Franchisee’s obligations to comply with any restrictive covenants in this Agreement during or after the Force Majeure Event.

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 its attorney-in-fact, which appointment is coupled with an interest, and hereby empowers Franchisor 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 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 Brand Standards 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 Franchisee agrees that Franchisor shall have the right to delegate to third-party designees, whether these designees are Franchisor's agents or independent contractors with whom Franchisor has contracted (1) the performance of any portion or all of Franchisor's obligations under this Agreement, and (2) any right that Franchisor has under this Agreement. If Franchisor does so, such third-party designees will be obligated to perform the delegated functions for Franchisee in compliance with this Agreement.

## 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, OR ADDENDA, IF APPLICABLE, IS BINDING ON FRANCHISOR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, AND INITIAL \_\_\_\_\_

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 FIVE FULL BUSINESS 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 SYSTEM AND TO CONSULT WITH LEGAL AND FINANCIAL ADVISORS OF ITS CHOICE; AND INITIAL \_\_\_\_\_

3. FRANCHISEE HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE SYSTEM AND RECOGNIZES THAT THE MH 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 MH BUSINESS. FRANCHISEE HEREBY ASSUMES THE RESPONSIBILITY FOR ITS SUCCESS OR FAILURE OF THE MH BUSINESS VENTURE; AND INITIAL \_\_\_\_\_

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; AND INITIAL \_\_\_\_\_

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 MH BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT. INITIAL \_\_\_\_\_

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 effective as of the Effective Date.

**FRANCHISOR:**  
**Message Heights Franchising, LLC**  
  
By: \_\_\_\_\_  
Shane Evans, Chief Executive Officer  
Date: \_\_\_\_\_

**FRANCHISEE: \*\*\***  
  
By: \_\_\_\_\_  
\*\*\*, \*\*\*  
Date: \_\_\_\_\_  
  
By: \_\_\_\_\_  
\*\*\*, \*\*\*  
Date: \_\_\_\_\_



FRANCHISEE DATA SHEET

1. **Effective Date.** The "Effective Date" set forth in the introductory paragraph of the Agreement is \*\*\*, 20\*\*.

2. **Franchisee.** The "Franchisee" set forth in the introductory paragraph of the Agreement is: [Entity Name and its entity members]\*\*.

3. **Notice Address.** The address for notices to Franchisee set forth in Section 19 of the Agreement shall be the following:

[Entity Name]
Attn: [Owner Name]
[Address]
[City, State Zip]
Email: \*\*

4. **Territory.** The Territory set forth in Section 4.1 of the Agreement shall be the geographic area described below:

a one-and-a-half (1.5) mile radius around the site to be determined within [\*\*\*]

--OR--

a one-and-a-half (1.5) mile radius around the site known as
Massage Heights \*\*\*
located at \*\*\*

5. **Initial Franchise Fee.** Franchisee shall pay to Franchisor an Initial Franchise Fee equal to \*\*\* Thousand Dollars (\*\*\*,\*\*.) plus, if applicable, all federal, state or municipal taxes due and payable at the time of execution of the Agreement

FRANCHISOR:

FRANCHISEE:

Massage Heights Franchising, LLC

\*\*

By: \_\_\_\_\_
Shane Evans, Chief Executive Officer

By: \_\_\_\_\_
\*\*, \*\*

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

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

By: \_\_\_\_\_
\*\*, \*\*

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

## OWNERS AGREEMENT

As a condition to the granting by Massage Heights Franchising, LLC (“we” or “us”), of a Franchise Agreement with \*\*\* (“Franchisee”), each of the undersigned individuals (“Owners”), who constitute all of the owners of a beneficial interest, whether direct or indirect, in Franchisee, as well as their respective spouses, covenant and agree to be bound by this Owners Agreement (“Owners Agreement”).

### 1. Acknowledgments.

1.1 **Franchise Agreement.** Franchisee entered into a franchise agreement with us effective as of \*\*\*, 20\*\*\* (“Franchise Agreement”). Capitalized words not defined in this Owners Agreement will have the same meanings ascribed to them in the Franchise Agreement.

1.2 **Role of Owners.** Owners are the beneficial owners or spouses of the beneficial owners of all of the direct or indirect equity interest, membership interest, or other equity controlling interest in Franchisee and acknowledge there are benefits received and to be received by each Owner, jointly and severally, and for themselves, their heirs, legal representatives and assigns. Franchisee’s obligations under the Franchise Agreement, including the confidentiality and non-compete obligations, would be of little value to us if Franchisee’s direct and indirect owners were not bound by the same requirements. Under the provisions of the Franchise Agreement, Owners are required to enter into this Owners Agreement as a condition to our entering into the Franchise Agreement with Franchisee. Owners will be jointly and severally liable for any breach of this Owners Agreement.

### 2. Non-Disclosure and Protection of Confidential Information.

2.1 **Confidentiality.** Under the Franchise Agreement, we will provide Franchisee with specialized training, proprietary trade secrets, and other Confidential Information relating to the establishment and operation of a franchised business. The provisions of the Franchise Agreement governing Franchisee’s non-disclosure obligations relating to our Confidential Information are hereby incorporated into this Owners Agreement by reference, and Owners agree to comply with each obligation as though fully set forth in this Owners Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this Owners Agreement as we may seek against Franchisee under the Franchise Agreement. Any and all information, knowledge, know-how, techniques, and other data, which we designate as confidential, will also be deemed Confidential Information for purposes of this Owners Agreement.

2.2 **Immediate Family Members.** Owners acknowledge that they could circumvent the purpose of Section 2.1 by disclosing Confidential Information to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). Owners also acknowledge that it would be difficult for us to prove whether Owners disclosed the Confidential Information to family members. Therefore, each Owner agrees that he or she will be presumed to have violated the terms of Section 2.1 if any member of his or her immediate family uses or discloses the Confidential Information or engages in any activities that would constitute a violation of the covenants listed in Section 3, below, if performed by Owners. However, Owners may

rebut this presumption by furnishing evidence conclusively showing that Owners did not disclose the Confidential Information to the family member.

### **3. Covenants Not to Compete and Not to Solicit.**

#### **3.1 Non-Competition and Non-Solicitation During and After the Term of the Franchise Agreement.**

Owners acknowledge that as a participant in our system, they will receive proprietary and confidential information and materials, trade secrets, and the unique methods, procedures, and techniques which we have developed. The provisions of the Franchise Agreement governing Franchisee's restrictions on competition and solicitation both during the term of the Franchise Agreement and following the expiration or termination of the Franchise Agreement are hereby incorporated into this Owners Agreement by reference, and Owners agree to comply with and perform each such covenant as though fully set forth in this Owners Agreement as a direct and primary obligation of Owners. Further, we may seek the same remedies against Owners under this Owners Agreement as we may seek against Franchisee under the Franchise Agreement.

**3.2 Construction of Covenants.** The parties agree that each such covenant related to non-competition and non-solicitation will be construed as independent of any other covenant or provision of this Owners Agreement. If all or any portion of a covenant referenced in this Section 3 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in a final decision to which we are a party, Owners agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 3.

**3.3 Our Right to Reduce Scope of Covenants.** Additionally, we have the right, in our sole discretion, to unilaterally reduce the scope of all or part of any covenant referenced in this Section 3 of this Owners Agreement, without Owners' consent (before or after any dispute arises), effective when we give Owners written notice of this reduction. Owners agree to comply with any covenant as so modified.

### **4. Guarantee.**

**4.1 Payment.** Owners will pay us (or cause us to be paid) all monies payable by Franchisee under the Franchise Agreement on the dates and in the manner required for payment in the relevant agreement.

**4.2 Performance.** Owners unconditionally guarantee full performance and discharge by Franchisee of all of Franchisee's obligations under the Franchise Agreement on the date and times and in the manner required in the relevant agreement.

**4.3 Indemnification.** Owners will indemnify, defend and hold harmless us, all of our affiliates, and the respective shareholders, directors, partners, employees, and agents of such entities, against and from all losses, damages, costs, and expenses which we or they may sustain, incur, or become liable for by reason of: (a) Franchisee's failure to pay the monies payable (to us or any of our affiliates) pursuant to the Franchise Agreement, or to do and perform any other act, matter, or thing required by the Franchise Agreement; or (b) any action by us to obtain performance by Franchisee of any act, matter, or thing required by the Franchise Agreement.

**4.4 No Exhaustion of Remedies.** Owners acknowledge and agree that we will not be obligated to proceed against Franchisee or exhaust any security from Franchisee or pursue or exhaust any remedy,

including any legal or equitable relief against Franchisee, before proceeding to enforce the obligations of the Owners as guarantors under this Owners Agreement, and the enforcement of such obligations can take place before, after, or contemporaneously with, enforcement of any of Franchisee's debts or obligations under the Franchise Agreement.

**4.5 Waiver of Notice.** Without affecting Owners' obligations under this Section 4, we can extend, modify, or release any of Franchisee's indebtedness or obligation, or settle, adjust, or compromise any claims against Franchisee, all without notice to the Owners. Owners waive notice of amendment of the Franchise Agreement and notice of demand for payment or performance by Franchisee.

**4.6 Effect of Owner's Death.** Upon the death of an Owner, the estate of such Owner will be bound by the obligations in this Section 4, but only for defaults and obligations hereunder existing at the time of death; and the obligations of any other Owners will continue in full force and effect.

## **5. Transfers.**

Owners acknowledge and agree that we have granted the Franchise Agreement to Franchisee in reliance on Owners' business experience, skill, financial resources and personal character. Accordingly, Owners agree: a) not to sell, encumber, assign, transfer, convey, pledge, merge or give away any direct or indirect interest in this Franchisee, unless Owners first comply with the sections in the Franchise Agreement regarding transfers and assignment, and b) that any attempt to do so will be a material breach of this Owners Agreement and the Franchise Agreement.

## **6. Notices.**

**6.1 Method of Notice.** Any notices given under this Owners Agreement shall be in writing and delivered in accordance with the provisions of the Franchise Agreement.

**6.2 Notice Addresses.** Our current address for all communications under this Owners Agreement is:

Massage Heights Franchising, LLC  
ATTN: Legal Department  
13750 US Hwy 281 North, Suite 925  
San Antonio, Texas 78232  
Legal@MassageHeightsFranchising.com

The current address of each Owner for all communications under this Owners Agreement is designated in **Attachment A** of the Franchise Agreement. Any party may designate a new address for notices by giving written notice to the other parties of the new address according to the method set forth in the Franchise Agreement.

## **7. Enforcement of This Owners Agreement.**

**7.1 Dispute Resolution.** Any claim or dispute arising out of or relating to this Owners Agreement shall be subject to the dispute resolution provisions of the Franchise Agreement. This agreement to engage in such dispute resolution process shall survive the termination or expiration of this Owners Agreement.

**7.2 Choice of Law; Jurisdiction and Venue.** This Owners Agreement and any claim or controversy arising out of, or relating to, any of the rights or obligations under this Owners Agreement, and any other claim or controversy between the parties, will be governed by the choice of law and jurisdiction and venue provisions of the Franchise Agreement.

**7.3 Provisional Remedies.** We have the right to seek from an appropriate court any provisional remedies, including temporary restraining orders or preliminary injunctions to enforce Owners' obligations under this Owners Agreement. Owners acknowledge and agree that there is no adequate remedy at law for Owners' failure to fully comply with the requirements of this Owners Agreement. Owners further acknowledge and agree that, in the event of any noncompliance, we will be entitled to temporary, preliminary, and permanent injunctions and all other equitable relief that any court with jurisdiction may deem just and proper. If injunctive relief is granted, Owners' only remedy will be the court's dissolution of the injunctive relief. If the injunctive relief was wrongfully issued, Owners expressly waive all claims for damages they incurred as a result of the wrongful issuance.

## **8. Miscellaneous.**

**8.1 No Other Agreements.** This Owners Agreement constitutes the entire, full and complete agreement between the parties, and supersedes any earlier or contemporaneous negotiations, discussions, understandings or agreements. There are no representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this Owners Agreement, other than those in this Owners Agreement. No other obligations, restrictions or duties that contradict or are inconsistent with the express terms of this Owners Agreement may be implied into this Owners Agreement. Except for unilateral reduction of the scope of the covenants permitted in Section 3.3 (or as otherwise expressly provided in this Owners Agreement), no amendment, change or variance from this Owners Agreement will be binding on either party unless it is mutually agreed to by the parties and executed in writing. Time is of the essence.

**8.2 Severability.** Each provision of this Owners Agreement, and any portions thereof, will be considered severable. If any provision of this Owners Agreement or the application of any provision to any person, property or circumstances is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Owners Agreement will be unaffected and will still remain in full force and effect. The parties agree that the provision found to be invalid or unenforceable will be modified to the extent necessary to make it valid and enforceable, consistent as much as possible with the original intent of the parties (i.e. to provide maximum protection for us and to effectuate the Owners' obligations under the Franchise Agreement), and the parties agree to be bound by the modified provisions.

**8.3 No Third-Party Beneficiaries.** Nothing in this Owners Agreement is intended to confer upon any person or entity (other than the parties and their heirs, successors and assigns) any rights or remedies under or by reason of this Owners Agreement.

**8.4 Construction.** Any term defined in the Franchise Agreement which is not defined in this Owners Agreement will be ascribed the meaning given to it in the Franchise Agreement. The language of this Owners Agreement will be construed according to its fair meaning, and not strictly for or against either party. All words in this Owners Agreement refer to whatever number or gender the context requires. If more than one party or person is referred to as you, their obligations and liabilities must be joint and several. Headings are for reference purposes and do not control interpretation.

8.5 **Binding Effect.** This Owners Agreement may be executed in counterparts, and each copy so executed and delivered will be deemed an original. This Owners Agreement is binding on the parties and their respective heirs, executors, administrators, personal representatives, successors and (permitted) assigns.

8.6 **Successors.** References to “Franchisee” or “the undersigned,” or “you” include the respective parties' heirs, successors, assigns or transferees.

8.7 **Nonwaiver.** Our failure to insist upon strict compliance with any provision of this Owners Agreement shall not be a waiver of our right to do so. Delay or omission by us respecting any breach or default shall not affect our rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Owners Agreement shall be cumulative.

8.8 **No Personal Liability.** You agree that fulfillment of any and all of our obligations written in the Franchise Agreement or this Owners Agreement, or based on any oral communications which may be ruled to be binding in a court of law, shall be our sole responsibility and none of our owners, officers, agents, representatives, nor any individuals associated with us shall be personally liable to you for any reason.

8.9 **Owners Agreement Controls.** In the event of any discrepancy between this Owners Agreement and the Franchise Agreement, this Owners Agreement shall control.

**IN WITNESS WHEREOF**, the parties have entered into this Owners Agreement as of the effective date of the Franchise Agreement.

**OWNER(S):**

**SPOUSE(S):**

\_\_\_\_\_  
Printed Name: \*\*\*

\_\_\_\_\_  
Printed Name: \*\*\*

Address: \*\*\*  
\*\*\*

Address: \*\*\*  
\*\*\*

\_\_\_\_\_  
Printed Name: \*\*\*

\_\_\_\_\_  
Printed Name: \*\*\*

Address: \*\*\*  
\*\*\*

Address: \*\*\*  
\*\*\*

**Message Heights Franchising, LLC** hereby accepts the Owner(s)' agreements hereunder.

By: \_\_\_\_\_  
Shane Evans, Chief Executive Officer



**STATEMENT OF OWNERSHIP**

Franchisee: [Entity Name\*\*\*]

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 state and date of incorporation, names and addresses of each officer and director, and list names and addresses of every shareholder showing percentage of stock is owned by each.

If a **Limited Liability Company**, give the state and date of formation, the name of the manager(s), and list the names and addresses of every member and the percentage of membership interest held by each member.

State and Date of Formation: \*\*\*

Management (managers, officers, board of directors, etc.):

Name	Title	Name	Title
***	***	***	***

Members, Stockholders, Partners\*:

Name	Address	Percentage of Ownership
***	***	***
***	***	***

\*If any members, stockholders, or partners are entities, please list the owners of such entities up through the individuals.

**Identification of Operating Owner.** The Operating Owner as of the Effective Date is \*\*\*. Franchisee may not change the Operating Owner without prior written approval.

Franchisee acknowledges that this Statement of Ownership applies to the MH 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.

**FRANCHISEE:**

\*\*\*

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

\*\*\*, \*\*\*

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

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

\*\*\*, \*\*\*

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

**EXHIBIT C**

**LIST OF CURRENT AND FORMER FRANCHISEES**

## Current Franchisees as of December 31, 2023:

Name	Entity Name	Address	State	Phone	Email
Bell, R. Todd	Bell Destiny Holdings, LLC	10413 Craftsman Way, Ste 100 San Diego, CA 92127	CA	858-304-2400	tbell@massageheights.com
Bell, R. Todd	Bell Destiny Holdings, LLC	5290 Belt Line Road, Suite 122B Dallas, TX 75254	TX	972-833-8167	tbell@massageheights.com
Bell, R. Todd	TJS Retreat, LLC	5801 Long Prairie Rd., Ste 650 Flower Mound, TX 75028	TX	972-249-9790	tbell@massageheights.com
Bodony, Gary	MH Leawood, LLC	4800 135th St., Ste 270 Leawood, KS 66224	KS	913-660-0099	gary.bodony@massageheights.com
Bodony, Gary	MH Lenexa LLC	16808 West 89 <sup>th</sup> Street Lenexa, KS 66219	KS	913-717-0034	gary.bodony@massageheights.com
Bodony, Gary	MH Shoal Creek, LLC	9225 Missouri NE Hwy 152 Kansas City, MO 64158	MO	816-792-4783	gary.bodony@massageheights.com
Bodony, Gary	MH Tiffany Springs, LLC	9028 NW Skyview Ave. Kansas City, MO 64154	MO	816-746-4400	gary.bodony@massageheights.com
Bousema, Bill and Bonnie	South Coast Retreats, LLC	1334 Bison Ave. Newport Beach, CA 92660	CA	949-644-7352	bbousema@massageheights.com bonniebousema@massageheights.com
Boyd, Jerry	JBSB Destiny Enterprises Co	134 Vintage Park Blvd., Ste D Houston, TX 77070	TX	832-698-7359	jerry.boyd@MassageHeights.com
Boyle, Jeff	Boyle Holdings, LLC	6501 S. Fry Rd., Ste 900 Katy, TX 77494	TX	281-391-7529	jeff.boyle@massageheights.com
Boyle, Jeff	Boyle Holdings, LLC	27120 Fulshear Bend Dr., Ste 800 Fulshear, TX 77441	TX	346-707-5511	jeff.boyle@massageheights.com
Burk, II, William	WRB Investments 2, Inc.	26032 Marguerite Pkwy., Ste A2 Mission Viejo, CA 92692	CA	949-699-3803	bburk@massageheights.com
Burlington, Dave Dick, Todd	Heights Massage Alliance LLC	4580 Kingwood R., Ste C Kingwood, TX 77345	TX	281-359-7529	dave.burlington@massageheights.com todd.dick@massageheights.com
Burlington, David	Beyond Bassin LLC	1373 W. Bay Area Blvd. Webster, TX 77598	TX	281-992-8888	dave.burlington@massageheights.com
Burlington, David	Beyond Bassin, LLC	303 W. Parkwood Ave. Friendswood, TX 77546	TX	281-725-6800	dave.burlington@massageheights.com
Burlington, Jennifer	MHAH Ventures, LLC	999 E. Basse Rd., Ste 165 San Antonio, TX 78209	TX	210-822-8889	jburlington@massageheights.com
Burlington, Jennifer	MHBD Ventures, LLC	9110 N. Loop 1604 W, Ste 106 San Antonio, TX 78249	TX	210-681-7091	jburlington@massageheights.com
Burlington, Jennifer	MHMP Ventures, LLC	17230 Bulverde Rd., Ste 113 San Antonio, TX 78247	TX	210-494-7359	jburlington@massageheights.com
Burlington, Jennifer	MHLS Ventures, LLC	23535 IH 10 W, Suite 2104 San Antonio, TX 78257	TX	210-687-1112	jburlington@massageheights.com
Burlington, Jennifer	MHMC Ventures LLC	9620 Huebner Rd., Ste 101 San Antonio, TX 78240	TX	210-877-9014	jburlington@massageheights.com
Burlington, Jennifer	MHGV Ventures LLC	3820 FM 3009, Ste 120 Schertz, TX 78154	TX	210-658-5689	jburlington@massageheights.com
Burlington, Jennifer	MHSP Ventures, LLC	16635 Huebner Road Suite 102 San Antonio, TX 78248	TX	210-338-8249	jburlington@massageheights.com
Burlington, Jennifer	MHTPC Ventures LLC	22106 US Hwy 281 N, Ste 104 San Antonio, TX 78258	TX	210-981-1000	jburlington@massageheights.com
Busch, Michael and Tamatha	Busch Brands, Inc.	11975 Alamo Ranch Pkwy Ste 106 San Antonio, TX 78253	TX	210-688-9081	tamatha.busch@massageheights.com mike.busch@massageheights.com
Castro, Theresa	TAC Massage, Inc.	2625 Louisiana St., Ste H Houston, TX 77006	TX	832-431-4225	tcastro@massageheights.com
Cesare, Brooke	BC Agency Inc	13223 Black Mountain Rd., Ste 7 San Diego, CA 92129	CA	858-504-7277	brooke.cesare@massageheights.com

Name	Entity Name	Address	State	Phone	Email
Cesare, Brooke Rogers, Katrina Akili, Samaji	BKS Solutions LLC	2900 Townsgate Rd., Ste 210 Thousand Oaks, CA 91361	CA	805-418-1850	brooke.cesare@massageheights.com katrina.rogers@massageheights.com samaji.akili@massageheights.com
Clements, Adam and Sarah	ACS Retreats, LLC	1560 River Road, Ste 105 Boerne, TX 78006	TX	830-266-9700	adam.clements@massageheights.com sarah.clements@massageheights.com
Clements, Adam and Sarah	AFS Retreats LLC	430 West Loop 1604 Suite 111 San Antonio, TX 78251	TX	210-981-1000	adam.clements@massageheights.com sarah.clements@massageheights.com
Cobb, Barbara and Thomas	Cobb Retreats II, LLC	3550 Rayford Rd., Ste 180 Spring, TX 77386	TX	832-900-7222	bcobb@massageheights.com
Cobb, Barbara and Thomas	Cobb Retreats, LLC	4775 W. Panther Creek Dr., Ste 220B The Woodlands, TX 77381	TX	832-900-7788	bcobb@massageheights.com
Crawford, James	JC Portfolio, LLC	100 W. Southlake Blvd., Ste 175 Southlake, TX 76092	TX	817-442-001	james.crawford@massageheights.com
Dancer, Brad and Jaime	MH of South Naples, LLC	4525 Thomasson Drive Naples, FL 34112	FL	239-330-3827	bdancer@massageheights.com jdancer@massageheights.com
Dancer, Brad and Jaime	MH of North Naples, LLC	2348 Pine Ridge Rd. Naples, FL 34109	FL	239-449-9009	bdancer@massageheights.com jdancer@massageheights.com
Dick, Todd and LaVona	WL & D Ventures	14243 E. Sam Houston Pkw., Ste 600 Houston, TX 77044	TX	281-615-3214	todd.dick@massageheights.com lavona.dick@massageheights.com
Dollison, Douglas M. Dollison, Amy Dollison-Johnson, Danette	DIG Ankeny, LLC	2732 SE Delaware Ave., Ste 260 Ankeny, IA 50021	IA	515-963-2000	adollison@massageheights.com ddollison@massageheights.com dwight.dollison@massageheights.com diane.dollison@massageheights.com
Dollison, Douglas M. Dollison, Amy Dollison-Johnson, Danette	DIG Johnston, LLC	5441 NW 86th St., Ste 300 Johnston, IA 50131	IA	515-278-0200	adollison@massageheights.com ddollison@massageheights.com dwight.dollison@massageheights.com diane.dollison@massageheights.com
Dollison, Douglas M. Dollison, Amy Dollison-Johnson, Danette	DIG West Des Moines, LLC	640 S. 50th St., Ste 1130 West Des Moines, IA 50265	IA	515-222-3102	adollison@massageheights.com ddollison@massageheights.com dwight.dollison@massageheights.com diane.dollison@massageheights.com
Dollison, Dwight and Diane	Dollison Family Enterprises, LLC	637 Lincoln Way, Ste 103 Ames, IA 50010	IA	515-232-7359	dwight.dollison@massageheights.com diane.dollison@massageheights.com
Evans, Wayne Evans, Shane	KWB Stone Oak, LP*	523 Med Court Suite 1 San Antonio, TX 78258	TX	210-981-1000	sevans@massageheights.com wevans@massageheights.com
Goebel, Cristina and Matt	MH Indy, LLC	9706 East 116 <sup>th</sup> Street, Fishers, IN 46037	IN	317-643-9600	cristina.goebel@massageheights.com mgoebel@massageheights.com
Goebel, Cristina and Matt	MH Indy, LLC	2721 E. 86th St., Suite 160 Indianapolis, IN 46240	IN	317-559-5910	cristina.goebel@massageheights.com mgoebel@massageheights.com
Goebel, Cristina and Matt	MH Indy, LLC	1438 West Main St., Suite 103 Carmel, IN 46032	IN	317-669-9710	cristina.goebel@massageheights.com mgoebel@massageheights.com
Gonzalez, Sabino Hooks, Audrey Ware, Aaron and Lucy	G & W Massage, LLC	90 Oak Drive, Ste H Lake Jackson, TX 77566	TX	979-292-8150	sgonzalez@massageheights.com ahooks@massageheights.com aware@massageheights.com lware@massageheights.com
Grossman, David and Travis	MH Cypress, LLC	25845 Northwest Freeway, Ste 1086-B Cypress, TX 77429	TX	832-497-1395	dgrossman@massageheights.com tochoa@massageheights.com
Grossman, David and Travis	MH Towne Lake, LLC	9935 Barker Cypress Rd, Cypress, TX 77433	TX	832-497-1393	dgrossman@massageheights.com tochoa@massageheights.com
Gustoff, Tom	MHBV Salon, LLC	305 Brookhaven Ave, Ste B1160 Atlanta, GA 30319	GA	404-647-0278	tgustoff@massageheights.com
Gustoff, Tom	MHBH Salon, LLC	2900 Peachtree Rd. NW, Ste 109 Atlanta, GA 30305	GA	404-846-0444	tgustoff@massageheights.com
He, Allison	Ally Boulevard LLC	600 W. Sam Houston Pkwy N, Ste 740 Houston, TX 77024	TX	713-467-3529	allisson.he@massageheights.com

Name	Entity Name	Address	State	Phone	Email
Higgins, Kim	KCH Massage, LLC	18240 Royalton Rd. Strongsville, OH 44136	OH	440-580-4520	kim.higgins@massageheights.com
Hirji, Raheel and Akhonzada, Fereshta	Hirji Akhonzada LLC	11008 Metcalf Ave. Overland Park, KS 66210	KS	913-663-5444	raheel.hirji@massageheights.com fereshta.akhonzada@massageheights.com
Holley, Wendy	WHMH Parkway Village, LLC	13410 Briar Forest Dr., Ste 198 Houston, TX 77077	TX	281-677-4290	wendy.holley@massageheights.com
Holley, Wendy	WHMH River Oaks LLC	2055 Westheimer Rd., Ste 155 Houston, TX 77098	TX	713-526-7529	wendy.holley@massageheights.com
Holley, Wendy Godwin, Tom	WHMH Shadow Creek, LLC	2810 Business Center Dr., Ste 118 Pearland, TX 77584	TX	832-448-7529	wendy.holley@massageheights.com tom.godwin@massageheights.com
Holt, II, Claude D.	The Wellness Retreat, LLC	7926 B Rea Rd. Charlotte, NC 28277	NC	704-749-5820	dholt@massageheights.com
Huber, Holly C. Huber, Heather	MVPenny, LLC	2830 Town Center Dr., Ste 125 New Braunfels, TX 78130	TX	830-302-2091	heather.huber@massageheights.com holly.huber@massageheights.com
Huber, Holly C. Huber, Heather	N/A	286 Singing Oaks Ste 101 Spring Branch, TX 78070	TX	830-743-9901	heather.huber@massageheights.com holly.huber@massageheights.com
Hyland, Bruce and Joyce	Hyland MH Retreats, LLC	143 Crocker Park Blvd. Westlake, OH 44145	OH	440-249-6898	bhyland@massageheights.com jhyland@massageheights.com
Innes, Kaitlyn and Jason	MH Riverview Retreat Management, LLC	4948 South Tamiami Trail Sarasota, FL 34231	FL	941-924-0338	jason.innes@massageheights.com kaitlyn.innes@massageheights.com
Johnson, Nathan and Christina	Johnson Family #2 LLC	11955 Dallas Pkwy, Ste 900 Frisco, TX 75034	TX	972-292-7685	christina.johnson@massageheights.com nathan.johnson@massageheights.com
Johnson, Nathan and Christina	Johnson Family LLC	6150 W. Eldorado Pkwy, Ste 160 McKinney, TX 75070	TX	469-424-0155	christina.johnson@massageheights.com nathan.johnson@massageheights.com
Johnson, Nathan and Christina	Johnson Family #3 LLC	3309 Dallas Pkwy, Ste 421 Plano, TX 75093	TX	972-424-7907	christina.johnson@massageheights.com nathan.johnson@massageheights.com
Kinsella, Patrick and Joseph Kelly	JPM Austin, Inc.	1680 U.S. 290 Austin, TX 78724	TX	512-461-9143	Joe.Kelly@massageheights.com Patrick.Kinsella@massageheights.com
Kohtala, Kasey Ryan Kohtala, Joonas	ACE & JK Corp.	2570 Blackmon Drive, Ste 350 Decatur, GA 30030	GA	404-380-1623	kasey.wolz@massageheights.com joonas.kohtala@massageheights.com
Goode, Trisha	Therapy Investments, LLC	3708 Ingersoll Ave. Des Moines, IA 50312	IA	515-255-7529	trisha.goode@massageheights.com
Meriel, Claire	Meriel Investments, Inc.	5403 FM 1960 W, Ste A Houston, TX 77069	TX	281-943-7529	claire.meriel@massageheights.com
Meriel, Claire	Meriel Investments, Inc.	3003 W. Holcombe Blvd., Ste A Houston, TX 77025	TX	281-299-3341	claire.meriel@massageheights.com
Michaylo, John W. Jensen, Leslie L.	The Del Vee Group, Inc.	230 Palladio Pkwy, Ste 1229 Folsom, CA 95630	CA	916-932-0399	john.michaylo@massageheights.com leslie.jensen@massageheights.com
Michaylo, John W. Jensen, Leslie L.	The Del Vee Group, Inc.	761 Pleasant Grove Blvd., Ste 120 Roseville, CA 95678	CA	916-772-9555	john.michaylo@massageheights.com leslie.jensen@massageheights.com
Misulic, Tatjana Cisneros, Lucio	LCM Enterprises, LLC	3642 King St. Alexandria, VA 22302	VA	703-688-7359	tmisulic@massageheights.com lcisneros@massageheights.com
Mizener, Allison	Aldilou West, LLC	1371 W. Warm Springs, Ste B Henderson, NV 89014	NV	702-431-1300	amizener@massageheights.com
Moore, Lisa A. and Bradley A.	Finding Serenity	5865 Sky Pond Dr., Ste G112 Loveland, CO 80538	CO	970-663-7529	bmoore@massageheights.com lmoore@massageheights.com
Moore, Lisa A. and Bradley A.	Finding Serenity 2, LLC	2912 Council Tree Ave., Ste 106 Fort Collins, CO 80525	CO	970-226-1521	lmoore@massageheights.com bmoore@massageheights.com
Nguyen, Pamela Cao, Don	N/A	5661 Fairmont Pkwy, Ste 100 Pasadena, TX 77505	TX	832-327-5088	pnguyen@massageheights.com
Nguyen, Pamela Cao, Don	Relaxbo, Inc.	2630 Gulf Freeway South, Ste E League City, TX 77573	TX	281-554-7359	pnguyen@massageheights.com

Name	Entity Name	Address	State	Phone	Email
O'Malley, Ronald Gumina, James	Resort Associates, L.L.C.	2157 Route 35, Ste 1B Sea Girt, NJ 08750	NJ	732-449-9500	ron.omalley@massageheights.com james.gumina@massageheights.com
Paladino, Rob	Thrive Daily, LLC	1925 Gunbarrel Rd., Ste 113 Chattanooga, TN 37421	TN	423-933-0200	rob.paladino@massageheights.com
Patel, Viral P. Patel, Francheska Patel, Ankur P. Patel, Vandana	AKAZ Enterprises, Inc.	9902 Gulf Coast Main St., Ste 105 Fort Myers, FL 33913	FL	239-908-4007	vpatel@massageheights.com apatel@massageheights.com
Peters, Mickey and Stephanie	Upside Consulting, LLC	103 Yale St., Ste 700 Houston, TX 77007	TX	713-864-2403	mpeters@massageheights.com speters@massageheights.com
Serdinsky, Neil	MH Lake Norman, LLC	19818 N. Cove Rd, Cornelius, NC 28031	NC	704-827-5000	nserdinsky@massageheights.com
Serio, Deanna	ADS Holdings, Inc.	10420 S. Eastern Ave., Ste 110 Henderson, NV 89052	NV	702-547-0006	dserio@massageheights.com
Shawger, David D. Carmody, Dale	MH 11:11, LLC	40 West Park Place, Ste 7 Morristown, NJ 07960	NJ	973-939-3999	dshawger@massageheights.com dcarmody@massageheights.com
Shawger, David Cerulli, Charles Weitzman, Maria	Renew DMC LLC	1204 Ulster Avenue Suite #2 Kingston, NY 12401	NY	845-203-2555	chas.cerulli@massageheights.com dshawger@massageheights.com maria.weitzman@massageheights.com
Shoptaugh, Michael and Barbara	Shoptaugh Investments	9288 Forrest Bluff View, Ste 110 Colorado Springs, CO 80923	CO	719-425-8110	mike.shoptaugh@massageheights.com barbara.shoptaugh@massageheights.com
Shoptaugh, Michael and Barbara	Shoptaugh Investments	5925 Dublin Blvd., Ste 130 Colorado Springs, CO 80923	CO	719-302-0561	mike.shoptaugh@massageheights.com barbara.shoptaugh@massageheights.com
Simmons, Ryan Zablan, Roque	N/A	6465 East Mockingbird Lane Dallas, TX 75214	TX	817-271-6868	ryan.simmons@massageheights.com
Simon, Mitchell D. and Deborah	Simon Adventures, LLC	3881 Alton Pkwy, Ste A Irvine, CA 92606	CA	949-383-5388	msimon@massageheights.com dsimon@massageheights.com
Simon, Mitchell D. and Deborah	Simon Adventures II, LLC	5800 Nave Dr., Ste H Novato, CA 94949	CA	415-483-8181	msimon@massageheights.com dsimon@massageheights.com
Simon, Mitchell D. and Deborah	Simon Adventures III, LLC	13925 City Center Dr., Ste 2043 Chino Hills, CA 91709	CA	909-590-4487	msimon@massageheights.com dsimon@massageheights.com
Simon, Mitchell D. and Deborah	Simon Adventures V, LLC	3810 Valley Centre Dr., Ste 901 San Diego, CA 92130	CA	858-794-4962	msimon@massageheights.com dsimon@massageheights.com
Simon, Mitchell and Debbie	Simon Adventures VI, LLC	130 North El Camino Real, Suite 5 Encinitas, CA 92024	CA	760-659-7500	msimon@massageheights.com dsimon@massageheights.com
Strmiska, Christine	CM Caloss, LLC	9231 W. Parmer Lane, Ste 103 Austin, TX 78717	TX	512-716-1303	cwright@massageheights.com
Terracina, Roy Franson, Glenn Evans, Wayne Evans, Shane	AT2 Cedar Park, LLC*	5001 183A Toll Rd, Cedar Park, TX 78613	TX	512-387-9840	rterraacina@massageheights.com gfranson@massageheights.com sevans@massageheights.com wevans@massageheights.com
Terracina, Roy Franson, Glenn Evans, Wayne Evans, Shane	AT2, LLC*	1911 Aldrich Street, Suite 170 Austin, TX 78723	TX	512-596-2236	rterraacina@massageheights.com gfranson@massageheights.com sevans@massageheights.com wevans@massageheights.com
Terracina, Roy Franson, Glenn Evans, Wayne Evans, Shane	AT2 Southpark Meadows, LLC*	9600 S. IH 35, Suite D-200 Austin, TX 78748	TX	512-200-7383	rterraacina@massageheights.com gfranson@massageheights.com sevans@massageheights.com wevans@massageheights.com
Walker, Margaret	Beste & Boss, Inc.	3777 Catclaw Drive Abilene, TX 79606	TX	325-695-0200	maggie.walker@massageheights.com
Wambugu, Patrick Muraya, Ann	Serenity Body & Spa Services, LLC	8600 Ward Parkway, Ste 2115 Kansas City, MO 64114	MO	816-778-0901	patrick.wambugu@massageheights.com ann.muraya@massageheights.com
Watkins, Amanda	Vanilubeen Limited	14286 Lincoln Street Thornton, CO 80023	CO	720-504-3003	manda.watkins@massageheights.com
Watts, Terry	Body Bliss LLC	2761 Del Paso Rd., Ste 100 Sacramento, CA 95678	CA	916-779-5389	terry.watts@massageheights.com



Name	Entity Name	Address	State	Phone	Email
Weatherford, Larry and Debbie	LDSJ Holdings, LLC	1875 Hwy 6, Ste 500 Sugar Land, TX 77478	TX	281-490-7529	dweatherford@massageheights.com lweatherford@massageheights.com
Weatherford, Larry and Debbie	LDSJ Holdings, LLC	1415 S. Voss Rd., Ste 150 Houston, TX 77057	TX	713-278-7529	dweatherford@massageheights.com lweatherford@massageheights.com
Welsh, Tracy and Kramer, Todd	Essential Therapy LLC	4201 42nd St. NE Cedar Rapids, IA 52404	IA	319-774-6397	tracy.welsh@massageheights.com todd.kramer@massageheights.com
Wright, Aaron and Jessica	Ronomi, LLC	970 NW Blue Pkwy Lee's Summit, MO 64086	MO	816-554-3438	jessica.wright@massageheights.com
Wright, Angela	Angelicspa, Inc.	3113 Florida Boulevard Delray Beach, FL 33483	FL	561-220-3849	angela.wright@massageheights.com

\*Some of these franchisees share common ownership with SWGI, Franchisor's parent company, but Franchisor and SWGI do not have controlling interest or management in the franchisees.

#### Current Franchisees as of Issuance Date:

Name	Entity Name	Address	State	Phone	Email
Bell, Todd and Rena	Bell Adventures El Dorado Market Place LLC	11955 Dallas Pkwy, Suite #900 Frisco, TX 75034	TX	972-853-4076	tbell@massageheights.com rbell@massageheights.com
Bell, Todd and Rena	Bell Adventures Stonebridge Ranch LLC	6150 Eldorado Pkwy, Suite #160 McKinney, TX 75070	TX	972-694-6863	tbell@massageheights.com rbell@massageheights.com
Bell, Todd and Rena	Bell Adventures Windhaven LLC	3309 Dallas Pkwy, #421 Plano, TX 75093	TX	972-734-1889	tbell@massageheights.com rbell@massageheights.com
Innes, Kaitlyn and Jason	MH Delray Beach LLC	420 E. Linton Blvd., Ste. 804 Delray Beach, FL 33483	FL	561-220-3849	jason.innes@massageheights.com kaitlyn.innes@massageheights.com
Savage, Eric	Freedom Spas of Sacramento, LLC	230 Palladio Pkwy, #1229 Folsom, CA 95630	CA	916-295-6974	eric.savage@massageheights.com
Savage, Eric	Freedom Spas of Sacramento, LLC	761 Pleasant Grove Boulevard, Suite 120 Roseville, CA 95678	CA	916-302-4374	eric.savage@massageheights.com
Umoh, Imoh J.	Buy Build LLC	2570 Blackmon Drive, Ste 340 Decatur, GA 30033	GA	404-948-5807	james.umoh@massageheights.com

#### Current Franchisees with Unopened Outlets as of December 31, 2023:

Name	Entity Name	Address	State	Phone	Email
Dancer, Brad and Jaime	MH Holdings of Naples, LLC	TBD	FL	TBD	bdancer@massageheights.com jdancer@massageheights.com
O'Malley, Ronald Gumina, James	Resort Associates, L.L.C.	TBD	FL	TBD	ron.omalley@massageheights.com james.gumina@massageheights.com
Manion, James and Eshelle	N/A	TBD – Las Vegas, NV	NV	TBD	james.manion@massageheights.com eshelle.manion@massageheights.com
Simmons, Ryan	N/A	TBD – Dallas, TX	TX	TBD	ryan.simmons@massageheights.com
Terracina, Roy Franson, Glenn Evans, Wayne Evans, Shane	AT2, LLC*	TBD – Austin, TX	TX	TBD	rterracina@massageheights.com gfranson@massageheights.com sevans@massageheights.com wevans@massageheights.com
Terracina, Roy Franson, Glenn Evans, Wayne Evans, Shane	AT2, LLC*	TBD – Austin, TX	TX	TBD	rterracina@massageheights.com gfranson@massageheights.com sevans@massageheights.com wevans@massageheights.com
Terracina, Roy Franson, Glenn	AT2, LLC*	TBD – Austin, TX	TX	TBD	rterracina@massageheights.com gfranson@massageheights.com

Evans, Wayne Evans, Shane					sevans@massageheights.com wevans@massageheights.com
Terracina, Roy Franson, Glenn Evans, Wayne Evans, Shane	AT2, LLC*	TBD – Austin, TX	TX	TBD	rterracina@massageheights.com gfranson@massageheights.com sevans@massageheights.com wevans@massageheights.com
Wambugu, Patrick Muraya, Ann	Pattan Holdings LLC	TBD – Overland Park, KS	KS	TBD	patrick.wambugu@massageheights.com ann.muraya@massageheights.com

\*Some of these franchisees share common ownership with SWGI, Franchisor’s parent company, but Franchisor and SWGI do not have controlling interest or management in the franchisees.

### Current Franchisees with Unopened Outlets as of Issuance Date:

Name	Entity Name	Address	State	Phone	Email
Rogers, Russell and Norelia	N/A	TBD – Coppell, Texas	TX	TBD	russell.james.rogers@gmail.com noreliarogers@gmail.com
Rogers, Russell and Norelia	N/A	TBD – Colleyville, Texas	TX	TBD	russell.james.rogers@gmail.com noreliarogers@gmail.com
McMurray, Nicholas and Jackline	N/A	TBD – Sherman Oaks, California	CA	TBD	nicholas.mcmurray@massageheights.com jackline.mcmurray@massageheights.com

### Former Franchisees:

The name and last known address of every franchisee who had a Massage Heights Franchise transferred, terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under our Franchise Agreement during the period January 1, 2023 to December 31, 2023, or who has not communicated with us within ten weeks of the Issuance Date of this Franchise Disclosure Document are listed below. If you buy this Franchise, your contact information may be disclosed to other buyers when you leave the Franchise System.

### List of Former Franchisees as of December 31, 2023:

Notes	Name	Entity Name	State	Phone	Email
Transferred*	Evans, Wayne Evans, Shane	Hufstetler, Evans & Franson, LLC	TX	210-379-5880	wevans@massageheights.com sevans@massageheights.com
Transferred*	Evans, Wayne Evans, Shane	MH TPC, LLC	TX	210-379-5880	wevans@massageheights.com sevans@massageheights.com
Expired – Not Renewed	Hadall, Kevin Meeks, Greg	Awesometown, LLC	TX	972-464-1562	kevin.hadall@gmail.com meeks.greg@gmail.com
Transferred	Leehey, Becky Hoyman, Kelly	Too Pure Too Be Pink, Inc.	CA	805-358-4236	beckyleehey@usa.net khoyman@msn.com
Transferred	Lopez, Michael C.	BrandCamy, Inc.	TX	210-688-5493	mlopez@brandcamy.com
Transferred	Lopez, Michael C.	BrandCamy, Inc.	TX	210-688-5493	mlopez@brandcamy.com
Transferred	Murray, David and Karlien	Paco Wellness Inc.	TX	817-264-1399	darmurray1@gmail.com
Transferred	Radebaugh, James Radebaugh, Sondra	The Radebaugh Group, LLC	OH	614-374-0389	jamesradebaugh@yahoo.com
Transferred	Reimann, Alan and Janet	CHATTZ Massage, Inc.	TN	423-304-2745	alan.reimann52@gmail.com
Terminated	Walker, Denise	GREa, LLC	TX	512-787-2910	deniseshea95@gmail.com

Ceased Operations – Other*	Watkins, Amanda Zeller, Tara	Suzlou Limited	CO	970-219-4055	manda.watkins@yahoo.com
Terminated*	Wright, Aaron and Jessica	Ronomi, LLC	MO	515-988-6425	aaron.wright@massageheights.com jessica.wright@massageheights.com

\*These franchisees closed one outlet, but currently operate other outlets.

**List of Former Franchisees as of Issuance Date:**

Notes	Name	Entity Name	State	Phone	Email
Transferred	Johnson, Christina and Nathan	Johnson Family LLC	TX	909-438-1888	johnsonfamilyllc2021@gmail.com
Transferred	Johnson, Christina and Nathan	Johnson Family #2 LLC	TX	909-438-1888	johnsonfamilyllc2021@gmail.com
Transferred	Johnson, Christina and Nathan	Johnson Family #3 LLC	TX	909-438-1888	johnsonfamilyllc2021@gmail.com
Transferred	Kohtala, Kasey and Joonas	Ace and JK Corp.	GA	404-395-6120	wolzkr@hotmail.com
Terminated	Leehey, Becky Hoyman, Kelly	Too Pure Too Be Pink, Inc.	CA	805-358-4236	beckyleeyhey@usa.net khoyman@msn.com
Transferred	Michaylo, John W. Jensen, Leslie L.	The Del Vee Group, Inc.	CA	623-258-1947	jmichaylo@gmail.com leslie.jensen@massageheights.com
Transferred	Michaylo, John W. Jensen, Leslie L.	The Del Vee Group, Inc.	CA	623-258-1947	jmichaylo@gmail.com leslie.jensen@massageheights.com
Transferred	Wright, Angela	ANGELICSPA,INC.	FL	954-290-9145	angelawright89@yahoo.com

*[Remainder of page intentionally left blank.]*

**EXHIBIT D**

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

## STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS

<p><b><u>CALIFORNIA</u></b>  <u>State Administrator and Agent for Service of Process:</u>            Commissioner            Department of Financial Protection and Innovation            320 W. 4<sup>th</sup> Street, #750            Los Angeles, CA 90013            (213) 576-7500            (866) 275-2677</p> <p><b><u>HAWAII</u></b>  <u>Administrator:</u>            Commissioner of Securities of the State of Hawaii            335 Merchant Street, Room 203            Honolulu, HI 96813            (808) 586-2722</p> <p><u>Agent for Service of Process:</u>            Commissioner of Securities of the State of Hawaii            Department of Commerce and Consumer Affairs            Business Registration Division            335 Merchant Street, Room 203            Honolulu, HI 96813            (808) 586-2722</p> <p><b><u>ILLINOIS</u></b>            Illinois Attorney General            Chief, Franchise Division            500 S. Second Street            Springfield, IL 62706            (217) 782-4465</p> <p><b><u>INDIANA</u></b>            Secretary of State            Securities Division            Room E-018            302 W. Washington Street            Indianapolis, IN 46204            (317) 232-6681</p>	<p><b><u>MARYLAND</u></b>  <u>Administrator:</u>            Office of the Attorney General            Securities Division            200 St. Paul Place            Baltimore, MD 21202            (410) 576-6360</p> <p><u>Agent for Service of Process:</u>            Maryland Securities Commissioner            200 St. Paul Place            Baltimore, MD 21202-2020</p> <p><b><u>MICHIGAN</u></b>            Michigan Department of Attorney General            Consumer Protection Division            525 W. Ottawa Street            Lansing, MI 48913            (517) 373-7117</p> <p><b><u>MINNESOTA</u></b>            Department of Commerce            Commissioner of Commerce            85 Seventh Place East, Suite 280            St. Paul, MN 55101-3165            (651) 539-1600</p> <p><b><u>NEW YORK</u></b>  <u>Administrator:</u>            NYS Department of Law            Investor Protection Bureau            28 Liberty Street, 21<sup>st</sup> Floor            New York, NY 10005            (212) 416-8222</p> <p><u>Agent for Service of Process:</u>            Secretary of State            99 Washington Avenue            Albany, NY 12231</p> <p><b><u>NORTH DAKOTA</u></b>            North Dakota Securities Department            State Capitol, Fifth Floor, Dept. 414            600 E. Boulevard Avenue            Bismarck, ND 58505-0510            (701) 328-4712</p>	<p><b><u>RHODE ISLAND</u></b>            Department of Business Regulation            1511 Pontiac Avenue, Bldg. 68-2            Cranston, RI 02920            (401) 462-9527</p> <p><b><u>SOUTH DAKOTA</u></b>            Division of Insurance            Securities Regulation            124 South Euclid, Suite 104            Pierre, SD 57501            (605) 773-3563</p> <p><b><u>VIRGINIA</u></b>  <u>Administrator:</u>            State Corporation Commission            Division of Securities and Retail Franchising            1300 E. Main Street, 9<sup>th</sup> Floor            Richmond, VA 23219</p> <p><u>Agent for Service of Process:</u>            Clerk of the State Corporation Commission            1300 E. Main Street, 1<sup>st</sup> Floor            Richmond, VA 23219</p> <p><b><u>WASHINGTON</u></b>  <u>State Administrator:</u>            Department of Financial Institutions            Securities Division            P.O. Box 9033            Olympia, WA 98507            (360) 902-8760</p> <p><u>Agent for Service for Process:</u>            Director of Department of Financial Institutions            Securities Division            150 Israel Road SW            Tumwater, WA 98501</p> <p><b><u>WISCONSIN</u></b>            Department of Financial Institutions            Division of Securities            201 W. Washington Avenue            Madison, WI 53703            (608) 266-3364</p>
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Rev. 110321

**EXHIBIT E**

**STATE ADDENDA AND AGREEMENT RIDERS**



**STATE ADDENDA AND AGREEMENT RIDERS**  
**ADDENDUM TO FRANCHISE AGREEMENT, SUPPLEMENTAL AGREEMENTS, AND FRANCHISE**  
**DISCLOSURE DOCUMENT FOR CERTAIN STATES FOR MASSAGE HEIGHTS FRANCHISING, LLC**

The following modifications are made to the Massage Heights Franchising, LLC (“**Franchisor**,” “**us**,” “**we**,” or “**our**”) Franchise Disclosure Document (“**FDD**”) given to franchisee (“**Franchisee**,” “**you**,” or “**your**”) and may supersede, to the extent then required by valid applicable state law, certain portions of the Franchise Agreement between you and us dated **\*\*\***, 20**\*\*\*** (“**Franchise Agreement**”). When the term “**Franchisor’s Choice of Law State**” is used, it means Texas. When the term “**Supplemental Agreements**” is used, it means “None.”

Certain states have laws governing the franchise relationship and franchise documents. Certain states require modifications to the FDD, Franchise Agreement and other documents related to the sale of a franchise. This State-Specific Addendum (“**State Addendum**”) will modify these agreements to comply with the state’s laws. The terms of this State Addendum will only apply if you meet the requirements of the applicable state independently of your signing of this State Addendum. The terms of this State Addendum will override any inconsistent provision of the FDD, Franchise Agreement or any Supplemental Documents. This State Addendum only applies to the following states: California, Hawaii, Illinois, Iowa, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Ohio, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

If your state requires these modifications, you will sign this State Addendum along with the Franchise Agreement and any Supplemental Agreements.

## CALIFORNIA

The California Franchise Investment Law requires a copy of all proposed agreements relating to the sale of the Franchise be delivered together with the FDD.

California Corporations Code Section 31125 requires us to give to you an FDD approved by the Department of Financial Protection and Innovation before we ask you to consider a material modification of your Franchise Agreement.

The Franchise Agreement contains provisions requiring litigation with the costs being awarded to the prevailing party. The litigation will occur in Texas. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of the Franchise Agreement or Supplemental Agreements restricting venue to a forum outside the State of California. The Franchise Agreement contains a mediation provision that provides for mediation in Texas. The parties shall each bear their own costs of mediation and shall share equally the filing fee and the mediator's fees.

The Franchise Agreement requires the application of the laws of the State of Texas. This provision may not be enforceable under California law.

Neither Franchisor nor any other person listed in Item 2 of the FDD is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.

California Business and Professions Code Sections 20000 through 20043 provide rights to you concerning termination, transfer, or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the California Franchise Investment Law, the California Franchise Investment Law will control.

The Franchise Agreement provides for termination upon bankruptcy. Any such provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. SEC. 101 et seq.).

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

Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable. The Franchise Agreement provides for liquidated damages. Such a provision may not be enforceable.

You must sign a general release of claims if you renew or transfer your Franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516).

Our website has not been reviewed or approved by the California Department of Financial Protection and Innovation. Any complaints concerning the content of this website may be directed to the California Department of Financial Protection and Innovation at [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

Item 6 of the FDD is amended to state the highest interest rate allowed by law in California is 10% annually.

The Franchise Agreement contains a provision shortening the statute of limitations. This provision violates Corporations Code section 31512, since Corporations Code section 31303 provides a four-year statute of limitations and 31304 provides a two-year statute of limitations for claims under the California Franchise Investment Law. Section 18.M of the Franchise Agreement is hereby amended to extend the statute of limitations per California Franchise Investment Law to provide for a four-year statute of limitations for claims arising under Corporations Code Section 31512 and for a two-year statute of limitations for claims arising under Corporations Code 31304.

The Franchise Agreement is hereby amended to state: No disclaimer, questionnaire, clause, or statement signed by a franchisee or prospective franchisee in connection with the commencement of the franchise relationship shall be construed or interpreted as waiving any claim of fraud in the inducement, whether common law or statutory, or as disclaiming reliance on or the right to rely upon any statement made or information provided by any franchisor, broker or other person acting on behalf of the franchisor that was a material inducement to a franchisee's investment. This provision supersedes any other or inconsistent term of any document executed in connection with the franchise.

The Franchise Agreement contains a provision requiring you to waive your right to punitive or exemplary damages against the franchisor or any of its representatives, limiting your recovery to actual damages. Under California Corporations Code section 31512, these provisions are not enforceable in California for any claims you may have under the California Franchise Investment Law.

The financial performance representation does not reflect the costs of sales, operating expenses, or other costs or expenses that must be deducted from the gross revenue or gross sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating your MH Business. Franchisees or former franchisees, listed in the Franchise Disclosure Document, may be one source of this information.

Section 1.7 of the Franchise Agreement is hereby amended to remove the following language: "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 or in Franchisor's Franchise Disclosure Document."

Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: "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."

The Franchise Disclosure Questionnaire in **Exhibit H** of this Disclosure Document is hereby deleted and is not to be completed by a franchise applicant. Should a franchise applicant answer the foregoing question, the franchisor will disregard the answer as if it had not been submitted and will not rely on any such representations inferred from the franchise applicant's answer.

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

#### Fee Deferral

The Department of Financial Protection and Innovation requires that the franchisor defer the collection of all initial fees from California franchisees until the franchisor has completed all its pre-opening obligations and franchisee is open for business.

**The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the commissioner.**

## HAWAII

The following is added to the Cover Page:

**THIS FRANCHISE WILL BE/HAS BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED IN THIS FRANCHISE DISCLOSURE DOCUMENT IS TRUE, COMPLETE AND NOT MISLEADING.**

**THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO YOU OR SUBFRANCHISOR AT LEAST SEVEN (7) DAYS PRIOR TO THE EXECUTION BY YOU OR SUBFRANCHISOR OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN (7) DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY YOU, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.**

**THIS FRANCHISE DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH US AND YOU.**

Registered agent in the state authorized to receive service of process:

Commissioner of Securities of the State of Hawaii  
Department of Commerce and Consumer Affairs  
Business Registration Division  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813

The status of the Franchisor's franchise registrations in the states which require registration is as follows:

1. States in which this proposed registration is effective are listed in **Exhibit I** of the FDD on the page entitled, "State Effective Dates."
2. States which have refused, by order or otherwise, to register these Franchises are: None
3. States which have revoked or suspended the right to offer the Franchises are: None
4. States in which the proposed registration of these Franchises has been withdrawn are: None

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



Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: "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."

## ILLINOIS

Sections 4 and 41 and Rule 608 of the Illinois Franchise Disclosure Act states that court litigation must take place before Illinois federal or state courts and all dispute resolution arising from the terms of this Agreement or the relationship of the parties and conducted through arbitration or litigation shall be subject to Illinois law. The FDD, Franchise Agreement and Supplemental Agreements are amended accordingly.

The governing law or choice of law clause described in the FDD and contained in the Franchise Agreement and Supplemental Agreements is not enforceable under Illinois law. This governing law clause shall not be construed to negate the application of Illinois law in all situations to which it is applicable.

Section 41 of the Illinois Franchise Disclosure Act states that “any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void.” The Franchise Agreement is amended accordingly. To the extent that the Franchise Agreement would otherwise violate Illinois law, such Agreement is amended by providing that all litigation by or between you and us, arising directly or indirectly from the Franchise relationship, will be commenced and maintained in the state courts of Illinois or, at our election, the United States District Court for Illinois, with the specific venue in either court system determined by appropriate jurisdiction and venue requirements, and Illinois law will pertain to any claims arising under the Illinois Franchise Disclosure Act.

Item 17.v, Choice of Forum, of the FDD is revised to include the following: “provided, however, that the foregoing shall not be considered a waiver of any right granted upon you by Section 4 of the Illinois Franchise Disclosure Act.”

Item 17.w, Choice of Law, of the FDD is revised to include the following: “provided, however, that the foregoing shall not be considered a waiver of any right granted upon you by Section 4 of the Illinois Franchise Disclosure Act”.

The termination and non-renewal provisions in the Franchise Agreement and the FDD may not be enforceable under Sections 19 and 20 of the Illinois Franchise Disclosure Act.

Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: “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.

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

Under Section 705/27 of the Illinois Franchise Disclosure Act, no action for liability under the Illinois Franchise Disclosure Act can be maintained unless brought before the expiration of three (3) years after the act or transaction constituting the violation upon which it is based, the expiration of one (1) year after you become aware of facts or circumstances reasonably indicating that you may have a claim for

relief in respect to conduct governed by the Act, or 90 days after delivery to you of a written notice disclosing the violation, whichever shall first expire. To the extent that the Franchise Agreement is inconsistent with the Illinois Franchise Disclosure Act, Illinois law will control and supersede any inconsistent provision(s).

#### Fee Deferral

Item 5 and Item 7 of the Franchise Disclosure Document and Section 5 of the Franchise Agreement are hereby amended to state that the Initial Franchise Fee will be deferred until the Franchisor completes all of its training and other initial obligations to Franchisee and the Franchisee is open for business.

## INDIANA

Item 8 of the FDD is amended to add the following:

Under Indiana Code Section 23-2-2.7-1(4), we will not accept any rebates from any person with whom you do business or associate in relation to transactions between you and the other person, other than for compensation for services rendered by us, unless the rebate is properly accounted for and submitted to you.

Item 17 of the FDD is amended to add the following:

Indiana Code 23-2-2.7-1(7) makes it unlawful for us to unilaterally terminate your Franchise Agreement unless there is a material violation of the Franchise Agreement and termination is not in bad faith.

Indiana Code 23-2-2.7-1(5) prohibits us to require you to agree to a prospective general release of claims subject to the Indiana Deceptive Franchise Practices Act. The "Summary" column in Item 17.r. of the FDD is deleted and the following is inserted in its place: No competing business for two (2) years within the Territory.

The "Summary" column in Item 17.t. of the FDD is deleted and the following is inserted in its place:

Notwithstanding anything to the contrary in this provision, you do not waive any right under the Indiana Statutes with regard to prior representations made by us.

The "Summary" column in Item 17.v. of the FDD is deleted and the following is inserted in its place:

Litigation regarding Franchise Agreement in Indiana; other litigation in Franchisor's Choice of Law State. This language has been included in this Franchise Disclosure Document as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement, including all venue provisions, is fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement and all other documents signed by them, including but not limited to, all venue, choice-of-law, mediation and litigation provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

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

The "Summary" column in Item 17.w. of the FDD is deleted and the following is inserted in its place:

Indiana law applies to disputes covered by Indiana franchise laws; otherwise, Franchisor's Choice of Law State law applies.

Despite anything to the contrary in the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Indiana:

1. The laws of the State of Indiana supersede any provisions of the FDD, the Franchise Agreement, or Franchisor's Choice of Law State law, if such provisions are in conflict with Indiana law.
2. The prohibition by Indiana Code 23-2-2.7-1(7) against unilateral termination of the Franchise without good cause or in bad faith, good cause being defined under law as including any material breach of the Franchise Agreement, will supersede the provisions of the Franchise Agreement relating to termination for cause, to the extent those provisions may be inconsistent with such prohibition.
3. Any provision in the Franchise Agreement that would require you to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to relieve any person from liability imposed by the Indiana Deceptive Franchise Practices Law is void to the extent that such provision violates such law.
4. The covenant not to compete that applies after the expiration or termination of the Franchise Agreement for any reason is hereby modified to the extent necessary to comply with Indiana Code 23-2-2.7-1 (9).
5. The following provision will be added to the Franchise Agreement:

No Limitation on Litigation. Despite the foregoing provisions of this Agreement, any provision in the Agreement which limits in any manner whatsoever litigation brought for breach of the Agreement will be void to the extent that any such contractual provision violates the Indiana Deceptive Franchise Practices Law.

6. Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: "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."

**IOWA**

Any provision in the Franchise Agreement or Compliance Questionnaire which would require you to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to relieve any person from liability imposed by the Iowa Business Opportunity Promotions Law (Iowa Code Ch. 551A) is void to the extent that such provision violates such law.

The following language will be added to the Franchise Agreement:

**NOTICE OF CANCELLATION**

\_\_\_\_\_ (enter date of transaction)

You may cancel this transaction, without penalty or obligation, within three (3) business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence or business address, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within twenty (20) days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to Massage Heights Franchising, LLC, ATTN: Legal Department, 13750 US Hwy 281 North, Suite 925, San Antonio, Texas 78232, or send a fax to Massage Heights Franchising, LLC, ATTN: Legal Department, at (210) 402-3228 not later than midnight of the third business day after the Effective Date.

I hereby cancel this transaction.

Franchisee: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

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



## MARYLAND

### AMENDMENTS TO FRANCHISE DISCLOSURE DOCUMENT AND FRANCHISE AGREEMENTS

Item 17 of the FDD and the Franchise Agreement are amended to state: “The general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.”

Representations in the Franchise Agreement are not intended to, nor shall they act as, a release, estoppel, or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

Item 17 of the FDD and sections of the Franchise Agreement are amended to state that you may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the Franchise.

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

Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: “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.”

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

The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law (11 U.S.C.A Sec. 101 et seq.).

#### Fee Deferral

Item 5 and 7 of the Franchise Disclosure Document and Section 5 of the Franchise Agreement are hereby amended to state that based upon the Franchisor’s financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement.

## MICHIGAN

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

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

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

obligations.

(iv) your or proposed transferee's failure to pay any sums owing to us or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.

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

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

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

Any questions regarding this notice should be directed to: State of Michigan

Department of Attorney General

Consumer Protection Division Attn: Franchise

670 Law Building 525 W. Ottawa Street

Lansing, Michigan 48913

Telephone Number: (517) 373-7117

## MINNESOTA

Despite anything to the contrary in the Franchise Agreement, the following provisions will supersede and apply to all Franchises offered and sold in the State of Minnesota:

1. Any provision in the Franchise Agreement which would require you to assent to a release, assignment, novation, or waiver that would relieve any person from liability imposed by Minnesota Statutes, Sections 80C.01 to 80C.22 will be void to the extent that such contractual provision violates such law.
2. Minnesota Statute Section 80C.21 and Minnesota Rule 2860.4400J prohibit the franchisor from requiring litigation to be conducted outside of Minnesota. In addition, nothing in the FDD or Franchise Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of Minnesota.
3. Minn. Rule Part 2860.4400J prohibits a franchisee from waiving his rights to a jury trial or waiving his rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction, or consenting to liquidated damages, termination penalties or judgment notes. Any provision in the Franchise Agreement which would require you to waive your rights to any procedure, forum or remedies provided for by the laws of the State of Minnesota is deleted from any agreement relating to Franchises offered and sold in the State of Minnesota; provided, however, that this paragraph will not affect the obligation in the Franchise Agreement relating to mediation.
4. With respect to Franchises governed by Minnesota law, we will comply with Minnesota Statute Section 80C.14, Subds. 3, 4 and 5, which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement; and that consent to the transfer of the Franchise will not be unreasonably withheld.
5. Item 13 of the FDD is hereby amended to state that we will protect your rights under the Franchise Agreement to use the Marks, or indemnify you from any loss, costs, or expenses arising out of any third-party claim, suit or demand regarding your use of the Marks, if your use of the Marks is in compliance with the provisions of the Franchise Agreement and our System standards.
6. Minnesota Rule 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release. As a result, the FDD and the Franchise Agreement, which require you to sign a general release prior to renewing or transferring your Franchise, are hereby deleted from the Franchise Agreement, to the extent required by Minnesota law.
7. No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.
8. The following language will appear as a new paragraph of the Franchise Agreement:

No Abrogation. Pursuant to Minnesota Statutes, Section 80C.21, nothing in the dispute resolution section of this Agreement will in any way abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80.C.

9. Minnesota Statute Section 80C.17 states that no action for a violation of Minnesota Statutes, Sections 80C.01 to 80C.22 may be commenced more than three (3) years after the cause of action accrues. To the extent that the Franchise Agreement conflicts with Minnesota law, Minnesota law will prevail.

10. Item 6 of the FDD and Section 6.11 of the Franchise Agreement is hereby amended to limit the Insufficient Funds Charge to \$30 per occurrence pursuant to Minnesota Statute 604.113.

11. Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: "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."

## NEW YORK

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

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

2. The following is added at the end of Item 3:

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

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

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

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

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including without limitation, actions affecting a license as a real estate broker or sales agent.

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

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

4. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”:

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

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

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

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

7. Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: “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.”



## **NORTH DAKOTA**

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring that you sign a general release, estoppel, or waiver as a condition of renewal and/or assignment may not be enforceable as they relate to releases of the North Dakota Franchise Investment Law.

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring resolution of disputes to be outside North Dakota may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Sections of the FDD, the Franchise Agreement, and the Supplemental Agreements relating to choice of law may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to liquidated damages and/or termination penalties may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to a waiver of trial by jury may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Any sections of the FDD, the Franchise Agreement, and the Supplemental Agreements requiring you to consent to a waiver of exemplary and punitive damages may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Item 17(r) of the FDD and Section 14 of the Franchise Agreement disclose the existence of certain covenants restricting competition to which Franchisee must agree. The Commissioner has held that covenants restricting competition contrary to Section 9-08-06 of the North Dakota Century Code, without further disclosing that such covenants may be subject to this statute, are unfair, unjust, or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. The FDD and the Franchise Agreement are amended accordingly to the extent required by law.

Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: "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."

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

Franchise Fee Deferral:

Items 5 and 7 of the Franchise Disclosure Document and Section 5.1 of the Franchise Agreement regarding payment of the initial franchise fee are amended to state that the franchise fee will be deferred until all initial obligations owed to the Franchisee by the Franchisor have been fulfilled and the franchisee has commenced doing business pursuant to the Franchise Agreement.

**OHIO**

The following language will be added to the front page of the Franchise Agreement:

You, the purchaser, may cancel this transaction at any time prior to midnight of the fifth business day after the date you sign this agreement. See the attached notice of cancellation for an explanation of this right.

Initials\_\_\_\_ Date\_\_\_\_

**NOTICE OF CANCELLATION**

\_\_\_\_(enter date of transaction)

You may cancel this transaction, without penalty or obligation, within five (5) business days from the above date. If you cancel, any payments made by you under the agreement, and any negotiable instrument executed by you will be returned within ten (10) business days following the seller’s receipt of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your business address all goods delivered to you under this agreement; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of them without further obligation. If you fail to make the goods available to the seller, or if you agree to return them to the seller and fail to do so, then you remain liable for the performance of all obligations under this agreement. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to Massage Heights Franchising, LLC, ATTN: Legal Department, 13750 US Hwy 281 North, Suite 925, San Antonio, Texas 78232, or send a fax to Massage Heights Franchising, LLC, ATTN: Legal Department, at (210) 402-3228 not later than midnight of the fifth business day after the Effective Date.

I hereby cancel this transaction.

Franchisee:

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

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

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

Its: \_\_\_\_\_

## **RHODE ISLAND**

§ 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.” The FDD, the Franchise Agreement, and the Supplemental Agreements are amended accordingly to the extent required by law.

The above language has been included in this FDD as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement and the Supplemental Agreements, including all choice of law provisions, are fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement, the Supplemental Agreements, and all other documents signed by them, including but not limited to, all venue, choice-of-law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.

Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: “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.”

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

## **SOUTH DAKOTA**

Intentionally left blank.

## **VIRGINIA**

Item 17(h). The following is added to Item 17(h):

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

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the FDD for Massage Heights Franchising, LLC for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure. The following statements are added to Item 8 and Item 17.h.

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

Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: “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.”

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

## WASHINGTON

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

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any litigation or mediation involving a franchise purchased in Washington, the venue or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the litigation or mediation, or as determined by the mediator at the time of mediation. In addition, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

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

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: "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."

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming

reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**Use of Franchise Brokers.** The franchisor uses the services of franchise brokers to assist in selling franchises. A franchise broker represents the franchisor and is paid a fee for referring prospects to the franchisor and/or selling the franchise. Do not rely only on the information provided by a franchise broker about a franchise. Do your own investigation by contacting the franchisor's current and former franchisees to ask them about their experience with the franchisor.

#### Fee Deferral

In lieu of an impound of franchise fees, the Franchisor will not require or accept the payment of any initial franchise fees until the franchisee has (a) received all initial training that it is entitled to under the franchise agreement or offering circular, and (b) is open for business.



## **WISCONSIN**

The Wisconsin Fair Dealership Law, Chapter 135 of the Wisconsin Statutes supersedes any provision of the Franchise Agreement if such provision is in conflict with that law. The Franchise Disclosure Document, the Franchise Agreement and the Supplemental Agreements are amended accordingly.

Section 22(1)-(5) of the Franchise Agreement is hereby deleted in its entirety. For clarity, the following provision in Section 22 of the Franchise Agreement shall remain in full force and effect: "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.

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

**APPLICABLE ADDENDA**

If any one of the preceding Addenda for specific states (“**Addenda**”) is checked as an “Applicable Addenda” below, then that Addenda shall be incorporated into the Franchise Disclosure Document, Franchise Agreement and any other specified agreement(s) entered into by us and the undersigned Franchisee. To the extent any terms of an Applicable Addenda conflict with the terms of the Franchise Disclosure Document, Franchise Agreement and other specified agreement(s), the terms of the Applicable Addenda shall supersede the terms of the Franchise Agreement.

- |                                     |                                       |                                       |
|-------------------------------------|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> California | <input type="checkbox"/> Michigan     | <input type="checkbox"/> Rhode Island |
| <input type="checkbox"/> Hawaii     | <input type="checkbox"/> Minnesota    | <input type="checkbox"/> South Dakota |
| <input type="checkbox"/> Illinois   | <input type="checkbox"/> New York     | <input type="checkbox"/> Virginia     |
| <input type="checkbox"/> Iowa       | <input type="checkbox"/> North Dakota | <input type="checkbox"/> Washington   |
| <input type="checkbox"/> Indiana    | <input type="checkbox"/> Ohio         | <input type="checkbox"/> Wisconsin    |
| <input type="checkbox"/> Maryland   |                                       |                                       |

**FRANCHISOR:**

**Massage Heights Franchising, LLC**

By: \_\_\_\_\_  
Shane Evans, Chief Executive Officer

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

**FRANCHISEE:**

\*\*\*

By: \_\_\_\_\_  
\*\*\*, \*\*\*

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

By: \_\_\_\_\_  
\*\*\*, \*\*\*

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

Rev. 050918

**Exhibit F**

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## EXHIBIT G

### CONTRACTS FOR USE WITH THE MASSAGE HEIGHTS FRANCHISE

The following contracts contained in **Exhibit G** are contracts that Franchisee is required to utilize or execute after signing the Franchise Agreement in the operation of the Massage Heights Business. The following are the forms of contracts that Massage Heights Franchising, LLC uses as of the Issuance Date of this Franchise Disclosure Document. If they are marked "Sample," they are subject to change at any time.

## Exhibit G-1

### MASSAGE HEIGHTS FRANCHISE

#### SAMPLE GENERAL RELEASE AGREEMENT

#### WAIVER AND RELEASE OF CLAIMS

This Waiver and Release of Claims (“**Release**”) is made as of **\*\*\***, 20**\*\*\*** by **\*\*\***, a(n) **\*\*\*** (“**Franchisee**”), and each individual holding an ownership interest in Franchisee (collectively with Franchisee, “**Releasor**”) in favor of Massage Heights Franchising, LLC, a Texas limited liability company (“**Franchisor**,” and together with Releasor, the “**Parties**”).

**WHEREAS**, Franchisor and Franchisee have entered into a Franchise Agreement (“**Agreement**”) pursuant to which Franchisee was granted the right to own and operate a Massage Heights business;

**WHEREAS**, (Franchisee has notified Franchisor of its desire to transfer the Agreement and all rights related thereto, or an ownership interest in Franchisee, to a transferee/enter into a renewal franchise agreement/amend the Agreement) or (the Agreement is being terminated/or indicate other reason for the requirement of this waiver and release), and Franchisor has consented to such (transfer/renewal franchise agreement/amendment/termination/other reason); and

**WHEREAS**, as a condition to Franchisor’s consent to (transfer the Agreement/enter into a renewal franchise agreement/amend the Agreement/terminate the Agreement/other reason), Releasor has agreed to execute this Release upon the terms and conditions stated below.

**NOW, THEREFORE**, in consideration of Franchisor’s consent, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, Releasor hereby agrees as follows:

1. **Representations and Warranties.** Releasor represents and warrants that it is duly authorized to enter into this Release and to perform the terms and obligations herein contained, and has not assigned, transferred, or conveyed, either voluntarily or by operation of law, any of its rights or claims against Franchisor or any of the rights, claims, or obligations being terminated and released hereunder. Each individual executing this Release on behalf of Franchisee represents and warrants that he/she is duly authorized to enter into and execute this Release on behalf of Franchisee. Releasor further represents and warrants that all individuals that currently hold a direct or indirect ownership interest in Franchisee are signatories to this Release.

2. **Release.** Releasor and its subsidiaries, affiliates, parents, divisions, successors and assigns, and all persons or firms claiming by, through, under, or on behalf of any or all of them, hereby release, acquit, and forever discharge Franchisor, any and all of its affiliates, parents, subsidiaries, or related companies, divisions, and partnerships, and its and their past and present officers, directors, agents, partners, shareholders, employees, representatives, successors and assigns, and attorneys, and the spouses of such individuals (collectively, the “**Released Parties**”), from any and all claims, liabilities, damages, expenses, actions, or causes of action which Releasor may now have or has ever had, whether known or unknown, past or present, absolute or contingent, suspected or unsuspected, of any nature whatsoever, including without limiting the generality of the foregoing, all claims, liabilities, damages,

expenses, actions, or causes of action directly or indirectly arising out of or relating to the execution and performance of the Agreement and the offer and sale of the franchise related thereto, except to the extent such liabilities are payable by the applicable indemnified party in connection with a third-party claim.

3. **Nondisparagement.** Releasor expressly covenants and agrees not to make any false representation of facts, or to defame, disparage, discredit, or deprecate any of the Released Parties or otherwise communicate with any person or entity in a manner intending to damage any of the Released Parties, their business, or their reputation.

4. **Confidentiality.** Releasor agrees to hold in strictest confidence and not disclose, publish, or use the existence of, or any details relating to, this Release to any third party without Franchisor's express written consent, except as required by law.

5. **Miscellaneous.**

a. Releasor agrees that it has read and fully understands this Release and that the opportunity has been afforded to Releasor to discuss the terms and contents of said Release with legal counsel and/or that such a discussion with legal counsel has occurred.

b. This Release shall be construed and governed by the laws of the State of Texas.

c. Each individual and entity that comprises Releasor shall be jointly and severally liable for the obligations of Releasor.

d. In the event that it shall be necessary for any Party to institute legal action to enforce or for the breach of any of the terms and conditions or provisions of this Release, the prevailing Party in such action shall be entitled to recover all of its reasonable costs and attorneys' fees.

e. All of the provisions of this Release shall be binding upon and inure to the benefit of the Parties and their current and future respective directors, officers, partners, attorneys, agents, employees, shareholders, and the spouses of such individuals, successors, affiliates, and assigns. No other party shall be a third-party beneficiary to this Release.

f. This Release constitutes the entire agreement and, as such, supersedes all prior oral and written agreements or understandings between and among the Parties regarding the subject matter hereof except for those provisions of other agreements signed by the Releasors that have terms that survive the termination of those agreements, including, but not limited to, certain provisions of the Franchise Agreement, the System Protection Agreement, and the Confidentiality Agreement. This Release may not be modified except in a writing signed by all of the Parties. This Release may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

g. If one or more of the provisions of this Release shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Release, but this Release shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

h. Releasor agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as any Released Party may reasonably require to consummate, evidence, or confirm the Release contained herein in the matter contemplated hereby.

i. Notice for Washington franchisees only: This general release does not apply with respect to claims arising under the Washington Franchise Investment Protection Act, RCW 19.100, and the rules adopted thereunder.

**IN WITNESS WHEREOF**, Releasor has executed this Release as of the date first written above.

**FRANCHISEE:**

**FRANCHISEE OWNER(S):**

\*\*\*

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

\*\*\*, \*\*\*

\_\_\_\_\_  
\*\*\*, \*\*\*

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

**Address:**

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

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

Rev. 012021



**Exhibit G-2**

**MESSAGE HEIGHTS FRANCHISE**

**SAMPLE SYSTEM PROTECTION AGREEMENT**

**(for Franchise Officers, Directors, Managers and Designated Retreat Directors)**

This System Protection Agreement (“**Agreement**”) is entered into by the undersigned (“**you**” or “**your**”) in favor of Massage Heights Franchising, LLC, a Texas limited liability company, and its successors and assigns (“**us**,” “**we**” or “**our**”), upon the terms and conditions set forth in this Agreement.

**1. Definitions.** For purposes of this Agreement, the following terms have the meanings given to them below:

“**Competitive Business**” means any business that: (i) sells or offers to sell products the same as or similar to the type of products sold by you in and/or from the Franchisee Territory (including, but not limited to, the products we authorize); or (ii) provides or offers to provide services the same as or similar to the type of services sold by you in and/or from the Franchisee Territory (including, but not limited to, the services we authorize), but excludes a Massage Heights business operating pursuant to a franchise agreement with us.

“**Copyrights**” means all works and materials for which we or our affiliate have secured common law or registered copyright protection and that we allow franchisees to use, sell, or display in connection with the marketing and/or operation of a Massage Heights business or the solicitation or offer of a Massage Heights franchise, whether now in existence or created in the future.

“**Franchisee**” means the Massage Heights franchisee for which you are a manager or officer.

“**Franchisee Territory**” means the territory granted to you pursuant to a franchise agreement with us.

“**Intellectual Property**” means, collectively or individually, our Marks, Copyrights, Know-how, and System.

“**Know-how**” means all of our trade secrets and other proprietary information relating to the development, construction, marketing, and/or operation of a Massage Heights business, including, but not limited to, methods, techniques, specifications, proprietary practices and procedures, policies, marketing strategies, and information comprising the System and the Manual.

“**Manual**” means our confidential operations manual for the operation of a Massage Heights business, which may be periodically modified by us.

“**Marks**” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Massage Heights business, including “MESSAGE HEIGHTS,” and any other trademarks, service marks, or trade names that we designate for use by a Massage Heights business. The term “Marks” also includes any distinctive trade dress used to identify a Massage Heights business, whether now in existence or hereafter created.

**“Prohibited Activities”** means any or all of the following: (i) owning, operating, or having any other interest (as an owner, partner, director, officer, employee, manager, consultant, shareholder, creditor, representative, agent, or in any similar capacity) in a Competitive Business (other than owning an interest of five percent (5%) or less in a publicly-traded company that is a Competitive Business); (ii) diverting or attempting to divert any business from us (or one of our affiliates or franchisees); and/or (iii) inducing or attempting to induce any customer of ours (or of one of our affiliates or franchisees) to transfer their business to you or to any other person that is not then a franchisee of ours.

**“Restricted Period”** means the two (2)-year period after you cease to be a manager or officer of Franchisee’s Massage Heights business; provided, however, that if a court of competent jurisdiction determines that this period of time is too long to be enforceable, then the “Restricted Period” means the nine (9) month period after you cease to be a manager or officer of Franchisee’s Massage Heights business.

**“Restricted Territory”** means the geographic area within: (i) a 15-mile radius from Franchisee’s Massage Heights business (and including the premises of the approved location of Franchisee); and (ii) a 15-mile radius from all other Massage Heights businesses that are operating or under construction as of the beginning of the Restricted Period; provided, however, that if a court of competent jurisdiction determines that the foregoing Restricted Territory is too broad to be enforceable, then the “Restricted Territory” means the geographic area within an 8-mile radius from Franchisee’s Massage Heights business (and including the premises of the approved location of Franchisee).

**“System”** means our system for the establishment, development, operation, and management of a Massage Heights business, including Know-how, proprietary programs and products, Manual, and operating system.

**2. Background.** You are a manager or officer of Franchisee. As a result of this relationship, you may gain knowledge of our System. You understand that protecting the Intellectual Property and our System are vital to our success and that of our franchisees and that you could seriously jeopardize our entire System if you were to unfairly compete with us. In order to avoid such damage, you agree to comply with the terms of this Agreement.

**3. Know-How and Intellectual Property.** You agree:

- a. you will not use the Know-how in any business or capacity other than the Massage Heights business operated by Franchisee;
- b. you will maintain the confidentiality of the Know-how at all times;
- c. you will not make unauthorized copies of documents containing any Know-how;
- d. you will take such reasonable steps as we may ask of you from time to time to prevent unauthorized use or disclosure of the Know-how; and
- e. you will stop using the Know-how immediately if you are no longer a manager or officer of Franchisee’s Massage Heights business. You further agree that you will not use all or part of the Intellectual Property or all or part of the System for any purpose other than the performance of your duties for Franchisee and within the scope of your employment or other engagement with Franchisee. These restrictions on Know-how, Intellectual Property and the System shall not apply to any information which is information publicly known or becomes lawfully known in the public domain other than through a breach of this Agreement or is required or compelled by law to be disclosed, provided that you will give

reasonable notice to us to allow us to seek protective or other court orders.

**4. Unfair Competition During Relationship.** You agree not to unfairly compete with us at any time while you are a manager or officer of Franchisee's Massage Heights business by engaging in any Prohibited Activities.

**5. Unfair Competition After Relationship.** You agree not to unfairly compete with us during the Restricted Period by engaging in any Prohibited Activities; provided, however, that the Prohibited Activity relating to having an interest in a Competitive Business will only apply with respect to a Competitive Business that is located within or provides competitive goods or services to customers who are located within the Restricted Territory. If you engage in any Prohibited Activities during the Restricted Period, then you agree that your Restricted Period will be extended by the period of time during which you were engaging in the Prohibited Activity.

**6. Immediate Family Members.** You acknowledge that you could circumvent the purpose of this Agreement by disclosing Know-how to an immediate family member (i.e., spouse, parent, sibling, child, grandparent, or grandchild). You also acknowledge that it would be difficult for us to prove whether you disclosed the Know-how to family members. Therefore, you agree that you will be presumed to have violated the terms of this Agreement if any member of your immediate family: (i) engages in any Prohibited Activities during any period of time during which you are prohibited from engaging in the Prohibited Activities; or (ii) uses or discloses the Know-how. However, you may rebut this presumption by furnishing evidence conclusively showing that you did not disclose the Know-how to the family member.

**7. Covenants Reasonable.** You acknowledge and agree that: (i) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (ii) you have sufficient resources and business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS AGREEMENT AS BEING OVERLY BROAD, UNREASONABLE, OR OTHERWISE UNENFORCEABLE.**

**8. Breach.** You agree that failure to comply with the terms of this Agreement will cause substantial and irreparable damage to us and/or other Massage Heights franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of the terms of this Agreement will entitle us to injunctive relief. You agree that we may apply for such injunctive relief without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and the sole remedy of yours in the event of the entry of such injunction will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree that the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance, and recovery of monetary damages. Any claim, defense, or cause of action that you may have against us, our owners, or our affiliates, or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.

**9. Miscellaneous.**

a. If we pursue legal remedies against you because you have breached this Agreement and prevail against you, you agree to pay our reasonable attorneys' fees and costs in doing so.

b. This Agreement will be governed by, construed, and enforced under the laws of Texas, and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.

c. Each section of this Agreement, including each subsection and portion thereof, is severable. If any section, subsection, or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection, or portion; and each party to this Agreement agrees that the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms reasonable in scope, duration, and geographic area.

d. You and we both believe that the covenants in this Agreement are reasonable in terms of scope, duration, and geographic area. However, we may at any time unilaterally modify the terms of this Agreement upon written notice to you by limiting the scope of the Prohibited Activities, narrowing the definition of a Competitive Business, shortening the duration of the Restricted Period, reducing the geographic scope of the Restricted Territory, and/or reducing the scope of any other covenant imposed upon you under this Agreement to ensure that the terms and covenants in this Agreement are enforceable under applicable law.

**EXECUTED** on the date stated below.

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

\_\_\_\_\_  
Name: \_\_\_\_\_, Individually

OR:  
(if a corporation or partnership)

\_\_\_\_\_  
Company Name (printed)

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**Franchisee:**

Printed Full Name / Entity Name: \*\*\*

Printed Managing Owner / Owner: \*\*\*

**Exhibit G-3**

**MESSAGE HEIGHTS FRANCHISE**

**SAMPLE CONFIDENTIALITY AGREEMENT**

**(for Retreat and Franchise Employees, Independent Contractors, Agents, Representatives, and Suppliers)**

This Confidentiality Agreement (“**Agreement**”) is entered into by the undersigned (“**you**”) in favor of Massage Heights Franchising, LLC, a Texas limited liability company, and its successors and assigns (“**us**”), upon the terms and conditions set forth in this Agreement.

**1. Definitions.** For purposes of this Agreement, the following terms have the meanings given to them below:

“**Copyrights**” means all works and materials for which we or our affiliate(s) have secured common law or registered copyright protection and that we allow Massage Heights franchisees to use, sell, or display in connection with the marketing and/or operation of a Massage Heights Business, whether now in existence or created in the future.

“**Franchisee**” means the Massage Heights franchisee for which you are an employee, independent contractor, agent, representative, or supplier.

“**Intellectual Property**” means, collectively or individually, our Marks, Copyrights, Know-how, Manual, and System.

“**Know-how**” means all of our trade secrets and other proprietary information relating to the development, construction, marketing, and/or operation of a Massage Heights Business, including, but not limited to, methods, techniques, specifications, proprietary practices and procedures, policies, marketing strategies, and information comprising the System and the Manual.

“**Manual**” means our confidential operations manual for the operation of a Massage Heights Business.

“**Marks**” means the logotypes, service marks, and trademarks now or hereafter involved in the operation of a Massage Heights Business, including “MESSAGE HEIGHTS” and any other trademarks, service marks, or trade names that we designate for use by a Massage Heights Business. The term “**Marks**” also includes any distinctive trade dress used to identify a Massage Heights Business, whether now in existence or hereafter created.

“**Massage Heights Business**” means a business that provides professional therapeutic massage services and facial services to the general public through membership-based programs, and other related products and services using our Intellectual Property.

“**System**” means our system for the establishment, development, operation, and management of a Massage Heights Business, including Know-how, proprietary programs and products, confidential operations manuals, and operating system.

**2. Background.** You are an employee, independent contractor, agent, representative, or supplier of Franchisee. Because of this relationship, you may gain knowledge of our Intellectual Property. You understand that protecting the Intellectual Property is vital to our success and that of our franchisees, and that you could seriously jeopardize our entire Franchise System if you were to use such Intellectual Property in any way other than as described in this Agreement. In order to avoid such damage, you agree to comply with this Agreement.

**3. Know-How and Intellectual Property: Nondisclosure and Ownership.** You agree:

- a. you will not use the Intellectual Property in any business or capacity other than for the benefit of the Massage Heights Business operated by Franchisee or in any way detrimental to us or to the Franchisee;
- b. you will maintain the confidentiality of the Intellectual Property at all times;
- c. you will not make unauthorized copies of documents containing any Intellectual Property;
- d. you will take such reasonable steps as we may ask of you from time to time to prevent unauthorized use or disclosure of the Intellectual Property; and
- e. you will stop using the Intellectual Property immediately if you are no longer an employee, independent contractor, agent, representative, or supplier of Franchisee. You further agree that you will not use the Intellectual Property for any purpose other than the performing your duties for Franchisee and within the scope of your employment or other engagement with Franchisee.

The Intellectual Property is and shall continue to be the sole property of Massage Heights Franchising, LLC. You hereby assign and agree to assign to us any rights you may have or may acquire in such Intellectual Property. Upon the termination of your employment or engagement with Franchisee, or at any time upon our or Franchisee's request, you will deliver to us or to Franchisee all documents and data of any nature pertaining to the Intellectual Property, and you will not take with you any documents or data or copies containing or pertaining to any Intellectual Property.

**4. Immediate Family Members.** You acknowledge you could circumvent the purpose of this Agreement by disclosing Intellectual Property to an immediate family member (i.e., spouse, parent, sibling, child, or grandchild). You also acknowledge that it would be difficult for us to prove whether you disclosed the Intellectual Property to family members. Therefore, you agree you will be presumed to have violated the terms of this Agreement if any member of your immediate family uses or discloses the Intellectual Property. However, you may rebut this presumption by furnishing evidence conclusively showing you did not disclose the Intellectual Property to the family member.

**5. Covenants Reasonable.** You acknowledge and agree that: (i) the terms of this Agreement are reasonable both in time and in scope of geographic area; and (ii) you have sufficient resources and business experience and opportunities to earn an adequate living while complying with the terms of this Agreement. **YOU HEREBY WAIVE ANY RIGHT TO CHALLENGE THE TERMS OF THIS AGREEMENT AS BEING OVERLY BROAD, UNREASONABLE, OR OTHERWISE UNENFORCEABLE.**

**6. Breach.** You agree that failure to comply with this Agreement will cause substantial and irreparable damage to us and/or other Massage Heights franchisees for which there is no adequate remedy at law. Therefore, you agree that any violation of this Agreement will entitle us to injunctive relief. You agree that we may apply for such injunctive relief, without bond, but upon due notice, in

addition to such further and other relief as may be available at equity or law, and the sole remedy of yours, in the event of the entry of such injunction, will be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby). If a court requires the filing of a bond notwithstanding the preceding sentence, the parties agree that the amount of the bond shall not exceed \$1,000. None of the remedies available to us under this Agreement are exclusive of any other, but may be combined with others under this Agreement, or at law or in equity, including injunctive relief, specific performance, and recovery of monetary damages. Any claim, defense, or cause of action you may have against us or against Franchisee, regardless of cause or origin, cannot be used as a defense against our enforcement of this Agreement.

**7. Miscellaneous.**

a. Although this Agreement is entered into in favor of Massage Heights Franchising, LLC, you understand and acknowledge that your employer/employee, independent contractor, agent, representative, or supplier relationship is with Franchisee and not with us, and for all purposes in connection with such relationship, you will look to Franchisee and not to us.

b. If we pursue legal remedies against you because you have breached this Agreement and prevail against you, you agree to pay our reasonable attorney fees and costs in doing so.

c. This Agreement will be governed by, construed, and enforced under the laws of Texas, and the courts in that state shall have jurisdiction over any legal proceedings arising out of this Agreement.

d. Each section of this Agreement, including each subsection and portion, is severable. If any section, subsection, or portion of this Agreement is unenforceable, it shall not affect the enforceability of any other section, subsection, or portion; and each party to this Agreement agrees that the court may impose such limitations on the terms of this Agreement as it deems in its discretion necessary to make such terms enforceable.

**EXECUTED** on the date stated below.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

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**Franchisee:**

Printed Full Name / Entity Name: \*\*\*

Printed Managing Owner / Owner: \*\*\*



**Exhibit G-4**

**ELECTRONIC FUNDS TRANSFER AUTHORIZATION FORM**

**License Number:**

**Franchisee Information:**

**Franchisee Name:**

**Franchisee Email Address:**

**Franchisee Phone Number:**

**Franchisee Mailing Address:**

*Address, City, State Zip*

***If different from above***

**Contact Name:**

**Contact Phone Number:**

**Contact Address:**

*Address, City, State Zip*

**Federal Tax ID #:**

**Bank Account Information:**

**Bank Name:**

**Bank Phone Number:**

**Bank Mailing Address:**

*Address, City, State Zip*

**Bank Account No.**

**Bank Routing No. (9 digits)**

**Account Type  
(checking, savings, etc.)**

**Authorization:**

Franchisee hereby authorizes Massage Heights Franchising, LLC ("**Franchisor**") to initiate debit entries to Franchisee's account with the Bank listed above, and Franchisee authorizes the Bank to accept and to debit the amount of such entries to Franchisee's account. Each debit shall be made from time to time in an amount sufficient to cover any fees payable to Franchisor pursuant to any agreement between Franchisor and Franchisee as well as to cover any purchases of goods or services from Franchisor or any affiliate of Franchisor. Franchisee agrees to be bound by the National Automated Clearing House Association (NACHA) rules in the administration of these debit entries. Debit entries will be initiated only as authorized above. This authorization is to remain in full force and effect until Franchisor has received written notification from Franchisee of its termination in such time and in such manner as to afford Franchisor and the Bank a reasonable opportunity to act on it. Franchisee shall notify Franchisor of any changes to any of the information contained in this authorization form at least 30 days before such change becomes effective.

\*\*\*

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

\*\*\*, \*\*\*

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

MH032822

**NOTE: FRANCHISEE MUST ATTACH A VOIDED CHECK RELATING TO THE BANK ACCOUNT.**

## Exhibit G-5

### MASSAGE HEIGHTS FRANCHISE

#### SAMPLE APPROVAL OF REQUESTED TRANSFER

This Approval of Requested Transfer (“**Agreement**”) is entered into on \*\*\*, 20\*\*\*, among Massage Heights Franchising, LLC (“**Franchisor**”) a Texas limited liability company, \*\*\* [an individual] or [a/an Formation State] [corporation/limited liability company (“**Former Franchisee**”) and \*\*\* [an individual] or [a/an Formation State] [corporation/limited liability company (“**New Franchisee**”).

#### RECITALS

**WHEREAS**, Franchisor and Former Franchisee entered into that certain franchise agreement dated \*\*\*, 20\*\*\* (“**Franchise Agreement**”), in which Franchisor granted Former Franchisee the right to operate a Massage Heights franchise located at \*\*\* (“**MH Business**”); and

**WHEREAS**, Former Franchisee desires to transfer (“**Requested Transfer**”) the license to operate the MH Business to New Franchisee, New Franchisee desires to accept the Requested Transfer of the MH Business from Former Franchisee, and Franchisor desires to approve the Requested Transfer of the license to operate the MH Business from Former Franchisee to New Franchisee upon the terms and conditions contained in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto hereby covenant, promise, and agree as follows:

1. **Payment of Fees.** In consideration for the Requested Transfer, Former Franchisee acknowledges and agrees to pay Franchisor the License Transfer Fee as required under Former Franchisee’s Franchise Agreement (“**Franchise Transfer Fee**”).

2. **Assignment and Assumption.** Former Franchisee hereby consents to assign all of its rights and delegate its duties with regard to its license to operate the MH Business (under Former Franchisee’s Franchise Agreement and all exhibits and attachments thereto) from Former Franchisee to New Franchisee, subject to the terms and conditions of this Agreement, and conditioned upon New Franchisee’s signing of a franchise agreement pursuant to Section 5 of this Agreement.

3. **Consent to Requested Transfer of MH Business.** Franchisor hereby consents to the Requested Transfer of the MH Business from Former Franchisee to New Franchisee upon receipt of the Franchisor’s Transfer Fee from Former Franchisee and the mutual execution of this Agreement by all parties. Franchisor waives its right of first refusal set forth in Former Franchisee’s Franchise Agreement.

4. **Termination of Rights to the MH Business.** The parties acknowledge and agree that all of Former Franchisee’s rights to operate the MH Business and rights under Former Franchisee’s Franchise Agreement are hereby relinquished and that from the date of this Agreement only, New Franchisee shall have the sole right to operate the MH Business. Former Franchisee and its owners agree to comply with all of the covenants in Former Franchisee’s Franchise Agreement that expressly or by implication survive the termination, expiration, or transfer of Former Franchisee’s Franchise Agreement. Unless otherwise precluded by state law, Former Franchisee shall execute Franchisor’s current form of General Release Agreement.

5. **New Franchise Agreement.** New Franchisee shall execute Franchisor's current form of Franchise Agreement and attachments for the MH Business (as amended by the form of Addendum prescribed by Franchisor, if applicable), and any other required contracts for the operation of a Massage Heights franchise as stated in Franchisor's Franchise Disclosure Document.

6. **Franchisee's Contact Information.** Former Franchisee agrees to keep Franchisor informed of its current address and telephone number at all times during the three (3) year period following the execution of this Agreement.

7. **Acknowledgement by New Franchisee.** New Franchisee acknowledges and agrees that the purchase of the rights to the MH Business ("**Transaction**") occurred solely between Former Franchisee and New Franchisee. New Franchisee also acknowledges and agrees that Franchisor played no role in the Transaction and that Franchisor's involvement was limited to the approval of Requested Transfer and any required actions regarding New Franchisee's signing of a new franchise agreement for the MH Business. New Franchisee agrees that any claims, disputes, or issues relating to New Franchisee's acquisition of the MH Business from Former Franchisee are between New Franchisee and Former Franchisee and shall not involve Franchisor.

8. **Representation.** Former Franchisee warrants and represents that it has not heretofore assigned, conveyed, or disposed of any interest in Former Franchisee's Franchise Agreement or the MH Business. New Franchisee hereby represents that it received Franchisor's Franchise Disclosure Document and did not sign the new Franchise Agreement or pay any money to Franchisor or its affiliate for a period of at least 14 calendar days after receipt of the Franchise Disclosure Document.

9. **Notices.** Any notices given under this Agreement shall be in writing, and if delivered by hand, or transmitted by U.S. certified mail, return receipt requested, postage prepaid, shall be deemed to have been given on the date so delivered, if sent to the recipient at its address appearing on the records of the sending party.

10. **Further Actions.** Former Franchisee and New Franchisee each agree to take such further actions as may be required to effectuate the terms and conditions of this Agreement, including any and all actions that may be required or contemplated by their respective Franchise Agreements.

11. **Affiliates.** When used in this Agreement, the term "**Affiliates**" has the meaning as given in Rule 144 under the Securities Act of 1933.

12. **Miscellaneous.** This Agreement may not be changed or modified except in a writing signed by all of the parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

13. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas.

*(Signatures on following page)*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**FRANCHISOR:**

Massage Heights Franchising, LLC

By: \_\_\_\_\_  
Shane Evans, Chief Executive Officer

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

**FORMER FRANCHISEE:**

\*\*\*

By: \_\_\_\_\_  
\*\*\*, \*\*\*

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

**Address:**

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

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**NEW FRANCHISEE:**

\*\*\*

By: \_\_\_\_\_  
\*\*\*, \*\*\*

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

By: \_\_\_\_\_  
\*\*\*, \*\*\*

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

Rev. 031821

Exhibit G-6

MESSAGE HEIGHTS FRANCHISE

LEASE ADDENDUM

This Addendum to Lease (“**Addendum**”), dated \_\_\_\_\_, 20\_\_\_\_, is entered into by and between \_\_\_\_\_ (“**Landlord**”), and \_\_\_\_\_ (“**Tenant**”) and Massage Heights Franchising, LLC (“**Franchisor**”), collectively referred to herein as the “**Parties.**”

A. Landlord and Tenant have entered into a certain Lease Agreement dated \_\_\_\_\_, 20\_\_\_\_, and pertaining to the premises located at \_\_\_\_\_ (“**Lease**”).

B. Landlord acknowledges that Tenant intends to operate a franchised business from the leased premises (“**Premises**”) pursuant to a Franchise Agreement (“**Franchise Agreement**”) with Franchisor under Franchisor’s trademarks and other names designated by Franchisor (herein referred to as “**Franchised Business**” or “**Franchise Business**”).

C. The parties now desire to supplement the terms of the Lease in accordance with the terms and conditions contained herein.

**NOW, THEREFORE**, it is hereby mutually covenanted and agreed among the Parties as follows:

1. **Use of the Premises.** During the term of the Franchise Agreement, the Premises shall be used only for the operation of the Franchised Business.

2. **Franchise System.** Landlord hereby consents to Tenant’s use of such proprietary marks, signs, interior and exterior décor items, color schemes and related components of the Franchised Business required by Franchisor. Tenant's use of such items shall at all times be in compliance with all applicable laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Premises.

3. **Assignment.** Tenant shall have the right to sublease or assign all of Tenant’s right, title, and interest in the Lease to a Franchise Assignee (as defined below) at any time during the term of the Lease, including any extensions or renewals thereof, with the written consent of the Landlord, which shall not be unreasonably withheld. If Tenant fails to timely cure any default under either the Lease or the Franchise Agreement, Franchisor or a Franchise Assignee that Franchisor designates, will, at its option, have the right, but not the obligation, to take an assignment of Tenant’s interest under the Collateral Assignment of Lease or other form of assignment and assumption document reasonably acceptable to Landlord, provided such Franchise Assignee cures a default of the Lease no later than ten days following the end of Tenant’s cure period. No assignment shall be effective until a Franchise Assignee gives Landlord written notice of its acceptance of the assignment and assumption of the Lease. Nothing contained herein or in any other document shall create any obligation or liability of Franchisor, any Franchise Assignee, or guarantor thereof under the Lease unless and until the Lease is assigned to and accepted in writing by a Franchise Assignee. In the event of any assignment or purported assignment under this Addendum, Tenant shall remain liable under the terms of the Lease and the assignee or subtenant shall retain all of the Tenant’s rights granted in the Lease including without limitation: (x) any grant of a protected territory or use exclusivity; and (y) the renewal or extension of the Lease term. With respect to any assignment proposed or consummated under this Addendum, Landlord hereby waives any

rights it may have to (A) recapture the Premises; (B) terminate the Lease; or (C) modify any terms or conditions of the Lease. If Franchisor accepts an assignment and assumes the Lease under this section, Franchisor shall have the right to further sublet or reassign the Lease to another Franchise Assignee without Landlord's consent in which event Franchisor shall be released from any obligation or liability under the Lease. As used in this Addendum, "**Franchise Assignee**" means: (i) Franchisor or Franchisor's parent, subsidiary, or affiliate; or (ii) any franchisee of Franchisor (or of Franchisor's parent, subsidiary, or affiliate) that meets or exceeds the financial qualifications that the Tenant established at the time the Tenant signed the Lease.

#### 4. **Default and Notice.**

a) Landlord will give written notice to the Franchisor (concurrently with the giving of such notice to the Tenant) of any defaults ("**Default**") by the Tenant under the Lease by certified mail, return receipt requested, by nationally recognized overnight courier service, or by email, at the below address or to such other address as the Franchisor may provide to Landlord in writing from time to time. Franchisor shall have the right, but not the obligation, to cure the Default within the cure period provided to Tenant in the Lease to cure same, if any. Franchisor's address is as follows:

Massage Heights Franchising, LLC  
ATTN: Legal Department  
13750 US Hwy 281 North, Suite 925  
San Antonio, Texas 78232  
Legal@MassageHeightsFranchising.com

Franchisor may change its address for receiving notices by giving Landlord written notice of the new address. Landlord agrees that it will notify both Tenant and Franchisor of any change in Landlord's mailing address to which notices should be sent.

b) Tenant and Landlord agree not to terminate, or materially amend the Lease during the term of the Franchise Agreement or any renewal thereof without Franchisor's prior written consent. Any attempted termination, or material amendment shall be null and void and have no effect as to Franchisor's interests thereunder; and a clause to the effect shall be included in the Lease.

#### 5. **Termination or Expiration.**

a) If Franchisor does not elect to take an assignment of the Tenant's interest, Landlord will allow Franchisor to enter the Premises, without being guilty of trespass and without incurring any liability to Landlord, to remove all signs, awnings, and all other items identifying the Premises as a Franchised Business and to make other modifications (such as repainting) as are reasonably necessary to protect the Franchisor's trademarks and franchise system, and to distinguish the Premises from a Franchised Business provided that Franchisor repairs any damage caused to the Premises by exercise of its rights hereunder.

b) If any Franchise Assignee purchases any assets of Tenant, Landlord shall permit such Franchise Assignee to remove all the assets being purchased, and Landlord waives any lien rights that Landlord may have on such assets.

6. **Consideration; No Liability.**

a) Landlord acknowledges that the Franchise Agreement requires Tenant to receive Franchisor's approval of the Lease prior to Tenant executing the Lease and that this Addendum is a material requirement for Franchisor to approve the Lease. Landlord acknowledges Tenant would not lease the Premises without this Addendum. Landlord also hereby consents to the Collateral Assignment of Lease from Tenant to Franchisor as evidenced by **Attachment 1**.

b) Landlord further acknowledges that Tenant is not an agent or employee of Franchisor, and Tenant has no authority or power to act for, or to create any liability on behalf of, or to in any way bind Franchisor or any Franchise Assignee, and that Landlord has entered into this with full understanding that it creates no duties, obligations, or liabilities of or against any Franchise Assignee.

7. **Amendments.** No amendment or variation of the terms of this Addendum shall be valid unless made in writing and signed by the Parties hereto.

8. **Reaffirmation of Lease.** Except as amended or modified herein, all of the terms, conditions, and covenants of the Lease shall remain in full force and effect and are incorporated herein by reference and made a part of this Agreement as though copies herein in full.

**IN TESTIMONY WHEREOF**, witness the signatures of the Parties hereto as of the day, month, and year first written above.

**LANDLORD:**

**TENANT:**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

**FRANCHISOR:**

**Massage Heights Franchising, LLC**

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

Shane Evans, Chief Executive Officer

Rev. MH042121



EXHIBIT G-6

ATTACHMENT 1 TO LEASE ADDENDUM

**COLLATERAL ASSIGNMENT OF LEASE**

**FOR VALUE RECEIVED**, as of the \*\*\* day of \*\*, 20\*\* (“**Effective Date**”), the undersigned, \*\*\* (“**Assignor**”) hereby assigns, transfers and sets over unto Massage Heights Franchising, LLC (“**Assignee**”) all of Assignor’s right, title, and interest as tenant, in, to and under that certain lease, a copy of which is attached hereto as **Exhibit A (“Lease”)** with respect to the premises located at \*\*. This Collateral Assignment of Lease (“**Assignment**”) is for collateral purposes only and except as specified herein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment unless Assignee expressly assume the obligations of Assignor thereunder.

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

Upon a default by Assignor under the Lease or under that certain franchise agreement for a franchise between Assignee and Assignor (“**Franchise Agreement**”), or in the event of a default by Assignor under any document or instrument securing the Franchise Agreement, Assignee shall have the right and is hereby empowered, in Assignee’s sole discretion, to: (i) cure Assignor’s default of the Lease; (ii) take possession of the premises demised by the Lease; (iii) expel Assignor from the premises, either temporarily or permanently; (iv) terminate Assignee’s rights, title, and interest in the Lease; and/or (v) assume the Lease. If Assignee expends sums to cure a default of the Lease, Assignor shall promptly reimburse Assignee for the cost incurred by Assignee in connection with such performance, together with interest thereon at the rate of two percent (2%) per month, or the highest rate allowed by law.

Assignor agrees it will not suffer or permit any surrender, termination, amendment, or modification of the Lease without the prior written consent of Assignee. Through the term of the Franchise Agreement and any renewals thereto, Assignor agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than 30 days before the last day that said option must be exercised, unless Assignee otherwise agrees in writing. Upon failure of Assignee to otherwise agree in writing, and upon failure of Assignor to so elect to extend or renew the Lease as stated herein, Assignor hereby irrevocably appoints Assignee as its true and lawful attorney-in-fact, which appointment is coupled with an interest to exercise the extension or renewal options in the name, place, and stead of Assignor for the sole purpose of effecting the extension or renewal.

*(Signatures on following page)*

**IN WITNESS WHEREOF**, Assignor and Assignee have signed this Collateral Assignment of Lease as of the Effective Date first above written.

**ASSIGNOR:**

\*\*\*

**ASSIGNEE:**

**Massage Heights Franchising, LLC**

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

\*\*\*, \*\*\*

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

Shane Evans, Chief Executive Officer

Rev. 112619

## Exhibit G-7

### MESSAGE HEIGHTS FRANCHISE

#### SAMPLE USE AND LICENSE AGREEMENT

This Use and License Agreement (“**Agreement**”), dated \*\*\*, 20\*\*\*, is made by and between Massage Heights Franchising, LLC, a Texas limited liability company (“**Licensor**”), and \*\*\* (“**Licensee**”).

#### RECITALS

A. Licensor is the franchisor of the Massage Heights franchises and has purchased a master license for the use of software or developed software for the use in the operation of Massage Heights franchises, including any updates and revisions (“**Software**”); and

B. Licensee has entered into a franchise agreement to operate a Massage Heights franchise (“**Franchise Agreement**”); and

C. The Software is required for the operation of a Massage Heights franchise; and

D. Pursuant to the Franchise Agreement, Licensee is required to execute this Agreement and obtain a license to use the Software; and

E. Licensor wishes to grant certain rights and licenses to Licensee with respect to the Software, and Licensee wishes to obtain such rights and licenses with respect to the Software, on the terms and conditions set forth herein.

#### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Services.** Licensor hereby grants a worldwide, non-exclusive, non-transferable, revocable, non-sublicenseable license to use the Software exclusively for the internal operations of a Massage Heights franchise and for no other purpose unless Licensee has received prior written consent from Licensor for such purpose. Licensor shall provide all documentation for the operation of the Software.

2. **Term.** Unless sooner terminated, the term of this Agreement and of the license granted herein will begin on the Effective Date and continue until the expiration or termination of the Franchise Agreement (“**Term**”). If Licensee renews its license to operate a Massage Heights franchise under a renewal franchise agreement for the operation of a Massage Heights Retreat, Licensee must execute the then-current form of Use and License Agreement and pay all fees and comply with all terms and conditions set forth in the then-current form of Use and License Agreement. The Licensee acknowledges that the terms and conditions of the then-current form of Use and License Agreement may be substantially different from the terms and conditions of this Agreement, including without limitation increased Technology Fee (as defined below).

3. **Technical Requirements.** Licensee agrees to comply with the applicable hardware, software, and other technical and pre-setup requirements for Licensee's use of the Software as the Licensor may establish from time to time during the Term.

4. **Software Support.**

(a) Licensor shall provide technical support for the Software during normal business hours Monday through Friday. If additional support is needed during non-business hours, Licensor may provide such support at an additional fee to Licensee, availability permitting. Licensor will have the absolute right to contract with third parties to provide any or all maintenance and support services specified in this Agreement. If, in Licensor's absolute, exclusive, and unrestricted judgment it is commercially not feasible to provide any maintenance or support services, Licensor will have the right to terminate any or all of such support or maintenance services.

(b) Certain locations may be susceptible to power outages and/or fluctuations that can cause a computer to crash or shut down. Licensee is responsible for the installation and maintenance of battery backups systems and data backup. Licensor is not responsible for any such losses of data, nor does Licensor assume responsibility or liability for any losses or damages arising, directly, or indirectly, from Licensee's improper use or maintenance of the Software or hardware.

(c) Licensee is responsible for installing and maintaining updated anti-virus software at all times on any hardware that runs the Software.

5. **Payment.**

(a) Upon execution of the Franchise Agreement, Licensee shall pay to Licensor a Software Setup Fee in the amount of \$500. It is the express understanding of the parties that the Licensor shall sublicense or license the software to its franchisees. As compensation for the successful performance of the work and services to be performed hereunder, which will include point-of-sale system, email and network support along with additional software licenses for outbound consumer messaging and electronic forms, it is agreed that Licensee shall directly pay a monthly fee of \$550 to Licensor for use of the Software and other services ("**Technology Fee**"). Licensor reserves the right to increase the Technology Fee by a minimum of 3% per Massage Heights franchise location on the one-year anniversary of the operations of the Massage Heights franchise and may again increase by a minimum of 3% on subsequent one-year anniversaries per franchise location throughout the term of this Agreement. Licensor also reserves the right to include future hardware, software, websites, applications, and platforms that may be developed and implemented by Licensor.

(b) All applicable fees are to be paid to Licensor via an ACH bank transfer, due on the 15th of each month or by the morning of the next business day. Any fees not received will be assessed a late fee penalty of \$5.00 per day, per Retreat until said fees are paid in full.

(c) The Licensee will not, on grounds of the alleged nonperformance by Licensor of any of its obligations or for any other reason, withhold payment of any Technology Fees or payments due to Licensor pursuant to this Agreement or pursuant to any other contract, agreement, or obligation. The Licensee will not have the right to "offset" any liquidated or unliquidated amounts, damages, or other sums allegedly due to the Licensee by Licensor against any payments due to Licensor under this Agreement.

(d) If Licensor authorizes a sale of Licensee's Massage Heights franchise to a third party ("**Transferee**") Licensee must notify the Transferee that it will be obligated to enter into a new Use and License with Licensor.

(e) The Licensee acknowledges that it has agreed, pursuant to the Franchise Agreement, to obtain and maintain at all times such computer equipment and software (including without limitation, the most current version of the Software) as may from time to time be required by Licensor for use in the operation of the Licensee's Massage Heights franchise. The Licensee further acknowledges that future changes in technology and the opportunity and need to meet and surpass competition may necessitate that Licensor upgrade the Technology Fees, due hereunder, to amounts reasonably sufficient to cover the costs of such upgrades and a reasonable return to Licensor on its investment in an administration of such upgrade. The Licensee further acknowledges that any upgrade to the Software may necessitate upgrades in the Licensee's hardware and third-party software required to operate the Software, which may result in additional costs or fees payable by the Licensee.

6. **Access to Software and Information.** The Licensee agrees that Licensor will at all times have the right to access the Software and its data, by modem, print-out of data or any other means selected by Licensor, for purposes of obtaining financial, sales, customer, listing, business, supplier, teaching and all other data and information contained, resident or otherwise available in the Licensee's computer system, for purposes of verifying compliance by the Licensee with the terms of this Agreement and the Franchise Agreement, and for such other purposes as may be determined by Licensor, in its absolute, exclusive and unrestricted judgment. Licensor will have the right to retain and use any information obtained by accessing the Licensee's Software for any purposes deemed appropriate by Licensor, in its absolute, exclusive, and unrestricted judgment.

7. **Licensee Training.** Licensor shall conduct training sessions pursuant to the guidelines set forth in the Franchise Agreement. In addition, Licensee shall attend mandatory ongoing training sessions, at times and at such locations as Licensor shall establish.

8. **Ownership.** Licensee acknowledges that Licensor has the sole right to license and control Licensee's use of the Software. Licensee acknowledges that it has no ownership right to any data or information generated by the Software, including customer lists, customer data and other sales information. Licensee further acknowledges that it does not acquire any right, title, or interest in the Software except as set forth herein. Licensor specifically retains all right, title and interest in and to all proprietary and intellectual property rights in and to the Software, including without limitation, trade secrets, data, customer lists, copyrights, trademarks, patents, functionality, and business methodology embodied therein, and the like. All rights not expressly granted to Licensee herein are specifically reserved to Licensor. Upon termination of this Agreement, Licensee shall have no right to utilize the Software, or any data generated by the Software.

9. **Restrictions on Use.**

(a) Licensee may not decompile, reverse compile, reverse engineer, reverse assemble or otherwise derive a source code equivalent for the Software. In addition, Licensee may not copy the Software without the Licensor's written consent. Licensee may not download any portion of the Software except as the Licensor may expressly permit or instruct. Licensee may not permit any third-party access to the Software and may use the Software only on computers for which Licensee controls access to the Software. Licensee may not assign, transfer, sell, rent, license, sublicense, or grant any rights to or

interests in the Software to any corporation, partnership or other business entity or any other person. Licensee may not, at any time, use or exploit or authorize any third party to use or exploit any of Software's content or data. Licensee will comply with all terms and conditions packaged or accompanying any third-party software furnished to Licensee under this Agreement.

(b) Licensee is prohibited from printing or copying (including, without limitation, for back-up, training, testing or disaster recovery), in whole or in part, the Software except to the extent expressly permitted in advance in writing by Licensor, which permission Licensor may withhold in its sole discretion. Any backup training, testing or disaster recovery system intended to be or used by Licensee must be approved in advance in writing by Licensor, which approval Licensor may withhold in its sole discretion. Licensee acknowledges and agrees that any and all diskettes, CDs or any other physical embodiments or media, including, but not limited to, authorized and unauthorized copies, of the Software are the sole and exclusive property of Licensor. Any authorized copies of the Software must contain appropriate proprietary and trade secret, copyright, trademark, or other applicable legends as designated by Licensor. Except as otherwise set forth in this Agreement, Licensee shall store, secure, and prevent access to each physical embodiment of the Software. Licensee shall not use the name of Software or refer to Software directly or indirectly in any papers, articles, advertisements, sales presentations, news releases or releases to any third party without the prior written approval of Licensor for each such use. You may not release the results of any performance or functional evaluation of any portion of the Licensed Software to any third party.

10. **Exclusion of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SOFTWARE, OR ANY COMPONENT OF THE FOREGOING, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, CORRECTNESS, COMPLETENESS, COMPREHENSIVENESS, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE), OR ANY REPRESENTATION THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE LICENSEE'S OR ANY APPROVED LICENSEE'S USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES.

11. **Limitation of Liability.** LICENSOR SHALL HAVE NO LIABILITY TO LICENSEE OR TO ANY APPROVED FRANCHISEE WITH RESPECT TO LICENSOR'S OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFIT, REVENUE, DATA OR GOODWILL, WHETHER INCURRED OR SUFFERED AS A RESULT OF ANY ERRORS, DEFECTS OR NON-FUNCTIONING OF THE SOFTWARE PRODUCTS OR OTHERWISE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSOR'S AGGREGATE LIABILITY HEREUNDER FOR ANY CAUSE IN ANY CALENDAR YEAR ARISING OUT OF OR RELATED TO LICENSOR'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT OR OTHERWISE EXCEED THE AMOUNT OF THE TECHNOLOGY FEES PAID HEREUNDER TO LICENSOR IN THE CALENDAR YEAR IN WHICH SUCH DIRECT DAMAGES ARE INCURRED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF LIMITED WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

12. **Remedies for Third-Party Infringement.** In the event the Software is held by any court of competent jurisdiction to infringe the rights of a third party or to violate a patent, and its use is enjoined,

Licensor shall have the obligation, at its expense, to (i) modify the infringing Software, without impairing in any material respect its functionality, so that it is non-infringing or non-violative, or (ii) procure for Licensee the right to continue to use the infringing Software for any remaining unexpired portion of the Term, or (iii) replace the infringing Software with equally suitable non-infringing software. The foregoing is Licensee's sole remedy for infringement. If Licensor is unable to make any of the foregoing alternatives available to Licensee, Licensee shall receive a rebate of a prorated portion of the License fee charged hereunder, representing the fee due for the remaining unexpired portion of the Term.

13. **Confidentiality; Non-Disclosure.** Licensee agrees that the Software contains valuable proprietary information and that, except for those rights conveyed in this Agreement, Licensee retains no ownership rights in the Software. During the term of this Agreement, Licensee shall maintain the confidentiality of this information and not disclose the same to any third party or use it except as authorized by this Agreement. Licensee shall have no obligation of confidentiality or non-use with regard to information which (i) is or becomes a part of the public domain through no act or omission of Licensee, (ii) was in the Licensee's lawful possession prior to the disclosure thereto and had not been obtained by Licensee either directly or indirectly from Licensor, (iii) is lawfully disclosed to Licensee by a third party without restrictions on disclosure, (iv) is independently developed by Licensee, or (v) is required to be disclosed by law.

14. **Termination.** This Agreement shall automatically terminate upon the termination or expiration of the Franchise Agreement. The Licensor may terminate this Agreement: (a) without notice at any time if Licensee is in default of the Franchise Agreement; (b) if Licensee fails to pay the Technology Fee when due and such failure continues unremedied for five days; (c) upon ten days' written notice of Licensee's failure to comply with any other term of this Agreement if such failure is not remedied within ten days following such notice. In the event of termination, and without limiting Licensor's remedies hereunder, Licensee shall be responsible for payment of all past due Technology Fees and charges up to the date of such termination.

15. **Third-Party Beneficiary.** Licensee understands, acknowledges, and agrees with Licensor that Licensor, and its affiliates, assigns and designees (which may include the creator of the Software) are an intended third-party beneficiary of the terms and conditions of this Agreement.

16. **Restriction on Assignment.** Licensee may not assign its rights or delegate its duties under this Agreement without the prior written consent of Licensor, which may be withheld in its sole and absolute discretion. Licensor reserves the right to assign its rights and obligations under this Agreement to a third party.

17. **Jurisdiction; Applicable Law.** This Agreement shall be construed in accordance with the substantive laws of the State of Texas. Any controversy or claim arising out of this Agreement will be settled by mediation or litigation in the principal city closest to Licensor's principal business address (currently, San Antonio, Texas).

18. **Notices.** All notices required to be given under this Agreement shall be in writing and may be given to the party for whom it is intended by: personal delivery which shall be deemed delivered on the day of delivery; electronic mail to recipient's Massage Heights email account which shall be deemed delivered on the day of delivery, provided that the recipient acknowledges receipt of such electronic mail; prepaid certified mail which shall be deemed delivered on the third business day following the date of mailing; recognized overnight delivery or courier services which shall be deemed



delivered on the next business day following the date of mailing. Any party may at any time give notice in writing to any other party of any change of address. Notices to the respective parties shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

To Licensor:     Massage Heights Franchising, LLC  
                      ATTN: Legal Department  
                      13750 US Hwy 281 North, Suite 925  
                      San Antonio, Texas 78232  
                      Legal@MassageHeightsFranchising.com

To Licensee:     \*\*\*  
                      \*\*\*  
                      \*\*\*

19.     **Waiver.** No waiver or breach of any provision of this Agreement by Licensor will constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of Licensor.

20.     **Entire Agreement.** This Agreement and exhibits or addenda, along with the Franchise Agreement, contain the entire understanding of the parties with respect to the transactions and matters contemplated hereby and this Agreement supersedes all previous agreements concerning the subject matter. This Agreement cannot be amended except by a writing signed by both parties. Nothing in this Agreement is intended to disclaim anything contained in the Franchise Disclosure Document.

**IN WITNESS WHEREOF**, the parties have duly executed and delivered this Agreement as of the date first above written.

**LICENSOR:**

**Massage Heights Franchising, LLC**

By: \_\_\_\_\_  
Shane Evans, Chief Executive Officer

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

**LICENSEE:**

\*\*\*

By: \_\_\_\_\_  
\*\*\*, \*\*\*

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

By: \_\_\_\_\_  
\*\*\*, \*\*\*

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

## Exhibit G-8

### MASSAGE HEIGHTS FRANCHISE

#### SAMPLE SBA ADDENDUM TO FRANCHISE AGREEMENT

**THIS ADDENDUM** (“**Addendum**”) is made and entered into on \_\_\_\_\_, 20\_\_, by and between Massage Heights Franchising, LLC (“**Franchisor**”), located at 13750 US Hwy 281 North, Suite 925, San Antonio, Texas 78232, and \_\_\_\_\_ (“**Franchisee**”), located at \_\_\_\_\_.

Franchisor and Franchisee entered into a Franchise Agreement on \_\_\_\_\_, 20\_\_, (such Agreement, together with any amendments, the “**Franchise Agreement**”). Franchisee is applying for financing(s) from a lender in which funding is provided with the assistance of the U. S. Small Business Administration (“**SBA**”). SBA requires the execution of this Addendum as a condition for obtaining SBA-assisted financing.

In consideration of the mutual promises below and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree that notwithstanding any other terms in the Franchise Agreement:

#### **CHANGE OF OWNERSHIP**

- If Franchisee is proposing to transfer a partial interest in Franchisee and Franchisor has an option to purchase or a right of first refusal with respect to that partial interest, Franchisor may exercise such option or right only if the proposed transferee is not a current owner or family member of a current owner of Franchisee. If the Franchisor’s consent is required for any transfer (full or partial), Franchisor will not unreasonably withhold such consent. In the event of an approved transfer of the franchise interest or any portion thereof, the transferor will not be liable for the actions of the transferee franchisee.

#### **FORCED SALE OF ASSETS**

- If Franchisor has the option to purchase the business personal assets upon default or termination of the Franchise Agreement and the parties are unable to agree on the value of the assets, the value will be determined by an appraiser chosen by both parties. If the Franchisee owns the real estate where the franchise location is operating, Franchisee will not be required to sell the real estate upon default or termination, but Franchisee may be required to lease the real estate for the remainder of the franchise term (excluding additional renewals) for fair market value.

#### **COVENANTS**

- If the Franchisee owns the real estate where the franchise location is operating, Franchisor has not and will not during the term of the Franchise Agreement record against the real estate any restrictions on the use of the property, including any restrictive covenants, branding covenants or environmental use restrictions. If any such restrictions are currently recorded against the Franchisee’s real estate, they must be removed in order for the Franchisee to obtain SBA-assisted financing.

**EMPLOYMENT**

- Franchisor will not directly control (hire, fire, or schedule) Franchisee’s employees. For temporary personnel franchises, the temporary employees will be employed by the Franchisee not the Franchisor.

As to the referenced Franchise Agreement, this Addendum automatically terminates when SBA no longer has any interest in any SBA-assisted financing provided to the Franchisee.

Except as amended by this Addendum, the Franchise Agreement remains in full force and effect according to its terms.

Franchisor and Franchisee acknowledge that submission of false information to SBA, or the withholding of material information from SBA, can result in criminal prosecution under 18 U.S.C. 1001 and other provisions, including liability for treble damages under the False Claims Act, 31 U.S.C. §§ 3729 -3733.

AUTHORIZED REPRESENTATIVE OF FRANCHISOR:

AUTHORIZED REPRESENTATIVE OF  
FRANCHISEE:

**Massage Heights Franchising, LLC**

\_\_\_\_\_  
(Entity Name)

By: \_\_\_\_\_  
Shane Evans, Chief Executive Officer

By: \_\_\_\_\_  
Printed Name:  
Title:

By: \_\_\_\_\_  
Printed Name:  
Title:

**Note to Parties:** This Addendum only addresses “affiliation” between the Franchisor and Franchisee. Additionally, the applicant Franchisee and the franchise system must meet all SBA eligibility requirements.

**EXHIBIT H**  
**FRANCHISE DISCLOSURE QUESTIONNAIRE**

## FRANCHISE DISCLOSURE QUESTIONNAIRE

**DO NOT SIGN THIS STATEMENT IF YOU ARE A RESIDENT OF, OR INTEND TO OPERATE THE FRANCHISED BUSINESS IN, ANY OF THE FOLLOWING STATES:**

**CA, HI, IL, IN, MD, MI, MN, NY, ND, RI, SD, VA, WA, WI**

As you know, Massage Heights Franchising, LLC (“we” or “us”), and you are preparing to enter into a Franchise Agreement for the operation of a Massage Heights franchise. **You cannot sign or date this questionnaire the same day as the Receipt for the Franchise Disclosure Document, but you must sign and date it the same day you sign the Franchise Agreement.** Please review each of the following questions carefully and provide honest responses to each question. If you answer “No” to any of the questions below, please explain your answer in the table provided below. California franchise applicants should refer to the California State Addendum in **Exhibit E** of the Disclosure Document before completing this questionnaire.

**Please answer each response.**

- |    |              |             |  |
|----|--------------|-------------|--|
| 1. | Yes<br>_____ | No<br>_____ | Have you received and personally reviewed the Franchise Agreement, and each attachment or exhibit attached to it that we provided?   |
| 2. | Yes<br>_____ | No<br>_____ | Have you received and personally reviewed the Franchise Disclosure Document and each attachment or exhibit attached to it that we provided?  |
| 3. | Yes<br>_____ | No<br>_____ | Did you sign a receipt for the Franchise Disclosure Document indicating the date you received it?  |
| 4. | Yes<br>_____ | No<br>_____ | Do you understand all the information contained in the Franchise Disclosure Document, Franchise Agreement?   |
| 5. | Yes<br>_____ | No<br>_____ | Have you reviewed the Franchise Disclosure Document and Franchise Agreement with a lawyer, accountant, or other professional advisor, or have you had the opportunity for such review and chosen not to engage such professionals? |
| 6. | Yes<br>_____ | No<br>_____ | Have you had the opportunity to discuss the benefits and risks of developing and operating a Massage Heights Franchise with an existing Massage Heights franchisee?  |
| 7. | Yes<br>_____ | No<br>_____ | Do you understand the risks of developing and operating a Massage Heights Franchise?   |

8.      Yes            No  
          \_\_\_\_\_      \_\_\_\_\_  
Do you understand the success or failure of your Massage Heights Franchise will depend in large part upon your skills, abilities, and efforts, and those of the persons you employ, as well as many factors beyond your control such as competition, interest rates, the economy, inflation, labor and supply costs, and other relevant factors?
9.      Yes            No  
          \_\_\_\_\_      \_\_\_\_\_  
Do you understand all disputes or claims you may have arising out of or relating to the Franchise Agreement must be litigated in Texas, if not resolved informally or by mediation (subject to state law)?
10.     Yes            No  
          \_\_\_\_\_      \_\_\_\_\_  
Do you understand that you must satisfactorily complete the initial training program before we will allow your Massage Heights Franchise to open or within a specified time following our consent to a transfer of the Massage Heights Franchise to you?
11.     Yes            No  
          \_\_\_\_\_      \_\_\_\_\_  
Do you agree that no employee or other person speaking on our behalf made any statement or promise regarding the costs involved in operating a Massage Heights Franchise that is not contained in the Franchise Disclosure Document or that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
12.     Yes            No  
          \_\_\_\_\_      \_\_\_\_\_  
Do you agree that no employee or other person speaking on our behalf made any statement or promise or agreement, other than those matters addressed in your Franchise Agreement, and any addendum, concerning advertising, marketing, media support, marketing penetration, training, support service, or assistance that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
13.     Yes            No  
          \_\_\_\_\_      \_\_\_\_\_  
Do you agree that no employee or other person speaking on our behalf made any statement or promise regarding the actual, average or projected profits or earnings, the likelihood of success, the amount of money you may earn, or the total amount of revenue a Massage Heights Franchise will generate that is not contained in the Franchise Disclosure Document or that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
14.     Yes            No  
          \_\_\_\_\_      \_\_\_\_\_  
Do you understand that the Franchise Agreement, including each attachment or exhibit to the Franchise Agreement, contains the entire agreement between us and you concerning the Massage Heights Franchise?

15.    Yes            No  
       \_\_\_\_\_    \_\_\_\_\_

Do you understand that we are relying on your answers to this questionnaire to ensure that the franchise sale was made in compliance of state and federal laws?

YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO US AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.

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

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

**EXPLANATION OF ANY NEGATIVE RESPONSES (REFER TO QUESTION NUMBER):**

Question Number	Explanation of Negative Response



## EXHIBIT I

### STATE EFFECTIVE DATES

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered, or exempt from registration, as of the Effective Date stated below:

<b>State</b>	<b>Effective Date</b>
California	Pending
Hawaii	Pending
Illinois	Pending
Indiana	Pending
Maryland	Pending
Michigan	Pending
Minnesota	Pending
New York	Pending
North Dakota	Pending
Rhode Island	Pending
Virginia	Pending
Washington	Pending
Wisconsin	Pending

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

EXHIBIT J

**RECEIPT**



