

**Exhibit "B"**

**Franchise Agreement and Exhibits**

**CASTUS LOW CARB SUPERSTORES  
FRANCHISE AGREEMENT**

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List Of Exhibits:

- Exhibit A Personal Guaranty
- Exhibit B, Confidentiality and Non-Compete Agreement
- Schedule A, List of Trademarks
- Schedule B, Location Defined

**CASTUS LOW CARB SUPERSTORES  
FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT ("Agreement") is made this \_\_\_ day of \_\_\_\_\_ 20\_\_ by and between CASTUS LOW CARB SUPERSTORES, a California corporation, with its principal place of business located at 9110 B Alcosta Blvd., Suite 205, San Ramon, California, (hereinafter referred to as the "Franchisor"), and \_\_\_\_\_ (hereinafter referred to as the "Franchisee").

**RECITALS**

A. Franchisor has made a substantial investment of money, time and effort to develop certain techniques, plans, methods and systems for the uniform standards of distribution, display, marketing and sale of low and/or controlled carbohydrate foods and supplements for the weight and health conscious, diabetic or hypoglycemic individuals and to offer workshops and consulting related to the use of such low and /or controlled carbohydrate foods and supplements, through independent retail stores with unique décor, design, and operational characteristics (the "Castus System").

B. Franchisor grants to qualified persons franchises to own and operate such retail stores (each, a "Castus Store") to sell products and services authorized and approved by the Franchisor utilizing the Castus System and the Franchisor's trademarks, trade names, service marks, logos, and commercial symbols described in Schedule "A", attached hereto and incorporated by reference hereinafter (the "Proprietary Marks").

C. Franchisor may, from time to time, disapprove current products offered for sale at the Castus Stores or may approve other products or merchandise for sale in the Castus Stores. In addition, Franchisor may at some time in the future license the marketing and/or the sale of certain products, including without limitation, novelties, clothing, toys, or other merchandise at the Castus Stores (collectively, "Additional Products").

D. Franchisee has applied to the Franchisor for a franchise to operate a Castus Store and such application has been approved by the Franchisor in reliance upon all representations and statements made by the Franchisee to the Franchisor including, without limitation, the financial resources of the Franchisee.

E. Franchisee understands and acknowledges the importance of the Franchisor's high and uniform standards of quality and service and the necessity of operating the Castus Stores in conformity with the Franchisor's standards and qualifications.

F. Franchisee has reviewed this Agreement, the Franchise Offering Circular, and other materials related to the Franchisor's Castus Store franchises and related matters and has independently investigated and become familiar with the scope of the Castus System and declares that it possesses the requisite knowledge and skill to operate a franchise.

G. Franchisee represents that it has conducted any independent investigations it felt necessary in evaluating its decision to apply to purchase a Castus Store franchise. Franchisee recognizes: the business risks inherent in owning and operating a Castus Store franchise and that the success of the Franchisee is dependent upon the Franchisee's efforts.

H. Franchisee acknowledges that it has not received or relied upon any guarantee, expressed or implied, as to the revenues, profits, or success of the Castus Store franchise contemplated by this Agreement; and further acknowledges that there have been no representations by the Franchisor or its agents, employees or representatives that are contrary or in addition to the terms enunciated in this Agreement.

## **AGREEMENT**

**NOW THEREFORE**, for and in consideration of the foregoing recitals, the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Franchisor and Franchisee do hereby agree as follows:

### **1.00 GRANT OF FRANCHISE**

#### 1.01 Grant of Franchise.

a) This franchise is being granted based on the application, financial statements and other documents submitted by Franchisee to the Franchisor prior to the execution of this Agreement. Franchisee represents and warrants that those materials: (1) are accurate and complete as of their respective dates and the date of this Agreement; and (2) do not omit the statement of any material fact necessary to make them not misleading.

b) Subject to the terms and conditions of this Agreement and the Franchisee's continuing good faith performance under this Agreement, the Franchisor grants to Franchisee: (i) the right to build and operate one (1) Castus Store and to use the Castus System at the location described on Schedule B attached hereto and incorporated herein by reference (the "Location"); (ii) the right to use such Proprietary Marks of the Franchisor as are now or may hereafter be specifically designated by the Franchisor in writing for use with the Castus System (as they may be changed, improved, and further developed from time to time) in conjunction with the Castus Store, and (iii) the right to indicate to the public that the Castus Store is operated as a part of, or a unit in, the Franchisor's retail store chain.

c) The Franchisor shall not own, operate nor grant a franchise for a Castus Store within the area surrounding the Location comprised of the area determined solely by the Franchisor based on a demographic survey of such area designated as the "Territory;" provided, however, the Franchisor may own or operate, or grant franchises or licenses for others to operate one or more Castus Store anywhere outside the Territory (regardless whether such location is within the area targeted by Franchisee's advertising of the Castus Store) on such terms and conditions as the Franchisor deems appropriate.

d) Franchisee specifically acknowledges that HNC (an affiliate of Franchisor) may sell similar products, via the internet, as are distributed through the Castus Stores. Therefore, Franchisor reserves to itself, its subsidiaries, affiliates or designees, the right

to sell such products through the internet in the Territory in an effort to promote the Proprietary Marks.

1.02 Other Retail Stores.

Franchisee understands that the Franchisor may operate franchise retail stores other than Castus Stores. Franchisee agrees that the Franchisor may do so at any location, including locations within the Territory, provided that such retail stores are not operated under the names "Castus Low Carb Superstores" "Castus" or similar trade names. Franchisee further acknowledges and agrees that this franchise is solely for the Location and affords Franchisee no rights in any additional franchise to be operated at any other location. Neither this Agreement nor the franchise issued hereunder obligates the Franchisor in any way to sell or issue any other franchise.

1.03 Acceptance of Franchise; Use of Premises.

a) Franchisee agrees to diligently develop and operate its Castus Store and to promote diligently the interests of the Castus System for the term of this Agreement and any renewal thereof. Franchisee accepts said grant and franchise and agrees to construct, maintain and operate the Castus Store only at the Location, and in accordance with (i) the Franchisor's plans and specifications, (ii) the Castus System, (iii) the Confidential Operations Manual, (iv) other manuals and procedures as may be included in the Castus System and revised from time to time, and (v) the terms and conditions of this Agreement.

b) Franchisee agrees to use the Castus Store and the premises upon which it is located ("Franchised Retail Store Premises") solely for the operation of the Castus Store and purposes designated in this Agreement and for no other purpose.

1.04 Franchisor Services.

a) The Franchisor agrees to provide Franchisee with the following materials and services for its Castus Store:

- 1) upon Franchisee's request, written guidelines for site selection;
- 2) generic plans, drawings and specifications for the Castus Store and its related facilities;
- 3) generic layouts and specifications for fixtures, furnishings, interior design and decor, signs and equipment for the Castus System;
- 4) such pre-opening assistance as the Franchisor may, in its discretion, deem necessary for Franchisee to meet Castus System standards;
- 5) a pre-opening management training program and such other training at such locations and for such periods as may be designated by the Franchisor from time to time in the Confidential Operations Manual, subject to Section to 5.03 of this Agreement;
- 6) on-site opening assistance for the Castus Store, if determined by the Franchisor to be necessary;
- 7) one (1) copy of the Confidential Operations Manual (a registered copy of which is delivered concurrently with the execution hereof and loaned to Franchisee for the term hereof), and such additions and modifications thereto as the Franchisor may issue from

time to time, in its discretion (the Franchisor may require payment of its then-current replacement fee for replacing copies of the Confidential Operations Manual);

8) a sample of the Franchisor's standardized chart of accounts and format for Franchisee's statement of earnings and balance sheet, to be used by Franchisee for reporting to the Franchisor; and

9) the Castus marketing and advertising program(s), as described herein.

NEITHER THE FRANCHISOR'S ACCEPTANCE OF THE LOCATION NOR ANY INFORMATION COMMUNICATED TO FRANCHISEE REGARDING THE FRANCHISOR'S SITE SELECTION CRITERIA FOR CASTUS STORE SHALL CONSTITUTE A WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE SUITABILITY OF THE LOCATION FOR A CASTUS STORES OR FOR ANY OTHER PURPOSE. THE FRANCHISOR'S ACCEPTANCE OF THE PROPOSED SITE MERELY SIGNIFIES THAT IT IS WILLING TO GRANT A FRANCHISE FOR A CASTUS STORE FOR SUCH LOCATION. THE FRANCHISOR IS NOT RESPONSIBLE FOR THE FAILURE OF THE LOCATION TO MEET FRANCHISEE'S EXPECTATIONS AS TO POTENTIAL REVENUES. FRANCHISEE'S DECISION TO OPERATE A CASTUS STORE AT THE LOCATION IS BASED SOLELY ON FRANCHISEE'S INDEPENDENT INVESTIGATION OF THE SUITABILITY OF THE LOCATION FOR A CASTUS STORE.

## **2.00 TERM**

2.01 If Franchisee owns the Franchised Retail Store Premises:

a) Franchisee represents and warrants to Franchisor that Franchisee owns the Franchised Retail Store Premises;

b) Franchisee agrees that it shall notify Franchisor in writing of any change regarding its ownership of the Franchised Retail Store Premises; and

c) Unless previously terminated pursuant to the terms of this Agreement, the term of the franchise granted herein shall be ten (10) years commencing on the date that the Castus Store opens for business as reported by Franchisee in accordance with the terms of this Agreement and as reflected on the Franchisor's records (the "Opening Date");

OR

2.02 If Franchisee leases the Franchised Retail Store Premises:

a) Franchisee represents and warrants to Franchisor that Franchisee leases or subleases the Franchised Retail Store Premises pursuant to a lease or sublease agreement dated as of \_\_\_\_\_, 20\_\_, of which Franchisee has provided Franchisor with a true and accurate copy (together with any modifications or renewals thereof, the "Lease");

b) Franchisee further represents and warrants to Franchisor that the Lease commencement date is \_\_\_\_\_, the Lease expiration date is \_\_\_\_\_ and the Lease provides for (\_\_\_\_\_) option periods of (\_\_\_\_\_) years each;

c) Franchisee shall promptly provide Franchisor with copies of any material modifications of the Lease;

d) Franchisee shall cause the Lease to contain: (i) a provision that allows Franchisee and Franchisor to fulfill the requirements of Section 11.02 and 11.03; and (ii) a provision that grants the Franchisor the right, but not obligation, to assume the lease from the Franchisee, if the Franchisee's Franchise Agreement is terminated for any reason. The Lease must also state that, should the Franchisor decide to assume the Franchisee's Lease, then the Franchisor shall not be obligated to pay any monies due to the Landlord from the Franchisee, as such costs shall be the sole responsibility of Franchisee. The assignment clause of Franchisee's Lease with Landlord must clearly state that the Franchisor can assume the Lease on the same terms and under the same conditions as the Franchisee.

e) Unless previously terminated pursuant to the terms of this Agreement, the term of the franchise granted herein shall be ten (10) years (the term shall be a maximum of twenty (20) years if Franchisee qualifies and elects to exercise its options to renew, described below) commencing on the Opening Date, provided, however, that Franchisee agrees that it shall not open the Castus Store for business prior to the Lease commencement date and the term of this Agreement shall not extend beyond the expiration of Franchisee's Lease.

#### 2.03 Options to Renew.

a) Franchisee may, at its option, renew this Agreement for two (2) five (5) year option terms; however, Franchisee's exercise of its renewal option terms shall not extend the term of this franchise beyond the expiration of the Franchisee's Lease. In addition, in order to exercise its renewal option terms, Franchisee must satisfy all of the following conditions:

1) Franchisee must give the Franchisor written notice of its election to renew no less than six (6) months, nor more than nine (9) months, prior to the end of the then-current term;

2) At the time when notice is given and at the end of the then-current term, (a) Franchisee must not have been in default of: (i) any provision of this Agreement in the last 12 months, or (ii) any other agreement between Franchisee or any of its affiliates and the Franchisor or any of the Franchisor's affiliates, and (b) Franchisee and all of its affiliates shall have substantially complied with the terms and conditions of all such agreements during the initial and any prior renewal term(s) of this Agreement;

3) Franchisee and all of its affiliates shall have satisfied all monetary obligations owed by them to the Franchisor, its subsidiaries and affiliates prior to renewal, and have timely met all such obligations throughout the initial and all prior renewal terms of this Agreement;

4) Franchisee shall provide such financial information regarding Franchisee as the Franchisor reasonably may request;

5) Franchisee (and its owners) must execute the Franchisor's then-current standard form renewal franchise agreement (including personal guarantees and other

attachments), which may contain terms and conditions substantially different from those set forth herein, including, without limitation, increased mandatory fees and advertising expenditures;

6) Franchisee and each of its owners shall execute a general release, in a form satisfactory to the Franchisor, of any and all claims Franchisee may have as of the date of execution of the renewal unit franchise agreement, or arising from an event or events which occurred prior to such date, against the Franchisor and its officers, directors, shareholders and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;

7) Franchisee shall present evidence satisfactory to the Franchisor that Franchisee has the right to remain in possession of the Franchised Retail Store Premises for the duration of the renewal term;

8) Franchisee shall complete, or provide for, such renovation and modernization of the Castus Store and Franchised Retail Store Premises as the Franchisor may reasonably require, including, without limitation, such remodeling (including structural modifications), redecoration, repair and replacement of fixtures, furniture, signs and equipment, as may be necessary both to reflect the then-current public image required by the Franchisor of new Franchisees and to ensure the presentation of the Proprietary Marks consistent with such image;

9) Franchisee shall reimburse the Franchisor for all costs and expenses incurred by it in connection with the renewal of the franchise up to a maximum of \$5,000.00 including, without limitation, all administrative and legal costs incurred in preparation and review of documentation; and

10) Franchisee, at its cost, will have satisfied the training requirements for new Franchisees as of the date of such renewal.

b) The Franchisor may, at its option and in its sole discretion, conditionally accept Franchisee's exercise of its renewal option pending Franchisee's satisfaction of the conditions set forth in Section 2.03(a). In such event, Franchisee agrees to execute the Franchisor's then-current standard form renewal franchise agreement pursuant to Section 2.03(a)(5), which agreement may provide for a term of a duration substantially shorter than the renewal term provided for in this Agreement and which may grant to Franchisor the right to terminate the same immediately upon notice to Franchisee.

### **3.00 PREMISES AND EQUIPMENT**

#### **3.01 Site Selection of Castus Store.**

a) Franchisee shall select a Territory upon the execution of this Agreement. As soon as possible thereafter but no later than 30 days after execution of this Agreement, Franchisee must select and propose a potential location for Franchisee's Castus Store within your Territory. Franchisor will consult with Franchisee about the site selection criteria and the guidelines for choosing a site when Franchisee signs its Franchise Agreement; including, the following: (a) population density; (b) traffic patterns, ease of ingress and egress; (c) visibility; (d) adequate parking available; (e) market saturation and whether the demographics of the area include the potential for walk-in traffic, local advertising impact, and prospective customers for the products in proportion to the local population; and (f) zoning. These factors are considered



and balanced against the cost of operating the franchise in that area, with monthly rental obligations being one of the most significant financial strains. Franchisees shall submit potential site locations to Franchisor for review and if satisfactory, for acceptance. Franchisor will accept or reject the proposed site based on Franchisor's evaluation of this information and Franchisor's own on-site inspection and evaluation, if Franchisor desires, in its sole discretion, to conduct such inspections and evaluations. In the event that the Franchisee desires to relocate its Castus Store within the Territory and during the term of this Franchise Agreement, Franchisee must request Franchisor's consent to such relocation, in writing, and in compliance with this Section 3.01(a).

b) In addition, under the terms of the Area Development Agreement, if Franchisee enters into one, it is the Franchisee's obligation to select proposed sites for each of its Castus Stores within the Development Area.

c) Franchisor will review and, if appropriate, approve the proposed site location and size of the Castus Store and the terms of the proposed lease or purchase agreement for the Castus Store and notify Franchisee of our approval or disapproval of the proposed site location and/or the proposed lease terms or purchase agreement for the Castus Store within ten (10) business days after you provide us with sufficient information necessary for us to make such determination.

### 3.02 Construction of Castus Store.

a) The Castus System is used in freestanding retail stores, interior mall or outdoor in-line locations and other structures. The Location franchised herein is a \_\_\_\_\_ . The Franchisor shall furnish to Franchisee one (1) copy of a preliminary site layout, a set of generic plans and specifications for a standard Castus Store of the type specified in this subsection, and a list of and layout for standardized furnishings and equipment for the specified type of retail store.

b) Franchisee at its expense shall have: (i) the generic plans and specifications adapted as necessary to construct and operate the Castus Store on the Franchised Retail Store Premises, and (ii) such adapted plans including the final site layout stamped by an architect licensed by the state where the Castus Store will be located. Any such adaptations and all plans, specifications and layouts other than those furnished by the Franchisor must be approved in writing by the Franchisor prior to the Franchisee's obtaining permits, construction bids or commencing construction. The Franchisor's approval shall signify only its acceptance of the appearance of the retail store building, and shall not signify that the approved plans or specifications comply with applicable codes. Such approval shall not result in any liability of the Franchisor to Franchisee. Franchisee agrees to indemnify the Franchisor against claims of liability relating to such approval as provided in Section 9 of this Agreement.

c) Layout and plans and specifications, prepared or approved by the Franchisor, shall not thereafter be changed or modified without the Franchisor's prior written consent. Before commencing any construction of the Castus Store, Franchisee shall furnish to the Franchisor a letter certifying that all required permits and certifications required for the lawful construction and operation of the Castus Store have been obtained and all other

requirements for its lawful construction and operation have been met, including, without limitation, zoning, access, signage, fire, health and safety requirements.

d) Construction of the building and improvements shall begin as soon as possible after the Franchisor furnishes or approves the site layout, plans and specifications (the "Approval Date"). The building and improvements shall be constructed in strict compliance with the plans and specifications and shall be completed within nine (9) months after the Approval Date. The Franchisor, in its discretion, may inspect the construction at all reasonable times. At least thirty (30) days in advance of the Castus Store's projected Opening Date, Franchisee shall, by written notice, request the Franchisor to perform its final inspection, Franchisee shall open the Castus Store for business as soon after completion of the building and installation of furnishings and equipment as is reasonably possible, but in no event before the Franchisor's final inspection is performed and written approval is given.

e) If the Castus Store is damaged or rendered totally or partially unusable as a retail store by fire or other casualty, Franchisee shall repair or restore the Castus Store to its former condition within a reasonable time, not to exceed six (6) months after the date of the fire or casualty. The proceeds of all insurance carried by Franchisee covering the Franchised Retail Store Premises shall be applied to the cost of repairing or restoring the Castus Store, and Franchisee shall pay the balance, if any, of such costs. If, in the Franchisor's reasonable judgment, the damage or destruction is of such an extent that it is feasible for the Franchisee, without incurring substantial expense additional to the insurance proceeds, to repair or reconstruct the Castus Store in accordance with the then-standard Castus layout and decor specifications, the Franchisor may require the Franchisee to repair or reconstruct the Castus Store in accordance with those specifications. Notwithstanding the foregoing, Franchisee may terminate this Agreement, provided that Franchisee shall have notified the Franchisor in writing of its election to terminate no later than thirty (30) days following the casualty if: (i) the Castus Store is rendered totally or significantly unusable as a retail store by fire or other casualty within the two (2) years immediately preceding the date of expiration of the term of this Agreement, and (ii) Franchisee cannot reasonably repair or restore the Castus Store to its former condition.

### 3.03 Purchase and Installation of Equipment and Furnishings.

a) Franchisee shall purchase and install and use in and about the Franchised Retail Store Premises such items and only such items of equipment (including, without limitation, fixtures, furnishings, interior and exterior signage, electronic cash registers, software and computers) and other personal property (collectively, the "Equipment") as are designated by the Franchisor from time to time as Approved Brands on the Franchisor's required Equipment and Furnishings List in the Confidential Operations Manual, or which otherwise have been approved by the Franchisor in writing and which strictly conform to the appearance, uniform standards and specifications of the Franchisor and the Castus System as established from time to time. The Franchisor's specifications and standards for such Equipment shall be provided to Franchisee upon written request. If Franchisee desires to purchase or install any item not so listed or approved, Franchisee or the supplier of such item shall submit to the Franchisor a written request for approval of the item. The Franchisor shall have the right to require, among other things, that a sample of the item be delivered (or otherwise be made available in a manner acceptable to the Franchisor), either to the Franchisor or its designee for review, inspection and testing prior to acting on the request for approval. A charge not to exceed the cost of the review, inspection and testing shall be paid to the Franchisor by Franchisee or by the item's supplier.

The Franchisor shall not be liable for any damage to such items resulting from the testing process. The Franchisor reserves the right to retest any item previously approved by it, and to revoke its approval if the item fails to continue to meet the Franchisor's standards and specifications. Upon notification by the Franchisor, through revision of the Confidential Operations Manual or otherwise, that approval of any item has been revoked, Franchisee shall not thereafter purchase or, if the Franchisor so directs, use such item. The Franchisor may at any and all times inspect all Equipment and its installation to assure the Franchisee's compliance with the Franchisor's standards and specifications.

b) Franchisee shall not install, sell or use on the Franchised Retail Store Premises any vending machines, telephone booths, entertainment devices, products or services not included in the Castus System without the Franchisor's prior written consent.

#### 3.04 Maintenance of Premises and Equipment.

a) Franchisee shall maintain at all times during the term of this Agreement and any renewals hereof, at Franchisee's expense, the Franchised Retail Store Premises and all Equipment thereon in conformity with the high standards and public image of the Franchisor and the Castus System, and shall make no additions or alterations to the Franchised Retail Store Premises without the Franchisor's prior written consent.

b) Franchisee shall keep the Franchised Retail Store Premises in the highest degree of sanitation, repair and condition, including, without limitation, such periodic repainting, repairs to Equipment and replacement of obsolete signs and Equipment, as the Franchisor may reasonably direct in accordance with its then-current standards set out in the Confidential Operations Manual or otherwise.

c) Franchisee shall not attach or exhibit any signs, displays or posters on or in the exterior or interior of the Castus Store or on the Franchised Retail Store Premises, nor permit others to do so, other than signs, posters or displays then currently supplied, required or authorized in writing by the Franchisor.

d) If Franchisee fails to comply with this Section 3.03 in the Franchisor's judgment, then in addition to all other rights the Franchisor has, the Franchisor may notify the Franchisee and specify the action the Franchisee must take to correct such deficiency. If the Franchisee fails or refuses within ten (10) days after delivery of such notice, to initiate and thereafter continue in good faith with due diligence a bona fide program to complete such required maintenance, sanitation and repair, the Franchisor will have the right (in addition to all other rights in this Agreement), but not the obligation, to enter the Franchised Retail Store Premises and effect such maintenance, repairs or sanitation on the Franchisee's behalf and solely at Franchisee's expense.

#### 3.05 Renovation of Equipment and Premises.

In addition to performing maintenance required under Sections 3.03(a) and (b), Franchisee shall, upon the Franchisor's request but no more often than once every three (3) years, refurbish the Franchised Retail Store Premises to conform to the building design, trade dress, color schemes and presentation of the Proprietary Marks consistent with the Franchisor's then-current public image, including, without limitation, extensive structural changes, remodeling, replacement of Equipment, redecoration and modifications to existing improvements. The costs of these shall be borne solely by the Franchisee, but shall not exceed

3% of the total of your prior year's Gross Sales. We shall provide the list of necessary upgrades and improvements, and all such changes must be approved by us in writing before any work is commenced at your location.

#### **4.00 SUPPLIES AND PRODUCTS**

##### **4.01 Use of Supplies, Products and Other Items.**

a) Franchisee shall sell or offer for sale all food, beverage and other products and only such products that (i) are listed as standard inventory items from time to time in the Confidential Operations Manual; and (ii) meet the Franchisor's uniform standards of quality as specified in the Franchisor's Approved Brands List in the Confidential Operations Manual which may be amended from time to time.

b) Franchisee shall maintain all such products in sufficient supply at all times, but in not event shall Franchisee's total inventory level be less than 90% of the amount of the Franchisee's opening inventory level and Franchisee shall not deviate from the Franchisor's standards and specifications for selling such products without the Franchisor's prior written consent. Franchisee shall immediately discontinue selling or offering for sale any of such products as the Franchisor may, in its sole discretion, disapprove in writing at any time.

##### **4.02 Sampling and Testing.**

Franchisee shall permit the Franchisor or its agents, at any and all reasonable times, to remove from the Franchised Retail Store Premises samples of any inventory items, without payment therefor, in amounts reasonably necessary for testing by the Franchisor or an independent, certified laboratory, to determine whether the samples meet the Franchisor's then-current standards and specifications.

##### **4.03 Suppliers of Products, Supplies and Other Items.**

a) The Franchisee shall purchase from the Franchisor or sources designated by the Franchisor such items as are set forth from time to time in the Confidential Operations Manual. Franchisee shall not purchase such items from any other source or use any other item in substitution therefor.

b) Except as set forth in Section 4.03, Franchisee shall purchase only those approved items, brands or suppliers of equipment, products, paper goods and supplies which conform to the specifications and standards (including standards for handling and distribution of products) of the Franchisor and the Castus System in effect from time to time and which are included on the Franchisor's then-current Approved Lists appearing in the Confidential Operations Manual. The Franchisor may update or modify such Approved Lists by revising the Confidential Operations Manual or through bulletins or other written communications or on-line electronic communications. Franchisor will not communicate to you its specifications (or modifications) that Franchisor considers proprietary trade secrets. Franchisee may purchase such approved products from any source. Franchisee must request the Franchisor's approval of any products not included on the Approved Lists, and the Franchisor may require samples of any such products to be submitted to it or to a designated independent, certified testing laboratory for testing to determine whether approval shall be granted. Based on the samples and the information you provide to Franchisor, or its designee, Franchisor will have the product tested or examined, review the advertising claims made regarding the product and investigate the

proposed supplier. Franchisee shall pay, upon invoice to Franchisor, for the reasonable costs associated with such investigation, review, testing and approval. The Franchisor reserves the right to retest any product previously approved by it and to revoke its approval of any product that fails to continue to meet the Franchisor's standards and specifications. Upon notification by the Franchisor that any product being used is unapproved or otherwise does not satisfy the specifications and standards of the Franchisor and Castus System, Franchisee shall not thereafter purchase and, if the Franchisor so directs, immediately cease to use the unacceptable product.

c) All stationary items, including business cards, letterhead, labels, publications and other paper goods printed with the Franchisor's name or having any Franchisor's trademark, service mark or logo applied must conform to the Franchisor's specifications and quality standards and must be approved in writing by Franchisor prior to use by the Franchisee. Franchisee must request, in writing, that Franchisor approve a particular product.

## **5.00 OPERATING STANDARDS, PROCEDURES, TRAINING AND SERVICING**

### **5.01 Operational Standards.**

a) Franchisee shall not be permitted to open the Castus Store for business unless at the time of such opening, all of the following conditions have been met:

1) Franchisee and its owners and affiliates are not in default under any agreement between Franchisee or any of its owners and affiliates and the Franchisor or any of the Franchisor's affiliates and, during the six (6) month period immediately preceding the proposed Opening Date, has not continued in default beyond any applicable cure period under any agreement between Franchisee or any of its affiliates and the Franchisor or any of its affiliates.

2) Franchisee is current on all monetary and non-monetary obligations due the Franchisor and its affiliates.

3) The Franchisor has determined, in its reasonable discretion, that Franchisee is operating each of its Castus Stores, if applicable, and Franchisee is capable of operating the proposed Castus Store, in accordance with the terms of all franchise agreements between Franchisee and the Franchisor, and in accordance with the Castus System (as may be set forth in the Confidential Operations Manual or otherwise from time to time by the Franchisor).

4) Franchisee has provided such financial information regarding Franchisee as the Franchisor reasonably may request.

5) Franchisee's architect has certified to the Franchisor that the Castus Store was constructed strictly in accordance with the final plans and specifications approved by the Franchisor, and that the equipment installed at the Castus Store complies with the equipment specifications in effect as of the date the Franchisor approved the site for the Castus Store.

If Franchisee receives an occupancy certificate or permit from the appropriate governmental agency and if Franchisee does not give the Franchisor at least 30 days prior written notice of Franchisee's intent to open the Castus Store, the Franchisor may delay the opening in order to schedule training.

b) Franchisee shall operate the Castus Store in strict accordance with the Confidential Operations Manual which, among other things, sets forth the standard method of operation for a Castus Store, the business format, product marketing, display and distribution, and workshops and consultations related to such products. Franchisee shall keep the Confidential Operations Manual and all of its contents in confidence except to the extent disclosure is necessary to operate the Castus Store. Franchisee understands and agrees the Franchisor may, from time to time, revise the contents of the Confidential Operations Manual and such other manuals, standards, instructions, formulas and specifications, if any, as it may develop for use with the Castus System, and Franchisee shall comply with each changed requirement within such reasonable time as the Franchisor may require.

c) Franchisee shall at all times keep current its copy of the Confidential Operations Manual and other manuals issued to it by the Franchisor. In the event of any dispute as to the contents, current status and completeness of any of such manuals, the master copy of such manual maintained by the Franchisor shall control.

d) Franchisee shall promptly pay when due all taxes levied or assessed on Franchisee in the conduct of the business franchised under this Agreement including, without limitation, payroll, unemployment and sales taxes. In the event of any bona fide dispute as to liability for taxes assessed, Franchisee may contest the validity or the amount of the tax in accordance with procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the Franchised Retail Store Premises, or any improvements thereon.

e) Franchisee shall comply with all federal, state, and local laws, rules and regulations, and shall timely obtain and maintain all permits, certificates and licenses necessary for the full and proper conduct of the Castus Store, including, without limitation, building and other construction and occupancy permits, licenses to do business and fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire code clearances. Copies of all inspection reports, warnings, certificates and ratings issued by any governmental entity during the term of this Agreement in connection with the conduct of the Castus Store which cite or indicate (i) Franchisee's failure to meet or maintain the highest governmental standards, or (ii) less than full compliance by Franchisee with any applicable law, rule or regulation shall be forwarded to the Franchisor within five (5) days of Franchisee's receipt thereof, and Franchisee shall remedy such deficiency within the time period specified in the respective citation, report or other notice, or within ten (10) days if no time period is so specified.

f) Franchisee shall not sell or offer for sale any alcoholic beverages at or from its Franchised Retail Store Premises.

g) The Franchisee shall at all times maintain the confidentiality of the Confidential Operations Manual and all product and vendor lists. The Franchisee acknowledges that it has had no part in the creation or development of nor does it have any property or other rights or claims of any kind in or to any element of the Castus System, the Proprietary Marks or any matters dealt with in the Confidential Operations Manual and that all disclosures made to the Franchisee are communicated to it solely on a confidential basis as trade secrets in which the Franchisor has a substantial investment and legitimate right to protect the same against unlawful disclosure. Accordingly, at no time during the currency of this Agreement or at any time

thereafter shall the Franchisee disclose any of the contents of the Confidential Operations Manual or any information whatsoever with respect to the Franchisee's or the Franchisor's business or the Castus System other than to the Franchisor or as may otherwise be required to enable the Franchisee to conduct the Castus Store from the Franchised Retail Store Premises.

h) The Franchisee acknowledges that the Confidential Operations Manual is and shall at all times remain the sole and exclusive property of the Franchisor, and Franchisee shall acquire no right, title, or interest therein from its possession and use the same. Franchisee shall not copy or duplicate or cause to be copied or duplicated any part of the Confidential Operations Manual for any reason. Upon termination of this Agreement for any reason whatsoever, the Franchisee shall forthwith return the Confidential Operations Manual to the Franchisor together with all copies of any portion of the Confidential Operations Manual which the Franchisee may have made.

i) The Franchisee will designate an operating partner with at least ten percent (10%) ownership in the Franchisor that is participating in the business on a full time basis. This operating partner will reside in the market that the Castus Store is located and must be approved and trained by the Franchisor. The Franchisor may also require certain key persons to participate in the franchise business. If that is the case, the names of these persons will be set forth in a Notice of Key Employees Form, which will be attached to the applicable Area Development Agreement and Franchise Agreement when executed.

#### 5.02 Operating Hours.

The Castus Store shall be open and in normal operation for such minimum hours and days as may from time to time be prescribed in the Confidential Operations Manual or otherwise by the Franchisor in writing.

#### 5.03 Training.

a) The Franchisor has retail store facilities and/or training center(s) in San Ramon, California or elsewhere for training Franchisee and such of its executive, managerial and supervisory employees as the Franchisor deems necessary.

b) The Franchisor shall determine (i) the number of Franchisee's employees to be Franchisor-trained, (ii) the training period necessary to adequately train the employees, and (iii) whether and when the employees have satisfactorily completed training. In so doing, the Franchisor shall consider the background, experience and training performance of the trainee. Unless otherwise specified in writing by the Franchisor, Franchisee's opening manager, prior to opening the Castus Store, and all successor managers, prior to assuming the position of manager in the Castus Store, shall successfully complete the minimum period then currently specified by the Franchisor for management training, at such location(s) as the Franchisor may designate.

c) In addition to the required management training, all other employees of Franchisee must undergo such on-the-job and instructional training as the Franchisor may from time to time require. Franchisee shall purchase and use such training materials, equipment and supplies to properly conduct such training as may be specified by the Franchisor from time to time in the Confidential Operations Manual. The Franchisor shall use its best efforts to make available to Franchisee any training films or videotapes made by the Franchisor for a fee equal to the Franchisor's cost of producing and distributing such films or tapes.

d) Franchisee and such executive, managerial, supervisory and other employees as the Franchisor from time to time may require, shall attend and successfully complete subsequent training, refresher, and retraining programs conducted by the Franchisor; however, no individual shall be required to attend more than two (2) such additional training programs in each calendar year.

e) Upon failure for any reason of Franchisee or any of its employees to complete successfully any training, retraining or refresher program required by the Franchisor, Franchisee shall designate another trainee who shall attend and successfully complete the program, and who, if the Franchisor so directs, shall perform the functions of the category of employee for which the program was offered.

f) Franchisee shall pay all expenses of travel, room, board, training supplies and materials and salaries or wages of its employees while in training, as well as such registration or tuition fees as may be established by the Franchisor from time to time.

g) Upon request by Franchisee, or if the Franchisor deems additional assistance necessary, the representative shall remain for a reasonable period determined by the Franchisor, and Franchisee shall pay the Franchisor a fee for such additional training in the amount of \$200.00 per day (plus the Franchisee's, or its designee's, travel and other expenses incurred) if such training is conducted at the Franchisor's facilities and \$400.00 per day (plus travel and other expenses incurred by the Franchisor's representative) if such training is conducted at the Franchisee's facility. Franchisee's management staff shall be at work in the Castus Store during the hours assistance is provided by the Franchisor's representative. Notwithstanding the foregoing, the Franchisor, at its option, may decline to provide the assistance set forth in this Section 5.03(g) if Franchisee fails to give at least 30 days prior written notice to the Franchisor of the Opening Date of the Castus Store.

#### 5.04 Continuing Services.

a) The Franchisor may furnish to Franchisee, from time to time, such merchandising and operating aids and services, and printed material in connection therewith, as are furnished generally to other Franchisees of the Franchisor.

b) The Franchisor from time to time, in its discretion, may send its representatives to the Castus Store to consult with Franchisee or its management representative relative to the operation of the Castus Store, and may inspect the Franchised Retail Store Premises with or without prior notice to determine the efficiency and quality of the operation and the faithfulness of Franchisee's compliance with the Castus System.

### 6.00 FEES

#### 6.01 Initial and Royalty Fee.

a) Franchisee shall pay to the Franchisor, a nonrecurring, nonrefundable initial franchise fee of Twenty-Five Thousand Dollars (\$25,000) which is due upon the execution of this Agreement.

b) Franchisee shall pay to the Franchisor as a royalty fee, a sum equal to five percent (5.0%) of Franchisee's Gross Sales (as defined below). The Franchisee shall pay the royalty fee monthly by the fifth (5th) day of each month for the preceding month's Gross Sales.



A report of the Gross Sales of the Castus Store for the preceding month shall accompany each payment.

6.02 Advertising Expenditures.

a) Franchisee shall allocate for advertising and marketing programs in its Territory, a sum equal to four percent (4.00%) of Franchisee's monthly Gross Sales from the operation of the Castus Store. Franchisee shall spend at least three percent (3.00%) of such allocation on local and regional advertising (as more fully discussed in Section 7.01(b), below). One percent (1.00%) of such allocation shall be paid into an advertising fund to be administered by the Franchisor (as discussed in Section 7.01(c), below). Payment to such advertising fund shall be made on or before the fifth (5th) day of each month for the preceding month's Gross Sales. A report of the Gross Sales of the Castus Store for the preceding month shall accompany each payment.

b) Upon Franchisor's approval of the Franchisee's site location, Franchisee shall pay to Franchisor an amount equal to Two Thousand Dollars (\$2,000) for pre-opening and grand opening advertising arranged for and placed by the Franchisor or its designee and other related expenses.

6.03 Definition of Gross Sales.

"Gross Sales" for computation of the fees payable pursuant to Sections 6.01 and 6.02 shall mean gross receipts from of every kind and nature from sales of products, beverages, retail merchandise and any other items and services (including, without limitation, workshops, seminars and consulting services) made in, upon, or from the operation of your Castus Store, whether upon credit or for cash, without reserve or deduction for inability or failure to collect, excluding only (i) receipts from approved pay telephones, if any, and (ii) all sales, use, excise and similar taxes separately billed and collected by Franchisee for, and remitted to, governmental authorities and agencies, (iii) excluding over-rings, refunds, allowances, or discounts to customers (including discounts attributable to coupon sales). In order to accurately reflect the total amount of your sales, all of your sales must be scanned through the required point of sale (POS) system. We will require you to print out specific reports for us on a weekly and monthly basis and fax them to us. In the future, we may utilize a system in which we can access your POS system remotely via the internet. In that event, you will be required to provide us with the access and passwords needed to effectuate this remote access. If any audit or examination reveals any understatement of Gross Sales for any period of more than 3%, you must pay Castus' fees, charges and expenses of the audit and examination

6.04 Charge on Late Payments.

In addition to any other rights the Franchisor may have, (a) the Franchisor will impose upon Franchisee a charge of 10% of the unpaid amount of any amount due and owing to the Franchisor if not paid when due, and (b) if the amount is not paid within 30 days after the due date, the Franchisor will also charge Franchisee the lesser of (i) the maximum rate permitted by California law or (ii) one and one-half percent (1 1/2%) per month, on such unpaid amount.

#### 6.05 Gross Receipts Tax.

Franchisee shall pay the Franchisor an amount equal to any sales, value added, gross receipts or similar tax required to be paid or collected by the Franchisor and calculated solely on required payments from the Franchisee to the Franchisor hereunder.

#### 6.06 Direct Debit Arrangement.

The Franchisor shall directly debit the Franchisee's checking account on the 5<sup>th</sup> day of every month during the term of the Franchise Agreement, and any extensions or renewals thereof for the monthly royalty fee, advertising fees, if applicable and any other fees due and owing to the Franchisor for activity during the prior month. Such direct debit arrangement shall be entered into between Franchisee and its bank(s) and shall provide for the electronic transfer of funds from Franchisee's bank(s) to the Franchisor's accounts within twenty-four (24) hours of receipt of written instructions from the Franchisor, whether transmitted by telecopy, courier or regular mail and such instructions may be for multiple future transfers. Franchisee shall maintain sufficient funds in its account at all times to ensure that all amounts due the Franchisor and its affiliates and subsidiaries are promptly and fully paid. Franchisee agrees to sign any necessary authorizations required in order for these direct debit transactions to occur.

### 7.00 ADVERTISING

#### 7.01 Origination and Approval of Advertising.

a) Recognizing the value of advertising and the importance of the standardization of advertising to the furtherance of the goodwill and public image of the Castus System, Franchisee or its designee shall conduct, determine, maintain and administer all regional, local and other advertising and marketing as may be instituted by the Franchisor from time to time, and the Franchisor shall have the sole right to direct all such advertising and marketing with discretion over the concepts, materials, media, nature, type, scope, frequency, place, form, copy, layout and context used therein.

b) Franchisee agrees that the Franchisor's advertising expenditures may be used to meet any and all costs incident to the advertising and marketing described in Section 7.01(a), including such reasonable administrative costs and overhead, if any, as may be incurred by the Franchisor or its affiliates in conducting market research, preparing advertising and marketing materials, or in other activities reasonably related to the administration or direction of the Castus advertising funds. Franchisee understands and acknowledges that advertising expenditures are intended to maximize general public recognition and acceptance of all Castus Stores, and the Franchisor makes no representation or warranty that any particular Castus Store, including the Franchisee's Castus Store, will benefit directly or pro-rata from such advertising. To promote and increase the demand for the products and services of the Castus Store, Franchisee may conduct, at its separate expense, advertising in addition to that required for the expenditures described in Section 6.02. Franchisee may do its own local advertising or hire its own local advertising agency. In addition, Franchisee may participate, at its sole expense, in drives, contests and other local, regional and national programs, related to sales promotions established by the Franchisor. However, Franchisee must honor any coupons or similar promotional material issued by the Franchisor. In the event that Franchisee creates coupons for

product discounts, such coupons must specifically represent that they are good at the Franchisee's Castus Store only.

As set forth in 6.02(a) above, Franchisee is required to spend not less than four percent (4%) of each of its Castus Store's monthly Gross Sales on local and regional advertising. Franchisee may also be required to participate in an advertising cooperative, if there are other franchised or Franchisor-owned Castus Stores in the market in which Franchisee operates a Castus Store. In that case, the Franchisor may require that Franchisee pay up to the 3% of its monthly Gross Sales allocated for advertising (as noted in Section 6.02(a) above) to such advertising co-op. However, the Franchisee's total advertising expenditure requirement (including both direct advertising and contributions to an advertising co-op, if established) shall not exceed the aggregate of 3% of the Franchisee's monthly Gross Sales. If the Franchisor requires the Franchisee to contribute less than the total 3% of its monthly Gross Sales to the advertising co-op, then the Franchisee is still required to spend the remainder of the 3% of its monthly Gross Sales for local and regional advertising.

If the Franchisee does not spend the required 3% of its monthly Gross Sales either on local and regional advertising or as a contribution to the advertising co-op (or a combination of the two advertising mechanisms), then the Franchisor may either purchase advertising for and on behalf of the Franchisee in order to satisfy the Franchisee's 3% of monthly Gross Sales advertising requirement and the Franchisee shall promptly reimburse the Franchisor for such amount upon demand or the Franchisor may require the Franchisee to pay its monthly advertising requirement directly to the Franchisor and the Franchisor will have the right to purchase local and/or regional advertising for and on behalf of the Franchisee. Any and all advertising used by Franchisee must be in accordance with the standards set forth by the Franchisor and must be approved by Franchisor in writing prior to its use or dissemination.

c) Castus does not currently conduct regional or national advertising programs, however, it may do so in the future however, Franchisee is required to pay up to (1%) of each of the Franchisee's Castus Store's monthly Gross Sales into an advertising production fund. This fund shall be used for regional and/or national advertising and all advertising shall be created and placed by the Franchisor or its designee. The Franchisor may spend, in any fiscal year, an amount greater or less than the aggregate contributions of all Castus Stores in advertising expenditures in that year.

d) Franchisee shall, at its sole expense: (1) obtain a listing in the white and yellow pages of the telephone directories serving the location of the Castus Store, which listing shall be the kind and size as may be specified by the Franchisor for all Castus Stores from time to time in the Confidential Operations Manual or otherwise in writing; and (2) obtain and maintain an adequate supply of brochures, pamphlets and promotional materials of the kind and size, and at such locations in and around the Castus Store as the Franchisor may reasonably require of all Castus Stores from time to time in the Confidential Operations Manual or otherwise in writing.

e) Upon request from Franchisee, the Franchisor or its designee(s) will provide Franchisee with the special or additional approved local advertising and marketing plans and materials that are currently in use, if any; including, without limitation, newspaper photostats, radio commercial duplicates, merchandising materials, sales aids, special promotions

and similar advertising and marketing materials. Such special or additional materials and services shall be provided at the Franchisor's cost.

#### 7.02 Advertising Agency and Use of Advertising Funds.

The Franchisor shall have the right to delegate and relegate its responsibilities and duties hereunder to any designee(s) of its choosing, however, the right of final approval of all advertising programs shall be retained at all times by the Franchisor. The books and business records of accounts for the Franchisor's advertising programs shall be open to inspection by Franchisee or its authorized representative at any reasonable time.

#### 7.03 Limitation on Advertisement and Solicitation of Customers.

Franchisee is not limited in the customers that Franchisee may serve from its Castus Store, however, Franchisee may not use Franchisor's Proprietary Marks to advertise or solicit customers outside of the Franchisee's Territory. Franchisee agrees that it will not sell Franchisor's, or similar products, or any affiliated product or service, over the internet. Franchisee further agrees that it will not distribute the Franchisor's products on a non-retail basis without Franchisor's prior written consent and without entering into a separate agreement, if Franchisor requests the execution of such an agreement

### 8.00 BOOKS, RECORDS, CONTROL PROCEDURES

#### 8.01 Bookkeeping Castus System.

a) The Franchisor shall furnish to Franchisee cost-control procedures to which Franchisee shall adhere, as well as a sample format of a chart of accounts, statement of earnings and balance sheet, which Franchisee shall use in reporting to the Franchisor.

b) The Franchisor shall have the right to require Franchisee to use computer-based cash registers and software that are fully compatible with the then-current Franchisor's computer system and which include an information interface capability which allows Franchisee to communicate electronically with the Franchisor's computer system. Franchisee must purchase a computer/cash register system for its Castus Store that will be used to record customer purchases, track inventory, place product orders, and maintain a customer mailing list. Franchisor does not have a proprietary system or software, but will provide the Franchisee with the specifications and requirements for its computer-based cash register. Franchisee agrees, at its sole cost, to upgrade its hardware and software from time to time with specifications provided by the Franchisor.

Franchisee may purchase its hardware components from any computer dealer so long as they meet the specifications outlined by the Franchisor. The Franchisor is under no obligation to assist the Franchisee in obtaining its computer system for use in Franchisee's Castus Store. The software systems as approved by the Franchisor, may be purchased from any licensed software dealer. Franchisee agrees to replace or upgrade its equipment in its Castus Store as necessary to be in compliance with the Franchisor's then-current standards and specifications and as a condition of renewal of the Franchisee's Franchise Agreement. Franchisor is not limited to the frequency and cost of Franchisee's obligation to keep its computer-based cash register system up to the Franchisor's specifications.

Franchisor shall have independent access to the information and data stored in the Franchisee's computer or cash register system. Franchisor shall have the right to access all information contained in the Franchisee's database contained in its software or any other software used by Franchisee for the tracking and management of sales and inventory at the Castus Store.

#### 8.02 Reports.

Upon the Franchisor's request and as specified from time to time in the Confidential Operations Manual or otherwise in writing, Franchisee shall submit to the Franchisor, for review or auditing, such forms, reports, records and financial statements as the Franchisor may reasonably designate.

#### 8.03 Marketing Information.

At the Franchisor's request, Franchisee shall promptly furnish requested marketing information based on Franchisee's records.

#### 8.04 Franchisee's Records.

Franchisee shall at all times maintain and preserve, during the term of this Agreement, full, complete and accurate books, records and accounts in accordance with generally accepted accounting principles, of such kind, for such length of time and in the form and manner prescribed by the Franchisor from time to time in the Confidential Operations Manual or otherwise in writing.

#### 8.05 Inspection of Franchisee's Records.

The Franchisor shall have the right to examine and audit Franchisee's records, accounts and books at reasonable times and places (including, without limitation, at Franchisee's principal place of business). Franchisee shall immediately pay to the Franchisor the amount of any overdue, unreported or understated payment disclosed by such audit, with late payment charges thereon as provided in Section 6.04 herein. If any audit or examination reveals an understatement of Gross Sales for any reported period by Franchisee in excess of three percent (3%), Franchisee shall also pay the Franchisor's fees, charges and expenses (including, without limitation, travel expenses and reasonable accounting and legal fees) incurred in connection with such audit or examination.

### **9.00 WARRANTY, INDEMNITY, INSURANCE**

#### 9.01 Warranty.

All guarantees and warranties made or issued by Franchisee to a customer or other third party shall be deemed to be made solely by the Franchisee and not by the Franchisor. Franchisee shall fully comply with such customer guarantee program as the Franchisor shall have in effect or which the Franchisor may institute or modify from time to time. Franchisee shall make no untrue or misleading representations to customers or potential customers whether written or oral concerning any warranties or guarantees and shall make all affirmative disclosures which may at any time be required by the Franchisor or by law in order to properly advise customers with respect to such warranties and guarantees regarding sales, service, repair and or replacements and to avoid possible deception or confusion in connection therewith.

## 9.02 Indemnity.

Franchisee agrees to indemnify, protect, defend and hold harmless the Franchisor, its affiliates and their respective officers, directors, shareholders and employees from liability for any and all loss, injury, debts, obligations, damages, claims, liability, demands, actions, suits, proceedings, judgments or costs of any kind or nature, including attorneys' fees, arising directly or indirectly from, as a result of, or otherwise in connection with Franchisee's operation of the Castus Store (each an "Indemnified Matter"). The Franchisor shall have the right to defend and settle any Indemnified Matter in such manner as the Franchisor deems appropriate, in its sole discretion, and without the Franchisee's consent. The Franchisee agrees to reimburse the Franchisor for all costs reasonably incurred in defending such Indemnified Matter, including, without limitation, reasonable attorneys' fees. Franchisee's obligations under this Section shall continue in full force and effect subsequent to the expiration or termination of this Agreement.

## 9.03 Franchisee's Insurance.

a) Prior to opening the Castus Store, Franchisee, at its sole expense, shall obtain, and thereafter maintain during the entire term of this Agreement and any renewal(s) thereof, the following insurance in full force and effect:

1) comprehensive general liability insurance (through a single policy or by a primary policy with one or more excess or umbrella policies) including personal injury, bodily injury and products liability insurance, with minimum policy limits of Two Million Dollars (\$2,000,000) in the aggregate, and One Million Dollars (\$1,000,000) per occurrence, and property damage insurance with policy limits in the minimum amount of One Million Dollars (\$1,000,000) per occurrence, insuring Franchisee and the Franchisor, as well as the Franchisor's affiliates, officers, directors, and employees, as additional named insureds, against any liability that may accrue or have accrued against them, and any claim that is brought against them, by reason of the operation by Franchisee of its business, or by reason of any incident which may occur upon, in, about or in connection with the Franchised Retail Store Premises;

2) worker's compensation, social security, unemployment compensation, disability insurance;

3) business interruption insurance that will cover 50% of Franchisee's Gross Sales for the Franchisee's most recently ended calendar year; and

4) such other insurance coverages as may now or hereafter be required by law; and fire, casualty and extended coverage insurance with limits of not less than the full replacement cost of the Castus Store and its Equipment and other improvements.

b) Franchisee acknowledges that the minimum coverages and policy limits required by this Section may be reasonably increased from time to time by the Franchisor for its own and Franchisee's protection and Franchisee agrees to comply with such new requirements promptly upon receipt of written notice from the Franchisor; however, in no event shall any such increase require minimum policy limits greater than (i) that which is then required for Franchisor-owned retail stores, or (ii) Five Million Dollars (\$5,000,000), whichever is less. Every insurance policy required by this Section shall be written by one or more insurance companies possessing an A.M. Best rating of at least A-1 or such other rating as the Franchisor may specify in the Confidential Operations Manual or otherwise in writing.

c) Franchisee acknowledges and agrees that if it fails to obtain or maintain the required insurance coverage as set forth in this Section 9.0, the Franchisor may (but is not required to) procure the coverage and the Franchisor agrees to pay to the Franchisor the costs, plus a reasonable administrative fee determined solely by the Franchisor in an amount up to \$100.00, incurred in placing insurance coverage for the Franchisee. Franchisee's obligation to obtain and maintain the foregoing insurance in the amounts specified shall not be diminished in any way by reason of any insurance which may be maintained by the Franchisor, nor shall such obligation relieve Franchisee of liability under the indemnity provisions set forth in Section 9.02.

#### 9.04 Evidence of Insurance.

Franchisee shall deliver or cause to be delivered certificates (or copies thereof) of all insurance required by this Section 9 to the Franchisor or, upon the Franchisor's request, the policy or policies shall be deposited with and held by the Franchisor or its designee. Franchisee shall also deliver to the Franchisor evidence of payment of all insurance premiums.

#### 9.05 Notice.

All insurance policies shall provide for notice to the Franchisor of any cancellation, termination, modification or nonrenewal thereunder at least thirty (30) days prior to such occurrence and shall permit, but not require, the Franchisor to cure any default in payment of premiums within ten (10) days after written notice. If the Franchisor cures the default, Franchisee shall immediately pay the Franchisor the cost of curing the default together with a reasonable administrative fee to defray the Franchisor's expenses in connection therewith.

#### 9.06 Waiver of Subrogation.

Franchisee and its successors and assigns hereby waive, prior to loss, all of their rights of recovery from the Franchisor, its affiliates, successors and assigns, and their right to sue for loss or damage to the Castus Store and the Franchised Retail Store Premises, the adjacent premises and improvements or other property of Franchisee; provided such loss or damage is within the coverage of the insurance provided for herein. All property insurance policies carried by the Franchisee on the Castus Store or adjoining property shall, if reasonably possible, contain an express waiver of subrogation.

### **10.00 OWNERSHIP AND LIMITATIONS ON USE OF PROPRIETARY MARKS, TRADE SECRETS**

#### 10.01 Ownership of Proprietary Marks, Trade Secrets.

All right, title and interest in and to all Proprietary Marks, trade secrets, the Castus System, Confidential Operations Manuals, product and vendor lists, instruction manuals and the goodwill associated therewith are the sole property of the Franchisor or its affiliates and no such right, title or interest is or shall be transferred by virtue of this Agreement. Franchisee shall not represent in any manner that it has any such ownership, right, title or interest. Franchisee acknowledges that on expiration or termination of this Agreement, no monetary sum shall be designated by it as attributable to any goodwill associated with Franchisee's use of the Castus System and the Proprietary Marks.

#### 10.02 Limitations on Use of Proprietary Marks.

##### a) Use of Proprietary Marks.

Franchisee understands and acknowledges that each and every detail of the Castus System is important to Franchisee, the Franchisor and other Franchisees to develop and maintain high and uniform standards of quality and service, and to protect the reputation and goodwill of Castus Stores. Therefore, Franchisee shall:

- 1) operate and advertise under the Castus System name as specified in the Confidential Operations Manual, without prefix or suffix;
- 2) adopt and use the Proprietary Marks solely in the manner prescribed by the Franchisor;
- 3) observe such requirements with respect to trademark registration and copyright notices as the Franchisor may from time to time direct in the Confidential Operations Manual or otherwise in writing; and
- 4) use, promote and offer for sale only those items, products and services which are part of the Castus System and meet the standards or specifications as prescribed by the Franchisor from time to time in the Confidential Operations Manual or otherwise in writing.

##### b) Defense of Proprietary Marks.

Franchisee shall promptly notify the Franchisor of any claim, demand, or cause of action based upon or arising from any attempt by any other person, firm, corporation or other entity to use the Proprietary Marks or any colorable imitation thereof. Franchisee also agrees to notify the Franchisor promptly of any litigation instituted by any person, firm, corporation, entity or governmental agency against the Franchisor or Franchisee relating to the Proprietary Marks, and the Franchisor shall have the sole right and duty to defend any such action. The Franchisor shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Proprietary Marks and shall exercise such right in its sole discretion. In any defense or prosecution of any litigation relating to the Proprietary Marks or components of the Castus System undertaken by the Franchisor, Franchisee shall cooperate with the Franchisor and execute any and all documents and take all actions as may be desirable or necessary in the opinion of the Franchisor's counsel, to carry out such defense or prosecution. The Franchisor makes no representation or warranty, express or implied, as to the use, exclusive ownership, validity or enforceability of the Proprietary Marks.

#### 10.03 Nondisclosure of Trade Secrets and Confidential Information.

a) The Franchisor has disclosed and will continue to disclose to Franchisee certain confidential information relating to the development, marketing and operation of the Castus Stores, including without limitation:

- 1) specifications and methods of marketing, display and sale of low and/or controlled carbohydrate foods and supplements and other approved products;
- 2) site selection criteria for the Castus Stores and plans and specifications for the development of the Castus Stores;



3) sales, marketing and advertising programs and techniques for the Castus Stores;

4) knowledge of specifications for, and suppliers of, certain food products, materials, supplies and Equipment;

5) knowledge of operating results and financial performance of Castus Stores, other than the Franchisee's Castus Store; and

6) methods of labor control, inventory control, storage, product handling and management of Castus Stores (collectively "Proprietary Information").

b) Without the Franchisor's prior written approval, Franchisee shall not, during the term of the Agreement, or any renewal hereof and thereafter (regardless of cause of termination) divulge any Proprietary Information nor use any Proprietary Information for the benefit of any other person or entity. Notwithstanding the foregoing, Franchisee may disclose Proprietary Information without the Franchisor's prior written consent: (i) during the term hereof to Franchisee's employees only to the extent necessary for operation of the Castus Store, and (ii) to the extent such Proprietary Information has validly become public other than through any action or disclosure of Franchisee.

c) Franchisee acknowledges that the Franchisor will suffer irreparable harm and that monetary damages will be inadequate to compensate the Franchisor for any breach by Franchisee of the terms of this Section, therefore, Franchisee agrees that the Franchisor shall be entitled to injunctive relief in addition to all other remedies it may have for such breach.

#### 10.04 Survival.

The covenants set forth in this Section 10 shall survive the termination or expiration of this Agreement.

### 11.00 TERMINATION

#### 11.01 Termination.

a) Franchisee shall be deemed to be in default, and all rights granted under this Agreement shall automatically terminate without notice to Franchisee upon the occurrence of any of the following events:

1) if Franchisee shall become insolvent or make a general assignment for the benefit of creditors;

2) if a petition is filed against and consented to by Franchisee, or if Franchisee is adjudicated as bankrupt or insolvent;

3) if any proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee, or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by a court of competent jurisdiction, or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee;

4) if a final judgment against Franchisee or affecting Franchisee's business remains unsatisfied or of record for thirty (30) days or longer (unless a superseding bond is filed); or

5) if execution is levied against Franchisee's business or property, or suit to foreclose any lien against the assets of the Castus Store is instituted against Franchisee and not dismissed within thirty (30) days, or if the assets of the Castus Store are sold after levy thereupon by any sheriff, marshal or constable.

b) Franchisee shall be deemed to be in default of this Agreement, and the Franchisor may, at its option, terminate this Agreement and all rights granted hereunder at any time by notice to Franchisee without any opportunity to cure the default, upon the occurrence of any of the following events:

1) if Franchisee fails for any reason to have opened the Castus Store for business within nine (9) months from the date hereof, or thereafter ceases to operate or otherwise abandons or forfeits the legal right to transact business at the Castus Store;

2) if Franchisee is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely, in the Franchisor's sole judgment, to affect adversely the Castus System, the Proprietary Marks, the goodwill associated therewith or the Franchisor's rights therein;

3) if Franchisee purports to transfer any rights or obligations arising under this Agreement to any third party without the Franchisor's prior written consent, contrary to the terms of Section 13.02 of this Agreement;

4) if Franchisee misuses or makes any unauthorized use of the Proprietary Marks or any other identifying characteristic of the Castus System, or otherwise materially impairs the goodwill associated therewith, or the Franchisor's rights therein;

5) if Franchisee discloses to a third party any Proprietary Information or other confidential information learned from the Franchisor or relating to the Castus System; or if Franchisee uses or permits to be used any such information or secret, unique or confidential product, service, or other element of the Castus System in a retail store or business other than the Castus Store; or if Franchisee breaches any duty of confidentiality imposed on Franchisee in this Agreement or otherwise by law;

6) if three (3) or more notices of default under Section 11.01(c) have been sent to Franchisee for the same, similar or different defaults within a twelve (12) month period, in which event this Agreement may be terminated in lieu of the Franchisor's sending the fourth (4th) or any subsequent Notice of Default;

7) if Franchisee made or makes any material misrepresentation to the Franchisor in any information or report provided prior to or during the term of this Agreement;

8) if Franchisee falls to repair or restore the Franchised Retail Store Premises to its former condition within six (6) months of its being damaged or rendered totally or partially unusable as a retail store by fire or other casualty, as required by Section 3.01(e); or

9) if the Franchisee or its employees, as the case may be as required under this Agreement, fail to satisfactorily complete their initial training.

c) Subject to Sections 11.01(a) and (b), Franchisee shall be deemed to be in default and the Franchisor may, at its option, terminate this Agreement and all rights granted under this Agreement without further notice upon the occurrence of any of the following events and Franchisee's failure to cure such default within the time period set forth below:

1) if Franchisee fails, refuses or neglects to adhere to the standards and specifications of the Castus System as set forth in the Confidential Operations Manual and otherwise adopted by the Franchisor from time to time;

2) if Franchisee or any of its affiliates fails, refuses or neglects to pay promptly when due any amounts owed to the Franchisor or any of its affiliates;

3) if Franchisee fails, refuses or neglects to submit to the Franchisor any financial or other information required under this Agreement;

4) if Franchisee fails, refuses or neglects to obtain the Franchisor's prior written approval or consent as required under this Agreement; or

5) if Franchisee fails, refuses or neglects to observe any other of its obligations under this Agreement or to carry out the terms of this franchise in good faith.

Franchisee shall have the opportunity and right to cure the events of default listed in this Section 11.01(c) for a period of three (3) days with respect to Subsection (c)(1); ten (10) days with respect to Subsection (c)(2) and thirty (30) days with respect to Subsections (c)(3) through (c)(5) following the Franchisor's delivery of written notice of default.

#### 11.02 Effect of Termination or Expiration.

a) Franchisee, upon any termination or expiration of this Agreement, shall promptly pay to the Franchisor, its affiliates and subsidiaries any and all sums owed to them. In the event of termination for any default by Franchisee, such sums shall include all actual and consequential damages, costs and expenses, including reasonable attorneys' fees and expenses, incurred by the Franchisor as a result of the default (whether such fees and expenses are incurred through use of the Franchisor's own legal staff or otherwise), and late payment charges thereon until paid at the lower of (i) the highest rate permitted by California law, or (ii) one and one-half percent (1 1/2%) per month. Franchisee acknowledges and agrees that the proximate cause of the actual and consequential damages sustained by Franchisor is Franchisee's act of default and not Franchisor's exercise of its right to terminate this Agreement. The foregoing obligation shall give rise to and remain, a lien in favor of the Franchisor against any and all of the assets of the Franchisee at the time of default including specifically, but not limited to, the Castus Store.

b) Upon termination or expiration hereof for any reason, all of Franchisee's rights hereunder shall terminate. Franchisee shall immediately cease to use and shall not thereafter use any Proprietary Information or other trade secrets disclosed to it hereunder or any signs (other than pole signs and roof signs, which are governed by Section 11.02(c)), emblems, displays or other property on which the Franchisor's name, any of the Proprietary Marks or any confusing simulation thereof are imprinted. Franchisee shall not otherwise use or duplicate the Castus System or any portion thereof or assist others to do so. Franchisee shall, on or before the effective date of termination or expiration: (i) remove from the Franchised Retail Store Premises all signs, emblems and displays identifying it as being associated with the Franchisor or the Castus System, (ii) cease to use and return to the Franchisor all copies of the Confidential

Operations Manual and all other manuals, instructions or materials delivered to it by the Franchisor or otherwise hereunder, and (iii) relinquish its Castus Store telephone number.

c) Upon termination or expiration of this Agreement, unless otherwise directed in writing by the Franchisor, Franchisee shall modify the exterior and interior design and decor of the Franchised Retail Store Premises and shall make or cause to be made such changes in signs, buildings and structures as the Franchisor shall reasonably direct, so as to effectively distinguish the Castus Store from its former appearance and from any other Castus Store. Franchisee shall commence the required modifications immediately upon the termination or expiration of this Agreement and shall complete the modifications within thirty (30) days following the date of termination or expiration. If Franchisee fails or refuses to comply with this Section 11.02(c), in addition to any other rights which the Franchisor may have, the Franchisor shall have the right to enter upon the Franchised Retail Store premises without being guilty of trespass or any other tort and make or cause to be made such changes at Franchisee's expense, which Franchisee shall pay on demand.

d) FRANCHISEE AND THE FRANCHISOR AGREES THAT THE FRANCHISOR'S DAMAGES RESULTING FROM A BREACH OF THE PROVISIONS OF THIS SECTION 11.02 ARE DIFFICULT TO ESTIMATE OR DETERMINE ACCURATELY. THEREFORE, IN THE EVENT OF A BREACH BY FRANCHISEE OF THE PROVISIONS OF THIS SECTION, FRANCHISEE SHALL PAY THE FRANCHISOR THE SUM OF FIFTY DOLLARS (\$50) PER DAY BEGINNING ON THE THIRTY-FIRST (31ST) DAY AFTER THE DATE OF TERMINATION OR EXPIRATION OF THIS AGREEMENT, NOT TO EXCEED A MAXIMUM OF SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) IF TERMINATION OCCURS DURING THE FIRST TEN (10) YEARS OF THIS AGREEMENT; AND A MAXIMUM OF TEN THOUSAND DOLLARS (\$10,000) THEREAFTER. SUCH PAYMENT SHALL BE MADE AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, IT HAVING BEEN AGREED BY FRANCHISEE AND THE FRANCHISOR THAT THE PAYMENTS ARE REASONABLY REPRESENTATIVE OF THE ACTUAL DAMAGE SUSTAINED BY THE FRANCHISOR IN THE EVENT OF SUCH A BREACH. HOWEVER, NOTWITHSTANDING THE PROVISION FOR LIQUIDATED DAMAGES, THE FRANCHISOR SHALL BE ENTITLED TO INJUNCTIVE RELIEF IF FRANCHISEE CONTINUES TO OPERATE AS A CASTUS STORE OR BREACHES ANY OTHER COVENANT HEREIN.

e) The covenants set forth in Sections 11.02(a) through (d), inclusive, and all rights, claims and indebtedness which may accrue to the Franchisor under this Agreement shall survive any termination or expiration of this Agreement and be enforceable by the Franchisor.

f) Upon termination or expiration of this Agreement, Franchisee shall cease to hold itself out in any way as a Franchisee of the Franchisor or do anything that would indicate any relationship between it and the Franchisor.

#### 11.03 Franchisor's Option to Purchase.

a) Upon termination or expiration hereof, the Franchisor shall have the option, but not the obligation, to purchase all or any of the following:

- 1) the land and building constituting the Castus Store,

2) the leasehold estate and improvements constituting the Castus Store, and

3) any patented, special or unique items of Castus Store Equipment, including but not limited to equipment, furnishings, signs, sign faces, decor, products and supplies of Franchisee. Any such purchases shall be made at the fair market value of the purchased item(s), with no allowance for goodwill or additional charges.

If Franchisee and the Franchisor cannot agree on the fair market value of such items within a reasonable time, the price or disputed terms of purchase shall be determined by three (3) appraisers with each party selecting one (1) qualified appraiser and the two (2) qualified appraisers so chosen selecting the third appraiser. If the Franchisor elects to exercise its option to purchase, it shall have the right to set off against the purchase price all amounts due from Franchisee under this Agreement and the cost of the appraisal. Each appraiser shall have at least ten (10) years of experience appraising property similar to the items described above.

b) Franchisee shall cause any lease which affects the Franchised Retail Store Premises or any other item subject to this option to contain appropriate language permitting Franchisor to assume such lease without fees or additional charges.

c) In the case of expiration, the Franchisor shall exercise, if it chooses to do so, its option hereunder by giving Franchisee notice at least thirty (30) days prior to expiration of this Franchise Agreement. In the case of termination of the Franchise Agreement for any other reason, the Franchisor shall exercise, if it chooses to do so, its option by giving Franchisee notice within thirty (30) days after such termination. In the event the Franchisor exercises its option, the closing shall be held and the purchase price shall be paid within thirty (30) days of the date of such exercise. The Franchisor's option hereunder is without prejudice to its right under any security agreement held by it or to the extent that it may have a guarantor's or surety's subrogation interest.

## **12.00 FRANCHISEE'S OTHER BUSINESS INTERESTS**

### **12.01 Notification of Other Business Activity.**

Without limiting Franchisee's obligations under Section 12.02, Franchisee shall notify the Franchisor of its intention to participate or engage directly or indirectly in any other retail store that offers for sale low carb food products, at least thirty (30) days before: (i) Franchisee becomes a party to any agreement or understanding relating to such activity, or (ii) such activity commences, whichever is earlier. Franchisee shall provide the Franchisor with such information about the activity as the Franchisor may reasonably request.

### **12.02 Competing Business.**

Unless otherwise specified, the term "Franchisee" as used in this Section shall include, individually and collectively, all partners, members, managers, officers, directors, and holders, directly or indirectly (and any partners, officers or directors of any such holder), of any beneficial interest in the franchise granted hereunder ("Owners"). Franchisee acknowledges that pursuant to this Agreement, Franchisee will receive valuable training and confidential and trade secret information, including, without limitation, information regarding the promotional, operational, sales and marketing methods and techniques of the Franchisor and the Castus System. Franchisee further acknowledges its obligation under this Agreement to develop the

franchised business and to promote the interests of the Castus System. Accordingly, Franchisee agrees that:

a) During the term of the Agreement, Franchisee shall not, except as otherwise approved in writing by the Franchisor, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons or partnership or corporation own or engage in any retail store, if the gross sales of low carb food products or services of that retail store constitute thirty-three percent (33%) or more of all sales of such retail store.

b) Subject to this Section, a Franchisee may, during the term of this Agreement own all or a portion of a franchisor that operates a retail store or retail stores but does not violate the covenants set forth in this Section.

c) For a period of one (1) year after the expiration or termination of this Agreement, regardless of the cause of termination, Franchisee shall not, except if approved in writing by the Franchisor, maintain any interest in any retail store that offers for sale low carb food products or supplements or related services, which is located within fifty (50) miles of the Castus Store.

d) Subsections (a) through (c) of this Section shall not apply to ownership by Franchisee of less than ten percent (10%) beneficial interest in the outstanding equity securities of any corporation which is registered under the Securities Act of 1933.

### **13.00 ASSIGNMENT**

#### **13.01 Assignment by Franchisor.**

Upon termination, the Franchisor may assign this Agreement and any or all benefits and obligations arising from it without notice to or consent from Franchisee. There are no limitations on the Franchisor's ability to assign the Franchisor's rights under this Agreement.

#### **13.02 Assignment by Franchisee.**

a) Unless otherwise specified, the term "Franchisee" for purposes of this Section 13.02 shall mean, as applicable, the individual comprising the Franchisee, any general partners of the Franchisee, or any holder of any securities with voting rights of the Franchisee, who proposes to transfer or assign such its interest in this Agreement or the Franchisee. Franchisee understands and acknowledges that the rights and duties created by this Agreement are personal to Franchisee, and that the Franchisor has granted this franchise in reliance on the individual or collective character, skill, aptitude and business and financial capacity of Franchisee. Franchisee therefore shall not, without the Franchisor's prior written consent, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any interest or partial interest in the Franchisee, this Agreement, or in the franchise granted herein, or offer or attempt to do so, or permit the same to be done. Any actual or purported assignment occurring by operation of law or otherwise without the Franchisor's prior written consent shall be a material default of this Agreement and shall be null and void.

b) If Franchisee or any permitted successor is a partnership, limited liability company ("LLC") or corporation:

1) The Articles of Partnership, Partnership Agreement, Articles of Organization, Articles of Incorporation, by-laws and other organizational documents shall provide that the issuance and transfer of any interest in Franchisee is restricted by the terms of this Agreement. Copies of such documents and of resolutions of the Franchisee's board of directors or managers authorizing its entry into this Agreement shall be furnished to the Franchisor upon request.

2) All general partners, members and all direct and indirect holders of a ten percent (10%) or greater equity interest shall, upon Franchisee's execution of this Agreement, execute an agreement personally guaranteeing to the Franchisor the full payment and performance of Franchisee's obligations to the Franchisor and undertaking to be bound, individually, jointly and severally, by all the terms of this Agreement, including, without limitation, the restrictions on assignment contained herein. The Personal Guaranty shall be in the form attached hereto as Exhibit "A" or in such other form as the Franchisor may from time to time prescribe.

3) The Franchisee shall not use the names "Castus" or "Castus Low Carb Superstores" or any other Proprietary Mark, or any name deceptively similar thereto, except to reflect its franchise relationship with the Franchisor. Neither Franchisee nor any of its owners may issue or sell, or offer to issue or sell, any securities of Franchisee or an Affiliate of Franchisee, regardless of whether such sale or offer would be required to be registered pursuant to the provisions of the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction, without obtaining the Franchisor's prior written consent and complying with all of the Franchisor's requirements and restrictions concerning use of information about the Franchisor, its affiliates or the Castus System.

4) Franchisee shall furnish the Franchisor, at the time of execution of this Agreement and upon all transfers subject to the provisions of this Section 13.02, a list of all stockholders, members, managers and partners having an interest in Franchisee, their respective percentage interests and the number of shares directly and indirectly owned or controlled by each.

5) Franchisee, if a corporation, shall maintain stop transfer instructions against the transfer on its records of any securities with voting rights subject to the restrictions of this Section 13.02 and shall cause all certificates representing outstanding voting securities to be surrendered for reissuance and cause all certificates for voting securities in the future to be issued with this legend printed conspicuously upon the face of each certificate:

"The transfer of this certificate and the shares it represents is subject to the terms and conditions of a certain Franchise Agreement with Castus Low Carb Superstores. Reference is made to that Agreement and to certain restrictive provisions of the Articles and by-laws of this corporation."

c) Franchisee acknowledges and agrees that the restrictions on transfer imposed herein are reasonable and necessary to protect the Castus System, the Franchisor's Proprietary Marks, Proprietary Information and operating procedures and quality, as well as the Franchisor's high reputation and image, and are for the protection of the Franchisor, Franchisee,

and other Franchisees. No attempted assignment or transfer permitted by this Section 13.02 shall take effect without the Franchisor's written consent.

d) Upon Franchisee's written request, the Franchisor shall not unreasonably withhold its consent to any assignment subject to the restrictions of this Section 13.02; however, in addition to the requirements of Subsection 13.02(b), the Franchisor's consent shall be conditioned on the satisfaction of the following requirements:

1) neither Franchisee nor any successor or affiliate of Franchisee is in default under this Agreement or any other agreement with the Franchisor, and all of their accrued monetary obligations to the Franchisor have been satisfied;

2) the assignor and its Owners (as defined in Section 12.02) have executed a general release under seal, in a form prescribed by the Franchisor, of any and all claims against the Franchisor, its affiliates and their officers, directors and employees in their individual and corporate capacities;

3) the assignee has demonstrated to the Franchisor's satisfaction that it meets all of the Franchisor's then-current requirements for new Franchisees, including, without limitation, character, financial and managerial requirements;

4) the assignee has executed and/or caused all necessary parties to execute, the Franchisor's then-current standard form Franchise Agreement, including the Personal Guaranty described in Section 13.02(b)(2) and such other then-current ancillary agreements as the Franchisor may reasonably require (the Franchise Agreement shall be for a term expiring on the expiration date of this Agreement and it shall be renewable only upon the terms set forth in such then current Franchise Agreement);

5) if this Agreement is the current form Franchise Agreement then being required by the Franchisor, the assignee has entered into a written assignment in a form prescribed by the Franchisor, assuming and agreeing to discharge all of the assignor's obligations under this Agreement and all other ancillary agreements;

6) in the sole discretion of the Franchisor, the assignee and any of its employees responsible for the operation of the Castus Store shall have satisfactorily completed the Franchisor's training then in effect for all new Franchisees;

7) except in the case of an assignment to a corporation for convenience of ownership pursuant to Section 13.02(e), a transfer fee has been paid to the Franchisor in an amount determined by the Franchisor, not to exceed Five Thousand Dollars (\$5,000), to defray the Franchisor's reasonable costs and expenses in connection with the transfer, including, without limitation, the cost of legal and accounting fees, credit and investigation charges, evaluations, retraining, and additional supervision; and

8) the assignment is not to a business competitor of the Franchisor and the requirements of Section 14.08 are met.

e) If Franchisee is an individual and desires to assign all of his or her rights to a corporation formed solely for convenience for ownership, the Franchisor's consent to such assignment shall be conditioned on the following requirements, in addition to those in Sections 13.02 (b), (c) and (d):



1) the assignee shall be newly organized and its Articles of Incorporation and by-laws shall provide that its activities shall be confined exclusively to operating the Castus Store or other businesses franchised under similar agreements with the Franchisor, its subsidiaries, or affiliates;

2) Franchisee shall be the owner of a majority voting interest in the securities of the assignee; and

3) all shareholders of the assignee corporation to which Subsection 13.02 (b)(2) applies shall comply with the requirements of that Subsection.

f) Upon the dissolution or death of Franchisee or of a shareholder, member or a general partner of Franchisee, the personal representative or trustee who is legally authorized to transfer the affected interest may sell, assign or otherwise transfer the affected interest in the Franchisee to a third party, subject to the conditions set forth in this Agreement for any other transfer. If the personal representative does not receive, or desire to accept, a bona fide offer to sell such interest, and if under applicable law, Franchisee's rights in this Agreement and in the Castus Store are distributable to heirs or legatees who would otherwise qualify as Franchisees and assignees under the terms of this Section 13.02, the Franchisor shall consent to such assignment, provided such prospective assignees agree to accept all the conditions imposed on Franchisee by this Agreement.

g) If any person, partnership, LLC or corporation with an interest subject to the restrictions of this Section 13.02 desires to accept any bona fide written offer from a third party to purchase such interest, the prospective transferor shall notify the Franchisor in writing of each such offer, and the Franchisor shall have the option, but not the obligation, to purchase such business, franchise and interest, including any lease, on the same terms and conditions offered by the third party, except that the Franchisor shall have at least fifteen (15) days to prepare for closing. If the third party offer is such that the Franchisor may not reasonably be required to furnish the same consideration, terms or conditions, then the Franchisor may purchase the interest to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, or conditions contained in the offer, the consideration shall be determined by an independent appraiser designated by the Franchisor, whose determination shall be binding. The Franchisor shall notify the prospective transferor of its intention to exercise its option within ten (10) days after receipt of notice and a copy of the offer. Any material change in the terms of the third party offer prior to transfer to the third party shall constitute a new offer, subject to the same option by the Franchisor as in the case of an initial offer. The Franchisor's failure to exercise the option afforded by this Section 13.02 (g) shall not constitute a waiver of any other provision of this Agreement, including any of the requirements of Section 13.02 with respect to the proposed transfer, nor shall such failure constitute a waiver of its right to exercise its option with respect to any subsequent third party offer.

h) The Franchisor's consent to a transfer of any interest subject to the restrictions of this Section 13.02 shall not constitute a waiver of any claims it may have against the assignor, nor shall it be deemed a waiver of the Franchisor's right to demand compliance with any of the terms of this Agreement by the assignee at any time and from time to time.

## **14.00 GENERAL PROVISIONS**

### **14.01 Improvements to Castus System.**

All improvements in the Castus System developed by Franchisee, the Franchisor or other Franchisees, shall be and become the sole and absolute property of the Franchisor. The Franchisor may incorporate such improvements into the Castus System and shall have the sole and exclusive right to copyright, register and protect such improvements in the Franchisor's own name to the exclusion of Franchisee, whose right to use such improvements shall be limited to its rights as a Franchisee hereunder.

### **14.02 Governing Law; Exclusive Jurisdiction.**

This Agreement has been accepted by the Franchisor and shall be deemed to have been made in San Ramon, California, and shall be governed and construed under and in accordance with the laws of the State of California, which law shall prevail in the event of any conflict of law. Franchisee and the Franchisor agree that any action arising out of or relating to this Agreement (including, without limitation, the offer and sale of the Franchise) shall be instituted and maintained only in a state or federal court of general jurisdiction in Contra Costa County, California, and Franchisee irrevocably submits to the jurisdiction of such court and waives any objection it may have to either the jurisdiction or venue of such court.

### **14.03 Severability.**

a) Except as expressly provided to the contrary herein, each section, part, term and provision of this Agreement shall be considered severable. If, for any reason, any section, part, term or provision of this Agreement is determined to be invalid, contrary to, or in conflict with, any existing or future law or regulation of a court or agency having valid jurisdiction, such determination shall not impair the operation or affect such other portions, sections, part, terms or provisions of this Agreement as may remain otherwise intelligible, and the latter will continue to be given full force and effect and bind the parties hereto. Such invalid sections, parts, terms and provisions shall be deemed not to be a part of this Agreement.

b) If any applicable law or rule requires a greater period for notice to or performance by Franchisee than the period(s) provided in this Agreement, the period required by such law or rule shall be substituted for the period specified herein.

c) If any court in a final decision to which the Franchisor is a party holds any provision of this Agreement or portion thereof to be unenforceable or reduces the scope of any covenant or provision herein, Franchisee shall be bound to the fullest extent by such covenant or provision as reformed or reduced to the maximum extent consistent with such decision, and as if such reformed or reduced provision were separately set forth in and made a part of this Agreement.

### **14.04 Franchisee Is Independent Contractor.**

a) This Agreement does not create a fiduciary relationship between the parties hereto. Franchisee shall be at all times an independent contractor, and nothing herein contained shall constitute Franchisee as the agent, legal representative, partner, joint venturer or employee of the Franchisor. Franchisee shall not have any right or power to and shall not bind or obligate the Franchisor in any way or manner whatsoever, nor represent that it has the right to do so.

b) Franchisee shall have sole responsibility for, and shall promptly pay when due, all taxes levied or assessed by reason of its operation and performance under this Agreement, including, but not limited to, local, state and federal, property, license, sales, use, leasehold, excise and income taxes. Franchisee shall be solely responsible for all loss, damage and contractual liabilities to third persons originating in or in connection with the operation of the Castus Store and for all claims and demands for damages to property and for injury, illness or death of persons directly or indirectly resulting therefrom. Franchisee shall indemnify and save the Franchisor harmless from any such claims for taxes and other liabilities, loss, expense or damage.

c) In all building directories, public records and in its relationship with other persons, Franchisee shall indicate its independent ownership of the Castus Store and that it is only a Franchisee of the Franchisor. Franchisee and any permitted assignee shall file, and keep on file at all times in the proper public office for the locality involved, a statement showing the actual name of Franchisee as the proprietor of its business, if such is required or permitted by the law of the state and for the locality where the Castus Store and Franchisee's principal place of business are located.

#### 14.05 Section Titles.

Section titles and Section and Subsection references are used for convenience only and shall not affect the meaning or construction of any provision of this Agreement.

#### 14.06 Entire Agreement.

This Agreement, including the Exhibits and Schedules attached hereto and the preamble recitals, constitutes the entire agreement of the parties and supersedes all prior negotiations, commitments, representations and undertakings of the parties with respect to the subject matter hereof. The Franchisor has made no representations inducing the execution of this Agreement other than are expressly stated herein.

#### 14.07 Number and Gender.

All the terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number (singular or plural), and any other gender (masculine, feminine or neuter), as the context or sense of this Agreement or any paragraph or clause hereof may require, the same as if such words have been fully and properly written in the appropriate number and gender.

#### 14.08 Obligations of Interested Parties.

a) Except as otherwise provided herein, all acknowledgments, promises, covenants, agreements and obligations herein made or undertaken by Franchisee shall be jointly and severally made or undertaken by Franchisee, all persons signing this Agreement in their individual capacities and all guarantors.

b) Franchisee shall forward to the Franchisor concurrently with the execution and delivery of this Agreement and prior to the acquisition of any interest in Franchisee by a third party during the term of this Agreement and any extension hereof, a Confidentiality and Noncompetition Agreement, similar in form to Exhibit "B" attached hereto (as it may be revised by the Franchisor from time to time), executed by every Owner (as defined in Section 12.02) of the Franchisee.

14.09 Written Approval, Waiver and Nonwaiver.

a) Whenever this Agreement requires the prior approval or consent of the Franchisor, Franchisee shall make a timely written request therefor and such approval must be obtained in writing. Except where this Agreement expressly obligates the Franchisor to reasonably approve or consent to (or not to unreasonably withhold its approval of or consent to) any action or request by Franchisee, the Franchisor has the absolute right for any reason to refuse any request by Franchisee or to withhold the Franchisor's approval of or consent to any action by Franchisee. The Franchisor may also consider at its option and, in its sole discretion, other reasonable prior requests severally submitted in writing by Franchisee for the Franchisor's waiver of any obligation imposed by this Agreement. The Franchisor makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this franchise or by any neglect or delay in furnishing the same.

b) No failure of the Franchisor to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the Franchisor's right to demand exact compliance with all of the terms hereof. Waiver by the Franchisor of any particular default by Franchisee shall not affect nor impair the Franchisor's rights with respect to any subsequent default of the same, similar or different nature, nor shall any delay, forbearance, or omission of the Franchisor to exercise any power or right arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants hereof, affect or impair the Franchisor's right to exercise the same, nor shall such constitute a waiver by the Franchisor of any right hereunder, nor the right to declare any subsequent breach a default and to terminate this Agreement prior to the expiration of its term. Subsequent acceptance by the Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by the Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

c) No right or remedy conferred upon or reserved to the Franchisor or Franchisee by this Agreement is intended to be, nor shall it be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy.

d) No amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties hereto and executed in writing.

14.10 Notices; Payments.

a) Subject to Section 14.10(d), all notices, requests and reports permitted or required to be delivered by the provisions of this Agreement shall be deemed delivered: (i) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (ii) on the same date of the transmission by facsimile; (iii) one (1) business day after being placed in the hands of a nationally recognized commercial courier service for guaranteed overnight delivery; or (iv) four (4) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has been notified in writing.

b) If notice is sent to the Franchisor, it shall be addressed to the attention of the President, Castus Low Carb Superstores, 9110 B Alcosta Blvd. Suite 205, San Ramon, CA 94583, or at such other address as the Franchisor shall from time to time designate in writing.

c) If notice is sent to Franchisee, it shall be addressed to Franchisee, care of its designated agent, at \_\_\_\_\_ or at such other address as the Franchisee shall from time to time designate in writing.

d) Unless otherwise required by the Direct Debit Arrangement specified by Section 6.06, all payments and reports to accompany payments required to be made hereunder to the Franchisor shall be sent by the means specified in Subsection 14.10(a) (i) (iii) or (iv) above or by electronic wire payment transfer, addressed to the attention of the Treasurer at the above address, or at such address or by such other means as the Franchisor shall from time to time designate in writing. Any payment not actually received by the Franchisor on or before the date specified herein shall be deemed overdue if not postmarked at least five (5) days prior to the date due.

14.11 Designated Agent of Franchisee.

Franchisee hereby designates \_\_\_\_\_ to act in its behalf and execute all documents in all transactions with the Franchisor. All actions by such designee shall be binding upon Franchisee and shall be valid and binding on any partnerships as if done by each and every partner. The Franchisor shall have no duty to deal with anyone other than the designee; however, any documents submitted to the Franchisor executed by any other officer or partner shall be valid and binding upon Franchisee. Franchisee shall promptly notify the Franchisor in writing of any change in its designee.

14.12 Acknowledgments.

a) Franchisee acknowledges and warrants that it has received a complete and final copy of this Agreement and applicable exhibits as well as disclosure and other documents required in a timely fashion as required as follows:

We hereby acknowledge and warrant that the following dates are true and correct:

- Date of first face to face meeting with Franchisor to discuss the possible purchase of a franchise: \_\_\_\_\_ (Month/Day/Year)
- The date on which we received a Uniform Franchise Offering Circular about Franchisor: \_\_\_\_\_ (Month/Day/Year)
- The date we received a completed copy (other than signatures of the Franchise Agreement) that we later signed: \_\_\_\_\_ (Month/Day/Year)
- The date on which we delivered cash, check or other consideration in the amount of \$ \_\_\_\_\_ to or for the benefit of the Franchisor: \_\_\_\_\_ (Month/Day/Year)

b) We hereby represent:

Prior to signing the Franchise Agreement, we were given ample opportunity to review and examine a Uniform Franchise Offering Circular about the Franchisor and have been furnished with a copy of same.

No oral, written or visual claim or representation which contradicted the disclosure statement was made to us except: \_\_\_\_\_ (If none, Franchisee shall write "None")

No oral, written or visual claim or representation which stated or suggested any sales, income or profit levels was made to us except: \_\_\_\_\_ (If none, the Franchisee shall write "None")

**IN WITNESS WHEREOF**, the Franchisor and Franchisee have executed this Agreement as of the date(s) indicated below.

**Franchisee:**

\_\_\_\_\_  
a \_\_\_\_\_

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

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

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

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

**Franchisor:**

Castus Low Carb Superstores

a California corporation

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

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