

FRANCHISE DISCLOSURE DOCUMENT
ELEMENTS THERAPEUTIC MASSAGE, INC.
(a Delaware corporation)
9092 South Ridgeline Boulevard, Suite A
Highlands Ranch, Colorado 80129
(877) 663-0880

www.touchofelements.com

info@touchofelements.com



elements[®]

therapeutic massage

Elements Therapeutic Massage, Inc. offers franchises for the operation of studios under the name Elements Therapeutic Massage[®] offering various forms of therapeutic massage services and any related future services and products. The total initial investment necessary to begin operation of an Elements Therapeutic Massage studio ranges from \$159,100 to \$288,000. This includes the \$53,940.50 to \$58,940.50 that you must pay to us or our 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 franchise agreement with, or make any payment to, the franchisor or 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 the Elements Therapeutic Massage, Inc. Franchise Development Department at 9092 S. Ridgeline Blvd., Suite A, Highlands Ranch, CO, (877) 663-0880, Extension 21.

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

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

There may also be laws on franchising in your state. Ask your state agencies about them. (See Exhibit E.)

Issuance date: March 9, 2010, as amended August 20, 2010

STATE COVER PAGE

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

Call the state franchise administrator listed in Exhibit E for information about the franchisor, or about franchising in your state.

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

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

1. THE FRANCHISE AGREEMENT REQUIRES THAT ALL DISAGREEMENTS AND DISPUTES BE SETTLED BY BINDING ARBITRATION OR LITIGATION IN THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS CURRENTLY LOCATED, WHICH IS CURRENTLY DENVER, COLORADO. OUT OF STATE ARBITRATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE OR LITIGATE WITH US IN OUR HOME STATE RATHER THAN IN YOUR HOME STATE.
2. COLORADO LAW GOVERNS THE FRANCHISE AGREEMENT AND THE RELATIONSHIP BETWEEN US AND YOU. THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. IF YOU ARE A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY, YOUR OWNERS WILL HAVE TO GUARANTY YOUR OBLIGATIONS AND BE BOUND BY THE PROVISIONS OF OUR FRANCHISE AGREEMENT. IF THE OWNER IS A RESIDENT OF A STATE WHICH REQUIRES SPOUSAL CONSENT TO ENCUMBER THE ASSETS OF A MARITAL ESTATE, THEN THE OWNER'S SPOUSE MUST CONSENT TO THE GUARANTY, WHICH PLACES THE SPOUSE'S MARITAL ASSETS AT RISK.
4. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

Effective Date: See the next page for state effective dates

STATE EFFECTIVE DATES

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

California effective date: March 17, 2010, as amended August 25, 2010

Hawaii effective date: March 17, 2010, as amended August 30, 2010

Illinois effective date: March 10, 2010, as amended August 23, 2010

Indiana effective date: March 10, 2010, as amended August 20, 2010

Maryland effective date: June 9, 2010, as amended September 10, 2010

Michigan effective date: March 9, 2010, as amended August 20, 2010

Minnesota effective date: March 11, 2010, as amended August 24, 2010

New York effective date: March 19, 2010, as amended August 31, 2010

North Dakota effective date: March 26, 2010, as amended September 28, 2010

Rhode Island effective date: March 16, 2010, as amended August 23, 2010

South Dakota effective date: March 10, 2010, as amended August 20, 2010

Virginia effective date: March 22, 2010, as amended August 30, 2010

Washington effective date: March 16, 2010, as amended August 23, 2010

Wisconsin effective date: March 10, 2010, as amended August 23, 2010

In all other states that do not require registration, the effective date of this Disclosure Document is the issuance date of March 9, 2010, as amended August 20, 2010.

STATE OF MICHIGAN DISCLOSURE NOTICE

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.

(a) A prohibition on the right of a Franchisee to join an association of Franchisees.

(b) A requirement that a Franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a Franchisee of rights and protections provided in the Michigan Franchise 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 before the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.

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

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

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

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

- (i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.
- (ii) The fact that the proposed transferee is a competitor of the franchisor or sub-franchisor.
- (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 these assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

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

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

Any questions regarding this notice should be directed to: State of Michigan, Department of the Attorney General, Consumer Protection Division, Attn: Franchise, G. Mennen Williams Building – 6th Floor, 525 West Ottawa, Lansing, Michigan 48933, Telephone Number: (517) 373-7117

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

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

ELEMENTS THERAPEUTIC MASSAGE, INC.

Franchise Disclosure Document

Table of Contents

<u>ITEM</u>		<u>PAGE</u>
ITEM 1.	THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES	1
ITEM 2.	BUSINESS EXPERIENCE	3
ITEM 3.	LITIGATION	4
ITEM 4.	BANKRUPTCY	4
ITEM 5.	INITIAL FEES	4
ITEM 6.	OTHER FEES.....	5
ITEM 7.	ESTIMATED INITIAL INVESTMENT	12
ITEM 8.	RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES	16
ITEM 9.	FRANCHISEE'S OBLIGATIONS.....	19
ITEM 10.	FINANCING	20
ITEM 11.	FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING...21	
ITEM 12.	TERRITORY	29
ITEM 13.	TRADEMARKS.....	31
ITEM 14.	PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION.....	32
ITEM 15.	OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE STUDIO.....	33
ITEM 16.	RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL	34
ITEM 17.	RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION.....	34
ITEM 18.	PUBLIC FIGURES	37
ITEM 19.	FINANCIAL PERFORMANCE REPRESENTATIONS	37
ITEM 20.	OUTLETS AND FRANCHISEE INFORMATION	39
ITEM 21.	FINANCIAL STATEMENTS.....	44
ITEM 22.	CONTRACTS	44
ITEM 23.	RECEIPTS.....	44

EXHIBITS

A	State Addenda
B	Franchise Agreement
C1	Franchisees as of December 31, 2009
C2	Franchisees Who Left the Elements System during the Last Fiscal Year
C3	Franchises Sold But Not Yet Opened as of December 31, 2009
D	Audited Financial Statements of Elements Therapeutic Massage, Inc. for the years ended 2007, 2008, and 2009
E	State Agencies for Service of Process
F	Area Directors
G	Franchisee Questionnaire
H	Form of Non-Compete and Confidentiality Agreement
I	Form of Conversion Program Addendum to Franchise Agreement
J	Form of Guarantee Indemnification
K	Form of General Release
L	Operations Manual Table of Contents
M	Receipts

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

The Franchisor

To simplify the language in this Franchise Disclosure Document (“**Disclosure Document**”), “we,” “us,” “**Franchisor**,” “**Elements**” or “**our**” means Elements Therapeutic Massage, Inc. “You,” “your,” or “**Franchisee**” means the person or legal entity (including an individual, corporation, partnership, limited liability company or other legal entity, and its owners, officers, and directors) buying the franchise. If you are a legal entity, your owners will have to guarantee your obligations and be bound by the provisions of the franchise agreement and other agreements as described in this Disclosure Document.

We were incorporated in the State of Delaware on August 4, 2006. Our principal business address is 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129. We conduct business under our corporate name and no others.

Our agents for service of process are listed on Exhibit E to this Disclosure Document.

Our Business Activities

We sell franchises to own and operate Elements Therapeutic Massage studios (“**Studios**”). The Elements franchise system is a unique and comprehensive system providing various forms of therapeutic massage and related services and products that may be offered in the future to the general public (the “**Franchise System**”).

We will enter into the franchise agreement attached as Exhibit B (the “**Franchise Agreement**”), which will grant to you a license to use the service mark “Elements Therapeutic Massage[®]” as well as other service marks (including those disclosed in Item 13 of this Disclosure Document), for the purpose of owning and operating a Studio.

We do not currently own or operate any Studios. We have offered franchises in the line of business disclosed in this Disclosure Document since 2006, and we have not offered franchises in any other line of business or conducted any other business. As of December 31, 2009, we had 74 Elements franchises. See Item 20 for more information.

Our Parent, Predecessors and Affiliates

Our parent company is Fitness Together Holdings, Inc. (“**Parent Company**”). Our Parent Company was incorporated in the State of Delaware in 2006 and conducts business under its corporate name only at its principal business location of 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129. We do not have any predecessors.

In addition to owning us, our Parent Company wholly owns Fitness Together Franchise Corporation, which is the franchisor of the Fitness Together one-on-one personal training studio system (“**FT**”). FT was incorporated in Arizona, began offering franchises in 1996, and has its principal place of business at the same address as ours. FT offers and sells franchises to operate one-on-one physical training studios. As of December 31, 2009, there were 357 FT franchises.

Our Parent Company also wholly owns FTHC Operating Company, an Arizona corporation, which was incorporated in 2009 to provide services in connection with our gift card program. In addition, our Parent Company wholly owns FTHI Franchise Assurance Company, a Delaware corporation (“**FTHI-FAC**”),

which was formed in June 2010. FTHI-FAC may guarantee a portion of our franchisees' loans under certain circumstances. (See Item 10) FTHI-FAC shares our principal business address.

FT-One LLC, a Colorado limited liability company ("**FT-One**"), was formed in February 2007 to own and operate an FT studio in Lone Tree, Colorado. FT has a 75% ownership interest in FT-One. In May 2008, FT-One sold the studio to an FT franchisee and currently sublets the premises to the FT franchisee. FT-One remains primarily liable as tenant under the lease. Both FTHC Operating Company and FT-One have the same principal business location as ours.

Other than as described above, neither we, our Parent Company, nor any affiliates required to be disclosed in this Item 1 have operated any other businesses or sold or operated the franchises being offered by us and described in this Disclosure Document.

Area Directors

From October 2006 to October 2008, we offered to qualified individuals master franchise agreements for the operation of area director businesses in specific territories ("**Area Directors**"). Each Area Director acts as our representative, with the right to solicit and identify prospective franchisees on our behalf and provide support services to the franchisees in his or her territory. When a franchise is sold, the franchise agreement is signed by the franchisee and us. To the extent the Area Directors provide sales and support services, they are compensated with a portion of the franchise and royalty fees paid to Franchisor by franchisees in the Area Director's territory. As the Franchisor, we are contractually responsible to you if the services are not performed as required under the Franchise Agreement. Currently we only intend to offer additional area director businesses to existing area directors who qualify for a renewal franchise.

A list of Area Directors and their respective territories is provided in Exhibit F to this Disclosure Document.

Description of the Franchised Business

We grant to each franchisee a license to use the "Elements Therapeutic Massage[®]" trademark, together with other trademarks, service marks, trade names, symbols, emblems, slogans, insignias, designs and logos, existing now or which may exist in the future (together, the "**Marks**") for use in operating the Studio. You will sell and provide various forms of therapeutic massage services, as well as any related services and products that may be offered in the future. You will operate the Studio according to our standards, specifications, methods, techniques, and operating and other procedures ("**System Standards**") that constitute the Franchise System. The distinguishing characteristics of the Franchise System include the Marks, the interior layout and design, color scheme, signage and equipment, copyrights, titles, symbols, emblems, slogans, insignia, designs, diagrams, artworks, worksheets, originals, techniques, rules, ideas, philosophies, illustrations, course materials, the operations manual, any other manuals or materials loaned to you, and any additional manuals and materials periodically provided to you regarding the operations of your Studio (collectively, the "**Operations Manual**"), the System Standards, advertising and promotional materials, other audio, video and written materials, and other aspects of the Franchise System we have developed and designated for use within the Franchise System, or may acquire or develop and designate for use within the Franchise System in the future, all of which we may enhance and further develop (the "**Proprietary Assets**"). Our Proprietary Assets also include the client lists and other client information of each Studio. Elements Studios offer a membership program under which members, for a monthly fee, receive one massage per month.

We also offer to operators of other massage businesses who meet our criteria a franchise for the conversion of their business to a Studio. If you qualify for such a franchise, you will sign the Conversion Addendum attached as Exhibit I (the “**Conversion Addendum**”), together with the Franchise Agreement.

The Market and Competition

The Studio will offer its services and products to the general public. You will compete with nationally recognized trade names in the massage industry and with other local and regional businesses offering similar services and products. As of the date of this Disclosure Document, the economies of the United States and other countries worldwide are being negatively affected by a number of factors, and we cannot predict what impact these negative economic conditions will have on our industry or our franchisees. There may be additional unforeseen changes in the economy and in the industry.

Licenses, Permits, and Industry Regulations

Federal, state, and local labor regulations, including minimum age and wage laws, Americans with Disabilities Act, and other laws and regulations apply to businesses generally. You must comply with such laws and with all other laws that apply generally to all businesses. Currently there are no specific federal regulations governing the massage industry. However, many states require massage therapists to be licensed and you must ensure that the Studio and the therapists who work in your Studio comply with these requirements. Laws vary from place to place and may include bonding and registration requirements. Other regulations may apply to site location and building construction. You must know the laws and regulations applicable to your Studio and ensure that you and your employees comply with all such laws and regulations. You are also responsible for obtaining any licenses or permits required for operating your Studio. You should consult with your own professional advisors, such as an attorney and accountant, regarding applicable laws and regulations. In addition, it is your responsibility to implement and conform to the Health Insurance Portability and Accountability Act of 1996 (HIPPA) privacy laws.

ITEM 2. BUSINESS EXPERIENCE

Jeffrey L. Jervik, President and Chief Executive Officer, Director

Mr. Jervik has been our Chief Executive Officer, President and director since May 2008. Mr. Jervik has also been the Chief Executive Officer, President and a director of our Parent Company and FT since that time. Mr. Jervik took a professional sabbatical from October 2007 to May 2008 after serving as Executive Vice President of Operations of Krispy Kreme Doughnuts, Inc., in Winston-Salem, North Carolina from October 2005 to October 2007. Prior to that date, Mr. Jervik was the Operating Partner of Papa John’s Hawaii, in Honolulu, Hawaii, from October 1998 through August 2005.

Daniel M. Colbourne, Executive Vice President and Chief Financial Officer

Mr. Colbourne joined us in September 2009 as our Executive Vice President and Chief Financial Officer and has held the same position at our Parent Company and FT since that time. From August 2000 to May 2008, Mr. Colbourne was the Senior Vice President and Chief Financial Officer of Comex Group, Inc., located in Denver, Colorado. From May 2008 to September 2009, Mr. Colbourne was on sabbatical.

Robert S. Haimes, Executive Vice President and Chief Growth Officer

Mr. Haimes joined us in July 2009 as our Executive Vice President and Chief Growth Officer and has held the same position at our Parent Company and FT since that time. Previously, Mr. Haimes served as the Executive Vice President of Efficient Forms, LLC in Littleton, Colorado from February 2009 to July

2009, and continues to serve as a Director of that company. From December 2007 through February 2009, Mr. Haimes was the principal of Growthtrac Consulting, LLC, located in Conifer, Colorado. From July 2007 to December 2007, Mr. Haimes took a professional sabbatical, after serving as Executive Vice President of eCollege-owned Datamark located in Salt Lake City, Utah, from April 2005 through July 2007. Prior to its purchase of Datamark, Mr. Haimes served as Senior Vice President of eCollege in Denver, Colorado from November 1999 through November 2005.

Amy Powers, Executive Vice President and General Counsel

Ms. Powers joined us in July 2009 as our Executive Vice President and General Counsel and has held the same position at our Parent Company and FT since that time. From May 2009 to July 2009, Ms. Powers was the Acting General Counsel of QFA Royalties LLC, the franchisor of the Quiznos Sub franchise system, and other Quiznos affiliated entities (collectively “Quiznos”). From October 2006 to May 2009, Ms. Powers was Senior Vice President and Assistant General Counsel of QFA in Denver, Colorado. From May 2002 until October 2006, Ms. Powers held various senior legal positions at Quiznos, all in Denver, Colorado.

Kyle Gjersee, Senior Vice President and Chief Operations Officer

Mr. Gjersee has been our Senior Vice President and Chief Operations Officer since January 2009. Before joining Elements, he was the Vice President for Spicy Pickle Franchising in Denver, Colorado from February 2007 to December 2008, and was a Vice President with Quiznos in Denver, Colorado from February 2004 through November 2008.

Scott Wendrych, Senior Vice President and Chief Sales Officer

Mr. Wendrych has been our Senior Vice President and Chief Sales Officer since September 2008 and was our President from August 2006 to September 2008. Before that time, Mr. Wendrych was the Director of Sales of FT from July 2004 to July 2006.

ITEM 3. LITIGATION

No litigation is required to be disclosed in this Item.

ITEM 4. BANKRUPTCY

No bankruptcy is required to be disclosed in this Item.

ITEM 5. INITIAL FEES

Initial Franchise Fees. When you sign the Franchise Agreement, you must pay us an initial franchise fee as stated below:

Standard Program

The initial franchise fee for one franchise purchased by you from us is \$39,000.

Business Builder Program

If you are approved to purchase three franchises from us under our Business Builder Program, the franchise fee for the first franchise agreement will be \$39,000, the franchise fee for the second franchise

agreement will be \$34,000 and the franchise fee for the third franchise agreement will be \$29,000. All three franchise agreements must be purchased, and all three franchise fees must be paid, at the same time.

Conversion Program

If you are signing the Conversion Addendum described in Item 1, you must pay us 50% of the then-existing initial franchise fee (currently \$19,500) when you sign the Franchise Agreement. At the time you convert your existing business to a Studio, you must pay us the balance of the initial franchise fee. You will have 180 days to convert your existing business into a Studio; however, you shall pay royalties on your gross receipts that accrue beginning on the date on which your Franchise Agreement is fully executed by you and us. If you fail to convert your business into a Studio within such time period, we will have the right to terminate your Franchise Agreement and retain the non-refundable initial franchise fee.

Real Estate Broker Fee. You must pay us a non-refundable fee of \$4,000 in connection with real estate brokerage services to assist you in choosing a location for your Studio. We will provide these services or, at our option, designate a third party to provide these services.

Payment of Fees. The initial franchise fees and real estate broker fee must be paid to us as a lump sum in the form of a cashier’s check or wire transfer at the time the Franchise Agreement is signed, except in the case of the purchase of multiple franchise agreements. If you purchase multiple franchise agreements, the real estate broker fee for the first franchise agreement must be paid at the time the franchise agreements are executed and, for additional franchise agreements, at the time you commence your search for a Studio location under each additional franchise agreement.

All initial franchise fees are fully earned by us when paid by you and are not refundable under any circumstances.

We reserve the right to waive or reduce the initial franchise fee for other franchisees; however, in fiscal year ended December 31, 2009, we did not discount any initial franchise fees.

Other Initial Payments. Before you open your Studio, you must purchase certain equipment, furniture and fixtures, products and materials as disclosed in Item 8 of this Disclosure Document, some of which must be purchased from us. You must pay for these initial purchases in a lump sum in the form of a cashier’s check or wire transfer prior to opening your Studio. These payments are non-refundable. We estimate that the aggregate amount payable to us for the equipment, furniture and fixtures, products and materials will range from \$10,000 to \$15,000. You are also required to pay us a \$940.50 set up fee for certain initial computer hardware components and required software programs.

ITEM 6. OTHER FEES

Type of Fee*	Amount	Due Date	Remarks
Royalty	6% of gross receipts	5 th day of each month	See Note 1
Default Fee	\$250	Upon receipt of statement	See Note 2
Late Payment Fee	Greater of 10% of the amount due or \$150	Upon receipt of statement	See Note 3
Dishonored Check or Insufficient Funds Fee	\$150	Upon receipt of statement	See Note 4

Type of Fee*	Amount	Due Date	Remarks
Defense or Enforcement Costs	All costs including attorneys' fees (variable)	Upon settlement or conclusion of a claim or other legal action	See Note 5
Indemnification	All costs including attorneys' fees (variable)	Upon settlement or conclusion of a claim or other legal action	See Note 6
Collection Costs	Actual costs to collect past due or other amounts	Upon settlement or conclusion	See Note 7
Default Operation Costs (in event of your default)	Up to \$5,000 per month	1 st day of each month upon occurrence	See Note 8
Royalty Underpayments (audit)	\$600 to \$3,000 (estimated)— difference between amount reported and correct amount, plus 12% of such amount (and if understated amount is more than 2%, plus our costs (including attorneys' and accountants' fees))	Time of audit	See Note 9
Equipment, Inventory, Products and Materials (in addition to initial requirements)	Varies based on items and quantity ordered.	At time of purchase	See Note 10
Supplies or Supplier Approval	\$100 per hour	Upon request	See Note 11
Computer Software	\$68 per month	1st day of each calendar month	See Note 12
Computer Hardware and Software Upgrades	Varies depending on requirements	At time of upgrade	See Note 13
Changed Requirements	Varies depending on changes	Upon occurrence	See Note 14
Marketing Fund	As established; up to 1% of gross receipts	As established	See Note 15
Marketing Spend Requirement	Up to the required minimum Marketing Spend Requirement	As established	See Note 16
Marketing Cooperatives	As established	As established	See Note 17
Studio Website	\$55 per month (\$45 per month if you own more than one open and operating Studio)	Upon receipt of invoice	See Note 18
Training (refresher)	We may require a \$2,500 fee and you must pay all costs for travel, meals, lodging and other expenses	If a fee is payable, prior to attendance at training program; costs and expenses as incurred	See Note 19
Communications Log/Planner	\$45 per quarter	Upon receipt of invoice	See Note 20

Type of Fee*	Amount	Due Date	Remarks
Insurance	Varies by coverage and provider	If you fail to obtain insurance, we may obtain it for you and you will be required to reimburse us for any premiums and other costs we incur	See Note 21
Assistance Locating a Purchaser for your Studio	If you request assistance, marketing expenses (variable), plus a \$7,500 fee upon transfer (in addition to payment of the transfer fee described below)	Marketing expenses as incurred and \$7,500 fee upon transfer (in addition to payment of the transfer fee described below)	See Note 22
Transfer Fee	50% of the then-current initial franchise fee (currently \$19,500)	Upon transfer	See Note 23
Arbitration and Proceeding Costs	Our arbitration or other proceeding fees and costs plus attorneys' fees and costs if we prevail in the arbitration or proceeding	Upon conclusion of arbitration or proceeding	See Note 24
Renewal Fee	25% of the then-current initial franchise fee (currently \$9,750)	Upon renewal	See Note 25
Termination Fee	An amount equal to the net present value of the Royalties and other fees that would have become due and payable following termination of your Franchise Agreement for the period your Franchise Agreement would have remained in effect but for your default or your termination without cause	Upon termination of the Franchise Agreement	See Note 26

*Except as otherwise noted, all fees are uniformly imposed on all franchisees and collected by, and payable to, us (or our designated affiliate). No other fees or payments will be paid to us, and we do not impose or collect any fees for third parties. We may also pay an Area Director a portion of the Royalty you pay us if your Studio is located in an Area Director's territory. Any fees paid to us are non-refundable unless otherwise noted. Your costs for certain items listed above may differ depending on the suppliers used, local costs, and other factors.

NOTES:

1. **Royalty.** You must pay us the monthly royalty on the 5th day of the first full calendar month after opening the Studio (or if you are converting an existing business to a Studio, the first full calendar month after the date you sign the Franchise Agreement), and on the 5th day of each month after that date during the term of the Franchise Agreement. We will auto-debit your bank account (known as "ACH") for the amounts due based on your gross monthly receipts from the previous month. The ACH will remain in effect throughout the term of the Franchise Agreement. You

must ensure that funds are available in your bank account to cover our withdrawals. Some banks charge fees for us to ACH your account; you must pay those fees. Gross monthly receipts are all of your revenue and receipts, including those taken by cash, credit card, debit card, check, trade, barter or exchange, electronic funds transfer, or any other means of credit derived from the operations of the Studio, including the sales of massages, merchandise, products, gift certificates, gift cards or any other products or services you sell, whether sold at your Studio premises or elsewhere. Gross monthly receipts do not include sales, use or privilege taxes paid to the appropriate taxing authority, refunds that are made to customers, and tips received by massage therapists. In addition, should your business be interrupted for any reason and you are receiving business interruption insurance payments, the gross amount of these payments will be considered to be gross monthly receipts and will be subject to the monthly Royalty. If you fail to report your gross monthly receipts, we may debit your account for an estimated monthly royalty equal to the greater of (a) 6% of the average of your last three prior months of reported gross monthly receipts for your Studio, or (b) 6% of the average of the gross monthly receipts for all Studios for the immediately prior month (“**Estimated Monthly Royalty**”). If the Estimated Monthly Royalty we debit from your account is less than the amount you actually owe us (once we have determined your Studio’s true and correct gross monthly receipts), we will debit your account for the balance on the day we specify. If the Estimated Monthly Royalty we debit from your account is greater than the amount you actually owe us, we will credit the excess against the amounts we otherwise would debit from your account during the following month.

Despite any designation you make, we may apply any of your payments to any of your past due indebtedness to us.

We may require you to pay any amounts due under the Franchise Agreement or otherwise by means other than ACH (*e.g.*, by check or credit card) whenever we deem appropriate, and you must comply with our payment instructions. If you fail to comply with our payment instructions, we reserve the right to exclude you from participating in certain programs. In addition, your failure to comply with our payment instructions will be considered a default under the Franchise Agreement.

2. **Default Fee.** If you are in default of the Franchise Agreement and we send you a default notice, you must pay us a default fee.
3. **Late Payment Fee.** For all past due sums you owe us, you must pay us a late fee for each month or portion of a month that the amount is past due. This applies to all amounts owed to us, our Parent Company, and our affiliates, including but not limited to advertising fees (if any), royalties, transfer and renewal fees, and amounts due for purchases from us, our Parent Company or our affiliates.
4. **Dishonored Checks or Insufficient Funds Fee.** If you write us a check that is returned, cancelled or dishonored, or if we ACH your bank account (in accordance with the terms of the Franchise Agreement) and your account has insufficient funds or is inaccessible, you must pay us an insufficient funds fee.
5. **Defense or Enforcement Costs.** If we employ legal counsel or incur other expenses to (a) enforce any of your obligations under, or requirements of, the Franchise Agreement, (b) enforce you, your owners’ or your or their spouses’ personal guarantees of your obligations under the Franchise Agreement, or (c) defend ourselves against any claim, demand, action or proceeding initiated by you against us or because you contest the validity, ownership, distinctiveness or enforceability of the Proprietary Assets and the goodwill associated with the Proprietary Assets,

or because you and we litigate, we will be entitled to seek temporary, preliminary or permanent injunctive relief from a court of competent jurisdiction or take such other legal action as may be available to us. If we are successful in any such action, we will be entitled to have you pay our reasonable attorneys' fees, court costs, expenses of litigation and all other costs associated with any other appropriate remedies.

6. **Indemnification.** You must indemnify, defend and hold us, our affiliates, and our and their respective stockholders, members, owners, principals, directors, officers, employees, representatives and agents, harmless from any and all losses, expenses, judgments, claims, reasonable attorneys' fees and damages related to the Studio or from your breach of the Franchise Agreement. You must notify us in writing within five calendar days of any lawsuit, complaint or proceeding filed by or against you regarding the operation of the Studio and, upon request, must furnish us with copies of all documents related to the lawsuit, complaint or proceeding.
7. **Collection Costs.** If you withhold monies owed to us in the absence of a court order permitting you to do so, you must pay us all reasonable costs, including court costs, attorneys' fees, reasonable value for our employees' time, witness fees and travel expenses incurred in pursuing the collection of the withheld monies.
8. **Default Operation Costs (in the event of your default).** If you are in default of the Franchise Agreement and have not cured the default within the applicable cure period, we have the right to enter your Studio, to make modifications necessary to protect the Proprietary Assets, to cure any default under the Franchise Agreement or under the lease for the premises, and assume all of your rights under the lease (including making lease payments), including the right to assign or sub-lease. We shall also have the right to remove your equipment and signage. If we choose to enter and manage your business in the case of your breach of the Franchise Agreement, you must pay us a monthly fee. We have these rights whether or not your Franchise Agreement is terminated.
9. **Royalty Underpayments (audit).** If an inspection or audit of your books and records reveals that any payments due or made to us were based upon understated amounts, then, upon our demand, you must immediately pay us an amount equal to the payment that would have been due or paid in the absence of understated amounts, minus the payment actually due or made, plus 12% interest, calculated on an annual basis, from the date the disputed amount was originally due until the correct amount is paid. If the understatement is 2% or more, then you will also reimburse us for any costs and expenses, including accounting and attorneys' fees, in connection with the inspection or audit.
10. **Equipment, Inventory, Products and Materials (in addition to initial requirements).** From time to time, as needed to restock and maintain the required equipment and inventory, you must purchase for your Studio certain inventory, equipment, products, furniture, fixtures, signs, stationary, supplies, and other items or services required or recommended by us from manufacturers, suppliers and distributors required or recommended by us, which shall include us and our affiliates. Item 8 of this Disclosure Document contains additional information about required or designated preferred providers, products and services.
11. **Supplies or Supplier Approval.** If you wish to purchase supplies that are not Approved Supplies, or purchase supplies from a supplier that is not an Approved Supplier, you must first submit your request to us for approval. We will charge you a fee to evaluate the supplies or supplier, payable upon receipt of our invoice. We may withhold approval of any supplies or suppliers for any reason.

12. **Computer Software.** We require you to use the software program designated and described in the Operations Manual. Currently, you must pay us a set up fee and a monthly fee, which we ACH from your bank account on the first day of each month beginning with the first full month following the date on which you complete software training. (See Item 11 of this Disclosure Document for information about the required computer software).
13. **Computer Hardware and Software Upgrades.** During the term of the Franchise Agreement, you must upgrade any hardware component or software program at any time to be compatible with the software package required by us. The cost for any upgrade will vary depending upon the upgrades required. (See Item 11 of this Disclosure Document for information computer hardware and software upgrades.)
14. **Changed Requirements.** We may revise our System Standards and Operations Manual to implement new or different operating requirements and fees. You agree to comply with any new or changed requirements and fees.
15. **Marketing Fund.** We do not require you to contribute to any marketing or advertising funds at this time, but may in the future. If a Marketing Fund is established, you will be required to make contributions to the Marketing Fund of up to 1% of the gross receipts of your Studio, which we will spend on advertising, marketing and promotional programs for your Studio. You must meet the Marketing Spend Requirement described in Item 11 of this Disclosure Document. The Marketing Spend Requirement may include any contributions you make to a Marketing Fund (if established), and any contributions you make to a Marketing Cooperative (see below). If established, we may vary your Marketing Fund contributions and, if you contribute to a Marketing Cooperative, the Marketing Cooperative may vary your Marketing Cooperative contribution. If those contributions are established or exist and are subsequently adjusted, you must adjust your other advertising, marketing and promotional expenditures so that the Marketing Spend Requirement does not drop below the minimum amount you are required to spend to meet your Marketing Spend Requirement. Your required Marketing Fund and Marketing Cooperative contributions could, by themselves, exceed the minimum Marketing Spend Requirement. (See Item 11 of this Disclosure Document for more information on advertising and marketing costs.)
16. **Marketing Spend Requirement.** We have the right to collect any funds constituting the minimum Marketing Spend Requirement that are not otherwise being contributed to the Marketing Fund or Marketing Cooperatives and use those funds for local, regional or national advertising or promotional programs that reach your Studio's local trade area. The minimum "Marketing Spend Requirement" is: 1) during the first 90 days after you open your Studio, \$25,000 to advertise, market and promote your Studio; 2) after the first 90 days to the one-year anniversary of the date you open your Studio, \$2,000 per month; and 3) beginning in the second year anniversary of the date you open your Studio and continuing through the term of the Franchise Agreement, 5% of your gross receipts. If you are converting your existing business to a Studio, your Marketing Spend Requirement is 5% of your gross receipts throughout the term of the Franchise Agreement. (See Item 11)
17. **Marketing Cooperatives.** We may designate a geographic area in which three or more Studios are located as an area in which to establish a marketing cooperative ("**Marketing Cooperative**"). The Marketing Cooperative's members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. All material decisions of the Marketing Cooperative, including contribution levels, will require the affirmative vote of 51% of all Studios operating within the Marketing Cooperative's area

(including those that we and our affiliates operate, if any), with each Studio receiving one vote. We may collect Marketing Cooperative fees and transfer those fees to the Marketing Cooperative, or the Marketing Cooperative may collect the fees directly, as we determine. We may form, modify, change, dissolve, or merge Marketing Cooperatives. (See Item 11 of this Disclosure Document for more detail on Marketing Cooperatives.)

18. **Studio Website.** You are required to use our proprietary software to maintain a website for your Studio that is hosted by our Approved Supplier. You must pay us a monthly fee for your website, which will be reduced if you have more than one open and operating Studio. (See Item 11 of this Disclosure Document for more detail on websites).
19. **Training (refresher).** In the event we periodically provide refresher training courses or programs to our franchisees, we may require you to pay a \$2,500 fee per individual you designate to attend such training, and you must pay all costs for travel, meals, lodging and other expenses related to attendance at any refresher training course or program.
20. **Communications Log/Planner.** You must purchase from us, on a quarterly basis, a communications log and planning guide book for use in your Studio.
21. **Insurance.** You must obtain and retain the required insurance coverage as outlined in the Franchise Agreement or as may be otherwise periodically required by us. If you fail to obtain or retain such insurance, we may, but are not obligated to, obtain such insurance for you and charge the costs of the premiums, plus our reasonable costs in obtaining such insurance, to you.
22. **Assistance Locating a Purchaser for your Studio.** Upon your request, we can assist you in identifying a purchaser for your Studio. You will pay the costs of marketing your Studio as they are incurred and, upon completion of the transfer of your Studio (execution of a franchise agreement and related transfer documents), you must pay us the assistance fee by cashier's check or wire transfer. In addition to the fee, the transfer fee described below must be paid to us.
23. **Transfer Fee.** You must pay us a transfer fee if you sell or transfer ownership of your Studio, or if you assign or sell your controlling interest in the Studio to another party. This transfer fee must be paid to us in a lump sum in the form of a cashier's check or wire transfer at the time of the transfer. You do not have to pay a transfer fee if, within 90 days from the date you sign your Franchise Agreement, you transfer your individual interest in the Franchise Agreement to a corporation, limited liability company, partnership or similar entity in which you are a majority owner.
24. **Arbitration and Proceeding Costs.** The prevailing party of any arbitration or other proceeding shall be entitled to its reasonable attorneys' fees and costs.
25. **Renewal Fee.** You must pay us a renewal fee in order to renew your Franchise Agreement. The renewal fee is due upon renewal of the Franchise Agreement and is payable by cashier's check or wire transfer.
26. **Termination Fee.** You are required to pay us the termination fee if we terminate your Franchise Agreement because you defaulted under the agreement and failed to cure the default within the applicable cure period. Royalties and other fees included in the termination fee will be calculated based on your Studio's average monthly gross receipts for the 12 months preceding the termination date. If you have not opened your Studio for business for at least 12 months preceding the termination date, Royalties and other fees will be calculated based on the average

monthly gross receipts of all Studios in the Franchise System during the fiscal year prior to the termination date.

ITEM 7. ESTIMATED INITIAL INVESTMENT

YOUR ESTIMATED INITIAL INVESTMENT

Type of Expenditure	Amount*	Method of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee ¹	\$39,000	Lump sum	Upon signing Franchise Agreement	Us
Real Estate Broker Fee ²	\$4,000	Lump sum	Upon signing the Franchise Agreement	Us
Real Property and Utility Security Deposits ³	\$3,300-\$6,900	As arranged	As arranged, generally two months before opening or when lease is executed	Landlord and utility providers
Leasehold Improvements (net of landlord tenant allowances) ⁴	\$25,000-\$110,000	As arranged	As arranged	Landlord and Approved Suppliers and contractors
Equipment ⁵	\$10,000-\$15,000	Lump sum	8 weeks before opening	Us
Furniture and Decor ⁶	\$5,000-\$8,000	Lump sum	2-3 weeks before opening	Approved Suppliers
Computer Hardware and Software ⁷	\$8,000 (includes \$940.50 software set up fee)	As arranged	4-6 weeks before opening	Us and Approved Suppliers or other third party suppliers
Initial Training ⁸	\$3,000 (travel, meal, lodging and other expenses); \$2,500 fee per person plus expenses for additional initial training in excess of two persons per franchise agreement)	As incurred	Within 60 days after signing a lease	Third party providers
Pre-Opening Advertising ⁹	\$3,000-\$6,000	As arranged	4-6 weeks before opening	Approved Suppliers
Marketing Spend Requirement ¹⁰	\$25,000	As arranged	90 days after signing the Franchise Agreement	Us, Approved Suppliers or other third parties
Signs ¹¹	\$4,000-\$8,000	Lump sum	6-8 weeks before opening	Approved Suppliers

Type of Expenditure	Amount*	Method of Payment	When Due	To Whom Payment is to be Made
Business Licenses and Permits ¹²	\$100- \$1,000	As arranged	6-8 weeks before opening	Government agencies or other licensing authorities
Insurance ¹³	\$2,000-\$3,000	As arranged	At signing of lease	Insurance provider
Miscellaneous Opening Costs ¹⁴	\$2,000-\$5,000	As incurred	As incurred	Suppliers
Financing Costs ¹⁵	\$1,500	Lump sum	Upon initiating financing services	Approved Supplier
Additional Funds (3 months) ¹⁶	\$24,200-\$44,600	As arranged	First 3 months of operation	Landlord, utilities providers, suppliers, other operating expenses
TOTAL ESTIMATED INITIAL INVESTMENT¹⁷	\$159,100-\$288,000			

***Unless otherwise stated, the estimated amounts and ranges are based on our business experience.**

NOTES:

1. **Initial Franchise Fee.** The standard initial franchise fee for one Elements Studio is \$39,000. If you purchase more than one franchise agreement, or you convert an existing business to a Studio, your initial franchise fee may be discounted. (See Item 5)
2. **Real Estate Broker Fee.** You must pay us the real estate broker fee, which is non-refundable, when you sign your Franchise Agreement. We will provide real estate brokerage services and assist you in choosing a location for your Studio or, at our option, we may designate a third party to provide these services. If you purchase more than one franchise agreement, the real estate broker fee for each of your subsequent franchise agreements will be payable at the time you commence your search for a Studio under each franchise agreement.
3. **Real Property Deposits and Utility Deposits.** If you do not own retail space adequate to open your Studio, you must lease or rent the retail space from a third party. Studios are typically located in upscale retail areas, and require approximately 1,300 to 2,300 square feet. Estimated monthly lease payments range from \$2,300 to \$5,900 (including common area maintenance payments) depending on the size, condition, and location of the leased premises. Your landlord may require a security deposit before leasing the premises to you, which is typically equal to one month's rent. Some utility companies also may require a security deposit before commencing services. We estimate the total amount of utility security deposits to be approximately \$1,000.
4. **Leasehold Improvements (net of landlord tenant allowances).** The cost of construction build-out prior to occupying the leased premises for your Studio (including the cost of architectural services) depends on the size, location and condition of the premises, the demand for the premises among prospective lessees, the site's previous use, and the nature and extent of improvements required, less any amounts contributed by the landlord.

5. **Equipment**. You must purchase from us specific massage equipment for the operation of the Studio as detailed by us in the Operations Manual. The range of estimated costs represents the minimum equipment required to the maximum equipment recommended (depending on the number of rooms in your Studio and the equipment selected).
6. **Furniture and Decor**. You must purchase furniture and décor items for your Studio as specified by us in the Operations Manual. The cost will depend on supplier financing terms (if available), the brands purchased, the quality of the items purchased and other factors.
7. **Computer Hardware and Software**. Before opening your Studio, we typically require you to purchase three computer workstations and related equipment and our designated and other software programs. Your minimum requirements for these items are designated in the Operations Manual and in Items 8 and 11 of this Disclosure Document. You must pay us a set up fee for the set up of the designated software.
8. **Training Expenses**. You must pay your own transportation, meals, lodging and any other living expenses for you and any other persons attending the initial training outlined in Item 11 of this Disclosure Document. The amount you spend per individual will depend on the distance traveled and the type of accommodations you choose. The estimate contemplates attendance by you and one other person traveling to our support center office in Colorado for approximately five days. For each additional person designated by you to attend initial training, you must pay us a \$2,500 fee, and pay for the additional person's transportation, meals, lodging and other living expenses. You must pay the \$2,500 fee prior to any additional person attending initial training and the fee is not refundable under any circumstances. The estimates do not include any wages or salary you may choose to pay yourself or others while attending initial training.
9. **Pre-Opening Advertising**. Your pre-opening advertising will generally begin 4-6 weeks before you open your Studio, or if you are converting your existing business to a Studio, right after you sign the Franchise Agreement. Your actual costs may vary depending on the methods of advertising used, supplier costs, local costs, and other factors. (See Item 11 of this Disclosure Document for more details on pre-opening advertising.)
10. **Marketing Spend Requirement**. During the first 90 days after you open your Studio, you must spend at least \$25,000 to advertise, market and promote your Studio. The Marketing Spend Requirement shall initially consist of the amounts you spend to advertise, market and promote your Studio in accordance with an advertising and marketing plan we approve prior to the opening of your Studio and each following quarter during the term of the Franchise Agreement. If you are converting your existing business to a Studio, the \$25,000 Marketing Spend Requirement shall not apply and your Marketing Spend Requirement shall be 5% of your gross receipts throughout the term of your Franchise Agreement.
11. **Signs**. The estimate includes our required interior and exterior signs which bear the Marks. The cost of the signs varies depending on the type, size and location of the sign, and may also be affected by shipping costs, as well as local zoning and other ordinances and regulations and landlord restrictions.
12. **Business Licenses and Permits**. The cost includes the licenses and permits required to operate a Studio in your location. The license and permit requirements are specific to the state and city/town in which your Studio is located. Certain states may require that you file and post a bond, the estimated cost of which is not included in the table.

13. **Insurance.** You must obtain insurance coverage with the limits required by us as described in Item 8 of this Disclosure Document. Your landlord may require additional insurance. The estimate is the annual premium amount.
14. **Miscellaneous Opening Costs.** This cost includes other start up costs and expenses but does not include any attorneys' or other professional fees you may incur.
15. **Financing Costs.** We have designated a preferred provider that can assist you in your efforts to obtain financing for a portion of your investment in the Studio. If you choose to utilize our preferred provider, you must pay to the provider an initial credit processing fee of \$1,500. Item 10 of this Disclosure Document contains additional information concerning this financing assistance. In the event you obtain financing as a result of using our preferred provider's services, we will pay the preferred provider 1% of the aggregate amount of the loan you obtain. Our 1% payment to the preferred provider will be reduced by any percentage of the loan amount paid by the financial institution to the preferred provider (currently 0%). Other than as described in this footnote and in Item 10 of this Disclosure Document, we do not provide any financing to our franchisees.
16. **Additional Funds (first three months of operations).** The range of estimated costs represents your estimated initial start up expenses (other than the amounts separately identified in the table), which include payroll costs (but excluding a salary or draw for you), lease payments, advertising and marketing expenses, uniform expenses, the costs of supplies, and other operating expenses. We cannot guarantee that this amount will be sufficient. The 3-month period is not intended, and should not be interpreted, to identify a point at which your Studio will break even. We cannot guarantee when or if your Studio will break even. This estimated amount may vary based on a number of factors, including the extent to which you follow our methods and procedures, local economic conditions, the local market for your services, competition, sales levels, local wage rates, owner's salary, the extent of your actual participation in the Studio, your business acumen, your partners or shareholders (if applicable), and any other persons involved in the Studio.
17. **Total Estimated Initial Investment.** We relied on our and our affiliates' many years of business experience in selling and supporting Elements and FT franchises to compile these estimates. You should review these figures carefully with your professional advisors, including financial and legal advisors, before making any decision to purchase a Studio. The above amounts are stated in United States currency. The amounts may vary based on your geographic location. You should consider the costs of each of the items described in this Disclosure Document in your city, state, and/or country. If you are converting your existing business to a Studio, your actual investment may vary depending on the size of your Studio premises, the scope of the leasehold improvements required by us, and whether we approve your existing equipment and supplies for use in your Studio after the conversion. All fees paid to us are not refundable under any circumstances, unless otherwise stated in the Franchise Agreement. Fees or costs due to any other entity are subject to the terms set under their agreements. Inflation, discretionary expenditures, fluctuating interest rates and other factors may affect your actual costs to open your Studio. You are responsible for all costs and variances from the estimated costs in this Item 7, or variances from any other estimates we may provide during any phase of the development of your Studio. The availability and terms of financing depend on the availability of financing generally, your creditworthiness, your available collateral, and lending policies of financial institutions. The estimate does not include any finance charge, interest, or debt service obligation.

ITEM 8. RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

General

To maintain the quality, consistency, and goodwill of the Franchise System, you must comply with and maintain our System Standards. We can modify, amend and change our System Standards, the Operations Manual or any other standards and specifications at any time, and will notify you in writing of any such modifications. We may designate specific products that you must purchase, and require that you purchase products and services from suppliers and vendors we approve.

To the extent we have approved certain manufacturers, vendors, distributors, suppliers and producers, which may be us or our affiliates (collectively, “**Approved Suppliers**”), you are required to purchase from the Approved Suppliers. You may also be required to participate in certain mandatory service programs. You must purchase all goods and services required for the operation of your Studio from the Approved Suppliers (which may be one supplier for any given product or service) under terms, in the manner, and from the source designated by Franchisor or any of its affiliates. We currently have designated Approved Suppliers for advertising and promotional materials and other stationery supplies, furniture and fixtures, massage equipment, real estate broker services, software, uniforms and apparel, signs, and hotel accommodations. During the term of the Franchise Agreement, we may require you to purchase other items or services only from Approved Suppliers (which might include us or our affiliates).

With respect to products or services for which we have designated one or more Approved Supplier(s), you may request that we permit you to purchase from an alternative supplier other than an Approved Supplier by submitting a written request for our approval. Our fee for evaluating the requested supplies or supplier is \$100.00 per hour, which you must pay to us when billed. We will typically provide a response to the written request within 30 days from our receipt of the request. We may require that samples of the product produced by the proposed alternative supplier be delivered to us for review and testing. We do not make available to our franchisees our criteria for approving suppliers. We may withhold approval of a supplier for any reason. We will not approve a new supplier or continue to approve any supplier unless the supplier has agreed that we have a right to inspect the supplier’s premises and products. If any inspection discloses a supplier’s failure to maintain our specified criteria for products or services, we may revoke our approval by providing you written notice of the revocation. If an exclusive supplier already has been designated for the equipment, products, services, supplies, or materials proposed to be offered by a new vendor, your request for a new vendor likely will be rejected without further review or investigation.

Advertising

All advertising and promotional materials, signs, and other items we designate for use in your Studio must bear the Marks in the form, color, location and manner we specify, and you must obtain all such materials from Approved Suppliers. Your advertising and promotional materials must meet our standards and specifications as described in our Operations Manual. You may prepare and use your own advertising and promotional materials only with our prior written approval. We will provide a written response to your request for approval within 30 days after we receive it. As described below, we receive compensation from our Approved Suppliers of advertising and promotional materials.

You must prominently display a statement in your Studio that clearly indicates your Studio is independently owned and operated by you and that you are not our agent. In addition, you must display our standard quality control sign as well as the standard franchise opportunity sign in a highly visible area of your studio.

Insurance

Throughout the term of the Franchise Agreement (including any renewal periods) you are required to maintain certain minimum amounts and types of insurance coverage as we specify in the Operations Manual or otherwise in writing from time to time. You must purchase insurance from a carrier with a performance rating of A+ or higher as rated in the most recent edition of Best Insurance Reports (or comparable criteria as we may specify). Currently we require, at a minimum, the following types of insurance and minimum coverage limits: 1) at least \$1,000,000.00 per occurrence comprehensive general liability insurance; 2) \$60,000.00 business interruption insurance; 3) worker's compensation insurance (in compliance with state and local laws); (4) property insurance in amounts that protect your business personal property, fixtures, and improvements; and (5) if required by us, professional liability coverage due to errors or omissions in the performance of services at your Studio, subject to the limits we periodically establish. The types of coverage and minimum coverage limits we specify are for our benefit and are not intended to be relied upon by you as a recommendation as to the types of coverage and coverage limits which are or might be appropriate for your particular Studio. Additional types of coverage and higher coverage limits might be appropriate based upon, for example, the location of your Studio, and we recommend that you consult with your insurance advisor regarding the appropriate types of coverage and coverage limits sufficient to protect your Studio.

Before you open your Studio (or convert your existing business to a Studio), and then annually, you must provide us with copies of each certificate of insurance (including those of each of your employees, if then required) together with evidence of payment of premiums. The certificates must show the minimum limits of coverage required by us and must provide that the insurance cannot be canceled, terminated, materially amended or modified without providing us and any other additional insureds 30 days prior written notice. If you fail to obtain or retain the insurance that we require, we may, but are not obligated to, obtain insurance for you, and you must reimburse us for all related premiums, plus our reasonable costs in obtaining the insurance. Each insurance policy for your Studio must designate as additional insured parties us, our senior secured lender, and, if requested by us, any of our affiliates or Area Directors or other parties we may designate from time to time.

Products, Equipment, Furniture and Fixtures and Supplies

You will at all times maintain sufficient products, equipment, furniture and fixtures and supplies to permit your Studio to operate at maximum capacity. Some of these items may only be available from one source, and we or our affiliates may be that source. Items that you are not required to purchase from an Approved Supplier can be purchased from any supplier, so long as the suppliers and supplies you purchase meet our System Standards and other specifications and quality standards.

We have negotiated purchase arrangements with certain Approved Suppliers for the benefit of the Franchise System. We or our affiliates may derive revenue or profit from your dealings with the Approved Suppliers in the form of rebates, cash payments, discounts, promotional allowances, and/or other payments. We have these types of arrangements only with the Approved Suppliers disclosed in this Item 8. We also derive revenue on direct purchases that you make from us or from our affiliates. We retain all of the rebates, commissions or other consideration we are paid, and have the right to use these amounts without restriction (unless we or our affiliates agree otherwise with the supplier) for any purpose we or our affiliates deem appropriate. We do not provide material benefits to a franchisee based on a franchisee's purchase of particular products or services or use of particular suppliers.

The Approved Suppliers from whom we receive rebates, cash payments, discounts, or other consideration as a result of your purchase of certain equipment, supplies, products and services are listed below (based on our audited financial statements for the fiscal year ended December 31, 2009).

Real Estate Broker Services

When you sign your Franchise Agreement, you must pay us a \$4,000 real estate broker fee. We will provide real estate brokerage services and assist you in choosing a location for your Studio or, at our option, we may designate a third party to provide these services. We instituted the real estate broker fee in 2010; therefore, neither we nor our affiliates received revenues related to the real estate broker fee in fiscal year ended December 31, 2009. However, in fiscal year ended December 31, 2009, we did receive from certain landlords' lease commissions (ranging from 1% to 3% of the initial base rent rate) or flat fee payments as agreed by the parties, in an aggregate amount of \$10,733, which was 0.4% of our total revenues of \$2,581,314.

Massage Equipment

We are the only Approved Supplier of massage equipment and certain massage supplies. You must order the equipment and supplies from us and we place your order with the manufacturer. In fiscal year ended December 31, 2009, we received revenues of \$101,080 from the sale to franchisees of the required massage equipment and supplies, which was 3.9% of our total revenues of \$2,581,314.

Management Software; Website

We are the only Approved Supplier of the point of sale and management information software programs required to operate your Studio. You must pay us a set up fee and a monthly fee to use the required software. A portion of the monthly fee is remitted to the licensor of the software program and we retain a portion of the monthly fee. We are also the only Approved Supplier of website set up and hosting services, for which you pay us a monthly fee. In fiscal year ended December 31, 2009, we received revenues of \$74,455 from our franchisees' use of the required software programs and websites, which was 2.9% of our total revenues of \$2,581,314.

Stationery and Advertising Materials

You must purchase all of your stationery supplies (including without limitation envelopes, business cards, brochures and gift certificates) and all of your advertising and promotional materials, from our Approved Suppliers. Our Approved Suppliers pay us 12% of each franchisee order. In fiscal year ended December 31, 2009, we received payments of \$7,592 from our Approved Suppliers for stationery and advertising and promotional materials, which represents 0.3% of our total revenues of \$2,581,314.

Apparel and Uniforms

You must purchase certain apparel and uniforms from our Approved Supplier at the prices negotiated between us and the Approved Supplier. Our Approved Supplier will pay us 10% of every franchisee order. In fiscal year ended December 31, 2009, we did not receive any payments from our Approved Supplier of apparel and uniforms; however, our affiliate, FT, received payments from our Approved Supplier of \$7,500 for purchases made by our and FT's franchisees.

Signs

You must purchase all of your interior and exterior signs from our Approved Supplier. Our Approved Supplier for signs will pay us 12% of each franchisee order from the Approved Supplier. In fiscal year ended December 31, 2009, we did not receive any payments from our Approved Supplier for signs.

Hotels

If you elect to use our Approved Suppliers for accommodations during Discovery Day and initial training, our Approved Suppliers will pay us a 7% commission. In fiscal year ended December 31, 2009, we did not receive any payments from our Approved Supplier of accommodations; however, our affiliate, FT, received payments from our Approved Suppliers of \$2,414 for purchases made by our and FT's franchisees.

Rent Payments

In addition to the above, in fiscal year ended December 31, 2009, our affiliate, FT-One, received \$32,805 in rent payments for Studio premises it sublets to an FT franchisee.

Except as described above, neither we nor any of our affiliates are an Approved Supplier of any other product or service.

Total Revenue and Revenue from Required Franchisee Purchases

In fiscal year ended December 31, 2009, our total revenues were \$2,581,314. Our total revenues from required purchases by our franchisees were \$193,860, which represents 7.5% of our total revenues.

In fiscal year ended December 31, 2009, FT's total revenues from required purchases by FT franchisees and certain required purchases by our franchisees were \$797,240.

We estimate that the cost of your purchases from designated or approved suppliers, or according to our standards and specifications will range from approximately 75% to 80% of the total cost of establishing, and approximately 12% to 17% of the total cost of operating, your Studio.

None of our officers owns an interest in any of our Approved Suppliers. Currently, there are no purchasing or distribution cooperatives in the Franchise System.

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 those agreements and in other items of this Disclosure Document.

Obligation	Section in Franchise Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	1.1, 2.1, 2.2, 2.4, 7.2 (Conversion Addendum Sections 2 and 10)	5, 7, 8, 11, 12
b. Pre-opening purchase/leases	4.4, 4.7, 5.4, 5.5, 7.5(e), 7.5(g), 7.6(i), 8.7 (Conversion Addendum Section 9)	5, 7, 8, 11
c. Site development and other pre-opening requirements	5.4, 5.5, 7.3, 7.6(i) (Conversion Addendum Sections 11 and 12)	5, 7, 8, 11
d. Initial and ongoing training	5.2, 5.3, 7.5(d), 7.6(a)	6, 7, 11
e. Opening	7.3(b) (Conversion Addendum Section 12)	5, 7, 11
f. Fees	4, 7.5(h), 7.6(m), 10.3 (Conversion Addendum Sections 4, 5 and 17)	5, 6, 7, 8, 11

Obligation	Section in Franchise Agreement	Disclosure Document Item
g. Compliance with standards and policies/ Operations Manual	7.5(a), 7.5(b), 7.6(g), 7.6(j), 7.6(l), 7.6(r), 7.6(t), 7.6(v), 7.6(y)	1, 8, 11, 13, 14, 15, 16
h. Trademarks and proprietary information	6, 7.6(d), 7.6(e), 7.6(p), 12.5	8, 11, 13, 14, 16
i. Restrictions on products/services offered	7.5(c), 7.5(j), 7.6(f), 7.6(g), 7.6(k), 7.6(s), 8.7	8, 11, 16
j. Warranty and customer service requirements	7.5(a), 7.6(q), 7.6(y)	8, 11, 16
k. Territorial development and sales quotas	2.3, 5.7	12
l. Ongoing product/service purchases	4.4, 4.7, 5.4, 7.5(e), 7.5(f), 7.5(g), 7.6(i), 8.7 (Conversion Addendum Section 9)	6, 8, 11
m. Maintenance, appearance and remodeling requirements	7.5(e), 7.6(i), 7.6(v), 7.6(w)	8, 11, 17
n. Insurance	7.4, 7.6(c)	6, 7, 8
o. Advertising	4.11, 4.12, 4.13, 7.6(h), 8.1, 8.2, 8.3, 8.4, 8.5	6, 8, 11
p. Indemnification	9.1	6
q. Owner's participation/management/staffing	7.1, 7.5, 7.5(d), 7.6(b), 7.6(g)	15
r. Records and reports	7.5(g), 7.6(n), 7.6(o), 7.6(x)	N/A
s. Inspections and audits	7.5(h)	6
t. Transfer	11	6, 17
u. Renewal	3.2	6, 17
v. Post-termination obligations	10.4, 12.2, 12.4	6, 17
w. Non-competition covenants	7.6(t), 12.1, 12.2, 12.3, 12.4	17
x. Dispute resolution	14	17
y. Other: Licenses	7.5	1, 7
z. Other: Pricing	7.5(c)	16

ITEM 10. FINANCING

We have designated a preferred provider that can assist you in your efforts to obtain financing for a portion of your investment in the Studio. If you choose to utilize our preferred provider, you must pay the provider an initial credit processing fee of \$1,500. In the event you obtain financing as a result of using our preferred provider's services, we will pay the preferred provider 1% of the aggregate amount of the loan you obtain. Our 1% payment to the preferred provider will be reduced by any percentage of the loan amount paid by the financial institution to the preferred provider (currently 0%). We and our affiliates do not receive any direct or indirect payments or other consideration from our preferred provider, any lenders that may provide loans under our preferred provider arrangement, or any other person for the placement of financing.

Under certain circumstances, if you obtain financing from one of our preferred providers to cover initial investment and other start-up expenses, our affiliate, FTHI-FAC, may guarantee a portion of the loan (the "**Guarantee**") as follows: (a) 15% of the principal balance of the loan during the first 3 years of the loan; (b) 10% of the principal balance of the loan during the 4th year of the loan; and (c) 5% of the principal balance of the loan during the 5th year of the loan. The Guarantee terminates after the end of the 5th year of the loan term and neither FTHI-FAC, we or our affiliates will guarantee any portion of the loan after that time. The terms of the Guarantee may change in the future.

In addition to meeting our qualifications, franchisees in Area Director territories may be eligible for the loan Guarantee only if the applicable Area Director agrees to equally share FTHI-FAC's direct and indirect administrative costs of providing the Guarantee.

If we provide a Guarantee, you and your owners must sign the guarantee indemnification in the form attached as Exhibit J to this Disclosure Document. If the lender seeks performance under the Guarantee from FTHI-FAC due to your failure to pay the lender, we may terminate the Franchise Agreement. Neither we nor FTHI-FAC currently intend to assign our obligations under the Guarantee, but we reserve the right to do so in the future.

Other than as described in this Item 10, neither we nor any of our affiliates provide financing to our franchisees, nor do we guarantee franchisee loans, promissory notes, leases or other obligations. We and our affiliates have no past or future intent to sell, assign or discount to any third party, in whole or in part, any financing arrangements.

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

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

Pre-Opening Assistance. Before you open your Studio, we or our authorized representative will assist you with the following:

1. **Site Selection Assistance.** We will provide real estate brokerage services to assist you in choosing a location for your Studio or, at our option, we may designate a third party to provide these services. While we may provide assistance to you in finding a site, it is your responsibility to locate suitable premises for your Studio. You must select a location within the Territory (defined in Item 12) designated in the Franchise Agreement. We will make the final determination to approve or not approve any site that you propose to us. We make no guaranty or assurance that any particular site or area in which you have expressed an interest will be available, and your obligations under the Franchise Agreement are not conditioned upon securing any particular site or a site in a particular area. Our approval is conditioned on a variety of factors including the site's demographics, location, and proximity to other businesses, the character of the neighborhood, the size and appearance of the premises to be leased, and other characteristics and criteria that may change. Our approval of your site is not a guarantee or assurance of success at that location. It simply means that the site meets the location criteria we utilize from time to time. Upon executing the Franchise Agreement, you must begin searching for a site for your Studio, making diligent efforts to work with us (or a third party that we may designate) to review site information, view locations and review letters of intent, so that you can locate a site and sign a lease in a timely manner. Although there is no deadline by which you are required to select a site, you must open your Studio within 180 days after you sign the Franchise Agreement or we may terminate the Franchise Agreement. If you are converting your existing business to a Studio, you must complete the conversion within 180 days after you sign the Franchise Agreement (Sections 2.2, 7.2 and 7.3(b) of the Franchise Agreement and Section 12 of the Conversion Addendum)

We do not typically own or lease any Studio sites.

2. **Site Design and Layout Specifications.** We will provide you with specifications and guidelines for the design and layout of a typical Studio, as well as the typical leasehold improvements necessary to complete the build-out of your Studio premises. You must obtain our prior written approval before making any alterations to the design and layout of the Studio or make replacements or alterations to the equipment, furniture and fixtures or signs we require that you use in opening and operating (or

converting) your Studio. (Sections 5.5, 7.3(a) and 7.6 of the Franchise Agreement and Sections 9 and 11 of the Conversion Addendum)

3. Equipment, Furniture and Fixtures, Inventory and Supplies. We will provide you with specifications and guidelines for the equipment, furniture and fixtures, inventory and supplies necessary to open your Studio, a portion of which must be purchased from us and our Approved Suppliers, as described in Item 8 of this Disclosure Document. These specifications and guidelines are contained in the Operations Manual or elsewhere as we may designate. Other required equipment, furniture and fixtures, inventory and supplies may be purchased from any supplier, so long as the supplier and the items purchased meet our specifications. We do not deliver or install any items. Some Approved Suppliers may perform installation services; in other cases you will be responsible for installation or obtaining installation services from a third party. (Sections 4.4 and 5.4 of the Franchise Agreement)

4. Operations Manual. We will loan you or make available on-line, one copy of our Operations Manual to assist you in the operation of your Studio (as more fully described below). (Section 7.5 of the Franchise Agreement)

5. Training. We will provide initial training to you and one other person you designate. If you want any additional individuals to attend initial training, you must pay us a fee of \$2,500 per person. Only you, your co-owner(s) your manager(s), and other employees are eligible to attend initial training. At least one of you, your co-owners or manager(s) must complete initial training at least five weeks before opening your Studio and another designated representative must complete Initial Training within 180 days after your Studio opens (or if you are converting your existing business to a Studio, both individuals must complete Initial Training within 180 days after you sign the Franchise Agreement). In addition to fees for eligible individuals in excess of the first two who attend initial training, you are responsible for all travel, living, and miscellaneous expenses for all individuals who attend initial training. (Section 5.2 of the Franchise Agreement)

6. Pre-Opening Advertising. We will provide you with recommendations and guidelines for advertising and promoting your Studio prior to opening. You are required to purchase a stationery start-up kit and we recommend that you also purchase a press kit and other advertising and promotional materials. If you choose to create your own pre-opening advertising and promotional materials, you must obtain our written approval of the materials before using them. You are required to spend at least \$3,000 to \$6,000 on your pre-opening or pre-conversion activities. (Section 8.2 of the Franchise Agreement and Section 15 of the Conversion Addendum)

7. Opening Requirements. Our franchisees typically open their Studios within 150 days after they sign their franchise agreement. The actual time to open will depend on factors such as the location of the business, condition of the leased space, contractor and construction schedules, the time it takes to obtain required licenses and permits, zoning requirements, weather, availability of equipment and supplies, the economy and other factors. The Franchise Agreement requires that your Studio be open and operating within 180 days after the effective date of the Franchise Agreement, unless otherwise approved by us in writing. If you convert your existing business to a Studio, you must complete the conversion within 180 days after the effective date of the Franchise Agreement. If you do not open by such date, we may terminate the Franchise Agreement. If you purchase more than one franchise agreement, additional studios must open every 12 months after the effective date of the Franchise Agreement. (Section 7.3(b) of the Franchise Agreement and Section 12 of the Conversion Addendum)

Post-Opening Assistance. During the operation of your Studio, we or our authorized representative (which may be an affiliate of ours) will perform for you the following services:

1. Equipment, Products and Materials. We will make equipment, products and materials available to you at the prices disclosed in the Operations Manual, or other prices we designate, as may be periodically amended. (Sections 4.4 and 5.4 of the Franchise Agreement)
2. Operational Advice and Support. Periodically, we will provide you with operational support, assistance and consultation in person, by telephone, or otherwise, as we determine is appropriate. This advice may be based on periodic inspections of your Studio we or our authorized representative perform. (Section 5.6 of the Franchise Agreement)
3. Marketing and Advertising Support. Periodically, we will provide you with recommendations and guidelines for advertising and promoting your Studio (as more fully described below). (Section 5.6 of the Franchise Agreement)
4. Computer Software. We will provide you the computer software required for conducting point of sale transactions, management information processes and activities and other business activities for a fee. (Section 4.7 of the Franchise Agreement)
5. Operations Manual. We will loan you one copy of our Operations Manual or other manuals or written materials we have or may designate for use in the Franchise System (and appropriate updates and revisions) (as more fully described below). (Section 7.5(b) of the Franchise Agreement).

Advertising

Marketing Fund. (Section 8.3 of the Franchise Agreement) We do not currently, but may at a later time, establish and administer a Marketing Fund. If a Marketing Fund is established, you will be required to contribute up to 1% of your Studio's gross receipts to the Marketing Fund. We would have the right to collect for deposit into the Marketing Fund any advertising, marketing, or similar allowances paid to us by suppliers to the Franchise System who instruct us to use the allowances for advertising or marketing purposes. We may incorporate the Marketing Fund or operate it through a separate entity as we deem appropriate. We will have no fiduciary obligations to you in connection with our administration of the Marketing Fund. We will not use any of the funds contributed to the Marketing Fund principally to solicit new franchise sales. If we or our affiliates own any Studios, those Studios will make contributions to the Marketing Fund on the same basis as you and our other franchisees.

We will designate all programs to be financed by the Marketing Fund and will have sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. The Marketing Fund may pay for (i) preparing and producing video, audio, and written materials and electronic media, (ii) administering regional and multi-regional marketing and advertising programs, including purchasing space in print publications, direct mail, radio and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance, and (iii) supporting public relations, market research, and other advertising, promotion, and marketing activities. The Marketing Fund will advertise in printed materials or on radio or television for local, regional or national circulation. We and/or our regional or national advertising agency will produce all advertising and marketing. We will determine the use of the funds contributed to the Marketing Fund, including allocating a portion of any Marketing Fund contributions to any regional advertising programs we may establish in the future. We will not be required to spend any particular amount on marketing, advertising or promotion in the area in which your Studio will be located. In addition, we will not be required to ensure that Marketing Fund expenditures for or affecting any geographic area be proportionate or equivalent to Marketing Fund contributions by Studios operating in that area, or that any Studio benefits from the development or placement of advertising and marketing materials directly or in proportion to its Marketing Fund contributions. We may use collection agents and institute legal

proceedings to collect Marketing Fund contributions at the Marketing Fund's expense. We also may forgive, waive, settle, and compromise all claims by or against the Marketing Fund. Except as specifically provided in the Franchise Agreement, we assume no other direct or indirect liability or obligation to you for collecting amounts due, or maintaining, directing, or administering the Marketing Fund.

We have established and receive input and feedback regarding advertising and marketing from an the Leadership Council Subcommittee on Growth Initiatives (the "**Advisory Committee**"), which is comprised of franchisees and Area Director representatives. The Leadership Council consists of 4 franchisees, 4 Area Directors, and members of our management, each of whom represents the region in which his or her Studio or Area Director territory is located, who are elected by the franchisees and Area Directors in their respective regions. The Leadership Council provides us feedback and input on operational, marketing and other matters related to the Franchise System. Elected members of the Leadership Council serve two year terms. The Advisory Committee consists of a self-appointed chairperson, who is a member of the Leadership Council, and franchisees and/or Area Directors who agree to serve on the Advisory Committee at the request of the chairperson. The Advisory Committee serves in an advisory capacity only and does not have operational or decision-making power. We may alter the function and/or composition of the Leadership Council and Advisory Committee at any time, and may otherwise form, change or dissolve the Leadership Council or the Advisory Committee.

We will account for the Marketing Fund separately from our other funds and will not use the Marketing Fund for any of our general operating expenses, except to compensate us for the reasonable salaries, administrative costs, travel expenses and overhead we incur in administering the Marketing Fund and its programs, including conducting market research, preparing advertising, promotion, and marketing materials, and collecting and accounting for Marketing Fund contributions. The Marketing Fund will not be our asset and we would not owe you fiduciary obligations because of our maintaining, directing or administering the Marketing Fund or for any other reason. The Marketing Fund may spend in any fiscal year more or less than the total Marketing Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. We will use interest earned on Marketing Fund contributions to pay costs before spending the Marketing Fund's other assets.

If a Marketing Fund is established, we will prepare annual unaudited financial statements that will be available to you upon written request 120 days after the end of the Marketing Fund's fiscal year. We are not required to audit the Marketing Fund but may do so at our discretion.

Marketing Cooperatives. (Section 8.4 of the Franchise Agreement). We may designate a geographic area in which three or more Studios are located as an area in which to establish a Marketing Cooperative. The Marketing Cooperative's members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We will determine how any Marketing Cooperative is organized and governed, but the Marketing Cooperative's members are responsible for its administration and determination of contribution levels. All Marketing Cooperatives will be governed by written documentation generated and/or designated by us. Such documentation is available for Marketing Cooperative member review. All material decisions of the Marketing Cooperative, including contribution levels, will require the affirmative vote of 51% of all Studios operating within the Marketing Cooperative's area (including those that we and our affiliates operate, if any), with each Studio receiving one vote. We may form, modify, change, dissolve, or merge Marketing Cooperatives. Funds contributed to a Marketing Cooperative will not be utilized to solicit new franchise sales.

Marketing Spend Requirement. During the first 90 days after you open your Studio, you must spend at least \$25,000 to advertise, market and promote your Studio. Beginning 90 days after your Studio has opened and continuing the one year anniversary of the date you open your Studio, you must spend a

minimum of \$2,000 per month on advertising, marketing and promotional programs for your Studio. Beginning in the second year anniversary of the date you open your Studio and continuing through the term of your Franchise Agreement, you must spend a minimum of 5% of your gross receipts on advertising, marketing and promotional programs for your Studio (the \$25,000 first three months minimum spend, the \$2,000 per month spend and the 5% of gross receipts spend together, the “**Marketing Spend Requirement**”). However, if you are converting your existing business to a Studio, your Marketing Spend Requirement shall be 5% of your gross receipts throughout the term of the Franchise Agreement. The Marketing Spend Requirement shall initially consist of the amounts you spend to advertise, market and promote your Studio in accordance with an advertising and marketing plan we approve prior to the opening of your Studio and each following quarter during the term of the Franchise Agreement. We have the right to obtain from you information with respect to the results achieved from meeting your Marketing Spend Requirement and implementing your approved advertising and marketing plan. Your Marketing Spend Requirement may in the future include any contributions you make to a Marketing Fund (if we establish a Marketing Fund) and any contributions you make to a Marketing Cooperative. If established, we may vary your Marketing Fund contribution and any Marketing Cooperative to which you contribute may vary your Marketing Cooperative contribution. If those contributions are established or exist and are subsequently adjusted, you must adjust your other advertising, marketing and promotional expenditures so that the Marketing Spend Requirement does not drop below the minimum requirement of 5% of your gross receipts. Your Marketing Fund and Marketing Cooperative contributions could, by themselves, exceed the Marketing Spend Requirement. In addition, we have the right to collect any funds constituting the minimum Marketing Spend Requirement that are not otherwise being contributed to the Marketing Fund or Marketing Cooperatives and use those funds for local, regional or national advertising or promotional programs that reach your Studio’s local trade area. (Section 4.13 of the Franchise Agreement)

Your Advertising and Marketing Materials; Website. Your (and your Marketing Cooperative’s) advertising, promotion, and marketing must be clear, factual and not misleading, conform to the highest standards of ethics and comply with all advertising and marketing policies that we prescribe from time to time. You cannot use any advertising or marketing materials unless we have prepared the materials on your behalf, or unless and until you receive our written approval of the materials. We will respond to you within 30 days of receiving any request for approval of your marketing and advertising materials.

At least 90 days before you open your Studio (or if you are converting your existing business to a Studio, within 90 days prior to the conversion of your existing business to a Studio), you must submit to us for approval an advertising and marketing plan describing your pre-opening or pre-conversion advertising plan and your plan for the first three months after the opening or conversion. Subsequent to such period, and during the term of this Agreement, you must prepare and execute an advertising and marketing plan that you must provide to us upon our request. You must also provide to us upon request information about the results achieved from implementing your advertising and marketing plan and meeting your Marketing Spend Requirement. (Section 8.5(b) of the Franchise Agreement and Section 16 of the Conversion Addendum)

Restrictions on advertising apply to any and all advertising materials and information relating to us, you, your Studio or the Franchise System, including what you plan to use on a website and to any changes to any website information.

You are required to maintain a website for your location that is compliant with our standards and utilizes our Approved Supplier. You must pay us a monthly fee for your website, which will be reduced if you have more than one open and operating Studio. You may not maintain a website for your Studio without our approval. At our option, you must discontinue any previously approved website and/or sign any documents, submit any information and do any other things we reasonably require to participate in any

website we administer. We also may require you to obtain your own website for your Studio. (Section 8.1 of the Franchise Agreement).

Computer Systems

General. Our required computer systems (including the hardware and software programs described below) will allow you to generate and store a variety of information, including the amount of sales generated by your Studio, client profiles, client scheduling information, and payroll information. In order to operate your computer, you will need a high speed internet connection and a keyboard, mouse, color monitor and laser or ink-jet color printer. You must keep your computer in good working order and must provide any upgrades necessary at your cost. We and our affiliates and authorized representatives will have direct access to your computer and other systems, and the information and data generated by your computer systems.

Computer Hardware. The minimum computer hardware requirements are specified in the Operations Manual or otherwise in writing by us. We typically require you to have three computer workstations, which cost approximately \$2,000 each. Some of the minimum requirements include a Core 2 1.0Ghz processor, 1 GB random access memory, and a 500 GB hard drive. You may use any brand of computer hardware that meets these specifications and may acquire your computer hardware from any source. We also require you to have certain peripherals, such as printers, which we estimate will cost you \$1,000. We estimate that the cost to purchase the minimum computer hardware, software and peripherals will be approximately \$8,000, which includes the software set up fee described below.

Computer Software. We require you to use the designated software program described in the Operations Manual or otherwise in writing by us. Currently, prior to opening your Studio (or if you are converting your existing business to a Studio, within 30 days after you sign the Franchise Agreement or on another date we may approve), you must pay us a \$940.50 set up fee to order and purchase certain initial hardware components and required software programs, which includes a one-month hosting fee. You must pay us a monthly software fee, which is currently \$68. (See Item 6). Although not currently applicable, you may be required to enter into a license, lease or similar agreement in order to obtain the right to use designated software programs. (Section 7.5(e) of the Franchise Agreement and Section 6 of the Conversion Addendum)

Computer Hardware and Software Upgrades. During the term of your Franchise Agreement, you must maintain, repair and upgrade any hardware component or software program from time to time in order to maintain compatibility with the components and programs we require, including upgrading your software based on periodic releases provided by the licensor of the computer systems and programs. The costs will vary depending on the required upgrades. We have no obligation to provide ongoing maintenance, repairs, upgrades or updates to your hardware components or software programs. (Section 7.5(f) of the Franchise Agreement)

Operations Manual

We will loan you one copy of our Operations Manual and other manuals or written materials for your use in operating your Studio. These manual(s) and materials contain mandatory and suggested specifications, standards and procedures, rules and other criteria related to the operation and marketing of your Studio. The manuals and materials may consist of audio tapes, video tapes, compact discs, DVD's, and/or other written and intangible materials, all of which constitute our proprietary and confidential information. You may not copy, duplicate, record or otherwise reproduce these materials, in whole or in part, or make them available to any unauthorized person. The Operations Manual and such other manuals and materials will remain our sole property and must be kept in a secure place on the Studio premises. We may provide the

confidential manuals in any manner we choose, including by hard copy. We may update the Operations Manual and other manuals to implement new or different operating requirements and fees applicable to you. You must comply with all requirements, terms and conditions of the Franchise Agreement, Operations Manual and other written policies supplied to you by us. (Section 7.5(b) of the Franchise Agreement)

The table of contents of our Operations Manual is included as Exhibit L to this Disclosure Document. Our current Operations Manual has a total of 292 pages.

Training

Initial Training. Before you open your Studio, we or our designee will provide initial training to you or one of your co-owners, and one of your managers and/or employees. Initial training consists of a comprehensive program that provides you with the methods, procedures and techniques you need to operate your Studio ("**Initial Training**"). One designated individual must complete Initial Training to our satisfaction before your Studio opens (generally 5 to 6 weeks prior to opening) and the second designated individual must complete the Initial Training to our satisfaction within 6 months after your Studio opens. At least 1 owner must attend and complete Initial Training to our satisfaction, and if you intend to have a manager perform the day to day operations of your Studio, your manager will be required to attend and complete the Initial Training to our satisfaction before your Studio opens. If you are converting your existing business to a Studio, the two individuals must complete Initial Training 180 days after you sign the Franchise Agreement. You must ensure that 1 individual who has completed the Initial Training to our satisfaction is on-site at your Studio at all times. You must pay for all travel, accommodations, meals and other expenses incurred by all individuals who attend Initial Training.

Initial training will be conducted at a location we designate, currently at our Support Center in Colorado. Classes are typically scheduled to be conducted 6 times each calendar year and generally last 5 business days. The primary instructional material is the Operations Manual. The topics covered, instructional materials, hours of classroom and/or hands-on training, and the training program instructors are subject to change. (Section 5.2 of the Franchise Agreement and Section 8 of the Conversion Addendum)

If you purchase additional franchise agreements, you will designate up to 2 individuals per franchise agreement to attend Initial Training; however, you will not be required to attend Initial Training if you have already done so.

If you want more than 2 individuals (per franchise agreement) to attend Initial Training (such as new or additional managers or employees), you must pay us a fee of \$2,500 per person and you must pay for all travel, accommodations, meals and other expenses incurred by all individuals who attend Initial Training. Initial Training for additional individuals will be offered during our regularly scheduled Initial Training programs.

Initial Training currently consists of the following:

TRAINING PROGRAM

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
The Right Systems	1.0	0	Our Colorado Support Center
Studio Tours	0.0	2.0	Studios
Project Management	1.5	0	Support Center
Corporate Support	0.5	0	Our Colorado Support Center
The Right Facilities	1.0	0	Our Colorado Support Center
Memberships and Packages	0.5	0	Our Colorado Support Center
Sales and Memberships	1.0	0	Our Colorado Support Center
The Right Service	1.5	0	Our Colorado Support Center
Marketing Order	2.5	0	Our Colorado Support Center
Trends	1.0	0	Our Colorado Support Center
MBO Tour and Overview	1.0	0	Our Colorado Support Center
The Right Employees	1.5	0	Our Colorado Support Center
Interviewing Forms	2.0	0	Our Colorado Support Center
Scheduling Game	1.5	0	Our Colorado Support Center
Company Orientation	1.0	0	Our Colorado Support Center
Employee Handbook	1.5	0	Our Colorado Support Center
Therapist Pay	0.5	0	Our Colorado Support Center
Front Desk Training	1.0	0	Our Colorado Support Center
Anatomy 101	1.5	0	Our Colorado Support Center
MBO Practice Scenarios	3.0	0	Our Colorado Support Center
Massage Discussion	1.5	0	Our Colorado Support Center

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Manager Salary and Incentive	0.5	0	Our Colorado Support Center
MBO Set-up	1.0	0	Our Colorado Support Center
Front Desk Role Playing	1.0	0	Our Colorado Support Center
Royalty Reporting	0.5	0	Our Colorado Support Center
Therapist Training Class	2.0	0	Our Colorado Support Center
Marketing	1.0	0	Our Colorado Support Center
Systems	0.5	0	Our Colorado Support Center
Finances	1.0	0	Our Colorado Support Center
Finishing Touches	0.5	0	Our Colorado Support Center
Experience an ETM Massage	0.0	1.0	Local Studio
Additional Software Training	0.0	3.0	Teleconference
Total Hours	34.5	6.0	

Additional Training and Conferences. We may require that you pay a fee of up to \$2,500 per individual you designate to attend any refresher training we make available to our franchisees or for any optional training programs we may conduct from time to time. You must attend any annual conferences or seminars that we may require at a location we designate. You shall pay all costs to attend any refresher training, conferences or seminars.

Training Staff. Ms. Stacy Nordby is our supervisor of training. Ms. Nordby has a B.S. Degree in Communications and is a Certified Massage Therapist and Certified Infant Massage Instructor. Ms. Nordby joined us in May 2007, and before that was a massage therapist in Colorado for five years, two of which were spent working with one of our founders, Michele Merhib.

ITEM 12. TERRITORY

You will select a specific defined territory we approve from our available inventory (“**Territory**”) within which you will select a site for your Studio that we must approve. You must pay us a fee for assistance in locating a site for your Studio. (See Item 5). There is no minimum Territory size. The Territory is the area in which you will focus your efforts to find a location we approve for your Studio. We identify the Territory in order to facilitate the orderly development of the market, and not for purposes of granting you any exclusivity or protection within the Territory. You will not receive any exclusive rights to the 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 within the Territory. Our approval of your Studio site is conditioned on a variety of factors, including site demographics, location (including proximity to other businesses), neighborhood character, the size and appearance of the premises to be leased, and other characteristics and criteria that may change from time to time. We confirm

demographic data about territories and locations utilizing a mapping software we license from a third party. Our approval of your site is not a guarantee or assurance of success at that location. It simply means that the site meets the location criteria we utilize from time to time.

During the term of the Franchise Agreement (so long as you are not in default of the Franchise Agreement) we will not, and we will not grant to any other person the right to, establish or operate a Studio within a one mile radius of your Studio (the “**Protected Area**”). You shall receive exclusivity only with respect to other Studios within the Protected Area.

You must operate your Studio only at the location approved by us, and you must provide all authorized massage services only at your Studio location. Once it is open, you may not relocate the Studio without our prior written consent. If we approve a relocation of your Studio, you will be responsible for paying any associated costs, including our reasonable costs incurred in connection with approving the relocation.

We may change your Protected Area boundaries or other characteristics when you renew, transfer or assign a controlling interest in, the Franchise Agreement. Your rights in the Protected Area do not depend on you achieving a sales volume, market penetration or other contingency. The Franchise Agreement does not provide you with any options, rights of first refusal or similar rights to acquire additional franchise agreements. If you want to own and operate additional Studios, you must purchase one additional franchise agreement per Studio. Each additional franchise agreement will dictate the terms and conditions under which you may own and operate any additional Studio.

So long as you are not in default under your Franchise Agreement, you have the one-mile radius protection described above. We reserve all other rights with respect to the Studio and related Territory and Protected Area. Those rights include the right to offer, sell or distribute in your Territory and Protected Area, through alternative distribution channels (including in retail stores, on the internet or via similar future information technology, or otherwise) any proprietary products or other products that are part of, or which become part of, the Franchise System, such as, massage equipment, small wares and other products. Any such activities in which we engage will be without compensation to you. The alternative distribution channels may be available to us as the result of being the Franchisor of the Franchise System or as the result of other brands we may control, which may compete with your Studio. You may also face competition from other Studios operated by us or by other franchisees. Though we do not currently do so, we and our affiliates reserve the right to, without compensation to you, franchise and/or operate other types of businesses and businesses that are the same or similar to the Franchise System.

You may advertise your Studio and solicit clients from any area, so long as you provide services only at the Studio location we have approved. You are not required to compensate any individual or entity in connection with this advertising and solicitation. We and our other franchisees reserve the same right to solicit, accept and provide massage services to clients who live or work within your Protected Area, without compensating you.

You have the right to use other channels of distribution, such as direct mail, email and internet (but only through the website you maintain through us) to make sales within and outside of your Protected Area, provided that we have approved any marketing materials you use.

As of the date of this Disclosure Document, neither we nor any of our affiliates own or operate businesses similar to the Studios, nor do we or our affiliates have plans to own or operate such businesses under a trademark different from the Marks that will sell similar goods or services to those offered by franchisees in the Franchise System; however, we reserve the right to do so.

ITEM 13. TRADEMARKS

The Franchise Agreement grants you a non-exclusive license to use the Marks. Unless otherwise noted below, all of the primary Marks described below are registered on the Principal Register of the United States Patent and Trademark Office (“USPTO”) and all required affidavits and renewals for the Marks have been filed.

Mark	Registration Number	Registration Date
Elements Therapeutic Massage and Design	3407418	April 1, 2008
Elements Three Tear Drops	3760865	March 16, 2010
Elements Therapeutic Massage and Design	3761266	March 16, 2010

Currently, there are no effective determinations of the USPTO, the Trademark Trial and Appeal Board, or the trademark administrator of any state or any court, nor any pending infringement, opposition or cancellation proceedings or material litigation, involving the Marks. There are currently no effective agreements that significantly limit our right to use, license or sublicense the Marks. Neither we nor our affiliates know of any infringing uses or superior prior rights that could materially affect your use of the Marks.

Your use of the Marks and any goodwill associated with the Marks are solely for our benefit. You have no ownership or other interest in the Marks. You may not at any time contest the validity, ownership, distinctiveness or enforceability of the Marks. You must follow our rules when you use the Marks and the Marks are the only marks you may use to identify your Studio. You may not use any Mark or any part of any Mark as part of any corporate or trade name; with any prefix, suffix, or other modifying words, terms, designs, or symbols; as part of a domain name or electronic address you maintain on the internet, the worldwide web, or any other similar proprietary or common carrier electronic delivery system; to advertise or sell any unauthorized service; or in any other manner unless authorized by us in writing.

You must identify yourself as the independent owner of your Studio as directed or required by us. You may not take any action that will harm the Franchise System, other Studios or the goodwill associated with the Marks. We and our agents will have the right to enter and inspect your Studio to make sure you are complying with our standards and directives concerning the proper use of the Marks.

You must modify or discontinue using any Mark, at your expense, if we require you to do so. We need not reimburse you for your direct expenses related to changing your Studio’s signs or replacing proprietary supplies, for your lost revenue, or for your promotion of the modified or newly required Marks.

You must notify us immediately of any apparent infringement of, or challenge to, your use of any Mark and may not communicate information about such an infringement or challenge with any person other than us, our affiliates or our counsel. You may not settle any claim without our written consent. We may take any action we deem appropriate (including no action) and exclusively control any litigation or USPTO or other administrative proceeding arising out of any infringement, challenge or claim related to the Marks. We are not obligated to protect you against infringement or unfair competition claims arising out of your use of the Marks, nor are we required to participate in your defense or indemnify you. However, we might choose to do so if, in the opinion of our legal counsel, such action is necessary or appropriate under the circumstances.

Upon expiration or termination of your Franchise Agreement, you will have no further right to use the Marks and you must immediately discontinue using the Marks.

ITEM 14. PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

There are no patents or copyrights currently registered or pending that are material to the Franchise System although we do claim copyright protection for our Franchise Agreement, the Operations Manual, other manuals or writings related to operating the Studio, training materials, and various sales, promotional and other materials we produce or create from time to time (the “**copyrighted material**”). We have not registered the copyrighted material with the United States Registrar of Copyrights, but need not do so to protect it. You may use the copyrighted materials or any future copyrights or patents we may claim or obtain in the operation of your Studio only as we direct and specify.

Currently, there are no effective determinations of the USPTO, the United States Copyright Office, the Trademark Trial and Appeal Board, or the trademark administrator of any state or any court, nor any pending infringement, opposition or cancellation proceedings or material litigation, involving the copyrighted material. There are currently no effective agreements that significantly limit our right to use, license or sublicense the copyrighted material. Neither we nor our affiliates know of any infringing uses or superior prior rights that could materially affect your use of the copyrighted material.

You must notify us immediately of any apparent infringement or challenge to your use of any copyrighted material or any copyrights or patents we may claim or obtain in the future. You may not communicate information about such an infringement or challenge with any person other than us, our affiliates or our counsel. You may not settle any claim without our written consent. We may take any action we deem appropriate (including no action) and exclusively control any litigation or USPTO or other administrative proceeding arising out of any infringement, challenge or claim related to the copyrighted material or any copyrights or patents we may claim or obtain in the future. We are not obligated to protect you against infringement or unfair competition claims arising out of your use of the copyrighted material or any copyrights or patents we may claim or obtain in the future, nor are we required to participate in your defense or indemnify you. However, we might choose to do so if, in the opinion of our legal counsel, such action is necessary or appropriate under the circumstances.

You must modify or discontinue using any of the copyrighted materials or other items or processes that may be covered by a claim of copyright, or covered by a registered copyright or patent in the future, at your expense, if we require you to do so. We need not reimburse you for your direct expenses related to such modification or discontinuance of use or for your lost revenue.

We possess certain proprietary confidential information consisting of the methods, techniques, formats, specifications, procedures, information, systems, business management methods, sales, and promotion techniques and knowledge and experience in the operation of Studios. We will disclose this information to you during Initial Training, other training programs we may offer from time to time, in the Operations Manual and otherwise during the term of your Franchise Agreement. You will have no right or interest in or to the confidential information, other than to use it in the operation of your Studio, and you acknowledge that to use it in any other business venture would constitute unfair competition. You acknowledge and agree that the confidential information is proprietary, includes our trade secrets, and is disclosed to you solely on the condition that you agree: (a) not to use the confidential information in any other business; (b) to use the confidential information solely for the purpose of operating your Studio; (c) to maintain the absolute confidentiality of the confidential information during and after the term of your Franchise Agreement; (c) not to make unauthorized copies of any confidential information disclosed in writing or other tangible form; and (d) to adopt and implement all reasonable procedures we periodically prescribe to prevent unauthorized use or disclosure of the confidential information.

You must take reasonable steps to protect us, the Franchise System, the Proprietary Assets, the Marks and any other confidential and proprietary information we possess against any misappropriation or other action by any third party that could damage us, the Franchise System, the Proprietary Assets, the Marks and any other confidential and proprietary information we possess, and immediately notify us of any misappropriation or other such action. We are not obligated to take any action against any unauthorized use of our Proprietary Assets, Marks or confidential information. We are not obligated to indemnify you for claims brought by a third party arising from your use of our Proprietary Assets, Marks and confidential and proprietary information.

The Operations Manual and any other materials we provide you for the purpose of operating your Studio belong to us and are loaned to you for the term of your Franchise Agreement. You must return all of these confidential materials to us when your Franchise Agreement expires or is terminated for any reason. You must keep the confidential materials updated and they must be located on the Studio's premises. If there is dispute regarding the correct terms or interpretation of any provisions of the Operations Manual or other manuals or materials we provide to you that you are required to keep updated, the terms of our master copies of such materials will control. We will be entitled to equitable remedies, such as injunctive relief, in order to protect our Franchise System, the Proprietary Assets, the Marks and any other confidential and proprietary information we possess.

ITEM 15. OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE STUDIO

During the term of the Franchise Agreement, you must use the Studio premises solely to operate your Studio. You must operate your Studio on the days and for the number of hours as we may specify. You or your fully trained manager must devote full time and best efforts to the management and operation of the Studio. You, your owner or your manager must devote full time and best efforts to the management and operation of your Studio. All individuals providing direct day-to-day supervision must have first satisfactorily completed our Initial Training. You must ensure that one individual who has successfully completed the Initial Training is on-site at your Studio at all times. If you are an individual, we recommend that you provide the direct on-premises supervision. You must devote such time as is necessary to effectively and efficiently operate your Studio.

If you are approved to develop multiple Studios, each Studio must have its own direct day-to-day supervisor, who must have satisfactorily completed our Initial Training. If the supervisor is an employee and the employee's employment terminates for any reason, you will promptly designate a replacement manager, who must attend and satisfactorily complete our next scheduled Initial Training program. We do not impose requirements with respect to your employees; however, you and all of your employees must obtain any licenses required to operate the Studio, must comply with all applicable laws, and must not harm the goodwill associated with the Franchise System, the Proprietary Assets and the Marks. You must ensure that all massage therapists have adequate insurance, including professional liability insurance or the equivalent.

Your employees, agents and independent contractors must enter into our form of non-compete and confidentiality agreement, which is attached to this Disclosure Document as Exhibit H.

If you are an entity, we do not require any manager you hire to have an equity interest in you. Although you may hire a manager to conduct the day to day operations of your Studio, you will still be obligated to comply with the terms of the Franchise Agreement and ensure that the Studio is properly operated.

If you are an individual, you must sign, and if you are an entity, each of your owners must sign, a Guaranty and Assumption of Obligations in the form attached as Exhibit 4 to the Franchise Agreement.

The persons signing the Guaranty and Assumption of Obligations agree to personally assume and perform all of the Franchisee's obligations under the Franchise Agreement. In addition, the spouse of the person signing may be required to consent to the Guaranty and Assumption of Obligations. Your landlord might also require you, or if you are an entity, your owners, to personally guaranty the tenant obligations under your lease.

If you are a corporation, limited liability company or partnership (or any other form of legal entity), all of your officers, directors, partners, shareholders and members and their spouses (and if you are an individual, your spouse) must agree to be bound by the non-disclosure provisions of the Franchise Agreement.

ITEM 16. RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

You must perform all services and offer all products that we require or may in the future require for operating the Studio. You must not offer, sell or promote any products, services or other types of massage services or programs under any of the Marks, except for services, products, and programs approved by us. You must sell or offer for sale at the Studio only services and products that we require or recommend and meet our current System Standards established in our Operations Manual. We have the right, without restriction, to periodically change any of the products, goods and services we require you to offer and sell.

We retain the right to establish both minimum and maximum prices, subject to applicable law. You must offer to customers any membership program that we require.

You must not install or maintain on the premises of the Studio any newspaper racks, video games, juke boxes, games, gaming machines, gum machines, rides, vending machines or other similar items without our written approval.

ITEM 17. RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

THE FRANCHISE RELATIONSHIP

This table lists certain important provisions of the Franchise Agreement and related agreements. You should read these provisions which are contained in the Franchise Agreement attached as Exhibit B to this Disclosure Document.

Provision		Section Franchise Agreement	Summary
a.	Length of the franchise term	3.1	10 years
b.	Renewal or extension of the term	3.2	Additional terms of 5 years each
c.	Requirements for franchisee to renew or extend	3.2	You must: 1) provide written notice of your election to renew; 2) not be in default; 3) pay all monies due; 4) sign the then-current form of our franchise agreement (which may contain terms and conditions materially different from those in the Franchise Agreement); 5) sign a general release; 6) attend refresher training programs (if any); 7) pay the renewal fee; and 8) update/remodel the Studio to our then-current standards.
d.	Termination by you	Not applicable	Not applicable.

Provision		Section Franchise Agreement	Summary
e.	Termination by us without cause	Not applicable	Not applicable.
f.	Termination by us with cause	10.1, 10.2	We can terminate the Franchise Agreement after providing you notice.
g.	"Cause" defined – curable defaults	10.1, 10.2	Curable defaults include: 1) ten days to cure a failure to pay or a misuse/unauthorized use of Marks or Proprietary Assets; 2) 30 days to cure any breach of the Franchise Agreement other than those provided in "h" below; and 3) cure period for a failure to cure loan default, as determined by us or a third-party lender.
h.	"Cause" defined – non-curable defaults	10.1 (Conversion Addendum Section 18)	Non-curable defaults include: 1) unauthorized disclosure of confidential information; 2) fraud conviction or engagement in conduct which may harm the Marks, the goodwill associate with the Marks, or the Franchise System; 3) abandonment for two consecutive days or expressing an intent to abandon; 4) insolvency or similar proceeding of you, your owner or an affiliate; 5) failure to satisfy a final judgment of \$5,000 or more or similar events; 6) felony or other criminal conviction that is likely to harm the Marks, the Proprietary Assets or the Franchise System and any related reputation or goodwill; 7) failure to commence operations within 180 days (or convert existing business to a Studio within 180 days); 8) failure to satisfactorily complete Initial Training or cheating at Initial Training; 9) underreporting gross receipts; 10) 3 default notices from us within a 12-month period; 11) unauthorized transfer; 12) loss of right to occupy Studio premises; 13) termination of other agreement between you (or one of your owners) and us; and 14) you create or allow to exist a health or safety concern.
i.	Your obligations on termination/non-renewal	10.4, 12.2	Obligations include: de-identifying, pay all sums due; return all manuals and other confidential materials; assign the business telephone and fax numbers to us or our designee; notify clients; direct clients to another Studio; transfer client list to us or our designee; pay all damages and costs incurred by us in enforcing the termination provisions of the Franchise Agreement; and comply with the covenants not to compete.
j.	Assignment of contract by us	5.7(f), 11.9	No restriction on our right to transfer or assign. We may transfer or assign without your approval
k.	"Transfer" by you-definition	11	Includes transfer of the interests or rights in the Franchise Agreement or the Studio or if you are an entity, the transfer of a controlling ownership interest in you.
l.	Our approval of your transfer	11.1	We have the right to approve all transfers but will not unreasonably withhold our consent. You cannot transfer without our written consent.

Provision		Section Franchise Agreement	Summary
m.	Conditions for our approval of transfer	11.1	All of your obligations have been discharged or assumed by the transferee; all fees owed to us have been paid; transferee qualifies and signs our then-current form of franchise agreement, and completes our Initial Training; transfer fee is paid; new franchisee is not operating a Competitive Business; we approve the terms and conditions of the transfer; you are not in default of any agreement with us; transferee agrees to renovate Studio to our then-current standards; you sign a general release and non-disparagement agreement; you obtain landlord consent (if required by lease); you comply with all post-termination obligations (see “i” and “r”); and you transfer possession of Studio only after transfer process completed. The term “ Competitive Business ” means any business operating or granting franchises or licenses to others to operate therapeutic massage or bodywork services studios or any other massage service business, or any business offering or selling products, or educational materials or conducting workshops for services that are the same as, similar to, or competitive with the Franchise System or other Studios.
n.	Our right of first refusal to acquire your business	11.6	We have a right of first refusal to acquire your Studio
o.	Our option to purchase your business	11.6	If you decide to sell your business, we have the right to purchase your business within 60 days from the date of delivery of a written offer.
p.	Your death or disability	11.3	The Franchise Agreement or ownership interest in the business entity may be assigned to an approved party.
q.	Non-competition covenants during the term of the franchise	12.1, 12.3	No involvement in any Competitive Business; no interference with our or any other affiliate’s or franchisee’s employees; no unauthorized use of Proprietary Assets or Franchise System format; and no operation of another branded business within ¼ mile of the Studio.
r.	Non-competition covenants after the franchise terminates or expires	12.2	No involvement (direct or indirect), provision of services in Competitive Business for 2 years within a 3-miles radius of your Studio or within 3 miles of another Studio. (Same terms apply after transfer.)
s.	Modification of the agreement	15.2	The Franchise Agreement can be modified only by written agreement between you and us. We can modify or change the Franchise System through changes in the confidential Operations Manual, other manuals and System Specifications and standards.
t.	Integration/merger clause	15.4, 15.5	Only the terms of the Franchise Agreement, including the Operations manuals and other manuals we provide, are binding (subject to federal and state law) and may only be modified if required by an appropriate court to make the Franchise Agreement enforceable. Any representations outside of the Disclosure Document and Franchise Agreement may not be enforceable.

Provision		Section Franchise Agreement	Summary
u.	Dispute resolution by arbitration or mediation	14.5	All disputes relating to the Franchise Agreement or our relationship must be arbitrated in the location where our principal place of business is located (currently Denver, Colorado).
v.	Choice of forum	14.2	The place where our principal place of business is located (currently Denver, Colorado) (subject to state law).
w.	Choice of law	14.1	Colorado law governs (subject to state law), except that disputes regarding the Marks will be governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) and any arbitration matter will be governed by the United States Federal Arbitration Act (9 U.S.C. Sections 1 et seq.).

ITEM 18. PUBLIC FIGURES

We do not use any public figures to promote our Franchise System. However, we may use public figures in the future.

ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS

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

The financial performance figures contained in this Item 19 do not reflect the costs of sales, operating expenses or other costs or expenses that must be deducted from the gross revenue or gross receipts 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 Studio. Franchisees or former franchisees listed on Exhibits to this Disclosure Document may be a source of this information.

We began selling franchises in October 2006, and the first Studio, other than our founder's original two Studios, opened in January 2007. At December 31, 2009, there were 74 Studios open in the Franchise System.

The table below describes average monthly revenue for Studios in the Franchise System open as of December 31, 2009 and open for at least 12 months as of January 1, 2009 (total of 22 Studios) and Studios located in Massachusetts open as of December 31, 2009 and open for at least 12 months as of January 1, 2009 (total of 6 Studios). The Massachusetts market contains the largest number of Studios meeting this designated criteria.

REGION	2009 AVERAGE MONTHLY REVENUE	SAME STUDIO AVERAGE MONTHLY REVENUE INCREASE (2009 OVER 2008)	JANUARY – JUNE 2010 AVERAGE MONTHLY REVENUE	SAME STUDIO AVERAGE MONTHLY REVENUE INCREASE (JAN. – JUNE 2010 OVER JAN. – JUNE 2009)
All Regions	\$31,217	27%	\$34,233	20%
Massachusetts	\$37,712	37%	\$44,545	42%

In 2009, 50% of the 22 Studios in the Franchise System meeting the designated criteria performed better than the average monthly revenue, and 50% performed below the average. In the first half of 2010, 45% of the 22 Studios in the Franchise System meeting the designated criteria performed better than the average monthly revenue, and 55% performed below the average. In 2009, 50% of the 6 Studios located in Massachusetts meeting the designated criteria performed better than the average monthly revenue, and 50% performed below the average. In the first half of 2010, 67% of the 6 Studios located in Massachusetts meeting the designated criteria performed better than the average monthly revenue, and 33% performed below the average.

The average monthly revenue amounts presented above are based upon actual data we require our franchisees to submit to us on a monthly basis. These revenues are based upon historical data and individual franchise results may be significantly different. Factors that might adversely impact average monthly revenues for a given Studio include the general public's perception of the benefits of massage therapy, increased competition in the massage industry, actions by franchisees that are out of our control that could adversely impact the Franchise System, and the status of our general economic environment. The negative impact of such factors would also adversely impact a franchisee's net income, profits and earnings.

Written substantiation for the financial performance representation will be made available to prospective franchisees upon reasonable request. There is no guarantee that you, as a new franchisee, will attain the same level of sales, costs or profits that have been attained by our existing franchisees. Your results will likely differ.

The above representations are the only financial performance representations we make and our employees, agents and representatives are not authorized to make any additional financial representations about the Franchise System, either orally or in writing. If you are purchasing an existing Studio, however, we may be able to provide you with the Studio's financial performance information. If you receive any other financial performance information or projections of what your financial results might be if you purchase a Studio, you should report it to our management by contacting Daniel M. Colbourne, our Chief Financial Officer, 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129, (877) 663-0880, the Federal Trade Commission, and appropriate state regulatory agencies.

ITEM 20. OUTLETS AND FRANCHISEE INFORMATION

**Table 1
Systemwide Outlet Summary
For Years 2007 to 2009**

(Col 1) Outlet Type	(Col 2) Year	(Col 3) Outlets at the Start of the year	(Col 4) Outlets at the End of the Year	(Col 5) Net Change
Franchised Outlets	2007	2	30	+28
	2008	30	71	+43
	2009	71	74	+3
Company Owned Outlets	2007	0	0	0
	2008	0	0	0
	2009	0	0	0
Total Outlets	2007	2	30	+28
	2008	30	71	+41
	2009	71	74	+3

**Table 2
Transfers of Outlets from Franchisees to New Owners (other than Franchisor)
For Years 2007 to 2009**

(Col 1) State	(Col 2) Year	(Col 3) Number of Transfers
ID	2007	0
	2008	0
	2009	1
MA	2007	0
	2008	0
	2009	2
WI	2007	0
	2008	0
	2009	1
Total	2007	0
	2008	0
	2009	4

**Table 3
Status of Franchise Outlets
For Years 2007 to 2009**

(Col 1) State	(Col 2) Year	(Col 3) Outlets at Start of Year	(Col 4) Outlets Opened	(Col 5) Terminations	(Col 6) Non- Renewals	(Col 7) Reacquired by Franchisor	(Col 8) Ceased Operations Other Reasons	(Col 9) Outlets at End of Year
AL	2007	0	0	0	0	0	0	0
	2008	0	1	0	0	0	0	1
	2009	1	0	0	0	0	0	1
AZ	2007	0	3	0	0	0	0	3
	2008	3	2	0	0	0	1	4
	2009	4	1	0	0	0	0	5
CA	2007	0	0	0	0	0	0	0
	2008	0	2	0	0	0	0	2
	2009	2	2	1	0	0	0	3
CO	2007	2	5	0	0	0	0	7
	2008	7	6	0	0	0	1	12
	2009	12	2	0	0	0	1	13
FL	2007	0	0	0	0	0	0	0
	2008	0	4	0	0	0	0	4
	2009	4	1	1	0	0	0	4
GA	2007	0	1	0	0	0	0	1
	2008	1	2	0	0	0	0	3
	2009	3	0	1	0	0	1	1
ID	2007	0	0	0	0	0	0	0
	2008	0	3	0	0	0	0	3
	2009	3	0	0	0	0	0	3
IL	2007	0	1	0	0	0	0	1
	2008	1	2	0	0	0	0	3
	2009	3	0	0	0	0	0	3
IA	2007	0	1	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	3	0	0	0	0	0	3

(Col 1) State	(Col 3) Year	(Col 3) Outlets at Start of Year	(Col 4) Outlets Opened	(Col 5) Terminations	(Col 6) Non- Renewals	(Col 7) Reacquired by Franchisor	(Col 8) Ceased Operations Other Reasons	(Col 9) Outlets at End of Year
KY	2007	0	1	0	0	0	0	1
	2008	1	0	0	0	0	0	1
	2009	1	0	0	0	0	0	1
MA	2007	0	7	0	0	0	0	7
	2008	7	7	0	0	0	1	13
	2009	13	0	1	0	0	1	11
MI	2007	0	3	0	0	0	0	3
	2008	3	2	0	0	0	0	5
	2009	5	1	1	0	0	2	3
MN	2007	0	0	0	0	0	0	0
	2008	0	1	0	0	0	0	1
	2009	1	0	0	0	0	0	1
NY	2007	0	0	0	0	0	0	0
	2008	0	1	0	0	0	0	1
	2009	1	0	0	0	0	0	1
OH	2007	0	0	0	0	0	0	0
	2008	0	1	0	0	0	0	1
	2009	1	0	0	0	0	0	1
OK	2007	0	2	0	0	0	0	2
	2008	2	3	0	0	0	0	5
	2009	5	0	0	0	0	0	5
OR	2007	0	0	0	0	0	0	0
	2008	0	1	0	0	0	0	1
	2009	1	0	0	0	0	0	1
TX	2007	0	1	0	0	0	0	1
	2008	1	1	0	0	0	0	2
	2009	2	2	1	0	0	0	3
WA	2007	0	1	0	0	0	0	1
	2008	1	3	0	0	0	0	4
	2009	4	2	0	0	0	0	6

(Col 1) State	(Col 2) Year	(Col 3) Outlets at Start of Year	(Col 4) Outlets Opened	(Col 5) Terminations	(Col 6) Non- Renewals	(Col 7) Reacquired by Franchisor	(Col 8) Ceased Operations Other Reasons	(Col 9) Outlets at End of Year
WI	2007	0	1	0	0	0	0	1
	2008	1	3	0	0	0	0	4
	2009	4	0	0	0	0	0	4
US Total	2007	2	27	0	0	0	0	29
	2008	29	45	0	0	0	3	71
	2009	71	14	6	0	0	5	74
Costa Rica	2007	0	1	0	0	0	0	1
	2008	1	0	0	0	0	1	0
	2009	0	0	0	0	0	0	0
Total	2007	2	28	0	0	0	0	30
	2008	30	45	0	0	0	4	71
	2009	71	14	6	0	0	5	74

Table 4
Status of Company-Owned Outlets
For Years 2007 to 2009

(Col 1) State	(Col 2) Year	(Col 3) Outlets at Start of Year	(Col 4) Outlets Opened	(Col 5) Outlets Reacquired From Franchisee	(Col 6) Outlets Closed	(Col 7) Outlets Sold To Franchisee	(Col 8) Outlets at End of Year
Total	2007	0	0	0	0	0	0
	2008	0	0	0	0	0	0
	2009	0	0	0	0	0	0

Table 5
Projected Openings
As of December 31, 2009

(Col 1) State	(Col 2) Franchise Agreements Signed But Outlet Not Opened	(Col 3) Projected New Franchised Outlets in the Next Fiscal Year	(Col 4) Projected New Company- Owned Outlets in the Next Fiscal Year
AZ	1	3	0
CA	1	3	0
CO	3	3	0
FL	2	2	0
IL	0	1	0
MA	0	3	0
MI	1	1	0
NH	0	1	0
NJ	0	2	0
OH	1	1	0
OK	2	2	0
PA	1	1	0
TX	1	2	0
Total	13	25	0

Exhibit C1 lists the names of all current franchisees and the addresses and telephone numbers of their Studios as of December 31, 2009.

Exhibit C2 also list the name, city and state, and current business telephone number or the last known home telephone number of every franchisee who had a franchise agreement that was terminated, canceled or not renewed, or who otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year, or who has not communicated with us within 10 weeks of the issuance date of this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the Franchise System.

Exhibit C3 lists the name, city and state and telephone numbers of all franchisees who have signed franchise agreements, but who have not yet opened a Studio.

During the last three fiscal years, current and former franchisees have signed confidentiality clauses. In some instances, current and former franchisees have signed provisions restricting their ability to speak openly about their experience with the Elements Franchise System. You may wish to speak with current and former franchisees, but be aware that not all of them will be able to communicate with you.

In October 2008, we established the Leadership Council, consisting of members of Franchisor's management, Area Directors, and franchisees. The Leadership Council provides feedback and advice to us, but does not have decision-making authority. The Leadership Council has not incorporated or

otherwise organized under state law. It does not have its own address telephone number, email address or web address.

ITEM 21. FINANCIAL STATEMENTS

Attached as Exhibit D to this Disclosure Document are our audited financial statements as of December 31, 2007, December 31, 2008, and December 31, 2009.

Our fiscal year end is December 31.

ITEM 22. CONTRACTS

Attached to this Disclosure Document are the following Exhibits:

- A State Addenda to the Disclosure Document and Franchise Agreement
- B Franchise Agreement and Exhibits
- G Franchisee Questionnaire
- H Non-Compete and Confidentiality Agreement [Sample]
- I Form Conversion Program Addendum to the Franchise Agreement
- J Form of Guarantee Indemnification
- K Form of General Release

There are no other contracts or agreements you are required to sign to purchase your Studio

ITEM 23. RECEIPTS

Exhibit M of this Disclosure Document contains detachable documents acknowledging your receipt of this Disclosure Document and all Disclosure Document Exhibits.

EXHIBIT A

STATE ADDENDA AND AGREEMENT RIDERS

Exhibit A

STATE ADDENDA TO FRANCHISE DISCLOSURE DOCUMENT

**ADDENDUM TO
DISCLOSURE DOCUMENT FOR THE
STATE OF CALIFORNIA**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE
DOCUMENT FOR THE STATE OF CALIFORNIA ONLY.**

1. Item 3 of the Disclosure Document will be replaced with the following language:

Neither we nor any person in Item 2 of the Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78 et seq., suspending or expelling this person from membership in such association or exchange.

2. The prospective franchisee may view the Operations Manual described in Item 11 of the Disclosure Document before purchase of the franchise.

3. The Franchise Agreement contains a liquidated damage clause, under Civil Code, Section 1671. Certain liquidated damage clauses are unenforceable.

4. Item 17 of this Disclosure Document will be amended by adding the following paragraphs to the end of the chart:

The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law (11 U.S.C.A., section 101 et seq.).

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

The Franchise Agreement requires binding arbitration. The arbitration will be conducted at a suitable location chosen by the arbitrator located in our then-current principal place of business (currently, Denver, Colorado) with the costs being paid equally by the parties and each party is responsible for its own additional costs and attorneys' fees. This provision may not be enforceable under California law. 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 a franchise agreement restricting venue to a forum outside the State of California.

The Franchise Agreement requires application of the laws and forum of the state of which our principal place of business is located (currently, Colorado). This provision may not be enforceable under California law.

**ADDENDUM TO DISCLOSURE DOCUMENT
FOR CALIFORNIA (continued)**

The Franchise Agreement requires you to sign a general release of claims upon renewal or transfer of the Franchise Agreement. California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of that law or any rule or order is void. Section 31512 voids a waiver of your rights under Franchise Investment Law (California Corporations Code Section 31000-31516). Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 – 20043).

California Business and Professions Code Sections 20000 through 20043 provide rights to you concerning termination or non-renewal of a franchise. If a Franchise Agreement is inconsistent with the law, the law will control.

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

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

7. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF CORPORATIONS. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF CORPORATIONS AT www.corp.ca.gov.

**ADDENDUM TO
DISCLOSURE DOCUMENT FOR THE
STATE OF ILLINOIS**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE
DOCUMENT, FOR THE STATE OF ILLINOIS ONLY**

ITEM 17 OF THIS DISCLOSURE DOCUMENT IS AMENDED BY THE ADDITION OF THE FOLLOWING PARAGRAPHS TO THE END OF THE CHART.

1. The conditions under which you can be terminated and your rights on non-renewal may be affected by Illinois law, 815 ILCS 705/19 and 705/20.

2. The Illinois Franchise Disclosure Act will govern any franchise agreement if it applies to a franchise located in Illinois.

3. The Franchise Agreement shall become effective on its acceptance and execution by us at our principal business address. The Franchise Agreement shall be interpreted and constructed under the state law in which our principal place of business is located (currently, Colorado), except to the extent governed by the United States Arbitration Act and the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C., Sections 1051 et seq.). However, any condition, stipulation, or provision purporting to find any person acquiring any franchise to waive compliance with any provision of the Act or any other law of the state of Illinois is void.

4. Any action brought by either party in any court, except for claims required to be submitted to arbitration, whether federal or state, will be brought within a court of general jurisdiction in the location in which our principal place of business is located, which is currently Denver, Colorado. The parties waive all questions of personal jurisdiction or venue. However, any provision that designates jurisdiction or venue outside of Illinois is void with respect to any cause of action that otherwise is enforceable in Illinois; provided, however that the Franchise Agreement may provide for arbitration in a forum outside of Illinois.

**ADDENDUM TO
DISCLOSURE DOCUMENT FOR THE
STATE OF MARYLAND**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE
DOCUMENT FOR THE STATE OF MARYLAND ONLY.**

1. ITEM 17 OF THIS DISCLOSURE DOCUMENT IS AMENDED BY THE ADDITION OF THE FOLLOWING PARAGRAPHS TO THE END OF THE CHART.

We require you to sign a general release of claims as a condition of the sale, transfer or renewal, or under certain circumstances, the termination of the Franchise Agreement. The general release will not apply to any claims that arise under the Maryland Franchise Registration and Disclosure Law.

The Franchise Agreement requires you to agree to a period of limitations less than 3 years. The period of limitations less than 3 years will not apply to any claims arising under the Maryland Franchise Registration and Disclosure Law.

The Franchise Agreement requires you to sue in a state other than Maryland. You still can file a civil lawsuit in Maryland alleging a violation of the Maryland Franchise Registration and Disclosure Law.

A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

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

2. Exhibit G "Franchisee Disclosure Questionnaire" is amended to add the following language to the end of the form:

"The representations included in this Franchisee Disclosure Questionnaire 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."

**ADDENDUM TO
DISCLOSURE DOCUMENT FOR THE
STATE OF MINNESOTA**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE
DOCUMENT FOR THE STATE OF MINNESOTA ONLY**

1. Item 13 of this Disclosure Document will be amended to add the following paragraph:

Under Minnesota Statute Section 80C.12, Subd. 1(g) – we must protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name. We do not indemnify against the consequences of your use of our Marks except in accordance with the requirements of the Franchise Agreement and the Operations Manual and, as a condition to indemnification, you must notify us in writing within 10 days, or within such shorter period as is necessary to avoid prejudice, after learning of any claim, and immediately tender the defense of the claim to us. If we accept the tender of defense, we have the right to control any litigation or proceeding resulting from any such claim including the right to compromise, settle or otherwise resolve the claim, or whether to appeal a final determination of the claim.

2. Item 17 of this Disclosure Document is amended by the addition of the following paragraphs to the end of the chart:

Minn. Stat. 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the Disclosure Document 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 the jurisdiction.

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 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.

Minn. Rule Part 2860.4400J prohibits you from waiving your rights to a jury trial or waiving your 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.

Minn. Rule 2860.4400D prohibits us from requiring you to assent to a general release.

**ADDENDUM TO DISCLOSURE DOCUMENT
FOR NEW YORK**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE
DOCUMENT, FOR THE STATE OF NEW YORK ONLY**

1. Item 3 of this Disclosure Document will be amended to include the following language:

Other than the disclosures listed in this section, neither us, our predecessor, a person listed in Item 2, or an affiliate offering franchises under our principal trademark has pending an administrative, criminal or material civil action alleging a violation of a franchise, antitrust or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property or unfair or deceptive practices or comparable civil allegations.

Neither us, our predecessor, a person listed in Item 2, or an affiliate offering franchises under our principal trademark has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the application for registration, been convicted of a misdemeanor 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 conversation or misappropriation of property, restraint of trade, unfair or deceptive practices or comparable allegations.

Neither we nor any person identified in Item 2 is subject to any injunctive or restrictive order or decree relating to the franchise or under any Federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of 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 notional securities exchange, as defined in the Securities Exchange Act of 1934, suspending or expelling such persons from membership in such association or exchange.

2. Item 4 of this Disclosure Document will be replaced with the following language:

Neither we, our predecessor, our affiliates, our officers, our general partners, nor any person listed in Item 2, during the 10-year period immediately before the date of the Disclosure Document, has filed as a debtor, or had filed against it, a petition to start an action under the U.S. Bankruptcy Code; obtained a discharge of its debts under the bankruptcy code; or was a principal officer of a company or a general partner in a partnership that filed as a debtor or had filed against it a petition to start an action under the U.S. Bankruptcy Code nor that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after the officer or general partner held this position in the company or partnership.

**ADDENDUM TO DISCLOSURE DOCUMENT
FOR New York (continued)**

3. Item 17 (v) of this Disclosure Document will be amended to add the following paragraph to the end of the chart:

The Franchise Agreement state that any lawsuits filed against us must be filed exclusively in the state or federal court of general jurisdiction in the location in which our principal place of business is located, which is currently Denver, Colorado. Provisions in New York state law supersede this, allowing for lawsuits to be filed in New York.

4. The choice of law provision in Item 17 (w) shall not be a waiver of any right provided to us or you by the provisions of Article 33 of the General Business Law of New York.

**ADDENDUM TO DISCLOSURE DOCUMENT
FOR NORTH DAKOTA**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE
DOCUMENT, FOR THE STATE OF NORTH DAKOTA ONLY**

1. Item 17(c) of this Disclosure Document will be amended to add the following paragraph:

Under Section 51-19-09 of the North Dakota Franchise Investment Law, you are not required to sign a general release upon renewal of the Franchise Agreement.

2. Item 17(i) of this Disclosure Document will be amended to add the following paragraph:

Liquidated Damages are prohibited under Section 51-19-09 of the North Dakota Franchise Investment Law and will not apply to franchisees in North Dakota.

3. Item 17(r) of this Disclosure Document will be amended to add the following paragraph:

These restrictions of the covenant not to compete may be subject to Section 9-08-06 of the North Dakota Century Code. These covenants not to compete required by the Franchise Agreement are generally not enforceable under North Dakota law.

4. Item 17(u) of this Disclosure Document will be amended as follows:

All disputes must be conducted in North Dakota or in a location which is mutually agreed upon by us and you.

5. Item 17(v) of this Disclosure Document will be amended to add the following paragraph:

All litigation and arbitration must be conducted in North Dakota or in a location which is mutually agreed upon by us and you.

6. Item 17(w) of this Disclosure Document will be amended to add the following paragraph:

The Federal Arbitration Act and North Dakota laws apply except to the extent that the Franchise Agreement is governed by the United States Trademark Act of 1946 (Lanham Act, 15 USC 1051, et seq.)

**ADDENDUM TO DISCLOSURE DOCUMENT
FOR RHODE ISLAND**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE
DOCUMENT, FOR THE STATE OF RHODE ISLAND ONLY**

Item 17 (u), (v) and (w) of the Disclosure Document are amended to add the following:

Section 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 state laws of another state is void with respect to a claim otherwise enforceable under this Act.”

**ADDENDUM TO DISCLOSURE DOCUMENT
FOR VIRGINIA**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE
DOCUMENT, FOR THE STATE OF VIRGINIA ONLY**

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for Elements Therapeutic Massage for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure. The following statements are added to 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 ground 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.

ADDENDUM TO
DISCLOSURE DOCUMENT FOR THE
STATE OF WASHINGTON

THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE DOCUMENT, FOR THE STATE OF WASHINGTON ONLY.

1. The following language is added to the end of Item 17 of the Disclosure Document:

If any of the provisions in this Disclosure Document or Franchise Agreement are inconsistent with the relationship provisions of Revised Code of Washington, Section 19.100.180 or any other requirements of the Washington Franchise Investment Protection Act (the “Act”), the provisions of the Act will prevail over the inconsistent terms of the Disclosure Document or Franchise Agreement.

STATE ADDENDA TO FRANCHISE AGREEMENT

**ADDENDUM TO FRANCHISE AGREEMENT
FOR ILLINOIS**

THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR ILLINOIS (“this Addendum”) is entered into by and between **ELEMENTS THERAPEUTIC MASSAGE, INC.**, a Delaware corporation with its principal business address at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”) and _____ (“you” or “your”), whose principal business address is _____.

WHEREAS, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated _____, 20____ (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

WHEREAS, the offering or sales activity relating to the Franchise Agreement occurred in the State of Illinois, and the Elements Studio will be located in the State of Illinois, and/or you are domiciled in the State of Illinois.

NOW THEREFORE, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. Notwithstanding anything contrary in the Franchise Agreement, in the event of a conflict between the provisions of the Franchise Agreement and the provisions of this Addendum, the provisions of this Addendum shall control. The parties agree that the Franchise Agreement remains fully effective in all respects except as specifically modified by this Addendum, and all the respective rights and obligations of you and us remain as written unless modified herein.

2. The conditions under which you can be terminated and your rights on non-renewal may be affected by Illinois law, 815 ILCS 705/19 and 705/20.

3. The Illinois Franchise Disclosure Act will govern the Franchise Agreement if it applies to a franchise located in Illinois.

4. If any provisions of the Franchise Agreement are inconsistent with applicable Illinois state law, then Illinois state law will apply. Any provision which designates jurisdiction or venue in a forum outside Illinois is void with respect to any cause of action which is otherwise enforceable in Illinois, provided that a Franchise Agreement may provide for arbitration in a forum outside of Illinois. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act is void.

(continued on next page)

Miscellaneous. This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

Counterpart Execution and Delivery by Facsimile. This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be affected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

IN WITNESS THEREOF, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

FRANCHISEE:

(Name of individual or Entity)

By: _____

Printed Name: _____

Its: _____
(Title of Signor, if applicable)

**ADDENDUM TO FRANCHISE AGREEMENT
FOR MARYLAND**

THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR MARYLAND (“this Addendum”) is entered into by and between **ELEMENTS THERAPEUTIC MASSAGE, INC.**, a Delaware corporation with its principal business address at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”) and _____ (“you” or “your”), whose principal business address is _____.

WHEREAS, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated _____, 20____ (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

WHEREAS, the offering or sales activity relating to the Franchise Agreement occurred in the State of Maryland, and the Elements Studio will be located in the State of Maryland, and/or you are domiciled in the State of Maryland.

NOW THEREFORE, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. This Addendum is intended to modify the Franchise Agreement. In the event of any conflict between a provision of the Franchise Agreement and this Addendum, the provision of this Addendum shall control. All terms which are capitalized in this Addendum and not otherwise defined, will have the meanings given to them in the Franchise Agreement. Except as amended by this Addendum, the Franchise Agreement is unmodified and in full force and effect in accordance with its terms.

2. We require you to sign a general release of claims as a condition of the refund, sale, transfer or renewal of the franchise. Pursuant to COMAR 02. 02. 08. 16L, the release will not apply to any claims that arise under the Maryland Franchise Registration and Disclosure Law.

3. The Franchise Agreement requires you to agree to a period of limitations less than 3 years. The period of limitations less than 3 years shall not apply to any claims arising under the Maryland Franchise Registration and Disclosure Law.

4. The Franchise Agreement requires prospective franchisees to disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law. Such representations 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.

5. Section 10.1 (d) of the Franchise Agreement which provides for the termination of your Agreement should you become bankrupt or insolvent may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.)

(continued on next page)

6. Section 16: Acknowledgments of the Franchise Agreement is amended by adding the following paragraph:

These representations 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.

7. Section 14.2: Jurisdiction and Venue of the Franchise Agreement shall be amended to allow you to file a civil lawsuit in Maryland alleging a violation of the Maryland Franchise Registration and Disclosure Law.

Miscellaneous. This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

Counterpart Execution and Delivery by Facsimile. This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be affected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

IN WITNESS THEREOF, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

FRANCHISEE:

(Name of individual or Entity)

By: _____

Printed Name: _____

Its: _____
(Title of Signor, if applicable)

**ADDENDUM TO FRANCHISE AGREEMENT
FOR MINNESOTA**

THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR MINNESOTA (“this Addendum”) is entered into by and between **ELEMENTS THERAPEUTIC MASSAGE, INC.**, a Delaware corporation with its principal business address at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”) and _____ (“you” or “your”), whose principal business address is _____.

WHEREAS, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated _____, 20____ (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

WHEREAS, the offering or sales activity relating to the Franchise Agreement occurred in the State of Minnesota, and/or the Elements Studio will be located in the State of Minnesota.

NOW THEREFORE, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. This Addendum is intended to modify the Franchise Agreement. In the event of any conflict between a provision of the Franchise Agreement and this Addendum, the provision of this Addendum shall control. All terms which are capitalized in this Addendum and not otherwise defined, will have the meanings given to them in the Franchise Agreement. Except as amended by this Addendum, the Franchise Agreement is unmodified and in full force and effect in accordance with its terms.

2. Section 6 of the Franchise Agreement: Use of the Marks is amended to add the following paragraph:

Under Minnesota Statute Section 80C.12, Subd. 1(g) – we must protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name. We do not indemnify against the consequences of your use of our Marks except in accordance with the requirements of the Franchise Agreement and the Operations Manual and, as a condition to indemnification, you must notify us in writing within 10 days, or within such shorter period as is necessary to avoid prejudice, after learning of any claim, and immediately tender the defense of the claim to us. If we accept the tender of defense, we have the right to control any litigation or proceeding resulting from any such claim including the right to compromise, settle or otherwise resolve the claim, or whether to appeal a final determination of the claim.

3. Section 14 of the Franchise Agreement is amended by adding the following paragraph:

Pursuant to Minnesota Statutes Section 80C.21 and Minnesota Rule 2860.4400J, this section shall not in any way abrogate or reduce any of your rights as provided for in Minnesota Statutes Chapter 80C, including the right to submit matters to the jurisdiction of the courts of Minnesota and the right to bring a cause of action within three years after the cause of action accrues. You cannot be required to consent to the waiver of a jury trial.

4. With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 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.

5. Minn. Rule Part 2860.4400J prohibits you from waiving your rights to a jury trial or waiving your 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.

6. The Franchise Agreement requires you to sign a general release of claims as a condition of the renewal, refund, sale, assignment or transfer of the franchise. Pursuant to Minn. Rule 2860.4400D, the general release of claims will not apply to any liability under Minnesota Law.

Miscellaneous. This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

Counterpart Execution and Delivery by Facsimile. This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be effected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

IN WITNESS THEREOF, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

FRANCHISEE:

(Name of individual or Entity)

By: _____

Printed Name: _____

Its: _____
(Title of Signor, if applicable)

**ADDENDUM TO FRANCHISE AGREEMENT
FOR NEW YORK**

THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR NEW YORK (“this Addendum”) is entered into by and between **ELEMENTS THERAPEUTIC MASSAGE, INC.**, a Delaware corporation with its principal business address at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”) and _____ (“you” or “your”), whose principal business address is _____.

WHEREAS, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated _____, 20____ (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

WHEREAS, you are domiciled in New York and the Elements Studio will be located in New York, and/or any of the offering or sales activity relating to the Franchise Agreement occurred in the State of New York.

NOW THEREFORE, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. This Addendum is intended to modify the Franchise Agreement. In the event of any conflict between a provision of the Franchise Agreement and this Addendum, the provision of this Addendum shall control. All terms which are capitalized in this Addendum and not otherwise defined, will have the meanings given to them in the Franchise Agreement. Except as amended by this Addendum, the Franchise Agreement is unmodified and in full force and effect in accordance with its terms.

2. The Franchise Agreement states that any lawsuits filed against us must be filed exclusively in the state or federal court of general jurisdiction in the location in which our principal place of business is located, which is currently Denver, Colorado. Provisions in New York state law supersede this, allowing for lawsuits to be filed in New York.

3. Section 14.1 of the Franchise Agreement shall not be a waiver of any right provided to us or you by the provisions of Article 33 of the General Business Law of New York.

Miscellaneous. This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

Counterpart Execution and Delivery by Facsimile. This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be effected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

IN WITNESS THEREOF, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

FRANCHISEE:

(Name of individual or Entity)

By: _____

Printed Name: _____

Its: _____
(Title of Signor, if applicable)

**ADDENDUM TO FRANCHISE AGREEMENT
FOR NORTH DAKOTA**

THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR NORTH DAKOTA (“this Addendum”) is entered into by and between **ELEMENTS THERAPEUTIC MASSAGE, INC.**, a Delaware corporation with its principal business address at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”) and _____ (“you” or “your”), whose principal business address is _____.

WHEREAS, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated _____, 20____ (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

WHEREAS, the offering or sales activity relating to the Franchise Agreement occurred in the State of North Dakota, and the Elements Studio will be located in North Dakota, and/or you are domiciled in North Dakota.

NOW THEREFORE, Franchisor and Franchisee agree that the Franchise Agreement is hereby modified, as follows:

1. This Addendum is intended to modify the Franchise Agreement. In the event of any conflict between a provision of the Franchise Agreement and this Addendum, the provision of this Addendum shall control. All terms which are capitalized in this Addendum and not otherwise defined, will have the meanings given to them in the Franchise Agreement. Except as amended by this Addendum, the Franchise Agreement is unmodified and in full force and effect in accordance with its terms.

2. The following is added to the end of Sections 3.2(e) and 11.1(k) of the Franchise Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

3. Section 12.2 of the Franchise Agreement will be amended to add the following paragraph:

These restrictions of the covenant not to compete may be subject to Section 9-08-06 of the North Dakota Century Code and are generally not be enforceable under North Dakota law.

4. Section 14.1 of the Franchise Agreement will be amended to read as follows:

Except as otherwise required by North Dakota law, this Agreement shall be governed by and construed in accordance with the laws of the state in which our principal place of business is located (currently, Colorado), except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C., Sections 1051 et seq.) and the Federal Arbitration Act or other federal law.

(Continued on next page)

5. The following is added to the end of Section 14.2 of the Franchise Agreement:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, and subject to your arbitration obligations, you may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.

6. To the extent required by the North Dakota Franchise Investment Law, Sections 14.3 and 14.4 of the Franchise Agreement are deleted.

7. The first paragraph of Section 14.5 of the Franchise Agreement will be amended to read as follows:

We and you agree that all controversies, disputes, or claims between us and our affiliates, and our and their respective shareholders, members, officers, directors, agents, and/or employees, and you (and/or your owners, guarantors, affiliates, and/or employees) arising out of or related to:

- (a) this Agreement or any other agreement between you (or your owners) and us;
- (b) our relationship with you;
- (c) the scope or validity of this Agreement or any other agreement between you (or your owners) and us or any provision of any of such agreements (including the validity and scope of the arbitration obligation under Section 14.5, which we and you acknowledge is to be determined by an arbitrator, not a court); or
- (d) any System Standard;

must be submitted for binding arbitration to the American Arbitration Association in the United States (“AAA”). The arbitration proceedings will be conducted by one arbitrator and, except as this Subsection otherwise provides, according to the AAA’s then current commercial rules. All proceedings will be conducted at a suitable location chosen by the arbitrator located in our then-current principal place of business (currently Denver, Colorado); provided, however, that to the extent otherwise required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration shall be held at a site which we and you mutually agree. All matters relating to arbitration will be governed by the United States Federal Arbitration Act (9 U.S.C. §§ 1 et seq.).

8. The following language is added to the end of Section 14.6 of the Franchise Agreement:

The statutes of limitations under North Dakota law apply with respect to claims arising under the North Dakota Franchise Investment Law.

IN WITNESS THEREOF, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

FRANCHISEE:

(Name of individual or Entity)

By: _____

Printed Name: _____

Its: _____
(Title of Signor, if applicable)

**ADDENDUM TO FRANCHISE AGREEMENT
FOR RHODE ISLAND**

THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR RHODE ISLAND (“this Addendum”) is entered into by and between **ELEMENTS THERAPEUTIC MASSAGE, INC.**, a Delaware corporation with its principal business address at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”) and _____ (“you” or “your”), whose principal business address is _____.

WHEREAS, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated _____, 20____ (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

WHEREAS, you are a resident of Rhode Island and the Elements Studio will be located or operated in Rhode Island, and/or the offering or sales activity relating to the Franchise Agreement occurred in the State of Rhode Island.

NOW THEREFORE, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. This Addendum is intended to modify the Franchise Agreement. In the event of any conflict between a provision of the Franchise Agreement and this Addendum, the provision of this Addendum shall control. All terms which are capitalized in this Addendum and not otherwise defined, will have the meanings given to them in the Franchise Agreement. Except as amended by this Addendum, the Franchise Agreement is unmodified and in full force and effect in accordance with its terms.

2. Sections 14.1 and 14.2 of the Franchise Agreement will be amended to add the following paragraph:

Section 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 state laws of another state is void with respect to a claim otherwise enforceable under this Act.”

Miscellaneous. This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

Counterpart Execution and Delivery by Facsimile. This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be effected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

IN WITNESS THEREOF, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

FRANCHISEE:

(Name of individual or Entity)

By: _____

Printed Name: _____

Its: _____
(Title of Signor, if applicable)

**ADDENDUM TO FRANCHISE AGREEMENT
FOR WASHINGTON**

THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR WASHINGTON (“this Addendum”) is entered into by and between **ELEMENTS THERAPEUTIC MASSAGE, INC.**, a Delaware corporation with its principal business address at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”) and _____ (“you” or “your”), whose principal business address is _____.

WHEREAS, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated _____, 20____ (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

WHEREAS, you are a resident of Washington and/or the Elements Studio will be located or operated in Washington, and/or the offering or sales activity relating to the Franchise Agreement occurred in the State of Washington.

NOW THEREFORE, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. This Addendum is intended to modify the Franchise Agreement. In the event of any conflict between a provision of the Franchise Agreement and this Addendum, the provision of this Addendum shall control. All terms which are capitalized in this Addendum and not otherwise defined, will have the meanings given to them in the Franchise Agreement. Except as amended by this Addendum, the Franchise Agreement is unmodified and in full force and effect in accordance with its terms.

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

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

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

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

Miscellaneous. This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

Counterpart Execution and Delivery by Facsimile. This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be effected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

IN WITNESS THEREOF, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

FRANCHISEE:

(Name of individual or Entity)

By: _____

Printed Name: _____

Its: _____
(Title of Signor, if applicable)

Initial Here: _____

EXHIBIT B
FRANCHISE AGREEMENT

Exhibit B

FRANCHISE AGREEMENT

ELEMENTS THERAPEUTIC MASSAGE, INC.

Highlands Ranch, Colorado 80129

(877) 663-0880

www.touchoelements.com

info@touchoelements.com



elements[®]
therapeutic massage

FRANCHISEE

DATE OF AGREEMENT

ADDRESS

ELEMENTS THERAPEUTIC MASSAGE, INC.
FRANCHISE AGREEMENT

TABLE OF CONTENTS

1.	GRANT OF FRANCHISE	3
1.1.	Grant of Franchise.	3
2.	TERRITORY; LOCATION; PROTECTED AREA	3
2.1.	Territory.....	3
2.2.	Site Selection.	3
2.3.	Protected Area.	3
2.4.	Relocation of Your Studio.	3
3.	TERM; RENEWAL.....	4
3.1.	Initial Term.	4
3.2.	Renewal.	4
3.3.	Operation After Expiration of Term.	5
4.	FEES; PAYMENTS.....	5
4.1.	Initial Franchise Fees.....	5
4.2.	Royalty.....	5
4.3.	Definition of Gross Receipts.	6
4.4.	Product And Supply Orders.....	6
4.5.	Late Payments.....	6
4.6.	Default Fee.....	6
4.7.	Computer Software.....	6
4.8.	Dishonored Checks/Insufficient Funds.....	7
4.9.	Changes to Fees and Requirements.	7
4.10.	Set-Offs.....	7
4.11.	Marketing Fund Fee.....	7
4.12.	Marketing Cooperatives.....	7
4.13.	Marketing Spend Requirement.	8
5.	OUR RELATIONSHIP; OUR OBLIGATIONS TO YOU	8
5.1.	Our Relationship with You.....	8
5.2.	Initial Training.	8
5.3.	Additional Training and Conferences.....	9
5.4.	Supplies and Source of Supplies.....	9
5.5.	Studio Design.....	10
5.6.	On-going Support and Assistance.	10
5.7.	Our Reservation of Rights.	10
6.	USE OF THE MARKS	11
6.1.	Ownership; Goodwill.....	11
6.2.	Limitation on Use.	12
6.3.	Discontinuance of Use of Marks.	12
6.4.	Notification of Infringements and Claims.	12
7.	OPERATION OF YOUR FRANCHISE; YOUR OBLIGATIONS	12
7.1.	Employees, Agents and Independent Contractors.....	12
7.2.	Real Estate Broker; Lease Approval.....	13

7.3.	Opening Your Studio.....	13
7.4.	Insurance.....	14
7.5.	Operation of Your Studio.....	15
7.6.	Your Other Obligations.....	18
8.	ADVERTISING.....	20
8.1.	Limitations.....	20
8.2.	Pre-Opening Advertising.....	21
8.3.	Marketing Fund.....	21
8.4.	Marketing Cooperatives.....	23
8.5.	Marketing Spend Requirement.....	23
8.6.	Advisory Committee.....	23
8.7.	Gift Cards, Certificates and Checks.....	24
9.	INDEMNIFICATION.....	24
9.1.	Indemnification.....	24
10.	DEFAULT; TERMINATION.....	24
10.1.	Immediate Termination by Us.....	24
10.2.	Termination by Us-30 Days Notice.....	26
10.3.	Default Fee.....	26
10.4.	Your Obligations Upon Termination.....	27
10.5.	Our Options in the Event of Your Default.....	28
11.	TRANSFER.....	28
11.1.	Transfers.....	28
11.2.	Transfer to Corporate Entity Owned by You.....	30
11.3.	Death, Disability or Permanent Incapacity.....	30
11.4.	Your Agreement to Transfer Restrictions.....	30
11.5.	Assistance in Locating a Purchaser.....	31
11.6.	Our Right of First Refusal.....	31
11.7.	Transfer if Franchisee is an Entity.....	31
11.8.	Controlling Interest.....	31
11.9.	Our Transfer.....	32
12.	RESTRICTIVE COVENANTS.....	32
12.1.	Non-Competition During Term.....	32
12.2.	Post Termination Covenant Not to Compete.....	32
12.3.	Branded Business.....	33
12.4.	Permitted Interests.....	33
12.5.	Confidential Information.....	33
13.	NOTICES.....	34
14.	GOVERNING LAW; JURISDICTION AND VENUE; ARBITRATION.....	34
14.1.	Governing Law.....	34
14.2.	Jurisdiction and Venue.....	35
14.3.	Waiver of Jury Trial and Punitive Damages.....	35
14.4.	Remedies.....	35
14.5.	Arbitration.....	36
14.6.	Limitation of Claims.....	37
15.	MISCELLANEOUS PROVISIONS.....	37
15.1.	Remedies.....	37

15.2.	Modification/Exercise of Judgment.....	38
15.3.	No Waiver.....	38
15.4.	Severability/Invalidity.....	38
15.5.	Entire Agreement.....	38
15.6.	Delegation by Us.....	39
15.7.	Effective Date of Agreement.....	39
15.8.	Review of Agreement.....	39
15.9.	Costs and Attorneys Fees.....	39
15.10.	Injunctive Relief.....	39
15.11.	Survival.....	39
15.12.	Joint and Several Liability.....	39
15.13.	Counterparts; Paragraph Headings; Pronouns.....	40
16.	ACKNOWLEDGMENTS.....	40

Exhibits

1	Territory Description
2	Automatic Bank Draft Authorization
3	Statement of Ownership
4	Guaranty and Assumptions of Obligations

ELEMENTS THERAPEUTIC MASSAGE, INC.

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”) is entered into by and between **ELEMENTS THERAPEUTIC MASSAGE, INC.**, a Delaware corporation with its principal business address at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”),

and

_____ (“You,” or “your”)
(Name of Individual or Entity)

A _____
(Type of Entity and State of Organization)

Its _____
(Title of signor for Entity, if applicable)

Street Address

City, State, Zip Code

Telephone Number

and is entered into as of the date set forth below our signature on this Agreement (the “Effective Date”).

PURPOSE

A. We and our affiliates have developed methods to establish, operate and promote therapeutic massage studios (“**Elements Studios**” or “**Studios**”) offering various forms of therapeutic massage services and other services and products that may be offered in the future. These methods include the use and license of the “Elements Therapeutic Massage[®]” trademark, together with other valuable trademarks, service marks, trade names, symbols, emblems, slogans, insignias, designs and logos, existing now or which may exist in the future (together, the “**Marks**”) for use in establishing, operating and promoting Elements Studios.

B. We grant the right to others to establish and operate Studios under the Marks according to our standards, specifications, methods, techniques, and operating and other procedures (“**System Standards**”), which constitute our unique Elements franchise system (the “**Franchise System**”).

C. The distinguishing characteristics of the Franchise System include the Marks, the interior layout and design, color scheme, signage and equipment, copyrights, titles, symbols, emblems, slogans, insignia, designs, diagrams, artworks, worksheets, originals, manuals, techniques, rules, ideas, philosophies, illustrations, course materials, the confidential operations manual other manuals, technical bulletins, other written or videotaped materials and other materials and documents related to the operations of your Studio (such manuals, technical bulletins, other written or videotaped materials and other materials and documents related to the operations of your Studio are collectively referred to in this Agreement as, the “**Operations Manual**”), the System Standards, advertising and promotional materials, other audio, video and written materials, and other aspects of the Franchise System we have developed and designated for use within the Franchise System, or may acquire or develop and designate for use within the Franchise System in the future, all of which we may enhance and further develop (the “**Proprietary Assets**”). For purposes of this Agreement, the term “Proprietary Assets” includes the client lists and other client information of all Studios in the Franchise System, including your Studio.

D. You recognize and acknowledge the benefits to be derived from being identified and associated with us, and being able to utilize the Franchise System and concepts and, therefore, desire to establish a Studio at an approved location. We are willing to grant you the right to operate a Studio under the terms and subject to the conditions contained in this Agreement.

E. You have been informed and hereby acknowledge that the successful operation of a Studio will depend primarily upon your efforts, capabilities and management skills as well as your efficient operation of the Studio. We make no claims or representations whatsoever regarding potential sales, profits or earnings achievable by you or your Studio.

1. GRANT OF FRANCHISE

- 1.1. Grant of Franchise. We hereby grant to you, and you accept from us, the right to use the Marks and Proprietary Assets to establish and operate one Elements Studio at the Studio Location described in Section 2.2. You agree to use the Marks and Proprietary Assets, and conform to the System Standards, as they are periodically changed, improved and further developed by us and our affiliates, only in accordance with the terms, and subject to the conditions, of this Agreement. You do not have any right to sublicense or sub-franchise your Studio.

2. TERRITORY; LOCATION; PROTECTED AREA

- 2.1. Territory. Upon execution of this Agreement, you will identify a specific defined territory in which to locate your Studio, which will be described on Exhibit 1 of this Agreement (the “Territory”). The Territory is the area in which you will focus your efforts to find an acceptable location for your Studio. We are identifying the Territory for the sole purpose of facilitating the orderly development of the market, and not for purposes of granting you any exclusivity or protection within the Territory.
- 2.2. Site Selection. You will operate your Studio from a specific site or location within the Territory which we have approved (the “Studio Location”). You acknowledge and agree that our approval of the site for your Studio does not constitute a guarantee, recommendation, or endorsement of the Studio Location and that the success of your Studio depends upon your abilities as an independent business person. Our approval simply means that the Studio Location meets our current location criteria, which means it meets our requirements with respect to demographics, neighborhood characteristics, size, appearance, convenience, proximity to other businesses, and other characteristics we deem appropriate. During the term of this Agreement, the Studio Location shall be used exclusively to operate a Studio.

You must pay us a fee of \$4,000 for real estate brokerage services to assist you in obtaining a site for your Studio. We will provide these services or, at our option, we may designate a third party to provide these services. Upon executing this Agreement, you must begin searching for a site for your Studio, making diligent efforts to work with us (or a third party we may designate) to review site information, view locations and review letters of intent, so that you can locate a site and sign a lease in a timely manner. Although there is no deadline by which you are required to select a site, you must open your Studio within 180 days after you sign this Agreement.

- 2.3. Protected Area. During the term of this Agreement, if you are not in default under this Agreement, we and our affiliates will not establish, operate, sell to, grant a license for any other person to establish or operate another Elements Studio within a one-mile radius of your Studio Location (the “Protected Area”). This Agreement does not provide you with any options, rights of first refusal, or similar rights, to acquire additional Studios.
- 2.4. Relocation of Your Studio. You must obtain our prior written approval in order to relocate your Studio. Our approval will be based on a variety of factors including, but

not limited to, the viability of the Studio Location and the availability of alternative locations. We will provide a written response to any relocation request within 30 days of receiving your written request. We have no obligation to approve any relocation requests and can deny any such request for any reason. If approved, you must pay all costs of relocating your Studio.

3. TERM; RENEWAL

3.1. Initial Term. The initial term of this Agreement is for a period of 10 years from the Effective Date, unless sooner terminated pursuant to the terms of this Agreement.

3.2. Renewal. At the end of the initial term you may, at your option, renew this Agreement for successive additional five-year terms (each, a “Renewal Term”), provided that:

- (a) you provide us written notice of your election to renew at least 180 days (but not more than one year) prior to the end of the term of this Agreement;
- (b) at the time you provide the written notice of renewal, you are not in default or under notice of default of any provisions of this Agreement or of any other agreement between us, including any other franchise agreement, master franchise agreement and/or area director agreement, and you have been in substantial compliance with the terms and conditions of all such agreements (including this Agreement) during the term of this Agreement;
- (c) all monetary obligations you owe us (under this Agreement or any other agreements between us, including any other franchise agreement, master franchise agreement and/or area director agreement) have been satisfied and paid when due throughout the term of this Agreement;
- (d) you sign and agree to be bound by our then-current form of franchise agreement, which may contain terms and conditions materially different from those set forth in this Agreement, including terms changing the Protected Area, the Monthly Royalty (defined in Section 4.2) and other fee amounts; provided you will not be required to pay a new Initial Franchise Fee (although you will have to pay us the renewal fee set forth below);
- (e) you and your owners sign a general release in a form satisfactory to us, releasing any and all claims against us, our affiliates, and our and their respective shareholders, members, owners, principals officers, directors, employees, representatives, agents, successors and assigns, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances and claims under this Agreement and the business relationship between us;
- (f) you and any other person who has an interest in your Studio (if Franchisee is a legal entity or two or more individuals) must attend and satisfactorily complete such refresher training as we may require, at such time and place prior to expiration of the term of this Agreement as we may designate;

- (g) you pay us a renewal fee of twenty-five percent (25%) of our then-current initial franchise fee; and
- (h) if we deem it necessary, you must upgrade, remodel and refurbish, at your sole expense, the inside and outside of your Studio to conform to our then-current standards. The upgrade may include, but is not limited to, signs and equipment. All such upgrades, remodels and refurbishments must be performed in accordance with our System Standards and other standards and specifications we may designate.

3.3. Operation After Expiration of Term. This Agreement shall terminate unless you comply with all of the terms and conditions required to renew the Agreement. If you do not comply with all of the conditions contained in Section 3.2 above, then this Agreement will terminate and the provisions in Section 10 of this Agreement related to termination will apply.

4. FEES; PAYMENTS

4.1. Initial Franchise Fees. You must pay to us, in the form of a lump sum payment, by cashier's check or wire transfer, the amount of Thirty-Nine Thousand Dollars (\$39,000) as a non-refundable initial franchise fee (the "Initial Franchise Fee").

The Initial Franchise Fee must be paid at the time you sign the Franchise Agreement. The Initial Franchise Fee is fully earned by us when paid by you and is not refundable under any circumstances.

4.2. Royalty. On the fifth (5th) day of the first full calendar month after opening your Studio and on the 5th day of each month after that date during the term of this Agreement, you must pay to us a continuing monthly royalty of six percent (6%) of your gross receipts (as defined below) (the "Monthly Royalty"). You authorize us, as set forth in Exhibit 2 of this Agreement, to automatically withdraw funds from your bank account (sometimes referred to as ACH or auto-debit) to pay the Monthly Royalty based on your gross receipts from the previous month and to pay any other amounts you owe us or our affiliates (the "ACH Authorization"). The ACH Authorization shall remain in full force and effect during the term of this Agreement. You agree to ensure that funds are available in your designated account to cover our withdrawals. Some banks charge fees for ACH transactions and, to the extent your bank charges ACH fees, you agree to pay those fees. In the event any Monthly Royalty payment is not paid on a timely basis, we will also have the right to ACH from your bank account such late fees, default fees or other fees that may be assessed in connection with your non-timely payment, or such other fees or payments as we may periodically designate.

If you fail to report gross receipts, we may debit your account for an estimated Monthly Royalty equal to the greater of (a) six percent (6%) of the average of your last three prior months of reported gross receipts for your Studio, or (b) six percent (6%) of the average of the gross receipts for all Studios for the immediately prior month ("Estimated Monthly Royalty"). If the Estimated Monthly Royalty we debit from your account is less than the

amount you actually owe us (once we have determined your Studio's true and correct gross receipts), we will debit your account for the balance on the day we specify. If the Estimated Monthly Royalty we debit from your account is greater than the amount you actually owe us, we will credit the excess against the amounts we otherwise would debit from your account during the following month.

Despite any designation you make, we may apply any of your payments to any of your past due indebtedness to us.

We may require you to pay any amounts due under this Agreement or otherwise by means other than ACH (*e.g.*, by check or credit card) whenever we deem appropriate, and you agree to comply with our payment instructions. If you fail to comply with our payment instructions, we reserve the right to exclude you from participating in certain programs; provided that such failure shall also be deemed a default under this Agreement.

- 4.3. Definition of Gross Receipts. Gross receipts include all of your revenue and receipts, including those taken by cash, credit card, debit card, check, trade, barter or exchange, electronic funds transfer, or any other means of credit which are derived from the operations of your Studio, including the sales of massage and bodywork services, merchandise, products, gift certificates, or any other products or services which are sold by you, whether sold at your Studio location or from an off-site location, excluding sales, use or privilege taxes paid to the appropriate taxing authority, refunds that are made to customers, and tips received by massage therapists. In addition, should your business be interrupted for any reason and you are receiving business interruption insurance payments, the gross amount of these payments will be considered to be gross receipts and will be subject to the Monthly Royalty.
- 4.4. Product And Supply Orders. You are required to purchase certain equipment, products, materials and/or services from our Approved Suppliers (defined below), which could be us or one of our affiliates, at the prices listed in the Operations Manual, on our website, or in such other place as we may designate.
- 4.5. Late Payments. For all past due amounts you owe us and/or our affiliates, you must pay us a late fee equal to the greater of 10% of the amount due or \$150.00 for each month or portion of months that the amount is past due. This fee applies to all amounts past due including, but not limited to, Monthly Royalty, extension, transfer and renewal fees, advertising fees payable to us (if any), and amounts due for purchases from us or our affiliates.
- 4.6. Default Fee. If you are in default of the Franchise Agreement and we send you a default notice, you must pay us a fee of \$250.00.
- 4.7. Computer Software. You must use software we designate in the operation of your Studio. Prior to opening your Studio, you will be required to pay us a software set up fee of \$940.50 and, after opening your Studio, a monthly fee, which is currently \$68, in each case, payable by ACH. We may periodically change the amount of the set up fee and monthly software fee, and/or the software requirements, and we may require you to

purchase new or additional software. You may be required to execute a software license or other agreement in connection with your use of the required computer software. Other than providing the software specifications and Approved Suppliers from which you can purchase the required computer software, we are not obligated to provide you with any assistance in obtaining the required computer software or any support in connection with your use of the required software.

- 4.8. Dishonored Checks/Insufficient Funds. If you write us a check that is returned, cancelled or dishonored, or if we ACH your bank account and your account has insufficient funds or is inaccessible, you must pay us an insufficient funds fee of \$150.00.
- 4.9. Changes to Fees and Requirements. We may revise our System Standards and Operations Manual to implement new or different operating requirements and fees. You agree to comply with any new or changed requirements and fees.
- 4.10. Set-Offs. You have no right to set off any amounts you owe us against amounts we owe you, and you hereby expressly waive any such right. You agree you will not withhold payment of any fee or other amount you owe us (whether under this Agreement or any other agreements between us, including any other franchise agreement, master franchise agreement and/or area director agreement) because of alleged nonperformance of our obligations under this Agreement or otherwise. Absent a court order to the contrary, if you withhold any amounts owed to us and we pursue collection of such amounts, you must pay all of our reasonable costs, including court costs, attorneys' fees, the value of our employees' time, witness fees and travel expenses in connection with our collection efforts.
- 4.11. Marketing Fund Fee. We do not require you to participate in any marketing and advertising programs at this time, but may in the future. If a Marketing Fund is established, you will be required to make contributions to the Marketing Fund in an amount up to one percent (1%) of your gross receipts, which we will spend on advertising, marketing and promotional programs for Studios. We will have no fiduciary obligations to you in connection with our administration of the Marketing Fund. You must meet the Marketing Spend Requirement described below. The Marketing Spend Requirement may include any contributions you make to a Marketing Fund (if established) and any contributions you make to a Marketing Cooperative (see below). If established, we may vary your Marketing Fund contribution.
- 4.12. Marketing Cooperatives. We may designate a geographic area in which three or more Studios are located as an area in which to establish a marketing cooperative ("Marketing Cooperative"). The Marketing Cooperative's members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. We may collect Marketing Cooperative fees and transfer those fees to the Marketing Cooperative, or the Marketing Cooperative may collect the fees directly, as we determine.

- 4.13. Marketing Spend Requirement. During the first 90 days after you open your Studio, you must spend at least \$25,000 to advertise, market and promote your Studio. Beginning 90 days after your Studio has opened and continuing until the first year anniversary of the date you open, you must spend a minimum of \$2,000 per month on advertising, marketing and promotional programs for your Studio. Beginning in the second year after our Studio has opened and continuing through the term of this Agreement, you must spend a minimum of 5% of your gross receipts on advertising, marketing and promotional programs for your Studio (the \$25,000 first three months minimum spend, the \$2,000 per month spend and the 5% of gross receipts spend together, the “Marketing Spend Requirement”). Your Marketing Spend Requirement may in the future include any contributions you make to a Marketing Fund (if we establish a Marketing Fund) and any contributions you make to a Marketing Cooperative. If those contributions are established or exist and are subsequently adjusted, you must adjust your other advertising, marketing and promotional expenditures so that the Marketing Spend Requirement does not drop below the minimum 5% of gross receipts you are required to spend to meet your Marketing Spend Requirement. Your required Marketing Fund and Marketing Cooperative contributions could, by themselves, exceed the minimum Marketing Spend Requirement. In addition, we have the right to collect any funds constituting the minimum Marketing Spend Requirement that are not otherwise being contributed to the National Marketing Fund or Marketing Cooperatives and use those funds for local, regional or national advertising or promotional programs that reach your Studio’s local trade area.

5. OUR RELATIONSHIP; OUR OBLIGATIONS TO YOU

- 5.1. Our Relationship with You. We and you agree that each of us is an independent business person, our only relationship is by virtue of this Agreement, and no fiduciary relationship is created under this Agreement. No agency, employment or partnership is created or implied by the terms of this Agreement. In all public records, in your relationship with other persons, and in any disclosure document, prospectus or similar document, you must indicate clearly that you independently own your Studio and that the operations of your Studio are separate and distinct from the operations of our business. 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.
- 5.2. Initial Training. Before you open your Studio, we or our designee will provide initial training to you or one of your co-owners, and one of your managers and/or employees (“Initial Training”). One designated individual must complete Initial Training before your Studio opens (at least five weeks prior to opening) and the second designated individual must complete Initial Training within 180 days after your Studio opens. At least one owner must attend and successfully complete Initial Training. If you intend to have a manager perform the day to day operations of your Studio, your manager will be required to attend and successfully complete Initial Training before your Studio opens. You must ensure that one individual who has successfully completed Initial Training is on-site at your Studio at all times. You must pay for all travel, accommodations, meals and other expenses incurred by all individuals who attend Initial Training.

If you purchase additional franchise agreements, you will designate up to two individuals per franchise agreement to attend Initial Training; however, you will not be required to attend Initial Training if you have already done so.

If you want more than two individuals (per franchise agreement) to attend Initial Training (such as new or additional managers or employees), you must pay us a fee of \$2,500 per person and you must pay for all travel, accommodations, meals and other expenses incurred by these individuals. Initial Training for additional individuals will be offered during our regularly scheduled Initial Training sessions.

- 5.3. Additional Training and Conferences. We may require that you pay the \$2,500 fee described above, and you are required to pay all travel, accommodations, meals and other expenses, for each individual you may designate for any refresher training we make available to our franchisees or for any optional training programs we may conduct from time to time. You must attend any annual conferences or seminars that we may require at a location we designate. You agree to pay all costs to attend.
- 5.4. Supplies and Source of Supplies. We may designate specific products that you must purchase, and require that you purchase products and services from suppliers and vendors we approve. We will provide you with the System Standards in the Operations Manual loaned to you. We can modify, amend and change our System Standards, Operations Manual, and other standards and specifications at any time and you agree to abide by any such modified, amended or changed provisions.

We may designate specific products and services from suppliers and vendors we approve. To the extent we have approved certain manufacturers, vendors, distributors, suppliers and producers, which may be us or our affiliates (collectively, "Approved Suppliers"), you are required to purchase from the Approved Suppliers. We reserve the right to require you to participate in certain mandatory service programs. You must purchase all goods and services required for the operation of your Studio from the Approved Suppliers (which may be one supplier for any given product or service) under terms, in the manner, and from the source designated by Franchisor or any of its affiliates. If you wish to purchase any product or service from a supplier that is not an Approved Supplier, you must first submit to us a written request to do so. Our fee for evaluating the supplies or supplier you request is \$100.00 per hour, which you must pay to us when invoiced. We will typically provide a response to the written request within 30 days from our receipt of the request. We may require that samples of the product produced by the proposed alternative supplier be delivered to us for review and testing. We may withhold approval of a supplier for any reason. We will not approve a new supplier or continue to approve any supplier unless the supplier has agreed that we have a right to inspect the supplier's premises and products. If any inspection discloses a supplier's failure to maintain our specified criteria for products or services, we may revoke our approval in writing. We do not make available to our franchisees our criteria for approving suppliers. If an exclusive supplier already has been designated for the equipment, products, services, supplies, or materials proposed to be offered by a new vendor, your request for a new vendor likely will be rejected without further review or investigation. **ALTHOUGH SUPPLIES OR SUPPLIERS MAY BE APPROVED BY US, WE AND OUR**

AFFILIATES MAKE NO WARRANTY AND EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO INVENTORY, PRODUCTS, FIXTURES, FURNITURE, EQUIPMENT (INCLUDING WITHOUT LIMITATION ANY REQUIRED COMPUTER SYSTEMS), SIGNS, STATIONERY, SUPPLIES OR OTHER APPROVED ITEMS.

- 5.5. Studio Design. We will provide you with a list of recommended and required specifications and guidelines for the design and layout of a typical Studio. You must comply with all such specifications and guidelines unless we approve otherwise in writing.
- 5.6. On-going Support and Assistance. We or our designee will provide the following operational support to you as we deem appropriate:
- (a) opening support and ongoing operational support of your Studio by telephone, in person, or otherwise;
 - (b) recommendations for advertising and promotional materials;
 - (c) merchandising, marketing and other data and advice as may periodically be developed by us;
 - (d) advice, consultation and assistance regarding the operations of your Studio based primarily on our inspections of your Studio and reports you are required to provide to us. This assistance may be provided by telephone or in person or by newsletters, bulletins, or otherwise as we deem necessary or appropriate from time to time; and
 - (e) such other resources and assistance as we may develop and provide in the future.
- 5.7. Our Reservation of Rights.
- (a) Right to Modify the Franchise System. Whenever this Agreement provides that we have a certain right, that right is absolute and the parties intend that our exercise of that right will not be subject to any limitation or review. We have the right to operate, administer, develop, and change the Franchise System in any manner that is not specifically precluded by the provisions of this Agreement.
 - (b) Adaptations and Variances. Because uniformity under varying conditions may not be possible or practical, we specifically reserve the right to vary standards for any Studio. If we vary standards for any Studio, we have no obligation to vary standards for your Studio.
 - (c) Right to License to Others. We may use and license others to use the Marks, Proprietary Assets and the Franchise System for the operation of Studios anywhere outside of your Protected Area. Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall restrict our rights, or

grant any rights to you, with respect to the pursuit of any business concept other than the Franchise System concept.

- (d) Right to Develop and Franchise Other Systems. Unless specifically stated in this Agreement, we retain the right to develop, use and franchise the rights to any systems, businesses, trade names, trademarks, service marks, trade symbols, emblems, signs, slogans, insignia, or copyrights not designated by us as part of the Franchise System, the Proprietary Assets, or Marks, at any location, including within the Protected Area, on such terms and conditions as we may deem advisable, and without granting you any rights therein.
- (e) Right to Sell Products and Services. We may sell any products or services, including those similar to the products and services offered by Studios, anywhere, using the Marks or not, through various channels of distribution (including internet, wholesale, mail order and retail). Franchisees may use various channels of distribution, such as direct mail, email and internet (but only through Studio websites maintained through us) to market their Studios, provided that we have approved any marketing materials. Franchisees must not market their Studios or the services provided by the Studios by sending or transmitting unsolicited advertising or marketing faxes.
- (f) Right To Transfer, Assign, Purchase or Be Purchased. You acknowledge and agree that we have the right to transfer or assign all or any part of our right and interest in and to, and our obligations under, this Agreement to any person or legal entity without your approval. We also have the right to purchase or be purchased by, or merge or combine with, any Competitive Business (as defined in Section 12.1) or any other competing or other business, even if such business has locations within the Protected Area.
- (g) Right to Delegate Obligations. You acknowledge and agree that we have the right to delegate to third party designees the performance of all or any portion of our obligations under this Agreement.
- (h) Notice of Potential Profit. We or our affiliates may derive revenues or profits, or obtain other consideration, from your dealings with our Approved Suppliers or other suppliers. You acknowledge and agree that we have the right to receive payments, discounts, promotional allowances, and other payments from any supplier based on your purchases and the purchases of our other franchisees. Additionally, we have the right, and you acknowledge and agree that we are entitled, to derive revenues, profits and other consideration from your purchases from us or our affiliates.

6. USE OF THE MARKS

- 6.1. Ownership; Goodwill. You acknowledge that we and our affiliates have the sole right to license and control your use of the Marks and that the Marks shall remain under our and our affiliates' sole and exclusive ownership and control. You acknowledge that you do

not acquire any right, title, or interest in the Marks except for the right to use the Marks in the operation of your Studio under this Agreement. You will display the Marks prominently at your Studio and on forms, advertising, marketing and other materials in the manner we prescribe. Any unauthorized use of the Marks by you shall constitute a breach of this Agreement and an infringement of our rights in and to the Marks. You acknowledge and agree that your use of the Marks and any resulting goodwill is for our exclusive benefit.

- 6.2. Limitation on Use. You shall 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 other than as approved in writing by us, nor may you use any Mark in connection with unauthorized services or products or in any other manner not expressly authorized by us in writing. You agree that no service or trade mark other than the Marks shall be used in the marketing, promotion, or operation of your Studio.
- 6.3. Discontinuance of Use of Marks. If it becomes advisable at any time for us or you to modify or discontinue the use of any Mark, or to use an additional Mark, you must comply with our directions to do so within a reasonable time after we provide notice to you. We need not reimburse you for any lost revenue or the costs you incur to comply with such direction, including the costs to change your Studio's signs, replace proprietary supplies or promote the modified or newly required Marks.
- 6.4. Notification of Infringements and Claims. You must notify us immediately of any possible infringement of any Mark or use of a trademark confusingly similar to the Marks that comes to your attention. You must also notify us of any challenge to your use of the Marks. You may not communicate information about an infringement or challenge with any person other than us, our affiliates or our counsel. You may not settle any claim without our written consent. We may take any action we deem appropriate (including no action) and exclusively control any litigation or United States Patent and Trademark Office or other administrative proceeding arising out of any infringement, challenge or claim related to the Marks. We are not obligated to protect you against infringement or unfair competition claims arising out of your use of the Marks, nor are we required to participate in your defense or indemnify you. However, we may choose to do so. You must execute any and all instruments and documents, render such assistance, and perform such acts as may be necessary or advisable to protect and maintain our interests in the Marks.

7. OPERATION OF YOUR FRANCHISE; YOUR OBLIGATIONS

- 7.1. Employees, Agents and Independent Contractors. We acknowledge that you may hire employees, agents or independent contractors to assist in the operation of your Studio. You agree that any such employee, agent or independent contractor shall be required to execute the Non-Compete and Confidentiality Agreement located in the Operations Manual or otherwise provided to you.

- 7.2. Real Estate Broker; Lease Approval. You must pay us pay us a \$4,000 fee for assistance in obtaining a suitable site for your Studio. We will provide these services or, at our option, we may designate a third party to provide these services.

We must approve any lease for your Studio premises. You acknowledge and agree that any review and approval of any Studio premises or lease is for our sole benefit and the benefit of the Franchise System, and are not intended to imply or guarantee the success or profitability of any Studio Location. You acknowledge that you have been advised to obtain the advice of your own professional advisors before signing a lease. Your lease must contain the following terms and provisions:

- (a) the initial term of the lease must be at least five years and there must be at least one five-year renewal term;
- (b) the landlord must consent to your use of the Marks and any other proprietary marks and signage we designate for use in your Studio;
- (c) any right you have to sublease or assign all or any part of the lease or your right to occupy the premises must require our prior written consent;
- (d) the landlord must agree to provide to us copies of any and all notices of default by you under the lease;
- (e) we (or our designee) must have the right, but not the obligation, to enter the leased premises to make modifications necessary to protect the Marks, or to cure any default under the Franchise Agreement or the lease for a period of up to 30 days from the date any notice of default is sent to you; and
- (f) we (or our designee) must have the option, upon default, expiration or termination of the Franchise Agreement, and upon notice to the landlord, to (i) assume all of your rights under the lease including, but not limited to, the right to pay rent and the right to assign or sublease the leased premises, and (ii) remove equipment, furniture and signs.

- 7.3. Opening Your Studio.

- (a) Build-Out. After obtaining possession of the Studio Location, you must promptly complete the following:
 - 1. prepare (or cause to be prepared) and submit to us for our approval, a site survey and any proposed modifications to our conceptual designs and specifications (not including construction) including, but not limited to, modifications to our required dimensions, exterior and interior design, materials, layout, equipment, fixtures, furniture, and signs and décor; provided, however, that modifications are permitted only if required to comply with applicable ordinances, building codes and permit requirements and are subject to our prior written approval;

2. obtain all permits and licenses for the lawful construction and operation of the Studio, together with all certifications from government authorities having jurisdiction over the Studio Location that all requirements for construction and operations have been met, including, but not limited to, zoning, access, sign, health, fire, and safety requirements, building and other required construction permits, licenses to do business, fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire clearances;
 3. obtain all customary contractors' sworn statements and partial and final lien waivers for construction, remodeling, decorating and installation services;
 4. purchase or lease equipment, furniture, fixtures and signs as provided under this Agreement or in the Operations Manual;
 5. complete the construction and build out of the Studio premises, including installing equipment, fixtures, furniture and signs, and decorating your Studio, in full and strict compliance with the plans and specifications we have approved, and in accordance with all applicable ordinances, building codes and permit requirements; and
 6. otherwise complete all other aspects of developing your Studio as we may reasonably require in order to be able to commence operation of your Studio on or before the Projected Opening Date (defined below).
- (b) Commencement of Operations. You must have your Studio open and operating within 180 days from the Effective Date (the "Projected Opening Date"), unless otherwise specifically approved by us in writing. If you purchase multiple franchise agreements from us, additional Studios must open every 12 months thereafter.

- 7.4. Insurance. Before your Studio opens, you must purchase insurance coverage from a responsible carrier with a performance rating of A+ or higher as rated in the most recent edition of Best Insurance Reports (or comparable criteria as we may specify). You must maintain the insurance throughout the duration of the term of this Agreement. Each insurance policy for your Studio must designate as additional insured parties us, our senior secured lender, and, if requested by us, any of our affiliates or area directors or other parties we may designate from time to time. In addition, each insurance policy must provide that all additional insured parties will receive at least 30 days' prior written notice of termination, material amendment or cancellation.

Prior to opening your Studio, and then annually, you must provide to us a certificate of insurance (including those of each of your employees if required) reflecting the following minimum coverage limits: (a) \$1,000,000 per occurrence comprehensive general liability; (b) \$60,000.00 business interruption; (c) worker's compensation; (d) property insurance in amounts that protect your Studio's personal property, fixtures, and

improvements; and (e) if required by us, professional liability coverage due to errors or omissions in the performance of services at your Studio, subject to the limits we may determine from time to time.

We reserve the right to change or modify (including increasing) the required minimum coverage limits. You acknowledge and agree that the minimum coverage limits we specify are for our benefit and are not intended to be relied upon by you as a recommendation as to the types of coverage or coverage limits that are or might be appropriate for your Studio. Additional insurance coverage or increased coverage limits might be appropriate based upon, for example, the location of your Studio. You agree to seek the advice of your insurance advisor regarding the appropriate types of coverage and coverage limits you may need to sufficiently protect your Studio.

If you fail to obtain or maintain the required insurance, or if you fail to provide us with proof of insurance coverage, we may, but are not obligated to, obtain the insurance for you and maintain it in full force and effect. You acknowledge and agree that, in the event we obtain or maintain insurance on your behalf, you will pay the applicable premiums, or reimburse us for the applicable premiums, by authorizing us to ACH your bank account for such amounts. You must also pay, or reimburse us for, our reasonable costs to obtain insurance on your behalf. If you do not comply with these insurance provisions, you will be in material breach of this Agreement. In addition to all other available remedies, we may demand that you cease operating the Studio for any period during which you do not have insurance coverage.

7.5. Operation of Your Studio.

Your Responsibilities. You are solely responsible for the successful operation of your Studio and for the performance of all of your obligations arising from the operation of your Studio, including, without limitation, the payment (when due) of all applicable taxes and the procurement and maintenance of all required or applicable business licenses and permits, including any changes to such licenses and permits. You shall at all times during the term of this Agreement own and control the Studio. Upon our request, you will promptly provide satisfactory proof of such ownership to us. You represent that the Statement of Ownership set forth as Exhibit 3 to this Agreement is true, complete, accurate, and not misleading.

- (a) System Standards. You must operate your Studio in accordance with our System Standards, as described in the Operations Manual. You acknowledge receipt of a copy of the Operations Manual, which we are loaning to you. We have the right to revise the System Standards and the contents of the Operations Manual to meet changing conditions. The System Standards exist to protect our interests in the Franchise System and the Marks, and not for the purpose of establishing any control or duty to take control over those matters that are reserved to you. You acknowledge and agree that you will comply with the System Standards as they may be periodically changed or modified.

- (b) Operations Manual Requirements. You must at all times keep your copy of the Operations Manual current and up-to-date. In the event of any dispute as to the contents of the Operations Manual, the master copies maintained by us at our principal place of business shall be controlling.

You must treat the Operations Manual and the information it contains as confidential, and must use all reasonable efforts to maintain the information as secret and confidential. You must not copy, duplicate, record or otherwise reproduce the Operations Manual, in whole or in part, or otherwise make it or any part of it available to any unauthorized person. The Operations Manual will remain our sole property and must be kept in a secure place on the Studio premises.

You agree that the provisions of the Operations Manual, including the System Standards applicable to the Franchise System, and any changes and modifications to the Operations Manual, System Standards and Franchise System as we may make from time to time, are incorporated into this Agreement and are an essential part of your obligations under this Agreement.

At our option, we may post all or portions of the Operations Manual on a restricted website, intranet or extranet to which our franchisees will have access. If we do so, you agree to monitor and access the website, intranet or extranet for any updates to the Operations Manual. Any password or other digital identification necessary to access the Operations Manual will be deemed to be our proprietary information, subject to the confidentiality provisions of this Agreement.

- (c) Products and Services. You acknowledge and agree that you are authorized to offer only those services and products we designate from time to time in the Operations Manual or otherwise. There are no limitations on our right to designate additional authorized services and products that you must offer. You cannot offer any other types of services or products, or operate or engage in any other type of business or profession, from or through the Studio, unless you first receive our written consent. You must participate in customer membership programs as we require. We may, subject to applicable law, prescribe the maximum and/or minimum prices that you may charge clients for services and products and you agree to comply with these maximum and minimum prices.
- (d) Studio Management. You acknowledge and agree that you are solely responsible for all decisions relating to your employees including, without limitation, hiring and terminating your employees. During the term of this Agreement, except as we otherwise approve in writing, you (or if you are a legal entity, one of your owners, members, shareholders, directors or officers) or your manager, must devote full time and best efforts to the management and operation of your Studio. Your Studio must at all times be under the direct on-site supervision of an individual who has satisfactorily completed Initial Training. If you are an individual, we strongly recommend that you be the full time, on-site supervisor of

your Studio's operations. We impose no limitations on, or requirements with respect to, who you may hire, except that you must comply with all applicable laws, and must not harm the goodwill associated with the Marks, the Proprietary Assets and the Franchise System. Your manager and other employees may be required to attend and complete Initial Training and will be required to enter into a non-compete and confidentiality agreement. These requirements may affect who you may hire.

- (e) Computer Hardware and Software. The minimum computer hardware requirements are specified in the Operations Manual. You may use any brand of computer hardware meeting our specifications and may acquire your computer hardware from any source. You must keep your computer in good working order and obtain and install the upgrades necessary to efficiently operate your Studio. You are responsible for consequences arising from improper use and/or poor upkeep and maintenance of your computer.

You must use the software program designated and described in the Operations Manual or otherwise designated by us. Currently, you must pay us a set up fee and a monthly fee for the required software program, which we ACH from your bank account on the first day of each month beginning with the first full month following the date on which you complete software training.

- (f) Computer Hardware and Software Updates. You must upgrade any hardware component or software program at any time to be compatible with the software package we require.
- (g) Accounting Software; Financial Reports. You must use the accounting software described in the Operations Manual or otherwise designated by us and maintain full, complete, and accurate books, records, and accounts. At the end of each calendar quarter you must provide to us, in the form we prescribe, a profit and loss statement and a balance sheet for the three-month period just ended. Within 90 days of the end of your fiscal year, you must submit to us a profit and loss statement for that fiscal year and a balance sheet as of the last day of the fiscal year prepared on an accrual basis, including all adjustments necessary for a fair presentation of your financial results. You must also maintain a report of all promotional expenditures relating to the Marketing Spend Requirement, which we may review at our request. All such financial statements and report shall be prepared in accordance with generally accepted accounting principles, consistently applied, and shall be accurate and complete in all material respects.
- (h) Additional Financial Information; Our Right to Audit. In addition to the financial statements and reports described above, we shall have the right to periodically request additional financial information about your Studio and to inspect and audit your books and records. You must permit us or our representatives or designees to enter your Studio during normal business hours to inspect and examine your operations, facilities, books and records, and you must cooperate with such inspections by rendering assistance as we or they may reasonably

request. We and our affiliates may collect the Studio's books, records and other financial information for review in any form or manner we reasonably determine including, without limitation, requiring you to send documents to our offices. If an inspection or audit of your books and records reveals a deficiency in amounts owed to us, then those amounts shall become immediately due and payable to us, with interest at the rate of 12%, calculated on a per annum basis, from the date the amount was due until paid. If an inspection or audit discloses an understatement of two percent (2%) or more, then you will also reimburse us for any costs and expenses, including accountants' and attorneys' fees, in connection with the inspection or audit. You must retain your books and records for three years following the fiscal year to which they relate.

- (i) Security Interest. As security for the performance of your obligations under this Agreement, including payments owed to us or our affiliates, you shall grant us a security interest in all of the furniture, fixtures, equipment, signage, and realty (including your interests under all real property and personal property leases) of the Studio, together with all similar property now owned or hereafter acquired, additions, substitutions, replacements, proceeds, and products thereof, wherever located, used in connection with the Studio. You agree to execute such other documents as we may reasonably request in order to further document, perfect and record our security interest. If you default in any of your obligations under this Agreement, we may exercise all rights of a secured creditor granted to us by law, in addition to our other rights under this Agreement and at law. This Agreement shall be deemed to be a Security Agreement and Financing Statement and may be filed for record as such in the records of any county and/or state that we deem appropriate to protect our interests.
- (j) Other Products and Services. You may not install or maintain on your Studio premises any newspaper racks, video games, juke boxes, gaming machines, gum machines, games, rides, vending machines or other similar items without our prior written approval.

7.6. Your Other Obligations. To further protect the Marks, the Proprietary Assets and the Franchise System, and their associated goodwill, you must:

- (a) attend and satisfactorily complete Initial Training and make certain that any other employee or individual having day to day supervisory responsibility for Studio operations attends and satisfactorily completes the Initial Training;
- (b) train your employees and other individuals working in your Studio so that they meet the qualifications established by us from time to time;
- (c) ensure that all of your massage therapists have adequate insurance, including professional liability insurance or the equivalent;
- (d) feature and use the Marks and Proprietary Assets solely in the manner prescribed by us;

- (e) observe such reasonable requirements with respect to the Marks, fictitious name registrations, and copyright notices as we may direct from time to time;
- (f) not offer, sell or promote, in connection with the Marks or any same or similar mark, any type of massage or bodywork services or other services or products other than those authorized by us under this Agreement;
- (g) sell or offer for sale at the Studio only services and products that we require or recommend and meet our current System Standards established in our Operations Manual;
- (h) use advertising, promotional and other materials displaying only the Marks and other names, marks, insignia and symbols we recommend or require for the Franchise System;
- (i) equip and stock your Studio with the equipment, furniture and fixtures, inventory, products and supplies required and approved by us so that at all times your Studio can operate at maximum capacity;
- (j) comply with all laws, ordinances and regulations applicable to the operation of your Studio and the offering of massage and bodywork services;
- (k) provide all authorized massage services only at your Studio Location;
- (l) notify us in writing within five calendar days of the commencement of any action, lawsuit, complaint or proceeding, or of the issuance of any writ, injunction, award or decree of any court, agency, governmental agency, or instrumentality that may adversely affect your financial condition or your ability to meet your obligations under this Agreement or operate your Studio and, upon request, furnish us with copies of all documents related to any such action, award or decree;
- (m) pay on a timely basis all fees and costs incurred in the operation of your Studio, whether owing to us or to third parties to avoid irreparable harm to our reputation and credit and the reputation and credit of the Franchise System and other Studios;
- (n) submit to us on a monthly basis, at the time we specify and on a form approved by us, a signed statement of the Studio's gross receipts for the previous month to be used by us to ACH from your bank account the Monthly Royalty;
- (o) submit to us, at the time we specify and on a form approved by us, such other reports we may prescribe from time to time in the Operations Manual or otherwise;
- (p) take all reasonable steps necessary to protect us, the Franchise System, the Marks and the Proprietary Assets against any misappropriation and/or similar actions taken by any third party that may damage us, the Marks, the Proprietary Assets or

the Franchise System, and immediately notify us of such misappropriation or similar action;

- (q) devote such time to the operation of your Studio as is necessary to effectively and efficiently operate the Studio;
- (r) comply with all requirements in this Agreement and in the Operations Manual, as the same may be modified from time to time;
- (s) accept the transfer of any client or member of another Studio who desires to obtain massage services from you; provided however, that (i) the franchisee of such other Studio has remitted to you any prepaid amounts paid by the client or member to the other franchisee for unused services, or (ii) arrangements have been made to assist you with accepting the client or member transfer (whether such assistance is offered by Franchisor or otherwise);
- (t) at no time solicit any employee of another Studio to become associated with your Studio as an employee, independent contractor, co-owner or otherwise;
- (u) at all times use the Studio Location solely to operate your Studio on the days and during the hours as we periodically specify, and refrain from using or permitting the use of the Studio Location for any other purpose or activity;
- (v) maintain and improve the condition and appearance of your Studio consistent with our System Standards and other Franchise System requirements as may be necessary to effectively operate your Studio;
- (w) without our prior written approval, make any material alterations to the Studio Location or make material replacements of, or alterations to, the Studio's equipment, fixtures or signs;
- (x) record all sales and related activities on a computer that is fully compatible with any program or system we require and ensure that we or our designee have full and direct access to all of your Studio's data and related information, whether in person, by telephone modem, or otherwise; and
- (y) display at all times our standard quality control and franchise opportunity signs in a highly visible area of your Studio.

8. ADVERTISING

8.1. **Limitations.** You agree to actively promote your Studio, to abide by all of our marketing and advertising requirements and to comply with the following provisions:

- (a) You may advertise your Studio and solicit clients from any area, even if the clients live or work in a territory or protected area other than the Protected Area, so long as you provide services only at the Studio location we have approved. You are not required to compensate any individual or entity in connection with

this advertising and solicitation. We and our other franchisees reserve the same right to solicit, accept and provide massage services to clients who live or work within the Protected Area, without compensating you.

- (b) All advertising and promotional materials, signs, and other items we designate for use in your Studio must bear the Marks in the form, color, location and manner we specify, and you must obtain all such materials from Approved Suppliers. Your advertising and promotional materials (including for your website) must meet our standards and specifications as described in the Operations Manual or as otherwise communicated to you by us. You may prepare and use your own advertising and promotional materials only with our prior written approval. Prior to using advertising and promotional materials you prepare (including signs, containers, boxes, specialty and novelty items, equipment and apparel), you must submit to us a copy of the materials, along with a description of how you intend to use the materials (including in newspapers, on television, radio or the internet, in a direct mail campaign, or in any other media sources). We have the right to approve, disapprove, or place conditions upon the advertising and promotional materials, such as limiting or modifying text, artwork or the manner in which you intend to disseminate the materials. We will approve or disapprove your advertising and promotional materials in writing within 30 days after we receive your request for approval. If we do not respond within such 30 day period, the advertising material will be deemed disapproved.
- (c) You must pay us or a party we designate a fee to establish and maintain a website for your Studio (the "Studio Website"). If you own more than one Studio, you can use one website for all of your Studios. You must use our Approved Suppliers to set-up, design and host your website. We retain the right to require you to cease maintaining the Studio Website and participate, at your cost, in a website that we, at our option, maintain for all Studios in the future.

8.2. Pre-Opening Advertising. We will provide you with recommendations and guidelines for advertising and promoting your Studio prior to opening. You are required to purchase a stationery start-up kit and we recommend that you also purchase a press kit and other advertising and promotional materials. If you choose to create your own pre-opening advertising and promotional materials, you must obtain our written approval of the materials before using them. You are required to spend at least \$3,000 to \$6,000 on your pre-opening activities.

8.3. Marketing Fund.

- (a) We do not currently, but may at a later time, establish and administer a Marketing Fund. If a Marketing Fund is established, you will be required to make contributions to the Marketing Fund as required under Section 4.11. We would have the right to collect for deposit into the Marketing Fund any advertising, marketing, or similar allowances paid to us by suppliers to the Franchise System who instruct us to use the allowances for advertising or marketing purposes. We may incorporate the Marketing Fund or operate it through a separate entity as we

deem appropriate. We will have no fiduciary obligations to you in connection with our administration of the Marketing Fund. We will not use any of the funds contributed to the Marketing Fund principally to solicit new franchise sales. If we or our affiliates own any Studios, those Studios will make contributions to the Marketing Fund on the same basis as you and our other franchisees.

- (b) We will designate all programs to be financed by the Marketing Fund and will have sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. The Marketing Fund may pay for (i) preparing and producing video, audio, and written materials and electronic media, (ii) administering regional and multi-regional marketing and advertising programs, including purchasing space in print publications, direct mail, radio and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance, (iii) supporting public relations, market research, and other advertising, promotion, and marketing activities, and (iv) develop and maintain website(s) for the Franchise System. The Marketing Fund will advertise in printed materials or on radio or television for local, regional or national circulation. We and/or our regional or national advertising agency will produce all advertising and marketing. We will determine the use of the funds contributed to the Marketing Fund, including allocating a portion of any Marketing Fund contributions to any regional advertising programs we may establish in the future. We will not be required to spend any particular amount on marketing, advertising or promotion in the area in which your Studio will be located. In addition, we will not be required to ensure that Marketing Fund expenditures for or affecting any geographic area be proportionate or equivalent to Marketing Fund contributions by Studios operating in that area, or that any Studio benefits from the development or placement of advertising and marketing materials directly or in proportion to its Marketing Fund contributions. We may use collection agents and institute legal proceedings to collect Marketing Fund contributions at the Marketing Fund's expense. We also may forgive, waive, settle, and compromise all claims by or against the Marketing Fund. Except as set forth in the Franchise Agreement, we assume no other direct or indirect liability or obligation to you for collecting amounts due, or maintaining, directing, or administering the Marketing Fund.

- (c) We will account for the Marketing Fund separately from our other funds and will not use the marketing Fund for any of our general operating expenses, except to compensate us for the reasonable salaries, administrative costs, travel expenses and overhead we incur in administering the Marketing Fund and its programs, including conducting market research, preparing advertising, promotion, and marketing materials, and collecting and accounting for Marketing Fund contributions. The Marketing Fund will not be our asset and we will not owe you fiduciary obligations because of our maintaining, directing or administering the Marketing Fund or for any other reason. The Marketing Fund may spend in any fiscal year more or less than the total Marketing Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest

any surplus for future use. We will use interest earned on Marketing Fund contributions to pay costs before spending the Marketing Fund's other assets.

- (d) If a Marketing Fund is established, we will prepare annual unaudited financial statements that will be available to you upon written request 120 days after the end of the Marketing Fund's fiscal year. We are not required to audit the Marketing Fund but may do so at our discretion.

8.4. Marketing Cooperatives. We may designate a geographic area in which three or more Studios are located as an area in which to establish a Marketing Cooperative. The Marketing Cooperative's members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. We will determine how any Marketing Cooperative is organized and governed, but the Marketing Cooperative's members are responsible for its administration and determination of contribution levels. All Marketing Cooperatives will be governed by written documentation generated and designated by us. Such documentation is available for Marketing Cooperative member review. All material decisions of the Marketing Cooperative, including contribution levels, will require the affirmative vote of 51% of all Studios operating within the Marketing Cooperative's area (including those that we and our affiliates operate, if any), with each Studio receiving one vote. We may form, modify, change, dissolve, or merge Marketing Cooperatives. Funds contributed to a Marketing Cooperative will not be utilized to solicit new franchise sales.

8.5. Marketing Spend Requirement.

- (a) You must spend the minimum Marketing Spend Requirement described in Section 4.13 of this Agreement. The Marketing Spend Requirement shall initially consist of the amounts you spend to advertise, market and promote your Studio.
- (b) No later than 90 days prior to the date on which you open your Studio, you must submit to us for approval an advertising and marketing plan describing your pre-opening advertising plan and your plan for the first three months after your Studio opens. Subsequent to such period, and during the term of this Agreement, you must prepare and execute an advertising and marketing plan that you must provide to us upon our request. You must also provide to us upon request information about the results achieved from implementing your advertising and marketing plan and meeting your Marketing Spend Requirement.

8.6. Advisory Committee. We have established and receive input and feedback regarding advertising and marketing from the Leadership Council Subcommittee on Growth Initiatives (the "Advisory Committee"), which is comprised of franchisees and area director representatives. The Leadership Council consists of four franchisees and four area directors, each of whom represents the region in which his or her Studio or area director territory is located, who are elected by the franchisees and area directors in their respective regions. Each member of the Leadership Council provides us with feedback and input on operational, marketing and other matters related to the Franchise System.

Each franchisee and area director is entitled to one vote for each Studio and territory owned. Elected members of the Leadership Council serve a two-year term. The Advisory Committee consists of a chairperson, who is a member of the Leadership Council, and franchisees and/or area directors who agree to serve on the Advisory Committee at the request of the chairperson. The Advisory Committee serves in an advisory capacity only and does not have operational or decision-making power. We may alter the function and/or composition of the Leadership Council and Advisory Committee at any time, and may otherwise form, change or dissolve the Leadership Council or the Advisory Committee.

- 8.7. Gift Cards, Certificates and Checks. You are required to purchase gift cards from our Approved Supplier and may use and honor gift cards only in the manner we designate and require. You may be required to purchase gift certificates and checks from a supplier we designate and to use and honor gift certificates and check as we may designate or require.

9. INDEMNIFICATION

- 9.1. Indemnification. You agree to indemnify, defend and hold harmless us and our affiliates, and our and their respective shareholders, members, managers, owners, principals, directors, officers, employees, agents, representatives, successors and assigns (the “Indemnified Parties”) from and against, and agree to reimburse them for, all claims, obligations and damages described in this Section 9.1, any and all of your third party payment or other obligations, and any and all claims and liabilities directly or indirectly arising out of the operation of your Studio or the use of the Marks and Proprietary Assets in any manner, including, without limitation, those alleged to be or found to have been caused by the Indemnified Party’s negligence or willful misconduct, unless (and then only to the extent that) the claims and liabilities are determined to be caused solely by the Indemnified Party’s gross negligence or willful misconduct in a final, un-appealable ruling issued by a court or arbitrator with competent jurisdiction. For purposes of this indemnification, claims means and includes all obligations, actual and consequential damages, and costs reasonably incurred in the defense of any claims against the Indemnified Parties 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. Each Indemnified Party shall have the right to defend any such claim against it at your expense and agree to settlements or take any other remedial, corrective, or other actions. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

10. DEFAULT; TERMINATION

- 10.1. Immediate Termination by Us. We have the right, at our option, to terminate this Agreement and all rights granted to you, without affording you any opportunity to cure any default (subject to any state laws to the contrary, in which case state law will prevail), effective upon delivery to you of a termination notice, upon the occurrence of any of the following events:

- (a) If you or any person under your control intentionally or negligently discloses to any unauthorized person, or copies or reproduces, the contents or any part of the Operations Manual or any other Proprietary Assets, trade secrets or confidential information of ours or our affiliates;
- (b) If you commit fraud in connection with the purchase or operation of the Studio or otherwise engage in conduct that, in our sole judgment, impairs or may impair the goodwill associated with the Marks or otherwise subjects the Marks or the Franchise System to ridicule, scandal, reproach, scorn or indignity;
- (c) If you cease to operate your Studio or you otherwise abandon your Studio for a period of two consecutive days, or you indicate an intent to permanently discontinue operation of the Studio, unless and only to the extent full operation of your Studio is suspended or terminated due to fire, flood, earthquake, or other similar causes beyond your control and not related to the availability of funds to you;
- (d) if you, or any person controlling, controlled by or under common control with you (“your affiliates”), becomes insolvent or are adjudicated bankrupt; or if you or any of your affiliates file or has filed against you or any of your affiliates, a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States; or if a permanent or temporary receiver is appointed for you or any of your affiliates; or if you or any of your affiliates requests the appointment of a receiver or makes a general assignment for the benefit of creditors;
- (e) if a final judgment against you or any of your affiliates in the amount of five thousand dollars (\$5,000) or more remains unsatisfied of record for 30 days or longer; or if the bank accounts, property or receivables of you or any of your affiliates are attached and such attachment is not dismissed within 30 days; or if execution is levied against your or any of your affiliates’ business or property; or if suit is instituted to foreclose any lien or mortgage against your Studio, the premises thereof or equipment thereon, and not dismissed within 30 days;
- (f) if you or any of your Bound Parties (as defined in Section 12.1) is convicted of, or pleads no contest or guilty to, a felony, a crime involving moral turpitude, or any crime or offense that, in our sole judgment, is reasonably likely to harm or unfavorably affect the Marks, the Proprietary Assets or the Franchise System or their associated goodwill and reputation;
- (g) if you or any other legal entity in which you or one of your owners with at least a 25% ownership interest in you, is an owner) fails to pay any amounts due us or our affiliates within 10 days after delivery of notice that such fees or amounts are overdue;

- (h) if you intentionally under report your Studio's gross receipts by any amount or negligently under report your Studio's gross receipts by 5% or more during any reporting period;
- (i) if you or any of your owners is discovered to be cheating at Initial Training or fails to complete Initial Training to our satisfaction, or if you fail to open your Studio by the Projected Opening Date;
- (j) if you or any of your affiliates misuse the Marks or Proprietary Assets, fail to follow our directions and guidelines concerning use of the Marks or Proprietary Assets, or use any marks in connection with your Studio not authorized by us and fail to correct the misuse or failure within 10 days after delivery of notice from us;
- (k) if you receive three notices of default from us within a 12-month period, regardless of whether you cured the defaults;
- (l) if you sell, transfer or otherwise assign this Agreement, the Studio, or any interest in this Agreement or the Studio, or sell, transfer or otherwise assign a substantial portion of the Studio, in each case, without complying with the provisions of this Agreement applicable to transfers;
- (m) if you lose the right to occupy the Studio premises;
- (n) if we or any of our affiliates issues a notice of termination with respect to any other franchise agreement, master franchise agreement or area director agreement between us and any of our affiliates and you (or other legal entity in which you, or one of your owners with at least a 25% ownership interest in you, is an owner) governing the operation of another Studio, or master franchise or area director business;
- (o) if you commit a default under any loan from, or lease with, us, our affiliates or a third party and fail to cure the default within the time specified by us or by any third party;
- (p) if you create or allow to exist any condition in or at the Studio, or on or about the Studio premises, that we reasonably believe presents health or safety concerns for the Studio's customers or employees.

10.2. Termination by Us-30 Days Notice. If you breach any other provision of this Agreement, we will have the right to terminate this Agreement 30 days after we deliver to you prior written notice of any such breach (subject to any state laws to the contrary, in which case state law will prevail), including, without limitation, if you fail to comply with the provisions of the Operations Manual and fail to cure the default during the 30 day period. In that event, this Agreement will terminate without further notice to you, effective upon expiration of the 30 day period.

10.3. Default Fee. In addition to our other rights and remedies, we have the right to charge you a \$250 default fee per breach by you of any term or condition of this Agreement

including, without limitation, failure to pay (or to have adequate amounts available for ACH from your bank account) amounts owed to us or our affiliates or failure to timely provide required reports. We may change or eliminate this fee.

10.4. Your Obligations Upon Termination. Upon the expiration or termination of this Agreement for any reason, you must:

- (a) pay all Monthly Royalties and other amounts then owed to us or our affiliates pursuant to this Agreement or any other agreement between us, including any other franchise agreement, or any master franchise agreement or area director agreement, or otherwise;
- (b) cease identifying yourself as a franchisee of the Franchise System, cease using any of the Marks and Proprietary Assets or any confusingly similar names, marks, systems, insignia, symbols or other procedures or methods, and cease doing anything that would indicate any relationship between us;
- (c) return to us the Operations Manual and all other manuals, plans, specifications, designs, records, data samples, models, programs, materials, handbooks, drawings and other materials provided to you by us;
- (d) notify the telephone company and all telephone company directory publishers of the termination or expiration of your right to use any telephone number and any regular, classified, or other telephone directory listings associated with any Mark (including any telephone number of directory listing for your Studio) and authorize their transfer to us or our designee. You acknowledge that, as between you and us, we have the sole right to, and interest in, all telephone, telecopy, or facsimile machine numbers and directory listings associated with any Mark (including those associated with your Studio). Should you fail to make such notifications, you authorize us, and hereby appoint us and any of our officers as your attorney-in-fact, to direct the telephone company and all telephone directory publishers to transfer to us or our designee any telephone, telecopy, or facsimile machine numbers and directory listings relating to the Studio, and the telephone company and all telephone directory publishers may accept such direction or this Agreement as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;
- (e) notify the clients of your Studio that you are no longer our franchisee and refund to your clients any prepaid amounts for unused services;
- (f) direct your clients to another Studio that can perform any unused, but prepaid services for your clients;
- (g) transfer your client list to us or our designee. You acknowledge that, as between you and us, we have the sole right to, and interest in, your client lists and other client information; and
- (h) abide by all restrictive covenants set forth in Section 12 of this Agreement.

10.5. Our Options in the Event of Your Default.

- (a) If you are in default of the Franchise Agreement and have not cured the default within the applicable cure period:
 - (i) we have the right (but not the obligation) to enter your Studio to make modifications necessary to protect the Proprietary Assets, to remove your equipment and signage, to cure any default under the Franchise Agreement or under the lease for the Studio Location, and assume all of your rights under the lease (including making lease payments), including the right to assign or sub-lease.
 - (ii) we have the right (but not the obligation) to enter the Studio and assume the Studio's management (or to appoint a third party to assume its management) for any time period we deem appropriate. If we (or a third party) assume the Studio's management, you must pay us or the third party we designate (in addition to the Monthly Royalty and any additional amounts you owe us or our affiliates) our then-current monthly management fee (currently \$5,000). If we (or a third party) assume the Studio's management, you acknowledge that we (or the third party) will have a duty to utilize only reasonable efforts and will not be liable to you or your owners for any debts, losses, or obligations the Studio incurs, or to any of your creditors for any supplies or services the Studio purchases, while we (or the third party) manage it. The exercise of our rights under this Section 10.5 of this Agreement shall not affect our right to terminate this Agreement.

11. **TRANSFER**

- 11.1. Transfers. You acknowledge and agree that we are entering into this Agreement in reliance upon, and in consideration of, your business skills, financial capacity and other required qualifications. Accordingly, the rights and duties created under this Agreement are personal to you. Your interest in this Agreement, any of your rights under this Agreement, your Studio, and any interest therein may not be assigned, transferred, shared or divided, voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, in any manner, without our prior written consent. Any actual or intended assignment, transfer or sale made in violation of the terms of this Section 11 shall be null and void and shall constitute a material breach of this Agreement, constituting good cause for termination of this Agreement. We will not unreasonably withhold our consent to a transfer, provided you fully comply with the provisions herein. If the proposed transfer is of this Agreement and the Studio or the day-to-day operational responsibilities for the Studio, or a controlling interest in you, or is one of a series of transfers (regardless of the time period over which these transfers take place) that, in the aggregate, transfer this Agreement and the Studio or a controlling interest in you (25% or more), all of the following conditions must be met before or concurrently with the effective date of the transfer:

- (a) all obligations created by this Agreement, all ancillary documents and any other franchise agreements, master franchise agreements, area director agreements or other agreements between us have been discharged or otherwise assumed by the transferee;
- (b) all amounts due and owing pursuant to this Agreement or otherwise (including under another franchise agreement, master franchise agreement or area director agreement with us) by you (or any other legal entity in which you, or one of your owners with at least a 25% ownership interest in you, is an owner) to us, our affiliates, or third parties whose debts or obligations we have guaranteed on your behalf, if any, are paid in full;
- (c) you are not in default under this Agreement or under any other franchise agreement, master franchise agreement, area director agreement or other agreements between us;
- (d) the proposed transferee agrees to operate the Studio as an Elements Studio and signs the then-current form of franchise agreement, the provisions of which may be materially different than the provisions contained in this Agreement;
- (e) the proposed transferee must satisfactorily complete Initial Training;
- (f) you provide written notice to us at least 30 days prior to the proposed effective date of the transfer and include information reasonably detailed to enable us to evaluate the terms and conditions of the proposed transfer, which, at a minimum, includes a written offer from the proposed transferee;
- (g) the proposed transferee provides information to us sufficient for us to assess the transferee's business experience, aptitude, and financial qualification, and we approve the proposed transferee as a franchisee;
- (h) neither the transferee nor its owners or affiliates have an ownership interest in, or perform services in any capacity for a Competitive Business (defined in Section 12.1)
- (i) the proposed transferee agrees to renovate, refurbish, remodel or replace, at its own cost, the real and personal property and equipment used in operating the Studio within the timeframe specified by us in order to comply with our then current image and System Standards;
- (j) your landlord permits you to transfer the Studio lease to the transferee;
- (k) you execute a non-disparagement agreement and general release in a form satisfactory to us, releasing us and our affiliates, and our and their respective officers, directors, members, shareholders, employees and agents, in their corporate and individual capacities, from any and all claims, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;

- (l) you and your owners and guarantors abide by all post-termination covenants, including the covenant not to compete set forth in Section 12.2;
- (m) you or the transferee pay us a fee in the amount of 50% of the then-current initial franchise fee (“Transfer Fee”). The Transfer Fee must be paid to us in the form of a cashier’s check or wire transfer on the date of transfer;
- (n) if you are an individual transferring this Agreement and the Studio to an entity wholly owned by you, you agree to remain personally responsible for the entity’s performance of its obligations under this Agreement and to continue to comply personally with all obligations under this Agreement; and
- (o) neither the transferee nor its owners may, without our prior written consent, take possession of the Studio until the transfer process has been completed.

You acknowledge that the proposed transferee will be evaluated by us based on the same criteria as those currently being used to assess new franchisees and that the proposed transferee will be provided with the disclosures required by law. We may review all information regarding the Studio and your franchise business that you give the transferee, and we may give the transferee copies of any reports or information that you have given us or that we have made regarding the Studio.

- 11.2. Transfer to Corporate Entity Owned by You. Notwithstanding the foregoing, you may, solely for the convenience of ownership, within 90 days from the Effective Date and without the payment of the Transfer Fee, transfer the ownership of your Studio under this Agreement to a legal entity which is wholly or majority owned by you. Before such transfer, you must supply to us a copy of the organizational documents of the entity, cause all owners of the entity to execute a guaranty of the obligations under this Agreement (substantially in the form set forth as Exhibit 4), and cause all necessary parties to execute any other transfer documents we deem reasonably necessary.
- 11.3. Death, Disability or Permanent Incapacity. Upon your death, disability or permanent incapacity, we shall not unreasonably withhold our consent to the transfer of your interest in the Agreement to a spouse, heirs or relatives, by blood or marriage, whether such transfer is made by will or by operation of law, provided that the conditions of Section 11.1 and the requirements of this Agreement have been met, and further provided that the transfer does not result in a change of control of you to any party other than such spouse, heir or relative. In such event, no Transfer Fee shall be required. If your heirs do not obtain our consent as prescribed herein, your personal representative shall have 180 days to dispose of your interest hereunder, which disposition shall be subject to all of the terms and conditions for transfers under this Agreement.
- 11.4. Your Agreement to Transfer Restrictions. Any transfer permitted by this Section 11 shall not be effective until all requirements in this Agreement concerning transfer have been met and we have approved the transfer in writing. You agree that the restrictions on transfer imposed in this Agreement are reasonable and necessary to protect the Marks, the

Proprietary Assets, your Studio and the Franchise System, as well as our reputation and image, and are for the protection of us, you, and our other franchisees.

- 11.5. Assistance in Locating a Purchaser. You may request assistance from us in locating a transferee for your Studio pursuant to the terms of our then current form of agreement which will include, without limitation, the following terms:
- (a) you must satisfy all conditions of Section 11.1;
 - (b) you must be available to meet with prospective franchisees at mutually convenient times;
 - (c) prior to completion of the transfer, you must remain current in all of your obligations under this Agreement, including, but not limited to, payment of the Monthly Royalty, and under any master franchise agreement, area director agreement or other agreement between us; and
 - (d) you must pay us a fee of \$7,500 at the time the transfer is completed (in addition to the Transfer Fee);
- 11.6. Our Right of First Refusal. At least 60 days prior to a proposed sale or transfer by you of a controlling interest in this Agreement (25% or more) or the assets of your Studio, whether voluntarily or involuntarily undertaken, you must give us written notice of such proposed sale or transfer. The notice shall set forth the name of the proposed purchaser, a description of the proposed transfer transaction, all terms and conditions of the proposed sale, and a copy of a fully executed purchase and sale agreement. The effectiveness of the purchase and sale agreement must be contingent upon our waiver of our right of first refusal as described in this Section 11.6.
- Upon our receipt of the notice and other documents, we will have 60 days in which to exercise our right of first refusal on the same terms and conditions set forth within the notice. During such period, we may also notify you that we have acted to withhold approval of the proposed transfer and will provide you with the specific reasons for such action.
- 11.7. Transfer if Franchisee is an Entity. If Franchisee is a legal entity, the terms of this Section 11 shall be deemed to also apply to any sale, resale, pledge, assignment, transfer or encumbrance (“transfer”) of the voting stock of, or other ownership interest in you, which would alone or together with other related, previous, simultaneous or proposed transfers, result in the transfer of a controlling interest in you.
- 11.8. Controlling Interest. A person will be deemed to have a controlling interest in you if that person has the right to vote 25% or more of the voting securities or other forms of ownership interest of a corporation, partnership or other form of entity, or is entitled to receive 25% or more of the net profits of any such entity, or is otherwise able to direct or cause the direction of that entity’s management or policies.

- 11.9. Our Transfer. This Agreement inures to the benefit of us and our successors and assigns, and we have the right to transfer or assign all or any part of our interest, rights, privileges, duties and obligations hereunder to any person or legal entity without your approval.

12. RESTRICTIVE COVENANTS

- 12.1. Non-Competition During Term. You agree that, in addition to the license of the Marks granted to you under this Agreement, you have been licensed commercially valuable information that comprises the Proprietary Assets, including without limitation, operations, marketing, advertising and related information and materials. You further agree that the value of this information arises not only from the time, effort and money expended on compiling the information, but also from all franchisees' use of the information. Therefore, you agree that, other than the Studio, neither you nor any of your officers, directors, shareholders, members, partners or other owners, nor any spouse or immediate family member of yours or any of these individuals (collectively, "Bound Parties"), shall, during the term of this Agreement:

- (a) have any direct or indirect interest as a disclosed or beneficial owner in a "Competitive Business" as defined below, wherever located or operating;
- (b) perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business, wherever located or operating;
- (c) divert or attempt to divert any business related to the Studio, our business, or any other franchisee's Studio by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of ours, any of our affiliates, or another franchisee, to any Competitive Business;
- (d) directly or indirectly solicit or employ any person who is employed by us, any of our affiliates, or another franchisee of ours without obtaining the employer's prior written consent; or
- (e) use any of the Proprietary Assets for any unauthorized purpose, use any confusingly similar method, format, procedure, technique, slogan, insignia, term, designation, design, diagram, promotional material or course material, or cause or permit any facility or program to look like, copy or imitate any facility or program operated or licensed by us without our prior written consent.

The term "Competitive Business" for purposes of this Agreement, means any business operating or granting franchises or licenses to others to operate therapeutic massage or bodywork services studios or any other massage service business, or any business offering or selling products, or educational materials or conducting workshops for services that are the same as, similar to, or competitive with the Franchise System or other Studios.

- 12.2. Post Termination Covenant Not to Compete. For a period of two years after the expiration or termination of this Agreement (regardless of the cause of termination) or the

sale or transfer of your Studio, or such other date as you and all other Bound Parties begin to comply with this Section 12.2, whichever is later, neither you nor any other Bound Party shall have any direct or indirect interest as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative, agent, or in any other capacity in any Competitive Business located or operating within a three-mile radius of your Studio (including at the former Studio Location) or within a three-mile radius of any other Studio existing on the later of the effective date of termination or expiration of this Agreement or the date on which you and all other Bound Parties begin to comply with this Section 12.2. You and the other Bound Parties expressly acknowledge that you and they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section 12.2 will not deprive you or them of their personal goodwill or ability to earn a living.

- 12.3. Branded Business. During the term of this Agreement, neither you nor any other Bound Party will, without our written consent, operate, directly or indirectly, any Branded Business within a one-quarter (1/4) mile radius of your Studio. The term “Branded Business” means any business marketed by a franchisor or chain under a locally, regionally, or nationally known or registered trademark or service mark (including by our affiliate, Fitness Together Franchise Corporation).
- 12.4. Permitted Interests. Nothing in this Section 12 shall prohibit you or any other Bound Party from owning shares of a class of securities listed on a stock exchange or traded on the over-the-counter market representing five percent (5%) or less of the aggregate number of shares of that class of securities issued and outstanding.
- 12.5. Confidential Information. We possess certain proprietary confidential information consisting of the Marks, the Proprietary Assets, our System Standards, and other methods, techniques, formats, specifications, procedures, information, systems, methods of business management, sales and promotion techniques and knowledge of and experience in the operation and franchising of Studios (the “Confidential Information”). We shall disclose the Confidential Information to you in Initial Training, in the Operations Manual, and in guidance and materials furnished to you during the term of this Agreement. You have not acquired any interest in the Confidential Information other than the right to utilize it in the territory and Protected Area in the execution of your duties hereunder during the term of this Agreement, and you acknowledge that the use or duplication of the Confidential Information in any other business venture would constitute an unfair method of competition. You acknowledge and agree that the Marks and Proprietary Assets have valuable goodwill attached to them, that their protection and maintenance are essential to us and our affiliates, and that any unauthorized use or disclosure of the Marks, the Proprietary Assets or other Confidential Information will result in irreparable harm to us and our affiliates. You also acknowledge and agree that the Confidential Information is proprietary, includes trade secrets of ours, and is disclosed to you solely on the condition that you agree, and all of the other Bound Parties hereby agree that you:
- (a) will not use the Confidential Information in any other business or capacity;

- (b) will maintain the absolute confidentiality of the Confidential Information during and after the term of this Agreement;
- (c) will not make unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and
- (d) will adopt and implement all reasonable procedures prescribed periodically by us to prevent unauthorized use or disclosure of the Confidential Information, including requiring that every employee, agent or independent contractor you hire or engage to assist you in the operation of your Studio execute the form of Non-Compete and Confidentiality Agreement located in the Operations Manual or otherwise provided to you.

You agree that we shall have the perpetual right to use and authorize other franchisees to use, and you shall fully and promptly disclose to us, all ideas, concepts, methods, and techniques relating to the development and operation of the Franchise System howsoever conceived or developed by you or your employees during the term of this Agreement. You acknowledge that any ideas, concepts, methods, and techniques or materials concerning any Studio, whether or not protectable intellectual property and whether or not created by or for you or your owners or employees, must be promptly disclosed to us and will be deemed to be our and our affiliates' sole and exclusive property, part of the Franchise System and works "made for hire" for us and our affiliates. With respect to any such item, you assign ownership of that item, or will cause your owners or employees to assign ownership of that item, and all related rights to that item, to us and our affiliates and you must sign whatever assignment or other documents we or our affiliates request to reflect our ownership of, or to help us and our affiliates obtain intellectual property rights in, the item. If you are an individual, you agree that your spouse shall be bound, and if you are an entity, you agree that any officers, directors, partners, shareholders and members and their respective spouses shall be bound by this Section 12.5.

13. NOTICES

All notices required to be given under this Agreement shall be in writing and shall be hand delivered or sent by a nationally recognized overnight mail delivery service, registered or certified mail, postage prepaid, return receipt requested, or by any delivery service providing documentation of receipt, to the address set forth on page 1 of this Agreement, or to such other address as specified in a written notice given to the other party from time to time. Any such notice shall be deemed delivered (a) on the date shown on the return receipt or in the courier's records as of the date of delivery, or (b) on the date of first attempted delivery, if actual delivery cannot be made for any reason.

14. GOVERNING LAW; JURISDICTION AND VENUE; ARBITRATION

- 14.1. Governing Law. ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE UNITED STATES FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL

ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), OR OTHER UNITED STATES FEDERAL LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED (CURRENTLY, COLORADO) WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES, EXCEPT THAT ANY STATE LAW REGULATING THE SALE OF FRANCHISES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS PARAGRAPH.

- 14.2. Jurisdiction and Venue. SUBJECT TO SECTION 14.5, YOU AND THE BOUND PARTIES AGREE THAT ALL ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OTHERWISE AS A RESULT OF THE RELATIONSHIP BETWEEN YOU AND US MUST BE COMMENCED EXCLUSIVELY IN THE STATE OR FEDERAL COURT OF GENERAL JURISDICTION IN THE LOCATION IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED, WHICH IS CURRENTLY DENVER, COLORADO, AND WE AND YOU (AND EACH OWNER) IRREVOCABLY CONSENT TO THE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS.
- 14.3. Waiver of Jury Trial and Punitive Damages. WE, YOU AND THE OTHER BOUND PARTIES EACH WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER PARTY. EXCEPT FOR YOUR OBLIGATION TO INDEMNIFY US FOR THIRD PARTY CLAIMS UNDER SECTION 19.1, AND EXCEPT FOR PUNITIVE, EXEMPLARY OR MULTIPLE DAMAGES AVAILABLE TO EITHER PARTY UNDER UNITED STATES FEDERAL LAW, WE AND YOU (AND YOUR OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY OR MULTIPLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US AND YOU, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.
- 14.4. Remedies. The parties agree that any claim for lost earnings or profits by you shall be limited to a maximum amount equal to the net profits of the Studio for the prior year as shown on your federal income tax return. In the event this Agreement is terminated by us based on your default, the parties agree that it would be difficult, if not impossible, to determine the amount of damages that we would suffer. Therefore, the parties agree that a reasonable estimate of damages is the net present value of the Monthly Royalty and other fees that would have become due following termination of this Agreement for the period this Agreement would have remained in effect but for your default or termination of the Agreement without cause. Monthly Royalty and other fees for purposes of this Section 14.4 shall be calculated based on your Studio's average monthly gross receipts

for the 12 months preceding the termination date of this Agreement. In the event you have not opened the Studio for business for at least 12 months preceding the termination date, Monthly Royalty and other fees for purposes of this Section 14.4 shall be calculated based on the average monthly gross receipts of all Studios in the Franchise System during our last fiscal year prior to the termination date.

- 14.5. Arbitration. We and you agree that all controversies, disputes, or claims between us and our affiliates, and our and their respective shareholders, members, officers, directors, agents, and/or employees, and you (and/or your owners, guarantors, affiliates, and/or employees) arising out of or related to:
- (a) this Agreement or any other agreement between you (or your owners) and us;
 - (b) our relationship with you;
 - (c) the scope or validity of this Agreement or any other agreement between you (or your owners) and us or any provision of any of such agreements (including the validity and scope of the arbitration obligation under this Section 14.5, which we and you acknowledge is to be determined by an arbitrator, not a court); or
 - (d) any System Standard;

must be submitted for binding arbitration to the American Arbitration Association in the United States (“AAA”). The arbitration proceedings will be conducted by one arbitrator and, except as this Subsection otherwise provides, according to the AAA’s then current commercial rules. All proceedings will be conducted at a suitable location chosen by the arbitrator located in our then-current principal place of business (currently Denver, Colorado). All matters relating to arbitration will be governed by the United States Federal Arbitration Act (9 U.S.C. §§ 1 et seq.).

The arbitrator has the right to award or include in his or her award any relief which he or she deems proper, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys’ fees and costs (as allowable under this Agreement or applicable law), provided that the arbitrator may not declare any Mark generic or otherwise invalid or, except as expressly provided in Section 14.3 above, award any punitive, exemplary or multiple damages against either party (we and you hereby waiving to the fullest extent permitted by law, except as expressly provided in Section 14.3 above, any right to or claim for any punitive, exemplary or multiple damages against the other).

We and you agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable law or this Agreement, whichever expires earlier. We and you further agree that, in any arbitration proceeding, each must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the United States Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim which is not submitted or filed as required is forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either you or us. We reserve the right, but have no obligation, to

advance your share of the costs of any arbitration proceeding in order for such arbitration proceeding to take place and by doing so shall not be deemed to have waived or relinquished our right to seek the recovery of those costs in accordance with Section 15.9 below.

We and you agree that arbitration will be conducted on an individual, not a class-wide, basis and that an arbitration proceeding between us and our affiliates, and our and their respective shareholders, officers, directors, agents, and/or employees, and you (and/or your owners, guarantors, affiliates, and/or employees) may not be consolidated with any other arbitration proceeding between us and any other person. Notwithstanding the foregoing or anything to the contrary in this Section 14.5 or Section 15.4, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section 14.5, then all parties agree that this arbitration clause shall not apply to that dispute and that such dispute shall be resolved in a judicial proceeding in accordance with this Section 14 (excluding this Section 14.5).

- 14.6. Limitation of Claims. You and the other Bound Parties agree not to bring any claim asserting that any of the Marks are generic or otherwise invalid. Except with regard to your obligation to pay us and our affiliates Monthly Royalty and other fees and payment due from you pursuant to this Agreement or otherwise, any claims between the parties must be commenced within one year from the date on which the party asserting the claim knew or should have known of the facts giving rise to the claim, or such claim will be barred. The parties understand that such time limit might be shorter than otherwise allowed by law. You and the other Bound Parties agree that your sole recourse for claims arising between the parties shall be against us or our successors or assigns. You and the Bound Parties agree that the members, managers, shareholders, directors, officers, employees, and agents of us and our affiliates shall not be personally liable nor named as a party in any action between us and you or any Bound Party; provided, however, that this shall not preclude claims you have directly against an area director. We, you and the Bound Parties further agree that, in connection with any such proceeding, each must submit or file any claims which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim that is not submitted or filed as described in this Section 14.6 will be forever barred. The parties agree that any proceeding will be conducted on an individual, not a class-wide basis, and that a proceeding between us and you or the Bound Parties may not be consolidated with another proceeding between us and any other person or entity, nor may any claims of another party or parties be joined with any claims asserted in any action or proceeding between us and you. No previous course of dealing shall be admissible to explain, modify, or contradict the terms of this Agreement. No implied covenant of good faith and fair dealing shall be used to alter the express terms of this Agreement.

15. MISCELLANEOUS PROVISIONS

- 15.1. Remedies. All rights and remedies enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, shall not exclude

any other rights or remedies allowed at law or in equity, and said rights and remedies may be exercised and enforced concurrently.

- 15.2. Modification/Exercise of Judgment. No amendment, waiver, or modification of this Agreement shall be effective unless it is in writing and signed by us and you. You acknowledge that we may unilaterally modify our System Standards and other standards and specifications and operating and marketing techniques, whether set forth in the Operations Manual or otherwise, under any conditions and to the extent we deem necessary to protect, promote or improve the Marks, the Proprietary Assets or the Franchise System, so long as such modifications are not specifically prohibited by this Agreement.

Whenever we reserve the right in this Agreement to take or withhold taking an action, or to grant or decline to grant you a right to take or omit an action, we may, except as otherwise specifically provided in this Agreement, make our decision or exercise our rights based on information readily available to us and our judgment of what is in our and/or the Franchise System's best interests at the time we make our decision, without regard to whether or not we could have made other reasonable or arguably preferable alternative decisions or whether or not our decision promotes our financial or other interests.

- 15.3. No Waiver. No waiver of any term, covenant or condition of this Agreement, or failure to exercise a right or remedy by us or you shall constitute or imply a further waiver of the same or any other covenant or condition. Our subsequent acceptance of any payments due to us under this Agreement shall not be deemed to be a waiver by us of any preceding breach by you of any terms, covenants or conditions of this Agreement. Whenever this Agreement requires our prior approval or consent, such approval or consent shall be obtained in writing. We make no warranties or guarantees upon which you may rely, and assume no liability or obligation to you, in connection with any waiver, approval or consent we may grant to you in connection with this Agreement, or by reason of any neglect, delay or denial of any waiver or request for waiver under this Agreement. Any waiver granted by us shall be subject to our continuing review, may subsequently be revoked for any reason effective upon 10 days prior written notice, and shall be without prejudice to any other rights we may have.

- 15.4. Severability/Invalidity. If any provision of this Agreement or the application of any provision to any person or circumstances shall be determined to be invalid or unenforceable, then such determination shall not affect any other provisions of this Agreement or the application of such provisions to any other person or circumstances, all of which shall remain in full force and effect. It is the intention of the parties that if any provision of this Agreement is susceptible to two or more interpretations, one of which would render it enforceable, then the provision shall have the meaning that renders it enforceable.

- 15.5. Entire Agreement. This Agreement constitutes the entire agreement between us regarding the subject matter hereof, and supersedes all prior and contemporaneous agreements between us regarding such subject matter. No officer, employee, servant or

agent of ours or yours has been authorized to make any representation, warranty or other promise not contained in this Agreement or in the accompanying Franchise Disclosure Document. Nothing in this Agreement or any related agreement is intended to disclaim the representations made in the accompanying Franchise Disclosure Document. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing by both parties.

- 15.6. Delegation by Us. We shall have the right to delegate the performance of any portion or all of our obligations and duties under this Agreement to third parties, whether they are our affiliates, agents, representatives and/or area directors or other individuals or entities with which we have contracted to perform such obligations, duties or services. You agree in advance to any such delegation and acknowledge and agree that we will not be bound, and this Agreement may not be modified, by any third party (including area directors) without our prior written consent. You acknowledge and agree that any delegation of our duties and obligations to third parties does not assign or confer any rights under this Agreement to such third parties and that they are not third party beneficiaries of this Agreement.
- 15.7. Effective Date of Agreement. This Agreement shall not be effective until accepted by us as evidenced by the signature of an officer or other duly authorized representative of ours and the dating of the Agreement as of the date of such signature. Notwithstanding the foregoing, we reserve the right to make the effective date of this Agreement the date on which you sign the Agreement.
- 15.8. Review of Agreement. You acknowledge that you have had a copy of the Franchise Disclosure Document in your possession for not less than 14 full calendar days, during which time you have had the opportunity to submit the Franchise Disclosure Document and this Agreement and other documents and agreements related thereto for professional review and advice of your choosing prior to freely executing this Agreement.
- 15.9. Costs and Attorneys Fees. In the event either party (or any of the Bound Parties) initiates a judicial, arbitration or other proceeding, the prevailing party will be entitled to reasonable costs and expenses (including reasonable attorneys' fees incurred in connection with such judicial or other proceeding).
- 15.10. Injunctive Relief. Nothing in this Agreement shall prevent us or you from seeking injunctive relief in appropriate cases to prevent irreparable harm.
- 15.11. Survival. All of our and your (and your owners' and other Bound Parties') obligations that expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect subsequent to, and notwithstanding, its expiration or termination until they are satisfied in full or by their nature expire, including, without limitation, the post-termination restrictive covenants contained in Section 12.2, dispute resolution covenants and notice and confidentiality provisions.
- 15.12. Joint and Several Liability. If you consist of more than one individual, the liability of all individuals are deemed to be joint and several.

15.13. Counterparts; Paragraph Headings; Pronouns. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The paragraph headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof. Each pronoun used herein shall be deemed to include the other gender and number.

16. ACKNOWLEDGMENTS

BEFORE SIGNING THIS AGREEMENT, YOU SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. YOU ACKNOWLEDGE THAT:

- (A) THE SUCCESS OF THIS BUSINESS VENTURE INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON YOUR ABILITY AS AN INDEPENDENT BUSINESS PERSON AND YOUR ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS;
- (B) YOU HAVE NOT BEEN GIVEN ANY ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, BY US OR OUR REPRESENTATIVES AS TO THE POTENTIAL SUCCESS OF YOUR STUDIO OR FRANCHISE BUSINESS, THE VIABILITY OF ANY STUDIO LOCATION OR THE EARNINGS OR PROFITS LIKELY TO BE ACHIEVED FROM THE OPERATION OF THE STUDIO, NOR HAVE YOU RELIED UPON ANY SUCH ASSURANCE OR WARRANTY IN EXECUTING THIS AGREEMENT;
- (C) WHILE WE HAVE OFFERED ASSISTANCE, YOU HAVE FINAL APPROVAL OF THE SITE SELECTED, LEASE EXECUTED AND OTHER DECISIONS CONCERNING YOUR FRANCHISE PURCHASE, STUDIO LOCATION AND THE OPERATIONS OF YOUR STUDIO;
- (D) NO STATEMENT, REPRESENTATION, OR OTHER ACT, EVENT, OR COMMUNICATION, EXCEPT AS SET FORTH IN THIS DOCUMENT AND IN ANY FRANCHISE DISCLOSURE DOCUMENT SUPPLIED TO YOU, IS BINDING UPON US IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT;
- (E) YOU ARE AWARE THAT OTHER FRANCHISEES MAY OPERATE THEIR STUDIOS UNDER DIFFERENT FORMS OF AGREEMENTS AND, CONSEQUENTLY, THAT OUR OBLIGATIONS AND RIGHTS WITH RESPECT TO THEM MAY DIFFER MATERIALLY THAN OUR OBLIGATIONS AND RIGHTS WITH RESPECT TO YOU IN CERTAIN CIRCUMSTANCES;
- (F) THE INDIVIDUALS EXECUTING THIS AGREEMENT ON YOUR BEHALF REPRESENT AND WARRANT THAT THE SIGNATURES LISTED BELOW CONSTITUTE ALL OF THE INDIVIDUALS, PARTNERS, LIMITED PARTNERS, MEMBERS, DIRECTORS, OFFICERS AND/OR SHAREHOLDERS OF YOURS NECESSARY TO BIND YOU AND THAT

THEY HAVE READ, UNDERSTAND AND CONSENT TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.

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

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

*Date: _____

(*Effective Date of this Agreement)

FRANCHISEE:

(Name of Individual or Entity)

By: _____

Printed Name: _____

Its: _____

(Title of Signor, if applicable)

EXHIBIT 1

TERRITORY DESCRIPTION

Franchisee: _____

Franchise Agreement Effective Date: _____

The territory in which you will locate your Studio shall be as follows:

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

FRANCHISEE:

(Name of Individual or Entity)

By: _____

Printed Name: _____

Its: _____
(Title of Signor, if applicable)

EXHIBIT 2

AUTOMATIC BANK DRAFT AUTHORIZATION

Franchisee: _____

Owner Name: _____ Phone: _____

Contact Person: _____ Title: _____
(if different from owner)

Address: _____

I hereby authorize Elements Therapeutic Massage, Inc. (“Franchisor”) to initiate entries to my checking or savings account identified below for Monthly Royalty (as defined in my Franchise Agreement with Franchisor), loan payments to Franchisor, software, website, default, late and other fees and amounts that may be incurred by me under the Franchise Agreement or otherwise and, if necessary, to initiate any adjustments for transactions credited in error.

Name and Address on Account: _____

Pay to the order of: Elements Therapeutic Massage, Inc.

Your Financial Institution: _____
(Name, Address & Phone #) _____

Routing Number: _____

Account Number: _____

PLEASE ATTACH A VOIDED CHECK

Signature: _____

Date: _____

Printed Name: _____

Elements Account Number: _____

Studio Name: _____

EXHIBIT 3

STATEMENT OF OWNERSHIP

Name of Franchisee Legal Entity: _____

Date of Formation: _____ State of Formation: _____

Type of Entity: _____

All Shareholders, Members and Partners:

Name	Type of Interest	% Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

The legal entity's activities must be confined exclusively to operating the Studio and Elements franchise business, unless Franchisor otherwise agree in writing.

Each shareholder, member, partner or other beneficial owner personally guarantees Franchisee's performance under the Franchise Agreement.

The legal entity must maintain a current list of all shareholders, members, partners, and other beneficial owners, and must furnish an updated list to Franchisor prior to making any ownership changes. Franchisor must approve the ownership changes described in the Franchise Agreement.

Documents to be provided to Franchisor:

- Certificate and Articles of Incorporation or Organization
- By-Laws, Operating Agreement or Partnership Agreement
- Other, as reasonably requested by Franchisor

EXHIBIT 4

GUARANTY AND ASSUMPTION OF OBLIGATIONS

Each of the undersigned (“Guarantor”) guarantees to Franchisor the timely, full, and complete performance of all of _____’s (“Franchisee’s”) obligations under the franchise agreement dated as of _____, 20__ (the “Franchise Agreement”) of which this Guaranty and Assumption of Obligations forms a part, including, without limitation, payment to Franchisor of all amounts due (“Guaranty”). This Guaranty is a guaranty of payment and performance and not a guaranty of collection. In the event of a default under the Franchise Agreement by Franchisee, Franchisor may proceed against Franchisee or any Guarantor in any order or simultaneously. Each Guarantor represents that he or she has full and complete access to all information and records regarding Franchisee’s operations, and that it is the responsibility of each Guarantor to keep itself informed about Franchisee’s operations and this Franchise Agreement. Periodically, without notice to or consent of any Guarantor, the Franchise Agreement may be modified or amended, and the preceding Guaranty shall not be affected by (a) any amendment or modification to the Franchise Agreement agreed to by Franchisee, (b) any delay, waiver, forbearance, or other similar act or omission of Franchisor in the enforcement of its rights and remedies under the Franchise Agreement, or (c) any compromise or settlement of any claim or obligation or any amount due or owing, or claimed to be due or owing, under the Franchise Agreement. The provisions of this Guaranty will extend and be applicable to all renewals, amendments, extensions and modifications of the Franchise Agreement. Each Guarantor waives notice of acceptance of this Guaranty, demand, notice of dishonor, notice of any and all proceedings to collect amounts due, and diligence in collecting any amounts due under the Franchise Agreement. Each Guarantor waives any defense arising by reason of (a) any disability of Franchisee (b) the cessation from any cause whatsoever of the liability of Franchisee or (c) Franchisor’s election of any remedy against Franchisee or any Guarantor. The insolvency or bankruptcy filing of Franchisee shall not in any manner affect the continuing obligations of each Guarantor hereunder. The obligations of Guarantors hereunder are joint and several.

Each of the undersigned represents and warrants that, if no signature appears below for such undersigned’s spouse, such undersigned is either not married or, if married, is a resident of a state which does not require the consent of both spouses to encumber the assets of a marital estate.

Guarantor agrees to be personally bound by the arbitration obligations under Section 14.5 of the Franchise Agreement, including, without limitation, the obligation to submit to binding arbitration the claims described in Section 14.5 of the Franchise Agreement in accordance with its terms.

* * * *

IN WITNESS WHEREOF, each of the undersigned has affixed his or her signature on the same day and year as the Franchise Agreement was executed.

GUARANTORS

Print Name: _____
Ownership Percentage: _____

Print Name: _____
Ownership Percentage: _____

The undersigned, as the spouse of the Guarantor indicated below, acknowledges and consents to the guaranty given herein by his/her spouse. Such consent also serves to bind the assets of the marital estate to Guarantor's performance of this Guaranty.

Name of Guarantor

Name of Guarantor

Name of Guarantor's Spouse

Name of Guarantor's Spouse

Signature of Guarantor's Spouse

Signature of Guarantor's Spouse

EXHIBIT C1

LIST OF FRANCHISEES AS OF 12/31/09

Exhibit C1

Exhibit C1

Franchisees as of December 31, 2009

Location				Owner	Telephone
AL	Mobile	3705 Arlington Oaks Drive	36695	Claudia McClure	(251) 342-6415
AZ	Gilbert	2556 S. Val Vista Drive Suite 105	85295	Greg and Jeanette Belloni	(480) 726-2222
AZ	Scottsdale	19420 N. 59th Ave., Suite E-515	85308	Darrin & Shauna Boyd	(623) 847-4050
AZ	Scottsdale	23425 N. Scottsdale Rd. Ste. A104	85255	Serje Studio II, LLC	(480) 513-2256
AZ	Scottsdale	16255 N. Scottsdale Road C-5	85254	Pam and Nelson Cresbo	(480) 998-2120
AZ	Glendale	9343 E. Shea Blvd. Suite 120	85260	Mike and Leslie Wright	(480) 941-3077
CA	Walnut Creek	1631 N. California Blvd. Suite B	94596	Rima Chakraborty	(925) 210-0900
CA	Mira Loma	18303 Brookhurst Street	92708	Kelly Berman and Tony Munio	(714) 965-2700
CA	Fountain Valley	6205 Pat's Ranch Rd. Suite F3	91752	Paul Fetui	(951) 280-1200
CO	Centennial	15446 E Orchard Rd	80016	Michele Merhib	(720) 529-3500
CO	Aurora	15230 E. Iliff Ave, Unit A	80014	Michele Merhib	(303) 751-1881
CO	Littleton	2610 W Belleview Ave, Suite 300	80123	Michele Merhib	(303) 738-5903
CO	Highlands Ranch	4004 Red Cedar Drive	80126	Cody McKay	(303) 683-8545
CO	Littleton	12482 Ken Caryl Ave. Suite A5	80127	Jeff Livingston	(303) 979-0822
CO	Aurora	3571 South Tower Road, Unit A	80013	Forrest Burdue	(303) 400-4545
CO	Colorado Springs	3703 Blooming St	80922	Eric Tuskind	(719) 596-6610
CO	Parker	18551 East Main Street, Suite 1B	80134	Jason Lenhart	(303) 805-1902
CO	Castle Rock	323 Metzler Drive, Suite 105	80108	Kristin Johnson and Mark Adams	(303) 663-3702
CO	Aurora	6140 S Gun Club Rd Suite I-2	80016	Elizabeth Thompson	(303) 680-5200
CO	Boulder	2321 30th St.	80301	Mills Massage, LLC	(303) 440-3998
CO	Denver	1367 E. 6th Ave. East Unit	80218	Todd Tantillo	(303) 339-3100
CO	Centennial	8200 S. Quebec St., Ste. A6	80112	Shelly Blume and David Berghoff	(303) 770-6440
FL	Coral Springs	6290 W. Sample Rd.	33067	Louise and Dennis Casper	(954) 757-2939
FL	Boca Raton	5030 Champion Blvd D7	33496	Mayra Reyes and Kevin Henry	(561) 241-6690
FL	University Park	8109 Cooper Creek Blvd.	34201	Cheryl Badiali	(941) 366-1168

Location				Owner	Telephone
FL	Naples	2355 Vanderbilt Beach Rd. #146	34109	Salt Pier LLC	(239) 514-2211
GA	Duluth	11720 Medlock Bridge Rd	30097	Carolyn and Duke Carrington	(770) 622-4000
IA	Cedar Falls	1704 West 1st Street	50613	John Schofield	(319) 277-1392
ID	Boise	3065 S. Bown Way	83706	Refresh Yourself, LLC ¹	(208) 331-9900
ID	Boise	7447 W. Emerald St.	83704	Marguerite Overton and Charles Stiff	(208) 344-3744
ID	Meridian	1505 S. Eagle Road, Suite 100	83642	Valerie Pabalis and Hilary Sautebin	(208) 888-9922
IL	Naperville	3075 Book Road, Suite 143	60564	Nathan Toensing	(630) 922-9595
IL	Palatine	395 W NW Highway	60067	Steve Gagliardo	(847) 963-1600
IL	Bloomington	142 S. Gary Ave. Ste. 104	60108	Daniel Benson	(630) 894-5500
KY	Louisville	1301 Herr Lane Suite 120	40222	Colleen O'Connor	(502) 412-9383
MA	Middleton	92 S. Main St.	01949	Steve Stabile	(978) 774-6100
MA	Newton	1290 Washington St.	02465	Sandy Mayer	(617) 467-6072
MA	Stoneham	200A Main Street	02180	Lisa Swanson	(781) 438-4110
MA	Woburn	446 Main Street	01801	Kang Enterprises, LLC ²	(781) 932-3500
MA	Belmont	693 Belmont Street	02478	Sandy Mayer	(617) 484-3400
MA	Andover	209 North Main Street	01810	Cheryl Arbia and Mark Viera	(978) 475-2266
MA	Beverly	45 Enon Street	01915	Pierre Richard	(978) 921-1144
MA	Plymouth	74 Long Pond Rd.	02360	Platinum Elements, Inc. ³	(508) 732-9797
MA	Tewksbury	1555 Main St. Ste.101	01876	Tae Kang and Deanna McCarthy	(978) 319-4586
MA	Burlington	101 Cambridge St. Ste.260	01803	Kip LeBaron	(781) 270-4433
MA	East Longmeadow	80 Center Square	01028	John Pantera	(413) 525-4456
MD	Crofton	1702G Transportation Blvd.	21114	Cheryl Stewart	(410) 451-6777
MD	Edgewater	3059 Solomons Island Rd. Ste. D	21037	Magic Hands Enterprises, LLC	(410) 571-5112
MI	Novi	24276 Novi Road	48375	Boo Sadikot	(248) 348-8770
MI	Troy	6846 Rochester Rd.	48085	Carol Glowczewski	(248) 828-0088

¹ Studio was transferred July 2009 from Ossik, Inc.

² Studio was transferred Feb 2009 from Lorraine Jenks.

³ Studio was transferred Feb 2009 from Plymouth Enterprises, LLC.

Location				Owner	Telephone
MI	Novi	31178 Novi Road	48377	KVM Group, LLC	(248) 960-3800
MN	Eden Prairie	10165 Hennepin Town Rd. #103	55347	M. Bruce McNeill	(952)405-6220
NV	Henderson	2970 St. Rose Parkway #130	89052	James and Cherlyn White	(702) 243-3386
NY	Smithtown	42 E. Main St. #18	11787	Ryan DeMarco	(631) 406-6611
OH	Hilliard	3804 Fishinger Blvd	43026	Jonathan Seiler	(614) 777-0222
OK	Edmond	1321 N. Bryant Ave	73034	Kendell McGowen	(405) 216-5252
OK	Oklahoma City	3533 West Memorial Road	73134	Kendell McGowen	(405) 418-4544
OK	Warr Acres	5519 NW Expressway	73132	Ora and Ron Merhib	(405) 470-7300
OK	Edmond	2133 W. 15th St.	73013	Randy and Michele Hazzard	(405) 341-2399
OK	Norman	1204 N. Interstate Drive #140	73072	Matthew McCalla	(405) 310-4355
OR	West Linn	22000 Willamette Drive #107	97068	Larry and Phyllis McMillin	(503) 722-8888
TX	College Station	3975 State Highway 6 #800	77845	Cliff Latham	(979) 696-2000
TX	Bryan	3001 Wildflower Dr. Ste.611	77802	Cliff Latham	(979) 774-4343
TX	Montgomery	15260 Hwy 105 W Ste. 125	77356	Cliff Latham	(936) 570-6060
WA	Spokane	3209 East 57th Avenue	99223	Joel Hayek	(509) 448-9398
WA	Seattle	460 NE 70th St.	98115	Deborah Jenner and Larry Culp	(206) 522-4000
WA	Spokane	101 E. Hastings Rd.	99218	Linda and Steven Sparks	(509) 340-3303
WA	Issquah	670 NW Gilman Blvd. Suite #B2	98027	Amy Frank Lewallen and Brian Wehner	(425) 427-6562
WA	Seattle	10021 Holman Rd. NW	98177	Seattle MFR, LLC	(206) 632-8300
WA	Spokane Valley	325 S. Sullivan Ste. E	99037	Anthony Giardino	(509) 928-9098
WI	Middleton	1950 Cayuga Street	53562	Sherry Austin ⁴	(608) 824-9099
WI	Whitefish Bay	312 East Silver Spring Dr.	53217	Aimee and Scott Matchette	(414) 332-3260
WI	Elm Grove	12920 W. Bluemond Road	53122	Jodi Vosburg and Michelle Burke	(262) 754-3850
WI	Franklin	2826 W. Rawson Ave.	53132	Jody Rusk	(414) 304-1510

⁴ Studio was transferred June 2009 from Brian Austin.

EXHIBIT C2

FRANCHISEES WHO LEFT SYSTEM DURING LAST FISCAL YEAR

Exhibit C2

Exhibit C2

Franchise owners who had an outlet terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement during the last fiscal year.

Location		Former Owner	Telephone	Reason for Change
CA	Livermore	John and Diane Kock	(925) 353-8010	Termination
CA	Irvine*	Wayne and Scarlett Teats	(949) 293-3600	Reacquisition
CA	Riverside*	Peter and Maria Feliciano	(951) 776-2205	Termination
CO	Arvada	Vannesa Benefiel	(303) 431-0259	Ceased Operations
CR	Curridabat*	Mauricio de la Espriella	(506) 290-8231	Termination
FL	Tampa	Margaret and Raymond Wood	(727) 784-6441	Termination
GA	Duluth	Steven Ziegler	(678) 431-6776	Termination
GA	Atlanta	Stacii Jae Johnson	(404) 630-9591	Ceased Operations
ID	Brown Crossing	Chris Smitheram	(208) 331-9900	Transfer
MA	South End*	PJ Castaldini	(617) 484-9048	Termination
MA	North Andover	Cheryl Arbia	(978) 749-9877	Termination
MA	South Weymouth	Mike and Mary Ellen Grant	(617) 828-1006	Ceased Operations
MA	Plymouth	Steve Nagy	(617) 877-6152	Transfer
MA	Woburn	Lorraine Jenks	(617) 699-1133	Transfer
MI	North Novi	Patricia Koonter	(248) 926-1076	Termination
MI	Ann Arbor	Bruce Carpman	(248) 840-1240	Ceased Operations
MI	Royal	Bruce Carpman	(248) 840-1240	Ceased Operations
MI	Saline*	Bruce Carpman	(248) 840-1240	Termination
MI	Kerry Town*	Bruce Carpman	(248) 840-1240	Termination
TX	Austin	Eric Lundin	(512) 263-8103	Termination
WI	Middleton	Brian Austin	(608) 669-2583	Transfer

*Studio never opened and the franchise agreement was terminated.

EXHIBIT C3

LIST OF FRANCHISES SOLD BUT NOT YET OPENED AS OF 12/31/09

Exhibit C3

Exhibit C3

Sold, but unopened franchises as of December 31, 2009.

Location		Owner	Telephone
AZ	Phoenix	Sophia Ruck	480-298-8141
CA	Carmel Mountain Ranch	Deborah Greene and Richard Connell	760-470-3593
CO	Castle Pines Center	Cody McKay	602-770-0377
CO	Lonetree	Kristin Johnson and Mark Adams	303-663-3702
CO	Broomfield	Gemini Dreams Corp.	303-913-4800
FL	Pembroke Pines	Ivan Acosta-Rubio and Maria Alejandra	754-246-2330
FL	Bonita Springs	Doreen Zeneski	239-514-2211
MI	Farmington Hills	KVM Group, LLC	248-960-3800
OH	Solon	Cherie Greenwald	216-921-0699
OK	Edmond	Randy & Michele Hazzard	405-834-8618
OK	Moore	Matthew McCalla	405-310-4355
PA	TBD	Michael and Debbie Fasnacht	717-215-1364
TX	Friendswood	Ashley Willis	832-493-1808

EXHIBIT D

**AUDITED FINANCIAL STATEMENTS OF
ELEMENTS THERAPEUTIC MASSAGE, INC.
FOR THE YEARS ENDED 2007, 2008, AND 2009**

Exhibit D



**Financial Statements
and
Independent Auditors' Report
December 31, 2009, 2008, and 2007**

EKS&H
**EHRHARDT • KEEFE
STEINER • HOTTMAN PC**
CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS

ELEMENTS THERAPEUTIC MASSAGE, INC.

Table of Contents

	<u>Page</u>
Independent Auditors' Report.....	1
Financial Statements	
Balance Sheets.....	2
Statements of Operations.....	3
Statement of Changes in Stockholders' Equity (Deficit).....	4
Statements of Cash Flows.....	5
Notes to Financial Statements.....	6

INDEPENDENT AUDITORS' REPORT

Board of Directors and Stockholders
Elements Therapeutic Massage, Inc.
Highlands Ranch, Colorado

We have audited the accompanying balance sheets of Elements Therapeutic Massage, Inc. (the "Company") as of December 31, 2009, 2008, and 2007, and the related statements of operations, changes in stockholders' equity (deficit) and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2009, 2008, and 2007, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.



Ehrhardt Keefe Steiner & Hottman PC

March 8, 2010
Denver, Colorado

ELEMENTS THERAPEUTIC MASSAGE, INC.

Balance Sheets

Assets	December 31,		
	2009	2008	2007
Current assets			
Cash	\$ 57,535	\$ 66,760	\$ 77,701
Accounts receivable, net	192,889	89,288	63,639
Notes receivable, current	-	-	43,000
Deferred franchise costs	273,000	351,750	249,153
Other current assets	14,281	2,843	2,376
Total current assets	537,705	510,641	435,869
Non-current assets			
Property and equipment, net	94,847	49,429	44,250
Notes receivable, less current portion	434,500	621,000	999,000
Deferred franchise costs, current	145,000	173,500	185,500
Trademark	100,000	100,000	100,000
Due from affiliate	1,070,916	2,232,898	2,042,838
Deferred tax asset	705,727	676,293	336,564
Total non-current assets	2,550,990	3,853,120	3,708,152
Total assets	\$ 3,088,695	\$ 4,363,761	\$ 4,144,021
Liabilities and Stockholders' Equity (Deficit)			
Current liabilities			
Accounts payable	\$ 13,206	\$ 10,126	\$ 7,127
Accrued expenses	145,897	160,840	1,054,599
Deferred revenue, current portion	331,250	597,612	933,356
Total current liabilities	490,353	768,578	1,995,082
Non-current liabilities			
Deferred revenues, less current portion	2,284,179	3,193,100	2,928,250
Due to related party	3,750	547,500	33,612
Total liabilities	2,778,282	4,509,178	4,956,944
Commitments and contingencies			
Stockholders' equity (deficit)			
Common stock, \$0.001 par value, 1,000 shares authorized, issued and outstanding	1	1	1
Additional paid-in capital	574,999	99,999	99,999
Accumulated deficit	(264,587)	(245,417)	(912,923)
Total stockholders' equity (deficit)	310,413	(145,417)	(812,923)
Total liabilities and stockholders' equity (deficit)	\$ 3,088,695	\$ 4,363,761	\$ 4,144,021

See notes to financial statements.

ELEMENTS THERAPEUTIC MASSAGE, INC.

Statements of Operations

	For the Years Ended		
	December 31,		
	2009	2008	2007
Revenues			
Royalties	\$ 1,174,472	\$ 607,420	\$ 97,040
Franchise fees	1,184,508	1,552,709	818,562
Equipment revenue	101,080	314,465	152,115
Other revenues	<u>131,254</u>	<u>161,379</u>	<u>149,012</u>
Total revenues	<u>2,591,314</u>	<u>2,635,973</u>	<u>1,216,729</u>
Expenses			
Franchise related costs	991,692	1,186,194	370,254
Payroll	757,498	936,945	378,591
Advertising and promotion	222,967	352,411	406,261
General and administrative	628,115	323,842	152,906
Management fee	-	431,400	885,000
Depreciation and amortization	<u>29,984</u>	<u>6,517</u>	<u>4,331</u>
Total expenses	<u>2,630,256</u>	<u>3,237,309</u>	<u>2,197,343</u>
Loss from operations	(38,942)	(601,336)	(980,614)
Other income (expense)	<u>(4,720)</u>	<u>1,443,000</u>	<u>-</u>
Net (loss) income before taxes	(43,662)	841,664	(980,614)
Income tax benefit (expense)	<u>24,492</u>	<u>(174,158)</u>	<u>253,638</u>
Net (loss) income	<u>\$ (19,170)</u>	<u>\$ 667,506</u>	<u>\$ (726,976)</u>

See notes to financial statements.

ELEMENTS THERAPEUTIC MASSAGE, INC.

Statement of Changes in Stockholders' Equity (Deficit)

	<u>Common Stock</u>		<u>Additional</u>	<u>Accumulated</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Paid-in</u>	<u>Deficit</u>	<u>Stockholders'</u>
			<u>Capital</u>		<u>Equity (Deficit)</u>
Balance - December 31, 2006	1,000	\$ 1	\$ 99,999	\$ (185,947)	\$ (85,947)
Net loss	<u>-</u>	<u>-</u>	<u>-</u>	<u>(726,976)</u>	<u>(726,976)</u>
Balance - December 31, 2007	1,000	1	99,999	(912,923)	(812,923)
Net income	<u>-</u>	<u>-</u>	<u>-</u>	<u>667,506</u>	<u>667,506</u>
Balance - December 31, 2008	1,000	1	99,999	(245,417)	(145,417)
Contribution	-	-	475,000	-	475,000
Net loss	<u>-</u>	<u>-</u>	<u>-</u>	<u>(19,170)</u>	<u>(19,170)</u>
Balance - December 31, 2009	<u>1,000</u>	<u>\$ 1</u>	<u>\$ 574,999</u>	<u>\$ (264,587)</u>	<u>\$ 310,413</u>

See notes to financial statements.

ELEMENTS THERAPEUTIC MASSAGE, INC.

Statements of Cash Flows

	For the Years Ended		
	December 31,		
	<u>2009</u>	<u>2008</u>	<u>2007</u>
Cash flows from operating activities			
Net (loss) income	\$ (19,170)	\$ 667,506	\$ (726,976)
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities			
Depreciation and amortization	29,984	6,517	4,331
Deferred tax provision	(29,434)	(339,729)	(253,638)
Cancellation of accrued management fees	-	(1,011,600)	-
Changes in assets and liabilities			
Accounts receivable	(103,601)	(25,649)	(63,639)
Other current assets	(11,438)	(467)	(2,376)
Deferred franchise costs	107,250	(90,597)	(362,903)
Accounts payable	3,080	2,999	(8,672)
Accrued expenses and other liabilities	(14,943)	117,841	920,658
Deferred revenue	(1,175,283)	307,106	2,048,558
	<u>(1,194,385)</u>	<u>(1,033,579)</u>	<u>2,282,319</u>
Net cash (used in) provided by operating activities	<u>(1,213,555)</u>	<u>(366,073)</u>	<u>1,555,343</u>
Cash flows from investing activities			
Purchases of property and equipment	(75,402)	(11,696)	(28,600)
Purchase of trademark	-	-	(100,000)
Payments on notes receivable	186,500	43,000	254,000
Amounts advanced from related party	<u>1,161,982</u>	<u>513,888</u>	<u>-</u>
Net cash provided by investing activities	<u>1,273,080</u>	<u>545,192</u>	<u>125,400</u>
Cash flows from financing activities			
Amounts advanced to affiliate	<u>(68,750)</u>	<u>(190,060)</u>	<u>(1,608,751)</u>
Net cash used in financing activities	<u>(68,750)</u>	<u>(190,060)</u>	<u>(1,608,751)</u>
Net (decrease) increase in cash	(9,225)	(10,941)	71,992
Cash - beginning of period	<u>66,760</u>	<u>77,701</u>	<u>5,709</u>
Cash - end of period	<u>\$ 57,535</u>	<u>\$ 66,760</u>	<u>\$ 77,701</u>

Supplemental disclosure of non-cash activity:

In 2009, FTHI made a contribution to the Company of \$475,000, which effectively relieved the Company of the related payable due to FTHI. The contribution is reflected in additional paid in capital.

In 2008, the Company issued \$79,250 in notes receivable in exchange for initial franchise fees which have been deferred at December 31, 2008. Further, in 2008, the Company deemed \$457,250 in notes receivable as uncollectible and were reflected as a reduction in deferred revenue.

In 2007, the Company issued \$1,296,000 in notes receivable in exchange for initial franchise fees which have been deferred at December 31, 2007.

See notes to financial statements.

ELEMENTS THERAPEUTIC MASSAGE, INC.

Notes to Financial Statements

Note 1 - Description of Business and Summary of Significant Accounting Policies

Description of Business

Elements Therapeutic Massage, Inc. (the "Company" or "Elements") is in the business of franchising massage studios in the United States and abroad. The Company was incorporated on August 4, 2006 in the state of Delaware.

The Company franchises either the right to open a massage studio or the right to develop a number of studios within a territory. Each studio franchisee pays the Company an initial franchise fee and royalties equal to 6% of revenue received. Each Area Director pays an initial franchise fee to the Company and receives half of the initial franchise fee and royalties received from each studio developed in their territory. Both the studio franchise agreement and the master franchise agreement are for a term of ten years and are renewable for a fee after the initial term.

An Elements massage studio normally consists of five to six massage rooms, plus a reception area in a space occupying 1,500 to 2,200 square feet. The ambiance of the space provides the massage clients an atmosphere of calm and relaxation.

Upon the Company's inception, the rights to the intellectual property associated with two operating studios were acquired. At December 31, 2009, the Company had 40 Area Directors and has 74 open studio franchises.

The Company is a wholly-owned subsidiary of Fitness Together Holdings Inc. ("FTHI" or "Parent") which also owns Fitness Together Franchise Corporation ("FTFC"). Certain amounts such as payroll and related benefits are allocated to the Company from FTFC. Additionally, the operating results of this Company could vary significantly from those that would have occurred had they operated independently.

The following table summarizes the number of studios in operation:

	<u>December 31,</u>		
	<u>2009</u>	<u>2008</u>	<u>2007</u>
Studios open at beginning of year	71	30	2
Studios opened during the year	14	45	28
Studios closed during the year	<u>(11)</u>	<u>(4)</u>	<u>-</u>
Studios in operation as of the end of the year	<u>74</u>	<u>71</u>	<u>30</u>
Studios sold but not yet operational	<u>13</u>	<u>26</u>	<u>40</u>

ELEMENTS THERAPEUTIC MASSAGE, INC.

Notes to Financial Statements

Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets, and liabilities at the date of the financial statements, and the 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. The Company continually monitors its positions with, and the credit quality of, the financial institutions with which it invests. Periodically throughout the year, the Company has maintained balances in various operating accounts in excess of federally insured limits.

Concentrations of Credit Risk

The Company grants credit in the normal course of business to franchises related to the collection of royalties and other operating revenues. In select cases credit is issued for initial franchise fees and master fees. The Company periodically performs credit analysis and monitors the financial condition of the franchises to reduce credit risk.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable primarily consists of royalties receivables from franchisees. The Company considers a reserve for doubtful accounts based on the creditworthiness of the franchisee. The provision for uncollectible amounts is continually reviewed and adjusted to maintain the allowance at a level considered adequate to cover future losses. The allowance is management's best estimate of uncollectible amounts and is determined based on specific identification and historical performance that is tracked by the Company on an ongoing basis. The losses ultimately incurred could differ materially in the near term from the amounts estimated in determining the allowance. The Company recognized an allowance of \$22,355, \$1,957, and \$0 as of December 31, 2009, 2008, and 2007, respectively.

Property and Equipment

Property and equipment are stated at cost. Depreciation is provided utilizing the straight-line method over the estimated useful lives for owned assets, ranging from three to five years, and the related lease terms for leasehold improvements.

Trademarks

The Company has determined that its trademarks have an indefinite life and accordingly these assets are not being amortized, but are subject to impairment.

ELEMENTS THERAPEUTIC MASSAGE, INC.

Notes to Financial Statements

Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

Long-Lived Assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets is measured by a comparison of the carrying amount of an asset to estimated, undiscounted future cash flows expect to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset. Upon review of the Company's long-lived assets, no impairments were recorded for the years ended December 31, 2009, 2008, and 2007.

Franchise Revenue Recognition and Related Franchise Costs

The Company's revenues consist of fees from franchisees such as initial franchise fees, royalties, renewal fees, transfer fees, and master fees.

Initial franchise fees received from a franchisee are recognized as revenue when the Company has performed substantially all initial services required by the franchise agreement, which is generally upon the opening of a studio. Royalties are based upon a percentage of franchisee sales and recognized when earned. Renewal fees are recognized when a renewal agreement with a franchisee becomes effective. Transfer fees are based upon when the transfer agreement becomes effective and recognized when the fee has been received. Additionally, the Company recognizes master fee revenues over the life of the master fee agreement and only to the extent that cash consideration has been received for the master fee. These agreements are normally for a term of ten years.

Incremental development costs, including referral and broker fees, are deferred, but not in excess of the deferred revenue and estimated cost to open a studio and are expensed when the revenue is recognized. The Company has the right to collect a marketing fee of \$500 per month from each franchisee. The Company is not currently collecting this fee.

Equipment Revenue

The Company purchases equipment and sells it to the franchisee for a profit. The Company recognizes revenue upon the receipt of the equipment by its franchisee. Shipping and handling charges to customers are included in revenue. Shipping and handling charges incurred by the Company are included in cost of equipment.

Income Taxes

The Company files a consolidated return with its Parent. Income tax expense or benefit of the Company is paid or received by the Parent and is reflected as Due to from Parent on the balance sheet. The Company recognizes deferred tax liabilities and assets based on the differences between the tax basis of assets and liabilities and their reported amounts in the financial statements that will result in taxable or deductible amounts in future years. The Company's temporary differences result primarily from net operating loss carryforwards and recognition of revenue.

ELEMENTS THERAPEUTIC MASSAGE, INC.

Notes to Financial Statements

Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

Income Taxes (continued)

Effective January 1, 2009, the Company accounts for any uncertainty in income taxes by recognizing the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The Company measures the tax benefits recognized in the financial statements from such a position based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. The application of income tax law is inherently complex. Laws and regulations in this area are voluminous and are often ambiguous. As such, the Company is required to make many subjective assumptions and judgments regarding income tax exposures. Interpretations of and guidance surrounding income tax law and regulations change over time and may result in changes to the Company's subjective assumptions and judgments which can materially affect amounts recognized in the consolidated balance sheets and consolidated statements of operations. The result of the reassessment of the Company's tax positions did not have an impact on the consolidated financial statements. The Company's federal tax returns for all years after 2005 and the Company's state tax returns after 2004 are subject to future examination by tax authorities for all our tax jurisdictions. The Company recognizes interest and penalties related to income tax matters in other income (expense) and selling, general and administrative expenses, respectively. After evaluating the tax positions taken, none are considered to be uncertain; therefore, no amounts have been recognized as of December 31, 2009, 2008, and 2007.

Advertising Costs

The Company expenses advertising costs as incurred. Advertising expense for the years ended December 31, 2009, 2008, and 2007 was \$200,613, \$117,697, and \$69,588, respectively.

Note 2 - Property and Equipment

Property and equipment consist of the following:

	<u>December 31,</u>		
	<u>2009</u>	<u>2008</u>	<u>2007</u>
Leasehold improvements	\$ 37,413	\$ 37,413	\$ 37,413
Software	73,979	16,843	10,600
Office equipment	<u>25,189</u>	<u>6,923</u>	<u>1,470</u>
	136,581	61,179	49,483
Less accumulated depreciation and amortization	<u>(41,734)</u>	<u>(11,750)</u>	<u>(5,233)</u>
	<u>\$ 94,847</u>	<u>\$ 49,429</u>	<u>\$ 44,250</u>

ELEMENTS THERAPEUTIC MASSAGE, INC.

Notes to Financial Statements

Note 3 - Notes Receivable

Notes receivable consist of the following:

	December 31,		
	2009	2008	2007
Notes receivable for master franchise fees financed by the Company, at 0% interest rate, and having no set maturity. Franchisees make payments based upon monies that will be received as commissions on future sales.	\$ 434,500	\$ 621,000	\$ 1,042,000
Less current portion	<u>-</u>	<u>-</u>	<u>(43,000)</u>
	<u>\$ 434,500</u>	<u>\$ 621,000</u>	<u>\$ 999,000</u>

The Company has not reflected a discount on its notes receivable as it would not be material. The Company reserves an allowance for doubtful collections. The provision for uncollectible amounts is continually reviewed and adjusted to maintain the allowance at a level considered adequate to cover future losses. The allowance is management's best estimate of uncollectible amounts and is determined based on historical performance of the notes, which is tracked by the Company on an ongoing basis. The losses ultimately incurred could differ materially in the near term from the amounts estimated in determining the allowance. The Company collateralizes the notes with the area directorship agreement, assets of the store sold or other related assets.

Note 4 - Income Taxes

The Company recognizes deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the financial statements or tax returns. Deferred tax liabilities and assets are determined based on the differences between the financial statement and tax basis of assets and liabilities using the enacted tax rates in effect for the year in which the differences are expected to reverse. The measurement of deferred tax assets is reduced, if necessary, by the amount of any tax benefits that are not expected to be realized based on available evidence. The Company expects future taxable income and, therefore, believes it will recognize future benefits related to its deferred tax asset.

The net current and long-term deferred tax assets and liabilities in the accompanying balance sheets include the following:

	December 31,		
	2009	2008	2007
Long-term deferred taxes			
Deferred tax asset (liability) - deferred franchise fee	\$ 705,727	\$ 676,293	\$ (6,089)
Deferred tax asset - net operating loss	<u>-</u>	<u>-</u>	<u>342,653</u>
Net long-term deferred tax asset	<u>\$ 705,727</u>	<u>\$ 676,293</u>	<u>\$ 336,564</u>

ELEMENTS THERAPEUTIC MASSAGE, INC.

Notes to Financial Statements

Note 4 - Income Taxes (continued)

Components reflected in the statements of operations are as follows:

	For the Years Ended December 31,		
	2009	2008	2007
Current tax (benefit) expense	\$ 4,941	\$ 513,888	\$ 33,612
Deferred tax (benefit) expense	<u>(29,433)</u>	<u>(339,730)</u>	<u>(287,250)</u>
	<u>\$ (24,492)</u>	<u>\$ 174,158</u>	<u>\$ (253,638)</u>

The following is a reconciliation of the statutory federal income tax rate applied to pre-tax accounting net (loss) income compared to the income taxes in the statements of operations:

	For the Years Ended December 31,		
	2009	2008	2007
Income tax (benefit) expense at the statutory rate	\$ (14,845)	\$ 286,166	\$ (333,409)
Change resulting from			
State and local income taxes, net of federal income tax	(1,441)	27,775	(32,360)
Permanent differences	4,219	3,106	1,564
Change in effective tax rate	<u>(12,425)</u>	<u>(142,707)</u>	<u>110,567</u>
	<u>\$ (24,492)</u>	<u>\$ 174,340</u>	<u>\$ (253,638)</u>

Note 5 - Commitments and Contingencies

Litigation

In the normal course of business, the Company is party to litigation from time to time. The Company maintains insurance to cover certain actions and believes that resolution of such litigation will not have a material adverse effect on the Company.

Consulting Agreement

The Company entered into a consulting agreement dated May 16, 2006 for a period of ten years ending 2016 with the original founder/owner. This agreement stipulates that the former owner will perform certain consulting services for the Company in exchange for compensation based upon franchise units sold and opened for business, including Company owned or affiliate owned units opened for business anywhere in the world. Consulting fees for the years ended December 31, 2009, 2008, and 2007, \$38,000, \$88,000, and \$32,500, respectively, were paid for consulting fees.

ELEMENTS THERAPEUTIC MASSAGE, INC.

Notes to Financial Statements

Note 5 - Commitments and Contingencies (continued)

Management Fees

The Company entered into a management agreement with an entity owned by certain directors of the Company, beginning August 4, 2006 which expired in March 2008. Under the agreement, the Company paid 30% of initial franchise fees collected after the first \$100,000. On November 10, 2008, the management fees due under the agreement were rescinded as part of a debt restructure agreement; therefore all unpaid management fees as of November 10, 2008 in the amount of \$1,443,000 were forgiven. During 2009, 2008, and 2007, the Company had accrued management fees of \$0, \$431,400, and \$885,000, respectively.

Note 6 - Related Party Transactions

The Company is a wholly owned subsidiary of FTHI, which also owns FTFC. Based upon cash needs of each company, cash may transfer amongst the companies. The amounts transferred are recorded as an intercompany asset or liability depending upon the amounts owed to or from related entities. The balance due from FTFC as of December 31, 2009, 2008, and 2007 was \$1,070,916, \$2,232,898, and \$2,042,838, respectively. The intercompany balance due to FTFC was \$3,750, \$547,500, and \$33,612 as of December 31, 2009, 2008, and 2007, respectively.

During the year ended December 31, 2009, FTHI contributed \$475,000 to the Company, in effect contributing to equity the majority of amounts due to FTHI. The contribution is recorded as such in the statement of changes in stockholders' equity.

Note 7 - Subsequent Events

The Company has evaluated events subsequent to December 31, 2009 through March 8, 2010, which is the issuance date of this report.

On January 26, 2010, the Company entered into an agreement to repurchase the Arkansas territory held by an area director under a master franchise agreement. This master franchise agreement entitled the area directors to a portion of certain revenues generated in the territories, which will now be retained wholly by the company. The valuation technique utilized in the acquisition considered the royalties derived from the territory in the trailing twelve months, less certain fees and expenses. The purchase price was \$94,354 and the Company entered into a note payable for that amount which will be paid from ongoing royalties earned in the territory acquired. The fair value of the remaining contractual term of the agreement is \$94,354 which will be reported in intangible assets on the Company's balance sheet. Any unearned revenue existing at the date of acquisition for these master franchise agreements is reported as revenue in the accompanying statements of operation. Total unearned revenue released as a result of these acquisitions was approximately \$97,800.

EXHIBIT E

LIST OF STATE AGENTS/AGENTS FOR SERVICE OF PROCESS

Exhibit E

EXHIBIT E

STATE AGENCIES/AGENTS FOR SERVICE OF PROCESS

Listed here are the names, addresses and telephone numbers of the state agencies having responsibility for the franchising disclosure/registration laws. We may not yet be registered to sell franchises in any or all of these states. There may be states in addition to those listed below in which we have appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.

CALIFORNIA

Department of Corporations:
1 (866) 275-2677

Los Angeles

Suite 750
320 West 4th Street
Los Angeles, California 90013
(213) 576-7505

Sacramento

1515 K Street, Suite 200
Sacramento, California 95814-4052
(916) 445-7205

San Diego

1350 Front Street
San Diego, California 92101
(619) 525-4044

San Francisco

71 Stevenson Street, Suite 2100
San Francisco, California 94105
(415) 972-8559

HAWAII

(agent for service of process)

Commissioner of Securities of the
Department of Commerce and Consumer
Affairs
Business Registration Division
Securities Compliance Branch
335 Merchant Street, Room 203
Honolulu, Hawaii 96813
(808) 586-2722

(for other matters)
Business Registration Division
Securities Compliance Branch
Department of Commerce
and Consumer Affairs
P.O. Box 40
Honolulu, Hawaii 96810
(808) 586-2722

ILLINOIS

Franchise Bureau
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-4465

INDIANA

(state administrator)

Indiana Secretary of State
Securities Division, E-111
302 West Washington Street
Indianapolis, Indiana 46204
(317) 232-6681

(agent for service of process)

Indiana Secretary of State
201 State House
200 West Washington Street
Indianapolis, Indiana 46204
(317) 232-6531

MARYLAND

(state administrator)

Office of the Attorney General
Securities Division
200 St. Paul Place
Baltimore, Maryland 21202-2021
(410) 576-6360

(agent for service of process)

Maryland Securities Commissioner
at the Office of the Attorney General
Securities Division
200 St. Paul Place
Baltimore, Maryland 21202-2021
(410) 576-6360

MICHIGAN

(state administrator)

Consumer Protection Division
Antitrust and Franchise Unit
Michigan Department of Attorney General
670 G. Mennen Williams Building
525 West Ottawa
Lansing, Michigan 48933
(517) 373-7177

(agent for service of process)

Michigan Department of Commerce,
Corporations and Securities Bureau
P.O. Box 30054
6546 Mercantile Way
Lansing, Michigan 48909

MINNESOTA

Commissioner of Commerce
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, Minnesota 55101
(651) 296-6328

NEW YORK

(state administrator)

New York State Department of Law
Bureau of Investor Protection
and Securities
120 Broadway
New York, New York 10271
(212) 416-8000

(agent for service of process)

Secretary of State of New York
41 State Street
Albany, New York 12231
(518) 474-4752

NORTH DAKOTA

North Dakota Securities Department
600 East Boulevard Avenue
State Capitol - Fifth Floor
Bismarck, North Dakota 58505
(701) 328-4712

OREGON

Department of Insurance and Finance
Corporate Securities Section
Labor and Industries Building
Salem, Oregon 97310
(503) 378-4387

RHODE ISLAND

Division of Securities
1511 Pontiac Avenue
Cranston, Rhode Island 02920
(401) 462-9582

SOUTH DAKOTA

Department of Revenue and Regulation
Division of Securities
445 East Capitol
Pierre, South Dakota 57501
(605) 773-4013

VIRGINIA

(state administrator)

State Corporation Commission
Division of Securities
and Retail Franchising
1300 East Main Street, Ninth Floor
Richmond, Virginia 23219
(804) 371-9051

(agent for service of process)

Clerk, State Corporation Commission
1300 East Main Street
Richmond, Virginia 23219
(804) 371-9672

WASHINGTON

(state administrator)

Department of Financial Institutions
Securities Division
P.O. Box 9033
Olympia, Washington 98507-9033
(360) 902-8760

(agent for service of process)

Director
Department of Financial Institutions
Securities Division
150 Israel Road, S.W.
Tumwater, Washington 98501

WISCONSIN

Securities and Franchise Registration
Wisconsin Securities Commission
345 West Washington Avenue, 4th Floor
Madison, Wisconsin 53703
(608) 266-3431

EXHIBIT F

LIST OF AREA DIRECTORS AS OF 12/31/09

Exhibit F

EXHIBIT F**AREA DIRECTORS AS OF DECEMBER 31, 2009**

Area	Name	Principal(s)	Business Address				Telephone
AZ	Intrepid Franchise Group LLC	Sophia Ruck	27551 N. 70th St	Scottsdale	AZ	85266	(480) 298-8141
AZ	Massage Franchise Group LLC	Pam and Nelson Crespo	16255 N. Scottsdale Raod, #C5	Scottsdale	AZ	85254	(480) 998-2120
CA	LaSpa Moksha	Rima Roy	1631 N. California Blvd. #B	Walnut Creek	CA	94596	(510) 821-1785
CA	Kelly Berman and Tony Munio	Kelly Berman and Tony Munio	3912 Montego Drive	Huntington Beach	CA	92649	(949) 340-7185
CA	W2D Corp.	Deborah Greene and Richard Connell	18303 Brookhurst Street	Fountain Valley	CA	92708	(714) 965-2700
CO	McKay Partners, Inc.	Cody McKay	832 S. Gilpin Street	Denver	CO	80209	(602) 770-0377
CO	Massage Colorado Inc	Jason Lenhart	5331 Spur Cross Trail	Parker	CO	80134	(303) 525-6979
CO	Unlimited Surfaces, Inc.	Todd Tantillo	340 Holly Street	Denver	CO	80220	(720) 217-7260
FL	Backstretch, LLC	Dennis and Louise Casper	6290 W. Sample Road, #102	Coral Springs	FL	33067	(954) 757-2939
FL	Pampering Touch Master Inc.	Margaret Wood	2549 Mulberry Dr	Clearwater	FL	33761	(727) 784-6441
FL	Wellness Franchises of South Florida, LLC	Cheryl Badiali	62 Windsor Dr	Englewood	FL	34223	(941) 468-9824
GA	Ziegler Enterprises LLC	Steve Ziegler	6601 Sugarloaf Pkwy #240	Duluth	GA	30097	(678) 431-6776
GA	DCC Optimum Investments, Inc.	Carolyn Carrington	11720 Medlock Bridge Rd	Johns Creek	GA	30097	(770) 622-4000
ID	Elements Master, Inc.	Todd Opheim	1047 E. Opus Street	Boise	ID	83716	(208) 703-1046
ID	Hayek Massage Inc.	Joel Hayek	3209 E. 57 th Ave, Suite F	Spokane	WA	99223	(509) 448-9398
IL	Toensing Holdings, Inc.	Nathan Toensing	25409 Pavilion Place	Plainfield	IL	60585	(630) 772-4747
IL	AG Wellness Group, LLC	Dave Ablin	908 Hampstead Court	Barrington	IL	60010	(847) 208-4500
IL	AG Wellness Group, LLC	Steve Gagliardo	803 W. Partridge Drive	Palantine	IL	60067	(847) 977-8668

Area	Name	Principal(s)	Business Address				Telephone
KY	Meridian Lines LLC	Colleen O'Connor	1301 Herr Lane	Louisville	KY	40222	(502) 412-9383
MD	Magic Hands Enterprises, LLC	Kenneth A. and Vicky L Piering	12401 Middlebrook Rd, #190	Germantown	MD	20874	(301) 353-9676
MA	Platinum Franchise, Inc.	Steve Stabile	265 Webster Woods Lane	North Andover	MA	01845	(978) 265-4294
MI	Platinum Wellness, LLC	Mehboob Sadikot	24276 Novi Road	Novi	MI	48375	(248) 348-8770
MN	SKK Development LLC	M. Bruce McNeil	10165 Hennipin Town Road	Eden Prairie	MN	55347	(952) 405-6220
NV	Nevada Wellness, Inc.	Jim and Cherlyn White	2831 St. Rose Parkway, #206	Henderson	NV	89052	(702) 818-1138
OH	Seiler Enterprises	Jonathan Seiler	3804 Fishinger Blvd.	Hilliard	OH	43026	(614) 777-0222
OR	Greg McMillin, LLC	Greg McMillin	6625 Lowry Dr	West Linn	OR	97068	(503) 277-8770
TX	WAL Interest LLC	Cliff Latham	4130 Sweetwater Drive	College Station	TX	77845	(979) 696-2000
UT	Elements Master, Inc.	Todd Opheim	1047 E. Opus Street	Boise	ID	83716	(208) 703-1046
WA	Hayek Massage Inc.	Joel Hayek	3209 E. 57 th Ave, Suite F	Spokane	WA	99223	(509) 448-9398
WA	Washington Massage Enterprise Inc.	Amy Lewallen	10812 222th Ave. E.	Buckley	WA	98321	(253) 632-7767
WA	Washington Massage Enterprise Inc.	Brian Wehner	670 NW Gilman's Corner	Issaquah	WA	98027	(425) 427-6562
WI	ETM Master, LLC	Aimee Matchette	835 E. Bay Point Rd	Bayside	WI	53217	(414) 303-4502

EXHIBIT G
FRANCHISEE QUESTIONNAIRE

Exhibit G

FRANCHISEE QUESTIONNAIRE

You are preparing to enter into an Elements Therapeutic Massage, Inc. (“Elements,” “we” or “us”) franchise agreement (“Franchise Agreement”). The purpose of this Questionnaire is to determine whether any statements or promises were made to you that we have not authorized and that may be untrue or misleading. All capitalized terms used but not defined in this Questionnaire will have the meanings ascribed to them in the Franchise Agreement.

1. Establishment of New Business. The purchase of a Franchise Agreement and Studio is the purchase of a license to establish and operate a business that you will develop and operate under the Elements name and trademark. You must operate your Studio in accordance with our System Standards. You understand that the operation of a new business involves a number of business risks that exist in any business.

2. Ability to Operate an Elements Studio. The ability to operate a profitable Studio requires some level of business and management skills plus the ability to provide good customer service. Our franchisees must always provide excellence in customer service. How you treat your customers and your ability to implement our systems is critical to the operation of your Studio.

3. Importance of Your Effort. Starting a business is a complicated undertaking and will require both a large financial investment and a commitment of personal time to work at and on the business a substantial number of hours per week. Although we will provide assistance and advice, we cannot guarantee your success as a franchisee. The earnings and profits that you earn as a franchisee will depend upon your own individual efforts in operating your Studio. You understand that the success or failure of your Studio will also depend on your local marketing efforts, and you understand that you must continuously actively engage in marketing efforts such as distributing door hangers and flyers, placing advertisements in local newspapers and magazines, direct mailing efforts, networking, and otherwise as we recommend. Your failure to follow our System Standards may have a negative effect on your Studio and the financial results you obtain from operating your Studio.

4. Working Capital and Financial Requirements. In our Franchise Disclosure Document (“Disclosure Document”), we have disclosed an ESTIMATE of the amount of funds that you should have available to invest in your Studio in the start-up phase. However, no amount of investment can guarantee that you will have a profitable Studio.

5. Pricing of Products and Services. Your election to price products and services too low or too high may adversely affect the success of your Studio.

6. Training and Support. We produce and distribute various training materials, programs, manuals and newsletters to our franchisees. We also design and facilitate national conferences in order to encourage networking and the exchange of ideas among franchisees for the purpose of helping you make your Studio more profitable. While we can make recommendations and suggestions on how to improve your Studio, it is up to you to avail yourself of, and use, the information, ideas and opportunities we provide.

7. Competition. Each service you provide is provided by others, and new competitors may appear at any time within your Territory, although these competitors are not licensed to use our Franchise System or our Marks. It is also possible that another Elements Studio may be located near or adjacent to your Territory.

8. Taxes, Fees, and Governmental Regulations. Your Studio is a business operation and will be required to pay all taxes and fees imposed on businesses by various governmental entities. Your Studio and business may be subject to a variety of federal, state, and local laws, and any new or proposed legislation. You understand that we cannot advise you with regard to such laws and it is your responsibility to know and comply with them.

9. Complaints and Litigation. Occasionally, we may receive complaints from, or be served with lawsuits, by our franchisees, or by clients of our franchisees, alleging misconduct and/or violation(s) of law. Adverse publicity resulting from such allegations may materially affect us and all of our franchisees, regardless of whether such allegations are true. On occasion, we will file suit against franchisees or former franchisees to enforce the terms of the Franchise Agreement. While we believe we have not violated any franchise laws or misled or defrauded any prospective franchisees, we cannot provide any assurance that an adverse result may not occur.

10. Liability Insurance. You may from time to time, receive complaints from, or be served with lawsuits by, your employees or clients. Because you are licensed to use our Marks in the operation of your Studio, we are occasionally included in these lawsuits. If we are sued because of something you have allegedly done or failed to do, you must defend us in the lawsuit. As a result, you must carry proper insurance on your Studio and business and you must name us as an additional insured. If you do not carry the proper coverage or if you fail to defend us, we may terminate your Franchise Agreement.

11. Renewal Option at the End of Term. Your Franchise Agreement gives you a license to operate your Studio for an initial term of 10 years. At the end of the 10 years, if you have complied with the terms of the Franchise Agreement, you may renew your Franchise Agreement by executing the then-current form of franchise agreement, and by complying with all of the other requirements for renewal. If we refuse to renew your Franchise Agreement because you have not complied with the Franchise Agreement, or if you choose not to renew your Franchise Agreement, you must provide to us your client list and other client information and you will be prohibited from operating any similar business which competes with us or our franchisees for one year.

12. Use of Independent Professional Advisers. We recommend that you consult with your own professional advisors in order to satisfy yourself concerning your ability to establish and operate a profitable business.

Please review each of the following questions carefully and provide responses.

1. Have you received and carefully reviewed the Disclosure Document provided to you?

_____ YES _____ NO Initials: _____

2. Did you sign a receipt for the Disclosure Document indicating the date you received it?

_____ YES _____ NO Initials: _____

3. Have you received and carefully reviewed the Franchise Agreement and each exhibit and schedule attached to it?

_____ YES _____ NO Initials: _____

4. Have you been given the opportunity to discuss the risks of operating an Elements Studio with an attorney, accountant or other professional advisor?

_____ YES _____ NO Initials: _____

5. Do you understand that the purchase of an Elements franchise agreement is a business decision that has many of the same risks associated with starting any type of business, and that the success or failure of your Elements Studio will depend in large part upon your skills and abilities, the number of hours you work, your ability to follow and apply our System Standards, competition from other businesses providing the same services, interest rates, inflation, the economy, labor costs, and other economic and business factors?

_____ YES _____ NO Initials: _____

6. Do you understand and acknowledge that we cannot guarantee the success of your Elements Studio or that it will ever achieve profitability?

_____ YES _____ NO Initials: _____

7. Do you understand that in all dealings with you, our owners, officers, directors, employees and agents act only in a representative capacity and not in an individual capacity and such dealings are solely between you and us?

_____ YES _____ NO Initials: _____

8. If you answered "no" to any of questions 1 through 7, please indicate the question number(s) and provide a further explanation of your answer(s) in the space provided below, attaching additional sheets if necessary. If you answered "yes" to all of questions 1 through 7, please leave the lines blank.

<u>Questions Number</u>	<u>Explanation</u>

Please review each of the following questions carefully and provide responses. When answering these questions, please remember that Elements franchisees are not our representatives.

9. Have any of our employees or representatives made any statement or promise concerning the revenues and/or profits of an Elements Studio, other than the information contained in the Disclosure Document?

_____ YES _____ NO Initials: _____

10. Have any of our employees or representatives made any statement or promise about the amount of money you can or will earn as an Elements franchisee?

_____ YES _____ NO Initials: _____

11. Have any of our employees or representatives made any statement or promise regarding the costs you may incur in operating an Elements Studio, or the amount of advertising, marketing, training or other support services or assistance that we will furnish to you; or any other statement, promise or agreement that is contrary to, or different from, the information contained in the Disclosure Document provided to you?

_____ YES _____ NO Initials: _____

12. If you answered “yes” to any of questions 9 through 12, please indicate the question number(s) and provide a further explanation of your answer(s) in the space provided, attaching additional sheets if necessary. If you answered “no” to all of questions 9 through 12 above, please leave the lines blank.

Questions Number

Explanation

By signing below, you are representing that you have responded truthfully to the above questions and that you FULLY UNDERSTAND AND ACCEPT ALL OF THE BUSINESS RISKS described above.

DATE

SIGNATURE OF FRANCHISEE

EXHIBIT H
FORM OF NON-COMPETE AND CONFIDENTIALITY AGREEMENT

NON COMPETE and CONFIDENTIALITY AGREEMENT

SAMPLE

This **Non-Compete and Confidentiality Agreement** (the Agreement”) is made _____, 20__, between _____ (“Employer”) and _____ (“Employee”).

Recitals

- A. Employer has hired Employee to perform services as a massage therapist at Employer’s Elements Therapeutic Massage studio;
- B. In connection with Employee’s employment with Employer, Employee will receive (1) confidential and proprietary information and materials provided to Employer by Elements Therapeutic Massage, Inc. (“Franchisor”), the franchisor of the unique Elements Therapeutic Massage franchise system (“Franchise System”), and (2) information about, and access to, Employer’s clients and confidential and proprietary information;
- C. In consideration of employment by Employer, Employee has agreed (1) to maintain the confidentiality of Franchisor’s and Employer’s confidential and proprietary information and (2) not to compete with Employer during the term of Employee’s employment and for a period after termination of Employee’s employment with Employer, all on the terms and subject to the conditions contained in this Agreement; and

NOW, THEREFORE, the parties agree:

- 1. **Covenant Not to Compete.**
 - A. For a period of one year from the date of termination of Employee’s employment with Employer for any reason or no reason, Employee covenants not to, directly or indirectly, solicit or provide massage service or bodywork service to any persons who are former clients of Employer or who were clients of Employer at any time during Employee’s employment by Employer.
 - B. In addition, during the term of Employee’s employment by Employer and for one year from the date of Employee’s termination of employment with Employer for any reason or no reason, Employee covenants not to, without the express prior written consent of Employer, directly or indirectly, provide massage service or bodywork services, or establish, consult with, work for, contract with, be employed by, accept payments from or participate in the ownership or management of any entity that is engaged in massage or bodywork services or other businesses that offer massage or bodywork services within a radius of 10 miles of any Employer location located in _____ County, _____.
 - C. For purposes of this Agreement the periods set forth in Sections 1(A) and (B) above are hereinafter referred to as the “Non-Compete Period” and the geographic restriction set forth in Section 1(B) above is hereinafter referred to as the “Geographic Restriction”.
- 2. **Injunctive Relief.** Both parties recognize that the services to be rendered by Employee for Employer are special, unique and of an extraordinary character, and that Employer is furnishing Employee an established base of clients. Upon breach of this Agreement, Employer shall be entitled, if it so elects, to seek injunctive relief in any court of competent jurisdiction to enjoin Employee from providing massage or bodywork services or from working for, establishing,

contracting with, being employed by, accepting payment from, or participating in the ownership or management of any other entity that is engaged in massage or bodywork services during the Non-Compete Period set forth herein subject to the following:

- A. If a court should find that the class of persons consisting of Employer's clients and former clients is broader than necessary to protect Employer's legitimate protectable interests, then Employee covenants not to provide services to Employer's clients (1) for whom Employee provided services while employed by Employer and (2) with whom Employee became acquainted during the course of Employee's employment by Employer;
 - B. If a court should find that the Geographic Restriction is too broad because the radius extends to any Employer location in the County designated above and is not necessary to protect Employer's legitimate protectable interests, then Employee covenants not to compete as provided herein within a 10 mile radius of the Employer location in which Employee was employed;
 - C. If a court should find that the Geographic Restriction is too broad because the radius size is too far (whether from any Employer location in the County set forth above or the Employer location at which Employee was employed), and is not necessary to protect Employer's legitimate protectable interests, then Employee covenants not to compete within an eight (8) mile radius of any Employer location in the County designated above or of the Employer location at which Employee was employed, as the case may be;
 - D. If a court should find that the Geographic Restriction is too broad because the radius size of 8 miles is too far (whether from any Employer location in the County set forth above or the Employer location at which Employee was employed), and is not necessary to protect Employer's legitimate protectable interests,, then Employee covenants not to compete within six (6) miles of any Employer location or of the Employer location at which Employee was employed, as the case may be, or such lesser distance as the court should find is necessary to protect Employer's legitimate protectable interests;
 - E. If a court should find that the duration of the restriction of one (1) year is not necessary to protect Employer's legitimate protectable interests, then Employee covenants not to compete with Employer as provided herein for ten (10) months after termination;
 - F. If a court should find that the duration of the restriction of one (1) year is not necessary to protect Employer's legitimate protectable interests, then Employee covenants not to compete with Employer as provided herein for eight (8) months after termination;
 - G. If a court should find that the duration of the restriction of eight (8) months is not necessary to protect Employer's legitimate protectable interests, then Employee covenants not to compete with Employer as provided herein for six (6) months after termination, or such lesser period of time as the court should find necessary to protect Employer's legitimate protectable interests.
3. **Damages.** In addition to injunctive relief, Employer shall be entitled to seek such other and further relief, including, but not limited to, the recovery of damages as may be permitted by law or in equity.

4. **Unauthorized Disclosure of Confidential Information.** While employed by Employer and thereafter, Employee shall not, directly or indirectly, disclose any Confidential Information (as defined below) or use any Confidential Information other than in connection with Employee's employment by and for the benefit of Employer. The term "Confidential Information" as used in this Agreement means any and all trade secrets and proprietary information of Franchisor, its affiliates and Employer whether prepared or developed by or for Franchisor, its affiliates or Employer or received by Franchisor, its affiliates and Employer from any outside source. Without limiting the scope of this definition, Confidential Information includes any franchise manuals, customer files, customer lists, any business, marketing, financial or sales record, data, plans, or surveys; and any other record or information relating to the present or future business, product or service of Franchisor, its affiliates or Employer. All Confidential Information and copies thereof are the sole property of Franchisor, its affiliates and/or Employer, as appropriate. Notwithstanding the foregoing, the term Confidential Information shall not apply to information that Franchisor, its affiliates or Employer have voluntarily disclosed to the public without restriction, or which has otherwise lawfully entered the public domain.

5. **Attorneys' Fees.** Employee agrees that in any litigation arising out of breach of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

(Signature Page Follows)

EMPLOYER:

If a Legal Entity:

[Name of Employer]

By: _____

Name: _____

Title: _____

If an Individual:

[Name]

EMPLOYEE:

If a Legal Entity:

[Name of Employer]

By: _____

Name: _____

Title: _____

If an Individual:

[Name]

EXHIBIT I

FORM OF CONVERSION PROGRAM ADDENDUM TO FRANCHISE AGREEMENT

**CONVERSION ADDENDUM TO
ELEMENTS THERAPEUTIC MASSAGE, INC.
FRANCHISE AGREEMENT**

THIS ADDENDUM (the “**Addendum**”) is made effective as of _____, 20__ (the “**Effective Date**”) between **ELEMENTS THERAPEUTIC MASSAGE, INC.**, a Delaware corporation (“**we,**” “**us**” or “**our**”), and _____, a _____ (“**you**” or “**your**”).

RECITALS

- A. WHEREAS, you operate an existing business that is based on a model similar to our Franchise System (the “Existing Business”) located at _____ (the “Studio Location”);
- B. WHEREAS, you desire to convert your Existing Business to an Elements Therapeutic Massage studio (“Studio”) using our Franchise System and the Proprietary Assets in accordance with the terms and conditions of the franchise agreement that you are entering into with us as of even date herewith (the “Franchise Agreement”); and
- C. WHEREAS, you and we have agreed to amend certain terms of the Franchise Agreement as set forth below. Capitalized terms that are used but not defined in this Addendum will have the meanings ascribed to them in the Franchise Agreement.

AGREEMENT

FOR AND IN CONSIDERATION of the foregoing Recitals and the undertakings and commitments set forth in this Addendum, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Grant of Franchise. Section 1.1 of the Franchise Agreement is hereby deleted and restated in its entirety as follows:

Grant of Franchise. We hereby grant to you, and you accept from us, the right to use the Marks and Proprietary Assets to convert your Existing Business into a Studio to be operated at the Studio Location. You agree to use the Marks and Proprietary Assets, and conform to the System Standards, as they are periodically changed, improved and further developed by us and our affiliates, only in accordance with the terms, and subject to the conditions, of this Agreement. You do not have any right to sublicense or sub-franchise your Franchise Agreement or the Studio.

- 2. Territory. Section 2.1 and Exhibit 1 of the Franchise Agreement are hereby deleted in their entirety.

- 3. Site Selection. The second paragraph of Section 2.2 of the Franchise Agreement is hereby deleted in its entirety. The first sentence of Section 2.2 of the Franchise Agreement is hereby deleted and restated in its entirety as follows:

You will operate your Studio from the Studio Location.

4. Initial Franchise Fee. The first sentence of Section 4.1 of the Franchise Agreement is hereby deleted and restated in its entirety as follows:

You must pay to us, at the time you enter into the Franchise Agreement, in the form of a lump sum payment, by cashier's check or wire transfer, the amount of Nineteen Thousand Five Hundred Dollars (\$19,500), in payment of one-half the current Initial Franchise Fee and, upon conversion of your Existing Business, you must pay us Nineteen Thousand Five Hundred Dollars (\$19,500).

5. Royalty. The first sentence of Section 4.2 of the Franchise Agreement is hereby deleted and replaced in its entirety with the following:

On the fifth (5th) day of the first full calendar month after the Effective Date and on the 5th day of each month after that date during the term of this Agreement, you must pay to us a continuing monthly royalty of six percent (6%) of your gross monthly receipts (as defined below) (the "Monthly Royalty").

6. Computer Software. The two sentences of Section 4.7 of the Franchise Agreement are hereby deleted and restated in their entirety with the following:

You must use software we designate in the operation of your Studio. Within thirty (30) days after the Effective Date (or such other date we may approve), you will be required to pay us a software set up fee (currently \$940.50) and a monthly fee, which is currently \$68, in each case, payable by ACH.

7. Marketing Spend Requirement. Section 4.13 of the Franchise Agreement is hereby deleted and restated in its entirety with the following:

Marketing Spend Requirement. Throughout the term of this Agreement, you must spend a minimum of 5% of your gross receipts on advertising, marketing and promotional programs for your Studio (the "Marketing Spend Requirement"). Your Marketing Spend Requirement may in the future include any contributions you make to a Marketing Fund (if we establish a Marketing Fund) and any contributions you make to a Marketing Cooperative. If those contributions are established or exist and are subsequently adjusted, you must adjust your other advertising, marketing and promotional expenditures so that the Marketing Spend Requirement does not drop below the minimum 5% of gross receipts you are required to spend to meet your Marketing Spend Requirement. Your required Marketing Fund and Marketing Cooperative contributions could, by themselves, exceed the minimum Marketing Spend Requirement. In addition, we have the right to collect any funds constituting the minimum Marketing Spend Requirement that are not otherwise being contributed to the National Marketing Fund or Marketing Cooperatives and use those funds for local, regional or national advertising or promotional programs that reach your Studio's local trade area.

8. Initial Training. The first two sentences of Section 5.2 of the Franchise Agreement are hereby deleted and replaced in their entirety with the following:

Within 180 days after the Effective Date, we or our designee will provide initial training to you or one of your co-owners, and one of your managers and/or employees. Initial

training consists of a comprehensive program that provides you with the methods, procedures and techniques you need to operate your Studio ("Initial Training"). Two designated individuals must complete Initial Training within 180 days after the Effective Date.

9. Studio Design. Section 5.5 of the Franchise Agreement is hereby amended by adding the phrase "within 180 days after the Effective Date" to the end of the last sentence.

10. Lease Approval. The first two paragraphs of Section 7.2 of the Franchise Agreement (excluding the list of (a) through (f)) are hereby deleted and restated in their entirety with the following:

Lease Approval. You must deliver to us a copy of your lease for your Studio Location on or prior to the Effective Date and we must approve or not approve the lease within 30 days after the Effective Date. You acknowledge and agree that any review and approval of any lease is for our sole benefit and the benefit of the Franchise System, and is not intended to imply or guarantee the success or profitability of any Studio Location. Unless we otherwise agree, you must obtain an addendum to the lease for your Studio Location which shall contain the following terms and provisions:

11. Converting Your Franchise. Section 7.3(a) of the Franchise Agreement is hereby deleted and restated in its entirety as follows:

(a) Conversion of Your Existing Business. You must perform the following actions to convert your Existing Business to your Studio:

1. prepare (or cause to be prepared) and submit to us for our approval, a site remodeling plan with any proposed modifications to our conceptual designs and specifications (not including construction) including, but not limited to, modifications to our required dimensions, exterior and interior design, materials, layout, equipment, fixtures, furniture, and signs and décor; provided, however, that modifications are permitted only if required to comply with applicable ordinances, building codes and permit requirements and are subject to our prior written approval;
2. obtain all permits and licenses for the lawful remodeling construction and operation of the Studio (if not previously obtained or maintained), together with all certifications from government authorities having jurisdiction over the Studio Location that all requirements for construction and operations have been met, including, but not limited to, zoning, access, sign, health, fire, and safety requirements, building and other required construction permits, licenses to do business, fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire clearances;
3. obtain all customary contractors' sworn statements and partial and final lien waivers for remodeling construction, decorating and installation services;
4. purchase or lease equipment, furniture, fixtures and signs as provided under this Agreement or in the Operations Manual, or retain such items from your Existing Business with our prior written approval;

5. complete the construction and remodeling of the Studio Location, including installing equipment, fixtures, furniture and signs, and decorating your Studio, in full and strict compliance with the plans and specifications we have approved, and in accordance with all applicable ordinances, building codes and permit requirements; and
6. remove from the Studio Location and cease using all signs and marks identified with your Existing Business that we have not authorized, change all telephone directory listings to the name of your Studio and otherwise complete all other aspects of the conversion of your Existing Business to your Studio as we may reasonably require.

12. Conversion of Operations. Section 7.3(b) of the Franchise Agreement is hereby deleted and restated in its entirety with the following:

(b) Conversion of Operations. You must convert your Existing Business in accordance with our System Standards and Franchise System and pursuant to Section 7.3(a) of this Agreement within 180 days after the Effective Date.

13. Insurance. The first sentence of Section 7.4 of the Franchise Agreement is hereby deleted and replaced in its entirety with the following:

Provided you maintain insurance on your Existing Business, within sixty (60) days after the Effective Date, you must purchase insurance coverage from a responsible carrier with a performance rating of A+ or higher as rated in the most recent edition of Best Insurance Reports (or comparable criteria as we may specify). If you do not maintain insurance on your Existing Business, then you must take such action within thirty (30) days of the Effective Date.

14. Insurance. The first sentence of the second paragraph of Section 7.4 of the Franchise Agreement is hereby deleted and replaced in its entirety with the following:

Provided you maintain insurance on your Existing Business, within sixty (60) days after the Effective Date, and then annually, you must provide to us a certificate of insurance (including those of each of your employees if required) reflecting the following minimum coverage limits: (a) \$1,000,000 per occurrence comprehensive general liability; (b) \$60,000.00 business interruption; (c) worker's compensation; and (d) property insurance in amounts that protect your Studio's personal property, fixtures, and improvements. If you do not maintain insurance on your Existing Business, then you must take such action within thirty (30) days of the Effective Date.

15. Conversion Advertising. Section 8.2 of the Franchise Agreement is hereby deleted and restated in its entirety with the following:

Conversion Advertising. We will provide you with recommendations and guidelines for advertising and promoting your Studio. You are required to purchase a stationery start-up kit and we recommend that you also purchase a press kit and other advertising and promotional materials. If you choose to create your own advertising and promotional materials, you must obtain our written approval of the materials before using them. You are required to spend at least

\$3,000 to \$6,000 on marketing activities no later than sixty (60) days prior to converting your Existing Business to a Studio.

16. Marketing Spend Requirement. The first sentence of Section 8.5(b) of the Franchise Agreement is hereby deleted and restated in its entirety with the following:

Within ninety (90) days prior to conversion of your Existing Business to a Studio, you must submit to us for approval an advertising and marketing plan describing your advertising plan and your plan for marketing before and after completion of the Studio conversion.

17. Gift Cards, Certificates and Checks. Section 8.7 of the Franchise Agreement is hereby amended by adding the following to the end of Section 8.7:

Notwithstanding the foregoing, your Studio may redeem all gift cards and gift certificates purchased from your Existing Business; provided that all gift card and gift certificate amounts redeemed on or after the Effective Date shall be treated as gross monthly receipts pursuant to Section 4.3 of this Agreement.

18. Default; Termination. Section 10.1(i) of the Franchise Agreement is hereby deleted and restated in its entirety with the following:

(i) if you and any of your owners is discovered to be cheating at Initial Training or fails to complete Initial Training to our satisfaction, or if you fail to convert your Existing Business to a Studio pursuant to Section 7.3(a) of this Agreement within 180 days after the Effective Date;

19. The Recitals of this Addendum are hereby incorporated by reference herein.

20. The terms of this Addendum form an integral part, and are incorporated into and made a part, of the Franchise Agreement. In the event of a conflict between the terms contained in the Franchise Agreement and this Addendum, the terms and conditions of this Addendum shall govern, control, and supersede any inconsistent or conflicting terms of the Franchise Agreement.

21. Except as amended by this Addendum, the terms and conditions of the Franchise Agreement are hereby confirmed, ratified and approved in their entirety, and shall continue in full force and effect, as amended and modified by this Addendum.

22. This Addendum may be signed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signature by facsimile is hereby authorized and shall have the same force and effect as an original. References to the Franchise Agreement shall mean the Franchise Agreement as amended and modified by this Addendum.

(Signature Page Follows)

IN WITNESS WHEREOF, you and we have signed this Addendum effective as of the Effective Date.

FRANCHISOR:

ELEMENTS THERAPEUTIC MASSAGE,
INC.

By: _____

Printed Name: _____

Its: _____

FRANCHISEE:

(Name of Individual or Entity)

By: _____

Printed Name: _____

Its: _____
(Title of Signor, if applicable)

EXHIBIT J
FORM OF GUARANTEE INDEMNIFICATION AGREEMENT

Exhibit J

FORM OF GUARANTEE INDEMNIFICATION AGREEMENT

GUARANTEE INDEMNIFICATION

In consideration of, and as an inducement to, the agreement by FTHI Franchise Assurance Company (“**FTHI-FAC**”) to guarantee a portion of the Franchisee’s financing (the “**Guarantee**”) from [Name of Lender] (the “**Lender**”) in connection with the franchise operated pursuant to a franchise agreement (the “**Franchise Agreement**”) dated _____ by and between Elements Therapeutic Massage, Inc. (“**Elements**”) and _____ (the “**Franchisee**”), each of the undersigned Franchisee and the individual owners of the Franchisee hereby agrees to the following:

In the event that FTHI-FAC is required to pay any amounts to the Lender or its successor pursuant to the Guarantee, each of the undersigned agrees to indemnify, defend and hold harmless FTHI-FAC from and against, and agrees to reimburse FTHI-FAC for, all costs, claims, obligations and damages arising from the Guarantee. For purposes of this indemnification, “**claims**” means and includes all obligations, actual and consequential damages, and costs reasonably incurred in the defense of any claims against FTHI-FAC including, without limitation, payments to the Lender pursuant to a financing agreement, reasonable accountants’, attorneys’ and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. FTHI-FAC shall have the right to defend any such claim against it at the undersigned’s expense and agree to settlements or take any other remedial, corrective, or other actions. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of the Franchise Agreement.

If the Lender or its successor seeks performance under the Guarantee from FTHI-FAC due to the Franchisee’s failure to pay the Lender, Franchisee acknowledges and agrees that Elements may terminate the Franchise Agreement, effective immediately upon delivery of termination notice to the Franchisee.

(signature page follows)

IN WITNESS WHEREOF, each of the undersigned has affixed its signature hereto, effective on the same day and year as the effective date of the Guarantee.

FRANCHISEE:

(Name of Individual or Entity)

By: _____

Printed Name: _____

Its: _____

(Title of Signor, if applicable)

INDIVIDUAL OWNERS OF FRANCHISEE:

Signature of Owner

Signature of Owner

Printed Name of Owner

Printed Name of Owner

Signature of Owner

Signature of Owner

Printed Name of Owner

Printed Name of Owner

ACKNOWLEDGED AND AGREED:

ELEMENTS THERAPEUTIC MASSAGE, INC.

By: _____

Printed Name: _____

Its: _____

EXHIBIT K
FORM OF GENERAL RELEASE

Exhibit K

GENERAL RELEASE [SAMPLE]

THIS GENERAL RELEASE is made and executed by _____, individually (“you”) as of _____, 20____ (“Effective Date”).

WHEREAS, you entered into a franchise agreement dated _____ with Elements Therapeutic Massage, Inc. (“us”) [DESCRIBE THE FACTS].

NOW, THEREFORE, you agree as follows:

You, for yourself and each of your past and present heirs, executors, administrators, representatives, successors and assigns, in their corporate and individual capacities (collectively “Releasor”), hereby release and forever discharge us and each of our predecessors, successors, affiliates, subsidiaries, assigns, officers, directors, shareholders, agents and employees, and their respective heirs, executors, administrators, representatives, successors and assigns, in their corporate and individual capacities (collectively “Releasees”), from, in respect of and in relation to any and all claims, demands, causes of action, suits, debts, obligations, sums of money, acts, omissions or refusals to act, damages, judgments and demands, of any kind whatsoever, joint or several, known or unknown, which, against Releasees, the Releasor ever had, now has or which Releasor hereinafter can, will or may have, for, upon or by reason of any matter, cause or thing whatsoever, through the Effective Date.

Signature, individually

Printed Name

STATE OF _____

COUNTY OF _____

I hereby certify that before me, a notary public, personally appeared _____ who made oath in due form of law that she/he was executing the foregoing General Release for the purposes therein contained.

As witness, my hand and Seal on _____, 20____

Notary Public

My commission expires:

EXHIBIT L

TABLE OF CONTENTS TO OPERATIONS MANUAL

Exhibit L

Elements Therapeutic Massage
Operations Manual
Table of Contents

Table of Contents	15 pages
Introduction	17 pages
New Studio Start-up.....	34 pages
Client Relations.....	22 pages
Menu of Services	5 pages
Studio Operations.....	33 pages
Elements Therapeutic Massage Sales Process	22 pages
Managing Your Business	16 pages
Accounting and Bookkeeping Overview	18 pages
Human Resources	63 pages
Marketing	28 pages
Safety and Security	19 pages
TOTAL.....	292 pages

NEW YORK REPRESENTATIONS PAGE

WE REPRESENT THAT THIS DISCLOSURE DOCUMENT DOES NOT KNOWINGLY OMIT ANY MATERIAL FACT OR CONTAIN ANY UNTRUE STATEMENT OF A MATERIAL FACT.

EXHIBIT M

RECEIPTS

Exhibit M

**RECEIPT
(OUR COPY)**

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If Elements Therapeutic Massage, Inc. offers you a franchise, it must provide this Disclosure Document to you 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 or grant, or sooner if required by applicable state law. Under New York and Rhode Island law, we must provide this Disclosure Document at the earlier of the 1st personal meeting or 10 business days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale. Michigan and Washington require that we give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Elements Therapeutic Massage, Inc. does not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit A.

The franchisor is Elements Therapeutic Massage, Inc., 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129, (877) 663-0880. The franchise seller for this offering is:

Name of Franchised Seller:
Kristofer T. Nieb
Principal Business Address:
8304 Field Court
Arvada, CO 80005

Issuance Date: March 9, 2010, as amended August 20, 2010. (The effective dates in the franchise registration states are noted on the third page of this Disclosure Document.)

See Exhibit A for our registered agents authorized to receive service of process.

I have received a Disclosure Document dated March 9, 2010, as amended August 20, 2010 that included the following Exhibits:

Exhibit A -	State Addenda	Exhibit G -	Franchisee Questionnaire
Exhibit B -	Franchise Agreement	Exhibit H -	Form of Non-Compete and Confidentiality Agreement
Exhibit C1 -	List of Franchisees	Exhibit I -	Form of Conversion Program Addendum to Franchise Agreement
Exhibit C2 -	Franchisees Who Left the System	Exhibit J -	Form of Guarantee Indemnification
Exhibit C3 -	Franchises Sold But Not Yet Opened	Exhibit K -	Form of General Release
Exhibit D -	Financial Statements	Exhibit L -	Table of Contents of Operations Manual
Exhibit E -	State Agencies for Service of Process	Exhibit M -	Receipts
Exhibit F -	List of Area Directors		

PROSPECTIVE FRANCHISEE:

If a business entity:

Name of Business Entity

By: _____

Its (title): _____

(Print Name): _____

Dated: _____

(Do not leave blank)

If an individual:

(Print Name): _____

Dated: _____

(Do not leave blank)

Please sign this copy of the receipt, print the date on which you received this Disclosure Document, and return it, by mail to Elements Therapeutic Massage, Inc., 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129, or by faxing it to (303) 663-1617.

**RECEIPT
(YOUR COPY)**

This Disclosure Document summarizes certain provisions of the franchise agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If Elements Therapeutic Massage, Inc. offers you a franchise, it must provide this Disclosure Document to you 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 or grant, or sooner if required by applicable state law. Under New York and Rhode Island law, we must provide this Disclosure Document at the earlier of the 1st personal meeting or 10 business days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale. Michigan and Washington require that we give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Elements Therapeutic Massage, Inc. does not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit A.

The franchisor is Elements Therapeutic Massage, Inc., 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129, (877) 663-0880. The franchise seller for this offering is:

Name of Franchised Seller:
Kristofer T. Nieb
Principal Business Address:
8304 Field Court
Arvada, CO 80005

Issuance Date: March 9, 2010, as amended August 20, 2010. (The effective dates in the franchise registration states are noted on the third page of this Disclosure Document.)

See Exhibit A for our registered agents authorized to receive service of process.

I have received a Disclosure Document dated March 9, 2010, as amended August 20, 2010 that included the following Exhibits:

- | | | | |
|--------------|---------------------------------------|-------------|--|
| Exhibit A - | State Addenda | Exhibit G - | Franchisee Questionnaire |
| Exhibit B - | Franchise Agreement | Exhibit H - | Form of Non-Compete and Confidentiality Agreement |
| Exhibit C1 - | List of Franchisees | Exhibit I - | Form of Conversion Program Addendum to Franchise Agreement |
| Exhibit C2 - | Franchisees Who Left the System | Exhibit J - | Form of Guarantee Indemnification |
| Exhibit C3 - | Franchises Sold But Not Yet Opened | Exhibit K - | Form of General Release |
| Exhibit D - | Financial Statements | Exhibit L - | Table of Contents of Operations Manual |
| Exhibit E - | State Agencies for Service of Process | Exhibit M - | Receipts |
| Exhibit F - | List of Area Directors | | |

PROSPECTIVE FRANCHISEE:

If a business entity:

Name of Business Entity
By: _____
Its (title): _____
(Print Name): _____
Dated: _____
(Do not leave blank)

If an individual:

(Print Name): _____
Dated: _____
(Do not leave blank)

PLEASE SIGN THIS COPY OF THE RECEIPT, PRINT THE DATE ON WHICH YOU RECEIVED THIS DISCLOSURE DOCUMENT AND KEEP IT FOR YOUR RECORDS.