

## FRANCHISE DISCLOSURE DOCUMENT



Farrell's eXtreme Bodyshaping, Inc.  
an Iowa corporation  
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(515) 770-7295

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[www.youtube.com/user/extremebodys shaping](https://www.youtube.com/user/extremebodys shaping)

You will operate a business that offers a comprehensive approach to wellness, combining kickboxing, strength training, nutrition, and personal coaching all under one roof under the name "FARRELL'S EXTREME BODYSHAPING."

The total investment necessary to begin operation of a FARRELL'S EXTREME BODYSHAPING franchise ranges from \$130,000 to \$383,900. This includes \$49,900 that must be paid to the franchisor or affiliate.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Lance Farrell, our Chief Executive Officer, at 8510 New York Avenue, Urbandale, Iowa 50322 and (515) 770-7295.

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

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

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

Issuance date: March 30, 2020

## How to Use This Franchise Disclosure Document

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

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

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

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

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

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

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

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

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

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

### **Some States Require Registration**

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

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

## Special Risks to Consider About *This* Franchise

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

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Iowa. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Iowa than in your own state.

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

**FARRELL’S EXTREME BODYSHAPING, INC.  
FRANCHISE DISCLOSURE DOCUMENT**

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## MICHIGAN NOTICE

The State of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against you:

- (a) A prohibition against you joining an association of franchisees.
- (b) A requirement that you assent to a release, assignment, novation, waiver or estoppel which would deprive you of rights and protections provided under the Michigan Franchise Investment Law. This does not preclude you, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits us to terminate your franchise prior to the expiration of its term except for good cause. Good cause includes your failure to comply with any lawful provision of the Franchise Agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits us to refuse to renew your franchise without fairly compensating you by repurchase or other means for the fair market value at the time of expiration, of your inventory, supplies, equipment, fixtures and furnishings. Personalized materials which have no value to us and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This provision applies only if:
  - (i) The term of the franchise is less than five years; and
  - (ii) You are prohibited by the Franchise Agreement or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising or other commercial symbol in the same area subsequent to the expiration of the franchise or if you do not receive at least six months advance notice of our intent not to renew the franchise.
- (e) A provision that permits us to refuse to renew the franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This provision does not require a renewal provision in the Franchise Agreement or other agreement.
- (f) A provision requiring that arbitration or litigation be conducted outside of Michigan. This does not preclude you from entering into an agreement, at the time of the arbitration, to conduct arbitration at a location outside of Michigan.
- (g) A provision which permits us to refuse to permit a transfer of ownership of the franchise, except for good cause. This provision does not prevent us from exercising a right of first refusal to purchase the franchise. Good cause includes, but is not limited to:
  - (i) The failure of the proposed transferee to meet our then-current reasonable qualifications or standards.
  - (ii) The fact that the proposed transferee is a competitor of ours.
  - (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 us or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.
- (h) A provision that requires you to resell to us items that are not uniquely identified with the franchisor. This does not prohibit a provision that grants us a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does it prohibit a provision that grants us the right to acquire the assets of a franchise for the market or appraised value of such assets if you have breached the lawful provisions of the Franchise Agreement and have failed to cure the breach in the manner provided in (c), above.

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

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

Any questions concerning this notice should be directed to the Michigan Department of Attorney General, Consumer Protection Division, Franchise Unit, 525 W. Ottawa Street, G. Mennen Williams Building, 1st Floor, Lansing, Michigan 48913, (517) 373-7117.

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

To simplify the language in this disclosure document, the term “we,” “us,” or “our” means Farrell’s eXtreme Bodyshaping, Inc. “You” means the person buying the franchisee, the franchisee. If the franchisee is a business entity, the term “you” does not include the entity’s owners unless otherwise stated.

The Franchisor, and any Parents, Predecessors, and Affiliates

We are an Iowa corporation formed in November 2006. We do business only under our corporate name, and maintain our principal business address at 8510 New York Avenue, Urbandale, Iowa 50322. Our agents for service of process are listed in Exhibit A. We have no predecessors or parent companies.

We have been offering franchises of the type described in this disclosure document since October 2007. We have never offered franchises in any other line of business, and have never engaged in any other business activities. We have never operated a business of the type described in this disclosure document, but our principal and founder, Lance Farrell, has operated similar businesses since 1989.

The Franchise Offered

We franchise the right to operate a business that offers a comprehensive approach to wellness, combining kickboxing, strength training, nutrition, and personal coaching all under one roof. You will operate the business using our proprietary business system (“System”) which includes our proprietary fitness techniques and workout programs (collectively, “Courses”), proprietary marketing systems, and proprietary sales techniques. We call this the “Franchised Business.”

You will operate the Franchised Business from a physical location, which we call the “Center,” under the name “FARRELL’S EXTREME BODYSHAPING” and other trademarks that we designate to identify businesses using our System (the “Marks”). In operating the Franchised Business, you will follow our mandatory and suggested specifications, standards, operating procedures and rules that we periodically specify (“System Standards”).

The Market and Competition

You will offer and provide services to the general public. The market for fitness centers generally is well developed and highly competitive. But we believe that our Courses, and the instruction, support services, and personalized attention that our Centers offer provide a competitive advantage in the market. You will compete with other health clubs and fitness centers, from low cost, key-card access gyms to high end fitness centers.

Laws and Regulations

The Franchised Business must comply with all laws and regulations that apply to businesses generally. In addition, there are Federal, state and local laws that apply to the fitness business and industry practices. Many states, for example, have enacted specific laws (1) regulating membership contract length and terms, advertising and limitations on pre-opening sales, and (2) requiring bonding, buyer’s remorse cancellation rights for limited periods (usually three to ten days after sale), and cancellation and partial refund rights for medical or relocation reasons. At the federal level, health clubs who sell memberships on credit may be subject to the federal Truth-In-Lending Act and Regulation Z and various other credit-related statutes like the Equal Credit Act and Fair Debt Collection Practices Act.

Some states have laws that require and regulate the content of service contracts and/or that require the presence of at least one person trained in administering CPR and/or to use an external defibrillator. Many states also require that certain types of fitness centers be equipped with working defibrillators. Additionally, some states’ laws require postings concerning steroids and other drug use, require certain medical equipment in the club, limit the supplements that health clubs can sell, require bonds if a health club sells memberships valid for more than a specified time period, require club owners to deposit into escrow certain amounts collected

from members before the club opens (sometimes referred to as “pre-sale” memberships), and/or impose other restrictions on memberships that health clubs sell.

It is solely your responsibility to comply with all applicable laws and regulations and to obtain and keep in force all necessary licenses and permits. Before purchasing the franchise, we strongly urge you to hire an attorney to review local, state and federal laws that may affect your operations.

**ITEM 2  
BUSINESS EXPERIENCE**

Director, CEO, Secretary, and Treasurer: Lance Farrell

Mr. Farrell has served as our Chief Executive Officer, Secretary, and Treasurer, and as our Director, since our incorporation in November 2006. Mr. Farrell served as our President from November 2006 until December 2018. Mr. Farrell has also served as President and Chief Executive Officer of Farrell’s U.S. Martial Arts, Inc. (“FUSMA”), located in West Des Moines, Iowa, since July 1998. Mr. Farrell founded our concept and has operated Farrell’s Centers in and around Des Moines, Iowa, since August 1989.

Director, Vice President, and Chief Marketing Officer: Michele Farrell

Ms. Farrell has served as our Director, Vice President, and Chief Marketing Officer since February 2014. Since July 2010, Ms. Farrell also has been a partner with Measured Intentions, a strategic business solutions firm, located in Urbandale, Iowa.

Chief Financial Officer: Luke Vogel

Mr. Vogel has served as our Chief Financial Officer since October 2008. Mr. Vogel also founded and has served as Chief Financial Officer at CustomOne CFO & Controllers in West Des Moines, Iowa since August 2004.

**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**

You will pay us a \$49,900 initial franchise fee when you sign the Franchise Agreement. The initial franchise fee is nonrefundable upon payment and is uniform for all new franchisees, except that some of our existing franchisees have the right to develop additional Farrell’s Centers under existing agreements and on different terms.

**ITEM 6  
OTHER FEES**

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Merchandise Royalty <sup>(1),(2)</sup>	5% of Merchandise Gross Sale, as may be reduced by the Compliance Rebate <sup>(4)</sup>	Monthly <sup>(5)</sup>	

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Service Royalty <sup>(1), (3)</sup>	Greater of 8½% of Service Gross Sales or Minimum Royalty, as may be reduced by the Compliance Rebate <sup>(4)</sup>	Monthly with annual reconciliation	The Minimum Royalty is \$11,250 for the first year of operations, \$15,000 for the second year of operations, and \$18,750 for the third and each additional year of operations. See Note 4 for information about the Compliance Rebate.
Marketing Fund contribution	Amount we determine periodically (currently \$0), subject to the Marketing Spending Requirement <sup>(6)</sup>	Monthly	Any amounts contributed to our Marketing Fund and any amounts you are required to contribute to an Advertising Cooperative will be credited toward this requirement
Cooperative contributions	Amount the Cooperative determines, subject to the Marketing Spending Requirement <sup>(6)</sup>	As Cooperative specifies	Any amounts contributed to our Marketing Fund and any amounts you are required to contribute to an Advertising Cooperative will be credited toward this requirement
Successor franchise fee	\$7,500	When signing successor franchise agreement	
Transfer <sup>(8)</sup>	\$10,000	Upon transfer	
Ongoing training and special assistance	Currently \$750 per day plus out-of-pocket costs and expenses, but could increase if our costs increase	As incurred	We may charge you for supplemental training courses, programs and conventions and for additional or special assistance or training you need or request
Replacement copy of Operations Manual	Currently \$50, but could increase if our costs increase	As incurred	Due only if you need a replacement copy
New product/supplier testing	Costs of testing	When billed	Covers costs of testing new products or inspecting new suppliers you propose
Relocation	Reasonable costs we incur	As incurred	Due only if you ask to relocate the Center

Type of Fee <sup>(1)</sup>	Amount	Due Date	Remarks
Costs to maintain Center	Reasonable costs we incur	Five days after billing	Due only if you do not maintain or upgrade the Center as required, and we choose to do so
Administrative Fee	\$250 per enforcement effort (i.e., written or verbal notification and follow up), and \$250 per week for each week that the issue remains unresolved	On demand	We may assess an administrative fee to compensate us for our time.
Audit	Cost of inspection or audit	As incurred	Due only if you fail to report or understate Royalty by 2% or more
Interest	Lesser of 1.5% per month or highest commercial contract interest rate law allows	15 days after billing	Due on all overdue amounts more than seven days late
Management fee	20% of combined Merchandise Gross Sales and Service Gross Sales while we manage Center	As incurred	Payable only if we or our designee manages Center after your (or your managing owner's) death or disability, after your default or abandonment, or after termination
Software license and Technology fees	\$450 per month	Monthly, due on or around the 20 <sup>th</sup> of each month.	Due monthly to us; we collect fees from all Centers and pay lump-sum to licensor with the exception of MyZone heart rate tracking system.
Costs and attorneys' fees <sup>(8)</sup>	Will vary under circumstances	As incurred	Due only if we prevail in legal proceeding
Indemnification <sup>(8)</sup>	Will vary under circumstances	As incurred	You must reimburse us if we are held liable for claims from your Center's operation, your business, breach of agreement or non-compliance with any law or regulation

Notes:

(1) Except as otherwise noted in this Item 6, all fees are imposed and collected by and payable to us, and all fees are non-refundable and currently are uniformly imposed. Upon notice to you, we may periodically change the timing and terms for payment of Royalties and other amounts payable to us under the Franchise Agreement. For example, we may change the frequency at which we calculate payments to weekly or bi-weekly.

(2) “Merchandise Gross Sales” means all revenue you derive from the sale of products at the Center’s pro shop, including cash, credit, and the fair market value of barter transactions. Merchandise Gross Sales does not include: (a) sales for which cash has been refunded, if you previously included those sales in Merchandise Gross Sales; or (b) sales or use tax, if paid to the appropriate taxing authority; or (c) the face value of coupons or discounts that customers redeem. For purposes of the royalty calculation, Merchandise Gross Sales are considered earned at the time of the sale, regardless of when merchandise is delivered and regardless of when funds are received in the case of credit.

(3) “Service Gross Sales” means revenue derived from providing services and all revenue derived from the operation of the Center which is not Merchandise Gross Sales. It includes cash, credit, and the fair market value of barter transactions, including the proceeds of business interruption insurance. Service Gross Sales does not include: (a) sales for which cash has been refunded, if you previously included those sales in Merchandise Gross Sales; or (b) sales or use tax, if paid to the appropriate taxing authority; or (c) the face value of coupons or discounts that customers redeem. Service Gross Sales are considered earned at the time of the sale, regardless of when services are performed and regardless of when funds are received in the case of credit.

(4) If you fully comply with your franchise obligations, you are eligible to receive a “Compliance Rebate” equal to ½% of Merchandise Gross Sales and 1% of Service Gross Sales. Compliance rebates are calculated twice a year, based on Merchandise Gross Sales and Service Gross Sales earned January 1 through June 30 (Period 1), and July 1 through December 31 (Period 2). Compliance Rebates earned during Period 1 will be applied on September 1; Compliance Rebates earned during Period 2 will be applied on March 1. When the Franchise Agreement expires, we will pay you any earned Compliance Rebate credit on the September 1 or March 1 following the expiration. If the Franchise Agreement terminates for any reason before its natural expiration, we will not pay any Compliance Rebate credit.

(5) We may require you to obtain overdraft protection for your business checking account in an amount we specify. You must reimburse us for any “insufficient funds” charges and expenses that we incur. If you fail to report the Center’s Merchandise Gross Sales or Service Gross Sales for any month, we may debit your account for 120% of the Royalty that we debited for the previous month. If the debited amount is less than the amount you actually owe, we will debit your account for the difference. If the debited amount is greater than the amount you actually owe us, we will credit the excess, without interest, against your next Royalty payment.

(6) Beginning on the first anniversary of the Franchise Agreement, you must spend at least 3% of the Center’s combined Merchandise Gross Sales and Service Gross Sales each calendar quarter on advertising, marketing and promotional programs for the Center (the “Marketing Spending Requirement”). Any amounts contributed to the Marketing Fund or an Advertising Cooperative will be credited toward satisfying this requirement.

**ITEM 7**  
**ESTIMATED INITIAL INVESTMENT**  
**FRANCHISE AGREEMENT**  
**YOUR ESTIMATED INITIAL INVESTMENT**

<b>Type of expenditure</b>	<b>Amount</b>	<b>Method of payment</b>	<b>When due</b>	<b>To whom payment is to be made</b>
Initial franchise fee <sup>(1)</sup>	\$49,900	Lump sum	See Item 5	Us
Training expenses <sup>(2)</sup>	\$10,000 to \$20,000	As agreed	As incurred	Third parties
Start-up marketing program	\$15,000 to \$25,000	As agreed	As directed by Franchisor	Us
Real estate services and costs (including three months' rent) <sup>(3)</sup>	\$17,500 to \$29,000	Installments	Typically monthly	Landlord
Security deposit <sup>(3)</sup>	\$5,000 to \$10,000	Lump sum	Typically when lease signed	Landlord
Construction and leasehold improvements <sup>(4)</sup>	\$0 to \$150,000	As agreed	As incurred	Contractors and other suppliers
Furniture, fixtures and equipment <sup>(5)</sup>	\$10,000 to \$28,000	As agreed	As incurred	Outside suppliers
Signage (interior and exterior)	\$10,000 to \$15,000	As agreed	As incurred	Outside suppliers
Opening inventory and supplies <sup>(6)</sup>	\$2,000 to \$5,000	As agreed	As incurred	Outside suppliers and us
Insurance	\$500 to \$1,000	As agreed	As incurred	Insurance company
Licenses	\$100 to \$1,000	As incurred	Typically lump sum	Government agencies
Miscellaneous expenses <sup>(7)</sup>	\$5,000 to \$40,000	As incurred	As incurred	Third parties
Additional funds – three months	\$5,000 to \$10,000	As incurred	As incurred	Third parties
<b>Total<sup>(9)</sup></b>	\$130,000 to \$383,900			

Except for the security deposit (which typically is refundable if you comply with the lease during its term), none of these expenditures is refundable.

Notes:

(1) See Item 5 for more information about the initial franchise fee.

- (2) There is no fee for the initial training program. The figures in the chart represent the estimated costs if you and your personnel temporarily relocate to Des Moines, Iowa for about six months to complete the Farrell's eXtreme Bodyshaping course as a student and undergo all of our initial training.
- (3) This estimate includes costs related to site evaluation, selection, lease negotiation, and three-months' rent for the Center. A standard Farrell's Center occupies approximately 3,500 to 5,000 square feet of space. The typical location for a Farrell's Center is a strip center in a suburban area. Rent depends on geographic location, size, local rental rates, businesses in the area, site profile, and other factors and could be considerably higher in large metropolitan areas. This estimate includes a security deposit equal to approximately one month's rent. A landlord might require you to pay a security deposit that is more than one month's rent. We anticipate that you will lease the Center's location. If you elect to purchase real estate, your costs will be substantially higher than the estimates in this chart. Real estate costs depend on location, size, visibility, economic conditions, accessibility, and competitive market conditions.
- (4) The estimate is to improve a 3,500 square foot property and includes amounts for construction, remodeling, fixed assets, leasehold improvements and decorating costs. This figure includes the costs of general contractors and licensed tradesmen to install electrical and plumbing fixtures. Your costs might be more or less than this estimate depending on where you plan to operate your Center. Leasehold improvement costs – including floor covering, wall treatment, counters, ceilings, painting, window coverings, electrical, carpentry and similar work, and contractor's fees – depend on the site's condition, location, and size; the demand for the site among prospective lessees; the site's previous use; the build-out required to conform the site for your Center; and any construction or other allowances the landlord grants. The landlord will often cover some, and in some cases might cover all, of these improvement costs, and the low-end estimate of \$0 assumes the landlord would cover all of these costs. However, the landlord normally will factor these allowances into your rent.
- (5) This includes items like gym flooring and equipment, ceiling fans, mirrors, a boxing ring, mats, ropes, strength training bands, office furniture, and the components and three months of required software licenses for the Computer System (defined in Item 11).
- (6) This includes costs for an initial inventory of items for your Center's pro shop and an initial supply of Course manuals. It also includes amounts for various office and cleaning supplies.
- (7) This includes costs for professional fees, utility deposits, and other organizational and pre-paid expenses.
- (8) This estimates the funds needed to cover your initial expenses for the first three months of operation (other than the items identified separately in the table). It includes payroll costs but not any draw or salary for you. This is only an estimate, and you might need additional working capital during the first three months you operate your Center and for a longer time period after that. This three-month period is not intended, and should not be interpreted, to identify a point at which your Center will break even. The level of pre-sales you make before you begin conducting Courses will impact your working capital needs.
- (9) We relied on our principals' experience developing and operating similar businesses in Iowa since 1989 to compile these estimates (including the estimate of additional funds). You should review these figures carefully with a business advisor before deciding to acquire the franchise. We do not offer financing directly or indirectly for any part of the initial investment. The availability and terms of financing depend on many factors, including the availability of financing generally, your creditworthiness and collateral, and lending policies of financial institutions from which you request a loan. We strongly recommend that you use these categories and estimates as a guide to develop your own business plan and budget and investigate specific costs in your area.

## ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

### Approved and Designated Suppliers

We can require you to purchase all furniture, fixtures, equipment, vehicles and signs necessary for the development and operation of the Center, Course materials and student manuals, and other products and services you use or provide at the Center from suppliers that we approve or designate, which may include our affiliates and us. Currently, we require franchisees to purchase student manuals, gloves and wraps, and heart rate monitors from designated suppliers, and you must acquire the CRM software platform through us. At our option, we also may require you to work with our real estate consultant or tenant representative.

Except for the CRM software platform, currently, neither we, nor our affiliates, are approved suppliers for any goods or services. None of our officers owns an interest in any privately-held suppliers, or a material interest in any publicly-held suppliers, of the franchise system. Occasionally, our officers may own non-material interests in publicly-held companies that may be suppliers to our franchise system.

If you wish to purchase an item or service for which we have established approved or designated suppliers from an unapproved source, you must provide us sufficient information, specifications, and samples for us to determine whether the product or service complies with our standards and specifications and that the supplier meets our criteria. If we choose to consider your proposed supplier, we may charge you a reasonable fee and will decide within a reasonable time (no more than 30 days). We may condition our approval of a supplier on requirements relating to product quality, prices, consistency, warranty, reliability, financial capability, labor relations, customer relations, frequency of delivery, concentration of purchases, standards of service (including prompt attention to complaints), and/or other criteria. We may inspect the proposed supplier's facilities and require the proposed supplier to deliver product samples or items, at our option, either directly to us or to any third-party we designate for testing. We may periodically re-inspect the facilities and products of any approved supplier and revoke our approval of any supplier, product or service that does not continue to meet our criteria by notifying you and/or the supplier. We have no obligation to consider requests for alternate supplier approval.

All products and services for which we have not established approved or designated suppliers must meet our System Standards and specifications, which may include brand and model requirements. We issue and modify System Standards and specifications based the experience of our principals and affiliates in operating Farrell's Centers. Standards and specifications may impose minimum requirements for production, performance, reputation, prices, quality, design, and appearance. Our Operations Manual or other communications will identify our standards and specifications for you and, where appropriate, you may provide those standards and specifications to suppliers.

### Insurance

You must acquire and maintain insurance coverage for the Center in the amounts, and covering the risks, that we periodically specify. Currently, we specify the following types and amounts of insurance:

- "All risk" property insurance with contents coverage and business interruption coverage;
- Crime insurance with a minimum coverage of \$10,000 per occurrence;
- General liability insurance with a minimum liability coverage of \$1,000,000 per occurrence and an aggregate limit of \$2,000,000;
- Professional liability insurance for personal trainers with a minimum coverage of \$1,000,000 per occurrence;
- Cyber liability insurance with a minimum coverage of \$25,000 per occurrence and an aggregate limit of \$25,000;

- Automobile liability insurance with hired and non-owned liability CSL of at least \$1,000,000 and if applicable for owned automobiles;
- Umbrella liability with a minimum coverage of \$10,000,000 per occurrence and an aggregate limit of \$10,000,000; and
- Workers' compensation insurance as required by state law.

Your insurance carriers must be licensed to do business in the state in which the Center is located and be rated A or higher by A.M Best and Company, Inc. (or such similar criteria as Franchisor periodically specifies). All liability policies must contain a separate endorsement naming us and our affiliates as additional insureds. All insurance policies must include a waiver of subrogation in favor of us and our affiliates, and must include a 30-day notice of cancellation directed to both you and to us or the person we designate. These insurance policies must be in effect before you open the Center for business. We may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage at any time to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or relevant changes in circumstances. These are minimum requirements only and you should consult with your own insurance advisor to determine whether they are appropriate and sufficient for your business and to protect your assets.

#### Marketing and Promotional Material

Before using them, you must send us, for our approval, samples of all advertising, promotional and marketing materials for the Center that we have not prepared or previously approved within the last six months. If you do not receive written notice of disapproval from us within 15 days after we receive the materials, they are deemed approved. You may not use any advertising, promotional or marketing materials that we have disapproved. We also will prepare a start-up marketing program for the Center that you must implement.

#### Center Location and Lease

You must send us for our approval any lease or sublease for the Center's site before you sign it. The lease must contain the terms and provisions that are reasonably acceptable to us. You may not relocate the Center without our approval. The Center must be designed and built out according to our specifications and according to applicable law and building code requirements. You must submit all construction and remodeling plans and specifications to us for our approval before beginning build-out for the Center and all revised or "as built" plans and specifications during construction and development. Our review is limited to ensuring your compliance with design requirements. Our review is not designed to assess compliance with federal, state, or local laws and regulations, including the ADA, as compliance with those laws is your responsibility.

#### Revenue Derived from Franchisee Purchases and Leases

We and/or our affiliates may derive revenue or other material consideration based on your purchases and leases to the extent that you purchase or lease products or services from us or our affiliates. We and/or our affiliates also have arrangements with certain suppliers whereby we or our affiliates receive rebates from franchisee purchase or leases calculated as a percentage of sales, ranging from five percent to 10%.

During our fiscal year ending on December 31, 2019, we derived \$16,496 as a result of required franchisee purchases or leases, or approximately one percent of our total revenue of \$1,540,953. None of our affiliates derived any revenue as a result of required franchisee purchases or leases during this period.

#### Estimated Proportion of Required Purchases and Leases to all Purchases and Leases

We estimate that approximately 60% to 80% of your expenditures for leases and purchases in establishing your Center, and approximately 60% to 80% of your total annual operating expenses on an ongoing basis,

will be for goods and services, that are subject to sourcing restrictions (that is, for which suppliers must be approved by us, or which must meet our standards or specifications).

Description of Purchasing Cooperatives; Purchasing Arrangements

There currently are no purchasing or distribution cooperatives. We and our affiliates currently negotiate purchase arrangements with suppliers (including price terms) for the items and services described earlier in this Item that you may obtain only from designated sources. We do not provide material benefits to you (for example, renewal or granting additional franchises) based on your purchase of particular products or services or use of particular suppliers.

**ITEM 9  
FRANCHISEE’S OBLIGATIONS**

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

Obligation	Section in Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	Sections 2.A. and 2.B. and Exhibit C of Franchise Agreement	Items 5, 7, 8, 11, and 12
b. Pre-opening purchases/leases	Sections 2.A., 2.B., 2.C., 2.D., 2.E., 5.A., 5.B., 5.D., 5.F., 5.G., and 5.H. of Franchise Agreement	Items 5, 7, 8, and 11
c. Site development and other pre-opening requirements	Sections 2.B. to 2.G., 4.A. to 4.D., 5.A., 5.B., 5.D., 5.F., 5.G., and 7.A. of Franchise Agreement	Items 5, 7, 8, and 11
d. Initial and ongoing training	Section 4 of Franchise Agreement	Items 6, 7, and 11
e. Opening	Section 2.G. of Franchise Agreement	Items 8, 11 and 12
f. Fees	Sections 2.A., 2.D., 2.E., 2.H., 4.E., 4.F., 4.H., 5.A., 6, 7.A., 7.B., 9.B., 13.C., 13.E.(2), 14, 15.C., 16.A., and 18.C. of Franchise Agreement	Items 5, 6, 7 and 8
g. Compliance with standards and policies/operating manual	Sections 4.A., 4.B., 4.C., 4.D., 4.E., 4.H., 5, and 17.D. of Franchise Agreement	Items 8 and 11
h. Trademarks and proprietary information	Sections 10 and 11 of Franchise Agreement	Items 13 and 14
i. Restrictions on products/services offered	Sections 2.F., 5.B., 5.C., and 5.H. of Franchise Agreement	Items 11, 12, and 16
j. Warranty and customer service requirements	Sections 5.E., and 5.G. of Franchise Agreement	Not Applicable
k. Territorial development and sales quotas	No provision	Item 12

Obligation	Section in Agreement	Disclosure Document Item
l. On-going product/service purchases	Sections 2.D., 2.E., 4.E., 5.D., and 5.G. of Franchise Agreement	Items 6 and 8
m. Maintenance, appearance and remodeling requirements	Sections 2.C., 5.A., and 5.G. of Franchise Agreement	Items 8, 11, 16, and 17
n. Insurance	Section 5.F. of Franchise Agreement	Item 7
o. Advertising	Section 7 of Franchise Agreement	Items 5, 6, 7, 8, and 11
p. Indemnification	Section 17.D. of Franchise Agreement	Item 6
q. Owner's participation/management/staffing	Sections 1.C., 1.D., 4.A., to 4.E. and 5.G. of Franchise Agreement	Items 11 and 15
r. Records and reports	Section 8 of Franchise Agreement	Item 6
s. Inspections and audits	Section 9 of Franchise Agreement	Item 6
t. Transfer	Section 13 of Franchise Agreement	Items 6 and 17
u. Renewal	Section 14 of Franchise Agreement	Items 6 and 17
v. Post-termination obligations	Section 16 of Franchise Agreement	Item 17
w. Non-competition covenants	Sections 12 and 16.E. of Franchise Agreement	Items 15 and 17
x. Dispute resolution	Sections 18.C. and 18.F. to 18.M. of Franchise Agreement	Item 17
y. Guaranty and Assumption of Obligations	Section 13.C. and Exhibit D of the Franchise Agreement	Item 15

## 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, Farrell's eXtreme Bodyshaping, Inc. is not required to provide you with any assistance.**

### Pre-Opening Assistance

Before you begin operating the Center, we will:

1. Provide you and your personnel with initial training as described below. (Franchise Agreement – Sections 4.A. to 4.D.)
2. Evaluate sites that you propose to determine whether they meet our criteria. You have three months after signing the Franchise Agreement to secure a site that we have approved. If you fail to secure a site within this time period, we may terminate the Franchise Agreement. We will use reasonable

- efforts to review and respond to your request within 30 days after we receive all requested information about the proposed site. (Franchise Agreement – Sections 2.A. and 15.B.)
3. Approve the lease for the Center. You must present to us for our approval any proposed lease or sublease for the Center’s approved site, and we may require that you engage the assistance of a tenant representative or attorney in lease negotiations. You must receive our approval of the lease before you sign it. The lease must contain the terms and provisions that are reasonably acceptable to us, and you and the landlord must sign the Collateral Assignment of Lease attached to the Franchise Agreement. (Franchise Agreement – Section 2.B.)
  4. Provide you mandatory and suggested specifications and layouts for a Farrell’s Center, including requirements or recommendations (as applicable) for dimensions, design, interior layout, décor, and all required furniture, fixtures, equipment (including components and required software licenses for the computer system, vehicles and signs that we periodically require for the Center and the franchised business (“Operating Assets”). (Franchise Agreement – Section 2.C.)
  5. We will provide names of approved suppliers, and our Operations Manual provides specifications for some items. We do not deliver or install any items. (Franchise Agreement – Sections 2.D., 2.E., 5.A., 5.D. and 5.H.)
  6. Authorize you to sell memberships, rights to attend Courses, and other rights to participate in the services at the Center (so-called “pre-sale”) if you meet our requirements. We will not authorize your pre-sale activities unless: (a) you expect to open the Center for business within the next 60 days; (b) you (or your managing owner) have completed to our satisfaction the General Business Training described below; and (c) you have secured all financing and permits necessary to develop and fully equip the Center. You are responsible for ensuring that your membership agreements and pre-sale activities comply with all applicable laws. (Franchise Agreement – Section 2.F.)
  7. Provide you access to our operating manual and other technical manuals (“Operations Manual”). The Operations Manual may include audio and video recordings, computer disks, compact disks, DVDs and/or other written or intangible materials that we may make available to you by various means, including access through the Extranet. The Operations Manual contains System Standards and information on your other obligations under the Franchise Agreement. We may modify the Operations Manual periodically to reflect changes in System Standards, but these modifications will not alter your fundamental rights or status under the Franchise Agreement. The Operations Manual currently contains approximately 386 pages and its current table of contents is Exhibit D. (Franchise Agreement – Section 4.H.)
  8. Consult with and jointly prepare with you a written start-up marketing program that contemplates spending an agreed amount on the initial promotion of the Center (the “Start-up Marketing Budget”) that we will approve. You must implement the approved program according to our requirements. You will use the Start-up Marketing Budget to pay providers of products and services according to the approved start-up marketing program. (Franchise Agreement – Section 7.A.)

#### Ongoing Assistance

During your operation of your Center, we will:

1. Provide such continuing advice as we deem necessary and appropriate. (Franchise Agreement – Section 4.G.)
2. Provide you, at your request and expense (and our option), additional or special guidance, assistance, and training. Any specific ongoing training, conventions, advice or assistance we provide does not create an obligation to continue providing that specific training, convention, advice or assistance, all of which we may discontinue and modify at any time. (Franchise Agreement – Section 4.G.)

3. Issue and modify System Standards. Because of our periodic modification of the System Standards (including to accommodate changes to the required Computer System for Farrell’s Centers and the Marks), you might need to invest additional capital in and otherwise improve and develop the Center and incur higher operating costs. You must comply with those obligations within the time period we specify. (Franchise Agreement – Sections 5.G. and 5.H.)
4. At our option, maintain and administer a marketing fund for the advertising, marketing and public relations programs and materials that we deem appropriate (the “Marketing Fund”). We describe the Marketing Fund and other aspects of our advertising, marketing and promotional programs later in this Item. (Franchise Agreement – Section 7.B.)

## **Advertising and Marketing Programs**

### Marketing Fund

We may, upon at least 60 days’ written notice to you, establish, and then administer and control, a Marketing Fund. You must contribute the amount that we periodically specify to the Marketing Fund. Although not contractually obligated, we anticipate that company-owned and affiliate-owned Farrell’s Centers will contribute to the Marketing Fund on the same basis as franchisees. Some of our existing franchisees might contribute at a lower rate.

We will direct all programs that the Marketing Fund finances, with sole control over the creative concepts, materials and endorsements used and their geographic, market and media placement and allocation. The Marketing Fund may pay for preparing and producing video, audio and written materials and electronic media and using social media, including mail pieces and welcome kits for new members; maintaining and administering one or more System Websites and otherwise establishing an online presence; administering regional and multi-regional marketing and advertising programs, including creating and/or purchasing trade journal, direct mail, radio and other media advertising and using advertising, promotion and marketing agencies and other advisors to provide assistance; and supporting public relations, market research and other advertising, promotion and marketing activities. The Marketing Fund may advertise locally, regionally, and/or nationally in printed materials, on radio or television, and/or on the Internet, whatever we think best. We and/or an outside national or regional advertising agency will produce all advertising and marketing. The Marketing Fund periodically will make available samples of advertising, marketing and promotional formats and materials at no cost and will sell you multiple copies of these materials at its direct cost of producing them, plus any related shipping, handling and storage charges.

We will account for the Marketing Fund separately from our other funds and not use the Marketing Fund for any of our general operating expenses. However, the Marketing Fund may reimburse us and our affiliates for the reasonable salaries and benefits of personnel who manage and administer the Marketing Fund or otherwise provide assistance or services to the Marketing Fund, the Marketing Fund’s administrative costs, travel expenses of personnel while they are on Marketing Fund business, meeting costs, overhead relating to the Marketing Fund’s business, and other expenses that we and our affiliates incur in administering or directing the Marketing Fund and its programs, including conducting market research, preparing advertising, promotional and marketing materials, and collecting and accounting for Marketing Fund contributions. We will not use the Marketing Fund’s resources principally to develop materials and programs to solicit new franchise sales.

The Marketing Fund is not a trust, and we do not owe you fiduciary obligations concerning its administration. The Marketing Fund may spend in any fiscal year more or less than the total Marketing Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. We will use all interest earned on Marketing Fund contributions to pay costs before using the Marketing Fund’s other assets. The Marketing Fund need not be audited, but we may have the Fund audited at the Fund’s expense. We may incorporate the Marketing Fund or operate it through a separate entity whenever we deem appropriate.

We intend the Marketing Fund to maximize recognition of the Marks and patronage of Farrell's Centers. We are not obligated to spend any amount on advertising in the area where your Farrell's Center is located. We have the right, but no obligation, to use collection agents and institute legal proceedings to collect Marketing Fund contributions at the Marketing Fund's expense. We also may forgive, waive, settle and compromise all claims by or against the Marketing Fund. We assume no other direct or indirect liability or obligation to you for collecting amounts due to, maintaining, directing or administering the Marketing Fund.

We may at any time defer or reduce the Marketing Fund contributions of a Farrell's Center franchisee and, upon 30 days' prior written notice, reduce or suspend Marketing Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Marketing Fund. If we terminate the Marketing Fund, we will distribute all unspent funds to our then existing franchisees, and to us and our affiliates, in proportion to our and their respective Marketing Fund contributions during the preceding 12-month period.

Upon your reasonable written request, we will provide you an annual unaudited statement of Fund contributions and expenditures. As of the date of this disclosure document, we have not yet implemented the Fund and, therefore, the Fund had no expenditures during our 2019 fiscal year.

#### Franchisee Advisory Council

We may establish a franchisee advisory council that may advise us on our advertising programs and expenditures, but the franchisee advisory council does not have operational or decision-making authority, and we maintain final decision-making authority regarding all matters that come before the council. All franchisees in good standing may be allowed to participate in the franchisee advisory council, and the members and council representatives will be selected in accordance with the advisory council bylaws. The council bylaws give us the power to amend or dissolve the council.

#### Advertising Cooperatives

We may designate a geographic area in which two or more Farrell's Centers are located as an area for a Cooperative. The Cooperative's members in any area are the owners of all of the Farrell's Centers located and operating in that area (including us and our affiliates, if applicable). We will determine how each Cooperative is organized and governed and when it begins operating. We may form, change, dissolve and merge Cooperatives. Each Cooperative's purpose is, with our approval, to administer advertising programs and develop advertising, marketing and promotional materials for the area that the Cooperative covers. You must sign the documents that we require to become a member of the Cooperative we specify and participate in the Cooperative as those documents require. We anticipate that Cooperatives will operate from written governing documents that members may review.

All material decisions of the Cooperative, including contribution levels (which also require our approval), will require the affirmative vote of at least 51% of all Farrell's Centers operating within the Cooperative's area including, if applicable, those that we or our affiliate operate. Each Farrell's Center receives one vote. All Cooperative members will contribute at the same approved rate, subject to the Marketing Spending Requirement. The Cooperative will determine whether to prepare annual or periodic financial statements.

#### System Website and Electronic Advertising

We or one or more of our designees may establish a website or series of websites for the Farrell's Center network (collectively, the "System Website"). If we include information about the Center on the System Website, you must give us the information and materials that we periodically request concerning the Center (including class times and instructor information) and otherwise participate in the System Website in the manner that we periodically specify. By posting or submitting information or materials for the System Website, you are representing to us that the information and materials are accurate and not misleading and do not infringe any third-party's rights.

We own all intellectual property and other rights in the System Website and all information it contains, including the domain name or URL for the System Website, the log of “hits” by visitors, and any Data and other personal or business data that visitors (including you and your personnel) supply. We may use the Marketing Fund’s assets to develop, maintain and update the System Website. We may implement and periodically modify System Standards relating to the System Website and, at our option, may discontinue the System Website, or any services offered through the System Website, at any time.

All advertising, marketing and promotional materials that you develop for the Center must contain notices of the System Website’s URL in the manner that we periodically designate. You may not develop, maintain or authorize any other website, other online presence or other electronic medium that mentions or describes the Center or displays any of the Marks without our prior approval. You may not conduct commerce or directly or indirectly offer or sell any products or services using any website, another electronic means or medium, or otherwise over the Internet. We have the right to maintain websites other than the System Website and to offer and sell products and services under the Marks from the System Website, another website or otherwise over the Internet without payment or obligation of any kind to you.

#### Approval of Advertising

All of your (and your Cooperative’s) advertising, promotion and marketing must be completely clear, factual and not misleading and conform to the highest ethical standards and the advertising and marketing policies that we periodically specify. Before using them, you must send us for our approval samples of all advertising, promotional and marketing materials that we have not prepared or previously approved within the previous six months. If you do not receive written notice of disapproval from us within 15 days after we receive the materials, they are deemed approved. You may not use any advertising, promotional or marketing materials that we have disapproved. We assume no liability to you or any other party for our approval or disapproval of any advertising, marketing or promotional materials or programs, and you must ensure that all of these materials and programs you use comply with all applicable laws.

#### **Computer System**

You must obtain and use the computer hardware and software that we periodically specify, including hardware components, dedicated telephone and power lines, modems, printers, software licenses, and other computer-related accessories and peripheral equipment (the “Computer System”). You currently will use the Computer System to access the Extranet and to input and access information about your members, sales and operations. The Extranet also will function as a web-based point-of-sale system for all transactions at the Center. The Computer System will store some Data and other data and information about the Center’s members, finances and operations based on information you input.

The Computer System’s required hardware components include a personal computer/processor, monitor, scanner, credit card reader, and receipt and other printers, which hardware items are generally available from a number of retailers. We estimate that it will cost about \$2,500 to buy these Computer System’s components when you develop the Center.

The Computer System’s required software currently includes QUICKBOOKS accounting software (about \$250 to purchase at various retailers) and our prescribed customer relationship management (“CRM”) system platform from a supplier or manufacturer we designate (currently MINDBODY, and FRANCONNECT) that includes point-of-sale software and links to QUICKBOOKS. You will pay us an ongoing technology fee (currently \$159 per month) on a monthly basis for use of the CRM platform that we collect from all Centers and pass through to the vendor. You may need to acquire any other software downloads necessary for your Computer System to access the primary software over the Extranet. Besides the monthly CRM license fee, you currently do not need to obtain, and no party has any obligation to provide, any other maintenance, repairs, updating, upgrading or ongoing support contracts for the Computer System. Because of varying market conditions and retailers who provide the Computer System’s

components, we are unable to estimate the annual cost of any optional maintenance, updating, upgrading or support contracts beyond the ongoing CRM system licensing fee.

We may periodically modify specifications for and components of the Computer System. Our modification of specifications for the Computer System, and/or other technological developments or events, may require you to purchase, lease and/or license new or modified computer hardware, software and other components and to obtain service and support for the Computer System, including all related costs. Within 60 days after we deliver notice to you, you must obtain any further Computer System components that we designate and ensure that your Computer System, as modified, is functioning properly. No contract limits the frequency or cost of these obligations. We and our affiliates may condition any license of required or recommended proprietary software to you, and/or your use of technology developed or maintained by or for us (including the Extranet), on your signing a software license agreement or similar document, or otherwise agreeing to the terms (for example, by acknowledging your consent to and accepting the terms of a click-through license agreement), that we and our affiliates periodically specify to regulate your use of, and our (or our affiliate's) and your respective rights and responsibilities for, the software or technology. We and our affiliates may charge you up-front and ongoing fees for any required or recommended proprietary software or technology that we or our affiliates license to you in the future and for other Computer System maintenance and support services provided during the Franchise Agreement's term. Besides the ongoing CRM platform license fee, we cannot estimate other future costs of the Computer System or required service or support that you may incur for additions, modifications, or required service and support of the Computer System during the franchise term. We will have unlimited, independent access to all of the information and data in the Computer System.

## **Opening**

We estimate that you will begin operating the Center within three to six months after you sign the Franchise Agreement. The specific timetable for opening depends on how quickly you finalize the Center's lease; the Center's condition and the extent to which you must upgrade or remodel it; the construction schedule; the delivery schedule for Operating Assets and supplies; schedule for completing training; and complying with local laws and regulations. You may not begin operating the Center (except for approved pre-sale activities, as described above) until: (1) you have properly developed and equipped the Center according to our standards and specifications and in compliance with all applicable laws; (2) the Center's personnel have completed all pre-opening training to our satisfaction; (3) you have paid all amounts owed to us and our affiliates; (4) you have obtained all required licenses and permits to operate the Center; (5) you have given us copies of all required insurance policies required and other evidence of insurance coverage; and (6) we have conducted (or notified you that we will not conduct) a pre-opening inspection and approved the Center for opening.

You must begin operating the Franchised Business on or before the opening deadline listed in the Franchise Agreement. We will determine the opening deadline for each situation depending on the factors described above that impact the timetable for opening. The opening deadline typically will not be shorter than three months, or longer than six months, after you sign the Franchise Agreement.

## **Training**

Lance Farrell, our founder, supervises all aspects of all our training programs. He has worked in the health and fitness field since 1980. Other individuals also assist with training, and they generally have at least two years' experience in their appropriate subject areas. FUSMA's other employees also assist with training, and they generally have at least two years' experience in their appropriate subject areas. Training is scheduled on an as needed basis. Training occurs at our company headquarters and our affiliate's operating Farrell's Center near Des Moines, Iowa. We use manuals (including the Operations Manual), videos, web-based training and handouts in our training programs for operators of Farrell's Centers. We do not charge any fees for the initial (pre-opening) training program, but you must pay our then current fees for any additional or supplemental training we provide. You also must pay your personnel's travel, living and other

expenses and compensation incurred while attending any training programs or working at Farrell’s Centers that is part of their development.

General Business Training

Before you begin soliciting customers for the Center or conducting pre-sale, and within 90 days after signing the Franchise Agreement, you (or your managing owner) must attend and complete our initial training program on the general business aspects of operating a Farrell’s Center (“General Business Training”). General Business Training may include classroom training of which a portion of it may be video based, instruction at designated facilities, hands-on training at an operating Farrell’s Center, remote training (including via video recording, DVD or Internet access), and/or self-study programs (including online Internet training on topics related to marketing, social media, and small business operations). We will provide General Business Training for no additional fee for three people associated with your Center, including you (or your managing owner) and others whom you choose. You (or your managing owner) and any other personnel you choose must complete the General Business Training program to our satisfaction. The following chart describes our current General Business Training program:

**TRAINING PROGRAM  
for General Business Training**

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Point-of-sale system/Extranet	6	0	Farrell’s Center in Des Moines and/or Extranet and FXBu Tools
Phone skills and system	6	0	Farrell’s Center in Des Moines and/or Extranet and FXBu Tools
Marketing and advertising	6	0	Farrell’s Center in Des Moines and/or Extranet and FXBu Tools
Sales training	16	0	Farrell’s Center in Des Moines and/or Extranet and FXBu Tools
<b>Total Hours</b>	<b>34</b>	<b>0</b>	

Basic Instructional Training

Just after you sign a Franchise Agreement, you will begin our initial training program on instructing the various Courses, including “on-the-job” instruction of classes and coaching, that Farrell’s Centers offer (the “Basic Instructional Training”). You (or your managing owner) and all other individuals who will instruct any class at the Center (together with you or your managing owner, “Instructors”) must attend and complete Basic Instructional Training to our satisfaction before you open the Center for business. Basic Instructional Training may include classroom training of which a portion of it may be video based, hands-on training at an operating Farrell’s Center, remote training (including via video recording, DVD or Internet access) and self-study programs. As part of the Basic Instructional Training, we may require Instructors to conduct Courses and perform other work without compensation from us or our affiliate at an operating Farrell’s Center that we specify. The following chart describes our current Basic Instructional Training program:

**TRAINING PROGRAM  
for Basic Instructional Training**

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Kickboxing	6	6	Farrell’s Center in Des Moines and/or Extranet and FXBu Tools
Strength training	6	6	Farrell’s Center in Des Moines and/or Extranet and FXBu Tools
Coaching	2	0	Farrell’s Center in Des Moines and/or Extranet and FXBu Tools
<b>Total Hours</b>	<b>14</b>	<b>12</b>	

Instructor Certification Training

At least one Instructor (which may be you or your managing owner) that works at the Center must fulfill all of our required fitness, skill, and instructional proficiency levels and maintain the other training, perform the other tasks, and satisfy the other conditions that we periodically specify to achieve and retain certification at each of three separate proficiency levels (collectively, “Instructor Certification Training”) before or within 18 months after you open the Center. Instructor Certification Training involves hands-on training at an operating Farrell’s Center, including Course instruction and performing other work without compensation from us or our affiliates at any operating Farrell’s Center that we specify.

Before you open the Center for business, you (or your managing owner) or another Instructor that works at your Center must successfully fulfill all of our required fitness, skill, and instructional proficiencies, and maintain or perform the other training, tasks, and other conditions that we periodically specify to achieve and retain at least a Level 1 Certification (defined below) in the Instructor Certification Training. At least one Instructor at the Center with Level 1 Certification must achieve both a Level 2 Certification and a Level 3 Certification (each defined below) in the Instructor Certification Training according to our then-current requirements within 18 months after you begin operating the Center.

You (or your managing owner) will designate an Instructor that has achieved a Level 3 Certification (or, if within the first 18 months of operating the Center, an Instructor with Level 1 Certification that is working toward achieving a Level 3 Certification) as the “Certified Instructor Trainer” for the Center. The Certified Instructor Trainer at your Center will implement a training program for all other Instructors using training standards and procedures that we periodically specify and staff the Center at all times with a sufficient number of trained employees. No individual may instruct any Course at the Center unless he or she has successfully completed either the Basic Instructional Training or a training program that the Center’s Certified Instructor Trainer has conducted according to our training standards and procedures. During the Franchise Agreement’s term, if the Center does not have a Certified Instructor Trainer working an average of at least 20 hours per week at the Center, then you must choose another Instructor who must complete the training and other tasks that we require for that individual to become a Certified Instructor Trainer for the Center within 90 days.

The certification levels and related programs we describe below represent our current requirements for Instructor Certification Training. We may modify these requirements at any time according to our updated standards and procedures.

Level 1 Certification: “Level 1 Certification” means that an Instructor has successfully achieved all of our required fitness, skill, and instructional proficiencies and maintained the other training, performed the other tasks, and satisfied the other conditions that we periodically specify to achieve a Level 1 training designation. The Level 1 Certification process currently includes your Instructor’s completion of at least three training sessions that Lance Farrell (or another representative we designate) teaches, approximately

six months serving as a trainee instructor during which the designated Instructor will teach at least 25 classes, and any additional coaching we provide, as we deem necessary. The following chart describes the training program associated with Level 1 Certification:

**TRAINING PROGRAM  
for Level 1 Certification**

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Kickboxing	3	18	Farrell’s Center in Des Moines (or other Farrell’s Center)
Strength training	3	18	Farrell’s Center in Des Moines (or other Farrell’s Center)
<b>Total Hours</b>	<b>6</b>	<b>36</b>	

Level 2 Certification: “Level 2 Certification” means that an Instructor has successfully achieved all of our required fitness, skill, and instructional proficiencies and maintained the other training (including first aid and CPR certification), performed the other tasks, and satisfied the other conditions that we periodically specify to attain the next highest certification level after Level 1. The Level 2 Certification process currently includes the Instructor attending at least three training sessions that Lance Farrell (or another representative we designate) teaches, acquiring 12 months of consistent successful teaching experience while certified as a Level 1 Instructor in either kickboxing or strength training (but not both), teaching at least 50 classes, and receiving at least one successful evaluation of the Level 1 Instructor’s abilities that we or our designee will conduct and complete. The following chart describes the current training program associated with Level 2 Certification:

**TRAINING PROGRAM  
for Level 2 Certification**

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Kickboxing	2	36	Farrell’s Center in Des Moines (or other Farrell’s Center)
Strength training	2	36	Farrell’s Center in Des Moines (or other Farrell’s Center)
<b>Total Hours</b>	<b>4</b>	<b>72</b>	

Level 3 Certification: “Level 3 Certification” means that an Instructor or other individual has successfully achieved all of our required fitness, skill, and instructional proficiencies and maintained the other training, performed the other tasks, and satisfied the other conditions that we periodically specify to attain the next highest certification level after Level 2. The Level 3 Certification process currently includes the Instructor attending at least two training sessions that Lance Farrell (or another representative we designate) teaches, acquiring at least 12 months of consistent successful teaching experience while certified as a Level 2 Instructor in both kickboxing and strength training, teaching at least 50 classes, and receiving at least one successful evaluation of the Instructor’s abilities that we or our designee will conduct and complete. The following chart describes the current training program associated with Level 3 Certification:

**TRAINING PROGRAM  
for Level 3 Certification**

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Kickboxing	2	36	Farrell’s Center in Des Moines (or other Farrell’s Center)
Strength training	2	36	Farrell’s Center in Des Moines (or other Farrell’s Center)
<b>Total Hours</b>	<b>4</b>	<b>72</b>	

Supplemental and Refresher Training

We may require you (or your managing owner) and/or previously trained and experienced Center personnel (including Instructors) to attend and satisfactorily complete various training courses, programs and conventions that we choose to provide periodically at the times and locations that we designate. We may charge reasonable fees for these training courses, programs and conventions. We currently require Instructors to attend refresher training in the form of certification seminars that we (or our designees) conduct on a semi-annual basis. Otherwise, we currently have no plans to conduct any specific additional or refresher training programs.

**ITEM 12  
TERRITORY**

Except for the territorial protection described below, you will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

If the Center location has not been identified at the time the Franchise Agreement is signed, then within three months after the effective date of the Franchise Agreement, you must obtain our approval of a site within the Site Selection Area identified in the Franchise Agreement. The Site Selection Area is nonexclusive, meaning that we and third parties may be evaluating real estate opportunities and developing Farrell’s Centers in the Site Selection Area before, during, and after the Site Selection Period.

You will operate the Center only at the approved site. If the Center’s lease expires or is terminated without your fault, or if the Center is destroyed, condemned, or otherwise rendered unusable, we will allow you to relocate the Center to a new site acceptable to us at your sole expense.

You will have limited territorial protection within a three-mile radius surrounding the center (your “Territory”). Neither we nor our affiliates will operate, or authorize any other party to operate, a Farrell’s Center in the Territory. Otherwise your rights under the Franchise Agreement are non-exclusive and we and our affiliates reserve for ourselves all other rights to use the Marks and elements of the System. We can develop and operate or franchise the operation of Farrell’s Centers outside the Territory, on any terms and conditions we deem appropriate. We also have the right to offer, sell, and distribute, in and outside the Territory, products and services such as books, magazines, instructional materials, online and remote classes, workout and training videos, DVDs, and online streaming content, equipment, fitness products, nutritional products, athletic gear, etc. without compensation to you. Distribution channels may include, without limitation, online commerce, through retail stores, by televised sales pitch, catalog, or social media solicitation, or any other source of commerce.

Neither we nor our affiliates are restricted from soliciting or accepting orders from consumers in the Territory, and we are not required to compensate you for sales made in the Territory. You may advertise and market to customers outside the Territory, but you may only sell products and provide services at the

Farrell's Center. You may not distribute products or services through other channel of distribution, including the Internet, catalog sales, telemarketing, or other direct marketing, to make sales.

Neither we nor our affiliate operates, franchises, or has present plans to operate or franchise a business under a different trademark that sells or will sell goods or services similar to those you will sell, but we may do so in the future.

You have no options, rights of first refusal, or similar rights to acquire additional franchises. Continuation of your territorial rights does not depend on your achieving a certain sales volume, market penetration or other contingency. If you commit certain defaults under the Franchise Agreement, we may temporarily or permanently reduce the size of your Territory. Otherwise, we may not alter your Territory or territorial rights. There are no minimum sales conditions, but you will owe us additional Royalty if you fail to achieve specified minimum Service Gross Sales.

### ITEM 13 TRADEMARKS

We own and have registered the following principal Marks on the Principal Register of the United States Patent and Trademark Office (the "PTO"). All required affidavits have been filed:

MARK	REGISTRATION NUMBER	REGISTRATION DATE	SERVICES
	5123371	1/17/17	Physical fitness instruction
FARRELL'S EXTREME BODYSHAPING (standard character)	3817655	7/13/10	Physical fitness instruction
FXB (standard character)	3671680	8/25/09	Physical fitness instruction
FARRELL'S (standard character)	3649762	7/9/09	Physical fitness instruction
EXTREME BODYSHAPING (standard character)	3814145	7/6/10	Physical fitness instruction
FARRELL'S INFINITE TRANSFORMATION (standard character)	3668536	10/18/09	Physical fitness instruction
MOTIVATION TO TRANSFORMATION (standard character)	4715760	4/7/2015	Physical fitness instruction
LIFE AT LEVEL 10 (standard character)	4353871	6/18/13	Physical fitness instruction
RESULTS ARE TYPICAL (standard character)	3837871	8/24/10	Physical fitness instruction
THE EXTREME IS IN THE RESULTS (standard character)	5391895	1/30/18	Physical fitness training of individuals and groups

We own and applied to register the following principal Mark on the Principal Register of the United States Patent and Trademark Office (the “PTO”), and the application published for opposition on March 17, 2020. We do not have a federal registration for this trademark. Therefore, this trademark does not have many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.

MARK	SERIAL NUMBER	APPLICATION DATE	SERVICES
	88607788	9/6/19	Physical fitness instruction

There are no agreements that limit our right to use or sublicense any of the Marks. There are no currently effective material determinations of the PTO, the Trademark Trial and Appeal Board, or any state trademark administrator or court, and no pending infringement, opposition, or cancellation proceedings or material federal or state court litigation, involving the principal Marks. We do not know of either superior prior rights or infringing uses that could materially affect your use of the Marks in any state.

You must follow our rules and other System Standards when using the Marks. If we believe at any time that it is advisable for us and/or you to modify, discontinue using and/or replace any Mark, and/or use one or more additional or substitute trademarks or service marks, you must comply with our directions within a reasonable time after receiving notice. We need not reimburse you for your expenses in complying with these directions (such as costs that you incur in changing the signs or replacing supplies for the Center), for any loss of revenue due to any modified or discontinued Mark, or for your expenses of promoting a modified or substitute trademark or service mark.

You may use only the Marks that we designate, must use them only in the manner that we authorize and permit, and must use them with the symbols, “®”, “TM”, or “SM”, as appropriate. You may use the Marks only for the operation and promotion of the Center and only in the manner we prescribe. You may not contest ownership or validity of the Marks or any registration of the Marks or our right to use or to sublicense the use of the Marks. You must sign all documents that we require in order to protect the Marks and to maintain their validity and enforceability.

You may not use the Marks or any part of the Marks in your legal name, and you may not use them to incur any obligation or indebtedness on our behalf.

You may not use the Marks or any part or derivative of the Mark on the Internet, except as expressly permitted in writing. This prohibition includes use of the Marks or any derivative of the Marks as part of any URL or domain name, as well as their registration as part of any user name on any gaming website or social networking web site (such as FACEBOOK, INSTAGRAM, or TWITTER), whether or not such social media platform is used for commercial gain, or as part of any unauthorized email address.

You must notify us immediately of any actual or apparent infringement of or challenge to your use of any Mark or of any person’s claim of any rights in any Mark (or any identical or confusingly similar trademark) or claim of unfair competition relating to any Mark. We may take the action that we deem appropriate (including no action) and control exclusively any litigation, PTO proceeding or other administrative proceeding arising from any infringement, challenge or claim or otherwise concerning any Mark. You must sign any documents and take any other reasonable actions that, in our attorney’s opinion, are necessary or advisable to protect and maintain our interests in any litigation or PTO or other proceeding or otherwise to protect and maintain our interests in the Marks.

We will reimburse you for all damages and expenses you incur in any trademark infringement proceeding disputing your authorized use of any Mark if you have timely notified us of, and complied with our

directions in responding to, the proceeding. At our option, we and/or our affiliate(s) may defend and control the defense of any proceeding arising from or relating to your use of any Mark.

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

We do not own any patents or registered copyrights that are material to the franchise, nor are there any pending patent applications. We and FUSMA do claim copyright protection and proprietary rights in the original materials used in the franchise system, including our procedures, manuals, correspondence and communications with our franchisees, training materials, advertising, and promotional materials, the content and design of our web site, and other written materials relating to the operation of Farrell's Centers and the franchise system ("Copyrighted Works").

There is no presently effective determination of the U.S. Copyright Office (Library of Congress) or any court affecting our copyrights. There is no currently effective agreement that limits our right to use and/or license our copyrights. We are not obligated by the franchise agreement, or otherwise, to protect any rights you have to use the copyrights. We have no actual knowledge of any infringements that could materially affect the ownership, use, or licensing of the copyrights. You may not use any of our copyrighted works on the Internet without our written permission. This includes display of the copyrighted works on commercial websites, gaming websites, and social networking web sites (such as FACEBOOK, INSTAGRAM, or TWITTER).

You and your employees must keep confidential during and after the term of the Franchise Agreement all proprietary information, including but not limited to the manuals. Upon termination of your Franchise Agreement, you must return to us all proprietary information, including but not limited to the manuals and all other copyright material. You must notify us immediately if you learn about an unauthorized use of proprietary information. We are not obligated to take any action and we have the sole right to decide the appropriate response to any unauthorized use of proprietary information. You must comply with all changes to the manuals at your cost.

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

If the franchisee is a business entity, an individual whom we approve must own more than 50% of business entity and devote full time and best efforts to the operation and promotion of the Franchised Business. We call this person your "Managing Owner." Your Center also must have a Certified Instructor Trainer meeting our qualifications who trains your other personnel, although your Certified Instructor Trainer need not have any equity interest in the franchise. Your managing owner, Certified Instructor Trainer, and all Instructors must attend and satisfactorily complete all applicable training and, if we require, sign confidentiality agreements.

Each owner of a business entity franchisee must personally guarantee all of the franchisee's obligations under the Franchise Agreement and agree to be bound personally by all of the financial and nonfinancial obligations of the Franchise Agreement, including the covenant not to compete. This "Guaranty and Assumption of Obligations" is attached as Exhibit D of the Franchise Agreement. The term "Owner" refers to anyone with a beneficial ownership in the franchise. "Owners" include shareholders of a corporation, members of a limited liability company, and limited partners of a limited partnership.

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

The Center must offer for sale all products and services that we periodically specify, including all products (whether or not branded under the Marks) for sale at the Center's pro shop. You must offer all Courses at the time(s) that we periodically specify and conduct those Courses according to our standards and

requirements. No individual may instruct any Course at the Center unless he or she has successfully completed either the Basic Instructional Training or a training program that the Center’s Certified Instructor Trainer has conducted according to our training standards and procedures. You may not offer, sell or otherwise distribute at the Center or any other location any products or services or offer any courses that we have not authorized. There are no limits on any of our rights to modify the courses, products and services that your Center may or must provide.

You may not engage in pre-sale activities without our approval. System Standards may regulate minimum and maximum class sizes, class times, pricing (if the law allows), and the standards, procedures and requirements for reciprocity programs, transferring membership programs, and other programs designed to enhance member satisfaction with the Farrell’s Center network, including revenue and cost sharing requirements for these programs

We have the right, but not the obligation, to negotiate agreements with National Membership Accounts (defined below) so that all or a certain group or category of Farrell’s Centers will provide goods and services to their members. If we agree to terms with any National Membership Account, you must provide Courses and other products and services to all valid members of the National Membership Account on those terms (including, at our option, by charging no more than the maximum fees or prices that we establish). A “National Membership Account” is any entity that represents a group of at least 200 persons and that would reasonably require the services of two or more Farrell’s Centers to properly serve those within its group who might choose to use a Center’s services (for example, a large employer, an employer with multiple offices, or a health plan). We have the right to receive commissions, rebates and other payments from the groups representing the National Membership Accounts based on our establishing the account or their dealings with you and other Farrell’s Center operators.

**ITEM 17**  
**RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**  
**THE FRANCHISE RELATIONSHIP**

**These tables list certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.**

Provision	Section in Franchise Agreement	Summary
a. Length of the franchise term	Section 1B	10 years.
b. Renewal or extension of the term	Section 14	You have the right to renew the franchise for one five-year renewal term.
c. Requirements for franchisee to renew or extend	Section 14	Sign then current franchise agreement and releases (if state law allows; see Exhibit H) and pay successor franchise fee. “Renewal” means signing our then current franchise agreement for the five-year successor franchise term, which could contain materially different terms (including fees and territory).
d. Termination by franchisee	Section 15A	You can terminate if we materially fail to comply with our obligations and fail to cure within a 30-day period.
e. Termination by franchisor without cause	No provision	Not applicable.
f. Termination by franchisor with cause	Section 15B of Franchise Agreement	We can terminate for cause.

Provision	Section in Franchise Agreement	Summary
g. “Cause” defined — curable defaults	Sections 15B and 15C	You have 48 hours to cure health, safety or sanitation law violations or operating unsafely; 10 days to cure monetary defaults and failure to maintain insurance; and 30 days to cure other defaults not listed in (h) below. We also may assume Center’s management if you default.
h. “Cause” defined — non-curable defaults	Section 15B	Material misrepresentations or omissions, failing to complete mandatory training satisfactorily, failing to obtain our site approval within three months after signing the Franchise Agreement, failing to open on time, abandonment or failing to operate for three or more consecutive days, losing rights to Center, conviction of or pleading no contest to a felony, interference with inspections, dishonest, unethical or illegal conduct, unauthorized transfer, termination of another agreement with us or our affiliate (other than development rights agreement), breach of non-compete, unauthorized use or disclosure of the Operations Manual or confidential information, failure to pay taxes, understating Merchandise Gross Sales or Service Gross Sales, repeated defaults (even if cured), and bankruptcy-related events.
i. Franchisee’s obligations on termination/nonrenewal	Section 16 of Franchise Agreement	Pay outstanding amounts, stop using Marks and our other intellectual property, deliver advertising material, signs and other proprietary items to us, de-identify, stop using and maintain confidentiality of all confidential information and data and return Operations Manual and other confidential materials, and allow us to notify members and customers (also see (o) and (r) below).
j. Assignment of contract by franchisor	Section 13A	No restriction on our right to assign or transfer ownership interests without your approval.
k. “Transfer” by franchisee — defined	Sections 13B and 13G	Includes transfer of interest in Franchise Agreement, the Center or its profits or losses, all or substantially all of the Operating Assets, or any ownership interest in you or your owner (if that owner is an entity). If a business entity owns an interest in you, individual(s) must own that business entity.
l. Franchisor approval of transfer by franchisee	Section 13C	No transfer without our prior written consent.
m. Conditions for franchisor approval of transfer	Section 13C	We will approve transfer of non-controlling interest in you if transferee (and each owner) qualifies and is not (and has no affiliate which is) in a competitive business. We will approve

Provision	Section in Franchise Agreement	Summary
		control transfer if transferee (and each owner) qualifies; you pay us and our affiliates all amounts due, submit all reports and are otherwise not in violation of any provision; transferee, its owners and affiliates are not in a competitive business; training completed; transferee signs our then current franchise agreement and other documents (which may have materially different terms); transfer fee paid; transferee agrees to upgrade and remodel; you (and transferring owners) sign general release (if state law allows; see Exhibit H); we determine that sale terms will not adversely affect Center's operation; you subordinate amounts due to you; and you stop using Marks and our other intellectual property (also see (r) below).
n. Franchisor's right of first refusal to acquire franchisee's business	Section 13G	We may match any offer for your Center or Operating Assets or controlling ownership interest in you.
o. Franchisor's option to purchase franchisee's business	Section 16F	We may buy Center's assets at fair market value after Franchise Agreement is terminated or expires.
p. Death or disability of franchisee	Section 13E	Must transfer to approved party within nine months. We may operate Center if it is not being properly managed.
q. Non-competition covenants during the term of the franchise	Section 12	No interest in a competitive business anywhere.
r. Non-competition covenants after the franchise is terminated or expires	Section 16E	For two years after Franchise Agreement expires or terminates, no owning interest in or performing services for competitive business within Territory or three miles from any other Farrell's Center (same restrictions apply after transfer).
s. Modification of the agreement	Section 18L	No modifications without signed writing, but we may change Operations Manual and System Standards.
t. Integration/merger clause	Section 18N	The Franchise Agreement constitutes the entire agreement between the parties. Any other promises might not be enforceable. Nothing is intended to disclaim any representation made in the disclosure document.
u. Dispute resolution by arbitration or mediation	Sections 18F and 18G	All disputes are subject to mediation and arbitration near our then current address.
v. Choice of forum	Section 18I	Subject to mediation and arbitration requirements, litigation generally must be where our then current address is located, subject to state law.

Provision	Section in Franchise Agreement	Summary
w. Choice of law	Section 18H	Except for Federal Arbitration Act and other federal law, Iowa law governs (subject to state law).

**ITEM 18  
PUBLIC FIGURES**

We do not use any public figure to promote our 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.

As of December 31, 2019, there were 66 Farrell’s Centers in operation, 65 of which were franchised, and one of which were owned and operated by an affiliate and which offered a different mix of products and services than franchised Farrell’s Centers, including martial arts classes and other experimental courses that were not offered by franchised Farrell’s Centers. Of the 65 franchised Farrell’s Centers that were open and operating as of December 31, 2019, 63 offered four full 10-week Course sessions during the 2019 calendar year. The remaining two Farrell’s Centers were not operational for the full 2019 calendar year.

During our fiscal year ended December 31, 2019, nine of the 63 franchised Farrell’s centers participated in a test program (which we call the Farrell’s 2.0 Program), which consisted of (a) extensive sales training, (b) charging a trained sales staff to handle member enrollments, rather than the owner or manager, (c) expanding the enrollment period from four three-week periods to open enrollment throughout the year, and (d) increasing membership prices. As described below, the nine Centers participating in the Farrell’s 2.0 Program achieved the highest sales levels in the System.

The following chart is an historical performance representation about the 63 franchised Farrell’s Centers that offered four full 10-week Course sessions during the 2019 calendar year, and the subset of nine franchised Farrell’s Centers that participated in the Farrell’s 2.0 Program in 2019. Excluded from these results are the two franchised Farrell’s Centers that did not operate for the full 2019 calendar year.

**Gross Sales for 63 Franchised Centers and Farrell’s 2.0 Centers  
for Fiscal Year Ended December 31, 2019**

The following chart reflects information about the Merchandise Gross Sales and Service Gross Sales achieved by the 63 franchised Centers that offered four full 10-week Course sessions during calendar year 2019 and the subset of nine franchised centers which implemented the new Farrell’s 2.0 enrollment and sales process.

Tier	Average Gross Sales	Median Gross Sales	Highest Gross Sales in Range	Lowest Gross Sales in Range	No. of Centers in Tier that met or exceeded Average Gross Sales	No. of Centers in Tier that met or exceeded Median Gross Sales
Top 1/3	\$395,537	\$390,259	\$578,159	\$302,354	9 (42.8%)	11 (52.4%)
Middle 1/3	\$254,723	\$254,693	\$296,528	\$220,717	10 (47.6%)	11 (52.4%)
Bottom 1/3	\$154,651	\$165,762	\$216,621	\$84,051	12 (57.1%)	11 (52.4%)
All Centers	\$268,304	\$254,693	\$578,159	\$84,051	29 (46.0%)	32 (50.8%)
Farrell's 2.0 Centers	\$436,050	\$444,588	\$578,159	\$272,473	5 (55.6%)	5 (55.6%)

Note 1. During calendar year 2019, 70.1% of students of Maple Grove, MN, Bellevue, NE, and South Des Moines, IA, attend morning or noon class times.

Note 2. “Gross Sales” includes Merchandise Gross Sales and Service Gross Sales. “Merchandise Gross Sales” and “Service Gross Sales” are defined in Item 6, Note 2.

The information in the above charts was compiled from actual Service Gross Sales reported to us by our franchisees. We have not independently verified this information, and this information has not been audited.

The figures contained in these tables do not reflect the costs of sales, operating expenses, or other costs or expenses that must be deducted from the service gross sales figures to obtain net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating a Farrell's Center. Franchisees or former franchisees, listed in this disclosure document, may be one source of this information.

**SOME OUTLETS HAVE EARNED THIS AMOUNT. YOUR INDIVIDUAL RESULTS MAY DIFFER. THERE IS NO ASSURANCE THAT YOU WILL EARN AS MUCH.**

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 representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. 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 Lance Farrell, our Chief Executive Officer and Director, at 8510 New York Ave, Urbandale, IA 50323, (515) 770-7295, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20  
OUTLETS AND FRANCHISEE INFORMATION**

**TABLE NO. 1  
Systemwide Outlet Summary  
For years 2017 to 2019**

<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	2017	61	60	-1
	2018	60	66	+6
	2019	66	65	-1
Company-Owned	2017	1	1	0
	2018	1	1	0
	2019	1	1	0
Total Outlets	2017	62	61	-1
	2018	61	67	+6
	2019	67	66	-1

**TABLE NO. 2  
Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)  
For years 2017 to 2019**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
Colorado	2017	0
	2018	1
	2019	0
Illinois	2017	1
	2018	0
	2019	0
Indiana	2017	1
	2018	0
	2019	0
Iowa	2017	2
	2018	1
	2019	2
Kansas	2017	0
	2018	0
	2019	0
Minnesota	2017	3
	2018	0
	2019	2
Nebraska	2017	4
	2018	1

State	Year	Number of Transfers
	2019	1
South Dakota	2017	0
	2018	2
	2019	0
Wisconsin	2017	1
	2018	0
	2019	0
Total	2017	12
	2018	5
	2019	5

**Table No. 3**  
**Status of Franchised Outlets**  
**For years 2017 to 2019**

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
Colorado	2017	6	0	0	0	0	0	6
	2018	6	0	0	0	0	2	4
	2019	4	0	1	0	0	0	3
Illinois	2017	4	0	0	0	0	0	4
	2018	4	1	0	0	0	0	5
	2019	5	0	0	0	0	0	5
Indiana	2017	2	0	0	0	0	0	2
	2018	2	0	0	0	0	0	2
	2019	2	1	0	0	0	0	3
Iowa	2017	19	0	0	0	0	1	18
	2018	18	0	0	0	0	0	18
	2019	18	0	0	0	0	0	18
Kansas	2017	0	0	0	0	0	0	0
	2018	0	1	0	0	0	0	1
	2019	1	0	0	0	0	0	1
Minnesota	2017	17	0	0	0	0	0	17
	2018	17	3	0	0	0	0	20
	2019	20	1	0	0	0	0	21
Nebraska	2017	8	0	0	0	0	0	8
	2018	8	0	0	0	0	0	8
	2019	8	0	0	0	0	0	8

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
North Carolina	2017	1	0	0	0	0	0	1
	2018	1	0	0	0	0	0	1
	2019	1	0	0	0	0	0	1
South Dakota	2017	2	0	0	0	0	0	2
	2018	2	0	0	0	0	0	2
	2019	2	0	0	0	0	1	1
Texas	2017	1	0	0	0	0	0	1
	2018	1	2	0	0	0	0	3
	2019	3	0	1	0	0	0	2
Wisconsin	2017	1	0	0	0	0	0	1
	2018	1	1	0	0	0	0	2
	2019	2	0	0	0	0	0	2
Totals	2017	61	0	0	0	0	1	60
	2018	60	8	0	0	0	2	66
	2019	66	2	2	0	0	1	65

**TABLE NO. 4**  
**Status of Company-Owned Outlets**  
**For years 2017 to 2019**

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
Iowa	2017	1	0	0	0	0	1
	2018	1	0	0	0	0	1
	2019	1	0	0	0	0	1
Totals	2017	1	0	0	0	0	1
	2018	1	0	0	0	0	1
	2019	1	0	0	0	0	1

**TABLE NO. 5**  
**Projected Openings as of December 31, 2019**

State	Franchise Agreements Signed But Outlets Not Opened	Projected New Franchised Outlets In The Next Fiscal Year	Projected New Company-Owned Outlets In the Next Fiscal Year
California	1	2	0
Florida	2	4	0
Illinois	0	0	0
Indiana	0	0	0
Minnesota	0	2	0

State	Franchise Agreements Signed But Outlets Not Opened	Projected New Franchised Outlets In The Next Fiscal Year	Projected New Company-Owned Outlets In the Next Fiscal Year
Missouri	0	0	0
Ohio	0	0	0
Tennessee	0	0	0
Wisconsin	0	1	0
Totals	3	9	0

Exhibit E includes a list of our franchisees as of the issuance date of this disclosure document and the addresses and telephone numbers of their Farrell’s Centers as of our last fiscal year, December 31, 2019. Exhibit E also includes the name, city and state, current business telephone number or, if unknown, last known home telephone number of each franchisee who has had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during our last fiscal year, December 31, 2019, or who have not communicated with us within 10 weeks of this disclosure document’s issuance date. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with Farrell’s eXtreme Bodyshaping. Two franchisees have signed such confidentiality provisions during the past three fiscal years.

As of the issuance date of this disclosure document, there are no trademark-specific franchisee organizations associated with the Farrell’s Center franchise system.

**ITEM 21  
FINANCIAL STATEMENTS**

Attached as Exhibit C is a copy of our audited balance sheets as of December 31, 2019, December 31, 2018, and December 31, 2017, and the related statements of income and cash flows for the periods then ended.

**ITEM 22  
CONTRACTS**

The following contracts/documents are exhibits:

- Exhibit B – Franchise Agreement
- Exhibit D – State Riders to Franchise Agreement

**ITEM 23  
RECEIPTS**

Two copies of a receipt of this disclosure document appear as Exhibit H. Please return on copy to us and retain the other for your records.

## STATE APPENDIX TO THE FRANCHISE DISCLOSURE DOCUMENT

### ***FOR THE STATE OF CALIFORNIA***

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

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

Item 3 of the disclosure document is supplemented by the following:

Neither the franchisor nor any person identified in Item 2 of the disclosure document is subject to any current effective order of any national securities association or national securities exchange as defined in the Securities Exchange Act of 1934, U.S.C.A., 78a *et. seq.*, suspending or expelling such persons from membership in such association or exchange.

Item 17 of the disclosure document is supplemented by the following:

California Business and Professions Code, Sections 20000 through 20043 provides rights to the franchisee concerning transfer, termination or nonrenewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

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

The Franchise Agreement contains a covenant not to compete that extends beyond expiration or termination of the agreement. This provision may not be enforceable under California law.

The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. § 101 *et seq.*).

The Franchise Agreement provides for mediation and/or arbitration for certain disputes. The mediation and/or arbitration will occur at a location within 10 miles of our then current address (currently West Des Moines, Iowa). This provision may not be enforceable under California law

Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

While the earnings claims figures do not reflect all operating expenses or other costs or expenses that must be deducted from the gross revenue or gross sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating your franchise business. Franchisees or former franchisees, listed in the offering circular, may be one source of this information.

The indemnification provision in the Franchise Agreement may not be fully enforceable as to punitive damages under California law.

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

### ***FOR THE STATE OF ILLINOIS***

Illinois law governs the Franchise Agreement.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

Your rights upon Termination and Non-Renewal are set forth in sections 19 and 20 of the Illinois Franchise Disclosure Act.

In conformance with section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

### ***FOR THE STATE OF MARYLAND***

1. The “Summary” sections of Item 17(c) and 17(l) are amended by adding the following:

The Code of Maryland Regulations, COMAR 02.02.08.16L., states that a general release required as a condition of renewal, sale and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law. This may affect the enforceability of certain provisions in the Franchise Agreement relating to renewal, sale, assignment or transfer of the Franchise Agreement.

2. The “Summary” section of Item 17(h) is amended by adding the following:

A provision in the Franchise Agreement that provides for termination on your bankruptcy may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

3. The “Summary” section of Item 17(v) is amended by adding the following:

You may sue us in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Law must be brought within three years after the grant of the franchise.

4. The Maryland Franchise Registration and Disclosure Law prohibits a franchisor from requiring a prospective franchisee to assent to any release, estoppel or waiver of liability as a condition of purchasing a franchise. Any provisions of the Franchise Agreement which requires a prospective franchisee to disclaim the occurrence and/or non-occurrence of acts that would constitute a violation of the Maryland Franchise Registration and Disclosure Law in order to purchase a franchise 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.

### ***FOR THE STATE OF MINNESOTA***

Item 13 of the disclosure document is supplemented by the following:

The franchisor will protect the franchisee’s rights to use the trademarks, service marks, trade names, logotypes or other commercial symbols (“Marks”) or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.

As required by the Minnesota Franchise Act, Minn. Stat. Sec. 80C.12(g), we will reimburse you for any costs incurred that you incur in the defense of your right to use the Marks, so long as you were using the Marks in the manner that we authorized, and so long as we are timely notified of the claim and given the right to manage the defense of the claim including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.

Item 17 of the disclosure document is supplemented by the following:

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that (1) a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Agreement and (2) that consent to the transfer of the franchise will not be unreasonably withheld.

To the extent that any condition, stipulation, or provision contained in the Franchise Agreement (including any choice of law provision) purports to require 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 with the Minnesota Franchises Law, such condition, stipulation, or provision may be void and unenforceable under the non-waiver provision of the Minnesota Franchises Law.

### ***FOR THE STATE OF NEW YORK***

1. The following information is added to the cover page of the Franchise Disclosure Document:

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A 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, 23<sup>RD</sup> FLOOR, NEW YORK, NEW YORK 10271. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.

2. The following is added to the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

- A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony; a violation of a franchise, antitrust or securities law; fraud, embezzlement, fraudulent conversion, misappropriation of property; unfair or deceptive practices or comparable civil or misdemeanor allegations.
- B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.
- C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud or securities law; fraud, embezzlement, fraudulent conversion or misappropriation of property, or unfair or deceptive practices or comparable allegations.
- D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a federal, State or Canadian franchise, securities, antitrust, trade

regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order or any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

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

Neither the franchisor nor its affiliate, its predecessor, officers, or general partner during the 10-year period immediately before the date of this Franchise Disclosure Document: (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 that officer or general partner of the franchisor held this position in the company or partnership.

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

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

5. The following is added to the end of the “Summary” sections of Item 17(c), titled “Requirements for franchisee to renew or extend,” and Item 17 (m), entitled “Conditions for franchisor approval of transfer”.

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

6. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”.

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

7. The following is added the end of the “Summary” section of Item 17(j), titled “Assignment of contract by franchisor”.

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

8. The following is added to the end of the “Summary” sections of Item 17(v), titled “Choice of forum”, and Item 17(w), titled “Choice of law”.

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

***FOR THE STATE OF NORTH DAKOTA***

1. The Securities Commissioner for the State of North Dakota has held that the provisions stated below in (a) through (g) are unfair, unjust, or inequitable to North Dakota Franchisees (Section 51-19-09, N.D.C.C.) and may be unenforceable under North Dakota Law:

- (a) A provision requiring a North Dakota franchisee to sign a general release upon renewal of the Franchise Agreement;
- (b) A provision requiring a North Dakota franchisee to consent to termination penalties or liquidated damages;
- (c) A provision requiring a North Dakota franchisee to consent to the jurisdiction of courts outside the state of North Dakota;
- (d) A provision requiring a choice of law contrary to the North Dakota Franchise Investment Law;
- (e) A provision restricting the time in which a North Dakota franchisee may make a claim to less than the applicable North Dakota statute of limitations;
- (f) A provision calling for the waiver by a North Dakota franchisee of the right to trial by jury;
- (g) A provision requiring a North Dakota franchisee to consent to a waiver of exemplary and punitive damages; and

2. North Dakota Century Code Section 9-08-06 subjects covenants not to compete to the provisions of that statute. The covenants not to compete contained within the Franchise Agreement are subject to Section 9-08-06 and are generally considered unenforceable in the State of North Dakota.

3. Provisions requiring arbitration or mediation to be held at a location that is remote from the site of the franchisee’s business are generally considered unenforceable in the State of North Dakota, pursuant to Section 51-19-09 of the North Dakota Franchise Investment Law. Accordingly, the parties must agree on the site where arbitration or mediation will be held.

***FOR THE COMMONWEALTH OF VIRGINIA***

1. In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, Item 17.h. of the disclosure document is supplemented by the following:

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

***FOR THE STATE OF WASHINGTON***

The following is added to the disclosure document for Washington residents:

Item 17, Additional Disclosures

RCW § 19.100.180 and court decisions may supersede the Franchise Agreement in your relationship with us, including in the areas of termination and renewal of your Franchise Agreement.

In the event of a conflict between the Washington Franchise Investment Protection Act and the law chosen in the Franchise Agreement, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW, will prevail.

A release or waiver of rights executed by a franchisee will 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, or rights or remedies under the Act, such as a right to a jury trial, may not be enforceable in Washington.

Transfer fees are collectable to the extent that they reflect our reasonable estimated or actual costs in effecting a transfer.

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

You have the right to terminate the Franchise Agreement on any grounds permitted by law.

These provisions shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Washington Franchise Investment Protection Act are met independently, without reference to these Additional Disclosures. The Additional Disclosures shall have no force or effect if such jurisdictional requirements are not met.

***FOR THE STATE OF WISCONSIN***

Item 17 of the disclosure document is supplemented by the following:

For franchisees subject to the Wisconsin Fair Dealership Law, Ch. 135, Stats., provisions in the Fair Dealership Law supersede any inconsistent provisions of the Franchise Agreement or a related contract.

**EXHIBIT A**

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

## LIST OF STATE ADMINISTRATORS

### California

Department of Business Oversight  
320 West 4th Street, Suite 750  
Los Angeles, California 90013  
(866) 275-2677

### Hawaii

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

### Illinois

Office of Attorney General  
500 S. Second Street  
Springfield, Illinois 62701  
(217) 782-4465

### Indiana

Franchise Section  
Securities Division  
302 W. Washington St., Room E-111  
Indianapolis, Indiana 46204  
(317) 232-6681

### Maryland

Office of Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202  
(410) 576-7042

### Michigan

Department of Attorney General  
Consumer Protection Division  
Attn: Franchise Section  
525 W. Ottawa St.  
G. Mennen Williams Bldg., 1<sup>st</sup> Floor  
Lansing, Michigan 48913  
(517) 373-7117

### Minnesota

Department of Commerce  
85 7<sup>th</sup> Place East, Suite 280  
St. Paul, Minnesota 55101-2198  
(651) 539-1600

### New York

NYS Department of Law  
Investor Protection Bureau  
28 Liberty Street, 21<sup>st</sup> Floor  
New York, New York 10005  
(212) 416-8236

### North Dakota

North Dakota Securities Department  
600 East Boulevard Avenue  
State Capitol – 5<sup>th</sup> Floor Dept. 414  
Bismarck, North Dakota 58505-0510  
(701) 328-4712

### Rhode Island

Securities Division  
Department of Business Regulation  
1511 Pontiac Avenue  
John O. Pastore Complex – Building 69-1  
Cranston, Rhode Island 02920

### South Dakota

Division of Insurance  
Securities Regulation  
124 S. Euclid, Suite 104  
Pierre, South Dakota 57501  
(605) 773-4823

### Virginia

State Corporation Commission  
Division of Securities and Retail  
Franchising  
1300 Main Street, 9<sup>th</sup> Floor  
Richmond, Virginia 23219  
(804) 371-9051

### Washington

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

### Wisconsin

Franchise Administrator  
Division of Securities  
Department of Financial Institutions  
345 West Washington Avenue  
Madison, Wisconsin 53703

**AGENTS FOR SERVICE OF PROCESS**

<b>STATE</b>	<b>AGENT</b>
California	Commissioner of Business Oversight Department of Business Oversight 320 West 4 <sup>th</sup> Street, Suite 750 Los Angeles, California 90013
Hawaii	Commissioner of Securities of the State of Hawaii Department of Commerce & Consumer Affairs 335 Merchant Street, Room 203 Honolulu, Hawaii 96813
Illinois	Office of Attorney General 500 S. Second Street Springfield, Illinois 62706
Indiana	Indiana Secretary of State 201 State House 200 West Washington Street Indianapolis, Indiana 46204
Iowa	Lance Farrell 8510 New York Avenue Urbandale, Iowa 50322
Maryland	Maryland Securities Commissioner Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2021
Michigan	Michigan Department of Labor & Economic Growth Commercial Services & Corporations Bureau 611 West Ottawa Street Lansing, Michigan 48909
Minnesota	Minnesota Commissioner of Commerce Department of Commerce 85 7th Place East, Suite 280 St. Paul, Minnesota 55101-2198
New York	Secretary of State of the State of New York One Commerce Plaza 99 Washington Avenue Albany, New York 12231
North Dakota	North Dakota Securities Commissioner State of North Dakota 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505
Rhode Island	Director Department of Business Regulation 1511 Pontiac Avenue, Bldg. 69-1 Cranston, Rhode Island 02920
South Dakota	Director, Division of Insurance Securities Regulation 124 S. Euclid, Suite 104 Pierre, South Dakota 57501

STATE	AGENT
Virginia	Clerk, State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 1 <sup>st</sup> Floor Richmond, Virginia 23219
Washington	Director, Department of Financial Institutions Securities Division 150 Israel Road, S.W. Tumwater, Washington 98501
Wisconsin	Administrator, Division of Securities Department of Financial Institutions 201 W. Washington Avenue, Suite 300 Madison, Wisconsin 53703

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



**FARRELL'S EXTREME BODYSHAPING  
FRANCHISE AGREEMENT**

**Franchise Agreement**  
**Summary Page**

Franchisee Information:

Complete Business Name: \_\_\_\_\_

Owner(s):	_____	%
(25% or more ownership, direct or indirect)	Full Name	Percentage Interest
	_____	%
	Full Name	Percentage Interest
	_____	%
	Full Name	Percentage Interest
	_____	%
	Full Name	Percentage Interest

Address for Notices (not a P.O. Box): \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Mobile Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Site Selection Area: \_\_\_\_\_  
\_\_\_\_\_

Initial Franchise Fee: \$49,900

Territory: The area within a three-mile radius surrounding the Center, having the Center's front entrance as its center

Merchandise Royalty Fee: 5% of Merchandise Gross Sales

Service Royalty Fee: Greater of 8½% of Service Gross Sales or Minimum Royalty Fee  
The Minimum Royalty Fee is \$11,250 during the first anniversary year of this Agreement; \$15,000 during the second anniversary year of this Agreement; and \$18,750 during the third and each subsequent anniversary year of this Agreement, including renewal and successor terms unless otherwise provided in the successor franchise agreement.

**To be completed by us:**

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

Franchise Number: \_\_\_\_\_

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STATE SPECIFIC RIDER TO FRANCHISE AGREEMENT

**EXHIBITS:**

- EXHIBIT A -- BASIC TERMS
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- EXHIBIT D -- GUARANTY AND ASSUMPTION OF OBLIGATIONS

## **FARRELL'S EXTREME BODYSHAPING FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (the “**Agreement**”) is made and entered on the “**Agreement Date**” identified on the Summary Page (the “**Agreement Date**”), between FARRELL'S EXTREME BODYSHAPING, INC., an Iowa corporation, with its principal mailing address at 8510 New York Avenue, Urbandale, Iowa 50322 (“**Franchisor**”), and the “**Franchisee**” identified in the Summary Page (“**Franchisee**”).

WHEREAS, Franchisor and its Affiliates have developed and own a proprietary system for operating a business that offers a comprehensive approach to wellness, combining kickboxing, strength training, nutrition, and personal coaching, all under one roof (the “**System**”) which includes, among other things, Franchisor's proprietary fitness techniques and workout programs, proprietary marketing systems, and proprietary sales techniques.

WHEREAS, businesses operated under the System are identified by the trademarks designated by Franchisor from time to time, which currently include the name FARRELL'S EXTREME BODYSHAPING” (the “**Marks**”).

WHEREAS, Franchisee has applied for a franchise to operate a business using the Marks and System within the Territory (the “**Franchised Business**”), and Franchisor has approved Franchisee's application in reliance on the information contained in Franchisee's application and desires to grant such franchise rights, all in accordance with the terms and conditions contained in this Agreement.

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

#### **1.A. GRANT OF FRANCHISE RIGHTS AND TERM**

Subject to the terms of this Agreement, Franchisor grants Franchisee the right, and Franchisee undertakes the obligation, to operate a Farrell's Center at the address identified on Exhibit A (the “**Center**”), and to use the System in its operation, for a term of 10 years beginning on the Agreement Date. If the address of the Center is unknown as of the Agreement Date, the address will be determined in accordance with Section 2.A and listed on an amended and restated Exhibit A that Franchisor will provide to Franchisee.

#### **1.B. BEST EFFORTS**

The rights granted under this Agreement are personal to Franchisee. Except as specifically set forth in Section 13, Franchisee may not delegate or assign any of its rights or obligations under this Agreement or any aspect of the management or operation of the Center. Franchisee agrees to at all times faithfully, honestly and diligently perform its obligations and fully exploit the rights granted under this Agreement.

#### **1.C. BUSINESS ENTITY FRANCHISEE**

If Franchisee is at any time a corporation, limited liability company or other form of business entity (collectively, an “**Entity**”), Franchisee agrees and represents that:

(1) Its organizational documents will state that this Agreement restricts the issuance and transfer of any ownership interests in Franchisee, and all certificates and other documents representing ownership interests in Franchisee will bear a legend referring to this Agreement's restrictions;

(2) Exhibit B to this Agreement completely and accurately describes all of Franchisee's owners and their interests;

(3) Each of Franchisee's owners at any time during the term of this Agreement will sign an agreement in the form that Franchisor periodically specifies undertaking personally to be bound, jointly and severally, by all provisions of this Agreement and any ancillary agreements

between Franchisee and Franchisor (or its Affiliate). Subject to Franchisor's rights and Franchisee's obligations under Section 13, Franchisee and its owners agree to sign and deliver to Franchisor revised Exhibits B to reflect any changes in the information that Exhibit B now contains within 10 days after the change;

(4) The Center and other Farrell's Centers, if applicable, will be the only businesses Franchisee operates (although Franchisee's owners and Affiliates may have other, non-competitive business interests, subject to Section 12); and

(5) An individual whom Franchisor approves (the "**Managing Owner**") must own more than 50% of the ownership interests in Franchisee and must devote full time and best efforts (*i.e.* at least 40 hours per week) to the operation and promotion of the Franchised Business. The Managing Owner's name is listed on Exhibit B.

## **2. SITE SELECTION, LEASE, AND DEVELOPING THE CENTER**

### **2.A. SITE SELECTION AND APPROVAL**

If the address of the Center is unknown as of the Agreement Date, then this Section 2.A governs the site selection and approval process. Within three months after the Agreement Date (the "**Site Selection Period**"), Franchisee must obtain Franchisor's approval of a site at which to operate a Farrell's Center within the particular geographic area listed in Exhibit A (the "**Site Selection Area**"). The Site Selection area is nonexclusive, meaning that Franchisor and third parties may be evaluating real estate opportunities and developing Farrell's Centers in the Site Selection Area before, during, and after the Site Selection Period.

Franchisor may require Franchisee to engage, at Franchisee's expense, a designated or approved tenant representative to assist Franchisee in identifying a site(s) for the Center located within the Site Selection Area. Franchisee must propose a site for the Center's location and obtain Franchisor's written approval of the proposed site within three months after the Agreement Date. Franchisee must submit all information that Franchisor requests when Franchisee proposes a site. Franchisor agrees to use reasonable efforts to review and approve or decline to approve each proposed site within 30 days after Franchisor receives all requested information and materials. **The parties acknowledge and agree that Franchisor's approval of a site indicates only that the proposed site meets Franchisor's minimum criteria for Farrell's Centers. Franchisee acknowledges and agrees that Franchisor's approval of a site is not an assurance that the Center will achieve a certain sales volume or level of profitability.** Upon approving a proposed site, Franchisor will identify the approved site's location as the Center's address in Exhibit A.

### **2.B. LEASE OF CENTER'S SITE**

Franchisee agrees to present to Franchisor, for Franchisor's approval, any proposed lease or sublease for the Center's approved site (the "**Lease**"), and the Lease may not be signed until it has been reviewed and approved by Franchisor. The Lease must contain the terms and provisions that are reasonably acceptable to Franchisor. At Franchisor's request, Franchisee agrees to sign, and obtain the lessor's consent to, the Collateral Assignment of Lease in the form attached as Exhibit C. **Franchisee acknowledges that Franchisor's approval of a lease does not mean that the economic terms of the Lease are favorable; it means only that the Lease contains the lease terms that Franchisor requires.**

### **2.C. DEVELOPING AND EQUIPPING THE CENTER**

Franchisee is responsible for developing the Center at its expense. Franchisor will provide Franchisee mandatory and suggested specifications and layouts for a Farrell's Center, including requirements or recommendations (as applicable) for dimensions, design, interior layout, decor and Operating Assets (defined in Section 2.D). These specifications and layouts might not reflect the requirements of any federal, state or local law, code or regulation, including those arising under zoning

regulations, environmental laws and regulations, other applicable ordinances, building codes or permit requirements, or any Lease requirements or restrictions.

It is Franchisee's responsibility to prepare all required construction and remodeling plans and specifications to suit the Center and to make sure that they comply with the Americans with Disabilities Act, as amended from time to time, (the "ADA") and similar rules governing public accommodations for persons with disabilities, other applicable ordinances, building codes, permit requirements, and Lease requirements and restrictions. Franchisee must submit all construction and remodeling plans and specifications to Franchisor for its approval before beginning build-out for the Center and all revised or "as built" plans and specifications during construction and development. Franchisor's review is limited to ensuring Franchisee's compliance with design requirements. Franchisor's review is not designed to assess compliance with federal, state, or local laws and regulations, including the ADA, as compliance with such laws is Franchisee's responsibility. Franchisee agrees to remedy, at its expense, any noncompliance or alleged noncompliance with such laws. Franchisor may, but has no obligation to, periodically inspect the Center's site during its development.

## **2.D. OPERATING ASSETS**

Franchisee agrees at its expense to construct, install trade dress and furnish all Operating Assets in, and otherwise develop, the Center according to Franchisor's standards, specifications and directions. Franchisee may not install or use any unauthorized Operating Assets at the Center. Franchisee agrees to place or display, according to Franchisor's guidelines, at the Center (interior and exterior) and on vehicles only the signs, emblems, lettering, logos and display materials that Franchisor approves from time to time. Franchisee agrees to purchase or lease from time to time only the approved brands, types and models of Operating Assets according to Franchisor's standards and specifications and, if Franchisor specifies, only from suppliers that Franchisor designates or approves (which may include or be limited to Franchisor and/or its Affiliates). "Operating Assets" means all required furniture, fixtures, equipment (including components and required software licenses for the Computer System (defined below)), vehicles and signs that Franchisor periodically requires for the Center and the business Franchisee operates under this Agreement.

## **2.E. COMPUTER SYSTEM**

Franchisee agrees to obtain and use the computer hardware and software that Franchisor periodically specifies, including hardware components, dedicated telephone and power lines, modems, printers, and other computer-related accessories and peripheral equipment (the "Computer System"). At Franchisor's option, Franchisee will use the Computer System to access the Extranet (defined in Section 5.C) and to input and access information about Franchisee's members, sales and operations.

Franchisor may periodically modify specifications for and components of the Computer System. Franchisor's modification of specifications for the Computer System, and/or other technological developments or events, may require Franchisee to purchase, lease and/or license new or modified computer hardware, software and other components and to obtain service and support for the Computer System. Although Franchisor cannot estimate the future costs of the Computer System or required service or support, Franchisee agrees to incur the costs of obtaining the computer hardware, software and other components comprising the Computer System (and additions, upgrades, and modifications) and required service or support. Within 60 days after Franchisor delivers notice to Franchisee, Franchisee agrees to obtain the Computer System components that Franchisor designates and ensure that Franchisee's Computer System, as modified, is functioning properly.

Franchisor and its Affiliates may condition any license of required or recommended proprietary software to Franchisee, and/or Franchisee's use of technology developed or maintained by or for Franchisor (including the Extranet), on Franchisee's signing a software license agreement or similar document, or otherwise agreeing to the terms (for example, by acknowledging Franchisee's consent to and accepting the terms of a click-through license agreement), that Franchisor and its Affiliates periodically prescribe to

regulate Franchisee's use of, and Franchisor's (or its Affiliate's) and Franchisee's respective rights and responsibilities with respect to, the software or technology. Franchisor and its Affiliates may charge Franchisee up-front and ongoing fees for any required or recommended proprietary software or technology that Franchisor or its Affiliates license to Franchisee and for other Computer System maintenance and support services provided during the term of this Agreement. For avoidance of doubt, Franchisee is solely responsible for: (1) the acquisition, operation, maintenance, and upgrading of the Computer System; (2) the manner in which Franchisee's Computer System interfaces with Franchisor's and any third-party's computer system; and (3) any and all consequences if the Computer System is not properly operated, maintained, and upgraded. The Computer System shall permit 24 hours per day, seven days per week electronic communications between Franchisee and Franchisor, including access to the Internet and Extranet.

## **2.F. PRE-SALE OF COURSES**

No rights to attend Courses (defined in Section 5.B), memberships or other rights to participate in the services at the Center may be offered to the public or sold before opening the Center to the general public according to Section 2.G, unless: (1) Franchisee in good faith expects to open the Center for business within the 60-day period following the offer or sale; (2) Franchisor has authorized Franchisee in writing to offer and sell those rights; (3) Franchisee (or, if Franchisee is an Entity, its Managing Owner) has completed to Franchisor's satisfaction the General Business training (as defined in Section 4.A); and (4) Franchisee has secured all financing and permits necessary to develop and fully equip the Center. Franchisee is responsible for ensuring that its membership agreements and presale activities comply with all applicable laws.

## **2.G. CENTER OPENING**

Franchisee agrees not to open the Center for business and begin providing Courses at the Center until: (1) it has properly developed and equipped the Center according to Franchisor's standards and specifications and in compliance with all applicable laws, rules and regulations; (2) all pre-opening training for the Center's personnel has been completed to Franchisor's satisfaction; (3) all amounts that Franchisee then owes to Franchisor or its Affiliate have been paid; (4) Franchisee has obtained all required licenses and permits to operate the Center; (5) Franchisor has been furnished with copies of all insurance policies required under this Agreement, or such other evidence of insurance coverage and payment of premiums as Franchisor requests; and (6) Franchisor has (at its option) conducted a pre-opening inspection and approved the Center for opening. Franchisor's determination that Franchisee has met all of Franchisor's pre-opening requirements will not constitute a representation or warranty, express or implied, that the Center complies with any laws or constitute a waiver of Franchisee's non-compliance, or of Franchisor's right to demand full compliance, with any provision of this Agreement. Franchisee agrees to open the Center for business and commence providing Courses and otherwise conducting business at the Center under this Agreement on or before the "**Opening Deadline**" listed on Exhibit A.

## **2.H. RELOCATING THE CENTER**

If the Lease expires or is terminated without Franchisee's fault, or if the Center is destroyed, condemned, or otherwise rendered unusable, Franchisor will allow Franchisee to relocate the Center to a new site acceptable to Franchisor, with Franchisor's prior written consent. Relocation will be at Franchisee's sole expense, and Franchisor may charge Franchisee for the reasonable costs that Franchisor incurs in connection with any Center relocation.

## **3. TERRITORY**

### **3.A. RIGHTS IN TERRITORY**

Subject to Franchisor's reservation of rights described in Section 3.B below and Franchisee's compliance with this Agreement, beginning on the date upon which Franchisor approves the Center's site

and provides Franchisee a complete Exhibit A reflecting the address of the approved site and continuing throughout the term of this Agreement, neither Franchisor nor its Affiliates will operate, or authorize any other party to operate, a Farrell's Center the physical premises of which are located within the Territory.

### **3.B. RESERVATION OF RIGHTS**

Except as provided in Section 3.A, Franchisee's rights under this Agreement are non-exclusive and Franchisor (and its Affiliates) retains the right during the term of this Agreement to engage in any and all activities that Franchisor (and they) desires, at any time or place, and whether or not these activities compete with the Center, including the right to:

(a) establish and operate, and grant to others the right to establish and operate, Farrell's Centers the physical premises of which are located outside the Territory on any terms and conditions Franchisor deems appropriate;

(b) offer and provide, and grant rights to others to offer and provide, products and services, whether identified by the Marks or any other trademarks or service marks, to any customers Franchisor desires (wherever located or operating, including within the Territory) and through any distribution channels Franchisor desires (wherever located or operating, including within the Territory). This includes the right to offer, sell, and distribute, in and outside the Territory, products and services such as books, magazines, instructional materials, online and remote classes, workout and training videos, DVDs, and online streaming content, equipment, fitness products, nutritional products, and athletic gear. Distribution channels may include, without limitation, online commerce, through retail stores, by televised sales pitch, catalog, or social media solicitation, or any other source of commerce; and

(c) engage in all other activities that this Agreement does not expressly prohibit.

## **4. TRAINING, GUIDANCE AND ASSISTANCE**

### **4.A. INITIAL GENERAL BUSINESS TRAINING**

Before Franchisee begins soliciting customers for the Center or offering the rights to attend Courses at the Center, and in any event within 90 days after the Agreement Date, Franchisee (or, if Franchisee is an Entity, the Managing Owner) must attend and complete Franchisor's initial training program on the general business aspects of operating a Farrell's Center ("**General Business Training**"). General Business Training may include classroom training, instruction at designated facilities, hands-on training at an operating Farrell's Center, remote training (including via videotape, DVD or Internet access) and/or self-study programs (including online internet training on topics related to marketing, social media, and small business operations). Franchisor will provide such training for no additional fee for three people associated with Franchisee's Center. The applicable personnel must complete the General Business Training program to Franchisor's satisfaction.

### **4.B. BASIC INSTRUCTIONAL TRAINING**

Before Franchisee opens the Center for business, Franchisee (or, if Franchisee is an Entity, its Managing Owner) and all other individuals who will instruct any class at the Center (together with the Managing Owner, "**Instructors**") must attend and complete Franchisor's initial training program on instructing the various Courses (defined below in Section 5.B), including "on-the-job" instruction of classes and coaching, offered at a Farrell's Center ("**Basic Instructional Training**"). Basic Instructional Training may include classroom training, hands-on training at an operating Farrell's Center, remote training (including via videotape, DVD or Internet access) and self-study programs. Franchisee acknowledges that Franchisor might already have begun providing Basic Instructional Training before Franchisee signs this Agreement. As part of the Basic Instructional Training, Franchisor may require Instructors to conduct Courses and perform other work without compensation from Franchisor or its Affiliate at an operating Farrell's Center that Franchisor specifies. All Instructors must complete the Basic Instructional Training to

Franchisor's satisfaction. Before attending Basic Instructional Training, each Instructor must successfully complete an authorized Farrell's eXtreme Bodyshaping™ course as a student.

#### **4.C. THIRD-PARTY CERTIFICATIONS**

Franchisee agrees to obtain before opening the Center, and maintain throughout the term of this Agreement, all certifications and similar designations that Franchisor or applicable law periodically specifies as applying to the Center.

#### **4.D. INSTRUCTOR CERTIFICATION TRAINING**

At least one Instructor (which may be Franchisee or, if Franchisee is an Entity, its Managing Owner) that works at the Center must fulfill all of Franchisor's required fitness, skill, and instructional proficiency levels and maintain the other training, perform the other tasks, and satisfy the other conditions that Franchisor periodically specifies to achieve and retain certifications in Franchisor's then-current proprietary instructor training program (collectively, "**Instructor Certification Training**") before or within 18 months after Franchisee opens the Center. Instructor Certification Training involves hands-on training at an operating Farrell's Center, including Course instruction and performing other work without compensation from Franchisor or its Affiliates at any operating Farrell's Center that Franchisor specifies.

Before Franchisee opens the Center for business, Franchisee (or, if Franchisee is an Entity, its Managing Owner) will designate an Instructor at the Center as a Certified Instructor Trainer for Franchisee. A "**Certified Instructor Trainer**" is an individual who has completed the Basic Instructional Training, achieved the required certifications in the Instructor Certification Training, and maintained such other training, performed such other tasks, and satisfied such other conditions that Franchisor periodically specifies to achieve and retain such designation. If at any time during the term of this Agreement the Center does not have a Certified Instructor Trainer working an average of at least 20 hours per week at the Center, then Franchisee agrees to choose another Instructor who must complete the training and other tasks that Franchisor requires for that individual to become a Certified Instructor Trainer within ninety (90) days. Franchisee agrees that the Center's Certified Instructor Trainer will implement a training program for all other Instructors using training standards and procedures that Franchisor periodically specifies and staff the Center at all times with a sufficient number of trained employees.

No individual may instruct any Course at the Center unless he or she has successfully completed either the Basic Instructional Training or a training program that the Center's Certified Instructor Trainer has conducted according to Franchisor's training standards and procedures.

#### **4.E. ONGOING AND SUPPLEMENTAL TRAINING**

During the term of this Agreement, Franchisor may require Franchisee (or, if Franchisee is an Entity, its Managing Owner) and/or previously trained and experienced Center personnel (including Instructors) to attend and satisfactorily complete various training courses, programs and conventions that Franchisor chooses to provide periodically at the times and locations that Franchisor designates. Franchisor may charge reasonable fees for these training courses, programs and conventions.

#### **4.F. TRAINING EXPENSES**

Franchisee will be responsible for its and its personnel's travel, living and other expenses (including local transportation expenses) and compensation incurred in connection with attendance at any training programs or work at Farrell's Centers that is part of their development.

#### **4.G. GENERAL GUIDANCE**

Franchisor will provide such continuing advice as Franchisor deems necessary and appropriate. Such advice may include: (1) standards, specifications, operating procedures and methods that Farrell's Centers use; (2) purchasing required or recommended Operating Assets and other products, supplies and materials; (3) methods of teaching Courses and providing advice to Center members; (4) Instructor and

employee training methods and procedures (although Franchisee is responsible for the terms and conditions of employment of all of its employees); and (5) accounting, advertising, and marketing. Franchisor may provide such advice by means of Franchisor's operating manual and other technical manuals ("**Operations Manual**"), in bulletins or other written materials, by electronic media, by telephone consultation, and/or at Franchisor's office or the Center. If Franchisee requests and Franchisor agrees to provide additional or special guidance, assistance or training, Franchisee agrees to pay Franchisor's then applicable charges, including reasonable training fees and Franchisor's personnel's per diem charges and any travel and living expenses. Any specific ongoing training, conventions, advice or assistance that Franchisor provides does not create an obligation to continue providing that specific training, convention, advice or assistance, all of which Franchisor may discontinue and modify at any time.

#### **4.H. OPERATIONS MANUAL**

During the term of this Agreement, Franchisor will provide Franchisee access to one copy of Franchisor's Operations Manual, which may include audiotapes, videotapes, computer disks, compact disks, DVDs and/or other written or intangible materials and which Franchisor may make available to Franchisee by various means, including access through the Extranet. The Operations Manual contains mandatory and suggested specifications, standards, operating procedures and rules that Franchisor periodically prescribes for operating a Farrell's Center ("**System Standards**") and information on Franchisee's other obligations under this Agreement. Franchisor may modify the Operations Manual periodically to reflect changes in System Standards. Franchisee agrees to keep Franchisee's copy of the Operations Manual current and communicate all updates to Franchisee's personnel in a timely manner. Franchisee agrees to keep all parts of the Operations Manual in a secure location. If there is a dispute over its contents, Franchisor's master copy of the Operations Manual controls. Franchisee agrees that the contents of the Operations Manual are confidential and that Franchisee will not disclose any part of the Operations Manual to any person other than Center personnel who need to know such part and who agree to maintain its confidentiality. Franchisee may not at any time copy, duplicate, record or otherwise reproduce any part of the Operations Manual. Franchisee agrees to pay Franchisor's then applicable charge for any replacement copy of the Operations Manual in tangible form.

The System Standards do not include any personnel policies or procedures or security-related policies or procedures that Franchisor (at its option) may make available to Franchisee in the Operations Manual or otherwise for Franchisee's optional use. Franchisee will determine to what extent, if any, these policies and procedures might apply to its operations at the Center. Franchisee and Franchisor recognize that Franchisor neither dictates nor controls labor or employment matters for franchisees and their employees and Franchisor is not responsible for the safety and security of Center employees or patrons. Franchisee is exclusively responsible for hiring personnel, for determining the number of jobs offered or job vacancies to be filled, for determining and changing employee wages and benefits and work hours, and for disciplining and discharging Franchisee's employees. Franchisee is exclusively responsible for labor relations with its employees. Franchisee shall indemnify Franchisor Indemnified Parties (defined below in Section 17.D.) against any and all proceedings, claims, investigations, and causes of action by Franchisee's employees or by others that arise from Franchisee's employment practices.

At Franchisor's option, Franchisor may post the Operations Manual on the Extranet or another restricted website to which Franchisee will have password access. If Franchisor does so, Franchisee agrees to periodically monitor the website for any updates to the Operations Manual or System Standards. Any passwords or other digital identifications necessary to access the Operations Manual on such a website will be deemed to be part of Confidential Information (defined in Section 11.E below).

#### **4.I. DELEGATION OF PERFORMANCE**

Franchisor has the right to delegate the performance of any portion or all of Franchisor's obligations under this Agreement from time to time to third-party designees, whether these designees are Franchisor's agents or independent contractors with whom Franchisor contracts to perform these obligations. Franchisee

acknowledges and agrees that it is not an intended third-party beneficiary under any agreement between Franchisor and any such third-party designee.

## **5. CENTER OPERATION AND SYSTEM STANDARDS**

### **5.A. CONDITION AND APPEARANCE OF CENTER**

Franchisee may not use, or allow any other party to use, any part of the Center for any purpose other than Franchisee's operation of a Farrell's Center in compliance with this Agreement. Franchisee agrees to place or display at the Center (interior and exterior) and on all vehicles used in the operation of Franchisee's business only those signs, emblems, designs, artwork, lettering, logos and display and advertising materials that Franchisor periodically specifies. Franchisee agrees to maintain the condition and appearance of the Center and the Operating Assets in accordance with the System Standards. Without limiting that obligation, Franchisee agrees to take, at its expense, the following actions during the term of this Agreement: (1) thorough cleaning, repainting and redecorating of the interior and exterior of the Center at intervals that Franchisor may periodically prescribe and at Franchisor's direction; (2) interior and exterior repair of the Center as needed; and (3) repair or replacement, at Franchisor's direction, of damaged, worn-out or obsolete Operating Assets at intervals that Franchisor periodically prescribes (or, if Franchisor does not prescribe an interval for replacing any Operating Asset, as that Operating Asset needs to be repaired or replaced).

In addition to Franchisee's obligations described above, Franchisor may from time to time require Franchisee to substantially alter the Center's appearance, layout and/or design, and/or replace a material portion of the Operating Assets, in order to meet Franchisor's then current requirements for new Farrell's Centers. Franchisee acknowledges that this obligation could result in its making extensive structural changes to, and significantly remodeling and renovating, the Center, and/or in Franchisee's spending substantial amounts for new Operating Assets, from time to time during the term of this Agreement, and Franchisee agrees to incur, without limitation, any capital expenditures required in order to comply with this obligation and Franchisor's requirements (even if such expenditures cannot be amortized over the remaining term of this Agreement). Within 60 days after receiving written notice from Franchisor, Franchisee shall have plans prepared according to the standards and specifications that Franchisor prescribes and, if Franchisor requires, using architects and contractors that Franchisor designates or approves, and Franchisee must submit those plans to Franchisor for its approval. Franchisee agrees to complete all work according to the plans that Franchisor approves within the time period that Franchisor specifies.

In addition to Franchisor's right to terminate this Agreement if Franchisee does not maintain the condition and appearance of the Center or the Operating Assets as required in this Agreement, Franchisor may, upon not less than 10 days' written notice (or, in cases of health or sanitation hazards or other public endangerment, immediately on oral or written notice) to Franchisee: (1) arrange for the necessary cleaning or sanitation, repair, remodeling, upgrading, painting or decorating; and/or (2) replace the necessary Operating Assets. Franchisee will pay the entire cost thereof on or before the fifth day following the receipt of a bill from Franchisor.

### **5.B. COURSES, PRODUCTS AND SERVICES THE CENTER OFFERS**

The Center must offer for sale all products and services that Franchisor periodically specifies, including all products (whether or not branded under the Marks) for sale at the Center's pro shop. Without limiting the foregoing, Franchisee agrees to offer all kickboxing, and other health and fitness courses of instructional classes and programs that Franchisor periodically specifies ("**Courses**"), at the time(s) that Franchisor periodically specifies, and to conduct those Courses according to Franchisor's standards and requirements. Franchisee may not offer, sell or otherwise distribute at the Center or any other location any products or services or offer any courses that Franchisor has not authorized.

### **5.C. EXTRANET**

Franchisor may establish a restricted website providing communications among Franchisor, its Affiliates, Franchisee, other Farrell's Center franchisees, and other persons and entities to whom Franchisor (in its judgment) periodically determines to give access, including Farrell's Center members (the "Extranet"). The Extranet may be part of the System Website (defined in Section 7.F) and will provide the features, services and functionality that Franchisor periodically specifies. Franchisor may implement and periodically modify System Standards relating to the Extranet and, at Franchisor's option, may discontinue the Extranet, or any services offered through the Extranet, at any time.

Franchisee agrees to comply with the requirements that Franchisor periodically specifies (whether set forth in the Operations Manual or otherwise) concerning connecting to the Extranet and using the Extranet in the operation of the Center. Without limiting the foregoing, Franchisee agrees to enter the information concerning each person who registers for a Course that the Center offers and all Gross Sales of the Center using the Extranet in the manner that Franchisor periodically specifies. Franchisor will own all intellectual property and other rights in the Extranet and all information it contains, including its domain name or URL, the log of "hits" by visitors, any personal or business data that visitors (including Franchisee and its personnel) supply, and all information relating to the members and other patrons of the Center, whether that information is contained on Franchisee's Computer System or Franchisor's (or its designee's) computer system (collectively, the "Data"). There is no limitation to Franchisor's right to access the Data.

### **5.D. APPROVED PRODUCTS AND SUPPLIERS**

Franchisor reserves the right periodically to designate and approve standards, specifications and/or suppliers of the Operating Assets and other products and services that Franchisor periodically authorizes for use at or sale by the Center. Franchisee agrees to purchase or lease all Operating Assets and other products and services for the Center only according to Franchisor's standards and specifications and, if Franchisor requires, only from suppliers that Franchisor designates or approves (which may include or be limited to Franchisor or its Affiliates). Franchisor and/or its Affiliates may derive revenue based on Franchisee's purchases and leases, including from charging Franchisee for products and services that Franchisor or its Affiliates provide to Franchisee and from promotional allowances, volume discounts and other payments made to Franchisor and its Affiliates by suppliers that Franchisor designates, approves or recommends for some or all Farrell's Center franchisees. Franchisor and its Affiliates may use all amounts received from suppliers, whether or not based on Franchisee's and other franchisees' prospective or actual dealings with them, without restriction for any purposes that Franchisor and its Affiliates deem appropriate. Franchisor makes no warranty and expressly disclaims all warranties, including warranties of merchantability and fitness for any particular purpose, with respect to services, products, equipment (including, without limitation, any required computer systems), supplies, fixtures, furnishing, Operating Assets, or other items approved or required for use in connection with the operation of Franchisee's Center.

If Franchisee wants to use any products or services for or at the Center that Franchisor has not yet evaluated or purchase any product or service from a supplier that Franchisor has not yet approved (for products and services that Franchisor requires Franchisee to purchase only from designated or approved suppliers), Franchisee first agrees to submit sufficient information, specifications and samples for Franchisor to determine whether the product or service complies with Franchisor's standards and specifications or the supplier meets Franchisor's criteria. Franchisor may charge Franchisee a reasonable fee (not exceeding Franchisor's good faith estimate of its evaluation costs) for each product, service or supplier that Franchisee asks Franchisor to evaluate. Franchisor may condition its approval of a supplier on requirements relating to product quality, prices, consistency, warranty, reliability, financial capability, labor relations, customer relations, frequency of delivery, concentration of purchases, standards of service (including prompt attention to complaints), and/or other criteria. Franchisor has the right to inspect the proposed supplier's facilities and to require the proposed supplier to deliver product samples or items, at Franchisor's option, either directly to Franchisor or to any third-party it designates for testing. Franchisor

reserves the right periodically to re-inspect the facilities and products of any approved supplier and to revoke its approval of any supplier, product or service that does not continue to meet its criteria. Notwithstanding the foregoing, Franchisor may limit the number of approved suppliers with whom Franchisee may deal, designate sources that Franchisee must use, and/or refuse any of Franchisee's requests for any reason, including that Franchisor has already designated an exclusive source (which might be Franchisor or its Affiliate) for a particular item or service or if Franchisor believes that doing so is in the best interests of the Farrell's Center network. Franchisor makes no representation concerning, and expressly disclaims any liability arising out of or in connection with, the services rendered or products furnished by any supplier approved or designated by Franchisor. Franchisor's approval or consent to any services, goods, suppliers, or any other individual, entity or any item shall not create any liability to Franchisor.

#### **5.E. COMPLIANCE WITH LAWS AND GOOD BUSINESS PRACTICES**

Franchisee agrees to secure and maintain in force throughout the term of this Agreement all required licenses, permits and certificates relating to the operation of the Center and operate the Center, and otherwise conduct its business under this Agreement, in full compliance with all applicable laws, ordinances and regulations, including laws relating to operating and selling memberships for health and fitness centers (if and to the extent applicable), the ADA, all environmental regulations, and all present and future laws, regulations, policies, lists and other requirements of any governmental authority addressing or relating to terrorism, terrorist acts or acts of war. Franchisee agrees that the Center will in all dealings with its customers, suppliers, Franchisor and the public adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. Franchisee agrees to refrain from any business or advertising practice that might injure Franchisor's business or the goodwill associated with the Marks or other Farrell's Centers. Franchisee agrees to notify Franchisor in writing within three business days of: (1) the commencement of any action, suit or proceeding relating to the Center; (2) the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality which might adversely affect Franchisee's operation or financial condition or that of the Center (including the revocation or threatened revocation of any license, permit or certification applicable to the Center); or (3) any notice of violation of any law, ordinance or regulation relating to the Center.

The parties acknowledge and agree that protection of customer privacy and credit card information is necessary to protect the goodwill of businesses operating under the Marks and System. Accordingly, Franchisee agrees that it shall cause the Center to meet or exceed, at all times, all applicable security standards developed by the Payment Card Industry Data Security Standards ("PCI DSS") council or its successor and other regulations and industry standards applicable to the protection of customer privacy and credit card information, including but not limited to the Fair and Accurate Credit Transaction Act ("FACTA"), and all other data security requirements Franchisor may prescribe. Franchisee is solely responsible for educating itself as to these regulations and standards and for achieving and maintaining applicable compliance certifications. Franchisee shall defend, indemnify and hold harmless the Indemnified Parties (as defined in Section 17.D) from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including but not limited to notification and investigation expenses, reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers, arising out of or resulting from any third-party claim or investigation against any Franchisor Indemnitee arising out of or resulting from Franchisee's failure to comply with any of its obligations under this Section 5.E.

#### **5.F. INSURANCE**

During the term of this Agreement, Franchisee agrees to maintain in full force and effect, at all times, at its sole expense insurance coverage for the Center in the amounts, and covering the risks, that Franchisor periodically specifies. In addition to any other insurance that may be required by applicable law, or by lender or lessor, Franchisee shall procure:

- (a) “All risk” property insurance with contents coverage and business interruption coverage;
- (b) Crime insurance with a minimum coverage of \$10,000 per occurrence;
- (c) General liability insurance with a minimum liability coverage of \$1,000,000 per occurrence and an aggregate limit of \$2,000,000;
- (d) Professional liability insurance for personal trainers with a minimum coverage of \$1,000,000 per occurrence;
- (e) Cyber liability insurance with a minimum coverage of \$25,000 per occurrence and an aggregate limit of \$25,000;
- (f) Automobile liability insurance with hired and non-owned liability CSL of at least \$1,000,000 and if applicable for owned automobiles;
- (g) Umbrella liability with a minimum coverage of \$10,000,000 per occurrence and an aggregate limit of \$10,000,000; and
- (h) Workers’ compensation insurance as required by state law.

All of Franchisee’s insurance carriers must be licensed to do business in the state in which the Center is located and be rated A- or higher by A.M Best and Company, Inc. (or such similar criteria as Franchisor periodically specifies). These insurance policies must be in effect before Franchisee opens the Center for business. Franchisor may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage at any time to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or relevant changes in circumstances. Insurance policies must name Franchisor and any Affiliates it periodically designates as additional insureds, contain a waiver of subrogation in favor of Franchisor and its Affiliates, and provide for thirty days’ prior written notice to Franchisor, or the person Franchisor designates, of the material modification, cancellation or non-renewal of any policy. Franchisee agrees to periodically send Franchisor a valid certificate of insurance or duplicate insurance policy evidencing the coverage specified above and the payment of premiums. Franchisee acknowledges that any minimum requirements set by the Franchisor does not constitute advice or a representation that such coverages are necessary or adequate to protect Franchisee from losses in connection with the Center. Nothing in this Agreement prevents or restricts Franchisor from acquiring and maintaining insurance with higher policy limits or lower deductibles than Franchisor requires. Franchisee’s obligation to obtain and maintain insurance is not limited in any way by reason of any insurance maintained by Franchisor, and Franchisee’s compliance with the minimum insurance requirements will not relieve it of its indemnification obligations under Section 17.D.

#### **5.G. COMPLIANCE WITH SYSTEM STANDARDS**

Franchisee agrees at all times to operate and maintain the Center according to each and every mandatory System Standard, as Franchisor periodically modifies and supplements them. System Standards may regulate any aspect of the operation and maintenance of the Center, including, without limitation, any one or more of the following:

- (a) sales, marketing, advertising and promotional programs and materials and media used in these programs, including participation in and compliance with the requirements of any special advertising, marketing and promotional programs that Franchisor periodically specifies;
- (b) staffing levels for the Center, appearance for Instructors and other Center personnel, practices and procedures for soliciting members, and competent and courteous service

to members and other customers (although Franchisee has the sole responsibility and authority for Franchisee's employees' terms and conditions of employment);

(c) minimum and maximum class sizes, requirements for the physical space in which classes are held, class times, qualifications of Instructors, and other aspects of Courses;

(d) standards, procedures and requirements for reciprocity programs, transferring membership programs, and other programs designed to enhance member satisfaction with the Farrell's Center network, including revenue and cost sharing requirements for these programs;

(e) maximum, minimum or other pricing requirements for products and services that the Center offers, including requirements for promotions, special offers and discounts in which some or all Farrell's Centers participate, in each case to the maximum extent the law allows;

(f) standards, requirements and procedures for training Instructors and other personnel of Franchisee's Center;

(g) use and display of the Marks;

(h) standards and procedures for collecting, inputting and maintaining Data, including through the use of the Extranet;

(i) terms and conditions of the sale and delivery of, and terms and methods of payment for, products and services that Franchisee obtains from Franchisor and suppliers, including ordering, return and warranty terms and conditions and Franchisor's and its Affiliates' right to sell Franchisee any products only on a "cash-on-delivery" or other basis if Franchisee is in default or has failed to pay when due amounts owed under any agreement with Franchisor or its Affiliates;

(j) member and customer satisfaction surveys and programs;

(k) days and hours of operation;

(l) accepting credit and debit cards, other payment systems and check verification services;

(m) standards and procedures for Franchisee's and its employees and other representatives' authorization to use, and use of, Social Media (defined below) that in any way references the Marks or involves the Center;

(n) standards and requirements for processing, collecting and accounting for payments from Center members, including, at Franchisor's option, by participating in any facility and member management program or system that Franchisor periodically specifies; and

(o) any other aspects of operating and maintaining the Center that Franchisor determines to be useful to preserve or enhance the efficient operation, image or goodwill of the Marks and Farrell's Centers.

Franchisee acknowledges that Franchisor's periodic modification of the System Standards (including to accommodate changes to the required Computer System for Farrell's Centers and the Marks) may obligate Franchisee to invest additional capital in the Center and incur higher operating costs, and Franchisee agrees to comply with those obligations within the time period Franchisor specifies. Although Franchisor retains the right to establish and periodically modify System Standards that Franchisee has agreed to follow, Franchisee retains the responsibility for the day-to-day management and operation of the Center and implementing and maintaining System Standards at the Center.

## **5.H. NATIONAL MEMBERSHIP ACCOUNTS**

Franchisor has the right, but not the obligation, to negotiate agreements with National Membership Accounts (defined below) for the provision of goods and services by all or a certain group or category of

Farrell's Centers. If Franchisor agrees to terms with any National Membership Account, Franchisee must provide Courses and other products and services to all valid members of the National Membership Account on those terms (including pricing requirements for Courses and/or other products and services provided to those members to the maximum extent the law allows). In this Agreement, a "**National Membership Account**" is any entity that represents a group of at least 200 persons and that would reasonably require the services of two or more Farrell's Centers to properly serve those within its group who might choose to use a Center's services (for example, a large employer, an employer with multiple offices, or a health plan). Franchisor has the right to receive commissions, rebates and other payments from the groups representing the National Membership Accounts based on its establishing the account or their dealings with Franchisee and other Farrell's Center operators.

#### **5.I. MODIFICATION OF SYSTEM**

Because complete and detailed uniformity under many varying conditions might not be possible or practical, Franchisor reserves the right to vary System Standards for any Farrell's Center or group of Farrell's Centers based upon the peculiarities of any conditions or factors that Franchisor considers important to its operations. Franchisee has no right to require Franchisor to grant Franchisee a similar variation or accommodation.

#### **5.J. PUBLIC RELATIONS**

Franchisee shall not make any public statements (including giving interviews or issuing press releases) regarding the Center or any other Farrell's Center or any particular incident or occurrence related to the Center or any other Farrell's Center, without the Franchisor's prior written approval.

#### **5.K. ASSOCIATION WITH CAUSES**

Franchisee shall not in the name of the Center, donate money, products, or services to any charitable, political, religious or other organization, or act in support of any such organization, without the Franchisor's prior written approval.

#### **5.L. SOCIAL MEDIA AND INTERNET LISTINGS**

Franchisee shall follow Franchisor's mandatory specifications, standards, operating procedures, and rules for using Social Media in connection with Franchisee's operation of the Center and Franchisee agrees to comply with any Social Media policy Franchisor implements. Franchisor shall own all Social Media accounts used in operation of the Center and shall allow Franchisee's access and use only in strict compliance with Franchisor's rules. Franchisor reserves its right to remove Franchisee's access to Social Media accounts at any time at its sole discretion. Upon termination of this Agreement for any reason, Franchisee's access to all Social Media accounts will terminate. The term "**Social Media**" includes, without limitation, blogs; common social networks such as FACEBOOK, SNAPCHAT, INSTAGRAM, LINKEDIN, TWITTER, or YOUTUBE; internet listing sites such as WIKIPEDIA, GOOGLE, FOURSQUARE, and YELP; applications supported by mobile platforms such as iOS and Android; virtual worlds; file, audio, and video-sharing sites; and other similar internet, social networking, or media sites, mobile platforms, or tools.

#### **5.M. TECHNOLOGY RISK**

Franchisee acknowledges and agrees that technology is constantly changing. Technologic devices and computer systems are always being updated, improved, replaced, and discontinued. Consequently, computer systems are sometimes incompatible and are susceptible to Internet, computer system, and communication failures. By entering into this Agreement, Franchisee assume all of the risk of all such issues and technology failures, which it acknowledges may affect its ability to order or receive products or to conduct business, and Franchisee acknowledges that Franchisor is not responsible for any damages caused by such issues or technology failures, including lost sales or profits.

## 5.N. CUSTOMER PRIVACY

The parties acknowledge and agree that protection of customer privacy and credit card information is necessary to protect the goodwill of businesses operating under the Marks and System. Accordingly, Franchisee agrees that it shall cause the Center to meet or exceed, at all times, all applicable security standards developed by the Payment Card Industry Data Security Standards (“**PCI DSS**”) council or its successor and other regulations and industry standards applicable to the protection of customer privacy and credit card information, including but not limited to the Fair and Accurate Credit Transaction Act (“**FACTA**”), and all other data security requirements Franchisor may prescribe. Franchisee is solely responsible for educating itself as to these regulations and standards and for achieving and maintaining applicable compliance certifications. Franchisee shall defend, indemnify and hold harmless Franchisor, Franchisor’s Affiliates, and their respective shareholders, directors, officers, employees, agents, successors and assignees (“**Franchisor Indemnitee**”) (from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including but not limited to notification and investigation expenses, reasonable attorneys’ fees, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers, arising out of or resulting from any third-party claim or investigation against any Franchisor Indemnitee arising out of or resulting from Franchisee’s failure to comply with any of its obligations under this Section 5.N.

## 6. INITIAL FRANCHISE FEE AND ROYALTY

### 6.A. INITIAL FRANCHISE FEE

Upon execution of this Agreement, Franchisee shall pay Franchisor an initial franchise fee in the amount listed on the Summary Page. The initial franchise fee is fully earned and nonrefundable upon payment.

### 6.B. ROYALTY AND DEFINITIONS OF GROSS SALES

Franchisee agrees to pay Franchisor a Merchandise Royalty and a Service Royalty (collectively, the “**Royalty**”) in the amounts stated in the Summary Pages. In this Agreement, “**Merchandise Gross Sales**” means all revenue that Franchisee derives from the sale of products at the Center’s pro shop, including cash, credit, and the fair market value of barter transactions. “**Service Gross Sales**” means all revenue that Franchisee derives from providing services and all revenue derived from the operation of the Center which is not Merchandise Gross Sales, including the proceeds of business interruption insurance. However, Merchandise Gross Sales and Service Gross Sales exclude: (1) sales for which cash has been refunded, if those sales were previously included in Merchandise Gross Sales or Service Gross Sales; (2) federal, state, or municipal sales, use or service taxes collected from customers and paid to the appropriate taxing authority; and (3) the face value of coupons or discounts that customers redeem. Merchandise Gross Sales and Service Gross Sales are considered earned at the time of the sale, regardless of when merchandise is delivered or services are performed and regardless of when funds are received in the case of credit.

### 6.C. COMPLIANCE REBATE

If, with respect to any fiscal six-month period (*i.e.* January through June or July through December) or any part thereof if the term of this Agreement begins or ends during such six-month period (each a “**Period**”), Franchisee has:

- (a) timely paid all amounts owed to Franchisor and its Affiliates, whether under this Agreement or any other agreement;
- (b) timely submitted to Franchisor and its Affiliates all reports and other information required to be submitted under this Agreement or any other agreement, including by timely entering all Course- and member-related information using the Extranet;

(c) maintained a Certified Instructor Trainer working an average of at least 20 hours per week at the Center at all times during the Period and had a fully trained and qualified Instructor teaching each class that the Center held during the Period; and

(d) not received written notice from Franchisor or any of its Affiliates of any default by Franchisee under this Agreement or any other agreement,

then Franchisee shall be entitled to a credit against future Royalties payable to Franchisor in the amount of ½% of the Merchandise Gross Sales and 1% of the Service Gross Sales for such Period. The credit (if earned) shall be calculated and applied by Franchisor on each September 1 and March 1, based on the Merchandise Gross Sales and the Service Gross Sales for the prior Period, and shall serve as a credit against all Royalties payable for the month(s) following such calculation until reduced to zero. Franchisee shall only be eligible to receive the rebates specified in this Section 6.C if Franchisee and all of its Affiliates are eligible to receive such rebate for all Farrell's Centers that they operate. Upon expiration of this Agreement at the end of its term, Franchisee shall be entitled to payment for any credit due, payable on the next September 1 or March 1 following the expiration, based on the Merchandise Gross Sales and the Service Gross Sales for the previous Period. If this Agreement is terminated for any reason before its term expires, Franchisee shall not be entitled to such payment.

#### **6.D. PAYMENT METHOD AND TIMING**

Franchisee agrees to sign and deliver to Franchisor the documents that Franchisor periodically requires to authorize Franchisor to debit Franchisee's business checking account automatically for the Royalty and other amounts due under this Agreement or any related agreement between Franchisor (or its Affiliates) and Franchisee. If Franchisor institutes an automatic debit program for the Center, Franchisor will debit Franchisee's account for the Royalty and any other amounts payable hereunder on or after the Payment Day, based on the Merchandise Gross Sales and the Service Gross Sales for the previous month. Franchisee agrees to make sufficient funds available for withdrawal by electronic transfer before each due date. In connection with the automatic debit program, Franchisor may require Franchisee to procure, at Franchisee's expense, overdraft protection for its business checking account in an amount that Franchisor specifies. Franchisee agrees to reimburse Franchisor for any "insufficient funds" charges and related expenses that Franchisor incurs in connection with any checks that Franchisor receives from Franchisee or Franchisee's failure to maintain sufficient funds in its automatic debit account.

If Franchisee fails to report the Center's Merchandise Gross Sales or Service Gross Sales for any month, Franchisor may debit Franchisee's account for 120% of the Royalty that Franchisor debited for the previous month. If the amount Franchisor debits from Franchisee's account is less than the amount Franchisee actually owes Franchisor for the month (once Franchisor has determined the true and correct Merchandise Gross Sales and Service Gross Sales of the Center for the month), Franchisor will debit Franchisee's account for the balance due on the day that Franchisor specifies. If the amount Franchisor debits from Franchisee's account is greater than the amount Franchisee actually owes Franchisor for the month (once Franchisor has determined the true and correct Merchandise Gross Sales and Service Gross Sales of the Center for the month), Franchisor will credit the excess, without interest, against the amount that Franchisor otherwise would debit from Franchisee's account during the following month(s).

Franchisor has the right, at its sole option upon notice to Franchisee, to change from time to time the timing and terms for payment of Royalties and other amounts payable to Franchisor under this Agreement. For example, Franchisor may change the frequency at which payments are calculated to weekly or bi-weekly.

Franchisee may not subordinate to any other obligation its obligation to pay Royalties or any other fee or charge under this Agreement.

#### **6.E. INTEREST ON LATE PAYMENTS**

All amounts that Franchisee owes Franchisor (including Royalty payments), if not debited from Franchisee's account or paid within seven days after the due date, will bear interest beginning after their original due date at 1.5% per month or the highest commercial contract interest rate the law allows, whichever is less. Franchisor may debit Franchisee's account automatically for these amounts. Franchisee acknowledges that this Section 6.F is not Franchisor's agreement to accept any payments after they are due or Franchisor's commitment to extend credit to, or otherwise finance Franchisee's operation of, the Center. Franchisee's failure to pay all amounts that Franchisee owes Franchisor when due constitutes grounds for Franchisor's terminating this Agreement under Section 15, notwithstanding this Subsection.

#### **6.F. APPLICATION OF PAYMENTS AND RIGHT OF SET-OFF**

Notwithstanding any designation that Franchisee makes, Franchisor may apply any of Franchisor's debits or Franchisee's payments to any of Franchisee's past due indebtedness to Franchisor (or its Affiliates). Franchisor may set-off any amounts Franchisee or its owners owe Franchisor or its Affiliates against any amounts that Franchisor or its Affiliates owe Franchisee or its owners, whether in connection with this Agreement or otherwise. Franchisee may not set-off, deduct, or otherwise withhold any fees or other amounts due Franchisor under this Agreement on grounds of alleged nonperformance by Franchisor of any of its obligations or for any other reason.

#### **6.G. PARTIAL PAYMENTS**

If Franchisee pays less than the amount due, its payment will be considered a partial payment on account. Franchisor may accept such payment as a partial payment, irrespective of any endorsement or other statement that the payment constitutes full payment. Franchisor's acceptance of such partial payment will not be considered a waiver of any of its right to demand or receive full payment, and Franchisee hereby waives any estoppel defense in this regard.

#### **6.H. PAYMENT OF TAXES**

If any tax is imposed on payment owed to Franchisor (other than a tax imposed on Franchisor's net income), then Franchisee shall be responsible and shall pay the tax in addition to Franchisee's payment obligation, the intent being that Franchisor shall receive all payments in full, as if no such tax had been imposed.

#### **6.I. ADMINISTRATIVE FEE**

If at any time Franchisee's Center fails to conform to System Standards, Franchisor shall have the right to impose and collect from Franchisee an administrative fee as described in this paragraph ("**Administrative Fee**"). Specifically, (1) Franchisor may impose and collect from Franchisee a \$250 Administrative Fee for each "enforcement effort" that Franchisor undertakes on account of Franchisee's noncompliance with System Standards (e.g., a letter, email, or telephone communication notifying Franchisee of noncompliance or continued noncompliance), and (2) if Franchisor has notified Franchisee of noncompliance and Franchisee has failed to correct the issue within seven days, Franchisor may impose and collect from Franchisee a \$250 Administrative Fee per week until the issue has been corrected to Franchisor's satisfaction. Franchisor also may impose and collect a \$250 Administrative Fee if Franchisee fails to acknowledge receipt of Franchisor's communications to Franchisee, or to respond to Franchisor's communications within 24 hours of delivery. This fee is not a penalty but is intended to compensate Franchisor for the additional costs that Franchisor incurs in enforcing Franchisee's compliance with the System Standards and is in addition to and not in lieu of any other rights or remedies that Franchisor may have based on Franchisee's noncompliance with the System Standards. Franchisor may impose and collect the Administrative Fee whether or not the noncompliance at issue is of the type or degree that constitutes a material default of Franchisee's obligations under this Agreement and, if it is, whether or not a cure period applies. At Franchisor's option, Franchisor may require Franchisee to demonstrate full compliance with its

obligations by submitting to Franchisor a comprehensive walk-through video of the Center premises in accordance with the System Standards.

## **7. ADVERTISING AND MARKETING**

### **7.A. START-UP OPENING MARKETING PROGRAM**

Franchisee agrees, at its expense, to implement a start-up marketing program for the Center in accordance with the System Standards. Franchisor will consult with and jointly prepare with Franchisee a written start-up marketing program for the Center that contemplates Franchisee's spending the amount listed on Exhibit A on the initial promotion of the Center (the "**Start-up Marketing Budget**"). Franchisee must obtain Franchisor's approval of the start-up marketing program. Franchisee agrees to implement the approved program according to Franchisor's requirements. Franchisee will use the Start-up Marketing Budget to pay providers of products and services according to the approved start-up marketing program.

### **7.B. MARKETING FUND**

Recognizing the value of advertising and marketing to the goodwill and public image of Farrell's Centers, Franchisor may, upon at least 60 days' written notice to Franchisee, establish, and thereafter administer and control, a marketing fund (the "**Marketing Fund**") for the advertising, marketing and public relations programs and materials that Franchisor deems appropriate. Franchisee agrees to contribute the amount that Franchisor periodically specifies to the Marketing Fund, up to 3% of the Center's combined Merchandise Gross Sales and Service Gross Sales, subject to the Marketing Spending Requirement (defined in Section 7.D). Franchisee's Marketing Fund contribution shall be payable in the same manner as the Royalty or in such other manner as Franchisor periodically specifies. Farrell's Centers that Franchisor or its Affiliates own will contribute to the Marketing Fund on the same basis as franchisees.

Franchisor will direct all programs that the Marketing Fund finances, with sole control over the creative concepts, materials and endorsements used and their geographic, market and media placement and allocation. The Marketing Fund may pay for preparing and producing video, audio and written materials and electronic media and using Social Media, including mail pieces and welcome kits for new members; maintaining and administering one or more System Websites and otherwise establishing an online presence; administering regional and multi-regional marketing and advertising programs, including creating and/or purchasing trade journal, direct mail, radio and other media advertising and using advertising, promotion and marketing agencies and other advisors to provide assistance; and supporting public relations, market research and other advertising, promotion and marketing activities. The Marketing Fund periodically will make available samples of advertising, marketing and promotional formats and materials at no cost and will offer for sale multiple copies of these materials at its direct cost of producing them, plus any related shipping, handling and storage charges.

Franchisor will account for the Marketing Fund separately from its other funds and not use the Marketing Fund for any of its general operating expenses. However, the Marketing Fund may reimburse Franchisor and its Affiliates for the reasonable salaries and benefits of personnel who manage and administer the Marketing Fund or otherwise provide assistance or services to the Marketing Fund, the Marketing Fund's administrative costs, travel expenses of personnel while they are on Marketing Fund business, meeting costs, overhead relating to the Marketing Fund's business, and other expenses that Franchisor and they incur in administering or directing the Marketing Fund and its programs, including conducting market research, preparing advertising, promotional and marketing materials, and collecting and accounting for Marketing Fund contributions. The Marketing Fund is not a trust, and Franchisor does not owe Franchisee fiduciary obligations because of Franchisor's maintaining, directing or administering the Marketing Fund or any other reason. The Marketing Fund may spend in any fiscal year more or less than the total Marketing Fund contributions in that year, borrow from Franchisor or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. Franchisor will use all interest earned on Marketing Fund contributions to pay costs before using the Marketing Fund's other assets.

Franchisor will prepare an annual, unaudited statement of Marketing Fund collections and expenses and give Franchisee the statement upon written request. Franchisor may (but need not) have the Marketing Fund audited annually, at the Marketing Fund's expense, by a certified public accountant. Franchisor may incorporate the Marketing Fund or operate it through a separate entity whenever Franchisor deems appropriate. The successor entity will have all of the rights and duties specified in this Subsection.

Franchisor intends the Marketing Fund to maximize recognition of the Marks and patronage of Farrell's Centers. Although Franchisor will try to use the Marketing Fund in the aggregate to develop advertising and marketing materials and programs, and implement programs, that will benefit Farrell's Centers, generally, Franchisor need not ensure that Marketing Fund expenditures in or affecting any geographic area are proportionate or equivalent to the Marketing Fund contributions by Farrell's Centers operating in that geographic area or that any Farrell's Center benefits directly or in proportion to its Marketing Fund contribution from the development of advertising and marketing materials or implementation of programs. Franchisor has the right, but no obligation, to use collection agents and institute legal proceedings to collect Marketing Fund contributions at the Marketing Fund's expense. Franchisor also may forgive, waive, settle and compromise all claims by or against the Marketing Fund. Except as expressly provided in this Subsection, Franchisor assumes no direct or indirect liability or obligation to Franchisee for collecting amounts due to, maintaining, directing or administering the Marketing Fund.

Franchisor may at any time defer or reduce the Marketing Fund contributions of a Farrell's Center franchisee and, upon thirty days' prior written notice to Franchisee, reduce or suspend Marketing Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Marketing Fund. If Franchisor terminates the Marketing Fund, Franchisor will distribute all unspent funds to Franchisor's then existing franchisees, and to Franchisor and its Affiliates, in proportion to their respective Marketing Fund contributions during the preceding 12-month period.

### **7.C. ADVERTISING COOPERATIVES**

Franchisor may designate a geographic area in which two or more Farrell's Centers are located as an area for an advertising cooperative (a "**Cooperative**"). The Cooperative's members in any area are the owners of all of the Farrell's Centers located and operating in that area (including Franchisor and its Affiliates, if applicable). Each Cooperative will be organized and governed in a form and manner, and begin operating on a date, that Franchisor determines. Franchisor may change, dissolve and merge Cooperatives. Each Cooperative's purpose is, with Franchisor's approval, to administer advertising programs and develop advertising, marketing and promotional materials for the area that the Cooperative covers. If, as of the Agreement Date, Franchisor has established a Cooperative for the geographic area in which the Center is located, or if Franchisor establishes a Cooperative in that area during the term of this Agreement, Franchisee agrees to sign the documents that Franchisor requires to become a member of the Cooperative and to participate in the Cooperative as those documents require. In addition to the Marketing Fund contribution, Franchisee agrees to contribute to the Cooperative the amounts determined by the Cooperative, subject to Franchisor's approval and the Marketing Spending Requirement.

All material decisions of the Cooperative, including contribution levels (which also require Franchisor's approval), will require the affirmative vote of at least 51% of all Farrell's Centers operating within the Cooperative's area (including, if applicable, those operated by Franchisor or its Affiliate), with each Farrell's Center receiving one vote.

Franchisee agrees to submit to Franchisor and the Cooperative any reports that Franchisor or the Cooperative periodically requires. The Cooperative will operate solely to collect and spend Cooperative contributions for the purposes described above. The Cooperative and its members may not use any advertising, marketing or promotional programs or materials that Franchisor has not approved.

#### **7.D. MARKETING SPENDING REQUIREMENT**

Beginning on the first anniversary of the Agreement Date and continuing for the remainder of the term of this Agreement, Franchisee agrees to spend a total of at least 3% of the Center's combined Merchandise Gross Sales and Service Gross Sales each calendar quarter on advertising, marketing and promotional programs for the Center (the "**Marketing Spending Requirement**"). Franchisor will credit Franchisee's Cooperative contributions, Marketing Fund contributions, and any other amounts that Franchisee spends to advertise, market or promote the Center in compliance with this Agreement toward the Marketing Spending Requirement; however, Franchisor will not count the Start-up Marketing Budget or the face value of redeemed coupons or similar promotions toward this minimum obligation. Franchisor has the authority under this Agreement to periodically determine the rate of Franchisee's Marketing Fund contributions, and Franchisee acknowledges that it must vary the amounts it spends on other advertising, marketing and promotional programs in order to spend at least the amounts required by the Marketing Spending Requirement. Franchisee's Marketing Fund and Cooperative contributions (taken together) shall not exceed 3% of the Center's combined Merchandise Gross Sales and Service Gross Sales. Franchisor may review Franchisee's books and records from time to time and require Franchisee to submit reports periodically to determine its advertising, marketing and promotion expenses.

#### **7.E. APPROVAL OF ADVERTISING**

All of Franchisee's (and its Cooperative's) advertising, promotion and marketing must be completely clear, factual and not misleading and conform to the highest ethical standards and the advertising and marketing policies that Franchisor periodically specifies. Before using them, Franchisee agrees to send to Franchisor, for its approval, samples of all advertising, promotional and marketing materials that Franchisor has not prepared or previously approved within the preceding six months. If Franchisee does not receive written notice of disapproval from Franchisor within 15 days after Franchisor receives the materials, they are deemed approved. Franchisee may not use any advertising, promotional or marketing materials that Franchisor has disapproved. Franchisor assumes no liability to Franchisee or any other party due to Franchisor's approval or disapproval of any advertising, marketing or promotional materials or programs, and Franchisee is responsible for ensuring that all such materials and programs that Franchisee uses and implements comply with all applicable laws, ordinances and regulations.

#### **7.F. SYSTEM WEBSITES AND ELECTRONIC ADVERTISING**

Franchisor or one or more of its designees may establish a website or series of websites for the Farrell's Center network: (1) to advertise, market and promote Farrell's Centers, the Courses and other products and services they offer, and/or the Farrell's Center franchise opportunity; (2) to function as the Extranet; and/or (3) for any other purposes that Franchisor determines are appropriate for Farrell's Centers (collectively, the "**System Website**"). If Franchisor includes information about the Center on the System Website, Franchisee agrees to give Franchisor the information and materials that Franchisor periodically requests concerning the Center (including class times and Instructor information) and otherwise participate in the System Website in the manner that Franchisor periodically specifies. By posting or submitting to Franchisor information or materials for the System Website, Franchisee is representing to Franchisor that the information and materials are accurate and not misleading and do not infringe any third-party's rights.

Franchisor shall own all intellectual property and other rights in the System Website and all information it contains, including the domain name or URL for the System Website, the log of "hits" by visitors, and any Data and other personal or business data that visitors (including Franchisee and its personnel) supply. Franchisor may use the Marketing Fund's assets to develop, maintain and update the System Website. Franchisor may implement and periodically modify System Standards relating to the System Website and, at Franchisor's option, may discontinue the System Website, or any services offered through the System Website, at any time.

All advertising, marketing and promotional materials that Franchisee develops for the Center must contain notices of the URL of the System Website in the manner that Franchisor periodically designates. Franchisee may not develop, maintain or authorize any other website, other online presence or other electronic medium that mentions or describes the Center or displays any of the Marks without Franchisor's prior approval. Franchisee may not conduct commerce or directly or indirectly offer or sell any products or services using any website, another electronic means or medium, or otherwise over the Internet.

Nothing in this Section 7.F shall limit Franchisor's right to maintain websites other than the System Website or to offer and sell products and services under the Marks from the System Website, another website or otherwise over the Internet without payment or obligation of any kind to Franchisee.

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

Franchisee agrees to establish and maintain at its own expense a bookkeeping, accounting and recordkeeping system conforming to the requirements and formats that Franchisor periodically specifies. Franchisor may require Franchisee to use the Computer System and Extranet to maintain certain financial data, member information and other information, in such formats as Franchisor periodically prescribes, and to transmit certain data and information to Franchisor on a schedule that Franchisor periodically specifies. Franchisee also agrees, at its expense, to maintain the Computer System and purchase the hardware and software that Franchisor designates in order to allow Franchisor unlimited access to, and the ability to download, all information in the Computer System at any time. Franchisee also agrees to give Franchisor in the manner and format that Franchisor periodically specifies:

- (a) within 20 days after the end of each month, the operating statements, financial statements (including a balance sheet and profit and loss statements), statistical reports and other information Franchisor requests regarding Franchisee and the Center covering that month;
- (b) within 60 days after the end of each of Franchisee's fiscal years, annual profit and loss and source and use of funds statements and a balance sheet for the Center as of the end of the previous fiscal year; and
- (c) within 30 days after Franchisor's request, exact copies of federal and state income and other tax returns and any other forms, records, books, reports and other information that Franchisor periodically requires relating to the Center or Franchisee.

Franchisee agrees to verify and sign each report and financial statement in the manner that Franchisor periodically specifies. Franchisor may disclose data derived from these reports, including by creating and circulating reports on the financial results of Franchisee's Center and/or some or all other Farrell's Centers to other Farrell's Center owners and prospective franchisees, but Franchisor will not (without Franchisee's consent) disclose Franchisee's identity in connection with that data.

Franchisee agrees to preserve and maintain all records in a secure location at the Center or other safe location during the term of this Agreement and for at least three years afterward. If Franchisor determines that Franchisee has failed to comply with its reporting or payment obligations under this Agreement, Franchisor may require Franchisee to have audited financial statements prepared annually at Franchisee's expense during the remaining term of this Agreement, in addition to Franchisor's other remedies and rights under the Agreement and applicable law.

## **9. INSPECTIONS AND AUDITS**

### **9.A. FRANCHISOR'S INSPECTION RIGHTS**

To determine whether Franchisee and the Center are complying with this Agreement and all System Standards, Franchisor and its designated agents and representatives may at all times and without prior notice to Franchisee:

- (1) inspect the Center and/or videotape, photograph or otherwise remotely monitor the Center's operations and monitor and test the Operating Assets, whether remotely via the Computer System or by other means;
- (2) observe, photograph, and videotape the operation of the Center and any Courses it offers (including so-called "mystery shopping") for consecutive or intermittent periods that Franchisor deems necessary;
- (3) remove samples of any products sold at the Center;
- (4) interview the personnel and members of the Center; and
- (5) inspect and copy any books, records and documents relating to the operation of the Center.

Franchisee agrees to cooperate with Franchisor fully. If Franchisor exercises any of these rights, it will use commercially reasonable efforts not to interfere unreasonably with the operation of the Center. Franchisee agrees to present to its members and customers the evaluation forms that Franchisor periodically specifies and to participate and/or request that Franchisee's customers and members participate in any surveys and other customer satisfaction programs performed by or for Franchisor.

#### **9.B. FRANCHISOR'S RIGHT TO AUDIT**

Franchisor may at any time during Franchisee's business hours, and without prior notice to Franchisee, examine the business, bookkeeping and accounting records, sales and income tax records and returns, and other records of the Center. Franchisee agrees to cooperate fully with Franchisor, its representatives and independent accountants in any inspection or audit. If any inspection or audit discloses an understatement of the Merchandise Gross Sales or Service Gross Sales of the Center, Franchisee agrees to pay, within 15 days after receiving the inspection or audit report, the Royalty, Marketing Fund contributions, and any other amounts due on the amount of the understatement, plus interest (in the amount described in Section 6.F) from the date originally due until the date of payment. Further, if an inspection or audit is necessary due to Franchisee's failure to furnish reports, supporting records or other information as required, or to furnish these items on a timely basis, or if Franchisor's examination reveals a Royalty understatement exceeding 2% of the amount that Franchisee actually reported to Franchisor for the period examined, Franchisee agrees to reimburse Franchisor for the cost of its examination, including the charges of attorneys and independent accountants and the travel expenses, room and board, and compensation of Franchisor's employees. These remedies are in addition to Franchisor's other remedies and rights under this Agreement and applicable law.

### **10. MARKS**

#### **10.A. OWNERSHIP AND GOODWILL OF MARKS**

Franchisee's right to use the Marks is derived only from this Agreement and is limited to Franchisee's operating the Center according to this Agreement and all mandatory System Standards that Franchisor prescribes during its term. Franchisee's unauthorized use of the Marks is a breach of this Agreement and infringes Franchisor's (and its licensor's) rights in the Marks. Any use of the Marks relating to the Center, and any goodwill established by that use, are for Franchisor's (or its licensor's) exclusive benefit. This Agreement does not confer any goodwill or other interests in the Marks upon Franchisee, other than the right to operate the Center according to this Agreement. All provisions of this Agreement relating to the Marks apply to any additional and substitute trademarks and service marks that Franchisor periodically authorizes Franchisee to use. Franchisee may not at any time during or after the term of this Agreement contest or assist any other person in contesting the validity, or Franchisor's (or its licensor's) ownership, of the Marks.

## **10.B. LIMITATIONS ON USE OF MARKS**

Franchisee agrees to use the Marks as the sole identification of the Center, subject to the notices of independent ownership that Franchisor periodically designates. Franchisee may not use any Mark, or any part or derivative thereof, (1) as part of any corporate or legal business name, (2) with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos that Franchisor has licensed to Franchisee), (3) in selling any unauthorized services or products, (4) as part of any domain name, homepage, electronic address, metatag or otherwise in connection with any website, social media platform, or other online presence without Franchisor's consent, or (5) in any other manner that Franchisor has not expressly authorized in writing. Franchisee may not use any Mark in advertising the transfer, sale or other disposition of the Center or an ownership interest in Franchisee or an Entity Owner (defined in Section 13.H) without Franchisor's prior written consent, which Franchisor will not unreasonably withhold. Franchisee agrees to give the notices of trademark and service mark registrations that Franchisor periodically specifies and obtain any fictitious or assumed name registrations that applicable law requires.

## **10.C. NOTIFICATION OF INFRINGEMENTS AND CLAIMS**

Franchisee agrees to notify Franchisor immediately of any actual or apparent infringement of or challenge to Franchisee's use of any Mark, or of any person's claim of any rights in any Mark (or any identical or confusingly similar trademark) or claim of unfair competition relating to any Mark. Franchisee agrees not to communicate with any person other than Franchisor and its licensor, their respective attorneys, and Franchisee's attorneys regarding any infringement, challenge or claim. Franchisor and its licensor may take the action that they deem appropriate (including no action) and control exclusively any litigation, U.S. Patent and Trademark Office proceeding or other administrative proceeding arising from any infringement, challenge or claim or otherwise concerning any Mark. Franchisee agrees to sign any documents and take any other reasonable actions that, in the opinion of Franchisor's or its licensor's attorneys, are necessary or advisable to protect and maintain Franchisor's (and its licensor's) interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain Franchisor's (and its licensor's) interests in the Marks.

## **10.D. DISCONTINUANCE OF USE OF MARKS**

If Franchisor believes at any time that it is advisable for Franchisor and/or Franchisee to modify, discontinue using and/or replace any Mark, and/or use one or more additional or substitute trademarks or service marks, Franchisee agrees to comply with Franchisor's directions within a reasonable time after receiving notice. Franchisor need not reimburse Franchisee for Franchisee's expenses in complying with these directions (such as costs that Franchisee incurs in changing the signs or replacing supplies for the Center), for any loss of revenue due to any modified or discontinued Mark, or for Franchisee's expenses of promoting a modified or substitute trademark or service mark.

## **10.E. INDEMNIFICATION FOR USE OF MARKS**

Franchisor agrees to reimburse Franchisee for all damages and expenses that Franchisee incurs in any trademark infringement proceeding disputing Franchisee's authorized use of any Mark under this Agreement if Franchisee has timely notified Franchisor of, and complied with Franchisor's directions in responding to, the proceeding. At Franchisor's option, Franchisor and/or its Affiliate(s) may defend and control the defense of any proceeding arising from or relating to Franchisee's use of any Mark under this Agreement.

# **11. COPYRIGHTED WORKS, CONFIDENTIAL INFORMATION AND INNOVATIONS**

## **11.A. OWNERSHIP OF COPYRIGHTED WORKS**

Franchisor hereby authorizes Franchisee to use in operating the Center those certain copyrighted or copyrightable materials which are from time to time owned by Franchisor or its Affiliates and which Franchisor approves and licenses for use in the operation of Farrell's Centers, which materials may include the Operations

Manual, Course manuals for students and/or Instructors, training materials, advertising and promotional materials, and other portions of the System, and/or any translations or paraphrasing of any of the foregoing (“**Copyrighted Works**”). Franchisee acknowledges and agrees that Franchisor owns or is the licensee of the owner of the Copyrighted Works and may (at its option) further create, acquire or obtain licenses for certain copyrights in various works of authorship used in connection with the operation of Farrell’s Centers, all of which shall be deemed to be Copyrighted Works under this Agreement. All works of authorship related to the System and created in the future will be owned by Franchisor or its Affiliates.

This Agreement does not confer any interest in the Copyrighted Works upon Franchisee, other than the right to use them in the operation of the Center in compliance with this Agreement and the System Standards. If Franchisor authorizes Franchisee to prepare any adaptation, translation or work derived from the Copyrighted Works, or if Franchisee prepares any Copyrighted Works such as advertisements, manuals, posters, forms or marketing or promotional material, Franchisee hereby agrees that such adaptation, translation, derivative work or Copyrighted Work shall be the sole and exclusive property of Franchisor or its licensor, and Franchisee hereby assigns all its right, title and interest therein to Franchisor (or such other person identified by Franchisor). Franchisee agrees to execute any documents, in recordable form, which Franchisor determines are necessary to reflect such ownership. Franchisee shall submit all such adaptations, translations, derivative works and Copyrighted Works to Franchisor for approval prior to use.

#### **11.B. LIMITATION ON FRANCHISEE’S USE OF COPYRIGHTED WORKS**

Franchisee shall ensure that all Copyrighted Works it uses bear an appropriate copyright notice under the Universal Copyright Convention or other copyright laws that Franchisor specifies indicating that Franchisor or its licensor is the owner of the copyrights therein. Any unauthorized use, adaptation, publication, reproduction, preparation of derivative works, distribution of copies (whether by sale or other transfer of ownership, or by rental, lease or lending), or attempts to recreate all or a portion of such Copyrighted Works, shall constitute a breach of this Agreement and an infringement of the Franchisor’s rights in and to the Copyrighted Works.

#### **11.C. NOTIFICATION OF INFRINGEMENTS AND CLAIMS**

Franchisee agrees to notify Franchisor immediately of any actual or apparent infringement of or challenge to any of the Copyrighted Works, or of any person’s claim of any rights in the Copyrighted Works (or any similar works) or claim of unfair competition relating to any Copyrighted Works. Franchisee agrees not to communicate with any person other than Franchisor and its licensor, their respective attorneys, and Franchisee’s attorneys regarding any such infringement, challenge or claim. Franchisor and its licensor may take the action that they deem appropriate (including no action) and control exclusively any proceeding arising from any infringement, challenge or claim or otherwise concerning the Copyrighted Works. Franchisee agrees to sign any documents and take any other reasonable actions that, in the opinion of Franchisor’s or its licensor’s attorneys, are necessary or advisable to protect and maintain Franchisor’s (and its licensor’s) interests in any litigation or other proceeding or to otherwise protect and maintain Franchisor’s (and its licensor’s) interests in the Copyrighted Works. Neither Franchisor nor its Affiliates shall have any obligation to defend Franchisee against, or indemnify Franchisee for any damages, costs or expenses it incurs in connection with, any claims or proceedings disputing Franchisee’s use of any Copyrighted Works.

#### **11.D. DISCONTINUANCE OF USE OF COPYRIGHTED WORKS**

If Franchisor believes at any time that it is advisable for Franchisor and/or Franchisee to modify, discontinue using and/or replace any of the Copyrighted Works and/or use one or more additional or substitute copyrighted or copyrightable items, Franchisee agrees to comply with Franchisor’s directions within a reasonable time after receiving notice. Neither Franchisor nor its Affiliates shall have any obligation to reimburse Franchisee for any expenditures made by Franchisee to modify or discontinue the use of any Copyrighted Work or to adopt additional or substitute copyrighted or copyrightable items.

## 11.E. CONFIDENTIAL INFORMATION

Franchisor and its affiliates possess (and will continue to develop and acquire) certain confidential information, some of which constitutes trade secrets under applicable law, relating to the development and operation of Farrell's Centers (the "**Confidential Information**"), which includes, without limitation:

- (1) information in the Operations Manual and System Standards;
- (2) layouts, designs, and other plans and specifications for Farrell's Centers;
- (3) methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, and knowledge and experience used in developing and operating Farrell's Centers;
- (4) content, methods of instructing, and other aspects of the Courses;
- (5) marketing research and promotional, marketing and advertising programs for Farrell's Centers;
- (6) knowledge of specifications for and suppliers of, and methods of ordering, certain Operating Assets, products, materials and supplies that Farrell's Centers use and sell;
- (7) knowledge of the operating results and financial performance of Farrell's Centers other than the Center;
- (8) customer and member solicitation, communication and retention programs, along with data and information used or generated in connection with those programs;
- (9) all Data and all other information generated by, or used or developed in, the operation of the Center, including member names, addresses, telephone numbers and other information supplied by a member (such as credit card information and Course-related information), and any other information contained from time to time in the Computer System or that visitors (including Franchisee) provide to the System Website; and
- (10) any other information that Franchisor reasonably designates as confidential or proprietary.

Franchisee will not acquire any interest in any Confidential Information, other than the right to use certain Confidential Information as Franchisor specifies in operating the Center during the term of this Agreement and according to the System Standards and the other terms and conditions of this Agreement. Franchisee acknowledges that its use of any Confidential Information in any other business would constitute an unfair method of competition with Franchisor and its franchisees. Franchisee acknowledges and agrees that the Confidential Information is proprietary, includes Franchisor's and its affiliates' trade secrets, and is disclosed to Franchisee only on the condition that Franchisee and its owners agree, and it and they do agree, that Franchisee and its owners:

- (a) will not use any Confidential Information in any other business or capacity and will keep the Confidential Information absolutely confidential, both during and after the term of this Agreement (afterward for as long as the information is not generally known in the health and fitness industry);
- (b) will not make unauthorized copies of any Confidential Information disclosed via electronic medium or in written or other tangible form;
- (c) will adopt and implement all reasonable procedures that Franchisor periodically specifies to prevent unauthorized use or disclosure of Confidential Information, including disclosing it only to Center personnel and others needing to know such Confidential Information to operate the Center, and using confidentiality and non-disclosure agreements with those having access to Confidential Information. Franchisor has the right to regulate the form of agreement that

Franchisee uses and to be a third-party beneficiary of that agreement with independent enforcement rights; and

(d) will not sell, trade or otherwise profit in any way from the Confidential Information (including by selling or assigning any customer or member names, addresses, telephone numbers or related information or Data), except during the term of this Agreement using methods that Franchisor has approved.

“**Confidential Information**” does not include information, knowledge or know-how which is or becomes generally known in the health and fitness industry or which Franchisee knew from previous business experience before Franchisor provided it to Franchisee (directly or indirectly) or before Franchisee began training or operating the Center. If Franchisor includes any matter in Confidential Information, anyone who claims that it is not Confidential Information must prove that the exclusion in this paragraph is applicable.

## 11.F. INNOVATIONS

All ideas, concepts, techniques or materials relating to a Farrell’s Center (“**Innovations**”), whether or not protectable intellectual property and whether created by or for Franchisee or its owners, employees or contractors, must be promptly disclosed to Franchisor and will be deemed to be Franchisor’s sole and exclusive property and works made-for-hire for Franchisor. To the extent any Innovation does not qualify as a “work made-for-hire” for Franchisor, by this paragraph Franchisee assigns ownership of that item, and all related rights to that item, to Franchisor and agrees to sign (and to cause its owners, employees and contractors to sign) whatever assignment or other documents that Franchisor periodically requests to evidence Franchisor’s ownership and to help Franchisor obtain intellectual property rights in the item. In the event that the foregoing provisions of this Section 11.F are found to be invalid or otherwise unenforceable, Franchisee hereby grants to Franchisor a worldwide, perpetual, non-exclusive, fully-paid license to use and sublicense the use of the Innovations to the extent such use or sublicense would, absent this Agreement, directly or indirectly infringe on Franchisee’s rights therein. Franchisee may not use any Innovation in operating the Center or otherwise without Franchisor’s prior approval.

## 12. EXCLUSIVE RELATIONSHIP

Franchisee acknowledges that Franchisor has granted Franchisee the rights under this Agreement in consideration of and reliance upon Franchisee’s (and, if Franchisee is an Entity, its owners’) agreement to deal exclusively with Franchisor with respect to the products and services that Farrell’s Centers offer. Franchisee therefore agrees that, during the term of this Agreement, neither Franchisee nor any of its owners, nor any members of Franchisee’s or their Immediate Families (defined below), will:

(a) have any direct or indirect, controlling or non-controlling interest as an owner - whether of record, beneficial or otherwise - in a Competitive Business (defined below), wherever located or operating, provided that this restriction will not prohibit the ownership of shares of a class of securities which are publicly traded on a United States stock exchange representing less than 3% of the number of shares of that class of securities issued and outstanding;

(b) perform services as a director, officer, manager, employee, consultant, representative or agent for a Competitive Business, wherever located or operating;

(c) directly or indirectly loan any money or other thing of value to, or guarantee any other person’s loan to, any Competitive Business or any owner, director, officer, manager, employee or agent of any Competitive Business, wherever located or operating; or

(d) divert or attempt to divert any actual or potential business or customer of the Center to a Competitive Business.

The term “**Competitive Business**” means any business providing bodyshaping, resistance training or kickboxing courses or other comprehensive wellness and fitness courses (excluding aerobics) that have

both initial and ongoing (or maintenance) components, or any business which grants franchises or licenses to others to operate such a business, other than a Farrell's Center operated under a franchise agreement with Franchisor. The term "**Immediate Family**" includes the named individual, his or her spouse, and all children of the named individual or his or her spouse.

Franchisee agrees to obtain similar covenants from its personnel whom Franchisor specifies, including officers, directors, managers, Instructors and employees attending Franchisor's training program or having access to Confidential Information. Franchisor has the right to regulate the form of agreement that Franchisee uses and to be a third-party beneficiary of that agreement with independent enforcement rights.

### **13. TRANSFER**

#### **13.A. TRANSFER BY FRANCHISOR**

Franchisee represents that it has not signed this Agreement in reliance on any owner's, officer's or employee's remaining with Franchisor in that capacity. Franchisor may change its ownership or form and/or delegate or assign any or all of its rights or obligations under this Agreement, or assign this Agreement without restriction. This Agreement will inure to the benefit of any transferee or other legal successor to Franchisor's interest in it. After Franchisor's assignment of this Agreement to a third-party who expressly assumes Franchisor's obligations under this Agreement, Franchisor no longer will have any performance or other obligations under this Agreement. Such an assignment shall constitute a release of Franchisor and novation with respect to this Agreement, and the assignee shall be liable to Franchisee as if it had been an original party to this Agreement.

#### **13.B. TRANSFER BY FRANCHISEE AND DEFINITION OF TRANSFER**

Franchisee acknowledges that the rights and duties this Agreement creates are personal to Franchisee (and, if Franchisee is an Entity, to its owners) and that Franchisor has granted Franchisee the rights under this Agreement in reliance upon Franchisor's perceptions of Franchisee's (or its owners') individual or collective character, skill, aptitude, attitude, business ability and financial capacity. Accordingly, neither: (i) this Agreement or any interest in this Agreement; (ii) the Center or any right to receive all or a portion of the profits or losses or any capital appreciation relating to the Center; (iii) all or substantially all of the Operating Assets; nor (iv) any ownership interest in Franchisee (if Franchisee is an Entity), may be transferred without Franchisor's prior written approval. A transfer of the ownership, possession or control of the Center or all or substantially all of the Operating Assets may be made only with a transfer of this Agreement. Any transfer without Franchisor's approval is a breach of this Agreement and conveys no rights under or interest in this Agreement.

In this Agreement, the term "**transfer**" includes a voluntary, involuntary, direct or indirect assignment, sale, gift or other disposition and includes the following events:

- (1) transfer of record or beneficial ownership of stock or any other ownership interest or right to receive (directly or indirectly) all or a portion of the profits or losses or any capital appreciation relating to the Center;
- (2) a merger, consolidation or exchange of ownership interests, or issuance of additional ownership interests or securities representing or potentially representing ownership interests, or a redemption of ownership interests;
- (3) any sale or exchange of voting interests or securities convertible to voting interests, or any management agreement or other agreement granting the right (directly or indirectly) to exercise or control the exercise of the voting rights of any owner or to control the operations or affairs of Franchisee or the Center;
- (4) transfer in a divorce, insolvency or entity dissolution proceeding, or otherwise by operation of law;

(5) transfer by will, declaration of or transfer in trust, or under the laws of intestate succession; or

(6) the grant of a mortgage, charge, pledge, collateral assignment, lien or security or other interest in this Agreement, the Center, any of the Operating Assets (other than vehicles), or an ownership interest in Franchisee, excluding only an equipment lease arrangement or financing arrangement for equipment on arm's-length terms; foreclosure upon or attachment or seizure of the Center or any of its Operating Assets or any interest in Franchisee; or Franchisee's transfer, surrender or loss of the possession, control or management of the Center.

### **13.C. CONDITIONS FOR APPROVAL OF TRANSFER**

If Franchisee is in full compliance with this Agreement, then, subject to the other provisions of this Section 13, Franchisor will approve a transfer that meets all the requirements in this Section 13.C.

(1) Franchisor will approve the transfer of a non-controlling interest in Franchisee (determined as if the proposed transfer had occurred) if the proposed transferee and its owners are of good moral character, have no interest in and do not perform services for (and have no affiliates which have an interest in or perform services for) a Competitive Business, otherwise meet Franchisor's then applicable standards for non-controlling owners of Farrell's Center franchisees, and sign Franchisor's then current form of Guaranty and Assumption of Obligations. The term "controlling interest" is defined in Section 18.N.

(2) If the proposed transfer is of this Agreement or a controlling interest in Franchisee, or is one of a series of transfers (regardless of the period of time over which these transfers take place) which in the aggregate transfer this Agreement or a controlling interest in Franchisee, then all of the following conditions must be met before or concurrently with the effective date of the transfer:

(a) Franchisor determines that the transferee and its Owners (if the transferee is an Entity) have sufficient business experience, aptitude and financial resources to operate the Center, and meet Franchisor's then-current qualifications for a franchisee;

(b) Franchisee has paid all required Royalties, Marketing Fund contributions and other amounts owed to Franchisor and its affiliates, has submitted all required reports and statements, and is not in violation of any provision of this Agreement, any other agreement with Franchisor or its affiliate, or the Lease;

(c) neither the transferee nor any of its Owners (if the transferee is an Entity) or affiliates operates, has an ownership interest in or performs services for a Competitive Business;

(d) the transferee (or its Managing Owner) and its management personnel and Instructors, if different from Franchisee's management personnel and Instructors, satisfactorily complete Franchisor's then current training program;

(e) the transferee and each Owner (if the transfer is of this Agreement), or Franchisee and its Owners (if the transfer is of a controlling interest in Franchisee), sign Franchisor's then current form of franchise agreement and related documents, the provisions of which (including the fees and the rights in, and geographic area comprising, the Territory) may differ materially from any and all of those contained in this Agreement, except for the term, which shall be the then remaining term of this Agreement;

(f) Franchisee or the transferee pays Franchisor a transfer fee in an amount equal to \$10,000 to partially cover Franchisor's administrative and out-of-pocket costs and expenses incurred in evaluating the transferee and the transfer;

(g) the transferee agrees to repair and/or replace the Operating Assets and upgrade the Center in accordance with Franchisor's then current requirements and specifications for new Farrell's Centers within the time period that Franchisor specifies following the effective date of the transfer;

(h) Franchisee (and its transferring owners) signs a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their respective owners, officers, directors, employees, representatives, agents, successors and assigns;

(i) Franchisor has determined that the purchase price and payment terms will not adversely affect the transferee's operation of the Center, and Franchisor has received a copy of the proposed transfer agreements;

(j) if Franchisee or its owners finance any part of the purchase price, Franchisee and they agree that all of the transferee's obligations under promissory notes, agreements or security interests reserved in the Operating Assets or ownership interests in Franchisee are subordinate to the transferee's (and its owners') obligation to pay Royalties, Marketing Fund contributions and other amounts due to Franchisor and its affiliates and otherwise to comply with this Agreement;

(k) Franchisee agrees to remain liable for all obligations that accrued under this Agreement prior to the effective date of the transfer, and shall continue to remain responsible for its obligations of nondisclosure and indemnification as provided elsewhere in this Agreement, and all other obligations that survive termination, expiration or transfer, and shall execute any and all instruments reasonably requested by Franchisor to further evidence such obligation;

(l) Franchisee has complied with the requirements set forth in Section 13.G;

(m) Franchisee and its transferring Owners (and members of their Immediate Families) agree, for two years beginning on the transfer's effective date, not to engage in any of the activities proscribed in Section 16.E below; and

(n) Franchisee and its transferring Owners agree not to directly or indirectly at any time thereafter or in any manner (except with respect to Farrell's Centers that any of them owns or operates): (i) identify themselves or any business as a current or former Farrell's Center or as one of Franchisor's franchisees; (ii) use any Mark, any colorable imitation of a Mark, any trademark, service mark or commercial symbol that is confusingly similar to any Mark, or other indicia of a Farrell's Center in any manner or for any purpose; or (iii) utilize for any purpose any trade dress, trade name, trademark, service mark or other commercial symbol that suggests or indicates a connection or association with Franchisor.

If the proposed transfer is to or among Franchisee's Owners or their Immediate Family members, then Subsection (f) will not apply, although Franchisee agrees to reimburse Franchisor for the out-of-pocket costs that Franchisor incurs in the transfer, up to the amount of the transfer fee described in Subsection (f). Franchisor has the right, but no obligation, to review all information regarding the Center that Franchisee gives the transferee and to give the transferee copies of any reports that Franchisee has given Franchisor or that Franchisor has made regarding the Center.

#### **13.D. TRANSFER TO A WHOLLY-OWNED CORPORATION OR LIMITED LIABILITY COMPANY**

Notwithstanding Section 13.C above, if Franchisee is in full compliance with this Agreement, Franchisee may transfer this Agreement, together with the Operating Assets and all other assets associated with the Center, to a corporation or limited liability company which conducts no business other than the Center and, if applicable, other Farrell's Centers and of which Franchisee owns and controls 100% of the equity and voting power of all issued and outstanding ownership interests, provided that all of the assets of the Center are owned, and the Center is operated, only by that single Entity. The Entity must expressly

assume all of Franchisee's obligations under this Agreement, but Franchisee will remain personally liable under this Agreement as if the transfer to the Entity did not occur. Transfers of ownership interests in that Entity are subject to restrictions in this Section 13.

### **13.E. DEATH OR DISABILITY**

#### **(1) Transfer Upon Death or Disability**

Upon Franchisee's (or, if Franchisee is an Entity, its Owner's) death or disability, Franchisee's (or the Owner's) executor, administrator, conservator, guardian or other personal representative (the "**Representative**") must transfer Franchisee's interest in this Agreement, the Operating Assets and the Center, or the Owner's ownership interest in Franchisee (or an Entity Owner), to a third-party. That transfer (including transfer by bequest or inheritance) must occur, subject to Franchisor's rights under this Subsection E, within a reasonable time, not to exceed nine (9) months from the date of death or disability, and is subject to all of the terms and conditions in this Section 13. A failure to transfer such interest within this time period is a breach of this Agreement.

#### **(2) Operation Upon Death or Disability**

If, upon Franchisee's (or, if Franchisee is an Entity, the Managing Owner's) death or disability, the day-to-day operations of the Center are not being managed by a trained manager whom Franchisor has approved, then Franchisee or the Representative (as applicable) must within a reasonable time, not to exceed 15 days from the date of death or disability, appoint a manager whom Franchisor approves to operate the Center. The manager must at Franchisee's expense satisfactorily complete the training that Franchisor designates within the time period that Franchisor specifies. However, nothing in this Section 13.E shall limit Franchisor's rights under Section 15.D.

### **13.F. EFFECT OF CONSENT TO TRANSFER**

Franchisor's consent to any transfer is not a representation of the fairness of the terms of any contract between Franchisee (or its Owner) and the transferee, a guarantee of the Center's or transferee's prospects of success, or a waiver of any claims that Franchisor has against Franchisee (or its Owners) or of Franchisor's right to demand full compliance with this Agreement.

### **13.G. FRANCHISOR'S RIGHT OF FIRST REFUSAL**

If Franchisee or any of its Owners at any time determines to sell or transfer for consideration an interest in this Agreement and the Center (or all or substantially all of its Operating Assets) or a controlling interest in Franchisee (except to or among Franchisee's current Owners or in a transfer pursuant to Section 13.D, which are not subject to this Section 13.G), Franchisee agrees to obtain from a responsible and fully disclosed buyer, and send Franchisor, a true and complete copy of a bona fide, executed written offer (which may be a letter of intent) relating exclusively to this Agreement and the Center or controlling interest in Franchisee. The offer must include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price and must provide for an earnest money deposit of at least 10% of the proposed purchase price. To be a valid, bona fide offer, the proposed purchase price must be in a fixed dollar amount and without any contingent payments of purchase price (such as earn-out payments) and the proposed transaction must relate exclusively to an interest in this Agreement and the Center (or all or substantially all of its Operating Assets) or a controlling interest in Franchisee and not to any other interests or assets. Franchisor may require Franchisee (or its Owners) to send Franchisor copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction.

Franchisor may, by delivering written notice to Franchisee within 30 days after Franchisor receives both an exact copy of the offer and all other information that Franchisor requests, elect to purchase the interest for the price and on the terms and conditions contained in the offer, provided that: (1) Franchisor

may substitute cash for any form of payment proposed in the offer; (2) Franchisor's credit will be deemed equal to the credit of any proposed buyer; (3) the closing will be not less than 30 days after notifying Franchisee of Franchisor's election to purchase or, if later, the closing date proposed in the offer; and (4) Franchisor must receive, and Franchisee and its Owners agree to make, all customary representations, warranties and indemnities given by the seller of the assets of a business or ownership interests in a legal entity, as applicable, including representations and warranties regarding ownership and condition of, and title to, assets and (if applicable) ownership interests, liens and encumbrances on assets, validity of contracts and agreements, and the liabilities, contingent or otherwise, relating to the assets or ownership interests being purchased, and indemnities for all actions, events and conditions that existed or occurred in connection with the Center prior to the closing of Franchisor's purchase. If Franchisor exercises its right of first refusal, Franchisee and its transferring Owners agree that, for two years beginning on the closing date, Franchisee or the transferring Owners (and members of their Immediate Families) will be bound by the non-competition covenants contained in Section 16.E.

If Franchisor does not exercise its right of first refusal, Franchisee or its Owners may complete the sale to the proposed buyer on the original offer's terms, but only if Franchisor approves the transfer as provided in this Section 13. If Franchisee does not complete the sale to the proposed buyer within 60 days after Franchisor notifies Franchisee that Franchisor does not intend to exercise its right of first refusal, or if there is a material change in the terms of the sale (which Franchisee agrees to tell Franchisor promptly), Franchisor will have an additional right of first refusal during the 30-day period following either the expiration of the 60-day period or Franchisor's receipt of notice of the material change(s) in the sale's terms, either on the terms originally offered or the modified terms, at Franchisor's option. Franchisor has the unrestricted right to assign this right of first refusal to a third-party (including an affiliate), who then will have the rights described in this Section 13.G.

#### **13.H. OWNERS WHICH ARE ENTITIES**

If any of Franchisee's Owners at any time during the term of this Agreement is an Entity, rather than an individual, then all references in this Agreement to Franchisee's Owners also will apply to the owner(s) of the Entity Owner. Without limiting the generality of the foregoing, the owner(s) of each Entity Owner will be bound by Sections 1.C(1), 1.C(2), 1.C(3), 10.B (third sentence), 11.A, 12, 13, 16 and 18 of this Agreement. Any transfer of ownership interests in any Entity Owner which, together with other related transfers (including transfers of ownership interests of other Owners in one or more related transaction(s), regardless of the period of time over which these transfers take place), in the aggregate transfer (indirectly) a controlling interest in Franchisee is subject to Subsection 13.C(2), and other transfers of ownership interests in any Owner are subject to Subsection 13.C(1). Each Owner of an Owner must be an individual.

#### **14. EXPIRATION OF THIS AGREEMENT**

Upon expiration of this Agreement, Franchisee will have the right to acquire a successor franchise and continue operating the Center as a Farrell's Center for a five-year term under Franchisor's then current form of agreement, but only if Franchisee has:

- (a) given Franchisor written notice of Franchisee's election to acquire a successor franchise at least 90 days, but not more than 180 days, before the end of the term of this Agreement,
- (b) complied with all of its obligations under this Agreement and all other agreements with Franchisor or its affiliate throughout their terms, and
- (c) at Franchisor's option, either (i) remodeled and upgraded the Center and otherwise brought the Center into full compliance with the specifications and standards then applicable for new Farrell's Centers before this Agreement expires, or (ii) agreed to relocate the Center to a substitute site that Franchisor has approved and construct and develop a new Farrell's Center at that site.

To acquire a successor franchise, Franchisee and its Owners agree to (i) sign Franchisor's then current form of franchise agreement (and related documents), which may contain terms and conditions (including the fees and the rights in, and geographic area comprising, the Territory) that differ materially from any or all of those in this Agreement, modified to reflect the fact it is for a successor franchise, except that such franchise agreement will impose a successor franchise fee of \$7,500 and will not grant any rights to a renewal or successor franchise; and (ii) sign a general release in the form that Franchisor specifies as to any and all claims against Franchisor, its affiliates and their respective owners, officers, directors, employees, agents, representatives, successors and assigns. If Franchisee fails to sign and return to Franchisor the documents referenced in (i) and (ii) above, and pay the successor franchise fee, within 30 days after Franchisor delivers those documents to Franchisee, that will be deemed Franchisee's election not to acquire a successor franchise. If Franchisee (and each of its Owners) are not, both on the date Franchisee gives Franchisor written notice of Franchisee's election to acquire a successor franchise and on the date on which this Agreement expires, in full compliance with this Agreement and all other agreements with Franchisor or its affiliate, Franchisee acknowledges that Franchisor need not grant Franchisee a successor franchise, whether or not Franchisor had, or chose to exercise, the right to terminate this Agreement during its term under Section 15.

## **15. TERMINATION OF AGREEMENT**

### **15.A. TERMINATION BY FRANCHISEE**

If Franchisee and its Owners are fully complying with this Agreement, and Franchisor materially fails to comply with this Agreement and does not, within 30 days after Franchisee delivers written notice of the failure to Franchisor, either correct the failure or, if Franchisor cannot reasonably correct the failure within 30 days, give Franchisee reasonable evidence of Franchisor's effort to correct the failure within a reasonable time, then Franchisee may terminate this Agreement effective an additional 30 days after Franchisee delivers to Franchisor written notice of termination. Franchisee's termination of this Agreement other than according to this Section 15.A will be deemed a termination without cause and a breach of this Agreement.

### **15.B. TERMINATION BY FRANCHISOR**

Franchisor may terminate this Agreement, effective upon delivery of written notice of termination to Franchisee, if:

- (1) Franchisee or any of its Owners has made or makes a material misrepresentation or omission in acquiring the rights under this Agreement or operating the Center;
- (2) Franchisee, the Managing Owner, any Instructor or any other Center personnel that Franchisor required to attend any portion of Franchisor's initial training programs does not satisfactorily complete that training;
- (3) Franchisee has not obtained Franchisor's approval of a site for the Center within three months after the Agreement Date;
- (4) Franchisee fails to open and begin continuously operating the Center on or before the Opening Deadline;
- (5) Franchisee abandons or fails actively to operate the Center for three or more consecutive calendar days (excluding Sunday), unless Franchisee closes the Center for a purpose that Franchisor approves or because of casualty;
- (6) Franchisee surrenders or transfers control of the operation of the Center or loses the right to occupy the Center without Franchisor's prior written consent;
- (7) Franchisee or any of its Owners is convicted by a trial court of, or pleads no contest to, a felony;

(8) Franchisee fails to maintain the insurance Franchisor requires from time to time, and/or Franchisee fails to provide Franchisor with proof of such insurance as this Agreement requires, and does not correct the failure within 10 days after Franchisor delivers written notice of that failure to Franchisee;

(9) Franchisee interferes with Franchisor's right to inspect the Center or observe or videotape its operation, as provided in Section 9;

(10) Franchisee or any of its Owners engages in any dishonest, unethical or illegal conduct which, in Franchisor's reasonable opinion, adversely affects or might adversely affect the reputation of the Center, the reputation of other Farrell's Centers or the goodwill associated with the Marks;

(11) Franchisee or any of its Owners makes or attempts to make an unauthorized transfer of an ownership interest in Franchisee or any Owner, this Agreement, all or substantially all of the Operating Assets, the Center or the right to receive all or any part of Franchisee's or the Center's profits or losses or any capital appreciation relating to Franchisee or the Center;

(12) any other franchise agreement or other agreement between Franchisor (or any of its affiliates) and Franchisee (or any of its Owners or affiliates) is terminated before its term expires, regardless of the reason;

(13) Franchisee, or any of its Owners, breaches Section 12 of this Agreement or knowingly makes any unauthorized use or disclosure of any part of the Operations Manual or any other Confidential Information;

(14) Franchisee violates any health, safety or sanitation law, ordinance or regulation, or operates the Center in an unsafe manner, and does not begin to cure the violation immediately, and correct the violation within 48 hours, after Franchisee receives notice;

(15) Franchisee fails to pay when due any federal, state or local income, service, sales or other taxes due on the operation of the Center, or repeatedly fails to make or delays making payments to its suppliers or lenders, unless Franchisee is in good faith contesting its liability for these taxes or payments;

(16) Franchisee understates Merchandise Gross Sales or Service Gross Sales two or more times during the term of this Agreement or by more than 2% on any one occasion;

(17) Franchisee or any of its Owners fails on three or more separate occasions within any 12 consecutive month period to pay when due any amounts due to Franchisor (or its affiliate) or otherwise comply with any one or more obligations under this Agreement, whether or not any of these failures are corrected after Franchisor delivers written notice to Franchisee and whether these failures involve the same or different obligations under this Agreement;

(18) Franchisee or any of its Owners fails on two or more separate occasions within any six consecutive month period, or on three or more separate occasions within any 36 consecutive month period, to comply with the same obligation under this Agreement, whether or not any of these failures are corrected after Franchisor delivers written notice to Franchisee;

(19) Franchisee makes an assignment for the benefit of creditors or admits in writing its insolvency or inability to pay its debts generally as they become due; Franchisee consents to the appointment of a receiver, trustee or liquidator of all or the substantial part of its property; the Center or any of the Operating Assets is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant or levy is vacated within 30 days; or any order appointing a receiver, trustee or liquidator of Franchisee or the Center is not vacated within 30 days following the order's entry;

(20) Franchisee fails to pay Franchisor (or its affiliate) any amounts due, whether under this Agreement or any other agreement or arrangement, and does not correct the failure within 10 days after Franchisor delivers written notice of that failure to Franchisee; or

(21) Franchisee fails to comply with any other provision of this Agreement or the Operations Manual, or any mandatory System Standard, and does not correct the failure within 30 days after Franchisor delivers written notice of the failure to Franchisee.

#### **15.C. FRANCHISOR'S REMEDIES UPON DEFAULT**

In addition to and without limiting Franchisor's other rights and remedies under this Agreement, any other agreement and applicable law, upon the occurrence of any of the events that give rise to Franchisor's right to terminate this Agreement under Section 15.B, Franchisor may, at its sole option and upon delivery of written notice to Franchisee, elect to take any or all of the following actions without terminating this Agreement:

(1) temporarily or permanently reduce the size of the Territory, in which event the restrictions on Franchisor and its affiliates under Section 3.A will not apply in the geographic area that was removed from the Territory;

(2) temporarily remove information concerning the Center from the System Website and/or stop Franchisee's or the Center's participation in any other programs or benefits offered on or through the Extranet or System Website;

(3) suspend Franchisee's right to participate in one or more advertising, marketing, promotional or public relations programs that Franchisor or the Marketing Fund provides; or

(4) assume or appoint a third-party to assume management of the Center according to Section 15.D.

Franchisor's exercise of its rights under this Section 15.C will not affect its right to terminate this Agreement under Section 15.B.

#### **15.D. ASSUMPTION OF MANAGEMENT**

Franchisor has the right (but not the obligation), under the circumstances described below and upon delivery of written notice to Franchisee, to enter the Center's premises and assume the management of the Center itself or appoint a third-party (who may be an affiliate of Franchisor) to manage the Center. All funds from the operation of the Center while Franchisor or its appointee assumes its management will be kept in a separate account, and all of the expenses of the Center will be charged to that account. Franchisor or its appointee may charge Franchisee (in addition to the Royalty and other amounts due under this Agreement) a management fee equal to 20% of the Center's combined Merchandise Gross Sales and Service Gross Sales during the period of management, plus any direct out-of-pocket costs and expenses, if Franchisor or its appointee assumes the management of the Center under this Section 15.D. Franchisor or its appointee has a duty to utilize only reasonable efforts and will not be liable to Franchisee for any debts, losses or obligations the Center incurs, or to any of Franchisee's creditors for any products or services the Center purchases, while managing it. Franchisee (and, if Franchisee is an Entity, its Owners) shall not take any action or fail to take any action that interferes with Franchisor's or its appointee's exclusive right to manage the Center. Franchisee shall indemnify and hold harmless Franchisor from any and all claims arising from the alleged acts and omissions of Franchisor and its representatives. Nothing contained herein shall prevent Franchisor from exercising any other right which Franchisor may have under this Agreement, including, without limitation, termination.

Franchisor or its appointee may assume the Center's management pursuant to this Section 15.D under any of the following circumstances: (1) if, in Franchisor's judgment, the Center is not being managed properly at any time after Franchisee's (or, if Franchisee is an Entity, the Managing Owner's) death or disability; (2) if Franchisee abandons or fails actively to operate the Center for any period; (3) the

circumstances described in Section 15.C; (4) if this Agreement expires or is terminated and Franchisor is deciding whether to exercise the option under Section 16.F; or (5) if Franchisor (or its designee) has exercised the option under Section 16.F and the parties are awaiting the closing of that purchase. Franchisor's (or its appointee's) management of the Center shall continue until Franchisor's delivery of written notice to Franchisee.

## **16. RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION OF THIS AGREEMENT**

### **16.A. PAYMENT OF AMOUNTS OWED**

Franchisee agrees to pay within 15 days after this Agreement expires or is terminated, or on any later date that the amounts due are determined, the Royalties, Marketing Fund contributions, interest and all other amounts owed to Franchisor or its affiliates which then are unpaid, including Franchisor's damages arising from the termination of this Agreement.

### **16.B. DE-IDENTIFICATION**

When this Agreement expires or is terminated for any reason:

(1) beginning on the De-identification Date (defined below), Franchisee and its Owners shall not directly or indirectly at any time thereafter or in any manner (except in connection with other Farrell's Centers that any of them own and operate): (a) identify themselves or any business as a current or former Farrell's Center or as one of Franchisor's current or former franchisees; (b) use any Mark, any colorable imitation of a Mark, any trademark, service mark or commercial symbol that is confusingly similar to any Mark, any Copyrighted Work, or any other indicia of a Farrell's Center in any manner or for any purpose; or (c) use for any purpose any trade dress, trade name, trademark, service mark or other commercial symbol that indicates or suggests a connection or association with Franchisor;

(2) Franchisee agrees promptly to take the action required to cancel all fictitious or assumed name or equivalent registrations relating to its use of any Mark;

(3) if Franchisor does not exercise the option under Section 16.F below, within three days after the De-identification Date, Franchisee agrees to deliver to Franchisor all signs, sign faces, sign cabinets, advertising, marketing and promotional materials, forms, and other materials containing any Mark or otherwise identifying or relating to a Farrell's Center that Franchisor requests and allow Franchisor, without liability to Franchisee or third parties, to remove these items from the Center;

(4) if Franchisor does not exercise the option under Section 16.F below, within three days after the De-identification Date, Franchisee agrees, at its own expense, to make the alterations that Franchisor specifies to distinguish the Center clearly from its former appearance and from other Farrell's Centers in order to prevent public confusion; and

(5) Franchisee agrees to give Franchisor from time to time upon request evidence satisfactory to Franchisor of Franchisee's compliance with these obligations.

The "**De-identification Date**" means: (i) if Franchisor exercises the option under Section 16.F, the closing date of Franchisor's (or its designee's) purchase of the Center's assets; or (ii) if Franchisor does not exercise the option under Section 16.F, the date upon which that option expires or the date upon which Franchisor provides Franchisee written notice of its decision not to exercise, or to withdraw its previous exercise, of that option, whichever occurs first.

### **16.C. CONFIDENTIAL INFORMATION**

When this Agreement expires or is terminated, beginning on the De-identification Date, Franchisee (and its Owners) agrees to immediately cease using any Confidential Information and Copyrighted Work

in any business or otherwise and return to Franchisor all copies of the Operations Manual, Instructor guides and any other Copyrighted Works and confidential materials that Franchisor has loaned Franchisee. Franchisee may not sell, trade or otherwise profit in any way from any Data or other Confidential Information (including member names, addresses, telephone numbers and related information) at any time following the expiration or termination of this Agreement.

#### **16.D. NOTIFICATION TO MEMBERS AND CUSTOMERS**

When this Agreement expires or is terminated, Franchisor has the right to contact (at Franchisor's expense) Franchisee's members and other customers and any potential customers of the Center and inform them that a Farrell's Center will no longer operate at the Center's location or, if Franchisor intends to exercise the option under Section 16.F, that the Center will operate under new management. Franchisor also has the right to inform them of other nearby Farrell's Centers. Franchisor's exercise of these rights will not constitute an interference with Franchisee's contractual or business relationship with such members or customers.

#### **16.E. COVENANT NOT TO COMPETE**

Upon Franchisor's termination of this Agreement for any reason, Franchisee's termination of this Agreement without cause, or expiration of this Agreement (without the grant of a successor franchise), Franchisee agrees that, for two years beginning on the effective date of termination or expiration or the date on which all persons restricted by this Subsection begin to comply fully with this Subsection, whichever is later, and except in connection with other Farrell's Centers operating under effective franchise agreements with Franchisor, neither Franchisee nor any of its Owners, nor any member of Franchisee's or their Immediate Families, will:

- (1) have any direct or indirect, controlling or non-controlling interest as an owner – whether of record, beneficial or otherwise – in any Competitive Business which is located or operating:
  - (a) within the Territory (including at the Center's site), or
  - (b) within three miles of any other Farrell's Center in operation or under construction on the later of the effective date of the termination or expiration or the date on which all persons restricted by this Subsection begin to comply with this Subsection; provided that this restriction will not prohibit the ownership of shares of a class of securities which are publicly traded on a United States stock exchange representing less than 3% of the number of shares of that class of securities issued and outstanding; or
- (2) perform services as a director, officer, manager, employee, consultant, representative or agent for a Competitive Business which is located or operating:
  - (a) within the Territory (including at the Center's site), or
  - (b) within three miles of any other Farrell's Center in operation or under construction on the later of the effective date of the termination or expiration or the date on which all persons restricted by this Subsection begin to comply with this Subsection.

These restrictions also apply after transfers and other events, as provided in Section 13 above. Franchisee (and each of its Owners) expressly acknowledges that it (and they) possess skills and abilities of a general nature and have other opportunities for exploiting these skills. Consequently, Franchisor's enforcing the covenants made in this Subsection will not deprive them of personal goodwill or the ability to earn a living. The time period described in this Subsection shall be tolled during any period of noncompliance.

## **16.F. OPTION TO PURCHASE OPERATING ASSETS**

### **(1) Exercise of Option**

Upon Franchisor's termination of this Agreement for any reason, Franchisee's termination of this Agreement other than pursuant to and in compliance with Section 15.A, or expiration of this Agreement (without the grant of a successor franchise), Franchisor has the option, exercisable by giving Franchisee written notice within 15 days after the date of termination or expiration, to purchase those Operating Assets and other assets associated with the operation of the Center that Franchisor designates. Franchisor has the unrestricted right to assign this option to purchase to a third-party (including an affiliate), who will then have the rights and obligations described in this Section 16.F. Franchisor is entitled to all customary representations, warranties and indemnities in its asset purchase, including representations and warranties as to ownership and condition of, and title to, assets, liens and encumbrances on assets, validity of contracts and agreements, and the liabilities affecting the assets, contingent or otherwise, and indemnities for all actions, events and conditions that existed or occurred in connection with the Center prior to the closing of its purchase.

If Franchisee or one of its affiliates owns the site upon which the Center is located, Franchisor may elect to include a fee simple interest in that site as part of the assets purchased or, at Franchisor's option, lease that site from Franchisee or such affiliate for an initial five-year term with one renewal term of five years (at Franchisor's option) on commercially reasonable terms. If Franchisee leases the Center's site from an unaffiliated lessor, Franchisee agrees (at Franchisor's option) to assign the Lease to Franchisor or to enter into a sublease for the remainder of the Lease term on the same terms (including renewal options) as the Lease.

### **(2) Purchase Price**

If Franchisor elects to purchase all or substantially all of the Operating Assets and other assets associated with the operation of the Center, then the purchase price for those assets, together with an assignment of the Lease or a lease for the Center's site on the terms set forth in Subsection (1) above, will be an amount equal to the aggregate of the Merchandise Gross Sales and Service Gross Sales of the Center during the 12 full calendar months immediately preceding the effective date of the expiration or termination of this Agreement. If less than 12 full calendar months have elapsed between the date upon which Franchisee first opens the Center for business and the effective date of the expiration or termination of this Agreement, then the purchase price will be the aggregate Merchandise Gross Sales and Service Gross Sales of the Center during the full calendar months following the date upon which Franchisee first opens the Center for business, annualized to reach a figure for 12 months. If Franchisor purchases a fee simple interest in the site upon which the Center is located pursuant to Subsection (1) above, then the fair market value of that interest shall be calculated according to the appraisal procedures described below and added to the purchase price described above.

Despite the calculation set forth above, either Franchisor or Franchisee may elect to have the fair market value of the assets purchased under this Section 16.F determined by three independent appraisers. When determining fair market value, the appraisers may not include any value for the rights granted by this Agreement, goodwill attributable to the Marks, Franchisor's brand image, or other intellectual property or participation in the network of Farrell's Centers. Franchisor will appoint one appraiser, Franchisee will appoint one appraiser, and these two appraisers will appoint the third appraiser. Franchisor and Franchisee agree to select their respective appraisers within 10 days after delivery of the notice invoking the appraisal mechanism, and the two appraisers so chosen are obligated to appoint the third appraiser within 15 days after the last of them is appointed. The party requesting the appraisal will bear the costs of all three appraisers. Within thirty (30) days after delivery of the notice invoking the appraisal mechanism, each of Franchisor and Franchisee shall submit its respective calculation of fair market value to the appraisers in such detail as the appraisers request and according to the criteria specified above. Within 15 days after receiving both calculations, the appraisers shall determine, by a majority vote, the purchase price.

(3) Closing

Franchisor will pay the purchase price at the closing, which will take place not later than 30 days after the purchase price is determined, although Franchisor may decide after the purchase price is determined not to complete the purchase without any liability to Franchisee. Franchisor may set off against the purchase price, and reduce the purchase price by, any and all amounts that Franchisee owes Franchisor (or its affiliates). At the closing, Franchisee agrees to deliver instruments transferring to Franchisor: (a) good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to Franchisor), with all sales and transfer taxes paid by Franchisee; and (b) all of the Center's licenses and permits which may be assigned or transferred. If Franchisee cannot deliver clear title to all of the purchased assets, or if there are other unresolved issues, the sale will be closed through an escrow. Franchisee further agrees to sign general releases, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their respective owners, officers, directors, employees, agents, representatives, successors and assigns. If Franchisor exercises its rights under this Subsection F, then for two years beginning on the closing date, Franchisee and its Owners (and members of Franchisee's and their Immediate Families) will be bound by the non-competition covenants contained in Section 16.E.

**16.G. CONTINUING OBLIGATIONS**

All of Franchisor's and Franchisee's (and its Owners') obligations hereunder which expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until these obligations are satisfied in full or by their nature expire.

**17. RELATIONSHIP OF THE PARTIES/INDEMNIFICATION**

**17.A. INDEPENDENT CONTRACTORS**

This Agreement does not create a fiduciary relationship between Franchisee and Franchisor. Franchisee has no authority, express or implied, to act as an agent of Franchisor or any of its affiliates for any purpose. Franchisee is, and shall remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Center and its assets, including any personal property, equipment, fixtures or real property and for all claims or demands based on damage to or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the Center. Franchisee may not bind Franchisor, transact business in Franchisor's name, or in any manner make any promises or representations on behalf of Franchisor. Further, Franchisor and Franchisee are not and do not intend to be partners, joint venturers, associates, or joint employers in any way, and Franchisor shall not be construed to be jointly liable for any of Franchisee's acts or omissions under any circumstances. Franchisor has no relationship with Franchisee's employees and Franchisee has no relationship with Franchisor's employees. Franchisee agrees to identify itself conspicuously in all dealings with members, other customers, suppliers, public officials, Center personnel and others as the owner of the Center under a franchise that Franchisor has granted and to place notices of independent ownership at the Center and on the forms, business cards, stationery, advertising and other materials that Franchisor requires from time to time.

**17.B. NO LIABILITY FOR ACTS OF OTHER PARTY**

Franchisor and Franchisee agree not to make any express or implied agreements, warranties, guarantees or representations, or incur any debt, in the name or on behalf of the other or represent that their relationship is other than franchisor and franchisee. Franchisor will not be obligated for any damages to any person or property directly or indirectly arising out of the operation of the Center or the business Franchisee conducts under this Agreement.

## 17.C. TAXES

Franchisor will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied upon Franchisee or the Center, due to the business Franchisee conducts (except any taxes Franchisor is required by law to collect from Franchisee for purchases from Franchisor and Franchisor's income taxes). Franchisee is responsible for paying such taxes.

## 17.D. INDEMNIFICATION AND DEFENSE OF CLAIMS

Franchisee agrees to indemnify and hold harmless Franchisor, its affiliates, and its and their respective owners, directors, officers, employees, agents, representatives, successors, and assignees (the "**Indemnified Parties**") against, and to reimburse any one or more of the Indemnified Parties for, all Losses (defined below) directly or indirectly arising out of or relating to: (a) the Center's operation; (b) the business Franchisee conducts under this Agreement; (c) Franchisee's breach of this Agreement; or (d) Franchisee's noncompliance or alleged noncompliance with any law, ordinance, rule or regulation, including those concerning the Center's construction, design or operation and those governing the offer or sale of memberships for health and fitness centers (if and to the extent applicable), and including any allegation that Franchisor or another Indemnified Party is a joint employer or otherwise responsible for Franchisee's acts or omissions relating to Franchisee's employees. "**Losses**" means any and all losses, expenses, obligations, liabilities, damages (actual, consequential, or otherwise), and reasonable defense costs that an Indemnified Party incurs, including accountants', arbitrators', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration, or alternative dispute resolution, regardless of whether litigation, arbitration, or alternative dispute resolution is commenced.

Franchisee agrees to defend the Indemnified Parties against any and all claims asserted or inquiries made (formally or informally), or legal actions, investigations, or other proceedings brought, by a third-party and directly or indirectly arising out of or relating to any matter described in Subsection 17.D(1)(a) through (d) above (collectively, "**Proceedings**"), including those alleging the Indemnified Party's negligence, gross negligence, willful misconduct, or willful wrongful omissions.

Each Indemnified Party may at Franchisee's expense defend and otherwise respond to and address any claim asserted or inquiry made, or Proceeding brought, that is subject to this Section 17.D (instead of having Franchisee defend it as required above), and agree to settlements or take any other remedial, corrective, or other actions, for all of which defense and response costs and other Losses Franchisee is solely responsible (subject to Subsection (4)). An Indemnified Party need not seek recovery from any insurer or other third-party, or otherwise mitigate its Losses, in order to maintain and recover fully a claim against Franchisee, and Franchisee agrees 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 Franchisee under this Section 17.D. Franchisee's obligations in this Section 17.D will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.

Despite Subsection (1), Franchisee has no obligation to indemnify or hold harmless an Indemnified Party for, and Franchisor shall reimburse Franchisee for, all Losses (including defense costs and other Losses incurred in defending any Proceeding described in Subsection (2), if applicable) resulting from a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction that Franchisor, its affiliate, or any of their respective employees directly engaged in willful misconduct or gross negligence or intentionally caused the property damage or bodily injury that is the subject of the claim, so long as the claim is not asserted on the basis of theories of vicarious liability (including agency, apparent agency, or employment) or Franchisor's failure to compel Franchisee to comply with this Agreement, which are claims for which Franchisee is not entitled to reimbursement under this Subsection (4).

## **18. ENFORCEMENT**

### **18.A. SEVERABILITY AND SUBSTITUTION OF VALID PROVISIONS**

Except as expressly provided to the contrary in Section 18.G or otherwise in this Agreement, each Section, Subsection, paragraph, term and provision of this Agreement is severable, and if, for any reason, any part 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, arbitrator, agency or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties. If any covenant which 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 if modified, Franchisee and Franchisor agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity. If any applicable and binding law or rule of any jurisdiction requires more notice than this Agreement requires of the termination of this Agreement or of Franchisor's refusal to enter into a successor franchise agreement, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any System Standard is invalid, unenforceable or unlawful, the notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and Franchisor may modify the invalid or unenforceable provision or System Standard to the extent required to be valid and enforceable or delete the unlawful provision in its entirety. Franchisee agrees to be bound by any promise or covenant imposing the maximum duty the law permits which is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

### **18.B. WAIVER OF OBLIGATIONS AND FORCE MAJEURE**

Franchisor and Franchisee may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice to the other or another effective date stated in the notice of waiver. However, no interpretation, change, termination or waiver of any provision of this Agreement shall be binding upon Franchisor unless in writing and signed by one of its officers, and which is specifically identified as an amendment to this Agreement. No modification, waiver, termination, discharge or cancellation of this Agreement shall affect the right of any party hereto to enforce any claim or right hereunder, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, discharge or cancellation. Any waiver Franchisor grants will be without prejudice to any other rights it has, will be subject to its continuing review, and may be revoked at any time and for any reason, effective upon delivery to Franchisee of 10 days' prior written notice.

Franchisor and Franchisee will not be deemed to waive or impair any right, power or option this Agreement reserves (including Franchisor's right to demand exact compliance with every term, condition and covenant or to declare any breach to be a default and to terminate this Agreement before its term expires) because of any custom or practice at variance with the terms of this Agreement; Franchisor's or Franchisee's failure, refusal or neglect to exercise any right under this Agreement or to insist upon the other's compliance with this Agreement, including Franchisee's compliance with any System Standard; Franchisor's waiver of or failure to exercise any right, power or option, whether of the same, similar or different nature, with other Farrell's Centers; the existence of franchise agreements for other Farrell's Centers which contain provisions different from those contained in this Agreement; or Franchisor's acceptance of any payments due from Franchisee after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to Franchisor will be a waiver, compromise, settlement or accord and satisfaction. Franchisor is authorized to remove any legend or endorsement, and it shall have no effect.

Neither Franchisor nor Franchisee will be liable for loss or damage or be in breach of this Agreement if its failure to perform its obligations results from: (1) acts of God; (2) fires, strikes, embargoes,

war, acts of terrorism or similar events, or riot; or (3) any other similar event or cause. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that these causes will not excuse payments of amounts owed at the time of the occurrence or payment of Royalties, Marketing Fund contributions and other amounts due afterward.

#### **18.C. COSTS AND ATTORNEYS' FEES**

If either Franchisor or Franchisee seeks to enforce this Agreement in an arbitration, judicial or other proceeding, the prevailing party shall be entitled to recover its reasonable costs and expenses (including attorneys' fees, arbitrators' fees and expert witness fees, costs of investigation and proof of facts, court costs, other arbitration or litigation expenses and travel and living expenses) incurred in connection with such arbitration, judicial or other proceeding.

#### **18.D. FRANCHISEE MAY NOT WITHHOLD PAYMENTS**

Franchisee agrees that Franchisee will not withhold payment of any amounts owed to Franchisor or its affiliates on the grounds of Franchisor's or their alleged nonperformance of any of its or their obligations under this Agreement or any other agreement.

#### **18.E. RIGHTS OF PARTIES ARE CUMULATIVE**

Franchisor's and Franchisee's rights under this Agreement are cumulative, and their exercise or enforcement of any right or remedy under this Agreement will not preclude their exercise or enforcement of any other right or remedy under this Agreement which they are entitled by law to enforce.

#### **18.F. MEDIATION AND PRELIMINARY RELIEF**

Franchisor and Franchisee acknowledge that, during the term of this Agreement, disputes may arise regarding their relationship, rights and obligations under this Agreement. To facilitate resolution of these disputes, Franchisor and Franchisee agree that, during the term of this Agreement, before commencing an arbitration action, Franchisor and Franchisee shall submit any dispute arising from or relating to this Agreement or their relationship (other than disputes relating to the Marks or to Franchisee's failure to pay amounts owed to Franchisor or its affiliates) for non-binding mediation. The mediation shall occur in the county where Franchisor's headquarters are then located and shall be conducted by one mediator under the then current Commercial Mediation Rules of the American Arbitration Association. Any statements made by any person during the mediation shall not be admissible in any subsequent litigation or arbitration proceeding. Franchisor and Franchisee shall each bear their own costs and expenses for the mediation and share equally the costs of any independent third parties or fees required for the mediation. If the dispute is not resolved within 45 days after the mediator is appointed, either Franchisor or Franchisee may bring an arbitration action according to the terms of this Agreement.

Notwithstanding anything to the contrary contained in this Section or in Section 18.G, Franchisor and Franchisee have the right to obtain temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction. In that case, Franchisor and Franchisee agree to contemporaneously submit Franchisor's dispute for arbitration on the merits according to Section 18.G. Furthermore, nothing in this Section or Section 18.G shall limit either party's right to deliver a notice of default under, and terminate, this Agreement in accordance with Section 15.

#### **18.G. ARBITRATION**

Except as otherwise provided in this Agreement, any controversy or claim between Franchisor (and its Affiliates and their respective owners, officers, directors, agents and employees, as applicable) and Franchisee (and its Affiliates and their respective owners, officers, and directors, as applicable) including, whether sounding in contract, tort, or otherwise, shall be resolved by arbitration administered by the American Arbitration Association in accordance with this Commercial Arbitration Rules; provided that the claim shall be heard by a single arbitrator regardless of the number of arbitrators provided under the Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator(s) may be entered in any

court having jurisdiction thereof. Arbitration proceedings shall be held at a suitable location to be chosen by the arbitrator within 10 miles of Franchisor's then existing principal business address. The arbitrator has no authority to select a different hearing locale. All matters within the scope of the Federal Arbitration Act (9 U.S.C. Sections 1 et seq.) will be governed by it and not by any state arbitration law.

The arbitrator shall have the right to award any relief which he or she deems proper in the circumstances, including money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief and attorneys' fees and costs in accordance with Section 18.C above, provided that: (a) the arbitrator shall not have authority to declare any Mark generic or otherwise invalid; and (b) subject to the exceptions in Section 18.J, Franchisor and Franchisee waive to the fullest extent permitted by law any right to or claim for any punitive, exemplary, and treble and other forms of multiple damages against the other. The award and decision of the arbitrator shall be conclusive and binding upon all parties hereto and judgment upon the award may be entered in any court of competent jurisdiction.

Franchisor and Franchisee agree to be bound by the provisions of any limitation on the period of time by which claims must be brought under this Agreement or applicable law, whichever expires first. Franchisor and Franchisee further agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by the then current Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim which is not submitted or filed in such proceeding shall be barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either Franchisee or Franchisor. Franchisor reserves the right, but has no obligation, to advance Franchisee's share of the costs of any arbitration proceeding in order for such arbitration proceeding to take place and by doing so shall not be deemed to have waived or relinquished Franchisor's right to seek the recovery of those costs in accordance with Section 18.C above.

Franchisor and Franchisee agree that arbitration shall be conducted on an individual, not a class-wide, basis, that only Franchisor (and its Affiliates and their respective owners, officers, directors, agents and employees, as applicable) and Franchisee (and its Affiliates and their respective owners, officers and directors, as applicable) may be the parties to any arbitration proceeding described in this Section, and that no such arbitration proceeding shall be consolidated with any other arbitration proceeding involving Franchisor and/or any other person. Notwithstanding the foregoing or anything to the contrary in this Section or Section 18.A, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section 18.G, then Franchisor and Franchisee agree that this arbitration clause shall not apply to that dispute and that such dispute shall be resolved in a judicial proceeding in accordance with this Section 18 (excluding this Section 18.G).

The provisions of this Section are intended to benefit and bind certain third-party non-signatories and will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

#### **18.H. GOVERNING LAW**

Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other federal law, all controversies, disputes or claims between the parties including, without limitation, claims arising under or related to this Agreement or any other agreement between Franchisee (or its Owners) and Franchisor (or its Affiliate) will be governed by the laws of the State of Iowa, without regard to its conflict of laws rules, except that any law regulating the offer or sale of franchises, business opportunities or similar interests, or governing the relationship between a franchisor and a franchisee or any similar relationship (including the Iowa Franchise Act, I.S.A. Sections 537A.10 et seq.), will not apply unless its jurisdictional requirements are met independently without reference to this Section 18.H.

#### **18.I. CONSENT TO JURISDICTION**

Subject to the mediation and arbitration obligations in Sections 18.F and 18.G, Franchisee and its Owners agree that all judicial actions brought by Franchisor against Franchisee or its Owners, or by Franchisee or its Owners against Franchisor, its Affiliates or their respective owners, officers, directors, agents, or employees, must be brought and maintained exclusively in the state or federal court situated in the county in which Franchisor maintains its principal business address at the time the action is initiated. Franchisee and each of its Owners irrevocably submits to the jurisdiction of such courts and waive any objection that any of them may have to either jurisdiction or venue. Notwithstanding the foregoing, Franchisor may bring an action for a temporary restraining order or for temporary or preliminary injunctive relief, or to enforce an arbitration award, in any federal or state court in the state in which Franchisee resides or the Center is located.

#### **18.J. WAIVER OF PUNITIVE DAMAGES**

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, FRANCHISOR AND FRANCHISEE (AND ITS OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY, AND TREBLE AND OTHER FORMS OF MULTIPLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN FRANCHISOR AND FRANCHISEE (AND/OR ITS OWNERS), THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.

#### **18.K. WAIVER OF JURY TRIAL**

FRANCHISOR AND FRANCHISEE (AND ITS OWNERS) IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM.

#### **18.L. BINDING EFFECT**

This Agreement is binding upon Franchisor and Franchisee and their respective executors, administrators, heirs, beneficiaries, permitted assigns and successors in interest. Subject to Franchisor's rights to modify the Operations Manual and the System Standards, this Agreement may not be modified except by a written agreement signed by both Franchisee and Franchisor.

#### **18.M. LIMITATIONS OF CLAIMS**

EXCEPT FOR CLAIMS ARISING FROM FRANCHISEE'S NON-PAYMENT OR UNDERPAYMENT OF AMOUNTS THAT FRANCHISEE OWES FRANCHISOR, ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP BETWEEN FRANCHISOR AND FRANCHISEE WILL BE BARRED UNLESS AN ARBITRATION OR JUDICIAL PROCEEDING IS COMMENCED IN THE APPROPRIATE FORUM WITHIN TWO YEARS FROM THE DATE ON WHICH THE PARTY ASSERTING THE CLAIM KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THE CLAIM. THIS PROVISION IS INTENDED TO SHORTEN ANY APPLICABLE STATUTE OF LIMITATIONS TO THE EXTENT PERMITTED BY LAW.

#### **18.N. CONSTRUCTION**

The recitals and exhibits are a part of this Agreement, which, together with any riders or addenda signed at the same time as this Agreement, constitutes Franchisor's and Franchisee's entire agreement and supersedes all prior and contemporaneous oral or written agreements and understandings between Franchisor and Franchisee relating to the subject matter of this Agreement. There are no other oral or written representations, warranties, understandings or agreements between Franchisor and Franchisee relating to the subject matter of this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require Franchisee to waive reliance on any representation that Franchisor made in the most

recent disclosure document (including its exhibits and amendments) that Franchisor delivered to Franchisee or its representative. Any policies that Franchisor adopts and implements from time to time to guide it in its decision-making are subject to change, are not a part of this Agreement and are not binding on Franchisor. Except as provided in Sections 17.D and 18.G, nothing in this Agreement is intended nor deemed to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

The headings of the sections and paragraphs are for convenience only and do not define, limit or construe the contents of these sections or paragraphs.

The following terms have the following meanings:

The term “**Affiliate**” means any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling the party indicated.

The term “**Center**” includes all of the assets of the Farrell’s Center that Franchisee operates under this Agreement, including its revenue and income and the Lease.

The term “**Control**” means having the power to direct or cause the direction of management and policies of the company in question, whether through the ownership of voting securities, by contract, or otherwise.

The term “**Franchisor**” with respect to all of its rights and all of Franchisee’s obligations to Franchisor under this Agreement include any of Franchisor’s Affiliates with whom Franchisee deals in connection with the Center.

The terms “**include**,” “**including**,” and words of similar import shall be interpreted to mean “including, but not limited to” and the terms following such words shall be interpreted as examples of, and not an exhaustive list of, the appropriate subject matter.

The term “**Owner**” means each individual or entity holding a beneficial ownership in the Franchisee. It includes all shareholders of a corporation, all members of a limited liability company, all general and limited partners of a partnership, and the grantor and the trustee of the trust. If any “Owner” is, itself, a partnership or other entity, then the term “Owner” includes each individual or entity holding a beneficial ownership in the partnership or entity; the intent being that the term “Owner” is intended to include all individuals holding a beneficial interest in the Franchisee, either directly or indirectly.

The term “**Person**” means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative or other legal or functional entity. Unless otherwise specified, all references to a number of days shall mean calendar days and not business days.

If two or more persons are at any time the owners of Franchisee’s rights under this Agreement and/or the Center, whether as partners or joint venturers, their representations, warranties, obligations and liabilities to Franchisor will be joint and several.

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

Neither this Agreement nor any uncertainty or ambiguity in this Agreement shall be construed or resolved against the drafter of this Agreement, whether under any rule of construction or otherwise. Terms used in this Agreement shall be construed and interpreted according to their ordinary meaning. If any provision of this Agreement is susceptible to two or more meanings, one of which would render the provision enforceable and the other(s) which would render the provision unenforceable, the provision shall be given the meaning that renders it enforceable.

## **18.O. THE EXERCISE OF FRANCHISOR’S JUDGMENT**

Franchisor has the right to operate, develop and change the System in any manner that is not specifically prohibited by this Agreement. Whenever Franchisor has reserved in this Agreement a right to take or to withhold an action, or to grant or decline to grant Franchisee a right to take or omit an action,

Franchisor may, except as otherwise specifically provided in this Agreement, make its decision or exercise its rights based on information readily available to Franchisor and its judgment of what is in the best interests of Franchisor, the Farrell's Center network generally, or the System at the time Franchisor's decision is made, without regard to whether it could have made other reasonable or even arguably preferable alternative decisions or whether Franchisor's decision promotes its or its Affiliates' financial or other individual interest. Except where this Agreement expressly obligates Franchisor reasonably to approve or not unreasonably to withhold its approval of any of Franchisee's actions or requests, Franchisor has the absolute right to refuse any request Franchisee makes or to withhold Franchisor's approval of any of Franchisee's proposed, initiated or completed actions that require Franchisor's approval.

## **19. NOTICES AND PAYMENTS**

All written notices, reports and payments permitted or required to be delivered by the provisions of this Agreement or the Operations Manual will be deemed so delivered: (1) one business day after transmission by telecopy, facsimile or other electronic system if the sender has confirmation of successful transmission; (2) one business day after being placed in the hands of a commercial courier service for next business day delivery; or (3) three 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 notice. Any required payment or report which Franchisor does not actually receive during regular business hours on the date due (or postmarked by postal authorities at least two business days before then) will be deemed delinquent.

## **20. ELECTRONIC MAIL**

Franchisee acknowledges and agrees that exchanging information with Franchisor by e-mail is efficient and desirable for day-to-day communications and that Franchisor and Franchisee may utilize e-mail for such communications. Franchisee authorizes the transmission of e-mail by Franchisor and its employees, vendors, and Affiliates ("**Official Senders**") to Franchisee during the term of this Agreement. Franchisee further agrees that: (a) Official Senders are authorized to send e-mails to Instructors and those of Franchisee's other employees as Franchisee may occasionally authorize for the purpose of communicating with Franchisor; (b) Franchisee will cause its officers, directors, Instructors and other employees to give their consent to Official Senders' transmission of e-mails to them; (c) Franchisee will require such persons not to opt out or otherwise ask to no longer receive e-mails from Official Senders during the time that such person works for or is associated with Franchisee; and (d) Franchisee will not opt out or otherwise ask to no longer receive e-mails from Official Senders during the term of this Agreement. The consent given in this Section 20 shall not apply to the provision of notices by either party under this Agreement pursuant to Section 19 using e-mail unless the parties otherwise agree in a written document manually signed by both parties.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement effective on the date stated on the first page above.

**FRANCHISOR:**  
**FARRELL'S EXTREME**  
**BODYSHAPING, INC.,**  
an Iowa corporation

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

**FRANCHISEE:**  
**(IF CORPORATION, LIMITED**  
**LIABILITY COMPANY OR**  
**PARTNERSHIP):**

\_\_\_\_\_  
[Name]

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

**(IF INDIVIDUALS):**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**EXHIBIT A**  
**to the**  
**FARRELL'S EXTREME BODYSHAPING FRANCHISE AGREEMENT**

**BASIC TERMS**

The Center's location is \_\_\_\_\_.

The Opening Deadline for the Center is \_\_\_\_\_.

The Start-up Marketing Budget is \$ \_\_\_\_\_.

**FARRELL'S EXTREME  
BODYSHAPING, INC.**, an Iowa corporation

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

**FRANCHISEE**

**(IF CORPORATION, LIMITED  
LIABILITY COMPANY OR  
PARTNERSHIP):**

\_\_\_\_\_  
[Name]

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

**(IF INDIVIDUALS):**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**EXHIBIT B**  
**to the**  
**FARRELL'S EXTREME BODYSHAPING FRANCHISE AGREEMENT**

**FRANCHISEE AND ITS OWNERS**

**Effective Date: This Exhibit B is current and complete**  
**as of \_\_\_\_\_, 20\_\_**

**Form of Franchisee.**

**Individual Proprietorship.** Franchisee's Owner(s) (is) (are) as follows:


**Corporation, Limited Liability Company or Partnership.** Franchisee was incorporated or formed on \_\_\_\_\_, 20\_\_, under the laws of the State of \_\_\_\_\_. Franchisee has not conducted business under any name other than Franchisee's corporate, limited liability company, or partnership name and \_\_\_\_\_. The following is a list of Franchisee's directors or managers (if applicable) and officers as of the effective date shown above:

Name	Position(s) Held

**Owners.** The following list includes the full name of each person who is one of Franchisee's owners and fully describes the nature of each owner's interest (attach additional pages if necessary). If any "owner" is, itself, a partnership or other entity, then the term "owner" includes each individual or entity holding a beneficial ownership in the partnership or entity; the intent being that the term "owner" is intended to include all individuals holding a beneficial interest in the franchisee, either directly or indirectly.

Owner's Name	Description of Interest

**Managing Owner.** Franchisee's Managing Owner is \_\_\_\_\_.

**FARRELL'S EXTREME  
BODYSHAPING, INC.,** an Iowa corporation

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

**FRANCHISEE**

**(IF CORPORATION, LIMITED  
LIABILITY COMPANY OR  
PARTNERSHIP):**

\_\_\_\_\_  
[Name]

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

**(IF INDIVIDUALS):**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**EXHIBIT C**  
**to the**  
**FARRELL'S EXTREME BODYSHAPING FRANCHISE AGREEMENT**

**COLLATERAL ASSIGNMENT OF LEASE**

**FOR VALUE RECEIVED**, \_\_\_\_\_ (“**Assignor**”) hereby assigns, transfers and sets over unto FARRELL’S EXTREME BODYSHAPING, INC., an Iowa corporation (“**Assignee**”), all of Assignor’s right, title and interest as tenant in, to and under that certain lease, a copy of which is attached hereto as Exhibit A (the “**Lease**”), respecting premises commonly known as \_\_\_\_\_ (the “**Premises**”). 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 takes possession of the Premises and assumes certain obligations of Assignor under the Lease pursuant to the terms hereof.

Assignor represents and warrants to Assignee that Assignor (a) has full power and authority to so assign the Lease and its interest therein, and (b) has not previously assigned or transferred, and is not obligated to assign or transfer, any of its interest in the Lease or the Premises.

Upon the occurrence of any of the following:

(a) a default by Assignor under the Lease, the Farrell’s eXtreme Bodyshaping, Inc. franchise agreement between Assignee and Assignor (the “**Franchise Agreement**”), or any document or instrument securing or relating to the Franchise Agreement, or

(b) the expiration (without renewal), cancellation or termination of the Franchise Agreement by Assignor or Assignee for any reason other than a default by Assignee,

Assignee shall have the right (but no obligation), exercisable upon delivery of written notice to Assignor, and is hereby empowered, to take possession of the Premises, expel Assignor from the Premises, and acquire all of Assignor’s right, title and interest as tenant in, to and under the Lease. In such event, Assignor shall have no further right, title or interest in the Lease or the Premises, but shall remain solely liable to the lessor under the Lease for all rents, charges and other obligations owed under the Lease prior to the date upon which Assignee assumes possession of the Premises.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Assignee. Throughout the term of the Franchise Agreement (and any extensions, amendments and renewals thereof), Assignor agrees that it shall exercise all rights and options to extend the term of or renew the Lease (each a “**Renewal Option**”) not less than thirty (30) days prior to the last day upon which such Renewal Option must be exercised, unless Assignee otherwise agrees in writing. Assignor shall send Assignee a copy of the notice of exercise concurrently with Assignor’s exercise of each Renewal Option. If Assignee does not otherwise agree in writing to Assignor’s refusal to exercise any Renewal Option, and if Assignor fails to exercise such Renewal Option, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such Renewal Option in the name, place and stead of Assignor for the sole purpose of effecting such extension or renewal, provided that Assignee shall have no obligation to exercise such Renewal Option.

This Assignment shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon Assignor and its heirs, personal representatives, officers, partners, successors and assigns.

**IN WITNESS WHEREOF**, the parties have executed this Assignment as of the date set forth below.

Dated: \_\_\_\_\_, 20\_\_

**ASSIGNEE:**

**FARRELL'S EXTREME  
BODYSHAPING, INC.**, an Iowa corporation

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

**ASSIGNOR:**

**(IF CORPORATION, LIMITED LIABILITY  
COMPANY OR PARTNERSHIP):**

\_\_\_\_\_  
[Name]

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

**(IF INDIVIDUALS):**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**CONSENT AND AGREEMENT OF LESSOR**

The undersigned Lessor under the “Lease” attached as Exhibit A hereby:

1. agrees to notify Assignee in writing of and upon the failure of Assignor to cure any default by Assignor under the Lease;
2. agrees that Assignee shall have the right, but shall not be obligated, to cure any default by Assignor under the Lease within 30 days after delivery by Lessor of notice thereof in accordance with paragraph (1) above;
3. consents to the foregoing collateral assignment and agrees that if Assignee takes possession of the premises demised by the Lease pursuant to the Collateral Assignment, Lessor shall recognize Assignee as tenant under the Lease from and after the date upon which Assignee assumes possession and provides notice thereof to Lessor, but that Assignee shall not be liable for any past due rents or other liabilities or obligations of Assignor under or in connection with the Lease prior to such date; and
4. agrees that, provided there are then no existing defaults under the Lease, Assignee may further assign the Lease to any person or business entity who shall agree to assume the tenant’s obligations under the Lease and, upon such assignment, Assignee shall have no further liability or obligation under the Lease as assignee, tenant or otherwise.

DATED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Lessor

**EXHIBIT D**  
**to the**  
**FARRELL'S EXTREME BODYSHAPING FRANCHISE AGREEMENT**

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

**THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS** is given this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement (the "**Agreement**") on this date by **FARRELL'S EXTREME BODYSHAPING, INC.**, an Iowa corporation ("**Franchisor**"), each of the undersigned personally and unconditionally (a) guarantees to Franchisor and its successors and assigns, for the term of the Agreement (including, without limitation, any extensions of its term) and afterward as provided in the Agreement, that \_\_\_\_\_ ("**Franchisee**") will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement (including, without limitation, any amendments or modifications of the Agreement) and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement (including, without limitation, any amendments or modifications of the Agreement), both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including, but not limited to, the arbitration, non-competition, confidentiality, and transfer requirements.

Each of the undersigned consents and agrees that: (1) his or her direct and immediate liability under this Guaranty will be joint and several, both with Franchisee and among other guarantors; (2) he or she will render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) this liability will not be contingent or conditioned upon Franchisor's pursuit of any remedies against Franchisee or any other person; (4) this liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims (including, without limitation, any extensions of its term or the release of other guarantors), none of which will in any way modify or amend this Guaranty, which will be continuing and irrevocable during the term of the Agreement (including, without limitation, any extensions of its term), for so long as any performance is or might be owed under the Agreement by Franchisee or any of its owners, and for so long as Franchisor has any cause of action against Franchisee or any of its owners; (5) this Guaranty will continue in full force and effect for (and as to) any extension or modification of the Agreement and despite the transfer of any interest in the Agreement or Franchisee, and each of the undersigned waives notice of any and all renewals, extensions, modifications, amendments, or transfers; and (6) any indebtedness by Franchisee to the undersigned, for whatever reason, whether currently existing or hereafter arising, shall at all times be inferior and subordinate to any indebtedness owed by Franchisee to Franchisor or its Affiliates.

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Franchisee arising as a result of the undersigned's execution of and performance under this Guaranty; (ii) acceptance and notice of acceptance by Franchisor of his or her undertakings under this Guaranty, notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices to which he or she may be entitled; and (iii) all rights to assert or plead any statute of limitations as to or relating to this Guaranty. The undersigned expressly acknowledges that the obligations hereunder survive the expiration or termination of the Agreement.

If Franchisor seeks to enforce this Guaranty in an arbitration, judicial or other proceeding, and prevails in such proceeding, Franchisor shall be entitled to recover its reasonable costs and expenses

(including, but not limited to, attorneys' fees, arbitrators' fees, and expert witness fees, costs of investigation and proof of facts, court costs, other arbitration or litigation expenses and travel and living expenses) incurred in connection with such proceeding. If Franchisor is required to engage legal counsel in connection with any failure by the undersigned to comply with this Guaranty, the undersigned shall reimburse Franchisor for any of the above-listed costs and expenses Franchisor incurs, even if Franchisor does not commence a judicial or arbitration proceeding.

Subject to the arbitration obligations (as set forth in the Agreement) and the provisions below, each of the undersigned agrees that all actions arising under this Guaranty or the Agreement, or otherwise as a result of the relationship between Franchisor and the undersigned, must be brought exclusively in the state or federal court of general jurisdiction in the state, and in (or closest to) the city, where Franchisor then maintains its principal business address, and each of the undersigned irrevocably submits to the jurisdiction of those courts and waives any objection he or she might have to either the jurisdiction of or venue in those courts. Nonetheless, each of the undersigned agrees that Franchisor may enforce this Guaranty and any arbitration orders and awards in the courts of the state or states in which he or she is domiciled. **FRANCHISOR AND THE UNDERSIGNED IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY ANY OF THEM.**

**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)**

**PERCENTAGE OF OWNERSHIP IN  
FRANCHISEE**

_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

**RIDER TO THE FARRELL'S EXTREME BODYSHAPING, INC.  
FRANCHISE AGREEMENT WITH  
[\_\_\_\_\_]**

This Rider (the "Rider") is made and effective as of [\_\_\_\_\_], 20\_\_ (the "**Effective Date**," regardless of the dates of the parties' signatures) by and between **FARRELL'S EXTREME BODYSHAPING, INC.**, an Iowa corporation having its principal business address at 8510 New York Avenue, Urbandale, Iowa 50322 ("**Franchisor**"), and [\_\_\_\_\_], a(n) \_\_\_\_\_, whose principal business address is \_\_\_\_\_ ("Franchisee").

1. **Background.** Franchisor and Franchisee are parties to that certain Franchise Agreement dated as of [\_\_\_\_\_], 20\_\_ that has been signed concurrently with the signing of this Rider (the "Franchise Agreement") pursuant to which Franchisee will operate a Farrell's Center at [\_\_\_\_\_]. This Rider is annexed to and forms part of the Franchise Agreement. Prior to or concurrently with signing this Rider, Franchisee has obtained from a lender a loan ("Loan") in which certain funding is provided with the assistance of the United States Small Business Administration ("SBA"). SBA requires the execution of this Rider as a condition for Franchisee obtaining the SBA assisted financing.

2. **Transfer By Franchisee and Definition of Transfer.** The second sentence of Section 13(B) of the Franchise Agreement is deleted and replaced with the following:

Accordingly, neither: (i) this Agreement or any interest in this Agreement; (ii) the Center or any right to receive all or a portion of the profits or losses or any capital appreciation relating to the Center; (iii) all or substantially all of the Operating Assets; nor (iv) any ownership interest in Franchisee (if Franchisee is an Entity), may be transferred without Franchisor's prior written approval, which approval will not be unreasonably withheld or delayed, provided that the transfer meets all the requirements in Section 13.C.

3. **Franchisor's Right of First Refusal.** The following sentence is added to the end of Section 13(G) of the Franchise Agreement:

Notwithstanding the foregoing, Franchisor's right of first refusal described herein only applies if the offer relates to the sale or transfer of all of the interests in the Franchise Agreement and the Center (or all of its Operating Assets) or one hundred percent (100%) of the ownership interests in Franchisee.

4. **Assumption of Management.** The second sentence of the second paragraph of Section 15(D) of the Franchise Agreement is deleted and replaced with the following:

Franchisor's (or its appointee's) management of the Center shall continue for an initial period up to ninety (90) days (unless Franchisor delivers notice to Franchisee terminating such management), which initial period may be extended up to one year at Franchisor's discretion so long as Franchisor periodically discusses the Center's status of operations with Franchisee.

5. **Option to Purchase Operating Assets - Exercise of Option.** The second paragraph of Section 16(F)(1) of the Franchise Agreement is deleted and replaced with the following:

If Franchisee or one of its Affiliates owns the site upon which the Center is located, the option described herein shall not apply to such owned site. If Franchisee leases the Center's site from an unaffiliated lessor, Franchisee agrees (at Franchisor's option) to assign the Lease to Franchisor or to enter into a sublease for the remainder of the Lease term on the same terms (including renewal options) as the Lease.

6. **Option to Purchase Operating Assets - Purchase Price.** Section 16(F)(2) of the Franchise Agreement is deleted and replaced with the following:

If Franchisor elects to purchase all or substantially all of the Operating Assets and other assets associated with the operation of the Center, then the purchase price for those assets, together with an assignment of the Lease or a lease for the Center's site on the terms set forth in Subsection (1) above, will be an amount mutually agreed upon by Franchisor and Franchisee. If Franchisor and Franchisee are unable to agree upon the purchase price, then either Franchisor or Franchisee may elect to have the fair market value of the assets purchased under this Section 16.F determined by three independent appraisers. When determining fair market value, the appraisers may not include any value for the rights granted by this Agreement, goodwill attributable to the Marks, Franchisor's brand image, or other intellectual property or participation in the network of Farrell's Centers. Franchisor will appoint one appraiser, Franchisee will appoint one appraiser, and these two appraisers will appoint the third appraiser. Franchisor and Franchisee agree to select their respective appraisers within 10 days after delivery of the notice invoking the appraisal mechanism, and the two appraisers so chosen are obligated to appoint the third appraiser within 15 days after the last of them is appointed. The party requesting the appraisal will bear the costs of all three appraisers. Within days after delivery of the notice invoking the appraisal mechanism, each of Franchisor and Franchisee shall submit its respective calculation of fair market value to the appraisers in such detail as the appraisers' request and according to the criteria specified above. Within 15 days after receiving both calculations, the appraisers shall determine, by a majority vote, the purchase price.

**7. The Exercise of Franchisor's Judgment.** The following sentence is added to the end of Section 18(O) of the Franchise Agreement:

Notwithstanding the foregoing, Franchisor may not unreasonably withhold its approval of any sale, assignment or transfer of interest by Franchisee where Franchisor's consent is required.

**8. Compliance with System Standards.** Notwithstanding anything to the contrary contained in Section 5.G(5) of the Franchise Agreement, Franchisee shall have the discretion to set pricing for products and services that the Center offers, provided that, subject to applicable antitrust laws, such pricing: (1) is at or below any maximum price cap programs established by Franchisor for the System; (2) is at or above any minimum price threshold programs established by Franchisor for the System; or (3) conforms to any bona fide promotional programs or national or regional accounts programs established from time to time by Franchisor for the System.

9. Notwithstanding anything to the contrary in the Guaranty and Assumption of Obligations agreement, the franchisee, upon transfer, will not be bound by the terms of the new franchise agreement and guarantee performance of the transferee.

10. Notwithstanding anything to the contrary in Section 2.B. of the Franchise Agreement and the Collateral Assignment of Lease and Consent and Agreement of Lessor, if the Franchisee (or its affiliates) owns the real property upon which the business is located, Franchisor (its assignees or Affiliates) only has a right to lease the premises for the remaining term of the Franchise Agreement (excluding renewals) at fair market value.

**11. Termination of Rider.** This Rider shall terminate automatically upon the earliest of the following events: (i) a termination occurs pursuant to the Franchise Agreement; (ii) the Loan is paid in full to the then-current lender (or its assignee(s), whether direct or indirect); or (iii) SBA no longer has any interest in the Loan.

IN WITNESS WHEREOF, the parties have signed this Rider effective as of the Effective Date.

**FRANCHISEE:**

[ \_\_\_\_\_ ]  
a(n) [ \_\_\_\_\_ ]

By:

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

**FRANCHISOR:**

FARRELL'S EXTREME  
BODYSHAPING, INC.,  
an Iowa corporation

By:

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

**EXHIBIT C**  
**FINANCIAL STATEMENTS**

**FARRELL'S EXTREME BODYSHAPING, INC.**

Financial Statements

December 31, 2019

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## Independent Auditors' Report

To the Stockholders  
Farrell's eXtreme Bodyshaping, Inc.  
West Des Moines, Iowa

We have audited the accompanying financial statements of Farrell's eXtreme Bodyshaping, Inc. which comprise the balance sheets as of December 31, 2019 and 2018 and the related statements of operations, stockholders' equity, and cash flows for the years then ended, and the related notes to the financial statements.

### Management's Responsibility for the Financial Statements

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

### Auditors' Responsibility

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

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

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

### Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Farrell's eXtreme Bodyshaping, Inc. as of December 31, 2019 and 2018, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

**LWBJ, LLP**  
West Des Moines, Iowa  
March 30, 2020

**FARRELL'S EXTREME BODYSHAPING, INC.**

Balance Sheets

December 31, 2019 and 2018

	<b>2019</b>	<b>2018</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 204,473	\$ 271,321
Accounts receivable, less allowance for doubtful accounts of \$81,000 and \$100,000 as of December 31, 2019 and 2018, respectively	208,142	174,650
Prepaid expenses	20,516	67,474
Inventory	51,866	30,672
Refundable income taxes	37,039	37,009
Total current assets	522,036	581,126
Property and equipment, net	80,622	57,560
Intangible and other assets, net	226,333	99,304
Total assets	\$ 828,991	\$ 737,990
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 16,232	\$ 35,242
Accrued liabilities	72,359	83,149
Deferred revenue, current	110,970	-
Long-term debt due within one year	12,115	14,151
Total current liabilities	211,676	132,542
Long-term liabilities:		
Deferred revenue, net of current portion	163,489	-
Long-term debt due after one year	405,263	379,542
Deferred income taxes	27,300	67,200
Total long-term liabilities	596,052	446,742
Total liabilities	807,728	579,284
Stockholders' equity:		
Common stock, no par value, 1,000,000 shares authorized; 200,000 issued; and 150,000 outstanding	120,080	120,080
Treasury stock, 50,000 shares, at cost	(375,000)	(375,000)
Retained earnings	276,183	413,626
Total stockholders' equity	21,263	158,706
Total liabilities and stockholders' equity	\$ 828,991	\$ 737,990

See accompanying notes.

**FARRELL'S EXTREME BODYSHAPING, INC.**

Statements of Operations

For the years ended December 31, 2019 and 2018

	<b>2019</b>	<b>2018</b>
Revenues:		
Franchise fees	\$ 68,658	\$ 130,000
Training	230,000	-
Royalties	1,164,745	1,240,526
Merchandise sales	28,688	46,873
Rebates and other	52,301	54,866
Total revenues	1,544,392	1,472,265
Operating expenses:		
Payroll expense	744,044	751,571
Professional fees	182,733	186,426
Franchise costs	85,434	49,184
Facilities and equipment	145,341	132,062
Travel and corporate development	148,400	104,382
Advertising	153,172	135,430
Cost of merchandise sold	27,050	40,910
Depreciation	26,198	25,161
Other administrative	37,490	42,968
Total cost of revenues	1,549,862	1,468,094
Operating income (loss)	(5,470)	4,171
Other income (expense):		
Interest income	21,295	18,779
Interest expense	(19,331)	(2,194)
Total other income	1,964	16,585
Net income (loss) before income taxes	(3,506)	20,756
Income tax expense (benefit):		
Current	420	33,042
Deferred	5,200	(25,667)
Total income tax expense	5,620	7,375
Net income (loss)	\$ (9,126)	\$ 13,381

See accompanying notes.

**FARRELL'S EXTREME BODYSHAPING, INC.**

Statements of Stockholders' Equity

For the years ended December 31, 2019 and 2018

	<u>Common Stock</u>	<u>Treasury Stock</u>	<u>Retained Earnings</u>	<u>Total</u>
Balance, December 31, 2017	\$ 120,080	\$ -	\$ 400,245	\$ 520,325
Repurchase of treasury stock	-	(375,000)	-	(375,000)
Net income	-	-	13,381	13,381
Balance, December 31, 2018	<u>120,080</u>	<u>(375,000)</u>	<u>413,626</u>	<u>158,706</u>
Cumulative effect adjustment (Notes 1 and 9)	-	-	(128,317)	(128,317)
Net loss	-	-	(9,126)	(9,126)
Balance, December 31, 2019	<u>\$ 120,080</u>	<u>\$ (375,000)</u>	<u>\$ 276,183</u>	<u>\$ 21,263</u>

See accompanying notes.

**FARRELL'S EXTREME BODYSHAPING, INC.**

Statements of Cash Flows

For the years ended December 31, 2019 and 2018

	<b>2019</b>	<b>2018</b>
<b>Operating activities</b>		
Net income (loss)	\$ (9,126)	\$ 13,381
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	71,689	54,959
Gain on disposal of property and equipment	(5,402)	-
Deferred tax expense (benefit)	5,200	(25,667)
Decrease (increase) in accounts receivable	(33,492)	134,896
Decrease (increase) in prepaid expenses	46,958	(37,872)
Decrease (increase) in inventory	(21,194)	25,036
Increase in refundable income taxes	(30)	(29,328)
Decrease in accounts payable	(19,010)	(18,652)
Increase (decrease) in accrued liabilities	(10,790)	11,171
Increase in deferred revenue	101,042	-
Decrease in income tax payable	-	(43,779)
Net cash provided by operating activities	125,845	84,145
<b>Investing activities</b>		
Purchases of property and equipment	-	(10,249)
Proceeds from disposal of property and equipment	23,000	-
Payments for intangible and other assets	(172,000)	(21,050)
Net cash used in investing activities	(149,000)	(31,299)
<b>Financing activities</b>		
Payments on long-term debt	(43,693)	(22,404)
Proceeds from long term debt	-	350,000
Repurchase of treasury stock	-	(375,000)
Net cash used in financing activities	(43,693)	(47,404)
Net increase (decrease) in cash and cash equivalents	(66,848)	5,442
Cash and cash equivalents at beginning of year	271,321	265,879
Cash and cash equivalents at end of year	\$ 204,473	\$ 271,321
<b>Supplemental disclosures</b>		
Interest paid	\$ 19,331	\$ 2,194
Income taxes paid	450	106,149
Non-cash investing and financing activity:		
Equipment acquired through note payable	\$ 67,378	\$ -

See accompanying notes.

# **FARRELL'S EXTREME BODYSHAPING, INC.**

## Notes to Financial Statements

December 31, 2019

### **1. Summary of Significant Accounting Policies and Related Matters**

#### **Nature of Business**

Farrell's eXtreme Bodyshaping, Inc. (the "Company") franchises Farrell's eXtreme Bodyshaping operations ("fitness centers") throughout the Midwest. The Company's revenue is from its franchised locations. Affairs of the Company are governed by its bylaws dated January 1, 2007.

#### **Use of Estimates**

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

#### **Cash and Cash Equivalents**

All liquid investments purchased with a maturity of three months or less are considered to be cash equivalents. At various times during the years ended December 31, 2019 and 2018, the Company maintained balances in excess of the balance insured by the Federal Deposit Insurance Corporation. The Company does not believe it is exposed to any significant credit risk related to cash and cash equivalents.

#### **Accounts Receivable**

Accounts receivable are carried at original invoice amount less an estimate made for doubtful receivables based on a review of all outstanding amounts on a monthly basis. Management determines the allowance for doubtful accounts by identifying troubled accounts and by using historical experience applied to an aging of accounts. Accounts receivable are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded when received.

#### **Inventory**

The Company values inventories at the lower of cost or net realizable value using the first-in, first-out method.

#### **Property and Equipment**

The Company's property and equipment are recorded at cost and depreciated using the straight-line method over the asset's estimated useful life. Expenditures for maintenance and repairs necessary to maintain equipment in proper operating condition are expensed as incurred. Major replacements and betterments are capitalized.

## FARRELL'S EXTREME BODYSHAPING, INC.

Notes to Financial Statements (continued)

### 1. Summary of Significant Accounting Policies and Related Matters (continued)

#### Intangibles and Other Assets

Intangibles and other assets are amortized by the straight-line method over the estimated useful lives ranging from 3 to 15 years. The Company reviews its intangibles and other assets for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable.

#### Revenue from Contracts with Customers

Effective January 1, 2019, the Company adopted Financial Accounting Standards Board Accounting Standards Codification Topic 606, *Revenue From Contracts with Customers*, ("ASC 606"), using the modified retrospective transition method. The financial statements for the year ended December 31, 2018 were prepared under the guidance of previous standards. As a result, the Company recorded a \$128,317 cumulative effect adjustment as of January 1, 2019 on the statement of stockholders' equity (see Note 10).

Company revenues consist primarily of initial franchise fees, transfer fees, training fees, development rights agreements ("DRAs"), royalties, and rebates and other fees.

The Company's primary performance obligations under the franchise agreement is granting the franchisee rights to use the Company's intellectual property and providing training to new owners and managers through FXB University ("FXBU"). FXBU is an extensive, in-person, class for new owners and head coaches, that is typically conducted quarterly or as needed. Other than FXBU, all pre-opening services the Company provides under the franchise agreement are considered highly interrelated, and are therefore accounted for under ASC 606 as a single performance obligation, the franchise right, which is satisfied over the term of the franchise agreement. Under the previous standards, initial franchise fees and transfer fees were recognized when substantially all preopening services provided to the franchisee had been performed. Training fees were not separately distinguished, as there was no significant timing difference between recognition.

Initial franchise fees and transfer fees are payable by the franchisee upon signing a new franchise agreement or when one franchisee transfers a franchise agreement to a different franchisee. Included within the initial franchise fees and transfer fees is tuition for the new owner or manager to attend FXBU. FXBU is considered a separate performance obligation as is not highly interrelated with the franchise right as the training is not brand specific and consist principally of training that could be relevant to the operations of a similar business. The Company has determined the value allocable to FXBU based upon the price that third parties charge for comparable education.

The allocation of the contract amount to the franchise right is calculated as the proceeds collected for the initial franchise fee and transfer fee received less the value allocable to FXBU. If the value allocable to FXBU exceeds the proceeds received, no value is allocated to the franchise right, and FXBU allocation is reduced to equal the proceeds received. Initial franchise fees and transfer fees are recognized as franchise revenue on a straight-line basis over the term of the respective franchise agreement. FXBU fees are recognized upon completion of the program by the franchisee as training revenue.

## **FARRELL'S EXTREME BODYSHAPING, INC.**

### Notes to Financial Statements (continued)

#### **1. Summary of Significant Accounting Policies and Related Matters (continued)**

##### **Revenue from Contracts with Customers (continued)**

DRAAs generally consist of obligations to grant geographic exclusive development rights to current or prospective franchisees for a set period of time, and are payable upon signing. Revenue is deferred and apportioned to each franchise agreement signed, or recognized upon expiration if no development.

Royalties are calculated as a percentage of franchisee gross sales over the term of the franchise agreement, and are payable in arrears. Royalties represent sales-based royalties that are related entirely to the franchise agreement performance obligation and are recognized as franchisee sales occur. Revenues from rebates and the sale of merchandise are recognized as products are sold and collectability is reasonably assured. In addition, franchisees agree to contribute an amount that the Company periodically specifies to the marketing fund, up to 3% of the franchisee's gross sales, to be used for advertising.

Incremental costs to obtain contracts, typically lead generation and sales closing expenses are capitalized and amortized on a straight line basis over the over the term of the respective franchise agreement.

##### **Deferred Revenue**

Deferred revenue resulting from initial franchise fees, transfer fees, and DRA fees paid by franchisees which are generally recognized on a straight-line basis over the term of the underlying franchise agreement. Deferred FXBU revenues are typically recognized at upon completion of the program.

##### **Advertising Costs**

Advertising costs are expensed as incurred.

##### **Income Taxes**

Income taxes are provided on a liability method whereby deferred tax assets are recognized for deductible temporary differences, operating loss and tax credit carryforwards, and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences arise from the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets are adjusted for the effects of changes in tax laws and rates on the date of enactment.

##### **Recently Adopted Accounting Pronouncements**

ASC 606 was adopted by the Company effective January 1, 2019. This guidance requires that an entity recognize revenue to depict the transfer of a promised good or service to its customers in an amount that reflects consideration to which the entity expects to receive. This guidance also specifies accounting for certain costs incurred by an entity to obtain a contract with a customer and provides for enhancements to revenue specific disclosures intended to allow users of the financial statements to clearly understand the nature, amount, timing, and uncertainty of revenue and cash flows arising from an entity's contracts with its customers. See above for revenue recognition policies and Notes 9 and 10 for further information.

## FARRELL'S EXTREME BODYSHAPING, INC.

Notes to Financial Statements (continued)

### 1. Summary of Significant Accounting Policies and Related Matters (continued)

#### Reclassifications

Certain amounts in the December 31, 2018 financial statements were reclassified to conform to the current year presentation.

### 2. Franchise Arrangements

The following is a summary of changes in the number of outlets during 2019 and 2018:

	2019	2018
Franchised outlets:		
In operation, beginning of year	66	60
New franchises during the year	2	8
Franchises closed during the year	(3)	(2)
Total in operation, end of year	65	66

### 3. Property and Equipment

Property and equipment consists of the following at December 31:

	2019	2018
Vehicles	\$ 96,717	\$ 117,329
Equipment	12,898	12,898
	109,615	130,227
Less accumulated depreciation	28,993	72,667
Total	\$ 80,622	\$ 57,560

### 4. Intangibles and Other Assets

Intangible and other assets consist of the following at December 31:

	2019	2018
Franchise agreement	\$ 46,774	\$ 46,774
Regional franchise agreement	24,665	24,665
Trademarks and patents	9,578	9,578
Renderings for building design	10,500	10,500
Software	161,375	121,375
Contract assets (Note 9)	132,000	-
	384,892	212,892
Less accumulated amortization	158,559	113,588
Total	\$ 226,333	\$ 99,304

**FARRELL'S EXTREME BODYSHAPING, INC.**

Notes to Financial Statements (continued)

**4. Intangibles and Other Assets (continued)**

Amortization expense for each of the five succeeding years subsequent to December 31, 2019 is estimated as follows:

2020		\$	59,622
2021			43,454
2022			28,415
2023			16,086
2024			14,442
Thereafter			<u>64,314</u>
			<u>\$ 226,333</u>

**5. Debt**

Long-term debt consists of the following at December 31:

	<u>2019</u>		<u>2018</u>
Note payable maturing in 2024, payable in monthly installments of \$1,271, including interest of 4.94%, secured by a Company vehicle.	\$ 67,378	\$	-
Notes payable repaid in 2019.	-		43,693
Revolving note payable, with interest due monthly at the prime interest rate (4.75% at December 31, 2019). All unpaid interest and principal due December 2021. The line is guaranteed and secured by personal assets of a stockholder.	<u>350,000</u>		<u>350,000</u>
	417,378		393,693
Less current portion of long-term debt	<u>12,115</u>		<u>14,151</u>
Long-term debt, net of current portion	<u>\$ 405,263</u>	\$	<u>379,542</u>

Aggregate maturities of long-term debt for each of the four succeeding years subsequent to December 31, 2019 are as follows:

2020		\$	12,115
2021			362,813
2022			13,460
2023			14,140
2024			<u>14,850</u>
			<u>\$ 417,378</u>

## FARRELL'S EXTREME BODYSHAPING, INC.

### Notes to Financial Statements (continued)

#### 6. Income Taxes

The tax effects of significant items comprising the Company's net deferred tax assets (liabilities) as of December 31 are as follows:

	<u>2019</u>	<u>2018</u>
Allowance for doubtful accounts	\$ 21,100	\$ 26,000
Property and equipment	(2,200)	(7,200)
Intangibles	(53,700)	(19,100)
Accrual to cash adjustments	7,500	(66,900)
Net deferred tax liability	<u>\$ (27,300)</u>	<u>\$ (67,200)</u>

Income tax expense differs from the amounts computed by applying the United States federal income tax rate of 21% to pre-tax earnings as a result of the following:

	<u>2019</u>	<u>2018</u>
Computed "expected" tax expense (benefit)	\$ (736)	\$ 4,359
State income taxes, net of federal benefit	988	2,602
Nondeductible and nontaxable items	5,283	1,996
Reconciliation to return, rate differential and other	85	(1,582)
Income tax expense	<u>\$ 5,620</u>	<u>\$ 7,375</u>

The Company has analyzed its filing positions open to review and believes all significant positions have a "more-likely-than-not" likelihood of being upheld based on their technical merits or would not result in taxes assessed against the Company.

#### 7. Trademark License Agreement, Management Agreement and Related-Party Activity

The Company operates under a trademark licensing agreement with an affiliate through common ownership. The agreement may be terminated with 180 days written notice by either party. Under the agreement, the Company was granted royalty-free, nonexclusive, personal and nontransferable right and license to its use and sublicense of the use of the trademarks in the territory solely in connection with the Company's business of licensing to franchisees its business system and know-how regarding the operation of the Company's franchises. At various times during the years ended 2019 and 2018, the Company made advances to, and received payments from, an affiliate through common ownership. There were no amounts due from, or to, the affiliate at December 31, 2019 or 2018.

#### 8. Stockholders' Equity

During the year ended December 31, 2018, the Company repurchased 50,000 shares from one of its stockholders for \$375,000.

**FARRELL'S EXTREME BODYSHAPING, INC.**

Notes to Financial Statements (continued)

**9. Contract Assets and Liabilities**

Costs associated with lead generation and sales closings are recognized as contract assets, and are amortized on a straight line basis over the over the term of the respective franchise agreement. Contract assets are included within intangible assets on the balance sheets (see Note 4). The following table reflects the change in contract assets from January 1, 2019 to December 31, 2019:

	Carrying Value	Accumulated Amortization
Balance January 1, 2019	\$ -	\$ -
Amortization expense	-	3,783
Incremental costs paid to obtain contracts	132,000	-
Balance at December 31, 2019	\$ 132,000	\$ 3,783

Contract liabilities consist of deferred revenue resulting from initial franchise fees, transfer fees, and DRA fees which are generally recognized on a straight-line basis over the term of the underlying franchise agreement. Deferred revenue as of December 31, 2019 and January 1, 2019 consists of the following:

	December 31, 2019	January 1, 2019
Franchise	\$ 164,459	\$ 103,417
DRA's	30,000	10,000
Training	80,000	60,000
	\$ 274,459	173,417

The following table reflects the change in contract liabilities from January 1, 2019 to December 31, 2019:

Balance January 1, 2019	\$ 173,417
Revenue recognized during year that was deferred at beginning of year	(104,083)
Contract liabilities entered into during year	205,125
Balance at December 31, 2019	\$ 274,459

The following table illustrates estimated revenues expected to be recognized in each of the five succeeding years subsequent to December 31, 2019 related to performance obligations that are unsatisfied (or partially unsatisfied) as of December 31, 2019.

2020	\$ 110,970
2021	30,970
2022	30,720
2023	19,220
2024	18,970
Thereafter	63,609
	\$ 274,459

## FARRELL'S EXTREME BODYSHAPING, INC.

### Notes to Financial Statements (continued)

#### 10. Financial Statement Impact of Transition to ASC 606

As described in Note 1, the Company adopted ASC 606 using the modified retrospective method on January 1, 2019. The cumulative effect of this transition to applicable contracts with customers that were not completed as of January 1, 2019, applied on an individual contract basis, was recorded as an adjustment to retained earnings as of that date.

As a result of applying the modified retrospective method to transition to ASC 606, the following adjustments were made to the consolidated balance sheet as of January 1, 2019:

	As Reported December 31, 2018	Restatement	As Restated January 1, 2019
Deferred revenue	\$ -	\$ 173,417	\$ 173,417
Deferred income taxes	67,200	(45,100)	22,100
Retained earnings	413,626	(128,317)	285,309

The monetary impact of adopting ASC 606 on each financial statement line item as of and for the year ended December 31, 2019 is as follows:

	As Reported December 31, 2019	Effects of ASC 606	Balance without ASC 606 Adopted
Intangible assets	\$ 226,333	\$ (128,217)	\$ 98,116
Total assets	\$ 828,991	\$ (128,217)	\$ 700,774
Deferred revenue, current	\$ 110,970	\$ (110,970)	\$ -
Deferred revenue, net of current portion	163,489	(163,489)	-
Deferred income tax liability	27,300	38,000	65,300
Total liabilities	807,728	(236,459)	571,269
Retained earnings	276,183	108,242	384,425
Total liabilities and stockholder' equity	\$ 828,991	\$ (128,217)	\$ 700,774
Franchise revenue	\$ 68,658	\$ 331,042	\$ 399,700
Training revenue	230,000	(230,000)	-
Total revenues	1,544,392	101,042	1,645,434
Franchise costs	85,434	128,217	213,651
Total cost of revenue	1,549,862	128,217	1,678,079
Total operating loss	(5,470)	(27,125)	(32,645)
Deferred tax expense (benefit)	5,200	(7,100)	(1,900)
Net loss	\$ (9,126)	\$ (20,075)	\$ (29,201)

## **FARRELL'S EXTREME BODYSHAPING, INC.**

Notes to Financial Statements (continued)

### **11. Subsequent Events**

The Company's operations may be affected by the recent and ongoing outbreak of the coronavirus disease 2019 ("COVID-19") which has been declared a pandemic by the World Health Organization. The spread of COVID-19 around the world in the first quarter of 2020 has caused significant volatility in U.S. and international markets. There is significant uncertainty around the breadth and duration of business disruptions related to COVID-19, as well as its impact on the U.S. and international economies and, as such, the Company is unable to determine the impact this will have on its operations.

Management has evaluated potential subsequent events through March 30, 2020, which is the date the financial statements were available to be issued.

**EXHIBIT D**  
**OPERATIONS MANUAL TABLE OF CONTENTS**

**FARRELL’S EXTREME BODYSHAPING, INC. OPERATIONS MANUAL**

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**EXHIBIT E**

**LIST OF FRANCHISEES AND FRANCHISEES WHO LEFT THE SYSTEM**

**FRANCHISEES AS OF DECEMBER 31, 2019**

<b>Franchisee</b>	<b>Franchise ID</b>	<b>Street Address</b>	<b>City</b>	<b>ST</b>	<b>Zip</b>	<b>Phone</b>
Mark, Jenny and Dave Vohsman, Good Stuff Fitness, LLC	Championship View FXB	5850 Championship View, Suite 140	Colorado Springs	CO	80922	719-473-3921
Mark, Jenny and Dave Vohsman, Good Stuff Fitness, LLC	Star Ranch FXB	3639 Star Ranch Road	Colorado Springs	CO	80906	719-203-3230
Ariel Doctoroff, FXB 5280, LLC	Denver FXB	1547 South Colorado Boulevard	Denver	CO	80222	303-756-2639
Flynn McCartney and Pat Thomas, Transform Fitness, LLC	Bloomington-Hershey FXB	1804 South Hershey Road	Bloomington	IL	61704	309-664-1601
Vic Jackowiak and Tia Simpson, Stabilized Training, LLC	Logan Square (Chicago) FXB	3201 W. Fullerton Avenue	Chicago	IL	60647	773-698-7855
Flynn McCartney and Pat Thomas, Transform Fitness, LLC	East Peoria FXB	212 Veterans Drive	East Peoria	IL	61611	319-362-0075
Flynn McCartney and Pat Thomas, Transform Fitness, LLC	Peoria – Knoxville FXB	5832 N. Knoxville Avenue, Suite L	Peoria	IL	61614	319-362-0075
Flynn McCartney and Pat Thomas, Transform Fitness, LLC	Springfield FXB	3246 Ginger Creek Drive	Springfield	IL	62711	217-993-9820
Teresa Geary and Pam Green, Purple Band Fitness, LLC	Landmark FXB	430 S. Landmark Avenue	Bloomington	IN	47403	812-822-2712

<b>Franchisee</b>	<b>Franchise ID</b>	<b>Street Address</b>	<b>City</b>	<b>ST</b>	<b>Zip</b>	<b>Phone</b>
Teresa Geary and Pam Green, Purple Band Fitness, LLC	Columbus FXB	3230 N. National Road	Columbus	IN	47201	812-375-9920
Jim Warren, FIT Indy, Inc.	Greenwood FXB	3011 Meridian Meadows Road	Greenwood	IN	46142	317-954-9791
David Shilling, Finish Strong, LLC	Altoona FXB	1003 8 <sup>th</sup> Street SW	Altoona	IA	50009	515-867-1073
Ryan and Angie Gurwell Ferocious eXtreme Beasts, Inc.	Ames FXB	605 East Lincoln Highway	Ames	IA	50010	515-509-4007
Andrew and Stephanie Wilson, Purple Bands, LLC	North Ankeny FXB	121 N. 18 <sup>th</sup> Street	Ankeny	IA	50021	515-778-6941
Andrew and Stephanie Wilson, Purple Bands, LLC	South Ankeny FXB	2803 SW Oralabor Road	Ankeny	IA	50023	515-778-6941
Pat Thomas, Thomas Fitness, LLC	Bettendorf FXB	2501 East 53 <sup>rd</sup> Avenue	Bettendorf	IA	52722	319-362-0075
Pat Thomas, Thomas Fitness, LLC	C.R. Boyson FXB	576 Boyson Road NE	Cedar Rapids	IA	52042	319-362-0075
Pat Thomas, Thomas Fitness, LLC	C.R. C Street FXB	5761 C Street SW	Cedar Rapids	IA	52404	319-841-2233
Pat Thomas, Thomas Fitness, LLC	C.R. Edgewood North FXB	5240 Edgewood Road NE	Cedar Rapids	IA	52411	319-832-0000
Pat Thomas, Thomas Fitness, LLC	Coralville – Oakdale FXB	2761 Oakdale Boulevard	Coralville	IA	52241	319-626-2285
Josh and Kathleen Riessen, Farrell’s Beaverdale, LLC	Beaverdale FXB	2706 Beaver Avenue	Des Moines	IA	50310	515-979-5244
Ryan Winter, FXB DSM, LLC	South Des Moines FXB	4230 Fleur Drive	Des Moines	IA	50321	515-287-2739

<b>Franchisee</b>	<b>Franchise ID</b>	<b>Street Address</b>	<b>City</b>	<b>ST</b>	<b>Zip</b>	<b>Phone</b>
Kip Hoffman, Challenge Fitness, Inc.	Dubuque – Meinen FXB	2478 Meinen Court	Dubuque	IA	52002	563-564-7696
Jenae Halstead, Joey Boyens, Scott Carpenter	Grimes – FXB	1451 SE 3 <sup>rd</sup> St, Suite 500	Grimes	IA	50111	515-986-0865
Pat Thomas, Thomas Fitness, LLC	Iowa City FXB	964 South 1 <sup>st</sup> Avenue	Iowa City	IA	52240	319-338-5878
Angie Fuller, Ryan Sheridan, and Dan Hanawalt, DARE Fitness	Cedar Falls – Waterloo FXB	3551 University Avenue	Waterloo	IA	50701	319-234-2348
Josh and Kathleen Riessen, Live With Intention, LLC	Waukee FXB	215 N. Warrior Lane	Waukee	IA	50263	515-770-7295
Josh and Kathleen Riessen, Farrell’s EP True	EP True FXB	1905 EP True Parkway	West Des Moines	IA	50265	515-314-1003
Eric and Tracy White, Fundamental Fitness, LLC	Jordan Creek FXB	7450 Bridgewood Blvd, Ste 225	West Des Moines	IA	50266	515-203-3239
Wayne Lewis, Imagnet, LLC	Overland Park	8380 W 151 <sup>st</sup> Street	Overland Park	KS	66223	913-285-5095
Robyn Keller and Brittany Widman, B.R.E.W. Fitness	Albertville FXB	5262 Kyler Avenue NE	Albertville	MN	55301	763-777-1616
Cindi Nikituk, CK Hardcore Fitness, LLC	Andover FXB	2246 Bunker Lane Boulevard, Suite 205	Andover	MN	55304	763-276-9688
Cindi Nikituk, CK Hardcore Fitness, LLC	Blaine FXB	1510 109 <sup>th</sup> Avenue, Suite 160	Blaine	MN	55449	763-784-2401
Cheryl and Chris Soli, Live Life Love Fitness, LLC	Brooklyn Park FXB	9618 Colorado Lane	Brooklyn Park	MN	55445	763-316-6458

Franchisee	Franchise ID	Street Address	City	ST	Zip	Phone
Lorenzo Rollie, Alicia Bartels, and Lenore Schoenfelder, ALL Fitness, LLC	Eagan FXB	1278 Town Centre Drive	Eagan	MN	55123	763-248-2710
Dale Braegelman and Greg Anderson, D&G Fitness	Eden Prairie FXB	9627 Anderson Lake Parkway	Eden Prairie	MN	55344	612-875-8706
Robyn Keller and Brittany Widman, B.R.E.W Fitness	Elk River FXB	19140 Freeport Street NW	Elk River	MN	55330	763-777-1616
Robyn Keller and Brittany Widman, B.R.E.W. Fitness	Forest Lake FXB	808 Lake Street South	Forest Lake	MN	55025	651-464-4041
Tracey, Dana McConkey & Dave, Sharilyn Erickson, 4321 Fitness, LLC	Lino Lakes FXB	709 Apollo Drive, Suite 110	Lino Lakes	MN	55014	612-360-8151
Jeremy and Jacque Whiteford, 4You Fitness, LLC	Mankato FXB	1170 South Riverfront Drive	Mankato	MN	56001	218-329-2266
Ken and Melody Klitzke, MAK Fitness, LLC	Maple Grove FXB	9893 Maple Grove Parkway North	Maple Grove	MN	55369	763-205-3291
Casey Bloemke and Ed McNamara – Wolverine Fitness, LLC	North Loop	304 6 <sup>th</sup> Ave N	Minneapolis	MN	55401	773-430-8660
Krista Berbig and Deb Boatman, BigBoat Fitness, LLC	New Hope FXB	7550 42 <sup>nd</sup> Avenue	New Hope	MN	55427	612-875-6140
Leslie Egan and Abby O'Reilly, Achieve Level 10 Fitness, LLC	Stillwater FXB	5825 Neal Avenue North	Stillwater	MN	55082	651-342-1063

Franchisee	Franchise ID	Street Address	City	ST	Zip	Phone
Casey Bloemke and Ed McNamara – Wolverine Fitness, LLC	St. Paul FXB	477 Selby Ave	St. Paul	MN	55102	651-369-7272
Krista Berbig and Deb Boatman, BigBoat Fitness, LLC	Plymouth FXB	3900 Winewood Lane North	Plymouth	MN	55441	763-383-1010
Jeremy Hoekstra and Doug Schminke, J & S Fitness, Inc.	Rochester – North 52 FXB	4214 Highway 52N	Rochester	MN	55901	319-202-4661
Cindi Nikituk, CK Hardcore Fitness, LLC	Shoreview FXB	1037 West Highway 96	Shoreview	MN	55126	763-400-8707
Amanda Martell and Anna Finke, Agape Fitness, LLC	St. Cloud FXB	1111 2 <sup>nd</sup> Street S	Waite Park	MN	56387	763-245-3335
Justin Gordon, Gillian Faber, and Randy Sampson, Intense Fitness, LLC	White Bear FXB	1210 County Road J	White Bear Township	MN	55127	651-407-2942
Justin Gordon, Gillian Faber, and Randy Sampson, Intense Fitness, LLC	Woodbury FXB	1960 Donegal Drive, Suite 10	Woodbury	MN	55125	651-407-2942
Nick Senior, Senior Enterprise, LLC	Bellevue FXB	2219 Capeheart Road	Bellevue	NE	68123	402-408-6404
Carol Wisecarver, Penny Mc Williams, and Joe Stein, PJC, LLC	La Vista FXB	10351 Portal Road	La Vista	NE	68128	402-408-4143

Franchisee	Franchise ID	Street Address	City	ST	Zip	Phone
Nicole Essink, Essink Energy, LLC	Lincoln-Jamie Lane FXB	2755 Jamie Lane Suite #9	Lincoln	NE	68516	402-310-4026
Nicole Essink, Essink Energy, LLC	Lincoln-Lucile FXB	4400 Lucile Drive	Lincoln	NE	68506	402-310-4761
Charissa Hansen, Achieve FIT, LLC	Omaha Northwest FXB	4975 N. 120 <sup>th</sup> Street	Omaha	NE	68164	402-408-5818
Janelle Risdon, Body Perfect, LLC	Midtown FXB	7610 Dodge Street	Omaha	NE	68144	402-201-2474
Ashley Nielsen, Wdstepsibfit, LLC	Omaha West Dodge FXB	15791 West Dodge Road	Omaha	NE	68118	402-408-9313
Jeremy Eppenbaugh, FXB Omaha, LLC	Omaha 180 <sup>th</sup> & Q FXB	18101 R Plaza #3	Omaha	NE	68135	402-208-9585
Michael and Bobbie Gettler, BMG Consulting, LLC	Mooresville FXB	122 Trade Court, Suite E	Mooresville	NC	28117	704-360-2947
Laura Jacobs, LLJ Fitness, LLC	Sioux Falls – Minnesota Ave FXB	6010 South Minnesota Avenue, Suite 110	Sioux Falls	SD	57108	605-338-1400
Mustaali and Shannon Carbaidwala, FXB Dallas, LLC	Frisco FXB	4855 Ohio Drive	Frisco	TX	75035	214-223-5797
Mustaali and Shannon Carbaidwala, FXB Dallas, LLC	Little Elm FXB	850 West Eldorado Parkway, Suite 500	Little Elm	TX	75068	214-223-5797
Jim and Christine Barnes, Bring It On Level 10 Fitness	Hudson FXB	1301 Gateway Circle, Suite 400	Hudson	WI	54016	651-206-1808
David Jansen, Health & Wealth, LLC	Madison FXB	6060 McKee Road	Fitchburg	WI	53719	608-720-1111

**FRANCHISEES WITH SIGNED FRANCHISE AGREEMENT  
BUT NOT OPEN AS OF DECEMBER 31, 2019**

Franchisee	Franchise ID	Street Address	City	ST	Zip	Phone
Tricia Helton, Winged Victory	New Tampa FXB	19651 Brue B Down Blvd, Ste E- 6	Tampa	FL	33647	813-600- 3742
Nicole Trowbridge, Trowbridge Fitness	Spring FXB	16116 Stuebner Airline Rd	Spring	TX	77379	281-773- 7647
Laxmi Narasimhan, PRG Software Solution	Irvine FXB	NA	Irvine	CA		949-202- 8972

**LIST OF FORMER FRANCHISEES<sup>1</sup>**

Franchisees who have had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year, December 31, 2019, or who have not communicated with us within 10 weeks of the date of this disclosure document:

100% Transfer of Interest:

Franchisee	City	State	Telephone or E-Mail
Randy Bachman	West Des Moines	IA	515-897-8462
Jeff Koudelka	Des Moines	IA	515-210-3536
Rhea Friederichs	Forest Lake	MN	612-770-5656
Joe Hill	Eagan	MN	612-414-3700
Brandon Luetkenhaus	Omaha	NE	402-201-5626

Terminations:

Franchisee	City	State	Telephone or E-Mail
Karolyn Beebe and Lee-Anne Kingma	Round Rock	TX	512-458-0246
Chad Davis	Parker	CO	720-376-9548

Non-Renewals:

Franchisee	City	State	Telephone or E-Mail
None.			

Reacquired by Franchisor:

Franchisee	City	State	Telephone or E-Mail
None.			

Ceased Operations Other:

Franchisee	City	State	Telephone or E-Mail
Laura Jacobs	Sioux Falls	SD	605-275-6070

**EXHIBIT F**  
**STATE-SPECIFIC RIDERS**

**RIDER TO THE FARRELL'S EXTREME BODYSHAPING, INC.  
FRANCHISE AGREEMENT FOR USE IN ILLINOIS**

This Rider (the "Rider") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Agreement Date"), between FARRELL'S EXTREME BODYSHAPING, INC., an Iowa corporation, with its principal mailing address at 8510 New York Avenue, Urbandale, Iowa 50322 ("Franchisor"), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ ("Franchisee").

1. Background. Franchisor and Franchisee are parties to that certain Franchise Agreement that has been signed concurrently with the signing of this Rider (the "Franchise Agreement"). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) the offer or sale of the franchise for the Farrell's Center that Franchisee will operate under the Franchise Agreement was made in the State of Illinois and the Center will be located in Illinois, and/or (b) Franchisee is a resident of Illinois.

2. Governing Law. Section 18.H of the Franchise Agreement is deleted and replaced with the following:

Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other federal law, all controversies, disputes or claims arising from or relating to:

- this Agreement or any other agreement between Franchisee (or its owners) and Franchisor (or its Affiliate);
- Franchisor's relationship with Franchisee;
- the validity of this Agreement or any other agreement between Franchisee (or its owners) and Franchisor (or its Affiliate); or
- any System Standard

will be governed by the laws of the State of Illinois, without regard to its conflict of laws rules, except that any Illinois statute will not apply unless its jurisdictional requirements are met independently without reference to this Section 18.H.

3. Consent to Jurisdiction. Section 18.I of the Franchise Agreement is deleted.

4. Waiver of Jury Trial. The following language is added to the end of Section 18.K of the Franchise Agreement:

However, the waiver in this paragraph shall not apply to the extent prohibited by Section 705/41 of the Illinois Franchise Disclosure Act of 1987 or Illinois Regulations at Section 200.609. Specifically, Section 705/41 of the Illinois Franchise Disclosure Act states:

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. This Section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any of the provisions of this Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code.

5. Limitation of Claims. The following language is added to the end of Section 18.M of the Franchise Agreement:

However, nothing in this Section shall shorten any period within which Franchisee may bring a claim under Section 705/27 of the Illinois Franchise Disclosure Act or constitute a

condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act of 1987 or any other Illinois law (as long as the jurisdictional requirements of that Illinois law are met).

IN WITNESS WHEREOF, the parties have executed and delivered this Rider effective on the date stated on the first page above.

**FRANCHISOR:**

**FARRELL'S EXTREME  
BODYSHAPING, INC.**, an Iowa corporation

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

**FRANCHISEE:**

**(IF CORPORATION, LIMITED  
LIABILITY COMPANY OR  
PARTNERSHIP):**

\_\_\_\_\_  
[Name]

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

**(IF INDIVIDUALS):**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**RIDER TO THE FARRELL’S EXTREME BODYSHAPING, INC.  
FRANCHISE AGREEMENT FOR USE IN MARYLAND**

This Rider (the “Rider”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Agreement Date”), between FARRELL’S EXTREME BODYSHAPING, INC., an Iowa corporation, with its principal mailing address at 8510 New York Avenue, Urbandale, Iowa 50322 (“Franchisor”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“Franchisee”).

1. Background. Franchisor and Franchisee are parties to that certain Franchise Agreement that has been signed concurrently with the signing of this Rider (the “Franchise Agreement”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because the Farrell’s Center that Franchisee will operate under the Franchise Agreement will be located in Maryland.

2. Termination. The following language is added to the end of Section 15.B of the Franchise Agreement:

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

3. Releases. The following is added to the end of Section 13.C.(2)(h) and 14(ii) of the Franchise Agreement:

Pursuant to COMAR 02.02.08.16L, the general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

4. Limitation of Claims. The following is added to the end of Section 18.M of the Franchise Agreement:

Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

5. Consent to Jurisdiction. The following is added to the end of Section 18.I of the Franchise Agreement:

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

The next page is the signature page.

IN WITNESS WHEREOF, the parties have executed and delivered this Rider effective on the date stated on the first page above.

**FRANCHISOR:**

**FARRELL'S EXTREME  
BODYSHAPING, INC.**, an Iowa corporation

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

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

**FRANCHISEE**

**(IF CORPORATION, LIMITED  
LIABILITY COMPANY OR  
PARTNERSHIP):**

\_\_\_\_\_  
[Name]

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

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

**(IF INDIVIDUALS):**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**RIDER TO THE FARRELL'S EXTREME BODYSHAPING, INC.  
FRANCHISE AGREEMENT FOR USE IN MINNESOTA**

This Rider (the "Rider") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Agreement Date"), between FARRELL'S EXTREME BODYSHAPING, INC., an Iowa corporation, with its principal mailing address at 8510 New York Avenue, Urbandale, Iowa 50322 ("Franchisor"), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ ("Franchisee").

1. Background. Franchisor and Franchisee are parties to that certain Franchise Agreement that has been signed concurrently with the signing of this Rider (the "Franchise Agreement"). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) the Farrell's Center that Franchisee will operate under the Franchise Agreement will be located in Minnesota; and/or (b) any of the franchise offering or sales activity with respect to the Franchise Agreement occurred in Minnesota.

2. Releases. The following language is added to the end of Sections 13.C.(2)(h) and 14(ii) of the Franchise Agreement:

; however, any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the Minnesota Franchises Law.

3. Termination by Franchisor. The following language is added to the end of Section 15.B of the Franchise Agreement:

With respect to franchises governed by Minnesota law, Franchisor will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that Franchisee be given ninety (90) days' notice of termination (with 60 days to cure) and one hundred eighty (180) days' notice of non-renewal of the Franchise Agreement.

4. Governing Law/Consent to Jurisdiction. The following language is added to the end of Sections 18.H and 18.I of the Franchise Agreement:

Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition (subject to Franchisee's arbitration obligations), nothing in this Agreement can abrogate or reduce any of franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

5. Waiver of Punitive Damages. The following language is added to the beginning of Section 18.J of the Franchise Agreement:

EXCEPT AS OTHERWISE REQUIRED BY THE MINNESOTA FRANCHISES LAW,  
AND

6. Waiver of Jury Trial. The following language is added to the beginning of Section 18.K of the Franchise Agreement:

EXCEPT AS OTHERWISE REQUIRED BY THE MINNESOTA FRANCHISES LAW,

7. Limitation of Claims. The following language is added to the end of Section 18.M of the Franchise Agreement:

; provided, however, that Minnesota law provides that no action may be commenced under Minn. Stat. Sec. 80C.17 more than three years after the cause of action accrues.

IN WITNESS WHEREOF, the parties have executed and delivered this Rider effective on the date stated on the first page above.

**FRANCHISOR:**

**FARRELL'S EXTREME  
BODYSHAPING, INC.**, an Iowa corporation

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

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

**FRANCHISEE:**

**(IF CORPORATION, LIMITED  
LIABILITY COMPANY OR  
PARTNERSHIP):**

\_\_\_\_\_  
[Name]

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

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

**(IF INDIVIDUALS):**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**RIDER TO THE FARRELL'S EXTREME BODYSHAPING, INC.  
FRANCHISE AGREEMENT FOR USE IN NORTH DAKOTA**

This Rider (the "Rider") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Agreement Date"), between FARRELL'S EXTREME BODYSHAPING, INC., an Iowa corporation, with its principal mailing address at 8510 New York Avenue, Urbandale, Iowa 50322 ("Franchisor"), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ ("Franchisee").

1. **Background.** Franchisor and Franchisee are parties to that certain Franchise Agreement that has been signed concurrently with the signing of this Rider (the "Franchise Agreement"). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) the Farrell's Center that Franchisee will operate under the Franchise Agreement will be located in North Dakota; and/or (b) any of the franchise offering or sales activity with respect to the Franchise Agreement occurred in North Dakota.

2. **Releases.** The following language is added to the end of Sections 14(ii) of the Franchise Agreement:

Any release required as a condition of renewal will not apply to the extent prohibited by Section 51-19-09 of the North Dakota Franchise Investment Law.

3. **Covenant Not to Compete.** The following is added to the end of Section 16.E of the Franchise Agreement:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, we will enforce the covenants to the maximum extent the law permits.

4. **Mediation.** The following sentence replaces the third sentence in Section 18.F of the Franchise Agreement in its entirety:

The mediation shall occur at a site mutually agreeable to Franchisor and Franchisee and shall be conducted by one mediator under the then current Commercial Mediation Rules of the American Arbitration Association.

5. **Arbitration.** The following sentence replaces the third sentence in Section 18.G of the Franchise Agreement in its entirety:

Arbitration proceedings shall be held at a suitable location to be chosen by the arbitrator in an agreed upon location by the Franchisee (or its owner) and the Franchisor (or its Affiliate).

6. **Governing Law/Consent to Jurisdiction.** The following language is added to the end of Sections 18.H and 18.I of the Franchise Agreement:

Section 51-19-09 of the North Dakota Franchise Investment Law prohibits the franchisor from requiring litigation to be conducted outside North Dakota. In addition (subject to Franchisee's arbitration and mediation obligations), nothing in this Agreement can abrogate or reduce any of franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

5. **Waiver of Jury Trial.** The following language is added to the beginning of Section 18.K of the Franchise Agreement:

EXCEPT AS OTHERWISE REQUIRED BY THE NORTH DAKOTA FRANCHISE INVESTMENT LAW,

6. Termination and Liquidated Damages. The following language is added to the beginning of Section 16.A of the Franchise Agreement:

Except as otherwise required by the North Dakota Franchise Investment Law,

7. Waiver of Exemplary and Punitive Damages. The following language is added to the beginning of Section 18.J of the Franchise Agreement:

EXCEPT AS OTHERWISE REQUIRED BY THE NORTH DAKOTA FRANCHISE INVESTMENT LAW, AND

8. Limitations of Claims. The following is added to the end of Section 18.M of the Franchise Agreement:

THE STATUTES OF LIMITATIONS UNDER NORTH DAKOTA LAW APPLIES WITH RESPECT TO CLAIMS ARISING UNDER THE NORTH DAKOTA FRANCHISE INVESTMENT LAW.

IN WITNESS WHEREOF, the parties have executed and delivered this Rider effective on the date stated on the first page above.

**FRANCHISOR:**

**FARRELL'S EXTREME  
BODYSHAPING, INC.**, an Iowa corporation

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

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

**FRANCHISEE**

**(IF CORPORATION, LIMITED  
LIABILITY COMPANY OR  
PARTNERSHIP):**

\_\_\_\_\_  
[Name]

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

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

**(IF INDIVIDUALS):**

---

[Signature]

---

[Print Name]

---

[Signature]

---

[Print Name]

**RIDER TO THE FARRELL’S EXTREME BODYSHAPING, INC.  
FRANCHISE AGREEMENT FOR USE IN WASHINGTON**

This Rider (the “Rider”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Agreement Date”), between FARRELL’S EXTREME BODYSHAPING, INC., an Iowa corporation, with its principal mailing address at 8510 New York Avenue, Urbandale, Iowa 50322 (“Franchisor”), and \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“Franchisee”).

1. Background. Franchisor and Franchisee are parties to that certain Franchise Agreement that has been signed concurrently with the signing of this Rider (the “Franchise Agreement”). This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) the Farrell’s Center that Franchisee will operate under the Franchise Agreement will be located in **Washington**; and/or (b) any of the franchise offering or sales activity with respect to the Franchise Agreement occurred in **Washington**.

2. Washington Law. The following paragraphs are added to the end of the Franchise Agreement:

The state of Washington has a statute, RCW 19.100.180 which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

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

In the event of a conflict between the Washington Franchise Investment Protection Act (the “Act”) and the law chosen in the Franchise Agreement, the provisions of the Act, Chapter 19.100 RCW, shall prevail.

To the extent required by the Act, a release or waiver of rights executed by a Franchisee shall not include rights under the Act except when executed pursuant to a negotiated settlement after the Franchise 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.

To the extent required by the Act, transfer fees are collectable to the extent that they reflect the Franchisor’s reasonable estimated or actual costs in effecting a transfer.

You have the right to terminate the Franchise Agreement on any grounds permitted by law.

The next page is the signature page.

IN WITNESS WHEREOF, the parties have executed and delivered this Rider effective on the date stated on the first page above.

**FRANCHISOR:**

**FARRELL'S EXTREME  
BODYSHAPING, INC.,** an Iowa corporation

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

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

**FRANCHISEE**

**(IF CORPORATION, LIMITED  
LIABILITY COMPANY OR  
PARTNERSHIP):**

\_\_\_\_\_  
[Name]

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

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

**(IF INDIVIDUALS):**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

**EXHIBIT G**  
**STATE EFFECTIVE DATES**

**FARRELL'S EXTREME BODYSHAPING, INC.**  
**STATE REGISTRATIONS**

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

State	Effective Date
California	
Hawaii	
Illinois	
Indiana	
Maryland	
Michigan	January 6, 2020
Minnesota	
New York	
North Dakota	
Rhode Island	
South Dakota	
Virginia	
Washington	
Wisconsin	

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

**EXHIBIT H**  
**RECEIPTS**

**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 Farrell’s eXtreme Bodyshaping, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable state law. Applicable state laws in Michigan requires us to provide you the disclosure document 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 and New York requires us to provide you the disclosure document at the earlier of the first personal meeting 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 Farrell’s eXtreme Bodyshaping, Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit A.

The franchisor is Farrell’s eXtreme Bodyshaping, Inc. located at 8510 New York Avenue, Urbandale, Iowa 50322. Its telephone number is (515) 770-7295.

The franchise seller(s) for this offering are:

Check All that Applies	Name	Principal Business Address	Telephone Number
	Lance Farrell	8510 New York Avenue, Urbandale, Iowa 50322	(515) 770-7295

Issuance date: March 30, 2020

We authorize the respective state agents identified on Exhibit A to receive service of process for us in the particular states.

I received a disclosure document from Farrell’s eXtreme Bodyshaping, Inc. dated as of March 30, 2020, (or the date reflected on the State Effective Dates Page), that included the following Exhibits:

- |   |  |
|---|--|
| A. List of State Agencies/Agents for Service of Process | E. Franchisees and Franchisees Who Left the System |
| B. Franchise Agreement                                  | F. State-Specific Riders                           |
| C. Financial Statements                                 | G. State Effective Dates Page                      |
| D. Operations Manual Table of Contents                  | H. Receipts  |

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

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

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

Printed name \_\_\_\_\_

Signed individually and as an officer of  
 \_\_\_\_\_(a Corporation)  
 \_\_\_\_\_(a Partnership)  
 \_\_\_\_\_(a Limited Liability Company)

Signed, individually and as an officer of  
 \_\_\_\_\_(a Corporation)  
 \_\_\_\_\_(a Partnership)  
 \_\_\_\_\_(a Limited Liability Company)

**[Keep this page for your records.]**

**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 Farrell’s eXtreme Bodyshaping, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable state law. Applicable state laws in Michigan requires us to provide you the disclosure document 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 and New York requires us to provide you the disclosure document at the earlier of the first personal meeting 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 Farrell’s eXtreme Bodyshaping, Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit A.

The franchisor is Farrell’s eXtreme Bodyshaping, Inc. located at 8510 New York Avenue, Urbandale, Iowa 50322. Its telephone number is (515) 770-7295.

The franchise seller(s) for this offering are:

Check All that Applies	Name	Principal Business Address	Telephone Number
	Lance Farrell	8510 New York Avenue, Urbandale, Iowa 50322	(515) 770-7295

Issuance date: March 30, 2020

We authorize the respective state agents identified on Exhibit A to receive service of process for us in the particular states.

I received a disclosure document from Farrell’s eXtreme Bodyshaping, Inc. dated as of March 30, 2020, (or the date reflected on the State Effective Dates Page), that included the following Exhibits:

- |   |  |
|---|--|
| A. List of State Agencies/Agents for Service of Process | E. Franchisees and Franchisees Who Left the System |
| B. Franchise Agreement                                  | F. State-Specific Riders                           |
| C. Financial Statements                                 | G. State Effective Dates Page                      |
| D. Operations Manual Table of Contents                  | H. Receipts  |

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

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

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

Printed name \_\_\_\_\_

Signed individually and as an officer of  
 \_\_\_\_\_(a Corporation)  
 \_\_\_\_\_(a Partnership)  
 \_\_\_\_\_(a Limited Liability Company)

Signed, individually and as an officer of  
 \_\_\_\_\_(a Corporation)  
 \_\_\_\_\_(a Partnership)  
 \_\_\_\_\_(a Limited Liability Company)

**[Sign, date, and return by mail to Farrell’s eXtreme Bodyshaping, Inc.,  
 8510 New York Avenue, Urbandale, Iowa 50322]**