

## FRANCHISE DISCLOSURE DOCUMENT



MASSAGE LUXE  
INTERNATIONAL, LLC  
(A Missouri Limited Liability  
Company)  
11 Champion Drive  
Fenton, Missouri 63026  
877-321-5893  
636-600-4056  
Contactus@massageluxe.com  
<http://www.massageluxe.com>

The franchise offered is a massage therapy spa featuring massage services, together with related services, products, merchandise, and accessories.

The total investment necessary to begin operation of MassageLuXe Spa ranges from \$195,500 to \$371,800. This includes from \$124,400 to \$170,000, that must be paid to the franchisor or its affiliates. If you are signing a Multi-Unit Development Agreement, you must pay us a MUD Fee equal to \$76,000 for the first 3 Spas and \$19,000 for each additional Spa contracted for under the Multi-Unit Development Agreement. If you are signing an Area Development Agreement, the total investment necessary to begin your development operations ranges from \$213,000 to \$224,600. This includes \$200,300 that must be paid to the franchisor or its affiliates.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar-days before you sign a binding agreement, with, or make any payment to, the franchisor or an affiliate in connection with the proposed 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 Todd Layton, Chief Operating Officer, at 11 Champion Drive, Fenton, Missouri 63026 and 636-600-4056.

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 contracts carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

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

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

Issuance Date: March 15, 2013

## 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 F** for information about the franchisor, about other franchisors, 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, MULTI-UNIT DEVELOPMENT AGREEMENT AND THE AREA DEVELOPMENT AGREEMENT PERMIT THE FRANCHISOR TO SUE IN MISSOURI. OUT OF STATE LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST MORE TO SUE US IN MISSOURI THAN IN YOUR HOME STATE.
2. THE FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND THE AREA DEVELOPMENT AGREEMENT STATE THAT MISSOURI LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. WE MAY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, SET PRICES FOR THE GOODS AND SERVICES OFFERED BY YOUR FRANCHISE.
4. THE FRANCHISE OWNERS AND THEIR SPOUSES MUST EACH SIGN AN AGREEMENT TO BE PERSONALLY BOUND BY THE CONFIDENTIALITY AND NON-COMPETITION OBLIGATIONS OF THE FRANCHISEE.
5. THERE MAY BE OTHER RISK FACTORS CONCERNING THIS FRANCHISE.

We use the services of one or more FRANCHISE BROKERS and 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 make sure to do your own investigation of the franchise.

**STATE EFFECTIVE DATES**

This franchise disclosure document is registered, on file or otherwise effective in the following states with franchise registration and disclosure laws:

- California \_\_\_\_\_
- Hawaii \_\_\_\_\_
- Illinois \_\_\_\_\_
- Indiana \_\_\_\_\_
- Maryland \_\_\_\_\_
- Michigan \_\_\_\_\_
- Minnesota \_\_\_\_\_
- New York \_\_\_\_\_
- North Dakota \_\_\_\_\_
- Rhode Island \_\_\_\_\_
- South Dakota \_\_\_\_\_
- Virginia \_\_\_\_\_
- Washington \_\_\_\_\_
- Wisconsin \_\_\_\_\_

**THE FOLLOWING PROVISIONS APPLY ONLY TO  
TRANSACTIONS GOVERNED BY  
THE MICHIGAN FRANCHISE INVESTMENT LAW**

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

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

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

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

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

If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000, the franchisor shall, at the request of a franchisee, arrange for the escrow of initial investment and other funds paid by the franchisee or subfranchisor until the obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the franchise offering are fulfilled. At the option of the franchisor, a surety bond may be provided in place of escrow.

**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 THE OFFICE OF THE ATTORNEY GENERAL, CONSUMER PROTECTION DIVISION, ATTN: FRANCHISE SECTION, G. MENNEN WILLIAMS BUILDING, 1ST FLOOR, LANSING, MICHIGAN 48933, (517) 373-7117.**

**MassageLuXe**  
**FRANCHISE DISCLOSURE DOCUMENT**

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**EXHIBITS:**

- A. FRANCHISE AGREEMENT
- B. MULTI-UNIT DEVELOPMENT AGREEMENT
- C. AREA DEVELOPMENT AGREEMENT
- D. OPERATIONS MANUAL TABLE OF CONTENTS
- E. FINANCIAL STATEMENTS

- F. STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS
- G. LIST OF FRANCHISEES
- H. STATE SPECIFIC ADDENDA FOR FDD, FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND AREA DEVELOPMENT AGREEMENT
- I. GENERAL RELEASE
- J. RECEIPT

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

To simplify the language in this franchise disclosure document, MASSAGE LUXE INTERNATIONAL, LLC, the franchisor of the MassageLuXe franchise, is referred to in this disclosure document as "we," "us," "our," or "MassageLuXe." A franchisee is referred to in this disclosure document as "you" and "your." If you are a legal entity, "you" includes the shareholders of the corporation, partners of the partnership or members and managers of the limited liability company and their spouses, where applicable.

Us and Our Parent

We are a limited liability company formed under Missouri law on July 13, 2007. Our principal business address is 11 Champion Drive, Fenton, Missouri 63026. Our agent or agents to receive service of process, if any, are in attached **Exhibit F**. We do not have any predecessors.

Our parent is TBML, Inc., a Missouri corporation, which was incorporated on November 19, 2007. Its principal business address is 11 Champion Drive, Fenton, Missouri 63026. In addition to our parent, we have several minority owners.

Affiliates of Us Providing Services to Franchisees

Team Luxe, LLC ("Luxe"), a limited liability company formed under Missouri law on June 10, 2008, is our affiliate. Luxe's principal business address is 11 Champion Drive, Fenton, Missouri 63026. You may receive advisory services and operational support from Luxe. You may also purchase equipment, inventory and supplies related to the offering of MassageLuXe Services (defined below) from Luxe. Luxe does not now and has never in the past sold franchises in any line of business. Luxe does not conduct the type of business that you will operate.

LuXeStethics, LLC ("LuXeStethics"), a limited liability company formed under Missouri law on November 11, 2010, is our affiliate. LuXeStethics' principal business address is 11 Champion Drive, Fenton, Missouri 63026. You may purchase equipment, inventory and supplies related to the offering of FaceLuXe Services (defined below) from LuXeStethics. LuXeStethics does not now and has never in the past sold franchises in any line of business. LuXeStethics does not conduct the type of business that you will operate.

Affiliates of Us Operating Businesses Similar to a Spa

ABTB ML Creve Coeur, LLC ("ABTB Creve Coeur"), a limited liability company formed under Missouri law on October 10, 2009, is our affiliate. ABTB Creve Coeur's principal business address is 11 Champion Drive, Fenton, Missouri 63026. Since December 2009, ABTB Creve Coeur has owned and operated a business similar to the business you will operate as our franchisee. You will not conduct business directly with ABTB Creve Coeur. ABTB Creve Coeur does not and has never in the past sold franchises in any line of business.

ABTB ML CWE, LLC ("ABTB CWE"), a limited liability company formed under Missouri law on December 7, 2009, is our affiliate. ABTB CWE's principal business address is 11 Champion Drive, Fenton, Missouri 63026. Since June 1, 2011, ABTB CWE has owned and operated a business similar to the business you will operate as our franchisee. You will not conduct business directly with ABTB CWE. ABTB CWE does not and has never in the past sold franchises in any line of business.



ABTB ML Kirkwood, LLC ("ABTB Kirkwood"), a limited liability company formed under Missouri law on June 2, 2009, is our affiliate. ABTB Kirkwood's principal business address is 11 Champion Drive, Fenton, Missouri 63026. Your MassageLuXe franchise is modeled after the massage therapy spa owned and operated by ABTB Kirkwood. ABTB Kirkwood has conducted the type of business you will conduct since August 2009. You will not conduct business directly with ABTB Kirkwood. ABTB Kirkwood does not and has never in the past sold franchises in any line of business.

ML Chesterfield, LLC ("ML Chesterfield"), a limited liability company formed under Missouri law on February 28, 2012, is our affiliate. ML Chesterfield's principal business address is 11 Champion Drive, Fenton, Missouri 63026. In March 2012, ML Chesterfield acquired a Spa formerly operated by one of our franchisees, and ML Chesterfield has continued to operate the Spa since that time. You will not conduct business directly with ML Chesterfield. ML Chesterfield does not and has never in the past sold franchises in any line of business.

ML Salon Investments, LLC ("MLSI"), a limited liability company formed under Missouri law on September 9, 2007, is our affiliate. MLSI's principal business address is 11 Champion Drive, Fenton, Missouri 63026. Since May 2008, MLSI has owned and operated a business similar to the business you will operate as our franchisee. You will not conduct business directly with MLSI. MLSI does not and has never in the past sold franchises in any line of business.

ML Salon Investments V, LLC ("MLSI V"), a limited liability company formed under Missouri law on March 9, 2009, is our affiliate. MLSI V's principal business address is 11 Champion Drive, Fenton, Missouri 63026. Since May 2009, MLSI V has owned and operated a business similar to the business you will operate as our franchisee. You will not conduct business directly with MLSI V. MLSI V does not and has never in the past sold franchises in any line of business.

T & E, LLC ("T & E"), a limited liability company formed under Missouri law on July 13, 2009, is our affiliate. T & E's principal business address is 11 Champion Drive, Fenton, Missouri 63026. Since February 2010, T & E has owned and operated a business similar to the business you will operate as our franchisee. You will not conduct business directly with T & E. T & E does not and has never in the past sold franchises in any line of business.

#### Affiliates of Us Offering Franchises in Other Lines of Business

THETANCO, Inc. ("Tanco"), a corporation formed under Missouri law on January 12, 2001, is our affiliate. Tanco's principal business address is 11 Champion Drive, Fenton, Missouri 63026. Since its inception, Tanco has sold franchises for tanning salons under the name The Tan Company®. As of December 31, 2012, Tanco had 39 franchised locations operating and 15 affiliate-owned locations operating. You will not conduct any business with Tanco except under a valid franchise agreement with Tanco for a The Tan Company franchise. Tanco does not conduct the type of business that you will operate.

Xist International, LLC ("Xist"), a limited liability company formed under Missouri law on March 23, 2012. Xist's principal business address is 11 Champion Drive, Fenton, Missouri 63026. Since June 2012, Xist has offered franchises for upscale health and fitness centers under the name Xist®. Xist fitness centers also offer limited tanning services under the name Xist Tan™ or The Tan Company Express™. As of December 31, 2012, Xist had 0 franchised locations operating and 1 affiliate-owned location operating. You will not conduct any business with Xist except under a valid franchise agreement with Xist for an Xist franchise. Xist does not conduct the type of business that you will operate.

#### Our Business

We do business, and intend to do business, under our company name and under the MassageLuXe name. We are in the business of selling franchises for the operation of Spas. We have been offering MassageLuXe franchises for sale since February 2008. We manage the MassageLuXe network of franchisees. We do not engage in any other business activity. We do not operate any Spas. We have not in the past and do not now offer franchises in any other line of business or in this line of business under a different name.

We have expended considerable time and effort in developing a business primarily featuring MassageLuXe Services and operating under the MassageLuXe Marks. However, as part of the System you will be required to offer all of the other Services in your Spa and use the other Marks all in accordance with the System. We use the following definitions in this disclosure document to describe the business we have developed:

"FaceLuXe Marks" means such service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights, as may presently exist or which may be modified, changed or acquired by us or our affiliates in connection with the operation of the Spa and the offering of FaceLuXe Services. Currently the FaceLuXe Marks include "FaceLuXe" and "FaceLuXe and design."

"FaceLuXe Services" means such facial and waxing services and skin care treatments and related services, products, merchandise and accessories as may presently exist or which may be modified, changed, or acquired by us or our affiliates.

"Marks" means such service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights, as may presently exist, or which may be modified, changed, or acquired by us or our affiliates, in connection with the operation of a Spa. Marks currently include the MassageLuXe Marks and FaceLuXe Marks.

"MassageLuXe Marks" means service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights, as may presently exist or which may be modified, changed or acquired by us or our affiliates in connection with offering of MassageLuXe Services.

"MassageLuXe Services" means massage therapy services together with related services, products, merchandise and accessories as may presently exist or which may be modified, changed, or acquired by us or our affiliates. Currently the MassageLuXe Marks include "MassageLuXe" and "ML and design."

"Spa" means any business operating under the MassageLuXe Marks according to and the System.

"System" means our distinct and proprietary business format for the operation of massage therapy businesses offering the Services, including the methods, procedures, signs, designs, layouts, equipment, standards and specifications, and the Marks, as the same may be modified, amended or replaced from time to time hereafter, the distinguishing characteristics of which include proprietary operating procedures and standards and specifications for the Services.

"Services" means the MassageLuXe Services, the FaceLuXe Services and other related products and services you are permitted to offer in your Spa.

This disclosure document describes our 3 franchise programs:

Single Franchise. We grant individual franchises to own and operate a Spa under the terms and conditions of a MassageLuXe franchise agreement (the "Franchise Agreement" or "FA" in **Exhibit A**).

**Multi-Unit Franchises.** We additionally offer applicants a Multi-Unit Development Agreement (the "Multi-Unit Development Agreement" or "MUD" in **Exhibit B**) which authorizes you to develop, own and operate a specific number of Spas in the territory designated in your Multi-Unit Development Agreement ("MUD Territory"). Under the Multi-Unit Development Agreement, you must develop and open a specific number of Spas in your MUD Territory in the time period designated in the Multi-Unit Development Agreement. There is a minimum number of 3 Spas that must be opened under the Multi-Unit Development Agreement. The specific number of Spas required to be opened will be mutually agreed upon by you and us based on the size of the territory and various market and economic factors.

**Area Development Franchises.** We also offer qualified applicants an Area Development Agreement (the "ADA" in **Exhibit C**) which authorizes you (the "Developer") to develop, own and operate a Spa and serve as our independent representative to solicit franchisees, provide training, on-going assistance and supervision to franchisees in the territory designated in your ADA ("ADA Territory"). Under the ADA you must develop and operate at least 1 Spa as a model Spa ("Model Spa"), develop franchises, solicit prospective franchisees, and, between you and other franchisees in the ADA Territory, open a minimum of 21 Spas in the ADA Territory in the time period designated in the ADA. These Spas may be additional Spas opened by you ("Developer Spas") or Spas opened by franchisees you solicit and we approve ("Franchised Spas"). You will sign a Franchise Agreement with us for the Model Spa and each Developer Spa you open. A Franchise Agreement will be signed only by us and the franchisee for each Franchised Spa. As compensation for these services, the Developer receives a portion of fees paid by franchisees located within the ADA Territory. See Item 5.

The services and related goods you will sell are well recognized by consumers and widely available from other sources. The market for the franchise's services and related goods is well developed. Our services and related goods are sold to individuals and to businesses. Selling is not seasonal, and services are offered throughout the year.

You must comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the privacy rules required of "covered entities" under HIPAA. Many states and local governments require massage therapists and massage therapy spas be licensed, and many states and local governments require estheticians and business offering facial and waxing services to be licensed. You must ensure that your Spa and the therapists and estheticians who work in your Spa comply with those requirements. You must ensure that only licensed therapists and licensed estheticians perform any services for which a license or specialized training is required. Some states may require that you obtain a bond if you accept payment for memberships in advance of services being provided and there may be buyer's remorse cancellation rights and other types of cancellation rights. It is your responsibility to check the laws within your state to determine whether any state licensing laws or regulations are applicable and to fully comply with those laws or regulations. If you are a Developer, you have to comply with all applicable rules relating to the offer and sale of franchises. You may be required to register with a state in order to solicit franchises in that state.

There is competition for the services and related goods you will sell. Local independent businesses compete with our franchises as do regional, national or international chains.

## **ITEM 2 BUSINESS EXPERIENCE**

**Todd J. Beckman, President**

Todd J. Beckman has been the President and Managing Member of Massage Luxe International, LLC since its formation on July 13, 2007. Since the dates listed, Mr. Beckman has also been the President of the following corporations: TBLuXe, Inc. (February 2011); TBFL, Inc. (November 2010); TBML, Inc. (November 2007), Team Tan, Inc. (August 1996); THETANCO, Inc. (January 2001); KAT, Inc. (October 1995); and St. Louis Tan Company, Inc. (February 1994). Since the dates listed, he has been the President and Managing Member of the following limited liability companies: BAM Brands, LLC (May 2012); SLV Distribution, LLC (April 2012); Xist International, LLC (March 2012); ML Chesterfield, LLC (February 2012); BRJ, LLC (September 2011); Spray La Vie International, LLC (April 2011); TBSLV, LLC (April 2011); Face Luxe International, LLC (February 2011); FaceLuXe Licensing I, LLC (February 2011); ABTB Euclid, LLC (February 2011); FaceLuXe Licensing, LLC (November 2010); LuXeSthetics, LLC (November 2010); Xist Fitness Licensing, LLC (September 2010); ABTB ML CWE, LLC (December 2009); TNJ ML, LLC (October 2009); ABTB ML Creve Coeur, LLC (October 2009); T & E, LLC (July 2009); ABTB ML Kirkwood, LLC (June 2009); ML Salon Investments V, LLC (March 2009); TBXC II, LLC (February 2009); TBXC, LLC (November 2008); Beckman Properties III, LLC (October 2008); Team Luxe, LLC (June 2008); ML Salon Investments, LLC (September 2007); Salon Investments, LLC (November 2006); TAGS at Omaha, LLC (March 2006); TAGS at San Marcos, LLC (October 2005); TAGS Holdings, LLC (October 2005); Beckman Properties II, LLC (August 2004); and Beckman Properties, LLC (June 2004). From May 2003 until December 2011, Mr. Beckman was the President and Managing Member of Street Smart Concepts, LLC.

#### **Todd R. Layton, Chief Operating Officer**

Since November 2010, Mr. Layton has also been the Chief Operating Officer of Massage Luxe International, LLC. From July 2007 until November 2010, Mr. Layton was the Vice President of Franchise Operations for Massage Luxe International, LLC. Since the dates listed, Mr. Layton has also served as the Chief Operating Officer of the following entities: BAM Brands, LLC (May 2012); SLV Distribution, LLC (April 2012); Xist International, LLC (March 2012); ML Chesterfield, LLC (February 2012); BRJ, LLC (September 2011); Spray La Vie International, LLC (April 2011); Face Luxe International, LLC (February 2011); ABTB Euclid, LLC (February 2011); LuXeSthetics, LLC (November 2010); Team Luxe, LLC (November 2010); ML Salon Investments, LLC (November 2010); ABTB ML CWE, LLC (November 2010); ABTB ML Creve Coeur, LLC (November 2010); ML Salon Investments V, LLC (November 2010); ABTB ML Kirkwood, LLC (November 2010); T & E, LLC (November 2010); THETANCO, Inc. (November 2010); KAT, Inc. (November 2010); St. Louis Tan Company, Inc. (November 2010); Team Tan, Inc. (November 2010); Salon Investments, LLC (November 2010); and TAGS at Omaha, LLC (November 2010). Since November 2007, Mr. Layton has been the President of ARL07, Inc. Mr. Layton served as the Vice President of Franchise Operations of THETANCO, Inc. from January 2007 to November 2010. From July 2005 to December 2006, Mr. Layton was the Director of Franchise Operations of THETANCO, Inc. Since March 2005, Mr. Layton has also been the Managing Member of Perfect 10 Tanning, L.L.C.

#### **Stephanie Struckhoff, Vice President of Operations and Marketing**

Since April 2012, Ms. Struckhoff has been the Vice President of Operations and Marketing of Massage Luxe International, LLC. From July 2007 until March 2012, Ms. Struckhoff's title was Vice President of Operations. Since May 2012, Ms. Struckhoff has been the Vice President of Operations and Marketing for BAM Brands, LLC. Since April 2012, Ms. Struckhoff has also been the Vice President of Operations and Marketing for each of the entities listed below. Between the dates listed and April 2012, Ms. Struckhoff's title with these entities was Vice President of Operations: SLV Distribution, LLC (April 2012); Xist International, LLC (March 2012); ML Chesterfield, LLC (February 2012); BRJ, LLC (September 2011); Spray La Vie International, LLC (April 2011); Face Luxe International, LLC (February 2011); ABTB Euclid, LLC (February 2011); LuXeSthetics, LLC (November 2010); ABTB ML

CWE, LLC (December 2009); ABTB ML Creve Coeur, LLC (October 2009); T & E, LLC (July 2009); ABTB ML Kirkwood, LLC (June 2009); ML Salon Investments V, LLC (March 2009); Team Luxe, LLC (June 2008); ML Salon Investments, LLC (September 2007); Salon Investments, LLC (September 2007); THETANCO, Inc. (January 2007); Team Tan, Inc. (January 2007); TAGS at Omaha, LLC (January 2007); and TAGS at San Marcos, LLC (January 2007). From April 2005 to December 2006 Ms. Struckhoff was the Director of Operations of THETANCO, Inc.

### **Maureen "Cookie" Pangilinan - Chief Financial Officer**

Maureen "Cookie" Pangilinan has been the Chief Financial Officer of Massage Luxe International, LLC since January 2008. Since the dates listed, Ms. Pangilinan has also been the Chief Financial Officer of the following entities: BAM Brands, LLC (May 2012); SLV Distribution, LLC (April 2012); Xist International, LLC (March 2012); ML Chesterfield, LLC (February 2012); BRJ, LLC (September 2011); Spray La Vie International, LLC (April 2011); Face Luxe International, LLC (February 2011); FacLuXe Licensing I, LLC (February 2011); ABTB Euclid, LLC (February 2011); LuXeSthetics, LLC (November 2010); FaceLuXe Licensing, LLC (November 2010); ABTM ML CWE, LLC (December 2009); ABTB ML Creve Coeur, LLC (October 2009); T & E, LLC (July 2009); ABTB ML Kirkwood, LLC (June 2009); ML Salon Investments V, LLC (March 2009); Team Luxe, LLC (June 2008); Team Tan, Inc. (January 2008); THETANCO, Inc. (January 2008); ML Salon Investments, LLC (January 2008); Salon Investments, LLC (January 2008); TAGS at Omaha, LLC (January 2008); KAT, Inc. (January 2008); and St. Louis Tan Company, Inc. (January 2008).

### **David Ruzicka – Director of Franchise Development**

David Ruzicka has served as the Director of Franchise Development for Massage Luxe International, Inc. since January 2010 and the Director of Franchise Development for THETANCO, Inc. Since April 2011 Mr. Ruzicka has also been the Director of Franchise Development for Spray La Vie International, LLC. Previously, Mr. Ruzicka was with Medicine Shoppe International, Inc. where he was employed in a number of positions from 1985 to December 2009. He last served as Franchise Director – West Coast for Medicine Shoppe International, Inc. from October 2000 to December 2009.

### **Katie Corbin – Director of Franchise Operations**

Since February 2008, Katie Corbin has been the Director of Franchise Operations for Massage Luxe International, LLC and THETANCO, Inc. Since April 2011, Ms. Corbin has been the Director of Franchise Operations for Spray La Vie International, LLC. Before then, Ms. Corbin served as a General Manager for various tanning salons owned by St. Louis Tan Company, Inc. from March 2003 through January 2008.

### **ITEM 3 LITIGATION**

No litigation is required to be disclosed in this Item.

### **ITEM 4 BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

## **ITEM 5 INITIAL FEES**

### **Franchise Agreement – Single Unit**

You must pay us a lump-sum initial franchise fee in the amount of \$38,000, which is due in full upon signing the Franchise Agreement. In 2012, we accepted initial franchise fees ranging from \$28,000 to \$38,000. The initial franchise fee is fully earned by us when you sign the Franchise Agreement and is not refundable under any circumstances.

If you sign a Multi-Unit Development Agreement, the initial franchise fee for your first Spa is \$38,000 and the initial franchise fee for each additional Spa developed under the Multi-Unit Development Agreement will be \$19,000. All of these fees will be paid as part of the MUD Fee and credited to you as described below.

If you sign an ADA, you are not required to pay the initial franchise fee for your first Model Spa and will only pay 50% of the initial franchise fee for each additional Developer Spas you open.

Before your Spa opens, you must purchase through us or our affiliates Luxe and LuXeStethics, certain products and services. The products that you will have to purchase through Luxe and LuXeStethics include almost all signs, computer hardware and software, spa equipment, furniture and décor, fixtures that you will need to open your Spa. Included in the computer software is the initial POS System Software Fee of \$350 that you must pay to us. The products include the initial inventory of massage lotions and oils, facial, waxing and related skin care products. Luxe and LuXeStethics source these items from different designated suppliers and serve in a commissary role in reselling the goods and services to our franchisees. Your estimated cost for those pre-opening purchases will range from \$86,400 to \$132,000. The breakdown of costs of each type of goods sold is described in greater detail in Item 7. You will have to pay for all of the purchases in accordance with the procedures set forth in our Operations Manual. Currently Luxe and LuXeStethics require that you pay a deposit on the products when you sign the lease for the premises in which you will operate your Spa.

### **Multi-Unit Development Agreement**

When you sign the Multi-Unit Development Agreement, you must pay us a non-refundable development fee (the "MUD Fee"). The minimum MUD Fee is \$76,000 (for a minimum of a 3 Spa mandatory development schedule, calculated as follows: \$38,000 for your first Spa, plus \$19,000 for your second Spa and \$19,000 for your third Spa). The total amount of the MUD Fee is equal to \$76,000 for these first 3 Spas, plus \$19,000 for each additional Spa to be developed under the Multi-Unit Development Agreement. You must pay the MUD Fee immediately upon signing the Multi-Unit Development Agreement. The MUD Fee is credited to the initial franchise fee due for each Spa that is to be developed under the Multi-Unit Development Agreement at the time that you sign the Franchise Agreement for each such Spa. The MUD Fee is fully earned by us when you sign the Multi-Unit Development Agreement and is not refundable under any circumstances.

### **Area Development Agreement**

When you sign the ADA, you are obligated to pay us a non-refundable Development Fee of \$200,000 (the "Development Fee"). You must pay the Development Fee immediately upon signing the

ADA. The Development Fee is fully earned by us when you sign the ADA and is not refundable under any circumstances. If you become a Developer and perform all of your obligations, you will be paid 50% of the initial franchise fee, 50% of any transfer fee and 40% of the royalties actually paid to us by franchisees you recruit and service within your ADA Territory. The Development Fee is fully earned by us when you sign the ADA and is not refundable under any circumstances

In addition to the Development Fee, as a Developer you are also required to purchase a license from us to use our POS System software. This licensed software is in addition to the POS System Software license you must buy from us for your Model Spa or any other Developer Spas. The POS System Software Fee you will owe as a Developer is \$300. The POS System Software Fee is fully earned by us when you sign the ADA and is not refundable under any circumstances.

**ITEM 6  
OTHER FEES**

TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Royalty	5% of Gross Revenue <sup>2</sup> commencing on the first day of operations	Each Friday for the preceding week, running as Saturday through Friday <sup>3</sup>	Paid via debit draft of your account as initiated by us
Refresher Training Fees	\$400 per day per trainer	As we and you agree	Paid if you need additional or refresher training. You will be responsible for all travel and living expenses
Per Day Fee (Franchise Agreement and ADA)	\$400 per day per trainer	As we and you agree	If you request us to provide assistance or if we require your employees to be trained
Employment Fee	\$5,000	Within 30 days of hiring a current employee of another Spa	Paid to the employer of a current MassageLuXe business employee that you hire as liquidated damages
Regional Ad Fee	2.5% of Gross Revenue <sup>2</sup> commencing on the first day of operations	Each Friday for the preceding week, running Saturday through Friday <sup>3</sup>	Paid via debit draft of your account as initiated by us
National Ad Fee	1% of Gross Revenue <sup>2</sup> commencing on the first day of operations	Each Friday for the preceding week, running Saturday through Friday <sup>3</sup>	Paid via debit draft of your account as initiated by us
POS System Software Fees (Franchise Agreement and ADA)	For each Spa: Initial fee of \$350 and an ongoing fee of \$100 per week  For each ADA franchise: Initial fee of \$300 and no ongoing fee	Prior to opening and then each Friday for the preceding week, running Saturday through Friday <sup>3</sup>	The ongoing fee of \$100 per week may be increased no more than 5% annually. Paid via debit draft of your account as initiated by us.

TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Alternative Supplier or Product Approval Fee	\$500 plus reasonable fee based on our costs if expenses incurred are greater than \$500	Upon submitting request for alternative supplier or alternative product and expenses on receipt of invoice.	If you want to use an alternative supplier or an alternative product
Interest <sup>4</sup>	The lesser of 1.5% per month or the highest contract rate of interest permitted by law	When underlying obligation is paid	Paid if you are late on any required payments to us
Auditing Costs <sup>4</sup>	Actual Costs	Reimbursement of our actual auditing costs	You'll reimburse us for our auditing costs if the audit discloses an understatement of more than 2%
Transfer Fee (Franchise Agreement, Multi-Unit Development Agreement and ADA)	25% of the then current Initial Franchise Fee  \$5,000 per Spa to be developed under the Multi-Unit Development Agreement  10% of the gross purchase price of your ADA rights or \$25,000, which ever is greater	Concurrently with the transfer	Upon a transfer under the Franchise Agreement, Multi-Unit Development Agreement or ADA
Renewal Fee (Franchise Agreement and ADA)	\$5,000 under the Franchise Agreement  \$1,000 per operating Spa in the ADA Territory	Concurrently with our granting a renewal franchise to you	Paid to us if you want to renew the Franchise Agreement or ADA
Costs and Attorney's Fees (Franchise Agreement, Multi-Unit Development Agreement and ADA)	Actual Costs	Upon demand	You'll reimburse us for accounting, attorneys', arbitrators' and related fees incurred by us if we are forced to seek enforcement
Taxes <sup>5</sup> (Franchise Agreement and ADA)	Actual Costs	Upon demand	
Liquidated Damages <sup>6</sup>	\$1,000 per day	Upon demand	Payable for each day unauthorized products or services are offered for sale or sold
Products and Fixtures	Per the price list, which is subject to change	As incurred	You will purchase products and fixtures from our affiliates, Luxe and LuXeSthetics



TYPE OF FEE <sup>1</sup>	AMOUNT	DUE DATE	REMARKS
Advertising Program (Only for ADA)	\$1,500 per month	As incurred	Paid via debit draft of your account as initiated by us or offset against fees we owe to you under the ADA
Franchise Sales Consulting Fee (Only for ADA)	\$5,000 per franchise sold	Concurrently upon the sale of a franchise in your ADA Territory	If we assist you in the sale of a franchise within your ADA Territory
On-Line Continuing Education Programs	\$100-\$500 per therapist per training program	As incurred	If we provide you optional continuing education programs for your therapists

<sup>1</sup> All fees are paid to us or our affiliates except for the Employment Fee and the Advertising Program under the ADA. All fees are non-refundable and uniformly imposed unless otherwise noted. All fees are under the Franchise Agreement unless otherwise noted.

<sup>2</sup> As used in this franchise disclosure document, the term "Gross Revenue" means all revenue you derive from operating your MassageLuXe franchise, including, but not limited to, all amounts you receive for services, merchandise, gift cards or goods sold at or away from the Location, and whether from cash, check or credit transactions, excluding all federal, state or municipal sales, use or service taxes collected from customers and paid to the appropriate taxing authority and customer refunds, adjustments, credits and allowances actually made by the franchise in compliance with the Operations Manual.

If you become a Developer and perform all of your obligations under the ADA, 40% of the royalties that you pay to us for your Spas in the ADA Territory will be returned to you with the payments by us to you of royalty payments made for all Spas in your ADA Territory.

<sup>3</sup> We anticipate the due date for royalties and other periodic payments to be each Friday for the preceding week, running Saturday through Friday ("Accounting Period"); however, we reserve the right to alter the collection schedule for royalties or other fee payments. We will provide you with at least 30 days notice of any change in the royalty payment schedule.

<sup>4</sup> You must pay interest on any unpaid amounts at the rate of the lesser of 1.5% per month or the maximum legal rate in the jurisdiction where your Spa is located. Interest begins from the date any payment is due. In addition, if the amount of Gross Revenue you report for any calendar year is less than 98% of the actual Gross Revenue for that period, you must reimburse us for all costs of the investigation or audit that uncovered the under-reported sales, including salaries, professional fees, travel, meals, and lodging.

<sup>5</sup> You must pay us the amount of any State or local sales, use, gross receipts, or similar tax that the State or local government authority imposes on fees which you pay to us under the Franchise Agreement, without offset or deduction of any kind. Your obligation to reimburse us for these taxes does not extend to income-type taxes which a State or local government imposes on our income.

<sup>6</sup> Uniformity of products and services offered by all Spas is of utmost importance to us, our franchisees and the System. If you offer to sell or do sell products or services which are not authorized or are not prepared in accordance with the Operations Manual, you agree we will be damaged by your non-compliance. These damages will be calculated at the rate of \$1,000 per day for each day unauthorized products or services are offered or sold and will be in addition to any other rights and remedies we may

have against you. We have the right to collect these amounts in addition to any and all of our other rights for non-compliance provided for under the Franchise Agreement. You agree that a precise calculation of the full extent of the damages that we will incur from the offer or sale of unauthorized products and services are difficult to determine and we and you desire certainty in this matter and agree that the damages provided here are reasonable, constitute liquidated damages and are not a penalty.

**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 <sup>1</sup>	\$ 38,000	Lump sum	When you sign the Franchise Agreement	Us
Leasehold Improvements <sup>2</sup>	\$ 25,000 - \$110,000	As Arranged	As Arranged	Approved Suppliers
Signs <sup>3</sup>	\$ 4,500 - \$ 6,500	As Arranged	As Arranged	Luxe, LuXeStethics or other Approved Suppliers
Spa Equipment <sup>4</sup>	\$ 31,500 - \$ 59,500	As Arranged	As Arranged	Luxe, LuXeStethics or other Approved Suppliers
Fixtures <sup>5</sup>	\$ 14,000 – \$ 16,000	As Arranged	As Arranged	Luxe, LuXeStethics or other Approved Suppliers
Furniture and Décor <sup>6</sup>	\$ 17,500 - \$ 23,500	As Arranged	As Arranged	Luxe, LuXeStethics or other Approved Suppliers
Initial Pre-Opening Inventory <sup>7</sup>	\$ 3,900 - \$ 9,500	As Arranged	As Arranged	Luxe, LuXeStethics or other Approved Suppliers
Start-Up Marketing <sup>8</sup>	\$ 7,500 - \$ 10,000	As Arranged	Before opening	Advertisers
Insurance <sup>9</sup>	\$ 3,000 - \$ 5,000	Lump sum	Before opening	Insurance companies
Pre-paid Rent and Lease Deposits <sup>10</sup>	\$ 2,000 - \$ 8,000	Lump sum	Upon signing lease	Landlord
Professional Fees <sup>11</sup>	\$ 2,500 - \$ 5,000	Terms vary	Terms vary	Accountants, lawyers, architects, etc.
Training Expenses <sup>12</sup>	\$ 2,000 - \$ 3,000	Terms vary	Terms vary	Transportation, meals, lodging, etc.
Licenses/Bonds <sup>13</sup>	\$ 100 - \$ 1,000	Lump sum on application	Before opening	Government agencies, and bonding companies
Computer Hardware and Software <sup>14</sup>	\$ 15,000 - \$ 17,000	As Arranged	As Arranged	Luxe or other Approved Suppliers

Security Systems <sup>15</sup>	\$ 0 – \$ 3,000	Terms vary	Terms vary	Security System service provider
Phone and Music Systems	\$ 2,800 – \$ 4,500	Terms vary	Terms vary	Approved Supplier
Office Supplies and Other Miscellaneous Expenses	\$ 1,200 – \$ 2,300	Terms vary	Terms Vary	Local vendor
Additional Funds – 3 months <sup>16</sup>	\$ 25,000 - \$ 50,000	Terms vary	Amount varies over the next 3 months	Before and during the 3 month period after the start of operations
Total <sup>17</sup>	\$195,500- \$371,800			

The chart above describes the estimated initial investment for a single unit Spa, whether it is a single Unit or a Unit under a Multi-Unit Development Agreement. The Initial Franchise Fee is non-refundable. Any refund of all of the other expenses or portion of these expenses are subject to the policies of the applicable supplier and may depend on whether delivery of the item(s) has been made. The foregoing expenses are merely estimates. You are encouraged to make an independent investigation and analysis of the potential expenses which may be incurred in order to start your Spa.

<sup>1</sup> The initial franchise fee for your second and subsequent Spas under a Multi-Unit Development Agreement is \$19,000. If you enter into a Multi-Unit Development Agreement, you will pay us a MUD Fee as described in Item 5, which will be attributed to the initial franchise fee for each Spa when you sign each Franchise Agreement. If you are a Developer, we will not charge you an initial franchise fee under the Franchise Agreement for your Model Spa and you will only pay 50% of the then current initial franchise fee when you sign Franchise Agreements for additional Developer Spas in the ADA Territory.

<sup>2</sup> Costs associated with the build-out for a Spa may vary greatly for newly constructed locations and existing locations requiring modification. We recommend 2,200 to 3,200 square feet for the operation of Spa. These estimates assume a partial build-out allowance from the landlord. Leasehold improvement costs will also be affected by labor costs, local market conditions, local zoning ordinances, age of the location and other factors.

<sup>3</sup> The amounts represent the estimated costs of both outdoor and indoor signage. The amounts exclude sales tax and shipping costs.

<sup>4</sup> The low estimate reflects the recommended equipment for a Spa with capacity for 6 client rooms. The high estimate reflects the recommended equipment for a Spa with capacity for 13 client rooms. These estimated expenses include the cost of 1 hydro water massage bed, massage tables, table warmers, towel and blanket warmers, therapy kits and other related equipment. The amounts exclude sales tax and shipping costs.

<sup>5</sup> Fixtures include the costs and installation of millwork (including retail fixtures, shelving, counters), light fixtures, and bathroom fixtures. The amounts exclude sales tax and shipping costs.

<sup>6</sup> The low estimate reflects the estimated cost of furnishing and decorating a Spa with 6 client rooms in accordance with our minimum standards. The high estimate reflects the estimated cost of furnishing and decorating a Spa with 13 client rooms beyond our minimum standards. The amounts exclude sales tax and shipping costs.

<sup>7</sup> These amounts represent the estimated cost of an initial supply of massage lotions, related skincare products, and supplies. The amounts exclude sales tax and shipping costs.

<sup>8</sup> The low estimate reflects the minimum amount required to be spent for grand-opening marketing of your Spa. The high estimate reflects the cost of additional marketing efforts beyond the required grand-opening marketing that you may choose to do.

<sup>9</sup> Your costs for insurance may vary depending on the insurer, the location of your Spa, the equipment and leasehold improvements and other factors. This is an estimate of your annual premium for your insurance which is described in the Franchise Agreement in Article 16.5 and Item 8.

<sup>10</sup> Some landlords may require the pre-payment of rent, as well as the payment of a security deposit. The amounts will vary based on the market rental rates for your market. If you purchase real estate for the operation of your Spa, your real estate costs may increase significantly.

<sup>11</sup> You may require the assistance of attorneys, accountants, architects and other professional service providers in establishing your Spa. These amounts may vary depending on the extent of the services required.

<sup>12</sup> These amounts represent the average costs of transportation, food and lodging for 2 to 3 people to attend initial training at our corporate office in Fenton, Missouri. These amounts do not include any salary or other compensation you may have to pay these employees during the time they are attending initial training.

<sup>13</sup> This figure may vary greatly depending on the fees charged by local government agencies and bonding companies. A refund of the entire fee or portion of the fees paid for licenses/bonds is subject to the policies of the appropriate government agencies and bonding companies.

<sup>14</sup> These estimated amounts are for the required POS System computer hardware and software, as well as shipping and installation. These amounts also include a cash drawer and an all-in-one printer and the POS System Software Fee. See Item 11.

<sup>15</sup> We highly recommend that you install a security system at your Spa.

<sup>16</sup> The Additional Funds reflect additional capital you may need to cover expenses during the initial period of operation of your Spa other than items identified separately in the above table. These expenses include additional rent, payroll costs, benefits, additional inventory requirements, supplies etc., but do not include the fees in Item 6 or an owner's draw or salary. You may experience negative cash flow during the initial months of operation of your Spa, which is common due to the type of business and need to develop a membership base.

<sup>17</sup> Costs and expenses can vary depending on various factors like local real estate costs, cost of labor and supplies. We cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on how closely you follow the System, your management skill, experience and business acumen, local economic conditions, the acceptance by local consumers of our approved goods/services, prevailing wage rates, competition, etc. These figures were based on our affiliate's experience operating a Spa since 2008. There can be no assurance that the experience of a particular franchisee will correspond with the information presented above. You should review these figures carefully with a business advisor before making any decision to purchase the franchise.

## Area Development Agreement

### YOUR ESTIMATED INITIAL INVESTMENT

TYPE OF EXPENDITURE <sup>1</sup>	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Development Fee <sup>1</sup>	\$200,000	Lump sum	When you sign the ADA.	Us
Insurance <sup>2</sup>	\$3,000 - \$5,000	Lump sum payment of first year premium	Before the start of operations	Insurance companies
Professional Fees <sup>3</sup>	\$2,000 - \$3,000	As Incurred	Terms Vary	Accountants, lawyers, State Agencies, etc.
Marketing and Advertising Expenses <sup>4</sup>	\$4,500 - \$10,000	As Incurred	Terms Vary	Advertising Sources
POS System Software Fee	\$300	Lump sum	As invoiced	Us
Training Expenses	\$3,200 - \$6,300	Terms vary	Terms vary	Transportation, meals, lodging, etc.
Additional Funds – 3 months	0			
Total <sup>5</sup>	\$213,000 - \$224,600			

<sup>1</sup> If you sign an ADA, you will incur additional costs that exceed those described in the Estimated Initial Investment Chart for a single Spa listed above. These additional costs may also include costs associated to solicit franchisee prospects, develop, open and service new Spas in your ADA Territory. You may also incur additional marketing and advertising expenses with your franchise sales initiatives and solicitation of franchise prospects. The Development Fee is described in Item 5 above. The Development Fee is non refundable.

<sup>2</sup> Your costs for insurance may vary depending on the insurer, and where you are located. This is an estimate of your annual premium for your insurance which is described in the ADA in Article 9 and Item 8.

<sup>3</sup> You may require the assistance of attorneys, accountants and other professional service providers in establishing your business. These amounts may vary depending on the extent of the services required.

<sup>4</sup> The low end represents 3 months of the required \$1,500 per month to be spent on an Advertising Program as described in Section 6.A (2) of the ADA. The high end represents additional funds which may be spent by the Developer in excess of the required Advertising Program.

<sup>5</sup> We cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on how closely you follow the System, your management skill, experience and business acumen, local economic conditions, the acceptance by local consumers of our approved goods/services, prevailing wage rates, competition, etc. We relied upon our experience in constructing

our affiliate owned locations in compiling the estimates listed in the charts above. There can be no assurance that the experience of a particular area developer will correspond with the information presented above. You should review these figures carefully with a business advisor and attorney before making any decision to purchase a franchise or area development rights.

## **ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

The goods, services, supplies, fixtures, inventory and computer hardware and software must be purchased by you from us, our affiliates, our approved suppliers or according to our specifications. Approved suppliers and specifications are determined based on the current needs for operating the franchised business. The Operations Manual identifies the items we require you to purchase or lease only from our approved suppliers. We evaluate approved suppliers based on price, service, quality, and other commercially reasonable benchmarks. The identity of approved suppliers and these specifications are updated periodically in writing by modifying the appropriate pages of the Operations Manual or notifying you by email. We will send you email notification or modified pages through the United States Mail or by any other commercially reasonable means. Our reason for these requirements is to ensure uniformity and consistent quality in all MassageLuXe locations.

If you want to use an alternative supplier or an alternative product for your Spa, you must first go through our approval process. We have procedures for approving vendors, suppliers, and alternative products you may recommend. There are no written guidelines for vendor, supplier and product approval, since the procedure will vary greatly depending on the particular product you want to use the vendor or supplier for, or the product you want to substitute. Factors that we will take into consideration include price, service, quality, and other commercially reasonable benchmarks. It takes up to 60 days to evaluate new vendors or suppliers and notify you of our decision. The approval criteria are not available to our franchisees. You are allowed to contract with alternative suppliers who meet our criteria, once we have approved the supplier. We charge a fee of \$500 for our review of an alternative supplier or product. The fee is intended to cover our costs for reviewing the supplier or product, though if our costs for doing so exceed \$500, we reserve the right to charge you a reasonable fee based on our actual costs. You must also provide us with a sufficient number of samples of the alternative product for us to review and evaluate. We reserve the right to revoke an approval in our sole discretion at any time upon written notice to you. We provide general specifications, which are issued by us in our sole discretion, to you or approved suppliers for our products upon request. If those specifications include our trade secrets or confidential information, we will require the supplier to sign a confidentiality agreement before receiving access to the specifications. If specifications provided to you or an approved supplier are later modified, we will inform you of that in writing.

The purchase of products from approved sources will represent approximately 40-55% of your overall purchases in opening the franchise and 10-15% of your overall purchases in operating the franchise.

Currently, our affiliates Luxe and LuXeStethics act as sources of products and services from our designated suppliers. Luxe is an approved supplier of massage tables and other equipment and supplies related to the MassageLuXe Services. LuXeStethics is an approved supplier of facial bars, tables and other equipment and supplies related to the FaceLuXe Services. You must purchase from us or our affiliates certain proprietary products as part of your initial and ongoing inventory requirements and we or our affiliates may be the only approved supplier of certain products or categories of products. We may occasionally develop proprietary private label equipment and products that are an integral part of our System and you must comply with all our specifications and requirements and incorporate and use the

equipment and products in the operation of the franchise business, as we may require. Luxe will provide you with your ongoing inventory requirements of massage-related products and massage equipment. LuXeStethics will provide you with your ongoing inventory requirements of facial and waxing-related products and facial and waxing equipment. In the fiscal year ending December 31, 2011, we did not sell products to our franchisees. However, our affiliates, Luxe and LuXeStethics, had revenues from the sale of items to franchisees in the amount of \$992,273. This figure was derived from our affiliates' internally prepared, unaudited financial statements for the year ending December 31, 2012. Our President, Todd Beckman, is the owner of our affiliates Luxe and LuXeStethics. Neither Mr. Beckman, nor any other of our officers is an owner of any other of our approved suppliers but they reserve the right to do so in the future. Any purchases from us or our affiliates will generally be at prices exceeding our, or our affiliate's, costs.

We and our affiliates reserve the right to negotiate with various vendors for quantity discount contracts which may include rebates to us or our affiliates under these contracts. You may or may not find the contracts to your advantage and may elect to participate or not to participate in them. We have the right to condition or revoke your right to participate in any supplier programs if you are in default under the Franchise Agreement. We have the right to affiliate ourselves with suppliers or become an approved supplier or the sole supplier. Further, we and our affiliates have the right to receive revenues, rebate, commissions or other benefits from suppliers based on purchases made by our franchisees. In the last fiscal year ending December 31, 2012, our affiliates received rebates of between \$1,600 and \$9,800 based on our franchisees' purchases from 2 approved suppliers.

We do not provide other material benefits to you; i.e., special renewal privilege or additional franchises, based on your use of our designated or approved sources. There are no purchasing or distribution cooperatives at this time. While we may do so in the future, we have not negotiated purchase arrangements with suppliers for our franchisees' benefit, but we reserve the right to do so in the future. We do not provide you material benefits based on your purchase of particular products or services or use of any particular suppliers.

In addition to the purchases or leases described above, you must buy and maintain, at your own expense, insurance coverage that we require and to meet the other insurance-related obligations, all of which are described in greater detail in Section 16.5 of the Franchise Agreement. The cost of coverage will vary depending on the insurance carrier's charges, terms of payment and your history. All insurance policies must name us as an additional insured party. We may, from time to time, in our sole discretion, make such changes in minimum policy limits, coverage, and endorsements as we may determine. The insurance policy or policies shall, at a minimum, include (i) comprehensive general liability insurance policy in the amount of \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate; (ii) worker's compensation insurance in amounts required by applicable law, or, \$2,000,000 aggregate limit, whichever is greater; (iii) professional liability insurance covering liability due to errors and omissions in the performance of massage services under this Agreement in the amount of \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate; (iv) "all risk" coverage for the full cost of replacement of leasehold improvements and other property at the Location in which we may have an interest with no coinsurance clause for the premises; (v) business interruption insurance with limit of liability representing loss of at least 6 months of income; (vi) other insurance as may be required by the landlord of the location for your Spa and by any applicable law or regulation; and (vii) other insurance as we may reasonably specify in the Operations Manual. In addition, if you are a Developer, the type of insurance you will be required to have is explained in Article 9 of the ADA.

**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 that agreement and in other items of this franchise disclosure document.**

OBLIGATION	ARTICLE NUMBER IN FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND ADA	ITEM NUMBER IN DISCLOSURE DOCUMENT
a. Site selection and acquisition/lease	1.3, 2.1 & 2.2 of the Franchise Agreement; and not applicable to the Multi-Unit Development Agreement or ADA	7 and 11
b. Pre-opening purchases/leases	2.2, 2.4 & 2.5 of the Franchise Agreement; and not applicable to the Multi-Unit Development Agreement or ADA	7 and 8
c. Site development and other pre-opening requirements	2.1, 2.3 through 2.8 & 4.1 of the Franchise Agreement; and not applicable to the Multi-Unit Development Agreement or ADA	5, 6, 7 and 11
d. Initial and ongoing training	4 of the Franchise Agreement; not applicable to the Multi-Unit Development Agreement; and 5 of the ADA	11
e. Opening	2.6, 2.7 & 2.8 of the Franchise Agreement; and not applicable to the Multi-Unit Development Agreement or ADA	11
f. Fees	3 of the Franchise Agreement; 2 of the Multi-Unit Development Agreement; and 2 of the ADA	5 and 6
g. Compliance with standards and policies / operating manual	2.11 and 4.5 of the Franchise Agreement; not applicable to the Multi-Unit Development Agreement; and 6 of the ADA	11 and 14
h. Trademarks and proprietary information	5 and 6 of the Franchise Agreement; not applicable to the Multi-Unit Development Agreement; and 10 and 11 of the ADA	13 and 14
i. Restrictions on products/services offered	2 & 8 of the Franchise Agreement; not applicable to the Multi-Unit Development Agreement or ADA	16
j. Warranty and customer service requirements	Not applicable to the Franchise Agreement, Multi-Unit Development Agreement or ADA	11
k. Territorial development and sales quotas	Not applicable to the Franchise Agreement; 3 of the Multi-Unit Development Agreement; and 3 and 14.A(2) of the ADA	12
l. Ongoing product/service purchases	8 of the Franchise Agreement; and not applicable to the Multi-Unit Development Agreement or ADA	8
m. Maintenance, appearance and remodeling requirements	2.11, 12.4 and 13.2 of the Franchise Agreement; and not applicable to the Multi-Unit Development Agreement or ADA	11
n. Insurance	16.5 of the Franchise Agreement; not applicable in the Multi-Unit Development Agreement; and 9 of the ADA	7 and 8
o. Advertising	9 of the Franchise Agreement; not Applicable to the Multi-Unit Development Agreement; and 6.A of the ADA	6, 7 and 11
p. Indemnification	16 of the Franchise Agreement; 5 of the Multi-Unit Development Agreement; and 8 of the ADA	6
q. Owner's participation/management/staffing	1.4 of the Franchise Agreement; and not Applicable to the Multi-Unit Development Agreement or the ADA	11 and 15
r. Records and reports	10 of the Franchise Agreement; not Applicable to the Multi-Unit Development Agreement; and 6.C of the ADA	6



OBLIGATION	ARTICLE NUMBER IN FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND ADA	ITEM NUMBER IN DISCLOSURE DOCUMENT
s. Inspections and audits	11 of the Franchise Agreement; not Applicable to the Multi-Unit Development Agreement; 6.C of the ADA	6 and 11
t. Transfer	12 of the Franchise Agreement; 8 of the Multi-Unit Development Agreement; and 12 of the ADA	6 and 17
u. Renewal	13 of the Franchise Agreement; not applicable to the Multi-Unit Development Agreement; and 1.B of the ADA	6 and 17
v. Post-termination obligations	13 and 14 of the Franchise Agreement; not applicable to the Multi-Unit Development Agreement; and 13.B & 14.E of the ADA	17
w. Non-competition covenants	7 of the Franchise Agreement; not applicable to the Multi-Unit Development Agreement; and 13 of the ADA	17
x. Dispute resolution	17.7 of the Franchise Agreement; 9 of the Multi-Unit Development Agreement; and 16 of the ADA	17

### **ITEM 10 FINANCING**

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

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

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

**Before you open your Spa, we will:**

- Designate your protected Territory under the Franchise Agreement (Franchise Agreement – Article 1.3 and Appendix A).
- Designate your exclusive ADA Territory if you are a Developer (ADA – Article 1.A and Appendix A).
- Designate your exclusive MUD Territory for your Spas to be developed under a Multi-Unit Development Agreement (Multi-Unit Development Agreement - Article 1.A and Appendix A).
- Loan you a copy of our Operations Manual (Franchise Agreement - Articles 4.1 and 4.5 and ADA- Article 5.B.). The Operations Manual, which may be in a format determined by us (i.e., in writing, on CD-Rom, via electronic media through a secure website, etc.) is confidential and remains our property. You will operate your Spa in strict compliance with those operational systems, procedures, policies, methods and requirements found in the Operations Manual which are designated as mandatory and in any supplemental bulletins and notices, revisions, modifications, or amendments thereto, all of which are a part of the Operations Manual.

You must always treat in a confidential manner the Operations Manual, any other manuals we create (or that we approve) for use with the Spa, and the information contained in the Operations Manual. You may not copy, duplicate, record, or otherwise reproduce all or any part of the Operations Manual and the related materials, (except for the parts of the Operations Manual that are meant for you to copy, which we will clearly mark), nor may you otherwise let any unauthorized person have access to these materials. The Operations Manual will always be our sole property. You must always keep the Operations Manual in a secure place at the Spa

premises. We may periodically revise the contents of the Operations Manual, and you must make corresponding revisions to your copy of the Operations Manual and comply with each new or changed standard which is mandatory. If there is ever a dispute as to the contents of the Operations Manual, our master copy of the Operations Manual (maintained at our home office) will be controlling. The Operations Manual is 235 pages and the table of contents of the Operations Manual is attached as **Exhibit D**.

- Consent to your lease for your Spa location (Franchise Agreement - Article 2.2). The factors we consider regarding whether to consent to your choice of a location for your Spa include general location and neighborhood, demographics, zoning, traffic patterns, parking, overall interior and exterior size, and lease terms. Our consent to your lease indicates that the lease meets our minimum requirements. Your lease for the Location must contain substantially the same terms as found on Appendix B attached to the Franchise Agreement. At our request, you agree that you will collaterally assign the lease to us as security for your timely performance of all obligations under the Franchise Agreement and secure the lessor's consent to this collateral assignment (see Franchise Agreement – Appendix C). If you and we cannot agree upon a location for your Spa and you fail to open within 270 days after signing the Franchise Agreement, we may terminate the Franchise Agreement.
- Provide you with suggestions for the layout and design of your Spa (Franchise Agreement - Article 2.3). These suggestions will not include the requirements of any federal, state, or local law, code, or regulation, including those concerning the Americans with Disabilities Act or similar rules governing public accommodations for persons with disabilities, nor will our suggestions include the requirements of, or be suitable for, construction drawings or other documentation necessary to obtain permits or authorization to build your Spa. You will construct your Spa in accordance with specifications and plans prepared by you based upon our standards, subject to our right to consent. The cost of plans and specifications will be borne by you. Our consent will be limited to review of such plans to assess compliance with our design standards for Spas, including such items as trade dress, presentation of trademarks, and the provision to the potential customer of certain products and services that are central to the functioning of your Spa. We do not construct, remodel or decorate the premises for you.
- Provide you suppliers and/or specifications for the products, equipment, services, furniture, fixtures and inventory you will be required to have at the Spa (Franchise Agreement – Article 2.5). Our affiliates, Luxe and LuXeSthetics, currently sell the equipment, signs, fixtures, opening inventory and supplies you will need to start your Spa. Written specifications for these products are included in the Operations Manual. The products will be delivered to you, but you will have to install them yourself.
- Provide you with an initial training program described below (Franchise Agreement - Article 4.1 and ADA – Article 5.A.).
- Provide you, at our discretion, with on-site consultation and additional guidance before you open the Spa (Franchise Agreement - Article 4.3). We have the right to charge a reasonable fee for this additional guidance.
- Make available to you, at our discretion and at your own expense, any marketing and promotional materials necessary for marketing programs. (Franchise Agreement - Article 9.1).

Note that if your Spa is located in the territory of one of our area developers, some or all of our obligations may be performed by that area developer.

## **Time for Opening the Spa**

We estimate the length of time between the signing of the Franchise Agreement to the opening of the Spa to range between 6 and 9 months. Factors that may affect the time period include your ability to obtain a lease, financing, building permits, comply with zoning and other local ordinances, weather conditions, shortages and delayed purchases or installation of equipment, fixtures or signs. You must begin operating your Spa within 270 days of execution of the Franchise Agreement.

Under the Multi-Unit Development Agreement, you must open your first Spa within 270 days of execution of the Franchise Agreement, the second Spa must be opened within 18 months after the opening of the first Spa, and you are required to continue opening subsequent Spas at 18 month intervals until all Spas required to be developed under the Multi-Unit Development Agreement have been opened (Multi-Unit Development Agreement – Article 3.A.).

Under the ADA, you must enter into a Franchise Agreement and open and operate at least one Spa within the Territory to be used as a Model Spa. The Spa that you open under that Franchise Agreement must open no more than 270 days after the effective date of the ADA (ADA – Article 3.D.).

If you are unable to find a location for your Spa within the required time, or if you are unable to open your Spa within the required time, you have to apply to us for an extension of time.

### **During the Operation of your Spa, we will:**

- Our representative will spend 3 to 5 days at your franchise location to assist you with the grand opening of the Spa. (Franchise Agreement - Article 4.4).
- Provide you with general guidance, for which we have the right to charge a reasonable fee (Franchise Agreement - Article 4.3 and ADA – Article 5.C).
- Be available for reasonable telephone consultation to assist with operating problems (Franchise Agreement - Article 4.3).
- Make available to you, at our discretion and your expense, ongoing marketing and promotional materials (Franchise Agreement - Article 9.1).
- Periodically, at our discretion, conduct meetings, where we may meet with you and other MassageLuXe franchisees for business or social purposes (Franchise Agreement - Article 4.2).
- For a Developer under an ADA, we will maintain a centralized telephone number and/or website or other Internet presence for the purpose of advertising the sale of franchises generally (ADA – Articles 5.E).
- For a Developer under an ADA, we will pay you the following in compliance with the terms of the ADA for each franchise sold by you in your ADA Territory: (i) 50% of the initial franchise fee or transfer fee actually received from Franchised Spas; and (ii) 40% of the royalty fees actually received by us (ADA - Article 7).
- For a Developer under an ADA, we will provide in our sole discretion final approval on potential franchisees within your ADA Territory (ADA - Articles 3.F and 6).
- For a Developer under an ADA, we will provide you with our franchise disclosure document, which you must use to solicit franchisees within your ADA Territory. We will attempt to maintain effective franchise registrations in all franchise registration states in your ADA Territory. You may have to register before you may solicit franchisees, should any franchise registration state determine that, as a Developer, you are a franchise broker or subfranchisor. A

franchise registration state may also require you to use your own franchise disclosure document when soliciting franchisees, and you must use that document, subject to our right to consent, instead of our disclosure document in that case (ADA - Article 5.D). Our consent will be limited to review of such disclosure document to assess descriptions of our business, the Marks and System and the agreements that franchisees you solicit will be required to sign.

## **Advertising**

### Creative Services Advertising Fund

We control and administer the Creative Services Advertising Fund that all of our franchisees contribute to by paying us a Regional Ad Fee and a National Ad Fee as described in Item 6 above. We are not limited to any specific media in which ads may be disseminated. We are not limited to local, regional or national programs, but may use a combination of these programs. We will create ads and may solicit outside ad agencies for the same purpose. We are not required under the terms of the Franchise Agreement to spend any funds from the Creative Services Advertising Fund to provide advertising in the local area or territory where your Spa is located in the same proportion as your contributions to the Creative Services Advertising Fund; however, we will provide some direct marketing in the general region in which your Spa is located at our sole discretion. We do not spend any funds from the Creative Services Advertising Fund on advertising that is principally a solicitation for the sale of franchises, except that we will use portions of the National Ad Fees towards the costs of any website we may maintain, which website may contain information about our franchising programs. The Creative Services Advertising Fund will be accounted for separately from our other funds and will not be used to defray any of our general operating expenses, except for reasonable salaries, administrative costs, travel expenses and overhead as we may incur in activities related to the administration of the Creative Services Advertising Fund and its programs. We will prepare an annual unaudited statement of monies collected and costs incurred by the Creative Services Advertising Fund and furnish the statement to you upon written request but do not provide you with periodic accountings showing how the advertising fees were spent. Any money in the Creative Services Advertising Fund which is not depleted within the calendar or fiscal year will remain in the Creative Services Advertising Fund for use during the following calendar or fiscal year. During our most recently completed fiscal year (ending December 31, 2012), 100% of expenditures were on media placement. Neither we, nor our affiliates receive payment for providing goods or services to the Creative Services Advertising Fund, other than reimbursement of the costs listed above. Our affiliate-owned Spas have no obligation to contribute to the Creative Services Advertising Fund, however, except for our first affiliate-owned Spa, they currently do contribute at the same rate as franchisees are required to contribute. There is no advertising council composed of franchisees at this time. There are no advertising cooperatives or franchisee councils involved in the advertising process at this time. You are not required to participate in any local or regional advertising cooperative.

### Local Advertising

Although it is not required, we recommend that you spend money on local advertising and promotion of your Spa in addition to your contributions to the Creative Services Advertising Fund. You may use advertising that you generate, but only after first submitting it to us and receiving our approval. If you do not receive written disapproval within 15 days after we receive the materials, we will be deemed to have given approval. You will not advertise or use in advertising or other form of promotion, the Marks without the appropriate copyright, trademark, and service mark symbols ("©", "®", "TM" or "SM") as we direct. You are responsible to ensure that all advertising and promotion materials used by you, whether created or consented to by us, comply with applicable laws.

### Start-Up Marketing

Under the Franchise Agreement, you must conduct a grand opening advertising and promotional program for your Spa during the 30 day period prior to opening and during the 30 day period after opening and to expend not less than \$7,500 (the "Start-Up Marketing") for such purpose. The Start-Up Marketing will utilize the marketing and public relations programs and media and advertising materials we have approved. The Start-Up Marketing shall be conducted at the times we consider prudent. You must provide to us, within 30 days of our request, copies of all receipts and other documents we reasonably request, demonstrating your compliance.

### ADA Advertising Program

If you enter into an ADA with us, you will be required to pay us \$1,500 per month until you have fulfilled at least 80% of your development obligations under your ADA. We will use this amount to finance the advertisement of the sale of franchises, along with the cost of search engine optimization and other methods we determine prudent to advertise the sale of franchises generally. We are not required to market the sale of franchises in any particular region, and the advertising to be conducted by us will not be designed to target any particular geographic area, including your ADA Territory. This amount is in addition to any Regional Ad Fee, National Ad Fee and other advertising spending that you pay to us under any Franchise Agreements in which you are a party.

### Internet and Other Electronic Advertising

We have established an Internet website, which we control. At your expense, we will include at this website an interior page containing information about your business for as long as determine. You may be required to prepare, at your cost, all or a portion of the page using our template, which will be subject to our approval. Subject to our right to consent, you may be permitted to create a social media account from which to advertise your Spa on the Internet (such as on LinkedIn, Facebook or Twitter). Any such permission shall only be for such time as we permit and shall be on the terms and condition we specify from time to time in the Operations Manual, which may restrict the content that you are permitted to post to such social media outlet. We have the right to cease granting you permission to operate any such social media outlet at any time. Except for this interior page and any such social media website, you may not maintain a presence on the internet for your Spa. Any advertising on the Internet, delivered by facsimile, electronic mail or other electronic means shall be pre-approved by us and on terms specified by us. We may require you to place all such electronic advertisements with us or our designated third party vendor.

### **Computer and POS System**

We require you to use an approved electronic cash register/point of sale system in the operation of your Spa. The cost for the required software and hardware is between \$15,000 and \$17,000 depending on the product requested. We currently approve only the PC OnSite equipment and software package. You will pay us an initial fee of \$350 (\$300 for a Developer under an ADA) and an ongoing fee of \$100 per week (no ongoing fee for a Developer under an ADA), which may be increased by up to 5% annually, for the PC OnSite software package that covers standard support and minor upgrades of the software. See Item 6. There is no other required maintenance, updating, upgrading or support, and we do not offer any optional maintenance, updating, upgrading or support for the required software. There is no additional cost for required or optional maintenance, updating or support of the computer hardware. PC OnSite is located at 4060 West Clarendon Avenue in Phoenix, Arizona 85019, and their telephone number is 1-877-530-7612.

You will use the cash register/point of sale system to generate receipts for customer purchases, track your sales at the Spa, and maintain information required for accounting records. The software is not proprietary to us, but is exclusive to us and is customized to include our sales codes and other System specifics. You will also use the cash register/point of sales system to communicate with us through the Internet, as well as to create correspondence and records related to the franchise. It will be your responsibility to find an Internet Service Provider and to set up an email account through which you can communicate with us.

You will contact our approved suppliers for service and maintenance of your computer hardware and software and peripheral equipment. Our approved suppliers have their own policies for service and maintenance as well as hardware and software upgrades. You agree to maintain at your own expense a computer system that conforms to the requirements and formats we prescribe, including updating all computer software and hardware as required by us. Neither we, nor any of our affiliates, nor any third parties, are required to provide ongoing maintenance, repairs, upgrades or updates to any part of your computer system. There are no contractual limitations on the frequency or cost of hardware and software upgrades required to conform to our system standards. We have the right, as often as we deem appropriate, including on a daily basis, to independently access your cash register/point of sale system and other computer systems that you are required to maintain in the operation of the Spa and to retrieve all information about the Spa's operations. There are no contractual limitations on our right to access the information, and you must ensure that we are able to remotely connect to your computer/point of sale system at all times for this purpose. None of the hardware components or software programs are the proprietary property of MassageLuXe or any of our affiliates, but they are exclusive to us.

We reserve the right to change the computer/POS system described in this Item at any time. There are no contractual limitations on the frequency and cost of this obligation. We need not reimburse you for any of these costs.

All point of sale system data and client information is our sole property and we may terminate your ability to access and use the point of sale system if a default of the Franchise Agreement, including non-payment of Royalties, Regional Ad Fees or National Ad Fees, is not cured within the permitted cure period, if any, or if you manipulate the system outside the way it was designed or intended without our prior approval. If we terminate your ability to access and use the point of sale system for non-payment of Royalties, Regional Ad Fees or National Ad Fees, full payment of all sums owed to us must be made before we give you access to and use of the point of sale system.

## **Training**

Our current training program consists of initial training at our training location or at an operating Spa on the operation of a Spa for you (or, if you are a business entity, your managing owners), and up to 10 additional employees you elect to enroll in the training program. Initial training consists of 10 working days. You (or your managing owner), and your employees are required to complete the initial training to our satisfaction. You will be responsible for all travel and living expenses which you (or your managing owner) and your employees incur while training. You (or your managing owner) must satisfactorily complete the initial training at least 2 weeks before opening your Spa. If we determine that you (or your managing owner) are unable to complete initial training to our satisfaction, we have the right to terminate your Franchise Agreement.

## TRAINING PROGRAM

TABLE OF SUBJECTS - SINGLE UNIT FRANCHISE

SUBJECT	HOURS OF CLASSROOM TRAINING <sup>1</sup>	HOURS OF ON THE JOB TRAINING <sup>1</sup>	LOCATION
Luxe 1 – Benefits of Massage and Types of Massage Offered	2	0	Fenton, MO or at another MassageLuXe Spa
Luxe 2 – Membership, Introductory Offers and Commissions	3	0	Fenton, MO or at another MassageLuXe Spa
Luxe 3- Introduction to Software Management System	3	0	Fenton, MO or at another MassageLuXe Spa
On-Site Training – Day-to-Day Operations, Customer Service, Selling, Software Management System	0	72	Fenton, MO or at another MassageLuXe Spa

<sup>1</sup> It is the nature of the MassageLuXe business that all subjects are integrated into the training program, and that there are no clear delineations between the subjects being learned.

We use our Operations Manual as the instructional material for the initial training. Initial training will be provided by Todd Layton, our Chief Operating Officer, Katie Corbin, our Director of Franchise Operations, Nicole "Nikee" Respi, our National Trainer & Corporate Recruiter, or another member of the Franchise Operations team. Mr. Layton has 15 years of training experience, and has been with us since our inception. Ms. Corbin has 9 years of training experience and has been with us since our inception. Ms. Respi has been in the massage industry since 2005 and has been with us since 2009. She has a Bachelor's Degree in Elementary and Early Childhood Education from Fontbonne University. The other trainers have, on average, 8 years of experience in our field, including 4 years with us. If your Spa will be located in the territory of one of our area developers, the training will be provided by the staff of the area developer at the area developer's Model Spa. The experience of the training staff will vary, but we will require each trainer to have completed our single unit franchise initial training program to our satisfaction before becoming a trainer.

Initial training is organized monthly. We may require you or your previously trained and experienced employees to attend periodic refresher courses. The courses will be held at locations designated by us and we have the right to charge reasonable fees for the courses.

In addition to the Training Program described above, we will send one representative to your Spa for a period of 3 to 5 days to provide on-site opening assistance during the opening of your Spa.

We anticipate developing an on-line training program to assist franchisees in training their employees. At that time, it may be mandatory for franchisees to purchase the equipment and pay the ongoing monthly fees for this training program.

If you enter into an ADA with us, you will receive the full training described above only when you open your Model Spa. In addition, you will receive training on the following subjects:

TABLE OF SUBJECTS - AREA DEVELOPER PROGRAM

<b>SUBJECT</b>	<b>HOURS OF CLASSROOM TRAINING <sup>2</sup></b>	<b>HOURS OF ON THE JOB TRAINING</b>	<b>LOCATION</b>
Franchise Marketing/Lead Generation	6	4	Fenton, MO or at another MassageLuXe Spa
Franchise Sales	6	6	Fenton, MO or at another MassageLuXe Spa
Qualifying of Prospects	2	4	Fenton, MO or at another MassageLuXe Spa
Financing	1	3	Fenton, MO or at another MassageLuXe Spa
Store Development/Site Development	1	5	Fenton, MO or at another MassageLuXe Spa

<sup>1</sup> It is the nature of the MassageLuXe business that all subjects are integrated into the training program, and that there are no clear delineations between the subjects being learned.

<sup>2</sup> The actual hours of training will likely vary, depending on the prior experience of the Developer.

We use our advertising materials, the disclosure document, demographic information about your area, our standard franchise application form and Small Business Administration materials as instructional materials for the Developer training.

**ITEM 12  
TERRITORY**

**Franchise Agreement**

We will grant you rights to operate a single Spa under the MassageLuXe Marks in an exclusive territory (the "Territory") in which we will not locate another Spa offering primarily the MassageLuXe Services under the MassageLuXe Marks, nor ourselves directly or indirectly own another Spa offering primarily the MassageLuXe Services under the MassageLuXe Marks. However, we reserve the right to operate locations within transportation facilities even if these transportation facilities are within your Territory. In addition, you understand that although you will provide FaceLuXe Services under the FaceLuXe Marks within your Spa in a limited number of rooms, you will not operate your Spa under the FaceLuXe Marks, and that we and our affiliates are permitted to establish or grant to a franchisee the right to establish businesses within the Territory which primarily offer FaceLuXe Services, both under the FaceLuXe Marks or otherwise, and that these other businesses will be permitted to also operate, in a limited number of rooms (e.g., one or two) MassageLuXe Services offered under the MassageLuXe Marks. These other business will not be predominately identified by the MassageLuXe Marks, but merely the MassageLuXe Services offered by such businesses will be identified by the MassageLuXe Marks.

Typically your Territory will be an approximately 3 mile radius around the location of your Spa unless you are in a densely populated area (i.e. metropolitan area) or a rural area. If you are in a rural area, the geographic radius of your Territory may be much larger and if you are in a densely populated area, the geographic radius of your Territory may be smaller.



Except as described above, we reserve all other rights with respect to the System, Marks and development of Spas, including the right to establish, and grant to franchisees the right to establish, Spas anywhere outside your Territory and within transportation facilities within and outside of your Territory; to establish, and grant to franchisees the right to establish, businesses within your Territory or outside of your Territory under trademarks or service marks different than the MassageLuXe Marks or systems different from the System (including systems which predominately feature the FaceLuXe Services); to sell our services or ancillary products, whether or not using the Marks, inside or outside your Territory through distribution channels other than Spas, including through catalogs distributed within your exclusive Territory, the Internet, print, direct marketing media and any other non-spa outlets inside or outside your Territory, and we may promote services and products bearing the Marks at special events, conventions, athletic contests, etc., through temporary locations and mobile units (both inside and outside your Territory); and to purchase, be purchased, merge, acquire, be acquired or affiliate with a competitor or any other business regardless of the location of the competitor or business, and to operate, franchise or license these businesses as Spas under the System or Marks or under other proprietary marks, regardless of the location of these businesses, whether they are in your Territory or outside your Territory. You will not receive any compensation if we exercise these reserved rights, and you are prohibited from soliciting customers outside of the Territory through the Internet without our prior consent and on terms we specify.

Nothing will prohibit us and our affiliates from doing business within your Territory for National Accounts. A "National Account" means those customers, with more than 1 location covered by an agreement for services which are not located solely in the territory of one of our franchisees. If you obtain an account that is considered a National Accounts, you must refer it to us and it will be treated as a National Account; however, we reserve the absolute right to reject any such account for any reason. National Accounts shall be negotiated solely by us or our affiliates, even if you procure the National Account. All National Accounts will be considered our property and you will have no claim to them. If one or more locations of a National Account falls within your Territory, we will first offer you the opportunity to provide services to those locations on the terms and conditions that we have established with the National Account. You are not required to service a National Account and if you do not accept our offer to do so in the manner and within the time period that we specify, we have the right to service the account ourselves, or may authorize other Spas, to provide these services. However, the decision to accept or reject you as a provider of services for the National Account ultimately rests with the National Account.

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

You do not receive the right to acquire additional franchises within your area. Relocation of your Spa must be approved by us. We may approve or disapprove a relocation in our sole discretion. The factors we consider regarding whether to approve your proposed site to relocate your Spa include general location and neighborhood, demographics, zoning, traffic patterns, parking, overall interior and exterior size, lease terms and proximity to other Spas. If you want to open additional Spas, you will have to submit a new application that will be treated like any application submitted by a new franchisee. You do not acquire any options, right of first refusal, or similar rights to acquire additional franchises when you sign a Franchise Agreement, Multi-Unit Development Agreement or ADA (other than the number of Spas specified in your Multi-Unit Development Agreement or ADA).

Your rights in and to your Territory are not dependent upon your meeting a minimum sales volume or market penetration. The configuration of your Territory will not change except by mutual agreement of you and us.

Neither we nor any of our affiliates operate, franchise, or plan to operate or franchise a business under a different trademark that will sell goods or services similar to those which you will offer.

### **Multi-Unit Development Agreement**

If you sign a Multi-Unit Development Agreement, we give you the right to develop and open a specific number of Spas as designated in your Multi-Unit Development Agreement. The territory for your Multi-Unit Development Agreement ("MUD Territory") will be determined by us before you sign the Multi-Unit Development Agreement based on various market and economic factors like market demographics and the penetration of Spas and similar businesses in the market, the availability of appropriate sites and growth trends in the market. You may not establish a Spa anywhere outside the MUD Territory. The minimum number of Spas required to be opened under the Multi-Unit Development Agreement is 3. The exact number of Spas required to be opened will be determined by us based on the size of the territory and various market and economic factors.

You must operate each Spa that you establish under your Multi-Unit Development Agreement under a separate Franchise Agreement with us. If you comply with your obligations under your Multi-Unit Development Agreement, we will not establish, nor license anyone other than you to establish a Spa in the MUD Territory, except in transportation facilities during the term of your Multi-Unit Development Agreement. If you do not exercise your Multi-Unit Development rights within the schedule provided in your Multi-Unit Development Agreement, or if you otherwise fail to comply with the terms of the Multi-Unit Development Agreement or Franchise Agreements, or any other agreement between you and us, your rights to develop Spas in your MUD Territory may be terminated. In addition, you understand that although you will provide FaceLuXe Services under the FaceLuXe Marks in a limited number of rooms within each Spa you develop in your MUD Territory, you will not operate any of your Spas under the FaceLuXe Marks, and that we and our affiliates are permitted to establish or grant to a franchisee the right to establish businesses within the MUD Territory which primarily offer FaceLuXe Services, both under the FaceLuXe Marks or otherwise, and that these other businesses will be permitted to also operate, in a limited number of rooms (e.g., one or two) MassageLuXe Services offered under the MassageLuXe Marks. These other businesses will not be predominately identified by the MassageLuXe Marks, but merely the MassageLuXe Services offered by such businesses will be identified by the MassageLuXe Marks.

Except as described above, we reserve all other rights with respect to the System, Marks and development of Spas, including the right to own or operate, or license others to own or operate Spas immediately adjacent to your MUD Territory, anywhere outside of your MUD Territory and within transportation facilities within and outside of your MUD Territory; to operate or license others to operate similar businesses or any other businesses and services under trademarks or service marks other than the MassageLuXe Marks in any location, both inside or outside of your MUD Territory; to operate or license others to operate businesses that are not similar to a Spa offering predominately MassageLuXe Services under the Marks in any location, both inside or outside of your MUD Territory; to develop, merchandise, sell and license others to sell products bearing the Marks (including the products and services offered at your Spas) through other channels of distribution such as catalogs distributed within the MUD Territory, the Internet, print, direct marketing media and any other non-spa outlets inside or outside your MUD Territory, and we may promote services and products bearing the Marks at special events, conventions, athletic contests, etc., through temporary locations and mobile units (both inside and outside your MUD Territory); and to purchase, be purchased, merge, acquire, be acquired or affiliate with a competitor or any other business regardless of the location of the competitor or business, and to operate, franchise or license these businesses as Spas under the System or Marks or under other proprietary marks, regardless of the location of these businesses, whether such businesses are in your MUD Territory or outside your MUD Territory. We also reserve the right to service National Accounts located within your MUD

Territory on the terms described above under the Franchise Agreement. You will not receive any compensation if we exercise these reserved rights.

You will not receive an exclusive territory under the Multi-Unit Development Agreement. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands we control.

Neither we nor any of our affiliates have granted, or presently intend to grant other multi-unit development rights for franchises selling or leasing similar products or services under a different trade name or trademark, but we have the right to do so.

### **Area Development Agreement**

If you sign an ADA, we give you the right to solicit franchisees, develop, open and service a minimum of 21 Spas in the ADA Territory that we determine before you sign the ADA. There is no minimum size for the ADA Territory and its size and shape will be determined based on various market and economic factors like market demographics and the penetration of Spas and similar businesses in the market, the availability of appropriate sites and growth trends in the market. You may not offer to sell a Spa anywhere outside your ADA Territory. A relocation of your ADA Territory will require our approval, which we may grant or withhold in our sole discretion. In addition to considering the market and economic factors described above for any proposed relocation of your ADA Territory, we will consider the proximity to other territories granted to our Area Developers.

You must solicit franchisees, develop, open, and service each Spa that you sell under your ADA pursuant to a Franchise Agreement between the franchisee and us. So long as you are in compliance with your obligations under your ADA, we will not establish, nor license anyone other than you development rights for Spas within the ADA Territory during the term of your ADA. If you do not exercise your Developer rights within the schedule provided in your ADA, or if you otherwise fail to comply with the terms of the ADA or any Franchise Agreement you may have with us, or any other agreement between you and us, your rights to develop Spas in the ADA Territory may be terminated. In addition, you understand that although you and the franchisees you solicit will provide FaceLuXe Services under the FaceLuXe Marks in a limited number of rooms within each Spa you or they develop in your ADA Territory, neither you nor they will operate any of the Spas under the FaceLuXe Marks, and that we and our affiliates are permitted to establish or grant to a franchisee the right to establish businesses within the ADA Territory which primarily offer FaceLuXe Services, both under the FaceLuXe Marks or otherwise, and that these other businesses will be permitted to also operate, in a limited number of rooms (e.g., one or two) MassageLuXe Services offered under the MassageLuXe Marks. These other businesses will not be predominately identified by the MassageLuXe Marks, but merely the MassageLuXe Services offered by such businesses will be identified by the MassageLuXe Marks.

You will not receive an exclusive territory under the ADA. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands we control. Except as described above, we reserve all other rights with respect to the System, Marks and development of Spas, including the right to establish, and grant development rights for Spas anywhere outside your ADA Territory and to establish Spas within transportation facilities within and outside of your ADA Territory; to establish, and grant to franchisees the right to establish, businesses within your ADA Territory or outside of your ADA Territory under trademarks or service marks different than the MassageLuXe Marks or systems different from the System (including systems which predominately feature the FaceLuXe Services); to sell services or ancillary products, whether or not using the Marks, inside or outside your ADA Territory through distribution channels other than Spas, including, but not limited to catalogs distributed within your ADA Territory, infomercials, toll free telephone numbers, mail

order, the Internet, print, direct marketing media and any other non-spa outlets inside or outside your ADA Territory, and we may promote services and products bearing the Marks at special events, conventions, athletic contests, etc., through temporary locations and mobile units (both inside and outside your ADA Territory); and to purchase, be purchased, merge, acquire, be acquired or affiliate with a competitor or any other business regardless of the location of the competitor or business, and to operate, franchise or license these businesses as Spas under the System or Marks or under other proprietary marks, regardless of the location of these businesses, whether such businesses are in your ADA Territory or outside your ADA Territory. You will not receive any compensation if we exercise these reserved rights.

You do not acquire any options, rights of first refusal, or similar rights when you enter into the ADA, other than the right to open the minimum number of Spas specified in your ADA.

Neither we nor any of our affiliates have granted, or presently intend to grant other area developer rights for franchises selling or leasing similar products or services under a different trade name or trademark, but we have the right to do so.

There is no restriction on where or by what means (Internet advertising or direct marketing, for example) in the U.S. or the world you may solicit franchisees to open Spas in the ADA Territory, but we must consent to the content any advertising or other solicitation materials you use. The ADA also does not restrict us or our affiliates or agents from soliciting prospective franchisees from within the ADA Territory for Spas outside the ADA Territory.

**ITEM 13  
TRADEMARKS**

Our trademarks listed below are registered on the Principal Register with the United States Patent and Trademark Office ("PTO"). Our principal Marks include:

<b>TRADEMARK</b>	<b>REGISTRATION NUMBER</b>	<b>REGISTRATION DATE</b>	<b>PTO REGISTER</b>
MassageLuXe	3,463,781	July 8, 2008	Principal
ML & Design	3,575,936	February 17, 2009	Principal

No renewals or affidavits are yet due with respect to the registration of these Marks. We intend to file all affidavits and to renew the registrations for the Marks when they become due. You must follow our operating procedures when you use the trademarks. You cannot use the Marks or any of our other trademarks or service marks as part of your corporate name. You may not use the Marks if you wish to advertise the sale of your franchise.

There are no currently effective material determinations of the PTO, Trademark Trial and Appeal Board, or any state trademark administrator or any court. There are no pending infringements, oppositions or cancellations concerning the Marks. There is no federal or state court pending material litigation involving the Marks. We are not required under the Franchise Agreement or ADA to protect your right to use the Marks or to protect you against claims of infringement or unfair competition arising out of your use of the Marks. If you become aware of any apparent infringement or challenge to your use of the Marks, you must notify us immediately. We are not required to take affirmative action if we are notified of an infringement, but have the right to do so, in our sole discretion. We have the right to control any administrative proceedings or litigation involving the Marks. We do not have to participate in your defense and/or indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving the Marks, or if the proceeding is resolved unfavorably to you. If we

require you to modify or discontinue the use of the Marks, you must comply with our directions within a reasonable time.

There are no agreements currently in effect that significantly limit our rights to use or license the use of the Marks in a manner material to the System. We are not obligated, by the terms of the Franchise Agreement or otherwise, to protect your right to use the Marks. Nor are we obligated to protect you against claims of infringement or unfair competition arising out of your use of the Marks.

We have no actual knowledge of superior prior rights or infringing uses that could materially affect your use of the Marks in the state where your Spa may be located.

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

No patents are material to the operation of your Spa.

We claim copyright protection covering various materials used in our business and the development and operation of Spas, including the Operations Manual, software, advertising and promotional materials, and any other materials we give you for your use or for public dissemination. It also includes proprietary information and publications that we own or have acquired under license from a third party and similar materials. We have not registered these materials with the United States Registrar of Copyrights and are not required to do so.

There are no currently effective determinations of the United States Copyright Office or any court, nor any pending litigation or other proceedings, regarding any copyrighted materials. No agreement limits our rights to use or allow franchisees to use the copyrighted materials. We do not know of any superior prior rights or infringing uses that could materially affect your use of the copyrighted materials. No agreement requires us to protect or defend our copyrights or to indemnify you for any expenses or damages you incur in any judicial or administrative proceedings involving the copyrighted materials. No provision in the Franchise Agreement or ADA requires you to notify us of claims by others of rights to, or infringements of, the copyrighted materials. If we require, you must immediately modify or discontinue using the copyrighted materials. Neither we nor our affiliates will have any obligation to reimburse you for any expenditures you make because of any discontinuance or modification.

Except for the purpose of operating the Spa under the Franchise Agreement and for the operation of your business under the Multi-Unit Development Agreement or ADA, you may never (during a Franchise Agreement's or the ADA's term or later) use in any other business or capacity any of the confidential information concerning the operation of a Spa that may be communicated to you or that you may learn by virtue of your operation of the Spa. Confidential information includes the Operations Manual. You must maintain absolute confidentiality of the confidential information during and after the term of the Franchise Agreement, Multi-Unit Development Agreement and/or the ADA and must implement reasonable procedures to avoid unauthorized use or disclosure of the confidential information.

#### **ITEM 15 OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

You (or your managing owners) agree to personally manage and operate the franchise as your (or their) primary occupation and will not, without our prior written consent, delegate your (or your managing owner's) authority and responsibility for management and operation. You or your managing owner must, at all times, faithfully, honestly and diligently perform and exert your best efforts in

performing your obligations under the Franchise Agreement. Each of your owners must be bound by the terms of the Franchise Agreement. If you are a corporation or other business entity, each individual owning 10% or more interest in the entity, and their spouse, if applicable, must agree to be bound by the confidentiality and exclusive dealing/non-competition obligations imposed on you under the Franchise Agreement.

If the franchisee is a business entity, you must designate and we must approve a managing owner to operate the franchise. There is no required amount of equity interest that the managing owner must have in the franchise. If you elect to hire a manager or supervisor to operate the franchise and we consent, the employee must successfully complete our initial training program and must be bound to the confidentiality and noncompetition provisions of the Franchise Agreement. We have the unrestricted right to approve or disapprove of your choice of whom you can hire as manager or supervisor.

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

You must operate your franchise in accordance with our Operations Manual. Our Operations Manual contains mandatory and suggested specifications, standards, operating procedures and rules that we specify periodically for the operation of the franchise business (i.e., the purchase of supplies and other products, membership transfers, etc.) and information about your other obligations under the Franchise Agreement, ADA and related agreements. The Operations Manual may be modified by us from time to time to reflect changes in our operations.

You may only offer and sell those services and related goods that we have approved. You must offer all services and related goods that we designate as required for all franchisees. We have the right to change the types of authorized services or goods offered by your franchise. To the extent permitted by applicable law, we have the right to set the prices at which you sell services and goods.

You must sell memberships in your Spa ("Memberships") only on such terms and conditions as we specify from time to time in the Manual. All Memberships must be evidenced by a written membership agreement based on our then-current standard form of membership agreement, except when local laws require you to alter the membership agreement in order for it to be enforceable in the jurisdiction in which your Spa is located, or as agreed by us in writing prior to use. The membership agreement must include a provision that permits members from your Spa to use other Spas. You must permit members from other Spas to use your Spa. All sales of Memberships must be made on a face-to-face basis, although you are permitted to solicit Memberships through non face-to-face methods. If a member of your Spa receives services under their Membership at another Spa, you will be required to share a portion of the fees received by you from the member to compensate the Spa providing the services to the Member.

We may require you, if permitted by applicable law, to participate in a gift card or other customer loyalty program in accordance with the provisions either set forth in the Operations Manual or otherwise disclosed to you. In order to participate, you may be required to purchase additional equipment and pay any fees applicable to the use of that equipment. If we establish a gift card or loyalty program, we have the right to determine how the amount of the gift cards or loyalty cards will be divided or otherwise accounted for, and we reserve the right to retain the amount of any unredeemed gift cards.

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

**THE FRANCHISE RELATIONSHIP**

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

PROVISION	ARTICLE IN FRANCHISE AGREEMENT AND OTHER AGREEMENTS	SUMMARY
a. Length of the franchise term	13.1 of the FA	Term is 10 years in the FA.
	1.A. of the MUD	The Term begins on the date you sign the MUD and pay the MUD Fee and it terminates on the earlier of the opening of the last Spa listed in the Mandatory Development Schedule or the expiration date.
b. Renewal or extension of the term	1.B. of the ADA	Term is 20 years in the ADA
	13.2 of the FA	If you are in full compliance and meet other requirements, you may acquire a renewal franchise.
c. Requirements for franchisee to renew or extend	1.B. of the ADA	You have the option to renew the ADA for an additional 10-year term.
	13.2 of the FA	Under the FA, you must give notice, remodel your Spa to meet our current standards, pay a fee of \$5,000, sign a general release and sign a new franchise agreement, which may have materially different terms and conditions than your original agreement.
d. Termination by franchisee	1.B. of the ADA	Under the ADA, you must give notice, pay a fee of \$1,000 per operating Spa, sign a general release, agree upon a new development schedule, and sign a new ADA, which may have materially different terms and conditions than your original ADA.
e. Termination by franchisor without cause	14.1 of the FA	If we breach the agreement and do not cure or attempt to cure the breach after notice from you.
f. Termination by franchisor with cause	Not applicable	Not applicable
	14.2 of the FA	Material, uncured breaches of the FA.
	6. of the MUD	Material, uncured breaches of the MUD.
	14 of the ADA	Material, uncured breaches of the ADA.

PROVISION	ARTICLE IN FRANCHISE AGREEMENT AND OTHER AGREEMENTS	SUMMARY
g. "Cause" defined - curable defaults	<p>14.2.10, 14.2.12, 14.2.14 and 14.2.16 of the FA</p> <p>6.A. of the MUD</p> <p>14.A(2), (3), (10), (12) and (13) of the ADA</p>	<p>You may cure certain defaults (i.e. payment of overdue amounts to us, submission of required reports, non-compliance) before we will terminate the FA.</p> <p>You may cure certain defaults (i.e. failure to comply with the development schedule, etc.) before we will terminate the MUD.</p> <p>You may cure certain defaults (i.e. failure to comply with the development schedule, submission of required reports) before we will terminate the ADA.</p>
h. "Cause" defined - non-curable defaults	<p>14.2.1 – 14.2.9, 14.2.11 and 14.2.13 and 14.2.15 of the FA</p> <p>6.A (1), (3) and (4)of the MUD.</p> <p>14.A(1), (4)-(9), (11) and (13) of the ADA</p>	<p>Certain defaults cannot be cured (i.e. you or your owners are convicted or plead or have pleaded guilty to a felony; you disclose Confidential Information, etc.) and will result in termination of the FA.</p> <p>Certain defaults cannot be cured (i.e. you make an unauthorized transfer of the MUD) and will result in termination of the MUD.</p> <p>Certain default cannot be cured (i.e. you or your owners are convicted or plead or have pleaded guilty to a felony; you disclose Confidential Information, etc.) and will result in termination of the ADA.</p>
i. Franchisee's obligations on termination/nonrenewal	<p>15 of the FA</p> <p>14.E. of the ADA</p>	<p>Under the FA, you must pay us what you owe us, cease using the Marks and any Confidential Information and follow our termination procedures.</p> <p>Under the ADA, you must cease using the Marks and any Confidential Information and follow our termination procedures.</p>
j. Assignment of Contract by franchisor	<p>12.1 of the FA, 8.A of the MUD, and 12.A. and 12.B. of the ADA</p>	<p>FA, MUD, and ADA are fully transferable by us.</p>



PROVISION	ARTICLE IN FRANCHISE AGREEMENT AND OTHER AGREEMENTS	SUMMARY
k. "Transfer" by franchisee – defined	12.2 – 12.3 of the FA  7 of the MUD  12.C. of the ADA	Includes transfer of the FA, change in ownership, sale of assets.  Includes transfer of the MUD and a change in ownership.  Includes transfer of the ADA and a change in ownership.
l. Franchisor approval of transfer by franchisee	12.4 of the FA, 7.B of the MUD, and 12.C. of the ADA	We have the right to approve all transfers.
m. Conditions for franchisor approval of transfer	12.4 of the FA  7.B of the MUD  12.C. of the ADA	The transferee meets our qualifications, signs our then-current FA which might contain different terms and conditions, and satisfactorily completes training; a transfer fee is paid to us; and you must sign a general release.  The transferee meets our qualifications and signs our then-current MUD which might contain different terms and conditions; a transfer fee is paid to us; and you must sign a general release.  The transferee meets our qualifications, signs our then-current ADA which might contain different terms and conditions, and satisfactorily completes training; a transfer fee is paid to us; and you must sign a general release.
n. Franchisor's right of first refusal to acquire franchisee's business	12.7 and 8 of the FA  12.C. of the ADA	Under the FA, we have the right of first refusal to purchase your Spa or ownership interest in you.  Under the ADA, we have the right of first refusal to purchase your interest in the ADA.
o. Franchisor's option to purchase franchisee's business	15.10 of the FA	Under the FA, we may purchase, at book value, the personal property of the Spa
p. Death or disability of franchisee	12.6 of the FA, 8.F of the MUD, 12.D of the ADA	The FA, MUD and ADA must be transferred to a third party within 6 months of death or disability.

PROVISION	ARTICLE IN FRANCHISE AGREEMENT AND OTHER AGREEMENTS	SUMMARY
q. Non-competition covenants during the term of the franchise	7.1 and 7.2 of the FA  13.A. of the ADA	Under the FA, you may not have direct or indirect involvement in a Competitive Business.  Under the ADA, you may not have direct or indirect involvement in a Competitive Business.
r. Non-competition covenants after the franchise is terminated or expires	7.3 of the FA  13.B. of the ADA.	Under the FA, you may not have direct or indirect involvement in a Competitive Business for 24 months within 25 miles of the Location or within 5 miles of any other Spa.  Under the ADA, you may not have direct or indirect involvement in a Competitive Business for 24 months within the ADA Territory or within 25 miles of any other Spa.
s. Modification of the agreement	17.10 of the FA, 10 of the MUD, and 20.A. of the ADA	The FA, MUD and ADA may not be modified except by written agreement signed by you and us.
t. Integration / merger clause	17.10 of the FA, 10. of the MUD, and 20.A. of the ADA	Only the terms of the FA, MUD and ADA are binding (subject to state law). Any representations or promises outside of the disclosure document, FA, MUD and ADA may not be enforceable.
u. Dispute resolution by arbitration or mediation	17.7 of the FA, 10 of the MUD, and 16 of the ADA	All disputes must be in St. Louis, Missouri, subject to state law.*
v. Choice of forum	17.7 of the FA, 10.B of the MUD, and 16 of the ADA	All disputes must be in St. Louis, Missouri, subject to state law.*
w. Choice of law	17.7 of the FA, 10.B of the MUD, 16 of the ADA	Missouri law applies, subject to state law.*

\*If a state regulator requires us to make additional disclosures related to the information contained in this disclosure document, these additional disclosures are contained in a State Law Addendum included in this disclosure document in **Exhibit H**.

## ITEM 18 PUBLIC FIGURES

At this time, there are no public figures involved in the sale of this franchise.

**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.

Our financial performance representation contains (1) the actual 2012 average annual revenue of all Spas (both franchised and affiliate-owned) in operation during the entire 2012 calendar year (Part I, below); and (2) the adjusted average 2012 operating results of certain affiliate-owned Spas (Part II, below).

Part I – Actual 2012 Average Annual Revenue of Franchised and Affiliate-Owned Spas

The financial performance representation in this Part I contains the actual 2012 average annual revenue of 8 franchisee-owned Spas and 6 affiliate-owned Spas that were open during the entire 2012 calendar year. These 14 Spas represent approximately 67% of the total 21 Spas open for business as of December 31, 2012. Spas that were not in operation for all of 2012 have been excluded from the financial performance representation as their partial year performance is not indicative of the performance we would reasonably expect to see over an entire calendar year. We have also excluded 2 of our affiliate-owned Spas that were open for all of 2012 because their operations are materially different from the operation of a franchised Spa. One of those excluded, affiliate-owned Spas does not operate in its own, stand-alone facility (it shares facilities with one of our affiliate-owned Tanco businesses), has no aestheticians on staff and fewer rooms than our typical franchised outlet. The other of those excluded, affiliate-owned Spas operated down the street from another affiliate-owned business that offered facial and waxing services during part of the 2012 year. Only after that other business ceased operating did this affiliate-owned Spa offer the full compliment of services that a franchisee will offer. We believe these operating differences make the financial performance of these 2 affiliate-owned outlets not indicative of the performance we would reasonably expect to see from an outlet that had the typical number of rooms, staff and store layout, or the typical list of services being offered. The Spas used to compile the information below have been in operation between 1 and 5 years. In addition, 9 of the 14 Spas are located in the St. Louis, Missouri metropolitan area and surrounding communities, where we have a more concentrated market presence. These results are based on the sales data we collect from the computer system software used by our franchised and affiliate-owned Spas. We have not independently audited this information.

<b>LENGTH OF OPERATING HISTORY</b>	11-24 months	25-36 months	37-48 months	49-60 months
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<b>NUMBER OF SPAS IN SAMPLE</b>	6	5	2	1
<b>AVERAGE REVENUE PER SPA</b>	\$599,085	\$1,011,574	\$1,217,769	\$884,491
<b>NUMBER AND PERCENTAGE OF SPAS AT OR ABOVE AVERAGE</b>	4 (67%)	3 (60%)	1 (50%)	1 (100%)

The actual average annual revenue numbers do not reflect the costs of sales, operating expenses or other costs or expenses that must be deducted from revenue to obtain net income or profit. You should conduct an independent investigation of the costs and expenses you may incur in operating your Spa. Franchisees and former franchisees listed in this disclosure document may be one source of this information.

Part II –Adjusted Average Operating Results of Certain Affiliate-Owned Spas

The financial performance representation in this Part II contains the adjusted average 2012 operating results of 4 affiliate-owned Spas. These results are based on the internally-prepared financial statements of our affiliates and have not been audited. We have adjusted certain expenses for presentation purposes in order to assist you in understanding the net income experience from the operation of a Spa. We have only included affiliate-owned Spas because we do not receive reliable expense reports for franchised Spas. We have only included information for affiliate-owned Spas that were operated by our affiliates for the entire 12 months during this period. These 4 Spas represent 57% of the 7 total affiliate-owned Spas open for business as of December 31, 2012 and 19% of the 21 total Spas open for business as of December 31, 2012. We have also excluded 2 of our affiliate-owned Spas that were open for all of 2012 because their operations are materially different from the operation of a franchised Spa. One of those excluded, affiliate-owned Spas does not operate in its own, stand-alone facility (it shares facilities with one of our affiliate-owned Tanco businesses), has no aestheticians on staff and fewer rooms than our typical franchised outlet. The other of those excluded, affiliate-owned Spas operated down the street from another affiliate-owned business that offered facial and waxing services during part of the 2012 year. Only after that other business ceased operating did this affiliate-owned Spa offer the full compliment of services that a franchisee will offer. We believe these operating differences make the financial performance of these 2 affiliate-owned outlets not indicative of the performance we would reasonably expect to see from an outlet that had the typical number of rooms, staff and store layout, or the typical list of services being offered. The Spas used to compile the information below have been in operation for an average of 3.67 years. In addition, all 6 of the Spas are located in the St. Louis, Missouri metropolitan area and surrounding communities, where we have a more concentrated market presence.

**MassageLuXe  
Income Statement  
For Period 12 Ending 12/31/2012  
Summary**

	Grand Totals	Average	Spas at/ Above
<b>REVENUE</b>			
Member Revenue	\$ 3,416,811	\$ 854,203	2
Massage, Facial, Waxing Revenue	664,149	166,037	2
Product Sales	98,032	24,508	1
Other Income	2,376	594	1
<b>Total REVENUE</b>	<b>4,181,368</b>	<b>1,045,342</b>	<b>2</b>
<b>EXPENSES</b>			
Payroll and Related Taxes	2,041,259	510,315	2
Rent	409,458	102,365	1
Supplies	174,975	43,744	1
Bank Charges	118,683	29,671	2
Utilities	72,045	18,011	2
Products	52,292	13,073	1
Insurance	42,096	10,524	2
Office Supplies	37,829	9,457	2
Professional Services	17,331	4,333	1
Repairs	25,343	6,336	2
Taxes and Licenses	19,016	4,754	3
Miscellaneous Expenses	7,609	1,902	2
Advertising – Non Franchisor <sup>a</sup>	6,665	1,666	1
<b>Total EXPENSES<sup>b</sup></b>	<b>3,024,601</b>	<b>756,150</b>	<b>2</b>
<b>Net Income</b>	<b>\$ 1,156,767</b>	<b>\$ 289,192</b>	<b>2</b>

<sup>a</sup> This amount represents local advertising expenses incurred by our affiliates. It does not include the National Ad Fees or Regional Ad Fees you will be required to contribute to the Creative Services Advertising Fund.

<sup>b</sup> The expenses reflected above have been adjusted. They do not include the certain expenses that were attributed to specific experiences of our affiliates and are either atypical of an outlet's operation (such as legal fees incurred by one of our affiliates related to a dispute with its landlord) or are materially different expenses than what a typical franchise-owned outlet would experience. For example, our affiliates do not pay us a royalty fee at the same rate paid by franchisees, and our affiliates also share certain management overhead that would not be experienced by a franchisee, including district manager salaries, benefits, automobile expenses and meal and entertainment expenses. For these reasons, these sorts of expenses have not been included in calculating the average net income reported above. In addition, we have excluded depreciation expenses. While it is likely that you will depreciate assets in your Spa, the particular experience of our affiliates depreciation is likely to be different from what you may experience given the length of time our affiliates have operated their Spas and other accounting factors.

## **EXPLANATORY NOTES**

All of the Spas included in this Item 19 are similar in operation to the franchises offered by us under this disclosure document; however, there are differences. A new franchisee's results are likely to differ from the results listed above since new Spas commonly experience lower revenues than Spas that have been operating for the number of years of those Salons included in our sample. Revenues will also vary from Spa to Spa due to various factors, including the demand for Services, related products and services, the type and number of competitive businesses in the market, advertising efforts, management experience, location, presence and prevalence of the Marks in the region, and other factors. Since actual results will vary from Spa to Spa, we cannot estimate actual results for any particular Spa. Some of our Spas have earned this amount. Your individual results may differ. There is no assurance you will earn as much.

This financial performance representation was prepared without an audit. Prospective franchisees should be advised that no certified public accountant has audited these figures or expressed an opinion with regard to their contents or form.

Written substantiation for the financial performance representation will be made available to you upon reasonable request.

Other than the preceding financial performance representation, we do not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Todd Layton, Chief Operating Officer, at 11 Champion Drive, Fenton, Missouri 63026, telephone no. (636) 600-4056, the Federal Trade Commission, and the appropriate state regulatory agencies.

## **ITEM 20 OUTLETS AND FRANCHISEE INFORMATION**

**TABLE 1  
SYSTEMWIDE OUTLET SUMMARY  
FOR YEARS 2010 TO 2012**

<b>Outlet Type</b>	<b>Year</b>	<b>Outlets at the Start of the Year</b>	<b>Outlets at the End of the Year</b>	<b>Net Change</b>
Franchised	2010	0	4	+4
	2011	4	9	+5
	2012	9	14	+5
Company-Owned*	2010	4	5	+1
	2011	5	6	+1
	2012	6	7	+1
Total Outlets	2010	4	9	+5
	2011	9	15	+6
	2012	15	21	+6

\* We do not operate any outlets, but our affiliates listed on **Exhibit G** have operated these Company-Owned outlets.

**TABLE 2**  
**TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS**  
**(OTHER THAN THE FRANCHISOR)**  
**FOR YEARS 2010 TO 2012**

State	Year	Number of Transfers
Illinois	2010	0
	2011	0
	2012	0
Michigan	2010	0
	2011	0
	2012	0
Missouri	2010	0
	2011	0
	2012	0
Virginia	2010	0
	2011	0
	2012	0
Total	2010	0
	2011	0
	2012	0

**TABLE 3**  
**STATUS OF FRANCHISED OUTLETS**  
**FOR YEARS 2010 TO 2012**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
California	2010	0	0	0	0	0	0	0
	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
Colorado	2010	0	0	0	0	0	0	0
	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
Florida	2010	0	0	0	0	0	0	0
	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
Illinois	2010	0	0	0	0	0	0	0
	2011	0	1	0	0	0	0	1
	2012	1	0	0	0	0	0	1
Michigan	2010	0	0	0	0	0	0	0
	2011	0	1	0	0	0	0	1
	2012	1	0	0	0	0	0	1
Missouri	2010	0	2	0	0	0	0	2

	2011	2	2	0	0	0	0	4
	2012	4	2	0	0	1	0	5
New Jersey	2010	0	0	0	0	0	0	0
	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
Virginia	2010	0	2	0	0	0	0	2
	2011	2	1	0	0	0	0	3
	2012	3	0	0	0	0	0	3
Totals	2010	0	4	0	0	0	0	4
	2011	4	5	0	0	0	0	9
	2012	9	6	0	0	1	0	14

**TABLE 4**  
**STATUS OF COMPANY-OWNED OUTLETS**  
**FOR YEARS 2010 TO 2012**

State	Year	Outlets at Start of the Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
Missouri	2010	4	1	0	0	0	5
	2011	5	1	0	0	0	6
	2012	6	0	1	0	0	7
Totals	2010	4	1	0	0	0	5
	2011	5	1	0	0	0	6
	2012	6	0	1	0	0	7

**TABLE 5**  
**PROJECTED OPENINGS AS OF DECEMBER 31, 2012**

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Affiliate – Owned Outlets In the Next Fiscal Year
California	1	0	0
Colorado	0	1	0
Florida	0	3	0
Georgia	0	1	0
Illinois	0	1	0
Missouri	0	4	0
Virginia	0	2	0
Total	1	12	0

**Exhibit G** lists the names, addresses and telephone numbers of all of our franchisees, area developers and affiliate-owned locations. **Exhibit G** also lists the name, city and state, and the current business telephone number (or, if unknown, the last known home telephone number) of every franchisee who had an outlet transferred, terminated, canceled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during our 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.

Our franchisees have not signed confidentiality clauses restricting their ability to speak openly about their experience with us during the last 3 years. There is no trademark-specific franchisee organization associated with the franchise system that must be disclosed in this Item 20.

## **ITEM 21 FINANCIAL STATEMENTS**

Attached to this disclosure document as **Exhibit E** are our audited financial statements as of December 31, 2012, 2011 and 2010.

**ITEM 22  
CONTRACTS**

The following agreements are attached to this franchise disclosure document:

- |                    |                                  |
|--------------------|----------------------------------|
| <b>Exhibit A -</b> | Franchise Agreement              |
| <b>Exhibit B -</b> | Multi-Unit Development Agreement |
| <b>Exhibit C -</b> | Area Development Agreement       |
| <b>Exhibit I -</b> | General Release                  |

**ITEM 23**

**RECEIPTS**

See **Exhibit J**

**EXHIBIT A**  
**TO THE DISCLOSURE DOCUMENT**  
**FRANCHISE AGREEMENT**

**MASSAGELUXE®  
FRANCHISE AGREEMENT**

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**AGREEMENT TO COMPLY WITH CERTAIN UNDERTAKINGS OF FRANCHISEE**

APPENDIX A	TERRITORY
APPENDIX B	LEASE PROVISIONS
APPENDIX C	COLLATERAL ASSIGNMENT OF LEASE
APPENDIX D	SBA ADDENDUM
APPENDIX E	AREA DEVELOPER ADDENDUM
APPENDIX F	QUESTIONNAIRE

# MASSAGELUXE® FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between MASSAGE LUXE INTERNATIONAL, LLC, a limited liability company organized under Missouri law, with its principal business address at 11 Champion Drive, Fenton, Missouri 63026 (referred to in this Agreement as "we," "us" or "our"), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (referred to in this Agreement as "you," "your" or "owner").

## 1. DEFINITIONS, ACKNOWLEDGMENTS AND GRANTS.

**1.1 DEFINITIONS.** For purposes of this Agreement, the following terms will have the meaning as defined below:

1.1.1 "FaceLuXe Marks" means such service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights, as may presently exist or which may be modified, changed or acquired by us or our affiliates in connection with the operation of the Spa and the offering of FaceLuXe Services. Currently the FaceLuXe Marks include "FaceLuXe" and "FaceLuXe and design."

1.1.2 "FaceLuXe Services" means such facial and waxing services and skin care treatments and related services, products, merchandise and accessories as may presently exist or which may be modified, changed, or acquired by us or our affiliates.

1.1.3 "Marks" means such service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights, as may presently exist, or which may be modified, changed, or acquired by us or our affiliates, in connection with the operation of the business contemplated by this Agreement, including the FaceLuXe Marks and the MassageLuXe Marks.

1.1.4 "MassageLuXe Marks" mean service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights, as may presently exist or which may be modified, changed or acquired by us or our affiliates in connection with offering of MassageLuXe Services. Currently the MassageLuXe Marks include "MassageLuXe" and "ML and design."

1.1.5 "MassageLuXe Services" means massage therapy services together with related services, products, merchandise and accessories as may presently exist or which may be modified, changed, or acquired by us or our affiliates.

1.1.6 "Spa" means any business operated under the MassageLuXe Marks according to the System regardless of whether it is owned by you, us, our affiliates or any other franchisee or licensee.

1.1.7 "Services" means the FaceLuXe Services, the MassageLuXe Services and other related products and services you are permitted to offer in your Spa.

1.1.8 "System" means our distinct and proprietary business format for the operation of massage therapy businesses offering the Services, including the methods, procedures, signs, designs, layouts, equipment, standards and specifications, and the Marks, as the same may be modified, amended or replaced from time to time hereafter, the distinguishing characteristics of which include proprietary operating procedures and standards and specifications for the Services.

**1.2 ACKNOWLEDGMENTS.** You acknowledge that you have read this Agreement and our Franchise Disclosure Document, and you understand and accept the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain our high standards of quality and service and the uniformity of those standards at each Spa and thereby necessary to protect and preserve the goodwill of the Marks. Any information you acquire from other MassageLuXe franchisees relating to their sales, profits or cash flows does not constitute information obtained from us, nor do we make any representation as to the accuracy of any such information. You acknowledge that, in all of their dealings with you, our officers, directors, employees and agents act only in a representative, and not in an individual, capacity. All business dealings between you and such persons as a result of this Agreement are solely between you and us. You further acknowledge that we have advised you to seek franchise counsel to review and evaluate this Agreement.

**1.3 GRANT OF FRANCHISE.** We have expended considerable time and effort in developing a business primarily featuring the MassageLuXe Services and operating under the MassageLuXe Marks. However, as part of the System you will be required to offer all of the other Services in your Spa and use the other Marks all in accordance with the System as described in greater detail in the Operations Manual.

You desire a franchise to own and operate a Spa at a location subject to our consent (the "Location"). Subject to the terms of and upon the conditions contained in this Agreement, we hereby grant you a franchise (the "Franchise") to operate a Spa solely at the Location, and a license to use the Marks and the System in the operation thereof. You may not operate your Spa from any site other than the Location without our prior written consent. If we consent to a relocation of the Spa, we have the right to charge you for the expenses we incur in connection with the relocation. Except as otherwise provided in Articles 1.5 and 1.6 and so long as you are not in default under this Agreement, we (and our affiliates) will not establish, or grant to a franchisee the right to establish, another Spa to be located within the geographical area set forth in Appendix A attached hereto (the "Territory"). Notwithstanding the foregoing, we reserve the right to operate locations within transportation facilities even if these transportation facilities are within your Territory.

**1.4 YOUR PERFORMANCE.** You (or your limited liability company manager or managing member, managing shareholder or managing partner) agree to personally manage and operate your Spa as your primary occupation and will not, without our prior written consent, delegate your (or your limited liability company manager's or managing member's, managing shareholder's or managing partner's) authority and responsibility with respect to management and operation. You agree that you will at all times faithfully, honestly and diligently perform your obligations hereunder, continuously exert your best efforts to promote and enhance your Spa and not engage in any other business or activity that conflicts with your obligations to operate your Spa in compliance with this Agreement.

**1.5 RIGHTS WE RESERVE.** We and our affiliates reserve all rights not specifically granted to you pursuant to this Agreement, including the right to do any of the following without compensation to you:

1.5.1 establish, and grant to franchisees the right to establish, Spas anywhere outside the Territory and within the transportation facilities within and outside the Territory;

1.5.2 establish, and grant to franchisees the right to establish, businesses within the Territory or outside of the Territory under trademarks and/or service marks different than the MassageLuXe Marks or systems offering services different from the MassageLuXe Services;

1.5.3 sell our services or ancillary products, whether or not using the Marks, inside or outside the Territory through distribution channels other than Spas, including through catalogs distributed

within your exclusive Territory, the Internet, print, direct marketing media and any other non-spa outlets inside or outside the Territory, and we may promote services and products bearing the Marks at special events, conventions, athletic contests, etc., through temporary locations and mobile units (both inside and outside your Territory); and

1.5.4 to purchase, be purchased, merge, acquire, be acquired or affiliate with a competitor or any other business regardless of the location of the competitor or business, and to operate, franchise or license such businesses as Spas under the System or Marks or under other proprietary marks, regardless of the location of such businesses, whether such businesses are in your Territory or outside your Territory.

You understand and acknowledge that although you will provide FaceLuXe Services under the FaceLuXe Marks within your Spa in a limited number of rooms, you will not operate your Spa under the FaceLuXe Marks. We and our affiliates are permitted to establish or grant to a franchisee the right to establish businesses within the Territory which primarily offer FaceLuXe Services, both under the FaceLuXe Marks or otherwise, and that such businesses shall be permitted to also operate, in a limited number of rooms (e.g., one or two) MassageLuXe Services offered under the MassageLuXe Marks; provided, however, that such other businesses shall not be predominately identified by the MassageLuXe Marks, but merely the MassageLuXe Services offered by such businesses will be identified by the MassageLuXe Marks.

**1.6 NATIONAL ACCOUNTS.** Nothing will prohibit us and our affiliates from doing business within your Territory for National Accounts. A "National Account" means those customers with more than 1 location covered by an agreement for services which are not located solely in the territory of one franchisee. If you obtain an account that may be considered a National Account, you must refer it to us and it will be treated as a National Account; however, we reserve the absolute right to reject any such account for any reason. National Accounts shall be negotiated solely by us or our affiliates, even if you procure the National Account. All National Accounts will be considered our property and you will have no claim to them. If one or more locations of a National Account falls within your Territory, we will first offer you the opportunity to provide Services to those locations on the terms and conditions that we have established with the National Account. You are not required to provide Service to a National Account and if you do not accept our offer to do so in the manner and within the time period that we specify, we have the right to provide Services to the account ourselves, or may authorize other Spas, to provide such Services. However, the decision to accept or reject you as a provider of Services for the National Account ultimately rests with the National Account.

**1.7 LMS SOFTWARE.**

1.7.1 We have been licensed the right to grant sublicenses to, and hereby grant you a nonexclusive, nontransferable, non assignable and non sublicensable license to, use the proprietary computer software program licensed or such other software as we may designate, including any modifications, additions or enhancements to such software ("LMS Software") during the term of this Agreement and subject to the limitations on use and other requirements set forth in this Article 1.7. You understand that we have the right to change the LMS Software at any time in our sole discretion. In such event, you may be required to change the licensed software you use at your sole cost and expense and may be required to sign new documentation to license the right to use the new software.

1.7.2 You and your employees will use the LMS Software for the operation of your Spa in accordance with the terms of this Agreement and the terms, conditions and procedures set forth in the Operations Manual or otherwise disclosed to you, which may change from time to time. We may require you to modify, enhance and/or replace all or any part of the LMS Software at any time and at your sole expense.

1.7.3 We or our affiliates may host some portion or all the LMS Software on our corporate servers as an ASP provider. In the event we or our affiliates provide any hosting services, we or they reserve the right to do so according to terms and conditions we or they may establish, including limiting our liability for the security of data transmitted over the Internet and establishing limitations on data storage size and the periodic purging of your data required as a result thereof.

1.7.4 You acknowledge that the only rights in the LMS Software granted by us to you are those specified in this Article 1.7. You have no rights other than those granted by this Article 1.7 to use the LMS Software or any enhancements thereto or documentation relating to either of the foregoing and any adaptations or modifications thereof. You agree to make no claim of any ownership interest in the intellectual property rights, including copyright in the LMS Software and any adaptations or modifications thereof.

1.7.5 You acknowledge that the LMS Software, in both object code and source code, is secret and proprietary and that its use and disclosure is restricted by the provisions of this Agreement. You shall not (i) make any copies of LMS Software (except for one copy of the LMS Software in object code for archival purposes only); (ii) shall not attempt to disassemble or decompile the LMS Software object code or otherwise attempt to discern the LMS Software source code; (iii) access or allow the access of the LMS Software (or any addition to or modification of the LMS Software) other than by your authorized employees; (iv) sell, lease, assign, sublicense or otherwise transfer your license to use the LMS Software other than in connection with a transfer of this Agreement; (v) alter, maintain, enhance or otherwise modify the LMS Software; (vi) decompile, disassemble, or otherwise analyze for reverse engineering purposes, the LMS Software; (vii) permit any parent, subsidiary, affiliate or third party to use the LMS Software; (viii) alter, amend, modify or mask any copyright, trademark, proprietary or other notice affixed to or incorporated in the LMS Software; or (ix) circumvent or otherwise interfere with any security measures we or our affiliates may use in connection with any hosting services we or they may provide.

1.7.6 Documentation that accompanies the LMS Software, if any, is provided solely to support your authorized use of the LMS Software. You may not use, copy, modify or distribute the documentation, or any copy, adaptation, transcription, summary or merged portion thereof.

1.7.7 You shall promptly disclose to us all ideas and suggestions for modification or enhancements of the LMS Software, or any component thereof, and we and all our affiliates and franchisees shall have the right to use, develop and license such ideas and suggestions in any manner, in our sole discretion, and without any obligation to you therefore.

1.7.8 In the event your use of the LMS Software is enjoined as a result of a claim by a third party of patent or copyright infringement or violation of proprietary rights, we shall, in our sole discretion, either (A) procure for you the right to continue to use the LMS Software as contemplated hereunder, or (B) replace the LMS Software or modify it such that there is no infringement of the third party's rights; and such action by us shall be your sole and exclusive remedy against us in such event.

1.7.9 We do not represent or warrant to you and we expressly disclaim any warranty that the LMS Software is error-free or that the operation and use of the LMS Software by you will be uninterrupted or error-free. We shall have no obligation or liability for any expense or loss incurred by you arising from your use of the LMS Software.

1.7.10 WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE LMS SOFTWARE OR ANY PORTION THEREOF, INCLUDING ANY PROGRAM DOCUMENTATION OR OTHER MATERIAL FURNISHED HEREUNDER OR ANY COMPONENT THEREOF, AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE



WITH RESPECT THERETO. WE SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES.

1.7.11 You shall bear all costs of purchase, installation, operation, maintenance, and upgrading the LMS Software. In connection therewith, you will pay us POS System Software Fees described in Article 3.5 below.

1.7.12 At all times, we shall be granted "administrator" rights to the LMS Software licensed hereunder, permitting us to remotely access such LMS Software, and all information contained therein. We may use the information contained in your copy of the LMS Software for any purpose we deem appropriate, including disseminating such information to our creditors and potential franchisees; provided, no social security number, birth date or home address information contained therein, if any, shall be disclosed without your prior written consent, unless required or permitted by law.

## **2. YOUR OBLIGATIONS.**

**2.1 LOCATION SELECTION.** You acknowledge that, following your signing this Agreement, you (with or without our assistance) will find and submit to us for our consent a location for your Spa. You acknowledge and agree that our recommendation of or consent to the Location, and any information regarding the Location communicated to you by us or our representatives or affiliates, does not constitute a representation or warranty of any kind, express or implied, as to the suitability of the Location for a Spa or for any other purpose. Such recommendation or consent indicates only that we believe that the Location falls within the acceptable criteria for locations that we have established as of the time of our recommendation or consent. You acknowledge and agree that your acceptance of the Location is based on your own independent investigation of the suitability of the Location.

**2.2 LEASE OF LOCATION.** You acknowledge that we and you may approve a lease or sublease for a Location subsequent to signing this Agreement. You are obligated to deliver a copy of the signed lease to us within 15 days after its execution. Your lease for the Location must contain substantially the same terms as found on Appendix B attached to this Agreement. At our request, you agree that you will collaterally assign the lease for the Location to us as security for your timely performance of all obligations under this Agreement and secure the landlord's consent to the collateral assignment (see Appendix C to this Agreement). You acknowledge that our approval of certain provisions of the lease for the Location does not constitute a guarantee or warranty, express or implied, of the successful operation or profitability of a Spa operated at the Location under such lease. Such approval indicates only that we believe that the Location and certain terms of the lease fall within the acceptable criteria we have established as of the time of our approval. You further acknowledge that we have advised you to seek counsel to review and evaluate the lease.

**2.3 ESTABLISHMENT OF THE SPA.** You are responsible for developing your Spa. We will furnish you with mandatory specifications and layouts for a Spa, including requirements for dimensions, design, image, interior layout, decor, fixtures, equipment, signs, furnishings, color schemes and other suggestions. You are obligated to have prepared, at your expense, all required construction plans and specifications to suit the shape and dimensions of the Location and to ensure that such plans and specifications comply with applicable zoning and other ordinances, building codes and permit requirements and with lease requirements and restrictions. You are obligated to submit construction plans and specifications to us for approval before construction of your Spa is commenced and, at our request, to submit all revised or "as built" plans and specifications during the course of such construction. We may assist you in constructing your Spa by recommending contractors (which may include us and/or our affiliates) and architects and otherwise furnishing information to assist you in establishing your Spa in accordance with our specifications. You acknowledge and agree that our review and approval of any construction plans you submit to us for approval under this paragraph (as well as any inspections we make of your premises during construction of your Spa) are solely to assure your compliance with the

System and not whether it is compliant with any laws or local building codes or the Americans with Disabilities Act. You expressly represent and warrant to us that your Spa will be built and operated in compliance with all local, state and federal laws, ordinances, rules and regulations, including the Americans with Disabilities Act.

**2.4 YOUR OBLIGATIONS.** You agree, at your own expense, to do the following with respect to establishing your Spa at the Location: (i) secure all financing required to develop and operate your Spa; (ii) obtain all permits and licenses required to construct and operate your Spa; (iii) construct all required improvements to the Location in compliance with plans and specifications we have approved and which comply with all governmental requirements; (iv) purchase or lease and install all required fixtures, furniture, equipment, furnishings and signs required for your Spa; and (v) purchase an initial inventory of authorized and approved products, materials and supplies.

**2.5 FIXTURES, FURNISHINGS, EQUIPMENT, SIGNS, PRODUCTS, AND AUTHORIZED EQUIPMENT REPAIR SERVICES.** You agree to use in establishing and operating your Spa only those fixtures, furnishings, equipment (including cash registers/POS systems, satellite music systems and computer hardware and software) signs and products that we have approved for Spas as meeting our specifications and standards for quality, design, appearance, function and performance. You agree to place or display at the Location (interior and exterior) only such signs, emblems, lettering, logos and display materials that we approve from time to time. You agree to purchase or lease approved brands, types or models of fixtures, furnishings, equipment, signs and products only from suppliers we have designated or approved (which may include us and/or our affiliates). You agree to utilize only authorized equipment repair services at the Location, either directly or indirectly (through an approved supplier). We may from time to time develop proprietary private label equipment and products that are an integral part of our System and you acknowledge and agree that you will comply with all our specifications and requirements relating to incorporating and using such equipment and products in the operation of your Spa, as we may require. You understand that you may be required to purchase additional or upgraded furniture, fixtures and equipment from time to time at your sole expense as we require.

**2.6 SPA OPENING.** You agree not to open your Spa for business until: (i) we approve your Spa as developed in accordance with our specifications and standards; (ii) pre-opening training has been completed to our satisfaction by you and/or your employees; (iii) you have given us a copy of your lease for the Location; (iv) the Initial Franchise Fee and all other amounts then due to us have been paid; (v) we have been furnished with copies of all insurance policies required by this Agreement, or such other evidence of insurance coverage and payment of premiums as we request or accept; and (vi) you have obtained all required permits, licenses and certifications for operating your Spa, and the Location is in compliance with all laws, rules and regulations.

**2.7 COMMENCEMENT DEADLINE.** You agree to open your Spa for business within 270 days of execution of this Agreement. If you are unable to begin operating your Spa within 270 days of execution of this Agreement due to circumstances beyond your reasonable control, you must request an extension of time from us to commence operations prior to the expiration of the 270 days, which we may grant or deny in our sole discretion.

**2.8 GRAND OPENING PROGRAM.** You agree to conduct a grand opening advertising and promotional program for your Spa during the 30 day period prior to opening and during the 30 day period after opening and to expend not less than \$7,500 (the "Start-Up Marketing") for such purpose. Such Start-Up Marketing will utilize the marketing and public relations programs and media and advertising materials we have approved. Such Start-Up Marketing shall be conducted at such times as we consider prudent. You shall provide to us, within 30 days of our request, copies of all receipts and other documents, as we may reasonably request, demonstrating your compliance with this Section 2.8.

**2.9 COMPLIANCE WITH LAWS.** You agree to operate your Spa in compliance with all applicable laws and governmental regulations and in accordance with the operational standards we may establish from time to time. At all times you will comply with all federal, state, municipal and local laws, rules, regulations, ordinances and codes applicable and related to this Agreement, your Spa, and all aspects of the conduct of business at your Spa. You must obtain all licenses and permits required by any applicable federal, state, municipal, and local law, rule, regulation, ordinance and code to operate your Spa as required by this Agreement. At no time are we required to inform you of any federal, state, municipal or local law, rule, regulation, ordinance, code or tax. Within 5 days of your receipt of any inspection report you receive from a governmental authority related to your providing any of the Services or otherwise operating your Spa, you must forward a copy of this/these reports to us.

**2.10 PROFESSIONAL LICENSES.** You acknowledge and agree that the services provided at your Spa may be regulated by certain state or local laws or regulations; that state governments, municipalities, regulatory bodies, or others may regulate your Spa now or in the future; and that many states regulate providing the MassageLuXe Services and the FaceLuXe Services. You represent that you have investigated and ascertained the laws and regulations specific to the activities licensed hereunder that affect your Spa, including state, municipal and local laws and regulations. Further, you agree that, unless otherwise permitted or required by applicable law, all massage therapists providing the MassageLuXe Services and the estheticians providing the FaceLuXe Services who are employed or work in your Spa must be duly licensed and in good standing with the applicable state regulatory bodies governing the provision of the Services at your Spa and be adequately insured at all times.

**2.11 STANDARDS OF OPERATIONS.** Your Spa must conform with the mandatory standards relating to signage, color scheme, appearance, hours of operation, cleanliness, sanitation, safety, methods of operation, type of equipment and decor as designated by us. Unless we give you our prior consent, you must offer all Services required by us in the Operations Manual or in any other written instruction we give to you. You will not conduct any business or sell any products or services other than those approved by us. Uniformity of products and services offered by all Spas is of utmost importance to us and the entire System. At no time will you or your employees solicit or provide any illegal, immoral, questionable or inappropriate services. We may require you to make capital expenditures to remodel the Spa to reflect our then current standards. Compliance with these standards may be an ongoing obligation of yours, and may be a condition of our consenting to a renewal of this Agreement, or our consenting to a transfer.

You must keep the premises clean and provide prompt and courteous service to customers. You agree to, and will take all steps as are necessary to, ensure that all of your employees treat each customer fairly and provide services in an honest, ethical and non-discriminatory manner. You must not advertise in a deceptive, misleading or unethical manner, and you agree to meet such minimum standards as we may establish from time to time in the Operations Manual.

**2.12 MEMBERSHIPS.** You must sell memberships in your Spa ("Memberships") only on such terms and conditions as we specify from time to time in the Operations Manual. All Memberships must be evidenced by a written membership agreement, which you must submit to us within 5 days of our request. You must use membership agreements that are based on our then-current standard form of membership agreement, except when local laws require you to alter the membership agreement in order for it to be enforceable in the jurisdiction in which your Spa is located, or as agreed by us in writing prior to use. The membership agreement must include a provision that permits members from your Spa to use other Spas. You must permit members from other Spas to use your Spas, or as we may otherwise require from time to time. The membership agreement must identify your Spa as a MassageLuXe franchised location and contain a waiver and release of us and our affiliates. All sales of Memberships must be made on a face-to-face basis, although you are permitted to solicit Memberships through non face-to-face

methods. We have the right to prohibit or cancel Memberships you sell that will expire beyond the expiration of the term of this Agreement and any exercised renewal term.

**2.13 GIFT CARDS.** We may require you, if permitted by applicable law, to participate in a gift card or other customer loyalty program in accordance with the provisions either set forth in the Operations Manual or otherwise disclosed to you. In order to participate, you may be required to purchase additional equipment and pay any fees applicable to the use of that equipment. If we establish a gift card or loyalty program, we have the right to determine how the amount of the gift cards or loyalty cards will be divided or otherwise accounted for, and we reserve the right to retain the amount of any unredeemed gift cards.

### **3. FEES.**

**3.1 INITIAL FRANCHISE FEE.** You agree to pay us a nonrecurring and nonrefundable initial franchise fee in the amount of \$38,000 when you sign this Agreement ("Initial Franchise Fee"). The fee will be fully earned by us upon the execution of this Agreement.

**3.2 ROYALTY.** You will pay us a non-refundable royalty ("Royalty") each week beginning on Saturday and ending on Friday (the "Accounting Period") in the amount of 5% of Gross Revenue (as defined below) commencing on the date of the initial opening of your Spa and continuing thereafter during the remaining term of the Agreement.

**3.3 REGIONAL AD FEE.** You agree to contribute to the Creative Services Advertising Fund for each Accounting Period a Regional Ad Fee in the amount of 2.5% of Gross Revenues ("Regional Ad Fee") commencing on the date of the initial opening of your Spa and continuing thereafter during the remaining term of the Agreement.

**3.4 NATIONAL AD FEE.** You agree to contribute to the Creative Services Advertising Fund for each Accounting Period a National Ad Fee in the amount of 1% of Gross Revenues ("National Ad Fee") commencing on the date of the initial opening of your Spa and continuing thereafter during the remaining term of the Agreement.

**3.5 POS SYSTEM SOFTWARE FEE.** You must pay us an initial POS System Software Fee in the amount of \$350 prior to installation of the LMS Software and an ongoing POS System Software Fee of \$100 per week ("POS System Software Fee") commencing on the date of the initial opening of the Spa and continuing thereafter during the remaining term of the Agreement. We reserve the right to increase the POS System Software Fee up to 5% annually.

**3.6 REPORT AND MANNER OF PAYMENTS.** You shall provide to us via facsimile transmission or email, or such other form of delivery we approve, a report of the Gross Revenue derived from operating your Spa for each Accounting Period no later than the Monday following the end of the Accounting Period. Royalties, Regional Ad Fees, National Ad Fees, POS System Software Fees and all other periodic fees due under this Agreement, or under any other agreement with us or our affiliates, will, unless otherwise specified in this or such other agreement, be paid in arrears on every Friday (unless a legal holiday falls on a Friday, in which case the payment will be made on the next day which is not a legal holiday). All of these payments will be made via electronic funds transfer ("EFT") or such other manner which we may designate from time to time. None of these fees are refundable. Any payment or report not received by us on or before the date they are due will be deemed overdue. You will comply with the procedures specified in the Operations Manual or as otherwise communicated for such EFT or other program and will perform the acts and sign the documents, including authorization forms that we, our bank, and your bank may require to accomplish payment by EFT or such other method we designate, including authorizations for us to initiate debit entries and/or credit correction entries to a designated

checking or savings account. In addition, you will pay all costs associated with utilizing an EFT or other payment program. Failure to maintain adequate funds in the designated account or your failure to pay all amounts when due will be considered a breach of this Agreement and grounds for termination, and we may further terminate your ability to access and use the POS system and/or the LMS Software for failure to pay any amount when due. If we terminate your ability to access and use the POS system or the LMS Software for failure to pay any amount when due, full payment of all sums owed to us must be made before we give you access to and use of the POS system or the LMS Software. If you fail to timely report to us, in addition to any applicable late charges, we have the right, but not the obligation, to debit from your designated account an estimated amount of the Royalties, Regional Ad Fees, National Ad Fees and other periodic fees due under this Agreement, or under any other agreement with us or our affiliates. We have the right to review your sales receipts on a daily basis.

**3.7 TAXES.** You agree to pay to us the amount of any State or local sales, use, gross receipts or similar tax that we may be required to pay on payments which you make to us under this Agreement, regardless of whether the State or local tax is imposed directly on us, is required to be withheld by you from amounts due to us under this Agreement, or is otherwise required to be collected by you from us. Your obligations under this Article shall not be reduced or offset by any type of claim, credit or deduction of any kind. This provision shall not apply to income taxes or comparable taxes measured by income to which we may be subject.

**3.8 DEFINITION OF "GROSS REVENUE".** As used in this Agreement, the term "Gross Revenue" means all revenue you derive from operating your Spa, including, but not limited to, all amounts you receive for services, merchandise, gift cards or goods sold at or away from the Location, and whether from cash, check or credit transactions, excluding all federal, state or municipal sales, use or service taxes collected from customers and paid to the appropriate taxing authority and customer refunds, adjustments, credits and allowances actually made by your Spa in compliance with the Operations Manual.

**3.9 INTEREST ON LATE PAYMENTS.** All amounts that you owe us and do not pay us when due will bear interest after their due date at the lesser of 1.5% per month or the maximum legal rate in the jurisdiction where your Spa is located. You acknowledge that this Article does not constitute our agreement to accept any payments after they are due or our commitment to extend credit to, or otherwise finance the operation of your Spa. Notwithstanding the provisions of this Article, your failure to pay all amounts when due constitutes grounds for termination of this Agreement.

**3.10 APPLICATION OF PAYMENTS.** Notwithstanding any designation you might make, we have sole discretion to apply any of your payments to any of your past due indebtedness to us. You acknowledge and agree that we have the right to set off any amounts you or your owners owe us against any amounts we might owe you or your owners.

**3.11 SPECIFIC GOODS PURCHASES.** The specifics of your initial purchase of inventory and supplies and the delivery of same and all subsequent inventory and supplies transactions will be dealt with in the normal course of business subject to the terms hereof. We may require a deposit for your initial purchase of inventory, supplies, fixtures, furniture and other equipment. If you fail to timely make payments to us or one of our affiliates for any purchases made from us or one of our affiliates, we may collect such amounts due to us via debit draft of your account, may require you to pay for all future purchases on a C.O.D. basis by cashier's check, or may refuse to make further sales to you.

#### **4. OUR OBLIGATIONS.**

**4.1 TRAINING.** Before you open your Spa for business, we will furnish initial training on the operation of a Spa to you (or, if you are a limited liability company, corporation or partnership, your limited liability company manager or managing member, managing shareholder or managing partner), and up to 10 additional employees you elect to enroll in the training program. Initial training consists of 10 working days to be furnished at our training location or at an operating Spa. You (or your limited liability company manager or managing member, managing shareholder or managing partner), and your employees are required to complete the initial training to our satisfaction. You also are required to participate in all other activities required to operate your Spa. You are responsible for all travel and living expenses that you (or your limited liability company manager or managing member, managing shareholder or managing partner) and your employees incur in connection with training. If we determine that you (or your limited liability company manager or managing member, managing shareholder or managing partner) are unable to complete initial training to our satisfaction, we have the right to terminate this Agreement. Notwithstanding the foregoing, in the event that you already own a Spa, your initial training program will not be mandatory or provided unless we deem it necessary and in which case it might be modified.

**4.2 REFRESHER TRAINING.** We may require you (or your limited liability company manager or managing member, managing shareholder or managing partner) and/or previously trained and experienced employees to attend periodic refresher training courses at such times and locations that we designate, and we may charge reasonable fees for such courses. You are responsible for the travel and living expenses of you and your employees during any such refresher training.

**4.3 GENERAL GUIDANCE.** We will advise you from time to time regarding operating issues concerning your Spa disclosed by reports you submit to us or on-site inspections we make from time to time. Such guidance will, at our discretion, be furnished in our operations manual ("Operations Manual"), bulletins or other written materials and/or during telephone consultations and/or consultations at our office or the Location. We reserve the right to charge a reasonable fee for providing this guidance.

**4.4 ON-SITE CONSULTATION AND ADDITIONAL GUIDANCE.** Our representative will spend 3 to 5 days at your Location to assist you with the grand opening of your Spa. In the event that you already own a Spa, the on-site consultation will not be mandatory or provided unless we deem it necessary.

**4.5 OPERATIONS MANUAL.** During the term of this Agreement, we will loan you 1 copy of our Operations Manual. The Operations Manual will be in a format determined by us (i.e. in writing, on CD-Rom, via electronic media through a secure website, etc.), and all other supplemental bulletins, notices, revisions, modifications, or supplemental information, either in document or electronic form, concerning the System are considered part of the Operations Manual. Also included are any passwords or other digital identifications necessary to access the Operations Manual on a website or extranet. The Operations Manual contains mandatory and suggested specifications, standards, operating procedures and rules that we prescribe from time to time for the operation of a Spa and related agreements. You will at all times be responsible for ensuring that your employees and all other persons under your control comply with the mandatory provisions of the Operations Manual in all respects. The Operations Manual constitutes a confidential trade secret of ours and will remain our property. The Operations Manual cannot be photocopied, reproduced, or disseminated without our written consent. The Operations Manual may be modified from time to time. You agree to comply with all modifications, additions or deletions to the Operations Manual at your sole cost and expense. You acknowledge that due to the changing nature of this type of business, as well as changing attitudes of customers and other factors, changes to the System or the Operations Manual may be necessary and may involve your expenditure of substantial sums of money, including purchasing new equipment, computer hardware and software, and other items. We and you intend that the exercise of our right or discretion will not be subject to limitation or review. You agree to keep your copy of the Operations Manual current and in a

secure location at your Spa. In the event of a dispute relating to its contents, the master copy of the Operations Manual we maintain at our principal office will be controlling. You may not at any time copy, duplicate, record or otherwise reproduce any part of the Operations Manual. The Operations Manual and other specifications, standards and operating procedures communicated to you shall be deemed a part of this Agreement.

**4.6 TRAINING AND ASSISTANCE BY AREA DEVELOPER.** The parties agree, that if your Spa is to be located in an area covered by an Area Development Agreement entered into between us and one of our area developers, some or all of the assistance under this Agreement to be provided to you by us may be provided by such area developer.

**4.7 ON-LINE CONTINUING EDUCATION PROGRAMS.** We may, in our sole discretion offer on-line continuing education programs for your therapists or estheticians. The programs may or may not qualify for continuing education requirements in your state and you will be responsible for determining whether these programs qualify. These programs are optional, however, you must pay us a fee if your therapists or estheticians take any of these programs. We anticipate the fee will range between \$100 - \$500 per attendee per program.

## **5. MARKS.**

**5.1 OWNERSHIP AND GOODWILL OF MARKS.** We own the MassageLuXe Marks. Our affiliate, FaceLuXe Licensing, LLC, owns the FaceLuXe Marks and licenses us the right to use the FaceLuXe Marks and to grant you a sublicense of the FaceLuXe Mark according to the terms of this Agreement. Your right to use the Marks is derived solely from this Agreement and limited to the operation of your Spa pursuant to and in compliance with this Agreement and the Operations Manual. Your unauthorized use of the Marks will be a breach of this Agreement and an infringement of our and our affiliate's rights in and to the Marks. You acknowledge and agree that your usage of the Marks and any goodwill established by such use will be exclusively for our and our affiliate's benefit and that this Agreement does not confer any goodwill or other interests in the Marks upon you (other than the right to operate your Spa in compliance with this Agreement). You will not represent in any manner that you have any ownership in the Marks or the right to use the Marks except as provided in this Agreement and the Operations Manual.

**5.2 LIMITATIONS ON YOUR USE OF MARKS.** You agree to use the MassageLuXe Marks as the sole identification of your Spa, except that you agree to identify yourself as the independent owner thereof in the manner we prescribe. You may not use any Marks as part of any corporate or legal business name. You will not maintain a world wide website, or social media (e.g., LinkedIn, Facebook or Twitter) account or user name, or any other presence, or otherwise advertise on the Internet, or any other public computer network, in connection with your Spa, without our prior written consent or in the manner we approve. You agree not to register any Internet address name under any Internet domain, class or category that contains the Marks or any abbreviation, acronym or variation of the Marks. We and our affiliates retain the sole right to advertise on the Internet and create a website or websites using any of the Marks or any variation of the Marks. We and our affiliates retain the sole right to determine the content on any website we create and on any social media outlet we may permit you to use. You may not use any Marks in connection with the performance or sale of any unauthorized services or products or in any other manner we have not expressly authorized in writing. No Marks may be used in any advertising concerning the transfer, sale or other disposition of your Spa or an ownership interest in you. You agree to display the Marks prominently in the manner we prescribe at your Spa, on supplies or materials we designate and in connection with forms and advertising and marketing materials. You agree to give such notices of copyright, trademark and service mark rights; i.e., "©", "®", "TM" or "SM", as we specify and to obtain any fictitious or assumed name registrations required under applicable law. You agree to withdraw

any fictitious or assumed name registrations immediately upon termination or expiration of this Agreement.

**5.3 NOTIFICATION OF INFRINGEMENTS AND CLAIMS.** You agree to notify us immediately of any apparent infringement or challenge to your use of any Marks, or of any claim by any person of any rights in any Marks, and agree not to communicate with any person other than us, our attorneys and your attorneys in connection with any such infringement, challenge or claim. We and our affiliates have the sole discretion to take such action as we deem appropriate and the right to control exclusively any litigation, United States Patent and Trademark Office ("USPTO") proceeding or any other administrative proceeding arising out of any such infringement, challenge or claim or otherwise relating to any Marks. You agree to sign any and all instruments and documents, render such assistance and do such acts and things as, in the opinion of our attorneys, may be necessary or advisable to protect and maintain our interests in any litigation or USPTO proceeding or other proceeding or otherwise to protect and maintain our interests in the Marks.

**5.4 DISCONTINUANCE OF USE OF MARKS.** If it becomes advisable at any time in our sole discretion for us and/or you to modify or discontinue the use of any Marks and/or use one or more additional or substitute Marks, you agree to comply with our directions within a reasonable time after receiving notice thereof, at your sole cost and expense. We will not be obligated to reimburse you for any loss of revenue attributable to any modified or discontinued Marks or for any expenditures you make to promote a modified or substitute Mark.

## **6. CONFIDENTIAL INFORMATION.**

**6.1 DETERMINATION OF CONFIDENTIAL INFORMATION.** We possess (and will continue to develop and acquire), and may disclose to you, certain confidential information (the "Confidential Information") relating to the development and operation of Spas, which may include (without limitation): (i) the System; (ii) Operations Manual; (iii) location selection criteria; (iv) methods, formats, specifications, standards, systems, procedures, any other proprietary materials, the sales and marketing techniques used, and knowledge of and experience in developing and operating Spas; (v) marketing and advertising programs for Spas; (vi) knowledge of specifications for and suppliers of certain fixtures, furnishings, equipment, products, materials and supplies used in the Spas; and (vii) knowledge of the operating results and financial performance of Spas other than your Spa.

**6.2 YOUR USE.** You acknowledge and agree that you will not acquire any interest in Confidential Information, other than the right to utilize Confidential Information disclosed to you in establishing and operating your Spa during the term of this Agreement, and that the use or duplication of any Confidential Information in any other business will constitute an unfair method of competition and a violation of this Agreement. You further acknowledge and agree that Confidential Information is proprietary, includes our trade secrets and is disclosed to you solely on the condition that you agree, and you do hereby agree, that you: (i) will not use Confidential Information in any other business or capacity; (ii) will maintain the absolute confidentiality of Confidential Information during and after the term of this Agreement; (iii) will not make unauthorized copies of any portion of Confidential Information disclosed via electronic medium or in written or other tangible form; (iv) will cease using the Confidential Information after the termination or expiration of this Agreement, or after any transfer (as described herein); and (v) will adopt and implement all reasonable procedures, including those that we prescribe from time to time to prevent unauthorized use or disclosure of Confidential Information, including restrictions on the disclosure of Confidential Information to your personnel and others.

**6.3 IDEAS, CONCEPTS, TECHNIQUES OR MATERIALS.** All ideas, concepts, techniques or materials relating to a Spa, all copyrights embodied therein and all goodwill arising therefrom, whether or not constituting protectable intellectual property, and whether created by or on



behalf of you or your owners, will be promptly disclosed to us, deemed to be our sole and exclusive property, part of the System and deemed to be works made for hire for us. You and your owners agree to sign whatever assignment or other documents we may request from time to time to evidence our ownership or to assist us in securing intellectual property rights in such ideas, concepts, techniques or materials.

## **7. EXCLUSIVE RELATIONSHIP.**

**7.1 EXCLUSIVE DEALINGS.** You acknowledge that we have granted the Franchise to you in consideration of and reliance upon your agreement to deal exclusively with us. You therefore agree that, during the term of this Agreement, neither you nor any of your owners (nor any of your or your owners' spouses, children or other relatives by blood or marriage) will: (i) have any direct or indirect interest as a disclosed or beneficial owner in a Competitive Business, wherever located; (ii) perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business, wherever located; or (iii) recruit or hire any person who is or was our employee or the employee of any other Spa without obtaining the prior written permission of that person's employer. If you hire any person who is a current employee of any Spa, whether with or without the permission of that employee's employer, you agree to pay that employee's employer an employment fee of \$5,000 (the "Employment Fee"). The parties agree that the payment of the Employment Fee to the employee's employer is not a penalty, but shall be construed as liquidated damages. The parties further agree that the actual damages suffered by the employer is difficult to calculate and that the Employment Fee represents a reasonable estimation of such damages. You must pay the Employment Fee to the appropriate employer within 30 days of hiring the employee.

**7.2 COMPETITIVE BUSINESS.** The term "Competitive Business" as used in this Agreement means any business operating, or granting franchises or licenses to others to operate, any business which derives more than 10% of its gross revenue from providing MassageLuXe Services or FaceLuXe Services or any other type of services offered in the Spa (other than a Spa operated under a franchise agreement with us).

**7.3 COVENANT NOT TO COMPETE AFTER TERM.** Upon termination of this Agreement, expiration of this Agreement, or assignment or transfer, you and your owners agree that, for a period of 24 months (the "Restriction Period") commencing on the effective date of termination or expiration or the date on that a person restricted by this Article begins to comply with this Article, whichever is later, neither you nor any of your owners will have any direct or indirect interest (i.e., through a spouse or child) as a disclosed or beneficial owner, investor, partner, director, officer, employee in a management or sales capacity, consultant, representative or agent or in any other capacity in any Competitive Business operating: (i) at the Location; (ii) within 25 miles of the Location; or (iii) within 5 miles of any other Spa in operation or under construction on the later of the effective date of the termination, expiration or transfer, or the date on which a person restricted by this Article complies with this Article.

**7.4 REASONABLENESS OF COVENANTS.** You acknowledge and confirm that the length of the term and geographical restrictions contained in Articles 6 and 7 are fair and reasonable and not the result of overreaching, duress or coercion of any kind. You acknowledge and confirm that your and their full, uninhibited and faithful observance of each of the covenants contained in Articles 6 and 7 will not cause any undue hardship, financial or otherwise, and that enforcement of each of the covenants contained in Articles 6 and 7 will not impair your or their ability to obtain employment commensurate with their respective abilities and on terms fully acceptable to you or them or otherwise to obtain income required for your or their comfortable support and, if such person is an individual, his or her family, and the satisfaction of the needs of his or her creditors. You acknowledge that to disregard the provisions of Articles 6 and 7 would effectively foreclose us from selling other franchises and you or they could be

unjustly enriched and unfairly derive benefit from the goodwill of and training you or they receive from us. Moreover, our franchisees and the Spa could be severely disadvantaged if you compete against them using the Marks or other Confidential Information. We intend to restrict your activities under Articles 6 and 7 of this Agreement only to the extent necessary for the protection of our, our affiliates', our franchisees' and our affiliates' franchisees' legitimate business interests. Each of the foregoing covenants will be construed as severable and independent and will be interpreted and applied consistent with the requirements of reasonableness and equity. In the event a court of competent jurisdiction will determine the business, time, or geographic limitations contained in this Agreement are illegal, invalid or unenforceable, then, the court so holding will reduce the limitation necessary to render such restriction enforceable by the court. We will have the right to reduce the scope of any covenant contained in Articles 6 and 7, without your consent, effective immediately upon receipt by you of our written notice; and you will comply with any reduced covenant. In addition to any other remedies available at law or equity, we will have the right to injunctive relief for your violation or threatened violation of any covenant described in Articles 6 and 7 without the obligation to post a bond. The terms of the restrictions in this Article 7 are assignable by us and will inure to our benefit, as well as our successors and assigns. In the event of any assignment, sale, merger or change in our ownership or structure, the resulting entity will step into our place, without any additional consent of or notice to you, as if the term "us" was defined in this Agreement to include such entity.

## **8. SERVICES, PRODUCTS AND SUPPLIERS.**

**8.1 SOURCES OF PRODUCTS.** You will purchase equipment, supplies, products and other materials required for the operation of your Spa from manufacturers, suppliers or distributors designated by us, or from other suppliers we approve who meet our specifications. Some of the approved suppliers may be affiliated with us. Specification of a supplier may be conditioned on requirements relating to frequency of delivery, standards of services, including prompt attention to complaints, as well as payments, contributions or other consideration to us, our affiliates or the Creative Services Advertising Fund, and may be temporary, in each case in our reasonable discretion.

We or our affiliates may receive rebates, commissions, promotional allowances, and other benefits from suppliers in relation to items purchased by you and other franchisees. We have the right to condition or revoke your right to participate in any supplier programs if you are in default under this Agreement. We and our affiliates reserve the right to negotiate with various vendors for quantity discount contracts which may include rebates to us or our affiliates under these contracts. You may or may not find the contracts to your advantage and may elect to participate or not to participate in them. We have the right to affiliate ourselves with suppliers or become an approved supplier or the sole supplier. Any purchases from us or our affiliates will generally be at prices exceeding our or our affiliate's costs.

**8.2 WE AND OUR AFFILIATES AS APPROVED SUPPLIERS.** Currently, our affiliates, Team Luxe, LLC ("Luxe") and LuXeStethics, LLC ("LuXeStethics"), act as sources of products and services from our designated suppliers. Luxe is an approved supplier of massage tables and other equipment and supplies used to provide the MassageLuXe Services. LuXeStethics is an approved supplier of facial bars, tables and other equipment and supplies related to the FaceLuXe Services. The products that you will have to purchase through Luxe and LuXeStethics include almost all equipment, furniture and fixtures that you will need to open your Spa. Luxe and LuXeStethics source these items from different designated suppliers and serves a commissary role in reselling the goods and services to our and our affiliate's franchisees. You must also purchase from us or our affiliates certain products as part of your initial and ongoing inventory requirements and we or our affiliates may be the only approved supplier of certain products or categories of products. Luxe will provide you with your ongoing inventory requirements of massage-related products and massage equipment. LuXeStethics will provide you with your ongoing inventory requirements of facial and waxing-related products and facial and waxing equipment. We may occasionally develop proprietary private label equipment and products that are an

integral part of our System and you must comply with all our specifications and requirements and incorporate and use the equipment and products in the operation of your Spa, as we may require. Payment terms for purchases from us or our affiliates are described in the Operations Manual.

**8.3 ALTERNATIVE SUPPLIERS.** Before using an alternative supplier or an alternative product to the suppliers or products required to be used in your Spa, you must submit to us an approval request in writing, together with a non-refundable fee of \$500 ("Alternative Supplier or Product Approval Fee"). You must submit whatever information, specifications or samples we require in addition to your approval request. If our costs of reviewing and testing the alternative supplier or product exceed the Alternative Supplier and Product Approval Fee, then we may require you to pay us a reasonable fee based on these costs. You must reimburse our costs promptly upon receipt of an invoice. We reserve the right to approve or disapprove proposed alternative suppliers and products in our sole discretion. We may revoke an approval previously given at any time in our discretion, upon written notice to you.

**8.4 UNIFORMITY OF PRODUCTS AND SERVICES.** Uniformity of Services offered by all Spas is of utmost importance to us, our franchisees and the System. If you offer to sell or do sell products or services which are not authorized or are not provided in accordance with the Operations Manual, you agree we will be damaged by your non-compliance. These damages will be calculated at the rate of \$1,000 per day for each day unauthorized products or services are offered or sold and will be in addition to any other rights and remedies we may have against you. We have the right to collect these amounts in addition to any and all of our other rights for non-compliance provided for under this Agreement. You agree that a precise calculation of the full extent of the damages that we will incur from the offer or sale of unauthorized products and services are difficult to determine and we and you desire certainty in this matter and agree that the damages provided here are reasonable, constitute liquidated damages and are not a penalty.

## **9. MARKETING.**

**9.1 CREATIVE SERVICES ADVERTISING FUND.** Recognizing the value of advertising and marketing to the goodwill and public image of the Spas, we have established an advertising fund (the "Creative Services Advertising Fund") for such creative services, advertising, marketing and public relations programs and materials as we deem necessary or appropriate in our sole discretion. We will direct all programs financed by the Creative Services Advertising Fund, with sole discretion over the creative concepts materials and endorsements used therein and the geographic market and media placement and allocation thereof. You agree that the Creative Services Advertising Fund may be used to pay the costs of preparing and producing video, audio and written advertising materials, administering regional and multiregional advertising programs, including, without limitation, purchasing direct mail and other media advertising, and employing advertising, promotion and marketing agencies to assist therewith, and supporting public relations, market research and other advertising promotion and marketing activities. The Creative Services Advertising Fund may furnish you with samples of advertising, marketing formats, promotional formats and other materials at a reasonable charge. We have established an Internet website that provides information about the Spa locations. We will have sole discretion and control over the website (including timing, design, contents and continuation). We may use part of the National Ad Fees we collect to pay or reimburse the costs associated with the development, maintenance and update of this or any other website we may use. At your expense, we will include at the website an interior page containing information about your Spa. We may require you to prepare all or a portion of the page, at your expense, using a template that we provide. All such information will be subject to our prior written approval prior to posting. Except for this interior page, you may not maintain a presence on the Internet for your Spa.

**9.2 ACCOUNTING.** The Creative Services Advertising Fund will be accounted for separately from our other funds and will not be used to defray any of our general operating expenses,

except for such reasonable salaries, administrative costs, travel expenses and overhead as we may incur in activities related to the administration of the Creative Services Advertising Fund. We may spend, on behalf of the Creative Services Advertising Fund, in any fiscal year, an amount that is greater or less than the aggregate contribution of all Spas to the Creative Services Advertising Fund in that year and the Creative Services Advertising Fund may borrow from us or others to cover deficits or invest any surplus for future use. All interest earned on monies contributed to the Creative Services Advertising Fund will be used to pay advertising costs before other assets of the Creative Services Advertising Fund are expended. We will prepare an annual unaudited statement of monies collected and costs incurred by the Creative Services Advertising Fund and furnish the statement to you upon written request.

**9.3 PROPORTIONALITY.** You acknowledge that the Creative Services Advertising Fund is intended to maximize recognition of the Marks and patronage of Spas. Although we will endeavor to utilize the Creative Services Advertising Fund to develop advertising and marketing materials and programs and to place advertising that will benefit all Spas, we undertake no obligation to ensure that expenditures by the Creative Services Advertising Fund in or affecting any geographic area are proportionate or equivalent to the contributions to the Creative Services Advertising Fund by Spas operating in that geographic area; however, we will provide some direct marketing in your area at our sole discretion. Except as expressly provided in this Article, we assume no direct or indirect liability or obligation to you with respect to collecting amounts due to, or maintaining, directing or administering the Creative Services Advertising Fund.

**9.4 LOCAL ADVERTISING.** We recommend that you spend money for local advertising and promotion of your Spa in addition to the Regional Ad Fee and National Ad Fee you pay to the Creative Services Advertising Fund and the Start-Up Marketing Expense described in Section 2.8 above.

**9.5 TRUTHFUL ADVERTISING, RESALE PRICES, OUR APPROVAL OF MARKETING AND PROMOTIONAL MATERIALS.** You agree that any advertising, promotion and marketing you conduct will be completely clear and factual and not misleading and conform to the highest standards of ethical marketing and the promotion policies that we prescribe from time to time. Samples of all advertising, promotional and marketing materials that we have not prepared or previously approved must be submitted to us for approval before you use them. If you do not receive written disapproval within 15 days after our receipt of such materials, we will be deemed to have given the required approval. You may not use any advertising or promotional materials that we have disapproved, and any advertising on the Internet, delivered by facsimile, electronic mail or other electronic means shall be pre-approved by us and on terms specified by us. We own the copyrights embodied in anything so submitted, whether approved by us or not. We may, to the extent permitted by applicable law, set resale prices from the products or services you offer at your Spa.

## **10. RECORDS, REPORTS AND FINANCIAL STATEMENTS.**

**10.1 BOOKKEEPING.** You agree to establish and maintain at your own expense a bookkeeping, accounting and record keeping system conforming to the requirements and formats we prescribe from time to time. We may require you to use approved computer hardware and software in order to maintain certain sales data and other information. You agree to furnish to us, upon our request, any financial report we may require or designate in the Operations Manual including, but not limited to, copies of federal and state income tax and sales tax returns, profit and loss statements for your Spa, and Gross Revenue reports of your Spa.

**10.2 VERIFICATION.** You agree to verify and sign each report and financial statement in the manner we prescribe. We have the right to disclose data derived from such reports without identifying you or the location of your Spa. If we at any time desire to utilize a financial performance representation or similar disclosure in connection with the sale of franchises, you will permit us to utilize

such information as we deem necessary (which may include disclosing information about you or the location of your Spa). We also have the right to require you to have reviewed or audited financial statements prepared on an annual basis. Moreover, we have the right, as often as we deem appropriate, including on a daily basis, to access the POS system and other computer systems that you are required to maintain in connection with the operation of your Spa and to retrieve all information relating to your Spa's operations.

## **11. INSPECTIONS AND AUDITS.**

**11.1 OUR RIGHT TO INSPECT THE BUSINESS.** To determine whether you and your Spa are in compliance with this Agreement and the Operations Manual, we and our designated agents have the right at any time during your regular business hours, and without prior notice to you, to: (i) inspect your Spa; (ii) observe, photograph and videotape the operations of your Spa for such consecutive or intermittent periods as we deem necessary; (iii) remove samples of any products, materials or supplies for testing and analysis; (iv) interview personnel and customers of your Spa; and (v) inspect and copy any books, records and documents relating to the operation of your Spa.

**11.2 OUR RIGHT TO AUDIT.** We have the right at any time during your business hours, and without prior notice to you, to inspect and audit, or cause to be inspected and audited, your (if you are a limited liability company, corporation or partnership) and your Spa's business, bookkeeping and accounting records, sales and income tax records and returns and other records. You agree to cooperate fully with our representatives and independent accountants we hire to conduct any such inspection or audit. In the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information as herein required, or to furnish such items on a timely basis, you agree to reimburse us for the reasonable cost of such inspection or audit, including, the charges of attorneys and independent accountants and the travel expenses, room and board and compensation of our employees. In the event an inspection or audit reveals that any payments have been understated in any report to us, then you shall immediately pay to us the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the lesser of 1.5% per month or the maximum legal rate in the jurisdiction where your Spa is located. If an inspection or audit discloses an understatement in any report of 2% or more, you shall, in addition to repayment of monies owed with interest, reimburse us for any and all costs and expenses connected with the inspection or audit, including the charges of attorneys and independent accountants and the travel expenses, room and board and compensation of our employees. The foregoing remedies are in addition to our other remedies and rights under this Agreement and applicable law.

## **12. TRANSFER.**

**12.1 BY US.** We are free to assign all of our rights and obligations under this Agreement, and upon such assignment we will be relieved of all liability under this Agreement, and all rights and obligations will accrue to our successor or assignee.

**12.2 BY YOU.** You understand and acknowledge that the rights and duties created by this Agreement are personal to you (or, if you are a limited liability company, corporation, partnership or other entity, to your owners) and that we have granted the Franchise to you in reliance upon our perceptions of your (or your owners') individual or collective character, skill, aptitude, attitude, business ability, acumen and financial capacity. Accordingly, neither this Agreement (or any interest therein) nor any ownership or other interest in you or your Spa may be transferred without our prior written approval. Any transfer without such approval constitutes a breach of this Agreement and is void and of no effect.

**12.3 ASSIGNMENT, ETC.** As used in this Agreement, the term "transfer" or "assignment" includes the following events:

12.3.1 transfer of ownership of limited liability company interest, capital stock, partnership interest or other equity interest in you;

12.3.2 merger, consolidation or issuance of additional securities or interests representing an ownership interest in you;

12.3.3 any issuance or sale of your stock, or any security convertible to your stock, to any person or entity other than an existing owner;

12.3.4 transfer of an interest in you, this Agreement or your Spa voluntarily, or in a divorce, insolvency, any limited liability company, corporate or partnership dissolution proceeding, or otherwise by operation of law;

12.3.5 transfer of an interest in you, this Agreement or your Spa, in the event of your death or the death of one of your owners, by will, declaration of or transfer in trust or under the laws of intestate succession;

12.3.6 sale of assets (including the inventory, furniture, fixtures, equipment and other operating assets of your Spa), other than in ordinary course of business; or

12.3.7 pledge of this Agreement (to someone other than us) or of an ownership interest in you as security, foreclosure upon your Spa, or your transfer, surrender or loss of possession, control or management of your Spa.

**12.4 CONDITIONS FOR APPROVAL OF TRANSFER.** If you (and your owners) are in full compliance with this Agreement, then subject to the other provisions of this Article 12, we will approve a transfer that meets all the applicable requirements of this Article. The proposed transferee and its direct and indirect owners must be individuals of good moral character and otherwise meet our then applicable standards for MassageLuXe franchisees. Our consent to a transfer does not constitute a representation as to the fairness of the terms of any contract between you and the transferee, a guarantee of the prospects of success of the Spa or transferee, a waiver of any claims we may have against you or of our right to demand the transferee's exact compliance with any of the terms or conditions of this Agreement. A transfer of ownership, possession or control of your Spa may be made only in conjunction with a transfer of this Agreement. All of the following conditions must be met prior to or concurrently with the effective date of the transfer:

12.4.1 you have paid all Royalties, Regional Ad Fees, National Ad Fees, POS System Software Fees, amounts owed for purchases from us and all other amounts owed to us, our affiliates or to third party creditors, and you must have submitted all required reports and statements;

12.4.2 the transferee (or its owners) has agreed to complete training to our satisfaction and does complete training to our satisfaction prior to closing;

12.4.3 the transferee has agreed to be bound by all of the terms and conditions of this Agreement for the remainder of its term or, at our option, must (i) execute our then current standard form of franchise agreement and related documents used in the state in which your Spa is located (which may provide for different royalties, advertising contributions and expenditures, duration and other rights and obligations than those provided in this Agreement); and (ii) pay a transfer fee of 25% of the then current Initial Franchise Fee in lieu of the Initial Franchise Fee required in the then current form of franchise agreement for the state in which the Spa is located;

12.4.4 you (and your transferring owners) have executed a general release, in form satisfactory to us, of any and all claims against us and our members, officers, limited liability company managers, employees and agents;

12.4.5 we have approved the material terms and conditions of such transfer and determined that the price and terms of payment will not adversely affect the transferee's operation of the Spa;

12.4.6 if you or your owners finance any part of the sale price of the transferred interest, you and/or your owners have agreed that all of the transferee's obligations pursuant to any promissory notes, agreements or security interests that you or your owners have reserved in your Spa are subordinate to the transferee's obligation to pay Royalties, Advertising Fees, POS System Software Fees, contributions and other amounts due to us and our affiliates, and otherwise to comply with this Agreement;

12.4.7 you and your transferring owners have executed an agreement in favor of us agreeing to be bound, commencing on the effective date of the transfer, by the restrictions contained in Articles 6 and 7 hereof; and

12.4.8 you and your transferring owners have agreed that you and they will not directly or indirectly at any time or in any manner (except with respect to other Spas you own and operate) identify yourself, themselves or any business you or they may operate as a current or former Spa, or as one of our licensees or franchisees, use any Marks, any colorable imitation thereof or other indicia of a Spa in any manner or for any purpose, nor will you or they utilize for any purpose any trade name, trademark or service mark or other commercial symbol that suggests or indicates a connection or association with us.

**12.5 TRANSFER TO A WHOLLY OWNED ENTITY.** Notwithstanding Article 12.4, if you are an individual in full compliance with this Agreement, you may transfer this Agreement to an entity which conducts no business other than your Spa and, if applicable, other Spas, in which you maintain management control and of which you own and control 100% of the equity and voting power of all issued and outstanding capital stock, membership interest or other equity interest, and further provided that all assets of your Spa are owned, and the entire business of the Spa is conducted, by a single entity. Transfers of shares, membership interests or such other equity interest in such entity will be subject to the provisions of Article 12.4. Notwithstanding anything to the contrary herein, you agree to remain personally liable under this Agreement as if the transfer to such corporation or limited liability company had not occurred.

**12.6 TRANSFER UPON YOUR DEATH OR DISABILITY.** You (or your owners), by will or other written instrument, may appoint a designated heir to continue operation of the Spa upon your death or disability. The designated heir must meet the qualifications of Article 12.4, including the requirement to meet our standards for new franchisees, execute the then-current form of franchise agreement used in the state in which the Spa is located and the designated heir has, or within 60 days will have, satisfactorily completed our initial training program; provided that no transfer fee will be charged on a transfer pursuant to this Article 12.6. But the transfer to a designated heir, personal representative or conservator, as applicable, in the event of your death or legal incapacity, will not give rise to our right of first refusal as described in Article 12.8 below.

**12.7 BONA FIDE OFFERS.** If you (or any of your owners) at any time determine to sell, assign or transfer for consideration an interest in this Agreement and your Spa or an ownership interest in you, you (or such owner) agree to obtain a bona fide, executed written offer and earnest money deposit (in the amount of 5% or more of the offering price) and a completed franchise application from a fully

disclosed offeror (including lists of the owners of record and beneficially of any corporate or limited liability company offeror, and all general and limited partners of any partnership offeror and, in the case of a publicly held corporation or limited partnership, copies of the most current annual and quarterly reports and Form 10K), and immediately submit to us a true and complete copy of such offer, which includes details of the payment terms of the proposed sale. To be a valid bona fide offer, the proposed purchase price must be denominated in a U.S. dollar amount. The offer must apply only to an interest in you or in this Agreement and your Spa and may not include an offer to purchase any of your (or your owners') other property or rights. However, if the offeror proposes to buy any other property or rights from you (or your owners) under a separate, contemporaneous offer, such separate, contemporaneous offer must be disclosed to us, and the price and terms of purchase offered to you (or your owners) for the interest in you or in this Agreement and your Spa must reflect the bona fide price offered therefor and not reflect any value for any other property or rights.

**12.8 OUR RIGHT OF FIRST REFUSAL.** We have the right, exercisable by written notice delivered to you or your selling owners within 30 days from the date of the delivery to us of both an exact copy of any bona fide offer and all other information required under Article 12.7 or which we request, to purchase such interest for the price and on the terms and conditions contained in such bona fide offer, provided that: (i) we may substitute cash for any form of payment or non-cash consideration proposed in such offer; (ii) our credit will be deemed equal to the credit of any proposed purchaser; (iii) we will have not less than 60 days after giving notice of our election to purchase to prepare for closing; and (iv) we are entitled to receive, and you and your owners agree to make, all customary representations and warranties given by the seller of the assets of a business or the equity of a business entity, as applicable, including representations and warranties as to: ownership and condition of and title to stock or other forms of ownership interest and/or assets; liens and encumbrances relating to the stock or other ownership interest and/or assets; and validity of contracts and the liabilities, contingent or otherwise, of the corporation whose stock is being purchased.

If we do not exercise our right of first refusal, you or your owners may complete the sale to such purchaser pursuant to and on the exact terms of such bona fide offer, subject to our approval of the transfer as provided in Articles 12.2, 12.3 and 12.4. If the sale to such purchaser is not completed within 120 days after delivery of such bona fide offer to us, or if there is a material change in the terms of the sale (which you agree promptly to communicate to us), the sale will be treated as a new sale subject to our right of first refusal as provided in Articles 12.7 and 12.8.

### **13. TERM AND RENEWAL OF THIS AGREEMENT.**

**13.1 TERM.** The term of this Agreement is for 10 years commencing on the date of this Agreement, and expiring on the 10th anniversary of that date unless sooner terminated in accordance with this Agreement. If you continue to operate your Spa with our express or implied consent following the expiration of this Agreement, the terms and conditions of this Agreement shall continue to apply and this Agreement may be terminated by either party upon 30 days written notice.

**13.2 RENEWAL.** If you are in full compliance with the terms of this Agreement, you will have the right to renew your franchise on the terms and conditions of our most current franchise agreement being utilized by us at the time you renew, which you must sign along with all ancillary agreements required in that franchise agreement (including the Agreement to Comply with Certain Undertakings of Franchisee). The most current franchise agreement may contain significantly different terms than this Agreement. In any event, we may in our discretion, refuse to renew this Agreement if you have been notified of defaults (even if subsequently cured) under this Agreement more than 2 times during the initial term or more than 2 times during any renewal term, even if you are not in default at the time of the renewal. You agree to give us not less than 6 nor more than 12 months written notice of an election to renew this Agreement, prior to the end of the term. Your failure to give us this notice will be



deemed an election not to renew this Agreement. You will also be required to pay us a renewal fee equal to \$5,000. Additionally, you must remodel your Spa to meet our then current standards of decor in accordance with the provisions of our Operations Manual and must execute a general release, to the extent permitted by applicable law, of any and all claims against us and our affiliates, and our and our affiliates' respective owners, officers, directors, employees, agents, successors and assigns arising under or from this Agreement and/or any related agreements between you and us or our affiliates, or under any applicable law, rule or regulation.

#### **14. TERMINATION OF AGREEMENT.**

**14.1 BY YOU.** If you and your owners are in compliance with this Agreement and we materially fail to comply with this Agreement and do not correct such failure within 60 days after written notice of such material failure is delivered to us, you may terminate this Agreement effective 30 days after delivery to us of written notice of termination.

**14.2 BY US.** We have the right to terminate this Agreement, effective upon delivery of written notice of termination to you if you (or any of your owners):

14.2.1 fail to successfully complete initial training to our satisfaction within the required periods;

14.2.2 fail to begin operating your Spa within 270 days after executing this Agreement;

14.2.3 abandon or fail to actively operate your Spa for 3 or more consecutive days, unless your Spa has been closed for a purpose we have approved;

14.2.4 have made any material misrepresentation or omission in connection with your purchase of the Franchise;

14.2.5 have been convicted by a trial court of, or plead or have pleaded guilty or no contest to, a felony or any crime involving moral turpitude;

14.2.6 engage in any dishonest or unethical conduct that may, in our opinion, adversely affect the reputation of your Spa, another Spa or the goodwill associated with the Marks;

14.2.7 make an unauthorized assignment or transfer in violation of this Agreement;

14.2.8 lose the right to possession of and use for your Spa at the Location;

14.2.9 make any unauthorized use or disclosure of any Confidential Information or use, duplicate or disclose any portion of the Operations Manual in violation of this Agreement;

14.2.10 violate any health, safety, sanitation or other applicable law, ordinance or regulation and do not immediately begin to cure the noncompliance or violation, and correct such noncompliance or violation within 24 hours after written notice thereof is delivered to you;

14.2.11 misuse the Marks or engage in fraudulent or other conduct which, in our opinion, reflects unfavorably upon the operation, maintenance, goodwill and/or reputation of the franchise system or your Spa;

14.2.12 fail to make payments of any amounts due to us or our affiliates and do not correct such failure within 7 days after written notice of such failure is delivered to you;

14.2.13 fail to pay when due any federal or state income, service, sales, employment related or other taxes due, unless you are, in good faith, legally contesting your liability for such taxes;

14.2.14 fail to comply with any other provision of this Agreement or the mandatory requirements of the Operations Manual and do not correct such failure within 30 days after written notice of such failure to comply is delivered to you;

14.2.15 fail on 3 or more separate occasions within any period of 12 consecutive months to submit when due reports or other data, information or supporting records, to pay when due any amounts due to us or our affiliates or otherwise to comply with this Agreement, whether or not such failures to comply were corrected after written notice of such failures were delivered to you; or

14.2.16 make an assignment for the benefit of creditors or admit in writing your insolvency or inability to pay your debts generally as they become due; you consent to the appointment of a receiver, trustee or liquidator of all or the substantial part of your property; your Spa or any of its assets is attached, seized, subjected to a writ or distress warrant or levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within 30 days; or any order appointing a receiver, trustee or liquidator of you or your Spa is not vacated within 30 days following the entry of such order.

## **15. OBLIGATIONS UPON TERMINATION, EXPIRATION OR ASSIGNMENT.**

Upon termination of this Agreement for any reason, expiration of the term of this Agreement, or any assignment or transfer:

**15.1** You agree to pay us within 15 days after the effective date of such termination, expiration, assignment or transfer, or on such later date that the amounts due to us are determined, such Royalties, Regional Ad Fees, National Ad Fees, POS Systems Software Fees, amounts owed for purchases from us or our affiliates, interest due on any of the foregoing and all other amounts owed to us or our affiliates which are then unpaid.

**15.2** You may not directly or indirectly at any time or in any manner (except with respect to other Spas you own and operate) identify yourself or any business as a current or former Spa, or as one of our licensees or franchisees, use any Marks, any derivation or colorable imitation thereof or other indicia of a Spa in any manner or for any purpose, or utilize for any purpose any trade name, trademark or service mark or other commercial symbol that indicates or suggests a connection or association with us;

**15.3** You will immediately discontinue use of all Marks, signs, colors, structures, printed goods and forms of advertising indicative of our business, any Spa or the System, and return any Confidential Information or other copyrighted materials, including the Operations Manual, to us.

**15.4** If we request, you will assign your telephone numbers, white and yellow page telephone references and advertising to us or any of our designees, including any other Spas.

**15.5** You must turn over all of your Memberships, membership agreements, files and customers upon our request.

**15.6** You will cancel any assumed name registration or equivalent registration which contains the Marks or any name that is confusingly similar to any of the Marks and you will furnish us with evidence satisfactory to us of your compliance with this obligation within 5 days of any transfer or assignment, or any termination or expiration of the term of this Agreement.

**15.7** Pursuant to the Collateral Assignment of Lease, upon our request, you will assign to us any interest that you may have in any lease or sublease for the Location. We may exercise the option at or within 30 days after either (i) the termination or expiration of the term of this Agreement, or (ii) our receipt of notice by your landlord of its intent to terminate the lease or sublease for the Location. If we exercise this option, we will have the right and are hereby empowered to take possession of the Location demised by the lease or sublease and expel you from the Location, after which you will have no further right, title or interest in the lease or sublease. In the event that we do not exercise our option to acquire the lease or sublease for the Location, you will make such modifications or alterations to the premises immediately upon the termination or expiration of the term of this Agreement, as we may deem necessary, to distinguish the appearance of the Location from that of other Spas. In the event you fail or refuse to comply with the requirements of this subsection., we or our designees will have the right to enter upon the premises without being guilty of trespass or any other tort for the purposes of making or causing to be made the changes that may be required by this subsection at your expense. You agree to pay us this expense upon demand.

**15.8** You (and your owners) will comply with all post-term covenant obligations including the Confidential Information, non-competition and indemnification.

**15.9** Neither a transfer or assignment nor the termination or expiration of the term of this Agreement will relieve you of any of your obligations to us or our affiliates existing at the time of such transfer, assignment, termination or expiration, or terminate your obligations that, by their nature, survive such transfer, assignment, termination or expiration. All of our and your (and your owners' and affiliates') obligations that expressly or by their nature survive the transfer, assignment, expiration or termination of this Agreement will continue in full force and effect subsequent to and notwithstanding its expiration, transfer, assignment or termination and until they are satisfied in full or by their nature expire. Furthermore, a transfer or assignment, or a termination or expiration of the term of this Agreement will be without prejudice to our rights against you; and in the event of a termination which is the result of your material breach or default under this Agreement, we will, in addition to our rights set forth above, also be entitled to all rights and remedies available at law or in equity.

**15.10 OUR RIGHT TO PURCHASE YOUR PERSONAL PROPERTY.** After the termination or expiration of this Agreement, but not upon an approved assignment or transfer pursuant to Section 12.4, we will have the right, but not the obligation, to purchase any or all of your equipment, inventory, supplies and other personal property used in connection with the operation of the Spa. The purchase price will be book value less any liens. We will have 60 days after the termination, expiration, assignment or transfer to notify you whether or not we want to exercise our option ("Notification Date"). The closing will take place within 90 days after determination of the purchase price. We have the right to set off against the purchase price, and thereby reduce the purchase price, by any and all amounts you or your owners owe to us or our affiliates. At the closing, you agree to deliver instruments transferring good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us), with all sales and other transfer taxes paid by you, and your owners will execute a general release, in form satisfactory to us, of any and all claims against us, our affiliates, owners, employees, agents, successors and assigns. We have the right to assign this purchase option to any other person or entity.

## **16. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION.**

**16.1 INDEPENDENT CONTRACTORS.** You and we understand and agree that this Agreement does not create a fiduciary relationship between you and us, that we and you are and will be independent contractors and that nothing in this Agreement is intended to make either you or us a general or special agent, joint venturer, partner or employee of the other for any purpose. You agree to conspicuously identify yourself in all dealings with customers, suppliers, public officials, personnel and

others as the owner of your Spa under a franchise we have granted and to place such notices of independent ownership on such forms, checks, business cards, stationery, advertising and other materials as we may require from time to time.

**16.2 NO LIABILITY FOR ACTS OF OTHER PARTY.** You agree not to employ any of the Marks in signing any contract or applying for any license or permit, or in a manner that may result in our liability for any of your indebtedness or obligations, and that you will not use the Marks in any way we have not expressly authorized. Neither we nor you will make any express or implied agreements, warranties, guarantees or representations or incur any debt in the name or on behalf of the other, represent that our respective relationship is other than franchisor and franchisee or be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized in writing. We will not be obligated for any damages of any nature whatsoever to any person or property directly or indirectly arising out of the Spa's operation.

**16.3 TAXES.** We will have no liability for any sales, use, service, occupation, excise, employment related, gross receipts, income, property or other taxes, whether levied upon you or your Spa, in connection with the business you conduct (except any taxes we are required by law to collect from you with respect to purchases from us). Payment of all such taxes is your responsibility.

**16.4 INDEMNIFICATION.** You agree to indemnify, exculpate, defend and hold us, our affiliates, and our and their respective shareholders, directors, members, limited liability company managers, partners, officers, employees, agents, successors and assigns (the "Indemnified Parties") harmless from and against, and to reimburse any one or more of the Indemnified Parties for all claims, obligations and damages described in this Article, any and all taxes described in Article 16.3 and any and all claims and liabilities directly or indirectly arising out of your Spa's operation or your breach of this Agreement. For purposes of this indemnification, "claims" includes all obligations, damages (actual, consequential or otherwise) and costs incurred in the defense of any claim against any of the Indemnified Parties, including reasonable accountants', arbitrators', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other expenses of litigation, arbitration or alternative dispute resolution, and travel and living expenses. We have the right to defend any such claim against us at your expense. This indemnity will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

**16.5 INSURANCE.** Upon execution of a lease for your Spa or 90 days prior to commencing operations of your Spa, whichever is earlier, you shall obtain, and shall maintain in full force and effect at all times during the term of this Agreement, at your own expense, an insurance policy or policies protecting you, us, our affiliates, successors and assigns, and the officers, directors, shareholders, partners, members, limited liability company managers, agents, representatives, independent contractors and employees of each of them against any demand or claim with respect to personal injury, death or property damage, or any loss, liability or expense whatsoever arising or occurring at or in connection with the operation of your Spa. Such policy or policies shall, at a minimum, include (i) comprehensive general liability insurance policy in the amount of \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate; (ii) worker's compensation insurance in amounts required by applicable law, or, \$2,000,000 aggregate limit, whichever is greater; (iii) professional liability insurance covering liability due to errors and omissions in the performance of the Services under this Agreement in the amount of \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate; (iv) "all risk" coverage for the full cost of replacement of leasehold improvements and other property at the Location in which we may have an interest with no coinsurance clause for the premises; (v) business interruption insurance with limit of liability representing loss of at least 6 months of income; (vi) such other insurance as may be required by the landlord of the Location and by any applicable law or regulation; and (vii) other insurance as we may reasonable specify in the Operations Manual. The Operations Manual will provide the type and minimum coverage which you will be required to maintain

and which may be changed and modified from time to time. All insurance policies required herein, with the exception of worker's compensation, shall name us and our affiliates, and the officers, directors, shareholders, partners, members, limited liability company managers, agents, representatives, independent contractors, and employees of each of them, as additional insureds, and shall expressly provide that our and their interest shall not be affected by your breach of any policy provisions. Within 30 days after obtaining the insurance required herein and within 30 days of written request by us, you shall provide a copy of certificates of insurance evidencing the existence and continuation of the insurance coverage required by this Article 16.5. All insurance policies required shall expressly provide that no less than 30 days prior written notice shall be given to us in the event of material alteration to or cancellation of the policy. If you fail to obtain or maintain the insurance required by this Agreement, we shall have the right and authority, but not the obligation to do so, to obtain such insurance and to charge the cost of such insurance to you, along with a reasonable fee for our expenses in connection with obtaining such insurance. Such amounts shall be due to us upon demand. The foregoing remedy shall be in addition to any other remedies we may have at law or in equity.

**16.6 MITIGATION NOT REQUIRED.** Under no circumstances will we or any other Indemnified Party be required to seek recovery from any insurer or other third party, or otherwise to mitigate our, their or your losses and expenses, in order to maintain and recover fully a claim against you. You agree that a failure to pursue such recovery or mitigate a loss will in no way reduce or alter the amounts we or another Indemnified Party may recover from you.

## **17. ENFORCEMENT AND MISCELLANEOUS MATTERS.**

**17.1 SEVERABILITY AND SUBSTITUTION OF VALID PROVISIONS.** Except as expressly provided to the contrary herein, each provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such provision is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may remain otherwise intelligible, which will continue to be given full force and effect and bind the parties hereto, although any portion held to be invalid will be deemed not to be a part of this Agreement from the date the time for appeal expires, if you are a party thereto, or otherwise upon your receipt from us of a notice of non-enforcement thereof.

**17.2 LESSER COVENANT ENFORCEABLE.** If any covenant herein that restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but would be enforceable by reducing any part or all thereof, you and we agree that such covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law is applicable to the validity of such covenant.

**17.3 GREATER NOTICE.** If any applicable and binding law or rule of any jurisdiction requires a greater prior notice than is required hereunder of the termination of this Agreement or of our refusal to enter into a renewal franchise agreement, or the taking of some other action not required hereunder, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement is invalid or unenforceable, the prior notice and/or other action required by such law or rule will be substituted for the comparable provisions hereof, and we will have the right in our sole discretion to modify such invalid or unenforceable provision without further notice to you to the extent required to be valid and enforceable. You agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof, any portion or portions which a court or arbitrator may hold to be unenforceable in a final decision to which we are a party, or from reducing the scope of any promise or covenant to the

extent required to comply with such a court order or arbitration award. Such modifications to this Agreement will be effective only in such jurisdiction, unless we elect to give them greater applicability, and will be enforced as originally made and entered into in all other jurisdictions.

**17.4 NON-WAIVER.** We and you will not be deemed to have waived or impaired any right, power or option reserved by this Agreement (including without limitation the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach thereof to be a default and to terminate this Agreement prior to the expiration of its term) by virtue of any custom or practice at variance with the terms hereof; our or your failure, refusal or neglect to exercise any right under this Agreement or to insist upon exact compliance by the other with our and your obligations hereunder, including the Operations Manual; our waiver, forbearance, delay, failure, or omission to exercise any right, power or option, whether of the same, similar or different nature, with respect to other Spas; the existence of other franchise agreements for Spas that contain different provisions from those contained herein; or our acceptance of any payments due from you after any breach of this Agreement. All rights and remedies granted in this Agreement shall be cumulative. Our election to exercise any remedy available by law or contract shall not be deemed a waiver or preclude exercise of any other remedy. No special or restrictive legend or endorsement on any check or similar item given to us will constitute a waiver, compromise, settlement or accord and satisfaction. Such legend or endorsement will have no effect, and we are authorized to remove or obliterate any such legend or endorsement.

**17.5 FORCE MAJEURE.** With the exception of your obligation to pay to us any sums when due, neither we nor you will be liable for loss or damage or deemed to be in breach of this Agreement if our or your failure to perform our or your obligations is not our or your fault and results from: transportation shortages, inadequate supply of equipment, products, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any federal, state or municipal government or any department or agency thereof; acts of nature; fires, strikes, embargoes, war or riot; or any other similar event or cause. Any delay resulting from any of said causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that said causes will not excuse payments of amounts owed at the time of such occurrence or payment of Royalties, Regional Ad Fees and National Ad Fees due on any sales thereafter.

**17.6 COSTS AND ATTORNEYS' FEES.** If we incur expenses in connection with your failure to pay when due amounts owed to us, to submit when due any reports, information or supporting records or otherwise to comply with this Agreement, you agree to reimburse us for any of the costs and expenses which we incur, including reasonable accounting, attorneys' and related fees.

**17.7 CHOICE OF LAW, VENUE AND JURISDICTION.** You acknowledge that this Agreement was accepted in the State of Missouri. You acknowledge that you have and will continue to develop a substantial and continuing relationship with us at our principal offices in Missouri, where our decision-making authority is vested and franchise operations are conducted and supervised. Except to the extent that this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 (Lanham Act, 115 U.S.C. 1051), this Agreement will be governed, to the extent permissible, by the laws of the State of Missouri without regard to principles of conflicts of law; provided, however, that the Missouri Franchises Act (Rev. Stats. Mo. §407.400 to §407.420) shall apply only if its independent jurisdictional requirements are met. If, however any provision of this Agreement would not be enforceable under the laws of Missouri, and if your Spa is located outside of Missouri and the provision would be enforceable under the laws of the State in which your Spa is located, then the provision in question (and only that provision) will be interpreted and construed under the laws of the State where your Spa is located. If applicable law provides you with additional rights as to notices, opportunities to cure or otherwise than as are provided by this Agreement as to termination, renewal, transfers or otherwise, we shall comply with the requirements of such laws to the extent they exceed our obligations

under this Agreement. We may institute any action arising out of or relating to this Agreement in any state or federal court of general jurisdiction in the State of Missouri, and you irrevocably submit to the jurisdiction of these courts and waive any objection to the application of Missouri law or to the jurisdiction or venue in these Missouri courts. If you institute any action arising out of or relating to this Agreement, that action must be brought in the Circuit Court of St. Louis County, Missouri or in the United States District Court for the Eastern District of Missouri, and you irrevocably submit to the jurisdiction of such court and waive any objection you may have to either the jurisdiction or venue of such court. If a state regulator requires an amendment to this Agreement, the amendment is attached to this Agreement. We will not, however, be precluded from contesting the validity, enforceability, or applicability or such regulator's required amendment in any action relating to this Agreement or to its rescission or termination. The parties hereto recognize, and any mediator or judge is affirmatively advised, that certain provisions of this Agreement describe our right to take (or refrain from taking) certain actions in the exercise of our business judgment based on our assessment of the overall best interests of the System and/or franchise network. Where such discretion has been exercised, and is supported by our business judgment, neither a mediator nor a judge shall substitute his or her judgment for the judgment so exercised by us.

#### **17.8 LIMITATION OF LEGAL ACTIONS.**

17.8.1 EXCEPT WITH RESPECT TO YOUR OBLIGATIONS REGARDING THE MARKS AND CONFIDENTIAL INFORMATION, WE AND YOU (AND YOUR OWNERS) EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO OR CLAIM FOR PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES FOR ANY CONDUCT ARISING OUT OF THIS AGREEMENT OR OUR RELATIONSHIP WITH YOU.

17.8.2 THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP OF THE PARTIES.

17.8.3 ANY DISAGREEMENT BETWEEN YOU (AND YOUR OWNERS) AND US (AND OUR AFFILIATES AND OWNERS) WILL BE CONSIDERED UNIQUE AS TO ITS FACTS AND MUST NOT BE BROUGHT AS A CLASS ACTION AND YOU (AND YOUR OWNERS) WAIVE ANY RIGHT TO PROCEED AGAINST US (AND OUR AFFILIATES, OWNERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS) BY WAY OF CLASS ACTION, OR BY WAY OF A MULTI-PLAINTIFF, CONSOLIDATED OR COLLECTIVE ACTION.

17.8.4 YOU WILL BE BARRED FROM BRINGING ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OUR RELATIONSHIP WITH YOU, UNLESS A JUDICIAL PROCEEDING IS COMMENCED WITHIN ONE (1) YEAR FROM THE DATE ON WHICH YOU KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THAT CLAIM.

**17.9 BINDING EFFECT.** This agreement is binding upon us and you and our respective executors, administrators, heirs, beneficiaries, assigns and successors in interest and may not be modified except by written agreement signed by you and us.

**17.10 ENTIRE AGREEMENT.** The preambles and exhibits are a part of this Agreement which together with the Operations Manual and our other written policies, constitute our and your entire agreement, provided, however, that nothing in this Agreement or any related document is intended to disclaim the representations we made in the Franchise Disclosure Document furnished to you. There are

no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement, except that you acknowledge that we justifiably have relied on your representations made prior to the execution of this Agreement as set forth in the questionnaire in Appendix F attached hereto. Except as contemplated by the provisions of this Article 17.10, nothing in this Agreement is intended, nor is deemed, to confer any rights or remedies upon any person or legal entity not a party hereto. Any changes or modifications to this Agreement must be in writing and signed by all parties.

**17.11 WITHHOLD APPROVAL.** Except where this Agreement expressly obligates us to reasonably approve or to not unreasonably withhold our approval of any of your actions or requests, we have the absolute right to refuse any request you make or to withhold our approval of any of your proposed or effected actions that require our approval.

**17.12 HEADINGS.** The headings of the several Articles hereof are for convenience only and do not define, limit or construe the contents of such Articles. Unless expressed to the contrary, references in this Agreement to "we," "us" and "our," with respect to all of our rights and all of your obligations to us under this Agreement, will be deemed to include any of our affiliates with whom you deal, whether or not our affiliates are specified therein. The term "affiliate" as used herein with respect to you or us, means any person or entity directly or indirectly owned or controlled by, under common control with or owning or controlling you or us. For purposes of this definition, "control" means the power to direct or cause the direction of management and policies.

**17.13 JOINT AND SEVERAL OWNERS' LIABILITY.** If two or more persons are at any time the owner of your Spa hereunder, whether as partners, joint venturers or otherwise, their obligations and liabilities to us and our affiliates will be joint and several. References to "owner" means any person holding a direct or indirect, legal or beneficial ownership interest or voting right in you (or a transferee of this Agreement, your Spa or an interest in you), including any person who has a direct or indirect interest in you (or a transferee), this Agreement, the Franchise or your Spa and any person who has any other legal or equitable interest, or the power to vest in himself any legal or equitable interest, in the revenue, profits, rights or assets thereof. References to a "controlling interest" in you means 33.33% or more of your voting shares or other voting rights if you are a limited liability company, corporation or partnership owned by 3 or more persons; otherwise, 50% or more of your voting shares or other voting rights will constitute a "controlling interest." "Person" means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative or other legal or functional entity.

**17.14 MULTIPLE COPIES.** This Agreement may be executed in multiple copies, each of which will be deemed an original.

**17.15 NOTICES.** All written notices and reports permitted or required to be delivered by the provisions of this Agreement or the Operations Manual will be deemed so delivered: (i) at the time delivered by hand; (ii) 1 business day after transmission by telecopy, facsimile or other electronic system, provided there is evidence of receipt; (iii) 1 business day after being placed in the hands of a commercial courier service for next business day delivery, provided there is evidence of receipt; or (iv) 3 business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid; and must be addressed to the party to be notified at its most current principal business address of which the notifying party has been notified. Any required payment or report that we do not actually receive during regular business hours on the date due (or postmarked by postal authorities at least 2 days prior thereto) will be deemed delinquent.

## **18. MISCELLANEOUS.**

### **18.1 YOUR WARRANTIES AND REPRESENTATIONS.**



18.1.1 You have been advised to make an independent investigation of our operations. We have not and do not represent that you can expect to attain a specific level of sales, profits or earnings. You have been advised to obtain independent professional advice regarding this Franchise. You understand that you may sustain losses as a result of the operation or the closing of the Spa. You understand that the business venture contemplated by this Agreement involves a high degree of financial risk and depends to a large degree on your skills, abilities, initiative and hard work.

18.1.2 You represent to us that your signature on and performance of this Agreement does not violate or constitute a breach of the terms of any other agreement or commitment to which you or any of your affiliates are a party.

18.1.3 Under applicable U.S. Law, including without limitation Executive Order 1224, signed on September 23, 2001 (the "Order"), we are prohibited from engaging in any transaction with any person engaged in, or with a person aiding any person engaged in, acts of terrorism, as defined in the Order. Accordingly, you do not, and hereafter will not, engage in any terrorist activity. In addition, you are not affiliated with and do not support any individual or entity engaged in, contemplating or supporting terrorist activity. Finally, you are not acquiring the rights granted under this agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating or supporting terrorist activity, or to otherwise support or further any terrorist activity.

## **18.2 CAVEAT.**

18.2.1 THE SUCCESS OF YOUR SPA IS SPECULATIVE AND DEPENDS, TO A LARGE EXTENT, UPON YOUR ABILITY AS AN INDEPENDENT BUSINESS PERSON, AS WELL AS OTHER FACTORS. WE DO NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE POTENTIAL SUCCESS OF YOUR SPA AND NO ONE IS AUTHORIZED TO MAKE ANY SUCH REPRESENTATION OR WARRANTY ON OUR BEHALF. YOU FURTHER ACKNOWLEDGE THAT YOU HAVE READ AND COMPLETED THE QUESTIONNAIRE, A COPY OF WHICH IS ATTACHED TO THIS AGREEMENT AS APPENDIX F.

18.2.2 YOU UNDERSTAND AND AGREE THAT WE HAVE NO OBLIGATION TO ACCEPT YOUR APPLICATION AND MAY REFUSE TO GRANT YOU A FRANCHISE FOR ANY REASON, OR NO REASON, WITHOUT DISCLOSING THE BASIS FOR OUR DECISION. YOU ACKNOWLEDGE THAT UNLESS AND UNTIL WE SIGN THIS AGREEMENT, THE FRANCHISE HAS NOT BEEN GRANTED, YOU ARE NOT A FRANCHISEE OF OURS AND YOU MAY NOT RELY UPON BECOMING A FRANCHISEE OF OURS.

[Signature page to follow]

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

MESSAGE LUXE INTERNATIONAL, LLC

By: \_\_\_\_\_  
Todd J. Beckman, President and Manager

[CORPORATION, LLC OR PARTNERSHIP:]

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

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

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

[AS INDIVIDUALS:]

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

**AGREEMENT TO COMPLY WITH CERTAIN UNDERTAKINGS OF FRANCHISEE**

In consideration of, and as an inducement to, the execution of the above Franchise Agreement (the "Franchise Agreement"), by MASSAGE LUXE INTERNATIONAL, LLC ("us", "we", or "our") in favor of \_\_\_\_\_ ("FRANCHISEE"), the undersigned ("UNDERSIGNED") agrees to personally comply with and abide by the following sections of the Franchise Agreement: Confidential Information (Article 6) and Exclusive Relationship (Article 7), to the same extent as and for the same period of time as FRANCHISEE is required to comply with and abide by such covenants and provisions. All of the foregoing obligations of the undersigned shall survive any expiration, termination, non-renewal, or transfer of the Franchise Agreement or this Agreement to Comply with Certain Undertakings of Franchisee ("Undertakings Agreement").

The obligations of the UNDERSIGNED hereunder are not contingent or conditioned upon our pursuit of any remedies against FRANCHISEE or any other person; nor will such obligations be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence that we may from time to time grant to FRANCHISEE or to any other person, including, without limitation, the acceptance of any partial performance or the compromise or release of any claims, none of which will in any way modify or amend this Undertakings Agreement, which will be continuing and irrevocable during the term of the Franchise Agreement and thereafter.

If we or any of our affiliates are required to enforce this Undertakings Agreement in any judicial proceeding or appeal thereof, the UNDERSIGNED shall reimburse us and our affiliates for our and/or their costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorney assistants', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any written demand, claim, action, hearing or proceeding to enforce this Undertakings Agreement. Further, UNDERSIGNED hereby consents to the applicability of the venue, governing law and jurisdiction provisions in the Franchise Agreement.

The terms contained in the Franchise Agreement and this Undertakings Agreement constitute the entire agreement between the parties, and there are no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein.

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

UNDERSIGNED::

Print Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**APPENDIX A**

**TERRITORY**

DEFINITION. The Territory referred to in Article 1.3 of the Franchise Agreement shall be as follows:

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\*(A separate territory formula is used for major metropolitan areas, as defined by us in our sole discretion.)

AS OF TODAY. If the Territory is identified by counties or other political subdivisions, political boundaries shall be considered fixed as of the date of this Agreement and shall not change for the purpose hereof, notwithstanding a political reorganization or change to such boundaries or regions. All street boundaries shall be deemed to end at the street center line unless otherwise specified above.

## APPENDIX B

### LEASE PROVISIONS

Any lease executed by you for the operation of the Spa will contain the following provisions or an addendum to the lease as follows.

#### ADDENDUM TO LEASE

This Lease Addendum entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ ("FRANCHISEE") and \_\_\_\_\_ ("LANDLORD") for the premises located at \_\_\_\_\_ in the City of \_\_\_\_\_, State of \_\_\_\_\_;

WHEREAS, FRANCHISEE has executed a Franchise Agreement ("Franchise Agreement") with MASSAGE LUXE INTERNATIONAL, LLC, ("MLI"), and as part of said Franchise Agreement, the lease ("Lease") for the franchised MassageLuXe Spa ("Spa") must contain certain provisions; and

WHEREAS, LANDLORD and FRANCHISEE agree that the terms contained herein will be applicable to the Lease, notwithstanding anything contained in the Lease to the contrary;

NOW, therefore, in consideration of the mutual promises contained herein and the execution of the Lease, which execution is made simultaneously with this Lease Addendum, LANDLORD and FRANCHISEE hereby agree as follows:

1. LANDLORD agrees that FRANCHISEE will not otherwise assign the Lease or renew, amend or extend the term of the Lease without the prior written consent of MLI.
2. LANDLORD agrees to furnish MLI with copies of any and all letters and notices sent to FRANCHISEE pertaining to the Lease at the same time that such letters and notices are sent to FRANCHISEE. LANDLORD further agrees that, if it intends to terminate the Lease, the LANDLORD will give MLI 30 days advance written notice of such intent, specifying in such notice all defaults that are the cause of the proposed termination. MLI will have, after the expiration of the period during which FRANCHISEE may cure such default, an additional 15 days (or if there is no cure period, at least 15 days) to cure, at its sole option, any such defaults. MLI, or an affiliate of MLI, will have the right, but not obligation, upon giving written notice of its election to FRANCHISEE and LANDLORD, to cure the breach and succeed to FRANCHISEE's rights under the Lease, and any renewals or extensions thereof.
3. Upon default, expiration or termination of the Franchise Agreement, or the Lease, and upon notice to LANDLORD, MLI or its designee will have the option, without however any obligation, to assume the FRANCHISEE's obligations under the Lease, on the same terms and conditions available to the FRANCHISEE. Further, if FRANCHISEE or any other party with an interest in FRANCHISEE transfers to MLI or another party all of its or their interest in the Franchise Agreement, the FRANCHISEE or the Spa, the transferee will have the right to assume the Lease on the same terms and conditions as contained in the Lease.
4. MLI will have the right to enter the premises to make any reasonable modification or reasonable alteration necessary to protect MLI's interest in its proprietary marks. LANDLORD agrees that in such event MLI will not be liable for trespass or any other crime or tort. Further, MLI or its designated agents

will be permitted to enter the leased premises for purposes of making inspections in accordance with the terms of the Franchise Agreement.

5. FRANCHISEE may assign to MLI all of its rights of further assignment at any time if the LANDLORD is given reasonable notice thereof. Such an assignment will be effective only if accepted in writing by MLI.

6. Upon request of MLI, the LANDLORD will provide MLI with copies of all reports, information, or data in LANDLORD's possession with respect to sales made from the leased premises.

Copies of any and all notices pertaining to the Lease will also be sent to MLI at the following address, or at such other address as may be designated by MLI in writing: 11 Champion Drive, Fenton, MO 63026.

7. MLI will be a third-party beneficiary of this Addendum to Lease and has the right independently of FRANCHISEE to enforce all of its rights hereunder.

8. To the extent of any conflict between the terms and conditions of this Addendum to Lease and the Lease, this Addendum to Lease will govern.

FRANCHISEE

LANDLORD

\_\_\_\_\_

\_\_\_\_\_

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

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

**APPENDIX C**

**COLLATERAL ASSIGNMENT OF LEASE**

FOR VALUE RECEIVED, the undersigned, ("Assignor") hereby assigns, transfers and sets over unto MASSAGE LUXE INTERNATIONAL, LLC, a limited liability company organized under Missouri law ("Assignee"), all of Assignor's right, title and interest as tenant in, to and under that certain lease (the "Lease"), respecting the premises commonly known as \_\_\_\_\_. This assignment is for collateral purposes only, and except as specified herein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with this assignment or the Lease unless and until Assignee shall take possession of the premises demised by the Lease pursuant to the terms hereof and assume the obligations of Assignor thereunder.

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

2. **POWER TO TAKE POSSESSION.** Upon a default by Assignor under the Lease or under the Franchise Agreement for a MassageLuXe Spa between Assignee and Assignor (the "Franchise Agreement"), or in the event of a default by Assignor under any document or instrument securing said Franchise Agreement, Assignee shall have the right and is hereby empowered to take possession of the premises demised by the Lease and expel Assignor therefrom, and, in such event, Assignor shall have no further right, title or interest in the Lease and shall remain liable to Assignee for all past due rents Assignee shall be required to pay to Lessor to effectuate the assignment contemplated hereunder.

3. **ASSIGNEE'S CONSENT.** Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without Assignee's prior written consent. Throughout the term of the Franchise Agreement, Assignor agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than 30 days prior to the last day upon which said option must be exercised, unless Assignee agrees otherwise in writing. Upon Assignee's failure to agree otherwise in writing, and upon Assignor's failure to elect to extend or renew the Lease as aforesaid, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact with the authority to exercise such extension or renewal options in the name, place and stead of Assignor for the sole purpose of effecting such extension or renewal.

ASSIGNOR:

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

(AS INDIVIDUALS)

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

## APPENDIX D

### SBA ADDENDUM TO THE FRANCHISE AGREEMENT

THIS ADDENDUM ("SBA Addendum") is made and entered into on \_\_\_\_\_, 20\_\_\_\_, by MASSAGE LUXE INTERNATIONAL, LLC, a limited liability company organized under Missouri law, with its principal business address at 11 Champion Drive, Fenton, Missouri ("Franchisor"), and \_\_\_\_\_, located at \_\_\_\_\_ ("Franchisee").

**Recitals.** Franchisor and Franchisee entered into a Franchise Agreement on \_\_\_\_\_, 20\_\_ ("Franchise Agreement"). Franchisee agreed among other things to operate and maintain a franchise located at \_\_\_\_\_. Franchisee has obtained from a lender a loan ("Loan") in which funding is provided with the assistance of the United States Small Business Administration ("SBA"). SBA requires the execution of this Addendum as a condition for obtaining the SBA assisted financing.

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. The Franchise Agreement is in full force and effect, and Franchisor has sent no official notice of default to Franchisee under the Franchise Agreement that remains uncured on the date hereof.

2. If Franchisee intends to own the Location, Franchisee will not be obligated to execute the collateral assignment of lease for the Location to Franchisor.

3. Notwithstanding anything to the contrary in Section 9.5 of the Franchise Agreement, Franchisee shall have the discretion to set pricing for its products and services provided that, subject to applicable antitrust laws, such pricing: (1) is at or below any maximum price cap programs established by the franchisor for its franchise system ; or (2) is at or above any minimum price threshold programs established by the franchisor for its franchise system; or (3) conforms to any bona fide promotional programs or national or regional accounts programs established from time to time by the franchisor for its franchise system.

4. The following is added to the end of Section 12.8 of the Franchise Agreement:

However, we may not exercise a right of first refusal:

(a) If a proposed Transfer is between or among individuals (including members of their immediate families and their respective spouses) who, at the time of the proposed Transfer, have an ownership interest in you or the Spa, and who have guaranteed your obligations under a then outstanding indebtedness which is guaranteed by the SBA ("Owner/Guarantors"); or

(b) If a proposed Transfer involves a Person other than an Owner/Guarantor and the proposed Transfer involves a noncontrolling ownership interest in you or the Spa, unless such noncontrolling interest: (1) represents less than a 20% ownership interest in you or the Spa, or (2) we (in combination with you) qualify as a small business and the exercise of the right does not affect the eligibility of the borrower to qualify for the SBA loan guarantee program.



Franchisor's right to approve or to disapprove a proposed Transfer or transferee, or to exercise its right of first refusal with respect to a Transfer of a controlling interest in Franchisee or the Spa, shall not be affected by any of the foregoing provisions. If Franchisor does not qualify as a small business under SBA regulations, the parties acknowledge and understand that Franchisor's exercise of its right of first refusal may result in an SBA guaranteed loan becoming immediately due and payable.

5. Franchisor will not unreasonably withhold, delay or condition its consent to any proposed transfer or assignment by Franchisee which requires Franchisor's consent under Article 12 of the Franchise Agreement.

6. This Addendum automatically terminates on the earliest to occur of the following: (i) a termination occurs under the Franchise Agreement; (ii) the Loan is paid; or (iii) SBA no longer has any interest in the Loan.

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Addendum as of the day and year first above written.

FRANCHISOR:

FRANCHISEE:

MESSAGE LUXE INTERNATIONAL, LLC

OWNER:  
[CORPORATION, LLC OR PARTNERSHIP:]

By: \_\_\_\_\_  
Name: Todd J. Beckman  
Title: President and Manager

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

[AS INDIVIDUALS:]

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

## APPENDIX E

### AREA DEVELOPER ADDENDUM TO THE FRANCHISE AGREEMENT

THIS ADDENDUM ("Area Developer Addendum") is made and entered into on \_\_\_\_\_, 20\_\_\_\_, by MASSAGE LUXE INTERNATIONAL, LLC, a limited liability company organized under Missouri law, with its principal business address at 11 Champion Drive, Fenton, Missouri ("Franchisor"), and \_\_\_\_\_, located at \_\_\_\_\_ ("Franchisee").

**Recitals.** The Franchisor and Franchisee entered into an Area Development Agreement on\_\_\_\_\_, 20\_\_\_, ("Area Development Agreement") requiring the Franchisee to open and operate one or more Spas in the Territory (as such term is defined in the Area Development Agreement). On \_\_\_\_\_, 20 \_\_\_Franchisor and Franchisee entered into a Franchise Agreement ("Franchise Agreement") to open [check the correct box]:

a Spa to function as the Model Spa (as such term is defined in the Area Development Agreement) in the Territory.

an additional Spa in the Territory (an "Additional Spa").

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

**1. Amendment to Section 3.1.** Section 3.1 of the Franchise Agreement is hereby deleted in its entirety and replaced with the following:

If this Area Developer Addendum applies to a Model Spa:

**"INITIAL FRANCHISE FEE.** There shall be no initial franchise fee payable under this Agreement."

If this Area Developer Addendum applies to an Additional Spa:

**"INITIAL FRANCHISE FEE.** You agree to pay us a nonrecurring and nonrefundable initial franchise fee in the amount of \$19,000 when you sign this Agreement. The fee will be fully earned by us upon the execution of this Agreement."

**3. Effectiveness of Agreement:** To the extent not amended herein, all other terms and conditions of the Franchise Agreement shall remain in full force and effect. No references to the amendments contained herein need be made in any instrument or document at any time referring to the Franchise Agreement and any such reference is deemed to be a reference to the Franchise Agreement as amended by the this Area Developer Addendum. In the event of any conflict between the terms of the Franchise Agreement and the terms of the Area Developer Addendum, the terms of this Area Developer Addendum shall control.

**4. Entire Agreement; Governing Law; Counterparts.** This Area Developer Addendum contains the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior negotiations, agreements, and understandings with respect thereto; provided, however, that nothing in this Area Developer Addendum or any related document is intended to disclaim the representations we made

in the Franchise Disclosure Document furnished to you. This Area Developer Addendum may only be amended by a written document duly executed by all parties hereto. This Area Developer Addendum shall be governed by and construed in accordance with the Choice of Laws provision in the Franchise Agreement.

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Area Developer Addendum as of the day and year first above written.

FRANCHISOR:

FRANCHISEE:

MESSAGE LUXE INTERNATIONAL, LLC

OWNER:  
[CORPORATION, LLC OR PARTNERSHIP:]

By: \_\_\_\_\_  
Name: Todd J. Beckman  
Title: President and Manager

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

[AS INDIVIDUALS:]

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

## APPENDIX F

### FRANCHISEE DISCLOSURE QUESTIONNAIRE

As you know, MASSAGE LUXE INTERNATIONAL, LLC ("we" or "us") and you are preparing to enter into a Franchise Agreement for the operation of a Franchise. 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, inaccurate or misleading. Please review each of the following questions and provide honest and complete responses to each question.

1. Have you received and personally reviewed the Franchise Agreement and each attachments and schedule attached to it? Yes \_\_\_ No \_\_\_
2. Have you received and personally reviewed the Franchise Disclosure Document for a MassageLuXe Franchise ("FDD") that we provided to you?  
Yes \_\_\_ No \_\_\_
3. Did you sign a receipt for the FDD indicating the date you received it?  
Yes \_\_\_ No \_\_\_
4. Date on which you received the FDD and related Exhibits explaining the MassageLuXe Franchise.  
\_\_\_\_\_, 20\_\_  
(month, day)
5. Date on which you received a completed copy, other than signatures, of the Franchise Agreement.  
\_\_\_\_\_, 20\_\_  
(month, day)
6. Date on which you signed the Franchise Agreement.  
\_\_\_\_\_, 20\_\_  
(month, day)
7. Were you given the opportunity to discuss the benefits and risks of operating a Spa with an attorney, accountant, or other professional advisor, and do you understand those risks?  
Yes \_\_\_ No \_\_\_
8. Do you understand that the success or failure of your franchise will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, lease terms and other economic and business factors?  
Yes \_\_\_ No \_\_\_
9. Has any employee or other person speaking on our behalf made any statement or promise regarding the amount of money you may earn or that any of our franchisees earn in operating MassageLuXe Franchise other than what is discussed in Item 19 of the FDD?  
Yes \_\_\_ No \_\_\_

10. Has any employee or other person speaking on our behalf made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a MassageLuXe Franchise?

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

11. Has any employee or other person speaking on our behalf made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that we will furnish to you that is contrary to, or different from, the information contained in the FDD?

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

\* \* \*

Please understand that your responses to these questions are important to us and that we will rely on them.

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions. You are also representing that you have reviewed all of these questions and the answers with the other owners of the business and any of your representatives who had discussions with us or any of our officers, agents, or employees. The responses from those people are also included by you above.

Dated on \_\_\_\_\_, 20\_\_.

FRANCHISE APPLICANT

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

Signature: \_\_\_\_\_

**EXHIBIT B**  
TO THE DISCLOSURE DOCUMENT  
MULTI-UNIT DEVELOPMENT AGREEMENT

**MASSAGELUXE®  
MULTI-UNIT DEVELOPMENT AGREEMENT**

THIS MULTI-UNIT DEVELOPMENT AGREEMENT (the "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between MASSAGE LUXE INTERNATIONAL, LLC, a Missouri corporation, with an address at 11 Champion Drive, Fenton, Missouri 63026 ("Franchisor") and \_\_\_\_\_, with an address at \_\_\_\_\_ ("MUD Developer").

**BACKGROUND**

A. Through the expenditure of money, time and effort, Franchisor has developed a distinct and proprietary method business format for the operation of business offering the Services, including but not limited to the methods, procedures, signs, designs, layouts, equipment, standards and specifications and the MassageLuXe Marks, as the same may be modified, amended or replaced from time to time hereafter the distinguishing characteristics of which include proprietary operating procedures and standards and specifications for products and services, as amended from time to time in Franchisor's sole discretion ("System").

B. "MassageLuXe Marks" means such service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights, as may presently exist, or which may be modified, changed, or acquired by Franchisor or its affiliates, in connection with the operation of a Spa. Marks currently include the "MassageLuXe Marks" and "ML and design."

C. "Services" means the massage therapy, facial and waxing services, together with related services, products, merchandise and accessories as may presently exist or which may be modified, changed or acquired by Franchisor or its affiliates.

D. Franchisor offers franchises to qualified individuals for the right to operate a business at a single approved location that features the Services and operates under the MassageLuXe Marks according to the System (a "Spa") and grants rights to developers to open multiple Spas in specific geographic territories.

E. MUD Developer desires to obtain the exclusive right to develop a certain number of Spas in the territory ("MUD Territory") and Franchisor is willing to grant MUD Developer such right under the terms and conditions of this Agreement.

**AGREEMENT**

NOW, THEREFORE, the parties, in consideration of the promises, undertakings and commitments of each party to the other party set forth herein, hereby mutually agree as follows:

**1. GRANT**

A. Franchisor hereby grants to MUD Developer the exclusive right and license to develop and open \_\_\_\_\_ (\_\_\_) Spas in the MUD Territory which is set forth in Exhibit A. The term of this Agreement shall commence on the date first written above and shall expire \_\_\_\_\_ or upon the opening of the last Spa required to be opened under this Agreement, whichever date is earlier unless otherwise terminated in accordance with this Agreement. There is no right to renew this Agreement. This Agreement does not give MUD Developer any right to license others to operate Spas under the System. Each Spa shall operate according to the terms of an individual single unit franchise agreement between

Franchisor and MUD Developer ("Franchise Agreement"). The Franchise Agreement that MUD Developer executes for each Spa will be the Franchisor's then current form franchise agreement (and related documents), any or all of the terms of which may differ substantially from the terms contained in the current form franchise agreement. So long as MUD Developer is not in default under this Agreement or any other agreement with Franchisor or its affiliates, neither Franchisor nor its affiliates will operate or grant a franchise to any other person or entity to operate a Spa within the MUD Territory, excluding any transportation facility. Notwithstanding any other term or condition of this Agreement to the contrary, MUD Developer may not develop a Spa that is within the franchised territory of another Spa which is either open or has been approved for development prior to the effectiveness of this Agreement. The boundaries of the MUD Territory shall not change regardless of political reorganization or geographic changes.

B. Until the termination, expiration or transfer of this Agreement, MUD Developer retains its right of exclusivity as long as it complies with the Mandatory Development Schedule (as defined below). If MUD Developer fails to meet any of its obligations under this Agreement, including compliance with the Mandatory Development Schedule, or if MUD Developer breaches any Franchise Agreement executed by it pursuant to this Agreement, Franchisor may terminate this Agreement along with MUD Developer's right to develop, open and operate new Spas within the MUD Territory, but the termination of this Agreement and the right to develop the MUD Territory will not terminate any rights granted under the Franchise Agreements then in effect between MUD Developer and Franchisor in which MUD Developer is in compliance. After the expiration or termination of this Agreement, Franchisor may own, operate, franchise or license others to operate additional Spas anywhere, without restriction, including in the MUD Territory, except for within any territories under any Franchise Agreement(s) which remain in effect.

C. Except as limited by Section 1.A. above, Franchisor and its affiliates retain all rights with respect to Spas, the Marks, the sale of similar or dissimilar products and services and any other activities Franchisor deems appropriate whenever and wherever Franchisor desires, including (1) establish, and grant to franchisees the right to establish, Spas anywhere outside the MUD Territory and within the transportation facilities within and outside of the MUD Territory; (2) the right to own or operate, or license others to own or operate Spas immediately adjacent to the MUD Territory or anywhere outside of the MUD Territory; (3) the right to operate or license others to operate similar businesses or any other businesses and services under trademarks or service marks other than the Marks in any location, both inside or outside of the MUD Territory; (4) the right to operate or license others to operate businesses that are not similar to a Spa under the Marks in any location, both inside or outside of the MUD Territory; and (5) the right to develop, merchandise, sell and license others to sell products bearing the Marks (including the products and services offered at the MUD Developer's Spa(s)) through other channels of distribution such as catalogs distributed within the MUD Territory, the Internet, print, direct marketing media and any other non-spa outlets inside or outside the MUD Territory, and Franchisor may promote services and products bearing the Marks at special events, conventions, athletic contests, etc., through temporary locations and mobile units (both inside and outside the MUD Territory). Franchisor further reserves the right to service National Accounts located within the MUD Territory on the terms set forth in the Franchise Agreement. A "National Account" means those customers, with more than 1 location covered by an agreement for services which are not located solely in the territory of one franchisee.

Franchisor and its affiliates also reserve the right to purchase, be purchased, merge, acquire, be acquired or affiliate with a competitor or any other business regardless of the location of the competitor or business, and to operate, franchise or license such businesses as Spas under the System or Marks or under other proprietary marks, regardless of the location of such businesses, whether such businesses are in the MUD Territory or outside the MUD Territory.



MUD Developer understands and acknowledges that although MUD Developer is granted the right to develop Spas within the MUD Territory, Franchisor and its affiliates are permitted to establish or grant to a franchisee or area developer the right to establish businesses within the MUD Territory which primarily offer facial and waxing services and skin care treatments and related services, products, merchandise and accessories, and that such businesses shall be permitted to also operate, in a limited number of rooms (e.g., one or two) Services offered under the MassageLuXe Marks; provided, however, that such other businesses shall not be predominately identified by the MassageLuXe Marks, but merely the massage therapy services, related services, products, merchandised and accessories offered by such businesses will be identified by the MassageLuXe Marks.

## **2. MULTI-UNIT DEVELOPMENT FEES**

A. In consideration of the rights granted under this Agreement, MUD Developer agrees to pay to Franchisor a development fee in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "MUD Fee"), which is equal to the initial franchise fee for the first Spa (the initial franchise fee for the first Spa is \$38,000) to be opened under this Agreement plus \$19,000 for each additional Spa (the initial franchise fee for each additional Spa is \$19,000) to be opened under this Agreement. The portion of the MUD Fee attributable to a particular Spa to be developed under this Agreement is credited to the initial franchise fee for such Spa at the time the payment of the initial franchise fee for such Spa is due. The MUD Fee is due upon execution of this Agreement and is deemed fully earned upon payment and nonrefundable.

B. MUD Developer agrees to pay to Franchisor the amount of any State or local sales, use, gross receipts, or similar tax that Franchisor may be required to pay on payments which MUD Developer makes to Franchisor under this Agreement, regardless of whether the State or local tax is imposed directly on Franchisor, is required to be withheld by MUD Developer from amounts due to Franchisor under this Agreement, or is otherwise required to be collected by MUD Developer from Franchisor. MUD Developer's obligations under this Article shall not be reduced or offset by any type of claim, credit or deduction of any kind. This provision shall not apply to income taxes or comparable taxes measured by income to which Franchisor may be subject.

## **3. MANDATORY DEVELOPMENT SCHEDULE**

A. MUD Developer shall commence operations of the first Spa to be developed under this Agreement within 270 days after execution of this Agreement. MUD Developer must commence operations of the second Spa within 18 months after the opening of the first Spa, and shall continue to commence operations of subsequent Spas at 18 month intervals until all Spas required to be developed under this Agreement have been developed ("Mandatory Development Schedule").

B. The development of any Spas in excess of the minimum number required in any time period shall be credited to the Spas required to be developed during any subsequent time period. If MUD Developer fails to meet the Mandatory Development Schedule, MUD Developer may request from Franchisor a 90 day extension to cure the default in the Mandatory Development Schedule. Franchisor shall have sole discretion in granting or rejecting such request for an extension to cure the default in the Mandatory Development Schedule. The purchase of a pre-existing Spa in the MUD Territory by MUD Developer shall not count towards the mandatory number of Spas to be developed under this Agreement. Franchisor and MUD Developer hereby acknowledge and agree that the Mandatory Development Schedule contained herein is a fair and reasonable time frame for the development of Spas within the MUD Territory and is an accurate reflection of market demand without over saturation of Franchisor's proprietary services offered under the System.

C. After MUD Developer signs a Franchise Agreement, it must fully comply with all of the terms contained in the Franchise Agreement including paying all of the fees required by that Franchise Agreement in a timely manner. MUD DEVELOPER DOES NOT OBTAIN ANY RIGHTS AS A FRANCHISEE FOR A PARTICULAR LOCATION UNTIL A FRANCHISE AGREEMENT IS SIGNED BY IT AND FRANCHISOR. MUD Developer must submit all proposals for sites to Franchisor for consent. Franchisor has the right, in its absolute discretion, to withhold its consent to any site MUD Developer proposes. Franchisor's consent to a site is no assurance of success.

D. MUD Developer acknowledges that all Spas must be developed and operated according to Franchisor's standards. MUD Developer agrees and recognizes that Franchisor may refuse to grant a Franchise Agreement for a Spa if Franchisor believes, in its reasonable judgment, that MUD Developer does not have sufficient financial resources and other ability (including, but not limited to, experience, character, skill, aptitude, attitude, and business acumen sufficient to operate multiple locations) to properly develop and operate the proposed Spa. Franchisor may take into account, among other things, MUD Developer's past performance and financial success of MUD Developer's existing Spas. In order to assist Franchisor in making such a determination, MUD Developer must provide Franchisor, upon request, the financial and other information regarding MUD Developer's existing Spa(s) and the proposed Spa. Franchisor's approval, however, is not deemed to be a warranty of MUD Developer's financial or other ability to develop and operate the proposed Spa(s).

E. MUD Developer acknowledges that Franchisor is not granting any right to use the Marks under this Agreement. Any rights MUD Developer receives regarding the use of the Marks arises from the Franchise Agreement(s) MUD Developer signed or will sign and MUD Developer may only use the Marks pursuant to the terms of that (those) Franchise Agreement(s).

#### **4. RELATIONSHIP OF THE PARTIES**

Neither this Agreement nor the relationship between the parties hereto constitutes a partnership or a joint venture between MUD Developer and Franchisor. Subject to any provisions contained in this Agreement to the contrary, the relationship of Franchisor and MUD Developer with respect to the ownership and operation by MUD Developer of Spas within the MUD Territory will be governed by the individual Franchise Agreement(s) executed in connection therewith.

#### **5. INDEMNIFICATION**

MUD Developer, to the extent permitted by law, agrees to indemnify, exculpate, defend and hold Franchisor, its affiliates and respective shareholders, directors, officers, employees, agents, successors and assignees (the "Indemnified Parties") harmless from and against and to reimburse any one or more of the Indemnified Parties for all claims, obligations and damages described in this Article, any and all taxes and any and all claims and liabilities directly or indirectly arising out of MUD Developer's performance of its obligations under this Agreement, MUD Developer's breach of this Agreement, or MUD Developer's non-compliance or alleged non-compliance with any law, ordinance, rule or regulation. For purposes of this indemnification, "claims" includes all obligations, damages (actual, consequential or otherwise) and costs incurred in the defense of any claim against any of the Indemnified Parties, including, without limitation, reasonable accountants', arbitrators', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other expenses of litigation, arbitration or alternative dispute resolution and travel and living expenses. Each of the Indemnified Parties shall have the right to defend any such claim against it at MUD Developer's expense. This indemnity will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement. An Indemnified Party need not seek recovery from an insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against MUD Developer. MUD

Developer agrees and acknowledges that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from MUD Developer.

## **6. DEFAULT AND TERMINATION**

A. The rights, licenses and territorial exclusivity may be terminated, effective upon delivery of written notice of termination to MUD Developer, upon the happening of any of the following events:

1. In the event MUD Developer is adjudicated bankrupt, becomes insolvent, suffers a permanent or temporary court-appointed receivership of substantially all of MUD Developer's property, makes a general assignment for the benefit of creditors or suffers the filing of a voluntary or involuntary bankruptcy petition which is not dismissed within one year after filing;

2. If MUD Developer fails to comply with the Mandatory Development Schedule set forth in Article 3 herein; provided, however, if Franchisor has granted a 90 day extension to MUD Developer to cure such default as set forth in Article 3.B. of this Agreement, then MUD Developer shall have such 90 days to cure the default;

3. If MUD Developer makes an unauthorized transfer or assignment under this Agreement; or

4. If MUD Developer or its affiliates commit any material breach of any Franchise Agreement between it or them and Franchisor which is not cured within the applicable cure period in the applicable Franchise Agreement.

B. The events of default and grounds for termination described in this Article 6 will be in addition to any other grounds for termination and remedies contained elsewhere in this Agreement or in any individual Franchise Agreement executed between Franchisor and MUD Developer. No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy provided or permitted by law or equity. Upon termination of this Agreement, MUD Developer will have no further rights to develop Spas within the MUD Territory, and Franchisor may offer the right to develop the MUD Territory to a third party or may directly develop the MUD Territory itself. If MUD Developer at the time of termination or expiration of this Agreement is operating one or more Spas pursuant to the terms of individual Franchise Agreements entered into with Franchisor, then all of the rights and obligations under such individual Franchise Agreements will continue to be applicable in accordance with their terms.

## **7. TRANSFERABILITY**

A. Franchisor has the right to assign this Agreement, and all of its rights and privileges hereunder, to any person, firm, corporation or other entity and upon such assignment Franchisor will be relieved of all liability under this Agreement, and all rights and obligations will accrue to Franchisor's successor or assignee. Specifically, and without limitation to the foregoing, MUD Developer expressly affirms and agrees that Franchisor may sell its assets, its Marks, or its System outright to a third party; may go public; may engage in a private placement of some or all of its securities; may merge, acquire other corporations, partnerships or limited liability companies, or be acquired by another corporation, partnership or limited liability company; may undertake a refinancing, recapitalization, leveraged buy out or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, MUD Developer expressly and specifically waives any claims, demands or damages arising from or related to the loss of said Marks (or any variation thereof) and/or the loss of association with or identification of "MassageLuXe" as Franchisor hereunder. Nothing contained in this Agreement

requires Franchisor to remain in the massage therapy business or to offer the same products and services, whether or not bearing Franchisor's Marks, in the event that Franchisor exercises its rights hereunder to assign its rights in this Agreement.

B. MUD Developer understands and acknowledges that the rights and duties set forth in this Agreement are personal to MUD Developer and are granted in reliance upon the individual or collective character, skill, aptitude and business and financial capacity of MUD Developer or its principals. MUD Developer has represented to Franchisor that MUD Developer is entering into this Agreement with the intention of complying with its terms and conditions and not for the purpose of resale of its rights and obligations hereunder. Neither MUD Developer nor any member, partner or shareholder thereof may, without Franchisor's prior written consent, directly or indirectly sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any interest in the MUD Developer or this Agreement without the prior written consent of Franchisor. Franchisor will not unreasonably withhold or delay its consent to the transfer of any interest in the MUD Developer; provided, however, that prior to the time of the transfer, Franchisor requires that: (i) The transferee demonstrate to Franchisor's satisfaction that it meets Franchisor's requirements that existed under this Agreement and have the adequate financial resources and capital to develop the MUD Territory; and (ii) the transferee must submit to Franchisor an application in the form prescribed by Franchisor; (iii) a transfer fee of \$5,000 per Spa to be developed pursuant to this Agreement shall be paid to Franchisor from MUD Developer; (iv) MUD Developer and each of its owners, if applicable, shall execute a general release, in a form prescribed by Franchisor, of all claims against Franchisor, its affiliates and its officers, directors, agents, and employees; and (v) transferee executes the then current Multi-Unit Development Agreement which might contain terms different than in this Agreement.

C. Upon the death or permanent disability MUD Developer or, if MUD Developer is a limited liability company, corporation or partnership, the death or permanent disability of the owner of a controlling interest in MUD Developer, MUD Developer's or such owner's executor, administrator, conservator, guardian or other personal representative must transfer MUD Developer's interest in this Agreement or such owner's interest in MUD Developer to a third party. Such disposition of this Agreement or the interest in MUD Developer (including, without limitation, transfer by bequest or inheritance) must be completed within a reasonable time, not to exceed 6 months from the date of death or permanent disability, and will be subject to all of the terms and conditions applicable to transfers contained in this Article. A failure to transfer MUD Developer's interest in this Agreement or the ownership interest in MUD Developer within this period of time constitutes a breach of this Agreement. For purposes hereof, the term "permanent disability" means a mental or physical disability, impairment or condition that is reasonably expected to prevent or actually does prevent MUD Developer or an owner of a controlling interest in MUD Developer from conducting day-to-day business for a period of 3 months from the onset of such disability, impairment or condition.

## **8. NOTICES**

All written notices and reports permitted or required to be delivered by the provisions of this Agreement will be deemed so delivered (i) at the time delivered by hand; (ii) 1 business day after being placed in the hands of a commercial courier service for next business day delivery, provided there is evidence of receipt; or (iii) 3 business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid; and must be addressed to the party to be notified at the address set forth above unless and until a different address has been designated by written notice to the other party.

## **9. CHOICE OF LAW**

A. MUD Developer acknowledges that this Agreement was accepted in the State of Missouri. MUD Developer acknowledges that it has and will continue to develop a substantial and continuing relationship with Franchisor at its principal offices in Missouri, where its decision-making authority is vested and franchise operations are conducted and supervised. This Agreement will be governed, to the extent permissible, by the laws of the State of Missouri without regard to principles of conflicts of law; provided, however, that the Missouri Franchises Act (Rev. Stats. Mo. §407.400 to §407.420) shall apply only if its independent jurisdictional requirements are met. If, however any provision of this Agreement would not be enforceable under the laws of Missouri, and if the MUD Territory is located outside of Missouri and the provision would be enforceable under the laws of the State in which the MUD Territory is located, then the provision in question (and only that provision) will be interpreted and construed under the laws of the State where the MUD Territory is located. If applicable law provides MUD Developer with additional rights as to notices, opportunities to cure or otherwise than as are provided by this Agreement as to termination, renewal, transfers or otherwise, Franchisor shall comply with the requirements of such laws to the extent they exceed Franchisor's obligations under this Agreement.

B. MUD Developer agrees that Franchisor may institute any action against MUD Developer arising out of or relating to this Agreement in the St. Louis County Circuit Court of Missouri, or in the United States District Court for the Eastern District of Missouri, and MUD Developer irrevocably submits to the jurisdiction of such court and waives any objection it may have to either the jurisdiction or venue of such court.

C. The parties hereto recognize, and any mediator or judge is affirmatively advised, that certain provisions of this Agreement describe the right of Franchisor to take (or refrain from taking) certain actions in the exercise of its business judgment based on its assessment of the overall best interests of the System and/or franchise network. Where such discretion has been exercised, and is supported by the business judgment of Franchisor, neither a mediator nor a judge shall substitute his or her judgment for the judgment so exercised by Franchisor.

D. THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER SHALL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT OR THE PERFORMANCE OF EITHER PARTY.

E. MUD DEVELOPER WILL BE BARRED FROM BRINGING ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FRANCHISOR'S RELATIONSHIP WITH MUD DEVELOPER, UNLESS A JUDICIAL PROCEEDING IS COMMENCED WITHIN ONE (1) YEAR FROM THE DATE ON WHICH MUD DEVELOPER KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THAT CLAIM.

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

G. If Franchisor incurs expenses in connection with MUD Developer's failure to pay when due amounts owed to Franchisor, to submit when due any reports, information or supporting records or otherwise to comply with this Agreement, MUD Developer agrees to reimburse Franchisor for any of the costs and expenses which Franchisor incurs, including reasonable accounting, attorneys' and related fees.

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

## 10. MISCELLANEOUS

A. This Agreement contains the entire agreement between the parties concerning the subject matter hereof; no promises, inducements or representations not contained in this Agreement have been made, nor shall any be of any force or effect, or binding on the parties; provided, however, that nothing in this or any related agreement is intended to disclaim the representations that Franchisor made in the franchise disclosure document furnished to MUD Developer. Modifications of this Agreement must be in writing and signed by both parties. Franchisor reserves the right to change Franchisor's policies, procedures, standards, specifications, form of Franchise Agreement or manuals at Franchisor's discretion.

B. Any provisions of this Agreement that may be reasonably interpreted to impose any obligation after termination or expiration hereof shall survive such termination or expiration and be binding upon the parties.

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

D. The term "MUD Developer" shall be construed to refer to the male or female gender in all cases where the MUD Developer is an individual, masculine or feminine modifiers and pronouns notwithstanding. The term "principals" shall include MUD Developer's general and limited partners, if it is a partnership, its officers, directors and shareholders, if MUD Developer is a corporation, and its members and managers, if MUD Developer is a limited liability company. The Article captions are inserted only for convenience and reference, and are not intended to define, limit or describe the scope, intent or language of this Agreement or any provisions hereof.

E. This Agreement shall be binding upon the parties and their heirs, executors, personal representatives, successors and assigns. All signatories to this Agreement and all partners of a partnership MUD Developer, all officers, directors and shareholders of a corporate MUD Developer, and all members

and managers of a limited liability company MUD Developer, shall be jointly and severally liable for the performance of all terms, covenants and conditions hereof.

## **11. ACKNOWLEDGEMENTS**

A. The success of the business venture contemplated to be undertaken by MUD Developer by virtue of this Agreement is speculative and depends, to a large extent, upon the ability of the MUD Developer as an independent businessman, and its active participation in the daily affairs of the business as well as other factors. Franchisor does not make any representations or warranty, express or implied, as to the potential success of the business venture contemplated hereby.

B. MUD Developer acknowledges that it has entered into this Agreement after making an independent investigation of Franchisor's operations and not upon any representation as to gross revenues, volume, potential earnings or profits that MUD Developer in particular might be expected to realize, nor has anyone made any other representation that is not expressly set forth herein, to induce MUD Developer to accept this license and execute this Agreement.

C. MUD Developer represents that it has read this Agreement in its entirety and that it has been given the opportunity to clarify any provisions that it did not understand and to consult with an attorney or other professional advisor. MUD Developer further represents that it understands the terms, conditions and obligations of this Agreement and agrees to be bound thereby.

## **12. ANTI-TERRORISM REPRESENTATIONS**

A. MUD Developer agrees to comply with and/or to assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, MUD Developer certifies, represents and warrants on behalf of itself and MUD Developer's Principal that none of their property or interests are subject to being "blocked" under any of the Anti-Terrorism Laws and that MUD Developer is not otherwise in violation of any of the Anti-Terrorism Laws. "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of, or "blocking" of assets under, the Anti-Terrorism Laws shall constitute grounds for immediate termination of this Agreement and any other agreement MUD Developer has entered into with Franchisor or one of its affiliates, in accordance with the termination provisions of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have duly executed and delivered this Agreement the date and year first written above.

FRANCHISOR:

MESSAGE LUXE INTERNATIONAL, LLC

By: \_\_\_\_\_  
Todd J. Beckman, President and Manager

MUD DEVELOPER: \_\_\_\_\_

[CORPORATION, LLC OR PARTNERSHIP:]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[AS INDIVIDUALS:]

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_



**EXHIBIT A**  
**MUD TERRITORY**

**EXHIBIT C**  
TO THE DISCLOSURE DOCUMENT  
AREA DEVELOPMENT AGREEMENT

**MASSAGELUXE®**  
**AREA DEVELOPMENT AGREEMENT**

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AGREEMENT TO COMPLY WITH CERTAIN UNDERTAKINGS OF FRANCHISEE

APPENDIX A            ADA TERRITORY

**MASSAGELUXE®**  
**AREA DEVELOPMENT AGREEMENT**

**THIS AREA DEVELOPMENT AGREEMENT** (the "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") between MASSAGE LUXE INTERNATIONAL, LLC, a Missouri limited liability company, with an address at 11 Champion Drive, Fenton, Missouri 63026 ("Franchisor") and \_\_\_\_\_, a \_\_\_\_\_, with an address at \_\_\_\_\_ ("Developer").

**BACKGROUND**

A. Through the expenditure of money, time and effort, Franchisor has developed a distinct and proprietary method business format for the operation of business offering the Services, including but not limited to the methods, procedures, signs, designs, layouts, equipment, standards and specifications and the MassageLuXe Marks, as the same may be modified, amended or replaced from time to time hereafter the distinguishing characteristics of which include proprietary operating procedures and standards and specifications for products and services, as amended from time to time in Franchisor's sole discretion ("System").

B. "MassageLuXe Marks" means such service marks, trademarks, trade dress, trade names, logos, commercial symbols and copyrights, as may presently exist, or which may be modified, changed, or acquired by Franchisor or its affiliates, in connection with the operation of a Spa. Marks currently include the "MassageLuXe Marks" and "ML and design."

C. "Services" means the massage therapy, facial and waxing services, together with related services, products, merchandise and accessories as may presently exist or which may be modified, changed or acquired by Franchisor or its affiliates.

D. Franchisor offers franchises for the right to operate a business at approved locations that features the Services and operates under the MassageLuXe Marks according to the System (a "Spa", or "Spas"), and grants area developers the right to solicit, market and service franchisees in specific geographic territories.

E. Developer desires to obtain the exclusive right to develop the territory and Franchisor is willing to grant Developer such rights on the terms and conditions hereunder.

**AGREEMENT**

**NOW, THEREFORE**, the parties, in consideration of the promises, undertakings and commitments of each party to the other party set forth herein, hereby mutually agree as follows:

**1. GRANT**

A. Franchisor hereby grants to Developer the exclusive right and license, in accordance with the terms and conditions of this Agreement, to do the following only within the geographic area as stated and described in Appendix A (the "ADA Territory"): (i) solicit prospective franchisees for Spas; (ii) perform certain site acquisition and development services for franchisees; and (iii) provide training, support and other services to franchisees. For purposes of this Agreement, the term "Developer Spa(s)" shall refer to Spas owned and operated by Developer, and the term "Franchised Spa(s)" shall refer to Spas owned and operated by franchisees other than the Developer. So long as Developer is not in default of

any provision of this Agreement, neither Franchisor nor any of its affiliates will, during the term hereof, grant anyone else development rights for Spas within the ADA Territory. Developer acknowledges and agrees that the rights granted in this Agreement are limited to the ADA Territory. In the event that a potential franchisee who is interested in operating a Spa within the ADA Territory contacts Franchisor, Franchisor shall refer said potential franchisee to Developer.

B. The term of this Agreement shall be for a term of 20 years commencing on the Effective Date unless sooner terminated in accordance with the terms of this Agreement. Developer shall have the option to renew this Agreement for 1 additional term of 10 years if (i) Developer has substantially complied with material terms of this Agreement during the term of this Agreement; (ii) Developer pays a renewal fee of \$1,000 per operating Spa in the ADA Territory; (iii) Developer and Franchisor execute the then current form of Area Development Agreement used by Franchisor in the state in which the ADA Territory is located, (iv) Developer and all of its owners execute general releases, in form satisfactory to Franchisor, of any and all claims against Franchisor and its members, managers, officers, directors, employees, agents, successors and assigns; and (v) Franchisor and Developer mutually agree on a new minimum development schedule for the ADA Territory for the renewal term. Developer must notify Franchisor in writing no more than 180 days and no less than 90 days prior to the expiration of the term of its desire to renew this Agreement for such additional 10 year term.

C. Each Spa shall operate according to the terms of an individual single unit franchise agreement between Franchisor and Developer, or Franchisor and a franchisee (the "Franchise Agreement"). The Franchise Agreement shall be Franchisor's then current form of franchise agreement, except that, (i) there shall be no initial franchise fee charged under the Franchise Agreement between Franchisor and Developer for the Model Spa (hereinafter defined); and (ii) the initial franchise fee under any other Franchise Agreement between Franchisor and Developer for a Developer Spa in the ADA Territory shall be 50% of the then current initial franchise fee. Developer shall be subject to the same procedures for site approval and the same standards of quality control for each Developer Spa as set forth in the Franchise Agreement governing such Developer Spa.

D. This Agreement is not a Franchise Agreement for the license to operate Spas under the System and MassageLuXe Marks, and Developer shall have no right to use Franchisor's System and MassageLuXe Marks in any manner by virtue of this Agreement, other than as necessary to recruit franchisees and to train and service franchisees as contemplated under this Agreement within the ADA Territory. This Agreement does not give Developer any right to license others to operate Spas under the System

E. LMS SOFTWARE.

(a) Franchisor has been licensed the right to grant sublicenses to, and hereby grant Developer a nonexclusive, nontransferable, non assignable and non sublicensable license to, use the proprietary computer software program licensed or such other software as Franchisor may designate, including any modifications, additions or enhancements to such software ("LMS Software") during the term of this Agreement and subject to the limitations on use and other requirements set forth in this Article 1.E. Developer understands that Franchisor has the right to change the LMS Software at any time in its sole discretion. In such event, Developer may be required to change the licensed software it uses at its sole cost and expense and may be required to sign new documentation to license the right to use the new software.

(b) Developer and its employees will use the LMS Software for the operation of the development business in accordance with the terms of this Agreement and the terms, conditions and procedures set forth in the Operations Manual or otherwise disclosed to Developer, which

may change from time to time. Franchisor may require Developer to modify, enhance and/or replace all or any part of the LMS Software at any time and at its sole expense.

(c) Franchisor or its affiliates may host some portion or all the LMS Software on its and/or their corporate servers as an ASP provider. In the event Franchisor or its affiliates provide any hosting services, it or they reserve the right to do so according to terms and conditions it or they may establish, including limiting Franchisor's or its affiliates' liability for the security of data transmitted over the Internet and establishing limitations on data storage size and the periodic purging of Developer's data required as a result thereof.

(d) Developer acknowledges that the only rights in the LMS Software granted by Franchisor to Developer are those specified in this Article 1.E. Developer has no rights other than those granted by this Article 1.E to use the LMS Software or any enhancements thereto or documentation relating to either of the foregoing and any adaptations or modifications thereof. Developer agrees to make no claim of any ownership interest in the intellectual property rights, including copyright in the LMS Software and any adaptations or modifications thereof.

(e) Developer acknowledges that the LMS Software, in both object code and source code, is secret and proprietary and that its use and disclosure is restricted by the provisions of this Agreement. Developer shall not (i) make any copies of LMS Software (except for one copy of the LMS Software in object code for archival purposes only); (ii) shall not attempt to disassemble or decompile the LMS Software object code or otherwise attempt to discern the LMS Software source code; (iii) access or allow the access of the LMS Software (or any addition to or modification of the LMS Software) other than by Developer's authorized employees; (iv) sell, lease, assign, sublicense or otherwise transfer Developer's license to use the LMS Software other than in connection with a transfer of this Agreement; (v) alter, maintain, enhance or otherwise modify the LMS Software; (vi) decompile, disassemble, or otherwise analyze for reverse engineering purposes, the LMS Software; (vii) permit any parent, subsidiary, affiliate or third party to use the LMS Software; (viii) alter, amend, modify or mask any copyright, trademark, proprietary or other notice affixed to or incorporated in the LMS Software; or (ix) circumvent or otherwise interfere with any security measures Franchisor or its affiliates may use in connection with any hosting services it or they may provide.

(f) Documentation that accompanies the LMS Software, if any, is provided solely to support Developer's authorized use of the LMS Software. Developer may not use, copy, modify or distribute the documentation, or any copy, adaptation, transcription, summary or merged portion thereof.

(g) Developer shall promptly disclose to Franchisor all ideas and suggestions for modification or enhancements of the LMS Software, or any component thereof, and Franchisor and all its affiliates and franchisees shall have the right to use, develop and license such ideas and suggestions in any manner, in Franchisor's sole discretion, and without any obligation to Developer therefore.

(h) In the event Developer's use of the LMS Software is enjoined as a result of a claim by a third party of patent or copyright infringement or violation of proprietary rights, Franchisor shall, in its sole discretion, either (A) procure for Developer the right to continue to use the LMS Software as contemplated hereunder, or (B) replace the LMS Software or modify it such that there is no infringement of the third party's rights; and such action by Franchisor shall be Developer's sole and exclusive remedy against Franchisor and its affiliates in such event.

(i) Franchisor does not represent or warrant to Developer and it expressly disclaims any warranty that the LMS Software is error-free or that the operation and use of the LMS

Software by Developer will be uninterrupted or error-free. Franchisor shall have no obligation or liability for any expense or loss incurred by Developer arising from its use of the LMS Software.

(j) FRANCHISOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE LMS SOFTWARE OR ANY PORTION THEREOF, INCLUDING ANY PROGRAM DOCUMENTATION OR OTHER MATERIAL FURNISHED HEREUNDER OR ANY COMPONENT THEREOF, AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT THERETO. FRANCHISOR SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES.

(k) Developer shall bear all costs of purchase, installation, operation, maintenance, and upgrading the LMS Software. In connection therewith, Developer will pay Franchisor the POS System Software Fee described in Article 3 below.

(l) At all times, Franchisor shall be granted "administrator" rights to the LMS Software licensed hereunder, permitting Franchisor the ability to remotely access such LMS Software, and all information contained therein. Franchisor may use the information contained in Developer's copy of the LMS Software for any purpose it deems appropriate, including disseminating such information to its creditors and potential franchisees; provided, no social security number, birth date or home address information contained therein, if any, shall be disclosed without Developer's prior written consent, unless required or permitted by law.

## **2. FEES**

A. In consideration of the rights granted under this Agreement, Developer shall pay to Franchisor a development fee in the amount of \$200,000 (the "Development Fee"). The Development Fee is due upon execution of this Agreement and is deemed fully earned upon payment and nonrefundable.

B. In addition to the Development Fee, Developer must pay Franchisor a POS System Software Fee for the LMS Software license granted to it in Article 1.E. This licensed software is in addition to the POS System Software license Developer must buy from Franchisor for its Model Spa or any other Developer Spas it opens (which fee will be paid pursuant to the applicable Franchise Agreement for such Spa). The POS System Software Fee Developer will owe under this Agreement is \$300. Developer must pay this fee when invoiced by Franchisor.

C. In addition to the Development Fee and POS System Software Fee, until Developer has fulfilled at least 80% of its development obligations under the Mandatory Development Schedule, it agrees to pay Franchisor \$1,500 per month for the lead generation services described in Section 5.E. (the "Lead Generation Fee"). Developer's payment of the Lead Generation Fee will be made via electronic funds transfer ("EFT") or such other manner which Franchisor may designate from time to time. Franchisor also has the right, at its election, to withhold the Lead Generation Fee from the amounts owed to Developer under Section 7.A. The Lead Generation Fee is not refundable. Developer must comply with the procedures specified in the Operations Manual or as otherwise communicated for such EFT or other program and will perform the acts and sign the documents, including authorization forms that Franchisor, its bank, and Developer's bank may require to accomplish payment by EFT or such other method Franchisor designates, including authorizations for Franchisor to initiate debit entries and/or credit correction entries to a designated checking or savings account. In addition, Developer will pay all costs associated with utilizing an EFT or other payment program. Failure to maintain adequate funds in

the designated account or Developer's failure to pay all amounts when due will be considered a breach of this Agreement and grounds for termination.

**3. MANDATORY DEVELOPMENT SCHEDULE**

A. Immediately following the execution of this Agreement, Developer shall commence a franchise sales, marketing and development program for the ADA Territory in order to develop, open and operate and service no less than 21 Spas within the ADA Territory according to the Mandatory Development Schedule below:

<b>DEVELOPMENT PERIOD</b>		<b>CUMULATIVE NUMBER OF SPAS OPEN AND OPERATING</b>
<b>Beginning Date</b>	<b>Ending Date</b>	

B. Spas that are opened, whether by Developer or by a franchisee, shall be counted towards Developer's cumulative number of Spas required pursuant to this Agreement. The sale of any Spas in excess of the minimum number required in any time period shall be credited to the subsequent time period. If Developer fails to meet the Mandatory Development Schedule, the Developer shall have a 90 day period to cure the default in the Mandatory Development Schedule.

C. Notwithstanding the foregoing, should Developer be unable to meet the Mandatory Development Schedule solely as the result of Force Majeure (including, but not limited to strikes, material shortages, fires, floods, earthquakes, and other acts of God, by force of law, or political or currency problems, which result in the inability of Developer to meet the Mandatory Development Schedule and which Developer could not by the exercise of due diligence have avoided) the Mandatory Development Schedule periods shall be extended by the amount of time during which such Force Majeure shall exist.

D. Franchisor and Developer hereby acknowledge and agree that the Mandatory Development Schedule contained herein is a fair and reasonable time frame for the development of Spas within the ADA Territory and is an accurate reflection of market demand without over saturation of Franchisor's proprietary services offered under the System.

E. Developer shall enter into a Franchise Agreement with Franchisor and open and operate at least 1 Developer Spa within the ADA Territory to be used as a model spa and training center (the "Model Spa") in order to train and service franchisees within the ADA Territory. Developer acknowledges that Franchisor may offer various Spa design formats. Developer shall develop and open the Model Spa in accordance with the highest design standards specified by Franchisor. Developer shall successfully complete initial training and commence operations of the Model Spa in the time frame set forth in the Franchise Agreement for the Model Spa and shall continuously operate the Model Spa or



another Developer Spa to be used as a model and training center at all times during the term of this Agreement.

F. Developer acknowledges that all Spas must be developed and operated in accordance with Franchisor's standards. Therefore, Developer agrees and recognizes that Franchisor may refuse to execute a Franchise Agreement with a potential franchisee for Franchised Spas or with Developer for Developer Spas, if Franchisor believes, in its reasonable judgment, that the potential franchisee or Developer does not have sufficient financial resources or other ability (including, but not limited to, experience, character, skill, aptitude, attitude, and business acumen sufficient to operate multiple locations) to properly develop and operate the proposed Spa. Franchisor's approval, however, shall not be deemed a warranty of a Spa's potential or of the franchisee's or Developer's financial or other ability to develop or operate the proposed Spa. Developer acknowledges and agrees that it is in Franchisor's sole discretion whether to grant a franchise or approve a franchisee or Developer to open within the ADA Territory, however, Franchisor's approval will not unreasonably be withheld.

#### **4. RIGHTS RESERVED BY FRANCHISOR**

Franchisor and its affiliates reserve all rights not specifically granted to Developer pursuant to this Agreement, including but not limited to the right to do any of the following:

A. Establish, and grant development rights for Spas anywhere outside the ADA Territory and to establish Spas within transportation facilities within and outside of the ADA Territory;

B. Establish, and grant to franchisees the right to establish, businesses within the ADA Territory or outside of the ADA Territory under trademarks or service marks different than the MassageLuXe Marks or systems different from the System;

C. Sell services or ancillary products, whether or not using the Marks, inside or outside the ADA Territory through distribution channels other than Spas, including, but not limited to catalogs distributed within the ADA Territory, infomercials, toll free telephone numbers, mail order, the Internet, print, direct marketing media and any other non-spa outlets inside or outside the ADA Territory, and Franchisor may promote services and products bearing the Marks at special events, conventions, athletic contests, etc., through temporary locations and mobile units (both inside and outside the ADA Territory); and

D. To purchase, be purchased, merge, acquire, be acquired or affiliate with a competitor or any other business regardless of the location of the competitor or business, and to operate, franchise or license such businesses as Spas under the System or Marks or under other proprietary marks, regardless of the location of such businesses, whether such businesses are in the ADA Territory or outside the ADA Territory.

Developer understands and acknowledges that although Developer is granted the right to develop Spas within the ADA Territory, Franchisor and its affiliates are permitted to establish or grant to a franchisee or area developer the right to establish businesses within the Territory which primarily offer facial and waxing services and skin care treatments and related services, products, merchandise and accessories, and that such businesses shall be permitted to also operate, in a limited number of rooms (e.g., one or two) Services offered under the MassageLuXe Marks; provided, however, that such other businesses shall not be predominately identified by the MassageLuXe Marks, but merely the massage therapy services, related services, products, merchandised and accessories offered by such businesses will be identified by the MassageLuXe Marks.

## 5. DUTIES OF FRANCHISOR

A. Franchisor will provide a special training program to Developer and its approved representatives. Such training may be conducted at Franchisor's corporate offices, at an operating Spa and/or other locations that Franchisor may designate. Developer must complete these training sessions to Franchisor's satisfaction before beginning operations. Developer will be responsible for all travel and living expenses that Developer or its employees incur in connection with training. Franchisor may require Developer to attend periodic refresher training courses at such times and locations that Franchisor designates, and Franchisor may charge reasonable fees for such courses.

B. Franchisor will loan to Developer 1 copy of its Operations Manual, as amended from time to time, which shall include standards and specifications for equipment, inventory and supplies. The Operations Manual, which may be in a format determined by Franchisor (i.e., in writing, on CD-Rom, via electronic media through a secure website, etc.) is confidential and remains the property of Franchisor. Developer will operate its business in strict compliance with those operational systems, procedures, policies, methods and requirements found in the Operations Manual which are designated as mandatory and in any supplemental bulletins and notices, revisions, modifications, or amendments thereto, all of which are a part of the Operations Manual. Developer must always treat in a confidential manner the Operations Manual, any other manuals Franchisor creates or approves for use with the Spa or the business hereunder, and the information contained in the Operations Manual. Developer may not copy, duplicate, record, or otherwise reproduce all or any part of the Operations Manual and the related materials, (except for the parts of the Operations Manual that are meant for Developer to copy, which Franchisor will clearly mark), nor may Developer otherwise let any unauthorized person have access to these materials. The Operations Manual will always be Franchisor's sole property. Franchisor may periodically revise the contents of the Operations Manual, and Developer must make corresponding revisions to its copy of the Operations Manual and comply with each new or changed standard. If there is ever a dispute as to the contents of the Operations Manual, Franchisor's master copy of the Operations Manual (maintained at its home office) will be controlling.

C. Franchisor will make available continuing advisory assistance in the operation of business hereunder, rendered in such manner and available from time to time, as Franchisor may deem appropriate. If Franchisor sends its representatives to the ADA Territory to provide assistance, Franchisor reserves the right to charge a reasonable fee for this type of assistance.

D. Franchisor will prepare and keep current the necessary Franchise Disclosure Document relative to the offer and sale of Spas in the ADA Territory in which Developer is selling franchises pursuant to the terms of this Agreement. Franchisor shall also take the necessary steps to file or register Franchisor's Franchise Disclosure Document (the "FDD") in the ADA Territory if such registration is required in order to sell franchises. Franchisor reserves the right to amend or modify the FDD at any time and from time to time. Franchisor shall provide Developer with any changes to Franchisor's disclosure documents and other agreements on a timely basis and, upon request, provide Developer with confirmation that the information contained in any written materials, agreements, or documents being used by Developer is true, correct, and not misleading except for information specifically relating to disclosures regarding Developer. If Developer notifies Franchisor of an error in any information in Franchisor's disclosure documents, Franchisor shall have a reasonable period of time to attempt to correct any deficiencies, misrepresentations or omissions in such information.

E. So long as Developer is required to pay the Lead Generation Fee, Franchisor will maintain a centralized telephone number and/or website or other Internet presence for the purpose of advertising the sale of franchises. Franchisor shall use the Lead Generation Fee to finance this advertisement, along with the cost of search engine optimization and other methods Franchisor

determines prudent to advertise the sale of franchises generally. Franchisor is not required to market the sale of franchises in any particular region and Developer acknowledges that the advertising to be conducted by Franchisor will not be designed to target any particular geographic area, including the ADA Territory. Franchisor makes no representations or warranties that the advertising and other activities conducted by it under this Section 5.E. will result in any franchise leads in the ADA Territory, and Developer acknowledges that it is its responsibility to solicit franchisees and develop, open and operate Spas in the ADA Territory in accordance with the Mandatory Development Schedule.

## **6. DUTIES OF DEVELOPER**

### **A. Solicitation and Qualification of Prospective Franchisees.**

1. Franchisor will have the sole right to formulate and make policy decisions concerning every aspect of sales, promotions, advertising and other programs. Developer shall use its best efforts to solicit potential franchisees to purchase a franchise for a Spa. Developer will make no financial performance representations, promises, representations or commitments to any prospective franchisee other than as stated in the then current FDD, and will only make offers and presentations pertaining directly or indirectly to the Spa in strict compliance with the laws of the United States, and any other applicable laws and regulations. Developer will cause all sales efforts made by it or under its direction to be courteous and dignified, and in a professional, ethical and responsible manner.

2. Franchisor encourages Developer to create and develop an advertising and promotional program for the purpose of recruiting prospective franchisees within the ADA Territory. In the event Developer does create or develop such programs, Developer shall submit to Franchisor for prior approval samples of all sales, promotional, and advertising and other materials, which relate to recruiting new franchisees. Franchisor will notify Developer of its approval of the proposed materials and programs within 15 days after receipt thereof. If Franchisor does not approve such material and programs within such period, such material shall be deemed disapproved and Developer shall not use such materials in any manner. Franchisor shall use reasonable efforts to respond within said 15 day period and shall not unreasonably withhold or delay approval. Developer shall be responsible for any state or local filings necessary of such materials.

3. Before Developer solicits any prospective franchisee, Developer shall take reasonable steps to confirm that the information contained in any written materials, agreements, and other documents related to the offer or sale of franchises is true, correct and not misleading at the time of such offer or sale and that the offer or sale of such franchise will not at that time be contrary to or in violation of any applicable state law related to the registration of the franchise offering.

4. If Developer's activities pursuant to this Agreement require the preparation, amendment, registration or filing of Developer's own franchise disclosure document, Developer must prepare, amend, register or file such franchise disclosure documents before soliciting any prospective franchisees. Developer's own franchise disclosure document must be approved by Franchisor before Developer begins operations to solicit prospective franchisees. Developer shall, upon request from Franchisor, provide all information reasonably required by Franchisor to prepare the Franchisor's franchise disclosure document and other documents necessary for the offering of franchises in the ADA Territory and execute all documents required for registration and/or disclosure to offer Spas in the ADA Territory. Developer shall be responsible for all costs associated with preparation of its franchise disclosure document and registration in connection with Developer's activities pursuant to this Agreement.

5. In recruiting prospective franchisees, Developer shall make every effort to locate persons of good standing, professional competence, experience, reputation, ability and financial responsibility. Developer must submit to Franchisor written and completed applications of all qualified prospective franchisees together with such additional information and comments, including credit and background information, as specified by Franchisor on items provided by Franchisor. Franchisor will notify Developer and the prospective franchisee within 10 days of its acceptance or rejection of such application. Franchisor's determination, for which it will have complete discretion, will be conclusive, final and binding. Developer shall forward to Franchisor the original of all disclosure receipts immediately upon its receipt from a prospective franchisee. Developer shall retain a copy of such disclosure receipts for its reference.

In the event Franchisor assists Developer and provides sales and marketing services to recruit prospective franchisees in the ADA Territory (other than Franchisor's lead generation services described in Section 5.E.), Developer shall pay to Franchisor a consulting fee of \$5,000 for each Franchised Spa in which Franchisor so assists in the selling of the Franchised Spa. This consulting fee shall be withheld by Franchisor from the fees that are otherwise due Developer under Section 7.A below.

B. Assistance to Franchisees.

1. Within 30 days of Franchisor's notification of approval of a prospective franchisee, Franchisor and the franchisee shall execute Franchisor's then current franchise agreement. If such agreement is not executed within 30 days, or such longer period as Franchisor may permit, or if any condition of approval specified by Franchisor is not satisfied, Franchisor may withdraw, suspend or condition its approval of the franchisee. Developer shall ensure that all formal site proposal packages submitted by a franchisee have been prepared and assembled in accordance with Franchisor's requirements and on prescribed forms and includes any property descriptions, lease forms, traffic pattern reports, market feasibility studies and other specifications as Franchisor may reasonably require.

2. Developer shall develop a training program for franchisees. As Franchisor directs, Developer shall provide such training to franchisees within the ADA Territory in accordance with Franchisor's standards and specifications. Such training program shall include at least 10 days and approximately 3 to 5 days of on-site follow-up training to assist the franchisee with the grand opening of their Spa.

3. Developer shall ensure that each Spa within the ADA Territory is developed and operated solely in compliance with Franchisor's requirements and specifications as set forth in the applicable Franchise Agreement and the Operations Manual. Developer shall ensure such compliance through inspections and secret shoppers and/or other methods as Franchisor may reasonably require.

4. Developer, or his duly authorized representative, must provide supervision to all Spas within the ADA Territory. Such supervision shall include, but not be limited to, on-site supervision during the period of time prior to the opening of the Spa; general assistance, advice and consultation to franchisees with regard to entering into negotiations and agreements within the ADA Territory for a franchisee's services; consenting to proposed leases and contracts; consultation and assistance with regard to grand opening of the Spa; providing supplemental training and assistance of all material aspects of the operation of a Spa, as needed, in accordance with Franchisor's requirements; periodic and regular telephone calls or visits to monitor operations of the Spas, continuous advisory services to franchisees, ongoing training and updates for all Spas within the ADA Territory. Developer agrees to perform such duties pursuant to Franchisor's requirements herein described and in accordance with the System, the Operations Manual or otherwise in writing, all of which may be changed from time to time by Franchisor.

5. In the event a problem arising out of the operation of a Spa within the ADA Territory is disclosed by a periodic report submitted to Developer or Franchisor by the franchisee, or by an inspection conducted by Developer or Franchisor of the Spas within the ADA Territory, Developer shall promptly address the problem with the respective franchisee and assist the franchisee in resolving the problem. Developer must provide each Spa within the ADA Territory with such assistance in connection with correcting such problem(s) at such Spas as is reasonably determined to be necessary by Franchisor.

6. Developer must make contact at least once every 30 days with all Franchised Spas within the ADA Territory for the purposes of consultation, assistance and guidance of franchisees and managers of each Franchised Spa, and Developer or its representatives will prepare, for benefit of both Developer and Franchisor, written reports regarding these regular contacts outlining any suggested changes or improvement in the operations of the Franchised Spa and detailing any defaults in such operations which become evident as a result of any such contact, and a copy of each such written report must be provided to both the franchisee and Franchisor. Developer must also visit each Franchised Spa within the ADA Territory at least once every year for purposes of providing consultation, assistance and guidance. The Developer or its representatives must prepare written reports of this visit and details regarding suggestions for improvement or any defaults. A copy of each such written report must be provided to both the franchisee and Franchisor.

7. Not less than once every 12 months, Developer will arrange for and conduct regional seminars within the ADA Territory for all Spas within the ADA Territory. Such seminars shall include training and general advisory assistance for the Spas within the ADA Territory and Developer shall notify Franchisor in writing at least 4 weeks prior to conducting such regional seminars. Upon the request of Developer, Franchisor will provide at least 1 person as an instructor at each regional seminar. In the event Developer requests that Franchisor provide an instructor at the regional seminar, Developer shall pay to Franchisor a sum of \$400 per day for each instructor provided by Franchisor plus the cost of travel, lodging, meals and other costs reasonably incurred for each instructor provided by Franchisor.

8. Developer, or his appointed representative, must attend any Developer seminars or training session held by Franchisor. Developer shall be responsible for travel, meal and lodging and other related expenses to such training sessions.

### C. Operating Standards.

1. Developer shall secure and maintain in force all required licenses, permits, and certificates relating to Developer's activities under this Agreement, and operate in full compliance with all applicable laws, ordinances, and regulations. Developer acknowledges being advised that many jurisdictions have enacted laws concerning the advertising, sale, renewal, and termination of, and continuing relationship between parties to a franchise agreement, including without limitation, laws concerning disclosure requirements. Developer agrees promptly to become aware of, and to comply with, all such laws and legal requirements in force in the ADA Territory and to utilize only the then current FDD that Franchisor has approved for use in the ADA Territory.

2. Not less than once every 6 months, Developer must conduct management and financial reviews with each Franchised Spa. As a part of these reviews, an evaluation form will be included to determine if Developer is satisfactorily performing its duties and obligations under the terms of this Agreement. Developer will remit the management and financial review form, together with the Developer evaluations to Franchisor within 10 days after its receipt of such reviews.

3. Developer must keep accurate records concerning all transactions and communications between Developer, Franchisor and/or franchisees relating to the operation of any Spa in the ADA Territory, and Franchisor's duly authorized representative shall have the right at all reasonable hours, and without prior notice, to inspect any or all of Developer's development business, and to examine all such records, and shall have full and free access thereto for said purpose and for the purpose of making extracts therefrom. All such records shall be available for at least 3 years after the termination or expiration of this Agreement for any reason whatsoever. Developer shall cooperate with the agents or representatives of Franchisor making any such inspection.

4. Developer shall furnish to Franchisor, upon Franchisor's request, Developer's books and records including, but not limited to, copies of federal and state income tax and sales returns and profit and loss statements of Developer.

5. Developer shall notify Franchisor in writing within 5 days after a material change has occurred, including but not limited to the commencement of any action, suit, arbitration, proceeding or investigation, or the issuance of any order, writ, injunction, award, or decree, by any court, agency or other governmental organization which names Developer or any of its owners or otherwise concerns the operation or financial condition of the Developer, the area development business granted hereunder, any Developer Spa or any franchisee located within the ADA Territory.

6. In the event Developer fails to perform any of these duties or any other obligations imposed on it by the terms of this Agreement, after being given a 30 day period of time to resolve, correct, or otherwise come into compliance with any terms of this Agreement, Franchisor has the right but not the obligation to perform said duties or obligations and Developer hereby agrees to pay Franchisor the sum of \$400 per day for each representative of Franchisor for its services in connection therewith, together with any expenses incurred by Franchisor in so performing, including travel, meals and lodging expenses. Any portion of any royalty payments or other payments owed by Franchisor to Developer hereunder may be offset by any amounts owed by Developer to Franchisor if Franchisor is required to so perform any of Developer's duties or obligations under the terms of this Agreement.

## **7. REMUNERATION OF DEVELOPER**

A. During the term of this Agreement, Franchisor shall remit to Developer 50% of the initial franchise fee collected upon the sale of each Franchised Spa within the ADA Territory sold by Developer. Developer shall have no claim to any portion of the initial franchise fee collected for the sale of any Franchised Spa within the ADA Territory if Developer provided no franchise sales services with respect to the sale of such Franchised Spa. In addition, during the term of this Agreement, Franchisor shall remit to Developer 50% of any transfer fee resulting from a transfer of a Franchised Spa within the ADA Territory if Developer has provided such Franchised Spa assistance under Section 6.B of this Agreement.

B. During the term of this Agreement, Franchisor shall remit to Developer 40% of all royalty fees actually received by Franchisor by each Spa within the ADA Territory which was sold by Developer. Developer shall have no claim to any portion of the royalty fees collected from any Franchised Spa within the ADA Territory if Developer provided no franchise sales services with respect to the sale of such Franchised Spa and if Developer fails to provide the ongoing supervisory and support services required to be provided to such Franchised Spa by Developer hereunder.

C. Developer expressly acknowledges and agrees that its rights to receive the amounts contemplated by this Article 7 are conditioned on Developer's full, prompt and complete performance of its duties and obligations under the terms of this Agreement. Franchisor's payments to Developer shall be

based on amounts actually collected from franchisees, not on payments accrued, due, or owed. In the event Franchisor returns all or part of the initial franchise fee or royalty fees, whether voluntarily or under legal obligation, Franchisor may deduct the portion of the amount returned to the franchisee in the same proportion as Developer shared in the initial franchise fee or royalty fees from any future amounts owed to Developer hereunder. Any payments received from a franchisee shall first be applied to any past due indebtedness of that franchisee for royalty fees, advertising fund contributions, purchases from Franchisor or its affiliates, or any other indebtedness of that franchisee to Franchisor or its affiliates in Franchisor's discretion. To the extent that such payments are applied to a franchisee's overdue royalty payments, Developer shall be entitled to its pro rata share of such payments, less its pro rata share of the costs of collection paid to third parties. Franchisor may set off any amounts Developer owes Franchisor against any amounts Franchisor might owe Developer under this Agreement, including without limitation any Lead Generation Fee. Developer acknowledges and agrees that it shall not set off any amounts owed to Franchisor against any amounts owed to Developer by Franchisor under this Agreement.

D. Developer will not be entitled to any fees so long as Developer is not in compliance with this Agreement. Developer will not be entitled to any fees from franchise sales outside of Developer's ADA Territory that are a result of Developer's referral or introduction of a prospective franchisee to Franchisor.

E. Any amounts due to Developer pursuant to this Agreement, including Developer's share of franchise fees, royalties, and transfer fees, shall be paid to Developer by check made payable to Developer on the later to occur of (i) the 25<sup>th</sup> day of the month following the month of receipt by Franchisor (fees paid into escrow shall not be deemed received by Franchisor until any such fees are actually remitted to Franchisor); or (ii) the next day which is not a legal holiday in the State of Missouri if such 25<sup>th</sup> day of the month is a legal holiday in the State of Missouri; provided, that no portion of the initial franchise fee collected by Franchisor shall be payable until the applicable Franchise Agreement has been executed; and provided further, that Developer may elect to have any sums due to Developer pursuant to this Article 7 electronically deposited into Developer's designated bank account rather than payment by check. If Developer elects to have amounts electronically deposited, Developer shall be solely responsible for any expenses incurred in connection with such electronic depositing of funds, the deposit shall be initiated by Franchisor on the 25<sup>th</sup> day of each month, and Developer shall be responsible for timely informing Franchisor of any changes in Developer's account information. Franchisor has no liability other than electronically depositing the funds in the account designated by Developer.

**8. INDEMNIFICATION**

Developer, to the extent permitted by law, agrees to indemnify, exculpate, defend and hold Franchisor, its affiliates and respective members, managers, shareholders, directors, officers, employees, agents, successors and assignees (the "Indemnified Parties") harmless from and against and to reimburse any one or more of the Indemnified Parties for all claims, obligations and damages described in this Article, any and all taxes and any and all claims and liabilities directly or indirectly arising out of Developer's performance of its obligations under this Agreement, Developer's breach of this Agreement; or Developer's non-compliance or alleged non-compliance with any law, ordinance, rule or regulation. For purposes of this indemnification, "claims" includes all obligations, damages (actual, consequential or otherwise) and costs incurred in the defense of any claim against any of the Indemnified Parties, including, without limitation, reasonable accountants', arbitrators', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other expenses of litigation, arbitration or alternative dispute resolution and travel and living expenses. Each of the Indemnified Parties shall have the right to defend any such claim against it at Developer's expense. This indemnity will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement. An Indemnified Party need not seek recovery from an insurer or other third party, or otherwise mitigate its

losses and expenses, in order to maintain and recover fully a claim against Developer. Developer agrees and acknowledges that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from Developer.

## **9. INSURANCE.**

A. Developer shall maintain at all times during the term of this Agreement such insurance that may be required by law in connection with its business as Developer or as provided in the Operations Manual, and must further maintain errors and omissions coverage and comprehensive general liability coverage.

B. In connection with all areas of insurance coverage required by this Agreement, Developer must submit as proof of such insurance a fully paid insurance policy naming Franchisor and any other parties designated by Franchisor as additional insured parties, to Franchisor for Franchisor's prior approval before commencing the business contemplated hereunder. Any proposed changes in the insurance policies must be submitted to Franchisor for its prior approval. Developer must furnish to Franchisor a copy of the then prevailing insurance policies with assurances that the specified insurance is in full force and effect; that the insurance covers Developer, Franchisor and other designated parties as their respective interest may appear, and that said insurance policies will not be canceled or modified by the insurer without written notice to Franchisor at least 30 days prior to the proposed cancellation or modification including, but not limited to, products liability, property damage, personal injury, owned and non-owned automobile and contractual liability, with a combined single limit of at least \$1,000,000 or such larger amount as Franchisor may reasonably require.

C. Nothing herein shall modify the insurance required to be maintained by Developer for the Model Spa and any other Developer Spas as required under the individual Franchise Agreement(s) pertaining thereto.

## **10. MASSAGELUXE MARKS.**

A. Developer's right to use the MassageLuXe Marks is derived solely from this Agreement and limited to Developer's operation of its business pursuant to and in compliance with this Agreement. Developer's unauthorized use of the MassageLuXe Marks will be a breach of this Agreement and an infringement of Franchisor's rights in and to the MassageLuXe Marks. Developer acknowledges and agrees that its usage of the MassageLuXe Marks and any goodwill established by such use will be exclusively for Franchisor's benefit and that this Agreement does not confer any goodwill or other interests in the MassageLuXe Marks upon Developer (other than the right to operate Developer's area development business in compliance with this Agreement). All provisions of this Agreement applicable to the MassageLuXe Marks apply to any additional proprietary trademarks and service marks and commercial symbols Franchisor authorizes Developer to use. Developer will not represent in any manner that it has any ownership in the MassageLuXe Marks or the right to use the MassageLuXe Marks except as provided in this Agreement.

B. Developer may not use any MassageLuXe Marks as part of any corporate or legal business name or Internet domain name or Internet email address or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed to Developer hereunder), or in any modified form, nor may Developer use any MassageLuXe Marks in connection with the performance or sale of any unauthorized services or products or in any other manner Franchisor has not expressly authorized in writing. No MassageLuXe Marks may be used in any advertising concerning the transfer, sale or other disposition of the Developer's business or an ownership interest in Developer.



C. Franchisor has established an Internet website that provides information about the Spa locations. Franchisor has sole discretion and control over the website (including timing, design, contents and continuation). At Developer's expense, Franchisor will include at the website an interior page containing information about Developer. Franchisor may require Developer to prepare, at its expense, using a template that Franchisor provides, all or a portion of one or more interior pages on Franchisor's website concerning the area development relationship granted hereunder. All such information will be subject to Franchisor's prior written approval prior to posting. Except for this interior page, Developer agrees it will not maintain a presence on the Internet for its Spa development business other than in accordance with an advertising program approved by Franchisor.

D. Developer agrees to notify Franchisor immediately of any apparent infringement or challenge to Developer's use of any MassageLuXe Marks, or of any claim by any person of any rights in any MassageLuXe Marks, and agrees not to communicate with any person other than Franchisor, its attorneys and Developer's attorneys in connection with any such infringement, challenge or claim. Franchisor has sole discretion to take such action as Franchisor deems appropriate and the right to control exclusively any litigation, United States Patent and Trademark Office ("USPTO") proceeding or any other administrative proceeding arising out of any such infringement, challenge or claim or otherwise relating to any MassageLuXe Marks. Developer agrees to sign any and all instruments and documents, render such assistance and do such acts and things as, in the opinion of Franchisor's attorneys, may be necessary or advisable to protect and maintain Franchisor's interests in any litigation or USPTO proceeding or other proceeding or otherwise to protect and maintain Franchisor's interests in the MassageLuXe Marks.

E. If it becomes advisable at any time in Franchisor's sole discretion for Franchisor and/or Developer to modify or discontinue the use of any Mark and/or use one or more additional or substitute trademarks or service marks, Developer, at Developer's sole cost and expense, agrees to comply with Franchisor's directions within a reasonable time after receiving notice thereof. Franchisor will not be obligated to reimburse Developer for any loss of revenue attributable to any modified or discontinued MassageLuXe Marks or for any expenditures Developer makes to promote a modified or substitute trademark or service mark.

## **11. CONFIDENTIAL INFORMATION**

A. Franchisor possesses (and will continue to develop and acquire), and may disclose to Developer, certain confidential information relating to the development and operation of a Spa (the "Confidential Information"), which may include (without limitation): (i) the System; (ii) Operations Manual; (iii) location selection criteria; (iv) methods, formats, specifications, standards, systems, procedures, any other proprietary materials, the sales and marketing techniques used, and knowledge of and experience in developing and operating Spas; (v) marketing and advertising programs for Spas; (vi) knowledge of specifications for and suppliers of certain fixtures, furnishings, equipment, products, materials and supplies used in Spas; (vii) knowledge of the operating results and financial performance of Spas; and (viii) any other information designated confidential or proprietary by Franchisor.

B. Developer acknowledges and agrees that it does not acquire any interest in Confidential Information, other than the right to utilize certain Confidential Information disclosed to Developer in accordance with this Agreement, and that the use or duplication of any Confidential Information in any other business by Developer will constitute an unfair method of competition and a violation of this Agreement. Developer further acknowledges and agrees that Confidential Information is proprietary, includes Franchisor's trade secrets and is disclosed to Developer solely on the condition that Developer agrees, and it does hereby agree, that Developer during and after the term of this Agreement: (i) will not use Confidential Information in any other business or capacity; (ii) will maintain the absolute

confidentiality and not use or disclose, other than pursuant to this Agreement; (iii) will not make unauthorized copies of any portion of Confidential Information disclosed via electronic medium or in written or other tangible form; (iv) will adopt and implement all reasonable procedures, including those that Franchisor prescribes from time to time to prevent unauthorized use or disclosure of Confidential Information, including, without limitation, restrictions on disclosure thereof to Developer's personnel and franchisees needing to know such Confidential Information in order to develop and operate Spas; and (v) requiring those having access to Confidential Information to sign confidentiality and non-disclosure agreements. Franchisor has the right to prescribe the form of agreement that Developer uses and to be a third party beneficiary of such agreement with independent enforcement rights; and (vi) will not sell, trade or otherwise profit in any way from the Confidential Information, except as approved by Franchisor.

C. All ideas, concepts, techniques or materials relating to a Spa, whether or not constituting protectable intellectual property, and whether created by or on behalf of Developer or its owners, will be promptly disclosed to Franchisor, deemed to be Franchisor's sole and exclusive property and part of the System and deemed to be works made for hire for Franchisor. Developer and its owners agree to sign whatever assignment or other documents Franchisor may request from time to time to evidence Franchisor's ownership or to assist Franchisor in securing intellectual property rights in such ideas, concepts, techniques or materials. In the event that any such intellectual property rights do not constitute works made for hire or Franchisor is otherwise unable to obtain ownership thereof, then Developer agrees to grant to Franchisor an irrevocable, world-wide, exclusive, royalty-free license, with the right to sublicense such intellectual property in its sole discretion.

D. "Confidential Information" does not include information, knowledge or know-how that is or becomes generally known in the massage and personal health industry or that Developer knew from previous experience before Franchisor provided it to Developer (directly or indirectly). If Franchisor includes any information in Confidential Information, anyone who claims that such information is not Confidential Information must prove that exclusion in this paragraph is fulfilled. Nothing in this Section 11 shall prohibit Developer from disclosing Confidential Information as required by order of a court of competent jurisdiction, provided that Developer shall, to the extent permitted to do so, give prompt notice of such request to Franchisor in order to allow Franchisor to apply for a protective order.

## **12. TRANSFERABILITY**

A. Franchisor shall have the right, but not the obligation, to cause a subsidiary or affiliate of Franchisor to perform any or all of its obligations and exercise any or all of its rights under this Agreement and under any Franchise Agreement, and to require Developer to perform any or all of its obligations hereunder, in favor of such subsidiary or affiliate, by delivery of written notice thereof to Developer.

B. Franchisor has the right to assign this Agreement, and all of its rights and privileges hereunder, to any person, firm, corporation or other entity. Specifically, and without limitation to the foregoing, Developer expressly affirms and agrees that Franchisor may sell its assets, its MassageLuXe Marks or its System outright to a third party; may go public; may engage in a private placement of some or all of its securities; may merge, acquire other corporations, or be acquired by another corporation; may undertake a refinancing, recapitalization, leveraged buy out or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, Developer expressly and specifically waives any claims, demands or damages arising from or related to the loss of said MassageLuXe Marks (or any variation thereof) and/or the loss of association with or identification of Massage Luxe International, LLC as Franchisor hereunder. Nothing contained in this Agreement requires Franchisor to remain in the massage business or to offer the same products and services, whether

or not bearing the MassageLuXe Marks, in the event that Franchisor exercises its rights hereunder to assign its rights in this Agreement.

C. Developer understands and acknowledges that the rights and duties set forth in this Agreement are personal to Developer and are granted in reliance upon the individual or collective character, skill, aptitude and business and financial capacity of Developer or its principals. Developer has represented to Franchisor that Developer is entering into this Agreement with the intention of complying with its terms and conditions and not for the purpose of resale of its rights and obligations hereunder.

In the event Developer (or any of its owners) desires to sell any interest in Developer or its interest, right or license under this Agreement, it must submit to Franchisor, in writing, the terms and conditions of any proposed sale or transfer, including the name or names of person or entity desiring to purchase such interest, rights or license. Franchisor will have 30 days from the date of the receipt of any notice of a bona fide offer to sell, to purchase the interest upon the same terms and conditions as set forth in the offer to sell to the bona fide offeree. The right of first refusal granted hereunder to Franchisor may be exercised in connection with any offer to sell which may be made by Developer during the entire term of this Agreement and any renewal thereof. In the event that Franchisor elects not to purchase the interest, rights and licenses granted to Developer, the remaining provisions of this Article 12 shall apply.

Neither Developer nor any member, partner or shareholder or other owner thereof may, without Franchisor's prior written consent, directly or indirectly sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any interest in this Agreement or in Developer without the prior written consent of Franchisor. Franchisor will not unreasonably withhold or delay its consent to the transfer of any interest in Developer or this Agreement; provided, however, that prior to the time of the transfer, Franchisor may, in its sole discretion require that:

(a) The transferee demonstrates to Franchisor's satisfaction that it meets Franchisor's requirements that existed under this Agreement and have the adequate financial resources and capital to manage the ADA Territory; and transferee must submit to Franchisor an application in the form prescribed by Franchisor;

(b) At transferee's expense and upon such other terms and conditions as Franchisor may reasonably require, transferee or transferee's manager must complete to the satisfaction of Franchisor any training course then in effect for Developers;

(c) Except in the case of a transfer to a corporation, partnership or limited liability company formed solely for the convenience of ownership, a transfer fee equal to 10% of the gross purchase price or \$25,000, whichever is greater, shall be paid to Franchisor by Developer;

(d) Developer and its owners shall execute a general release, in a form prescribed by Franchisor, of all claims against Franchisor, its affiliates and their members, managers, shareholders, partners, officers, directors, agents, and employees. Notwithstanding such release, Developer shall remain obligated under those provisions of this Agreement that expressly extend beyond the term hereof; and

(e) Transferee's execution of Franchisor's then-current Area Development Agreement, the provisions of which may differ materially from any and all of those contained in this Agreement, and the term of which shall be the remaining term of this Agreement.

D. Upon the death or permanent disability Developer or, if Developer is a limited liability company, corporation or partnership, the death or permanent disability of the owner of a controlling

interest in Developer, Developer's or such owner's executor, administrator, conservator, guardian or other personal representative must transfer Developer's interest in this Agreement or such owner's interest in Developer to a third party. Such disposition of this Agreement or the interest in Developer (including, without limitation, transfer by bequest or inheritance) must be completed within a reasonable time, not to exceed 6 months from the date of death or permanent disability, and will be subject to all of the terms and conditions applicable to transfers contained in this Article. A failure to transfer Developer's interest in this Agreement or the ownership interest in Developer within this period of time constitutes a breach of this Agreement. For purposes hereof, the term "permanent disability" means a mental or physical disability, impairment or condition that is reasonably expected to prevent or actually does prevent Developer or an owner of a controlling interest in Developer from conducting day-to-day business for a period of 3 months from the onset of such disability, impairment or condition.

### **13. EXCLUSIVE DEALINGS**

A. During the term of this Agreement, neither Developer, any of its owners (nor any of Developer's owners' spouses, children or other relatives by blood or marriage) will (i) have any direct or indirect interest as a disclosed or beneficial owner in a Competitive Business (defined below), wherever located; or (ii) perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business, wherever located.

B. Upon the expiration or earlier termination of this Agreement or transfer of this Agreement or an interest in Developer, Developer and its owners agree that, for a period of 24 months commencing on the effective date of termination, expiration, transfer or the date on which a person restricted by this Article begins to comply with this Article, whichever is later, neither Developer nor any of its owners will have any direct or indirect interest (i.e., through a spouse or child) as a disclosed or beneficial owner, investor, partner, director, officer, employee in a management or sales capacity, consultant, representative or agent or in any other capacity in any Competitive Business (as defined below) located or operating (i) within the ADA Territory; (ii) within the ADA Territory of any other System developer; or (iii) within 25 miles of any Spa in operation or under construction on the effective date of the assignment, termination or expiration.

C. The term "Competitive Business" as used in this Agreement means any business operating, or granting franchises or licenses to others to operate, any business which derives more than 10% of its gross revenue from providing massage therapy services (other than a Spa operated under a franchise agreement with Franchisor).

D. Each of the foregoing covenants will be construed as severable and independent and will be interpreted and applied consistent with the requirements of reasonableness and equity. In the event a court of competent jurisdiction will determine the business, time, or geographic limitations contained in this Agreement are illegal, invalid or unenforceable, then, the court so holding will reduce the limitation necessary to render such restriction enforceable by the court. Franchisor will have the right to reduce the scope of any covenant contained in Articles 11 and 13, without Developer's consent, effective immediately upon receipt by Developer of Franchisor's written notice; and Developer will comply with any reduced covenant. In addition to any other remedies available at law or equity, Franchisor will have the right to injunctive relief for Developer's violation or threatened violation of any covenant described in Articles 11 and 13 without the obligation to post a bond.

E. The terms of this non-compete are assignable by Franchisor and shall inure to the benefit of Franchisor, as well as its successors and assigns. In the event of any assignment, sale, merger or change in ownership or structure of Franchisor, the resulting entity shall step into the place of Franchisor,

without any additional consent of or notice to the Developer, as if the term Franchisor were defined in this Agreement to include such entity.

#### **14. DEFAULT AND TERMINATION**

A. Franchisor may terminate this Agreement, effective upon written notice of termination to Developer, if:

1. Developer fails to successfully complete Developer training to Franchisor's satisfaction;
2. Developer is adjudicated bankrupt, becomes insolvent, suffers a permanent or temporary court-appointed receivership of substantially all of Developer's property, makes a general assignment for the benefit of creditors or suffers the filing of a voluntary or involuntary bankruptcy petition which is not dismissed within 30 days after filing;
3. Developer fails to comply with the Mandatory Development Schedule set forth in Article 3 herein and the default is not cured within 90 days;
4. Developer or any of its owners makes or attempts to make a transfer in violation of Article 12 above;
5. Developer or any of its owners has made any material misrepresentation or omission in connection with acquiring the rights under this Agreement or in operating Developer's business;
6. Developer or any of its owners is or has been convicted by a trial court of, or plead or have pleaded guilty or no contest to, a felony or any crime involving moral turpitude;
7. Developer or any of its owners engages in any dishonest or unethical conduct that may adversely affect the reputation of the Franchisor, other Spas, or the goodwill associated with the MassageLuXe Marks;
8. In the event of Developer's death or permanent disability or the death or permanent disability of the owner of a controlling interest in Developer, this Agreement or such owner's interest in Developer is not assigned as herein required;
9. Developer or any of its owners makes any unauthorized use of the MassageLuXe Marks or use or disclosure of any Confidential Information or use, duplicate or disclose any portion of the Operations Manual in violation of this Agreement;
10. Developer fails to make payments of any amounts due to Franchisor, whether under this Agreement or a Franchise Agreement with Franchisor, and does not correct such failure within 7 days after written notice of such failure is delivered to Developer;
11. Developer fails on 3 or more separate occasions within any period of 12 consecutive months to submit when due reports or other data, information or supporting records, or otherwise to comply with this Agreement, whether or not such failures to comply were corrected after written notice of such failure was delivered to Developer;

12. Developer or any of its owners fails to comply with any other provision of this Agreement and does not correct such failure within 30 days after written notice of such failure to comply is delivered to Developer;

13. Developer voluntarily or otherwise abandons the area development business granted hereunder; or

14. Developer or any of its affiliates is in default of any Franchise Agreement or other agreement Developer may have with Franchisor or an affiliate of Franchisor, and such default is not cured within the timeframe provided for therein.

B. The events of default and grounds for termination described in this Article 14 will be in addition to any other grounds for termination and remedies contained elsewhere in this Agreement or in any individual Franchise Agreement executed between Franchisor and Developer.

C. Notwithstanding anything to the contrary contained in this Article 14, if applicable law or regulation limits Franchisor's rights to terminate or requires longer notice periods than those set forth above, this Agreement shall be deemed amended to conform to the minimum notice periods or restrictions upon termination required by such laws and regulations. Franchisor shall not, however, be precluded from contesting the validity, enforceability or application of such laws or regulations in any action, hearing or dispute relating to this Agreement or the termination of this Agreement.

D. Upon termination of this Agreement, Developer shall have no further rights to receive any portion of any remuneration described in Article 7 above, and Franchisor will have complete and exclusive rights to the franchise and royalty fees collected from each Spa within the ADA Territory. Further, Developer will have no further exclusive rights to develop Spas within the ADA Territory, and Franchisor may offer the right to develop the ADA Territory to a third party or may directly develop the ADA Territory itself. No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy provided or permitted by law or equity. If Developer at the time of termination or expiration of this Agreement is operating one or more Developer Spas pursuant to the terms of individual Franchise Agreements entered into with Franchisor, then all of the rights and obligations under such individual Franchise Agreements will be applicable in accordance with their terms.

E. Upon the termination, for any reason, expiration of this Agreement or transfer of this Agreement or an interest in Developer, Developer:

1. agrees to not directly or indirectly at any time or in any manner identify itself or any business as a current or former Developer for Franchisor, use any MassageLuXe Marks, any derivation or colorable imitation thereof or other indicia of a Spa in any manner or for any purpose or utilize for any purpose any trade name, trademark or service mark or other commercial symbol that indicates or suggests a connection or association with Franchisor;

2. agrees to take such action as may be required to cancel all fictitious or assumed names or equivalent registrations relating to Developer's use of any MassageLuXe Marks;

3. agrees to deliver to Franchisor within 30 days of termination or expiration all signs, advertising, marketing and promotional materials, forms, packaging and other materials containing any Mark or otherwise identifying or relating to Developer's business as a developer for Franchisor or a Spa;

4. agrees to immediately cease using any of Franchisor's Confidential Information in any business or otherwise, and to return to Franchisor all copies of the Operations Manual and any other confidential materials loaned to or in the possession of Developer;

5. agrees to promptly notify or take such other action required by Franchisor to direct the appropriate Internet search engines, telephone companies and all telephone directory listing agencies of the termination or expiration of Developer's right to use any domain names, websites, telephone numbers and any regular, classified or other telephone directory listings associated with any MassageLuXe Marks and authorize transfer of same to or at the direction of Franchisor. Developer acknowledges that as between Franchisor and Developer, Franchisor has the sole right to and interest in all domain names, social media accounts (e.g., LinkedIn, Facebook or Twitter), websites, telephone numbers and directory listings associated with any of the MassageLuXe Marks. Developer authorizes Franchisor, and hereby appoints Franchisor and any officer of Franchisor as its attorney in fact, coupled with an interest, to direct the appropriate Internet search engines, telephone companies and all listing agencies to transfer same to Franchisor or at its direction, should Developer fail or refuse to do so, and the appropriate Internet search engine, telephone companies and all listing agencies may accept such direction of this Agreement or Developer's letter of direction held by Franchisor as conclusive of the exclusive rights of Franchisor in such domain names, websites, search engines, telephone number and directory listings and its authority to direct their transfer;

6. agrees to immediately cease providing services to all the franchisees in the ADA Territory and forfeit all rights it has to the future revenues and fees. Further, Franchisee shall provide Developer with all franchisee lists, files, records, inspection reports, Operation Manuals, documents, bills, and insurance materials and not retain any copies of such materials;

7. agrees to pay all amounts due to Franchisor and its affiliates, if any; and

8. agrees to furnish Franchisor, within 30 days, with evidence satisfactory to Franchisor of Developer's compliance with the foregoing obligations.

## **15. RELATIONSHIP OF THE PARTIES**

A. The appointment of Developer pursuant to this Agreement does not make him an agent, partner, legal representative or employee of Franchisor, and the parties expressly agree that Developer is an independent contractor. Area Developer does not have the right to bind Franchisor, to transact any business or make any promises or representations on behalf of Franchisor, except as herein expressly provided. Developer will at all times represent himself only as an independent contractor who has been appointed and licensed as a developer. Neither this Agreement nor the relationship between the parties hereto constitutes a partnership or a joint venture between Developer and Franchisor. It is understood, acknowledged and agreed by the parties hereto that they do not intend to create by this Agreement any type of franchise relationship. The relationship that exists between the parties is one of contracting for the services of Developer as an independent representative for franchise sales, training and support and this Agreement is strictly a method to develop a program to sell and coordinate services for Franchised Spas and is not a master franchise, subfranchise, multi-unit development agreement, or any other type of franchise relationship of any kind or nature.

B. Subject to any provisions contained in this Agreement to the contrary, the relationship of Franchisor and Developer with respect to the ownership and operation by Developer of Developer Spas within the ADA Territory, including the Model Spa, will be governed by the individual Franchise Agreement(s) executed in connection therewith.

## **16. VENUE AND JURISDICTION**

A Developer acknowledges that this Agreement was accepted in the State of Missouri. Developer acknowledges that it has and will continue to develop a substantial and continuing relationship with Franchisor at Franchisor's principal offices in Missouri, where Franchisor's decision-making authority is vested and franchise operations are conducted and supervised. Except to the extent that this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 (Lanham Act, 115 U.S.C. 1051), this Agreement will be governed, to the extent permissible, by the laws of the State of Missouri without regard to principles of conflicts of law; provided, however, that the Missouri Franchises Act (Rev. Stats. Mo. §407.400 to §407.420) shall apply only if its independent jurisdictional requirements are met. If, however, any provision of this Agreement would not be enforceable under the laws of Missouri, and if the ADA Territory is located outside of Missouri and the provision would be enforceable under the laws of the State in which the ADA Territory is located, then the provision in question (and only that provision) will be interpreted and construed under the laws of the State where the ADA Territory is located. If applicable law provides Developer with additional rights as to notices, opportunities to cure or otherwise than as are provided by this Agreement as to termination, renewal, transfers or otherwise, Franchisor shall comply with the requirements of such laws to the extent they exceed Franchisor's obligations under this Agreement.

B. Franchisor may institute any action arising out of or relating to this Agreement in any state or federal court of general jurisdiction in the State of Missouri, and Developer and each guarantor of this Agreement irrevocably submits to the jurisdiction of these courts and waive any objection to the application of Missouri law or to the jurisdiction or venue in these Missouri courts. If Developer institutes any action arising out of or relating to this Agreement, that action must be brought in the Circuit Court of St. Louis County, Missouri or in the United States District Court for the Eastern District of Missouri, and Developer irrevocably submits to the jurisdiction of such court and waives any objection Developer may have to either the jurisdiction or venue of such court. If a state regulator requires an amendment to this Agreement, the amendment is attached to this Agreement. Franchisor will not, however, be precluded from contesting the validity, enforceability, or applicability or such regulator's required amendment in any action relating to this Agreement or to its rescission or termination. The parties hereto recognize, and any mediator or judge is affirmatively advised, that certain provisions of this Agreement describe Franchisor's right to take (or refrain from taking) certain actions in the exercise of Franchisor's business judgment based on Franchisor's assessment of the overall best interests of the System and/or franchise network. Where such discretion has been exercised, and is supported by Franchisor's business judgment, neither a mediator nor a judge shall substitute his or her judgment for the judgment so exercised by Franchisor.

## **17. LIMITATION OF LEGAL ACTIONS**

A. EXCEPT WITH RESPECT TO DEVELOPER'S OBLIGATIONS REGARDING THE MASSAGELUXE MARKS AND CONFIDENTIAL INFORMATION, FRANCHISOR AND DEVELOPER (AND DEVELOPER'S OWNERS) EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO OR CLAIM FOR PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES FOR ANY CONDUCT ARISING OUT OF THIS AGREEMENT OR FRANCHISOR'S RELATIONSHIP WITH DEVELOPER.

B. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP OF THE PARTIES.



C. ANY DISAGREEMENT BETWEEN DEVELOPER (AND DEVELOPER'S GUARANTORS AND OWNERS) AND FRANCHISOR (AND FRANCHISOR'S AFFILIATES AND OWNERS) WILL BE CONSIDERED UNIQUE AS TO ITS FACTS AND MUST NOT BE BROUGHT AS A CLASS ACTION AND DEVELOPER (AND DEVELOPER'S GUARANTORS AND OWNERS) WAIVE ANY RIGHT TO PROCEED AGAINST FRANCHISOR (AND FRANCHISOR'S AFFILIATES, OWNERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS) BY WAY OF CLASS ACTION, OR BY WAY OF A MULTI-PLAINTIFF, CONSOLIDATED OR COLLECTIVE ACTION.

D. DEVELOPER WILL BE BARRED FROM BRINGING ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FRANCHISOR'S RELATIONSHIP WITH DEVELOPER, UNLESS A JUDICIAL PROCEEDING IS COMMENCED WITHIN 1 YEAR FROM THE DATE ON WHICH DEVELOPER KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THAT CLAIM.

## **18. CHANGES AND MODIFICATIONS**

A. Franchisor reserves and will have the sole right to make changes in the Operations Manual, the System and the MassageLuXe Marks at any time and without prior notice to Developer. Developer must promptly alter any signs, products, business materials or related items, at its sole cost and expense, upon written receipt of notice of such change or modification in order to conform to the Franchisor's revised specifications.

B. Developer understands and agrees that due to changes in competitive circumstances, presently unforeseen changes in the needs of customers, and/or presently unforeseen technological innovations, Franchisor's System must not remain static, in order that it best serve the interests of Franchisor, Developer and the System. Accordingly, Developer expressly understands and agrees that Franchisor may from time to time change the components of the System, including but not limited to, altering the programs, services, methods, standards, forms, policies and procedures of that System; adding to, deleting from or modifying those programs, products and services which the Spas are authorized to offer; and changing, improving or modifying the MassageLuXe Marks. Subject to the other provisions of this Agreement, Developer expressly agrees to abide by any such modifications, changes, additions, deletions and alterations, at its sole cost and expense.

## **19. NOTICES**

All written notices and reports permitted or required to be delivered by the provisions of this Agreement will be deemed so delivered (i) at the time delivered by hand; (ii) 1 business day after being placed in the hands of a commercial courier service for next business day delivery, provided there is evidence of receipt; or (iii) 3 business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid; and must be addressed to the party to be notified at the address set forth above unless and until a different address has been designated by written notice to the other party.

## **20. MISCELLANEOUS**

A. This Agreement contains the entire agreement between the parties concerning the subject matter hereof; no promises, inducements or representations not contained in this Agreement have been made, nor shall any be of any force or effect, or binding on the parties, provided, however, that nothing in this Agreement or any related document is intended to disclaim the representations Franchisor made in the FDD furnished to Developer. Modifications of this Agreement must be in writing and signed by both

parties. Franchisor reserves the right to change Franchisor's policies, procedures, standards, specifications or manuals at Franchisor's discretion.

B. Any provisions of this Agreement which may be reasonably interpreted to impose any obligation after termination or expiration hereof shall survive such termination or expiration and be binding upon the parties.

C. The term "Developer" shall be construed to refer to the male or female gender in all cases where Developer is an individual, masculine or feminine modifiers and pronouns notwithstanding. The term "principals" shall include Developer's general and limited partners, if it is a partnership, its officers, directors and shareholders, if Developer is a corporation, and its members and managers, if Developer is a limited liability company. The Article captions are inserted only for convenience and reference, and are not intended to define, limit or describe the scope, intent or language of this Agreement or any provisions hereof.

D. This Agreement shall be binding upon the parties and their heirs, executors, personal representatives, successors and assigns. All signatories to this Agreement and all partners of a partnership Developer, all officers, directors and shareholders of a corporate Developer, and all members and managers of a limited liability company Developer, shall be jointly and severally liable for the performance of all terms, covenants and conditions hereof. If this Agreement is to be issued or transferred to a corporation, partnership, limited liability company or other entity, all shareholders, partners, members or other owners of such entity and their spouses shall execute the Agreement to Comply with Certain Undertakings of Franchisee attached to this Agreement, and any person who thereafter acquires or holds any interest in the Developer or this Agreement and their spouse shall also execute such agreement.

E. The performance by either party hereto of any of their respective obligations or undertakings provided for in this Agreement shall be excused and no default shall be deemed to exist in the event and so long as the performance of any such obligation or undertaking is prevented, delayed, retarded, or hindered by any act of nature, weather conditions, fire, earthquake, flood, explosion, war, riot, condemnation, laws, orders of government or civil or military authorities, strikes, lockout or the action of labor unions, or any other cause beyond the reasonable control of Franchisor or Developer, as the case may be. Each party agrees to notify the other promptly upon discovery of an event of force majeure, as set forth above, which may cause a failure or delay in performance under this Agreement, and Franchisor acknowledges and agrees that the development periods with respect to the Mandatory Development Schedule shall in each case be extended by the number of days during which the force majeure continues; provided, that Developer has promptly notified Franchisor of such force majeure.

F. This Agreement may be executed in multiple copies, each of which will be deemed an original.

G. If Franchisor incurs expenses in connection with Developer's failure to pay when due amounts owed to Franchisor, to submit when due any reports, information or supporting records or otherwise to comply with this Agreement, Developer agrees to reimburse Franchisor for any of the costs and expenses which Franchisor incurs, including reasonable accounting, attorneys' and related fees.

## **21. ACKNOWLEDGEMENTS**

A. The success of the business venture contemplated to be undertaken by Developer by virtue of this Agreement is speculative and depends, to a large extent, upon the ability of Developer as an independent business enterprise, and its active participation in the daily affairs of the business as well as

other factors. Franchisor does not make any representations or warranty, express or implied, as to the potential success of the business venture contemplated hereby.

B. Developer acknowledges that it has entered into this Agreement after making an independent investigation of Franchisor's operations and not upon any representation as to gross revenues, volume, potential earnings or profits that Developer in particular might be expected to realize, nor has anyone made any other representation which is not expressly set forth herein, to induce Developer to accept this license and execute this Agreement.

C. Developer represents that it has read this Agreement in its entirety and that it has been given the opportunity to clarify any provisions that it did not understand and to consult with an attorney or other professional advisor. Developer further represents that it understands the terms, conditions and obligations of this Agreement and agrees to be bound thereby.

D. Developer acknowledges that in all of Franchisor's dealings with Developer, Franchisor's officers, directors, employees and agents act only in a representative, and not in an individual, capacity and that business dealings between Developer and Franchisor's officers, directors, employees and agents are only between Developer and Franchisor.

E. Developer acknowledges that it has represented to Franchisor, to induce Franchisor to enter into this Agreement, that all statements Developer has made and all materials Developer has given to Franchisor in acquiring this Area Development Agreement are accurate and complete and that Developer has made no misrepresentations or material omissions in obtaining this Area Development Agreement

## **22. ANTI-TERRORISM REPRESENTATIONS**

Under applicable U.S. Law, including without limitation Executive Order 1224, signed on September 23, 2001 (the "Order"), Franchisor is prohibited from engaging in any transaction with any person engaged in, or with a person aiding any person engaged in acts of terrorism as defined in the Order. Accordingly, Developer does not, and hereafter will not engage in any terrorist activity. In addition, Developer is not affiliated with and does not support any individual or entity engaged in, contemplating, or supporting terrorist activity. Finally, Developer is not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby, have duly executed and delivered this Agreement the date and year first written above.

**FRANCHISOR:**

**MESSAGE LUXE INTERNATIONAL, LLC**

By: \_\_\_\_\_  
Todd J. Beckman, President and Manager

**DEVELOPER:**

**[CORPORATION, LLC OR PARTNERSHIP:]**

\_\_\_\_\_

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

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

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

**[AS INDIVIDUALS:]**

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

**AGREEMENT TO COMPLY WITH CERTAIN UNDERTAKINGS OF FRANCHISEE**

In consideration of, and as an inducement to, the execution of the above Area Development Agreement (the "ADA"), by MASSAGE LUXE INTERNATIONAL, LLC ("us", "we", or "our") in favor of \_\_\_\_\_ ("DEVELOPER"), the undersigned ("UNDERSIGNED") agrees to personally comply with and abide by the following sections of the ADA: Confidential Information (Article 11) and Exclusive Dealings (Article 13), to the same extent as and for the same period of time as DEVELOPER is required to comply with and abide by such covenants and provisions. All of the foregoing obligations of the undersigned shall survive any expiration, termination, non-renewal, or transfer of the ADA or this Agreement to Comply with Certain Undertakings of Franchisee ("Undertakings Agreement").

The obligations of the UNDERSIGNED hereunder are not contingent or conditioned upon our pursuit of any remedies against DEVELOPER or any other person; nor will such obligations be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence that we may from time to time grant to DEVELOPER or to any other person, including, without limitation, the acceptance of any partial performance or the compromise or release of any claims, none of which will in any way modify or amend this Undertakings Agreement, which will be continuing and irrevocable during the term of the ADA and thereafter.

If we or any of our affiliates are required to enforce this Undertakings Agreement in any judicial proceeding or appeal thereof, the UNDERSIGNED shall reimburse us and our affiliates for our and/or their costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorney assistants', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any written demand, claim, action, hearing or proceeding to enforce this Undertakings Agreement. Further, UNDERSIGNED hereby consents to the applicability of the venue, governing law and jurisdiction provisions in the ADA.

The terms contained in the ADA and this Undertakings Agreement constitute the entire agreement between the parties, and there are no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein.

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

GUARANTOR(S):

Print Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**APPENDIX A**  
**ADA TERRITORY**

**EXHIBIT D**  
TO THE DISCLOSURE DOCUMENT  
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**EXHIBIT E**  
TO THE DISCLOSURE DOCUMENT  
FINANCIAL STATEMENTS

**EXHIBIT F**  
**TO THE DISCLOSURE DOCUMENT**  
**STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS**

**LIST OF STATE ADMINISTRATORS**

Listed below are the names, addresses and telephone numbers of the state agencies having responsibility for franchising disclosure/registration laws:

**California**

One Sansome Street, Suite 600  
San Francisco, CA 94104  
(415) 557-3787  
(866) 275-2677

**Florida**

Department of Agriculture and  
Consumer Services  
Division of Consumer Services  
227 N. Bronough Street  
City Centre Building, 7th Floor  
Tallahassee, FL 32301  
(904) 922-2770

**Hawaii**

Department of Commerce and  
Consumer Affairs  
Business Registration Division  
335 Merchant Street, Room 203  
Honolulu, HI 96813  
(808) 586-2722

**Illinois**

Office of Attorney General  
Franchise Division  
500 South Second Street  
Springfield, IL 62706  
(217) 782-4465

**Indiana**

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

**Maryland**

Office of Attorney General  
Maryland Division of Securities  
200 St. Paul Place  
Baltimore, MD 21202-2020  
(410) 576-6360

**Michigan**

Attorney General  
Consumer Protection Division  
Antitrust and Franchise Unit  
670 Law Building  
Lansing, MI 48913  
(517) 373-7117

**Minnesota**

Department of Commerce  
Registration and Licensing  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101  
(612) 296-6328

**Nebraska**

Department of Banking and  
Finance  
1200 N Street, Suite 311  
P.O. Box 95006  
Lincoln, NE 68509  
(402) 471-3445

**New York**

New York State Dept. of Law  
Bureau of Investor Protection  
and Securities  
120 Broadway, 23rd Floor  
New York, NY 10271  
(212) 416-8211

**North Dakota**

North Dakota Securities  
Department  
600 East Boulevard, State  
Capitol, 5th Floor, Dept. 414  
Bismarck, ND 58505-0510  
(701) 328-4712

**Oregon**

Depart. of Ins. and Finance  
Corporate Securities Section  
Labor and Industries Building  
Salem, OR 97310  
(503) 378-4387

**Rhode Island**

Depart. of Business Regulation  
Division of Securities  
233 Richmond Street, Suite 232  
Providence, RI 02903  
(401) 222-3048

**South Dakota**

Depart. of Labor & Regulation  
Division of Securities  
c/o 445 East Capitol Avenue  
Pierre, SD 57501  
(605) 773-4823

**Texas**

Secretary of State  
Statutory Document Section  
P.O. Box 13563  
Austin, TX 78711  
(512) 475-1769

**Virginia**

State Corporation Commission  
Division of Securities and  
Retail Franchising  
1300 E. Main Street, 1<sup>st</sup> Floor  
Richmond, VA 23219  
(804) 371-9672

**Washington**

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

**Wisconsin**

Department of Financial  
Institutions Div. of Securities  
345 W. Washington Ave., 4<sup>th</sup> FL  
Madison, WI 53703  
(608) 261-9555

## **Agents for Service of Process**

### **California**

Commissioner of Corporations  
California Dept. of Corporations  
320 West 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013-2344  
(213) 576-7505  
(866) 275-2677

### **Hawaii**

Commissioner of Securities  
Business Registration Division  
335 Merchant Street, Room 203  
Honolulu, HI 96813  
(808) 586-2722

### **Illinois**

Illinois Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-1090

### **Indiana**

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

### **Maryland**

Maryland Securities Commissioner  
200 St. Paul Place  
Baltimore, Maryland 21202-2020  
(410) 576-6360

### **Michigan**

Department of Commerce,  
Corporations and Securities Bureau  
6546 Mercantile Way  
Lansing, Michigan 48910  
(517) 334-6212

### **Minnesota**

Commissioner of Commerce  
Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, Minnesota 55101  
(612) 296-4026

### **New York**

Secretary of State of the State of  
New York  
41 State Street  
Albany, New York 12231  
(518) 473-2492

### **North Dakota**

North Dakota Securities Department  
600 East Boulevard, State Capitol  
5th Floor, Dept. 414  
Bismarck, ND 58505-0510  
(701) 328-4712

### **Oregon**

Director of Oregon  
Department of Insurance and Finance  
700 Summer Street, N.E., Suite 120  
Salem, Oregon 97310  
(503) 378-4387

### **Rhode Island**

Director of Rhode Island  
Department of Business Regulation  
233 Richmond Street, Suite 232  
Providence, Rhode Island 02903-4232  
(401) 222-3048

### **South Dakota**

Director of South Dakota Division of Securities  
445 East Capitol Avenue  
Pierre, South Dakota 57501  
(605) 773-4823

### **Virginia**

Clerk of the State Corporation Commission  
1300 East Main Street, 1st Floor  
Richmond, Virginia 23219  
(804) 371-9672

### **Washington**

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

### **Wisconsin**

Wisconsin Commissioner of Securities  
345 W. Washington Ave., 4th Floor  
Madison, Wisconsin 53703  
(608) 261-9555

**EXHIBIT G**  
**TO THE DISCLOSURE DOCUMENT**  
**LIST OF FRANCHISEES**

**LIST OF FRANCHISEES**

<b>FRANCHISEE NAME</b>	<b>ADDRESS</b>	<b>TELEPHONE</b>
WRENCO	3800 Barranca Parkway Irvine, CA 92606	(949) 783-5893
BEL CIELO - DENVER, LLC Attention: Cynithia O'Toole	5058 East Hampden Avenue Denver, CO 80222	(303) 756-5893
Florida Massage Naples, LLC Attn: Michael Cavaseno	6460 Vanderbilt Beach Road Unit 400 Naples, FL 34109	(239) 254-5893
MGN Massage, LLC Attn: Mindy Grasso	7181 Kingery Road Willowbrook, Illinois 60527	(630) 455-4090
ML Highlands, LLC Annt: Darren and Jane Thomas	921 Brittany Parkway Manchester, MO 63011	(636) 527-5893
Serenity Investments 1 L.L.C. Attn: Steve Allison	2526 Hwy K O'Fallon, MO 63368	(636) 272-5893
Serenity 2 STC, L.L.C. Attn: Steve Allison	1520 S. Fifth Street, Suite 104 St. Charles, MO 63303	(636) 724-0123
Intentions by Design, LLC Attn: Karren Kindell	3016 S. Grand St. Louis, MO 63118	(314) 664-4563
Wolf Wellness Group, LLC Attn: Leonard and Jennifer Woolfenden	1851 Wentzville Parkway Wentzville, MO 63385	(636) 639-6006
Neena Enterprises 2, LLC Attn: Surinder and Neena Judge	43296 11 Mile Road Novi, MI 48375	(248) 349-5893
Kendall Park ML, LLC Annt: Sapan Inamdar	3570 Rt 27, Suite 111 Kendall Park, NJ 08824	(732) 821-5893
MLuxe LaPro, LLC Attn: Parisa N. Fard	La Promenade Shopping Center 1864 Laskin Road Virginia Beach, Virginia 23454	(757) 468-6300
MLuxe 2, LLC Attn: Parisa N. Fard	Brenneman Farms Shopping Center 4540 Princess Anne Road Virginia Beach, Virginia 23462	(757) 468-6300
MLuxe 3, LLC Attn: Parisa N. Fard	6255 College Drive, Suite A-P Suffolk, Virginia 23435	(757) 468-6300

**AFFILIATE-OWNED LOCATIONS**

<b>AFFILIATE NAME</b>	<b>ADDRESS</b>	<b>TELEPHONE</b>
T & E, LLC	1409 South Hanley Road Brentwood, MO 63144	(314) 594-5893
ML Chesterfield, LLC	1656 Clarkson Road Chesterfield, Missouri 63017	(636) 536-1330
ABTB ML Creve Coeur, LLC	12410 Olive Boulevard Creve Coeur, MO 63141	(314) 439-5893
ABTB ML Kirkwood, LLC	1246 South Kirkwood Road Kirkwood, MO 63122	(314) 821-9191
ML Salon Investments V, LLC	4036 Osage Beach Parkway Osage Beach, MO 65065	(573) 302-0094

<b>AFFILIATE NAME</b>	<b>ADDRESS</b>	<b>TELEPHONE</b>
ML Salon Investments, LLC	9572 Manchester Road Rock Hill, MO 63119	(314) 961-5893
ABTB ML CWE, LLC	11 N. Euclid St. Louis, MO 63108	(314) 367-5893

### **AREA DEVELOPERS**

<b>AREA DEVELOPER NAME</b>	<b>ADA TERRITORY</b>	<b>ADDRESS</b>	<b>TELEPHONE</b>
BEL CIELO, LLC Attention: Cynithia O'Toole	The State of Colorado	15 Winding Stair Way Dardenne Praire, MO 63368	(314) 594-2708
Florida Massage Corporation Attention: Michael Cavaseno	The State of Florida	634 Shoreline Drive Naples, FL 34119	(239) 250-7777
Fortress Capital Group, LLC Attention: Joe Pagano	The Atlanta, Georgia Metropolitan Area	538 Elm Creek Drive Wentzville, MO 63385	(636) 947-3277
Nicholas and Melinda Grasso	The following Counties in Illinois: Lake, DuPage, Cook, Will and Grundy	5100 Katie Valley Drive Imperial, MO, 63052	(636) 461-4023
Nick Skrbin	The following Counties in Illinois: McHenry, Kane and Kendall	3425 Judith Ridge Imperial, MO 63052	(314) 596-1553
Neena Enterprises 2, LLC Attention: Surinder and Neena Judge	The following Counties in Michigan: Livingston, Macomb, Oakland, Washtenaw and Wayne	45877 Tournament Drive Northville, MI 48168	(313) 805-7454
Chris Ahring & Todd Beckman	The Kansas City, Kansas, Topeka, Kansas and Kansas City, Missouri Metropolitan Areas	11 Champion Drive Fenton, MO 63023	(636) 600-4055
DJ, LLC Attention: Darren and Jane Thomas	Peoria, Illinois and the State of Illinois south of Peoria; and the Following Cities in Missouri: Cape Girardeau, Arnold, Fenton, Manchester, Des Peres, Oakville and Afton	5043 Country Club Drive High Ridge, MO 63049	(314) 583-1900
Serenity Investments, L.L.C. Attn: Margo Allison	Certain portions of Central Missouri	6185 Fire Station Road Osage Beach, MO 65065	(573) 434-9371
3 Smiths, LLC Attn: Kate Smith	Coastal North and South Carolina	339 Peters Creek Drive Summerville, SC 29483	(843) 814-5893
Phoenix Marketing, LLC Attn: Glenn Gross	The Memphis, Tennessee Metropolitan Area	4820 Winesap Drive Horn Lake, MS 38367	(920) 296-9481
ML Dallas, LLC Attn: Bruce Bartlett	Dallas/Fort Worth, Texas Metropolitan Area	222 South Central Avenue, Suite 105 Clayton, MO 63105	(314) 725-1500
MLUXE 1, LLC Attn: Parisa N. Fard	The States of Virginia and Maryland, and the District of Columbia	5741 Cleveland Street, Ste 100 Virginia Beach, VA 23462	(757) 468-6300

### **FRANCHISEES WHO HAVE SIGNED A FRANCHISE AGREEMENT BUT HAD NOT OPENED AS OF DECEMBER 31, 2012**

<b>FRANCHISEE NAME</b>	<b>STREET ADDRESS</b>	<b>TELEPHONE</b>
Wai Chik Ng	3715 Alemany Boulevard San Francisco, CA 94132	(415) 889-9299

**FRANCHISEES WHICH LEFT THE SYSTEM**

(The list of franchisees which have been terminated, transferred, cancelled, not renewed or 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 Application Date.) If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

ML Chesterfield Oaks Group, LLC Attn: Joe Pagano	Chesterfield, Missouri	(636) 439-9454
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**AREA DEVELOPERS WHO LEFT THE SYSTEM**

NONE

**EXHIBIT H**  
TO THE DISCLOSURE DOCUMENT  
STATE SPECIFIC ADDENDA



**ADDENDUM TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED BY THE STATE OF CALIFORNIA**

In recognition of the requirements of the California Franchise Investment Law, Cal. Corporations Code Sections 31000 *et seq.* the franchise disclosure document for MASSAGE LUXE INTERNATIONAL, LLC for use in the State of California shall be amended as follows:

Item 1 of the FDD is supplemented to include the following:

In California, both state and local laws regulate massage therapists and massage therapy spas and may require licensing. It is your responsibility to check the laws applicable in your location to determine whether any state or local licensing laws or regulations are applicable and to fully comply with those laws or regulations.

Item 3 of the FDD is supplemented to include the following:

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

Item 17 of the FDD shall be supplemented to include the following:

California Business & Professions Code Sections 20000 through 20043 provides rights to the franchisee concerning termination or nonrenewal of a franchise. If the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement contains a provision that is inconsistent with the California Business & Professions Code Sections 20000 through 20043, the California Business & Professions Code Sections 20000 through 20043 controls.

The Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement provide for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 *et seq.*).

The Franchise Agreement and Area Development 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, Multi-Unit Development Agreement and Area Development Agreement contains a provision requiring you to sign a general release of claims if you renew or transfer your franchise. California Corporations Code Section 31312 voids a waive of your rights under the Franchise Investment Law (California Corporations Code Section 31000 through 31516).

The Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement require application of the law of the State of Missouri. This provision may not be enforceable under California law.

Section 31125 of the California Corporation Code requires the franchisor to give the franchisee a disclosure document, in a form and containing such information as the

Commissioner may by rule or order require, prior to a solicitation of a proposed material modification of an existing franchise.

You must sign a release if you transfer your franchise. California Corporations Code 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code 31000 through 31516). Business and Professions Code 20010 voids a waiver of your rights under the Franchise Relations Act (Business Professions Code 2000 through 20043).

**OUR WEBSITE IS WWW.MASSAGELUXE.COM. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF CORPORATIONS, ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF CORPORATIONS AT WWW.CORP.CA.GOV.**

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

## **FACTORS TO BE CONSIDERED IN THE STATE OF HAWAII**

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

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

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

THE NAME AND ADDRESS OF OUR AGENT TO RECEIVE SERVICE OF PROCESS IN THE STATE OF HAWAII IS LISTED IN EXHIBIT F ATTACHED HERETO.

THIS REGISTRATION IS, OR WILL SHORTLY BE ON FILE IN THE FOLLOWING STATES: CALIFORNIA, FLORIDA, HAWAII, ILLINOIS, INDIANA, KENTUCKY, MARYLAND, MICHIGAN, MINNESOTA, NEBRASKA, NEW YORK, NORTH DAKOTA, RHODE ISLAND, SOUTH DAKOTA, TEXAS, UTAH, VIRGINIA, WASHINGTON AND WISCONSIN. NO STATES HAVE REFUSED, BY ORDER OR OTHERWISE, TO REGISTER THESE FRANCHISES. NO STATES HAVE REVOKED OR SUSPENDED THE RIGHT TO OFFER THESE FRANCHISES.

**ADDENDUM TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED BY THE STATE OF ILLINOIS**

For franchises and franchisees subject to the Illinois Franchise Disclosure Act of 1987 and the Illinois General Rules and Regulations under the Franchise Disclosure Act, the following information supersedes or supplements, as the case may be, the corresponding disclosures in the main body of the text of the MASSAGE LUXE INTERNATIONAL, LLC Illinois franchise disclosure document.

1. Item 17 shall be supplemented to include the following disclosure:

The conditions under which your franchise can be terminated and your rights upon nonrenewal may be affected by Illinois law, 815 ILCS 705/1-44.
2. The Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement provide that Missouri law applies. However, the foregoing choice of law should not be considered a waiver of any right conferred upon you by the provisions of the Illinois Franchise Disclosure Act of 1987 and the Rules and Regulations under the Act with respect to the offer and sale of a franchise and the franchise relationship. As required under Illinois law, the laws of the State of Illinois will govern.
3. Section 41 of the Illinois Franchise Disclosure Act states that "any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void." To the extent that any provision in the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement are inconsistent with Illinois law, Illinois law will control.
4. Any provision which designates jurisdiction or venue or requires Franchisee to agree to jurisdiction or venue in a forum outside of Illinois is void with respect to any cause of action which is otherwise enforceable in Illinois, except the arbitration may take place outside the State of Illinois.

**AMENDMENT TO MESSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND AREA  
DEVELOPMENT AGREEMENT  
REQUIRED BY THE STATE OF ILLINOIS**

This Amendment shall pertain to franchises sold in the State of Illinois and shall be for the purpose of complying with Illinois statutes and regulations. Notwithstanding anything which may be contained in the body of the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement to the contrary, each shall be amended as follows:

1. The Franchise Agreement, Multi-Unit Development Agreement and the Area Development Agreement shall each be supplemented with the following provision:

Any choice of law provision should not be considered a waiver of any right conferred upon you by the provisions of the Illinois Franchise Disclosure Act of 1987 and the Rules and Regulations under the Act with respect to the offer and sale of a franchise and the franchise relationship. As required under Illinois law, the laws of the State of Illinois will govern.

2. Section 41 of the Illinois Franchise Disclosure Act states that "any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this state is void." To the extent that any provision in the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement are inconsistent with Illinois law, Illinois law will control.
3. To the extent that any limitations period set forth in the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement are inconsistent with the Illinois Franchise Disclosure Act, the Act will control; it being the intent of the parties that nothing contained in the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement shall prohibit Franchisee from instituting a private civil action under Section 26 of the Illinois Franchise Disclosure Act within the limitations periods set forth in Section 705/27 of the Act.
4. Any provision which designates jurisdiction or venue or requires you to agree to jurisdiction or venue in a forum outside of Illinois is void with respect to any cause of action which is otherwise enforceable in Illinois, except that arbitration may take place outside the State of Illinois.

The parties have signed this Amendment as of the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

FRANCHISEE:

FRANCHISOR:

MESSAGE LUXE INTERNATIONAL, LLC

By:

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title

**ADDENDUM TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED BY THE STATE OF INDIANA**

1. **REGISTRATION OF THIS FRANCHISE IN THE STATE OF INDIANA DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER.**

2. The following is in addition to the disclosure in Item 17 of the Franchise Disclosure Document:

The release that you must sign as a condition to renewal or transfer excepts claims arising under the Indiana Deceptive Franchise Practices Law, Indiana Code 23-2-2.7.

The Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement for use in the State of Indiana specify that the Agreements and the construction of the Agreements will be governed by the laws of the State of Michigan except for the applicability of the Federal Arbitration Act and except that the Indiana Franchise Law (Indiana Code 23-2-2.5 and 23-2-2.7) will control where applicable.

**AMENDMENT TO MESSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND AREA  
DEVELOPMENT AGREEMENT  
REQUIRED BY THE STATE OF INDIANA**

This Amendment shall pertain to franchises sold in the State of Indiana and shall be for the purpose of complying with Illinois statutes and regulations. Notwithstanding anything which may be contained in the body of the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement to the contrary, each shall be amended as follows:

In recognition of the requirements of the Indiana Deceptive Franchise Practices Act, Indiana Code 23-2-2.7, the parties agree as follows:

1. The release that you must sign as a condition to renewal or transfer shall not apply to claims arising under the Indiana Deceptive Franchise Practices Law, Indiana Code 23-2-2.7.

2. The Indiana Franchise Law (Indiana Code 23-2-2.5 and 23-2-2.7) will control where applicable.

The parties have signed this Amendment as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

FRANCHISEE:

FRANCHISOR:

MESSAGE LUXE INTERNATIONAL, LLC

By:

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title

**ADDENDUM TO MESSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED BY THE STATE OF MARYLAND**

For franchises and franchisees subject to the Maryland Franchise Registration and Disclosure Law, the following information amends or supplements, as the case may be, the corresponding disclosures in the main body of the text of the MESSAGE LUXE INTERNATIONAL, LLC Franchise disclosure document:

Item 5.

Item 5 of the Franchise Disclosure Document, entitled "Initial Franchise Fee", is amended to disclose that the initial franchise fee, the MUD Fee the Development Fee, and payments for services or goods received from MassageLuXe or any affiliate before you open your business are due and payable after your initial training is completed and you open for business.

Item 17.

The Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement provide that we may terminate the agreement if you voluntarily or involuntarily file for bankruptcy. These provisions may not be enforceable under federal bankruptcy law.

Pursuant to Code of Maryland Regulations Section 02.02.08.16L, any general release required of the franchisee as a condition of renewal, sale, assignment and/or transfer shall not apply to any release from liability under the Maryland Franchise Registration and Disclosure Law.

Section 14-216(c)(25) of the Maryland Franchise Registration and Disclosure Law requires the franchisor to file an irrevocable consent to be sued in Maryland. Accordingly, choice of forum provisions contained in the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement are amended to provide that you may file a lawsuit alleging a cause of action arising under the Maryland Franchise Registration and Disclosure Law in any court of competent jurisdiction within the State of Maryland.

Section 14-227 of the Maryland Franchise Registration and Disclosure Law provides that any action brought under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.



**AMENDMENT TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND AREA  
DEVELOPMENT AGREEMENT  
REQUIRED BY THE STATE OF MARYLAND**

This Amendment shall pertain to franchises sold in the State of Maryland and shall be for the purpose of complying with Maryland statutes and regulations. Notwithstanding anything which may be contained in the body of the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement to the contrary, each Agreement shall be amended as follows:

1. Pursuant to Code of Maryland Regulations section 02.02.08.16L, any general release required of the franchisee as a condition of renewal, sale, assignment and/or transfer shall not apply to any release from liability under the Maryland Franchise Registration and Disclosure Law. The Franchise Agreement, Multi-Unit Development Agreement and Area Development are each amended accordingly.
2. Section 14-226 of the Maryland Franchise Registration and Disclosure Law prohibits a franchisor from requiring a prospective franchisee to agree to any release, estoppel or waiver of liability as a condition of purchasing a franchise. To the extent that the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement may require you to disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Maryland Franchise Registration and Disclosure Law in order to purchase your franchise, each is hereby amended to state that such representations are not intended to nor shall they act as a release, estoppel or waiver of any liability under the Maryland Franchise Registration and Disclosure Law.
3. Section 14-227 of the Maryland Franchise Registration and Disclosure Law provides that any action brought under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.
4. Section 14-216(c)(25) of the Maryland Franchise Registration and Disclosure Law requires the franchisor to file an irrevocable consent to be sued in Maryland. Accordingly, the Franchise Agreement, Multi-Unit Development Agreement and the Area Development Agreement are amended to provide that you may file a lawsuit alleging a cause of action arising under the Maryland Franchise Registration and Disclosure Law in any court of competent jurisdiction within the State of Maryland.
5. Initial Franchise Fees under the Franchise Agreement, the MUD Fees under the Multi-Unit Development Agreement and Development Fees under the Area Development Agreement, and services or goods received from MassageLuXe or any affiliate before the franchisee's business opens are due and payable after initial training is completed and the business is opened.
6. The Franchisee Disclosure Questionnaire in Appendix F is amended as follows: "Notwithstanding anything in the Franchise Agreement or the Franchise Disclosure Questionnaire to the contrary, all representations requiring prospective franchisee to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law."

The parties have signed this Amendment as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

FRANCHISEE:

FRANCHISOR:  
MESSAGE LUXE INTERNATIONAL, LLC

By:

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title

**ADDENDUM TO MESSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED FOR THE STATE OF MINNESOTA**

For franchises and franchisees subject to the Minnesota Franchise Act, the following information supersedes or supplements, as the case may be, the corresponding disclosures in the main body of the text of the MESSAGE LUXE INTERNATIONAL Franchise disclosure document.

Item 13

MESSAGE LUXE INTERNATIONAL, LLC will protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or will indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the marks to the extent required by Minnesota law.

Item 17.

Minnesota law provides franchisees with certain termination and nonrenewal rights. As of the date of this franchise disclosure document, Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 require, except in certain specified cases, that a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for nonrenewal of the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement, and that consent to transfer may not be unreasonably withheld.

Minn. Stat. Sec. 80C.21 provides that any condition, stipulation or provision, including any choice of law provision, purporting to bind any person who, at the time of acquiring a franchise is a resident of Minnesota or, in the case of a partnership or corporation, organized or incorporated under the laws of Minnesota, or purporting to bind a person acquiring any franchise to be operated in Minnesota to waive compliance or which has the effect of waiving compliance with any provision of "80C.01 to 80C.22 of the Minnesota Franchises Act, or any rule or order thereunder, is void.

Minn. Stat. 80.C.21 and Minn. Rule 2860.4400J prohibit the franchisor from requiring litigation to be conducted outside Minnesota. In addition, nothing in the franchise disclosure document, the Franchise Agreement, Multi-Unit Development Agreement or Area Development 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.

To the extent you are required to execute a general release in favor of MESSAGE LUXE INTERNATIONAL, LLC, such release shall exclude liabilities arising under the Minnesota Franchises Act, Minn. Stat. '80C.01 *et seq.* as provided by Minn. Rule 2860.4400D.

**AMENDMENT TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND AREA  
DEVELOPMENT AGREEMENT  
REQUIRED BY THE STATE OF MINNESOTA**

This Amendment shall pertain to franchises sold in the State of Minnesota and shall be for the purpose of complying with Minnesota statutes and regulations. Notwithstanding anything which may be contained in the body of the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement to the contrary, the Agreement shall be amended as follows:

1. Minnesota law provides franchisees with certain termination and nonrenewal rights. As of the date of this Agreement, Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 require, except in certain specified cases, that a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice of nonrenewal of the Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement.
2. MASSAGE LUXE INTERNATIONAL, LLC will protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or will indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the marks to the extent required by Minnesota law.
3. The Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement are supplemented by the following provision:

Pursuant to Minn. Stat. Sec. 80C.21, no provision of the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement shall in any way abrogate or reduce any of your rights as provided in Minnesota Statutes, Chapter 80C, including but not limited to the right to submit matters to the jurisdiction of the courts of Minnesota.
4. Minn. Stat. 80.C.21 and Minn. Rule 2860.4400J prohibit MASSAGE LUXE INTERNATIONAL, LLC from requiring litigation to be conducted outside Minnesota. In addition, nothing in the franchise disclosure document or the Franchise Agreement, Multi-Unit Development Agreement or Area Development 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.
5. To the extent you are required to execute a general release in favor of MASSAGE LUXE INTERNATIONAL, LLC, such release shall exclude liabilities arising under the Minnesota Franchises Act, Minn. Stat. '80C.01 *et seq.* as provided by Minn. Rule 2860.4400J.
6. Any provision in the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement requiring you to waive your right to a jury trial shall be deleted in its entirety.
7. Any claims brought pursuant to the Minnesota Franchises Act, 80.C.01 *et seq.* must be brought within 3 years after the cause of action accrues. To the extent that any provision of the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement imposes a different limitations period, the provision of the Act shall control.

The parties have signed this Amendment as of the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

FRANCHISEE:

FRANCHISOR:

MESSAGE LUXE INTERNATIONAL, LLC

\_\_\_\_\_  
Name  
Title

By:

\_\_\_\_\_  
Name  
Title

**ADDENDUM TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED BY THE STATE OF NEW YORK**

ADDITIONAL RISK FACTORS:

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT F OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 120 BROADWAY, 23RD FLOOR, NEW YORK, NEW YORK 10271.

THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE PROSPECTUS. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS PROSPECTUS.

THE FRANCHISOR HAS BEEN IN EXISTENCE FOR A SHORT PERIOD OF TIME (SINCE JULY 2007). THEREFORE, THERE IS ONLY A BRIEF OPERATING HISTORY TO ASSIST YOU IN JUDGING WHETHER OR NOT TO MAKE THIS INVESTMENT.

In recognition of the requirements of the New York General Business Law, Article 33, Section 680 through 695, and of the Codes, Rules, and Regulations of the State of New York, Title 13, Chapter VII, Section 200.1 through 201.16 the franchise disclosure document for MASSAGE LUXE INTERNATIONAL, LLC for use in the State of New York shall be amended as follows:

1. Item 3 shall be supplemented by the following:

Except as set forth above, neither we, our predecessor, nor any person identified in Item 2 or an affiliate offering franchises under our principal trademark has an administrative, criminal or civil action pending against that person alleging: a felony; a violation of a franchise, antitrust or securities law; fraud, embezzlement, fraudulent conversion, misappropriation of property; unfair or deceptive practices or comparable civil or misdemeanor allegations.

Except as set forth above, neither we, our predecessor, nor any person identified 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 ten-year period immediately preceding the application for registration, has been convicted of or pleaded *nolo contendere* to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud or securities law; fraud, embezzlement, fraudulent conversion or misappropriation of property, or unfair or deceptive practices or comparable allegations.

Neither we, our predecessor, any person identified in Item 2 or an affiliate offering franchises under our principal trademark is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a federal, state or Canadian

franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

2. Item 5 shall be supplemented by the following:

All franchisee fees are applied to the franchisor's general operating fund. All obligations of franchisor, whether to franchisees or otherwise, are paid out of this fund.

3. Item 4 shall be supplemented by the following:

During the 10-year period immediately before the application for registration, neither we nor our affiliate, any predecessor, current officers or general partner has: (a) filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after our officer or general partner held this position in the company or partnership.

4. Paragraph "j" under the section labeled "assignment of contract by us" in Item 17 shall be supplemented by the following provision:

However, no assignment shall be made except to an assignee who, in our good faith judgment, is willing and able to assume your obligations under the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement, respectively.

5. Paragraph "m" under the section in Item 17 titled "conditions for our approval of transfer" shall be supplemented as follows with respect to your execution of a general release:

Provided, however, that all rights you enjoy and any causes of action which arise in its favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder remain in force; it being the intent of this proviso that the nonwaiver provisions of the GBL Sections 687.4 and 687.5 be satisfied.

**AMENDMENT TO MESSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND AREA  
DEVELOPMENT AGREEMENT  
REQUIRED BY THE STATE OF NEW YORK**

In recognition of the requirements of the New York General Business Law, Article 33, the parties to the attached MESSAGE LUXE INTERNATIONAL, LLC Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement, as applicable, agree as follows:

1. Any provision of the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement requiring you to sign a general release shall be supplemented by the following provision:

Provided that all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the GBL of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the nonwaiver provisions of Sections 687.4 and 687.5 of New York's GBL be satisfied.

2. The Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement are supplemented to include the following provision:

Notwithstanding anything to the contrary in this Agreement, you shall indemnify MESSAGE LUXE INTERNATIONAL, LLC and hold MESSAGE LUXE INTERNATIONAL, LLC harmless from liabilities resulting from your breaches and civil wrongs only.

3. The Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement are supplemented to include the following provision:

In the event of an assignment by MESSAGE LUXE INTERNATIONAL, LLC, MESSAGE LUXE INTERNATIONAL, LLC will ascertain that its assignee, in MESSAGE LUXE INTERNATIONAL, LLC'S reasonable judgment, possesses the economic resources to fulfill MESSAGE LUXE INTERNATIONAL, LLC'S obligations to its franchisees.

4. The Franchise Agreement Multi-Unit Development Agreement and Area Development Agreement are supplemented by the following provision:

Any choice of law provision shall not be considered a waiver of any right conferred upon Franchisee by the provisions of Article 33 of the New York State General Business Law.

5. The Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement are supplemented by the following provision:

Nothing contained in this Agreement shall bar either party's right to seek to obtain injunctive relief against threatened conduct that will cause a loss or damage, under the usual equity rules, including the applicable rules for seeking to obtain restraining orders and preliminary injunctions.



6. The Franchise Agreement and Area Development Agreement contain a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under New York law.
7. MASSAGE LUXE INTERNATIONAL, LLC'S termination of the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement because of your insolvency or bankruptcy may not be enforceable under applicable federal law (11 U.S.C.A. 101 et seq.).

The parties have signed this Amendment as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

FRANCHISEE:

FRANCHISOR:

MASSAGE LUXE INTERNATIONAL, LLC

By:

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title

**ADDENDUM TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED BY THE STATE OF NORTH DAKOTA**

Notwithstanding anything to the contrary in the franchise disclosure document, the following provisions shall supersede and apply to all franchises offered and sold in the State of North Dakota:

1. Waiver of trial by jury is prohibited by law in the State of North Dakota.
2. Waiver of exemplary and punitive damages is prohibited by law in the State of North Dakota.
3. North Dakota prohibits a provision that the franchisee shall pay all costs and expenses incurred by Franchisor in enforcing the Franchise Agreement, Multi-Unit Development Agreement or Area Development Agreement.
4. North Dakota requires the following:

"In the event either party incurs legal fees or costs or other expenses to enforce any obligation of the other party hereunder, or to defend against any claim, demand, action or proceeding by reason of the other party's failure to perform or observe any obligation imposed upon that party by an agreement, then the prevailing party shall be entitled to recover from the other party the amount of all legal fees, costs and expenses, including reasonable attorneys' fees, whether incurred prior to, or in preparation for or contemplation of the filing of any claim, demand, action or proceeding to enforce any obligation of the other party hereunder or thereafter or otherwise."
5. The laws of the State of North Dakota supersede any provisions of the Franchise Agreement, Multi-Unit Development Agreement and the Area Development Agreement, if those provisions are in conflict with North Dakota law.
6. Any provision in the Franchise Agreement, Multi-Unit Development Agreement and the Area Development Agreement which designates jurisdiction or venue, or requires the Franchisee to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted when issued in the State of North Dakota.
7. North Dakota has determined that requiring a franchisee to sign a general release upon renewal of the franchise agreement is unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. Accordingly, all references to the Franchisee signing a general release upon renewal of the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement are deleted.
8. Covenants not to compete are generally considered unenforceable in the State of North Dakota. The Commissioner has held that covenants restricting competition are contrary to Section 9-08-06 of the North Dakota Century Code, and are unfair, unjust, or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.
9. North Dakota prohibits limiting the time period for bringing claims and the North Dakota statute of limitations will apply.

**AMENDMENT TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND AREA  
DEVELOPMENT AGREEMENT  
REQUIRED BY THE STATE OF NORTH DAKOTA**

MASSAGE LUXE INTERNATIONAL, LLC and Franchisee hereby agree that the Franchise Agreement, Multi-Unit Development Agreement and the Area Development Agreement, dated \_\_\_\_\_, 20\_\_\_\_, as applicable, will be amended as follows:

1. Section 7 of the Franchise Agreement and Sections 13 of the Area Development Agreement are amended to add the following:  
  
"Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota."
2. The Franchise Agreement, Multi-Unit Development Agreement and the Area Development Agreement are amended as follows:  
  
"In the event either party incurs legal fees or costs or other expenses to enforce any obligation of the other party hereunder, or to defend against any claim, demand, action or proceeding by reason of the other party's failure to perform or observe any obligation imposed upon that party, then the prevailing party shall be entitled to recover from the other party the amount of all legal fees, costs and expenses, including reasonable attorneys' fees, whether incurred prior to, or in preparation for or contemplation of the filing of any claim, demand, action or proceeding to enforce any obligation of the other party hereunder or thereafter or otherwise."
3. The laws of the State of North Dakota supersede any provisions of the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement if such provisions are in conflict with North Dakota law.
4. Any provision in the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement which designates jurisdiction or venue, or requires the Franchisee to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted when issued in the State of North Dakota. Section 17.7 of the Franchise Agreement, Section 9 of the Multi-Unit Development Agreement and Section 16 of the Area Development Agreement are deleted.
5. Section 13.2 and 12.4.4 of the Franchise Agreement is amended to delete the requirement that a general release be signed and Section 1.B of the Area Development Agreement is deleted.
6. Section 17.8 of the Franchise Agreement, Section 9.D-F of the Multi-Unit Development Agreement and Section 17 of the Area Development Agreement are deleted.

[SIGNATURE PAGE TO FOLLOW]

The parties have signed this Amendment as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

FRANCHISEE:

FRANCHISOR:

MESSAGE LUXE INTERNATIONAL, LLC

By:

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title

**ADDENDUM TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED BY THE STATE OF RHODE ISLAND**

In recognition of the requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34 the Franchise Disclosure Document Massage Luxe International, LLC for use in the State of Rhode Island shall be amended to include the following:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following:

§ 19-28.1-14 of the Rhode Island Franchise Investment Act provides that "A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act."

2. This addendum to the Franchise Disclosure Document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, are met independently without reference to this addendum to the Franchise Disclosure Document.

**ADDENDUM TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED BY THE STATE OF RHODE ISLAND**

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

The following additional RISK FACTOR is added to the State Cover Page:

- WE HAVE ONLY BEEN IN OPERATION SINCE MARCH OF 2008 AND THEREFORE HAVE A BRIEF OPERATING HISTORY. YOU MAY WANT TO CONSIDER THIS WHEN MAKING A DECISION TO PURCHASE A FRANCHISE.

**ADDENDUM TO MASSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
REQUIRED FOR THE STATE OF WASHINGTON**

For franchises and Franchisees subject to the Washington Franchise Investment Protection Act, the following information supersedes or supplements, as the case may be, the corresponding disclosures in the main body of the text of the MASSAGE LUXE INTERNATIONAL, LLC Franchise disclosure document.

If any of the provisions in the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement are inconsistent with the relationship provisions of RCW 19.100.180 or other requirements of the Washington Franchise Investment Protection Act, the provisions of the Act will prevail over the inconsistent provisions with regard to any franchise sold in Washington.

Item 6.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Item 17.

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

A release or waiver of rights executed by a franchisee 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.

**AMENDMENT TO MESSAGE LUXE INTERNATIONAL, LLC  
FRANCHISE AGREEMENT, MULTI-UNIT DEVELOPMENT AGREEMENT AND AREA  
DEVELOPMENT AGREEMENT  
REQUIRED BY THE STATE OF WASHINGTON**

This Amendment shall pertain to franchises sold in the State of Washington and shall be for the purpose of complying with Washington statutes and regulations. Notwithstanding anything which may be contained in the body of the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement to the contrary, each is amended as follows:

If any of the provisions in the Franchise Agreement, Multi-Unit Development Agreement or the Area Development Agreement are inconsistent with the relationship provisions of RCW 19.100.180 or other requirements of the Washington Franchise Investment Protection Act, the provisions of the Act will prevail over the inconsistent provisions with regard to any franchise sold in Washington.

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

A release or waiver of rights executed by a franchisee 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.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

The parties have signed this Amendment as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

FRANCHISEE:

FRANCHISOR:

MESSAGE LUXE INTERNATIONAL, LLC

By:

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Name  
Title



**EXHIBIT I**  
**TO THE DISCLOSURE DOCUMENT**  
**GENERAL RELEASE**

**GENERAL RELEASE**

THIS GENERAL RELEASE (the "General Release") is made by the undersigned (hereinafter "Releasor") for the benefit of Massage Luxe International, LLC, a Missouri limited liability company (hereinafter, "Franchisor"), on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

RECITALS:

WHEREAS, Releasor is a MassageLuXe \_\_\_\_\_ [franchisee] [developer] and operates a MassageLuXe \_\_\_\_\_ [Spa] [development business] (the "Franchised Business") pursuant to that certain \_\_\_\_\_ [franchise] [multi-unit development] [territory development] agreement dated \_\_\_\_\_ (the "Franchise Agreement");

WHEREAS, Releasor desires to renew its franchise with Franchisor or desires Franchisor's consent to \_\_\_\_\_ in connection with the Franchise Agreement; and

WHEREAS, certain states require certain changes be made to this General Release specific to such state.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Releasor hereby agrees, covenants and promises as follows:

1. Releasor, on behalf of itself and each of the persons and entities described in Section 2 hereof, hereby absolutely and forever releases, remises and discharges Franchisor and each of the persons and entities described in Section 3 hereof, from any and all claims, demands, damages, liabilities, costs (including, but not limited to reasonable attorneys' fees, accounting fees or experts' fees, and the costs of litigation, arbitration or other proceedings), expenses, liens, losses, charges, audits, investigations, injunctions, orders, rulings, subpoenas, controversies, obligations, debts, loans, interest, dues, accounts, awards, reckonings, bonds, bills, covenants, promises, undertakings, variances, trespasses, judgments, executions, sums of money owed, arbitrations, suits, decisions, proceedings, verdicts entered, issued, made or rendered and causes of action of every kind and nature whatsoever, whether now known or unknown, suspected or unsuspected, which Releasor now has, owns or holds, or at any time heretofore ever had, owned or held, or could, shall or may hereafter have, own or hold, pertaining to, arising out of or in connection with the Franchise Agreement, any related agreements or the franchisor franchisee relationship between Releasor and Franchisor. Notwithstanding the foregoing, if this General Release is entered into in conjunction with the renewal, assignment or transfer of the Franchise Agreement, the foregoing release shall not apply to any liability under any state franchise law which governs this Release.

2. Releasor hereby understands and agrees that this General Release shall extend to and be binding upon any and all of Releasor's past, present and future officers, directors, owners, employees, representatives, agents, trustees, successors, affiliates and assigns, and their respective insurers and underwriters. If more than one party shall execute this General Release, the term "Releasor" shall mean and refer to each of the parties executing this General Release, and all such parties shall be bound by its terms, jointly and severally.

3. Releasor hereby understands and agrees that this General Release shall extend to and inure to the benefit of Franchisor and any and all of Franchisor's past, present and future officers, directors, owners, employees, representatives, agents, trustees, successors, affiliates and assigns, and their respective insurers and underwriters.

4. Releasor hereby understands and agrees that this General Release supersedes any prior agreement, oral or written, with respect to its subject matter. Releasor understands and agrees that no representations, warranties, agreements or covenants have been made by Franchisor with respect to this General Release, other than those expressly set forth herein, and that in executing this General Release, Releasor is not relying upon any representations, warranties, agreements or covenants not expressly set forth in this General Release.

5. This General Release may not be changed except in a writing signed by the person(s) against whose interest such change shall operate. This General Release and all acts and transaction under it shall in all respects be interpreted, enforced and governed by the internal laws of the state in which Franchisor's principal place of business is located without regard to principles of conflicts of law

6. If any provision of this General Release is found or declared invalid or unenforceable by any arbitrator, court or other competent authority having jurisdiction, such finding or declaration shall not invalidate any other provision hereof and this General Release shall thereafter continue in full force and effect except that such invalid or unenforceable provision, and (if necessary) other provisions hereof, shall be reformed by such arbitrator, court or other competent authority so as to effect insofar as is practicable, the intention of the parties set forth in this General Release, provided that if such arbitrator, court or other competent authority is unable or unwilling to effect such reformation, the invalid or unenforceable provision shall be deemed deleted to the same extent as if it had never existed.

7. Releasor hereby certifies that Releasor has read all of this General Release and fully understands all of the same, and that Releasor has executed this General Release only after having received full legal advice and disclosure as to Releasor's rights from legal counsel of Releasor's choice.

IN WITNESS WHEREOF, each Releasor party hereto has executed this General Release effective as the day and year first above written.

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

**FRANCHISEE:**

**[CORPORATION, LLC OR PARTNERSHIP:]**

\_\_\_\_\_

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

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

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

**[INDIVIDUAL FRANCHISEE OR OWNER(S):]**

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

**EXHIBIT J**  
**TO THE DISCLOSURE DOCUMENT**  
**RECEIPT**

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 Massage Luxe International, LLC offers you a franchise, we must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Under Iowa law, if applicable, Massage Luxe International, LLC must provide this disclosure document to you at the earlier of your 1st personal meeting to discuss the franchise or 14 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. Under Michigan law, if applicable, Massage Luxe International, LLC must provide this disclosure document to you at least 10 business 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. Under New York or Rhode Island law, if applicable, Massage Luxe International, LLC must provide this disclosure document to you at the earliest of your 1st personal meeting to discuss the franchise or 10 business 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.

If Massage Luxe International, LLC, does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and any governing state agency.

The franchise seller is \_\_\_\_\_, located at \_\_\_\_\_, with telephone number \_\_\_\_\_.

The issuance date is March 15, 2013. See **Exhibit F** for a list of our registered agents authorized to receive service of process.

I received a disclosure document dated March 15, 2013 that included the following exhibits:

- |   |   |
|---|---|
| A. Franchise Agreement                                    | G. List of Franchisees  |
| B. Multi-Unit Development Agreement                       | H. State Specific Addenda for FDD, Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement |
| C. Area Development Agreement                             |   |
| D. Operations Manual Table of Contents                    |   |
| E. Financial Statements                                   |   |
| F. State Administrators and Agents for Service of Process | I. Sample General Release   |
|   | J. Receipt  |

**Signature:** \_\_\_\_\_

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

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

Individually and as an officer of \_\_\_\_\_

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

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

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

**(Your Copy. Sign, Date and Retain)**

**RECEIPT**

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 Massage Luxe International, LLC offers you a franchise, we must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Under Iowa law, if applicable, Massage Luxe International, LLC must provide this disclosure document to you at the earlier of your 1st personal meeting to discuss the franchise or 14 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. Under Michigan law, if applicable, Massage Luxe International, LLC must provide this disclosure document to you at least 10 business 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. Under New York or Rhode Island law, if applicable, Massage Luxe International, LLC must provide this disclosure document to you at the earliest of your 1st personal meeting to discuss the franchise or 10 business 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.

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- A. Franchise Agreement
- B. Multi-Unit Development Agreement
- C. Area Development Agreement
- D. Operations Manual Table of Contents
- E. Financial Statements
- F. State Administrators and Agents for Service of Process
- G. List of Franchisees
- H. State Specific Addenda for FDD, Franchise Agreement, Multi-Unit Development Agreement and Area Development Agreement
- I. Sample General Release
- J. Receipt

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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

Individually and as an officer of \_\_\_\_\_

- (a \_\_\_\_\_ corporation)
- (a \_\_\_\_\_ partnership)
- (a \_\_\_\_\_ limited liability company)

**(Sign, Date and Return to Us)**