

outstanding more than thirty (30) days shall incur interest at the highest rate allowable by law beginning upon the expiration of thirty (30) days from when the amount owed was originally due to Curves. Nothing in this Agreement shall be construed to mean that Franchisee is to pay, or has contracted to pay, any sum in excess of that which may lawfully be charged or contracted for under any applicable law. The intention of the parties is to conform strictly to applicable usury laws and it is agreed that if an excess is inadvertently collected it shall be applied to reduce the amount owed under Sections 10A and 10B herein. No claim by Franchisee that Curves is in default under any provision hereof shall be a defense to a claim by Curves for Monthly Service Fees, Monthly Advertising Fees, or other amounts owing hereunder. Franchisee agrees that it will not, on the grounds of the alleged non-performance by Curves of any of its obligations hereunder, withhold payment of any amounts due to Curves.

- H. **Place of Payment.** All payments required to be made to Curves under this Agreement shall be made at an address designated by Curves in Waco, Texas, or to such addresses and to such parties as Curves may designate in writing from time to time.

11. ACCOUNTING PROCEDURES: RIGHT OF AUDIT

- A. **Accounting.** Franchisee agrees to keep true, accurate and complete records of its business in such form as Curves now or hereafter may require and to furnish Curves with a quarterly and fiscal year-to-date profit and loss statement in the format prescribed by Curves. Franchisee shall also submit to Curves quarterly balance sheets, the first of which shall be for the quarter of the fiscal year ending after Franchisee's Facility opens. All profit and loss statements and balance sheets shall be prepared in accordance with generally accepted accounting principles and shall be submitted to Curves within thirty (30) days after the end of the period covered by the report. All of the accounts, books, records and federal, state and local sales and income tax returns and reports of Franchisee, to include all supporting and back up information and documents, so far as they pertain to the business transacted under this Agreement, shall be open to inspection, examination and audit by Curves and its authorized representatives at any and all times, and copies thereof may be made by Curves and retained for its own use. All of such records shall be maintained and retained by Franchisee for the full term hereof and for five (5) years thereafter.
- B. **Annual Financial Statements.** Franchisee's fiscal year shall begin on January 1 and end on December 31 of each year. Within one hundred and twenty (120) days after the close of each fiscal year, Franchisee shall submit a full disclosure of all persons with any interest in Franchisee's Facility and a complete annual financial statement, including, but not limited to, a profit and loss statement and a balance sheet, for Franchisee's Facility, which statement shall be certified by a certified public accountant ("Annual Financial Statement"). The Annual Financial Statement must be signed by all owners of Franchisee's Facility representing that the Annual Financial Statement is true and correct and is the financial position of Franchisee and the results of the operations of Franchisee's Facility during the period covered.
- C. **Audits.**
1. Franchisee agrees that Curves or its representatives shall, at all reasonable times, have the right to examine or audit the books, records, tax returns or accounts of Franchisee. Any

such inspection, examination and audit shall be at Curves' cost and expense unless Gross Sales as shown by Franchisee's records is found to be understated by more than two percent (2%). Then, in any such event, the cost and expense for such inspection, examination and audit shall be borne and paid by Franchisee. Any such cost and expense and any amounts found to be due but not paid shall be set forth in a written invoice delivered to Franchisee by Curves. Franchisee shall reimburse Curves for the invoice amount within seven (7) days after the invoice has been delivered to Franchisee.

2. Curves shall similarly have the right to examine or audit the books, records, tax returns or accounts of any and all persons or entities who are guarantors of the Franchisee's performance under this Agreement in those instances in which Franchisee has failed to make payments of the royalty or advertising fees or any other fees due under this Agreement or any reports required under this Agreement in a timely fashion or has otherwise defaulted under this Agreement. Then, in any such event, the cost and expense for such inspection, examination and audit shall be borne and paid by Franchisee. Any such cost and expense and any amounts found to be due but not paid shall be set forth in a written invoice delivered to Franchisee by Curves. Franchisee shall reimburse Curves for the invoice amount within seven (7) days after the invoice has been delivered to Franchisee.

- D. Membership Information.** To assist Curves in providing Franchisee with on-going advice and assistance, and to determine whether Franchisee is complying with the terms of this Agreement and with the specifications, standards and procedures established for operation of Franchisee's Facility, Curves, or its authorized representative, shall have the right, during regular business hours, or at such other times as may be mutually agreed upon, to inspect all customer/membership records, both active and inactive, and any other related records. By the first of each month after opening Franchisee's Facility and on or before December 31 of each year, and subject to any applicable state or federal data protection laws, Franchisee shall furnish to Curves in whatever electronic format required by Curves, which may be via a designated site on the internet or intranet, all member lists and records for Franchisee's Facility, both active and inactive, which shall include, but not be limited to, names, addresses, and telephone numbers of such members (hereinafter collectively referred to as "Membership Lists"). Franchisee acknowledges and agrees that Curves is the sole owner of the Membership Lists and that Franchisee shall not distribute, in any form or manner, the Membership Lists to any third party without the prior written consent of Curves.

12. LIMITATIONS OF FRANCHISEE

A. Trademarks, Trade Names, Service Marks and Trade Secrets.

1. **Curves' Ownership of the Trademarks.** Franchisee agrees that the trademark *Curves*®, the trademark *Curves for Women*®, the trademark "*The Power to Amaze Yourself*", the trademark "*It's Official, I'm Amazing*", the trademark "30 minute fitness and weight loss center," and all goodwill arising from all the foregoing, are the exclusive properties of Curves, and Franchisee asserts no claim and will hereafter assert no claim to the ownership thereof. Franchisee will not contest Curves' ownership of the Curves Marks or their validity and will not do or permit any act or thing to be done in derogation of any of the rights of Curves in connection with the Curves Marks either during the Term of this Agreement or thereafter. Nothing in this Agreement shall be construed to give Franchisee

any right, title or interest in or to the Curves Marks except for a non-exclusive revocable privilege and license to display and use the Curves Marks during the Term of, and pursuant to the conditions contained in, this Agreement. Franchisee expressly understands and agrees that it has not acquired and will not acquire any ownership interests, equitable rights, goodwill or other interests in any Curves Marks by virtue of this Agreement, its relationship with Curves, or Franchisee's use of the Curves Marks and will not represent that it has. Franchisee also understands and agrees that following the expiration or termination of this Agreement for any reason, it shall not attribute any monetary amount to any goodwill associated with its use of the Curves Marks or in connection with its operation of Franchisee's Facility.

2. **Trade Secrets.** Franchisee agrees that all materials loaned or otherwise made available to it and all disclosures made to Franchisee and not to the general public by or at the direction of Curves at any time before or during the Term of this Agreement relating to the Curves System, including, without limitation, the Confidential Operations Manual in its entirety, financial information, marketing strategy and marketing programs, are considered trade secrets of Curves for purposes of this Agreement and shall be kept confidential and used by Franchisee only in connection with the operation of Franchisee's Facility and other franchised Curves facilities. Franchisee agrees not to divulge any of the trade secrets to any person other than its employees and then only to the extent necessary for the operation of Franchisee's Facility and, specifically, that Franchisee will not, nor permit anyone to, reproduce, copy or exhibit any portion of the Confidential Operations Manual or any other trade secrets of Curves. At Curves' request, Franchisee shall require each owner and manager to execute an agreement similar in substance to this Section in a form acceptable to Curves and naming Curves as a third party beneficiary with the independent right to enforce such agreement.
3. **Modification of Curves Marks.** If Curves, in its sole discretion and right, decides to modify or discontinue use of the Curves Marks and/or to adopt or use one or more additional or substituted trademarks, Franchisee shall promptly conform its use of the Curves Marks as directed, in writing, by Curves. It shall be the sole obligation of Franchisee in any such event to purchase new signs, letterhead, etc. so as to comply with the Curves Marks, and Franchisee waives any other claim arising from or relating to any such change, modification or substitution of Curves Marks.
4. **Franchisee's Use of the Curves Marks.** Franchisee acknowledges that Curves' prior written consent is required for the use of any or all of the Curves Marks, or any other mark Curves owns or will own, except as granted herein. Franchisee shall not use the Curves Marks, any variations or abbreviations, or any words confusingly similar to the Curves Marks, as part of its name if Franchisee is or becomes a corporation or other legal entity. Franchisee shall use the Curves Marks and/or any trademark or service mark or trade name adopted by Curves, or other written instructions from Curves, including the form and manner and appropriate legends as may be prescribed by Curves from time to time. Franchisee agrees not to use any other trademark, service mark or trade name in combination with the Curves Marks without Curves' prior written consent. Franchisee shall not use the Curves Marks, or any other mark Curves owns or will own, in any advertising

that has not been provided to Franchisee by Curves or previously approved in writing by Curves. Franchisee shall permit Curves to inspect Franchisee's uses of the Curves Marks at all reasonable times for the purpose of ascertaining compliance with this Agreement. Except when necessary to comply with this Agreement, Franchisee shall not place the Curves Marks, nor provide any third party the Curves Marks for the purpose of placing the Curves Marks, on any products, supplies or any other item in any form for any purpose, unless Franchisee acquires prior written approval from Curves. Except when necessary to comply with this Agreement, Franchisee shall not use or associate in any way the Curves Marks with any services not approved by Curves in writing.

5. **Defense of the Curves Marks.** Franchisee will not, directly or indirectly, at any time during the Term of this Agreement or thereafter, do or cause to be done any act or thing disputing, attacking or in any way impairing or tending to impair Curves or Curves' right, title or interest in the Curves Marks or the Curves System. If Franchisee learns of any claim, suit or demand against Franchisee or the Curves Marks on account of any alleged infringement, unfair competition, or similar matter relating to the Curves Marks, or any unauthorized use of the Curves Marks, Franchisee shall promptly notify Curves, in writing. Curves may, but is not obligated to, take such action, if any, as Curves, in its sole discretion, deems necessary or appropriate in connection therewith. Curves shall have the sole right to defend, compromise or settle any such claim at Curves' sole cost and expense, using attorneys of its own choosing. Franchisee agrees to cooperate fully with Curves in connection with the defense of any such claim and hereby irrevocably appoints Curves to defend or settle all of such claims, demands or suits. Franchisee may participate at its own expense in such defense or settlement, but Curves' decisions shall be final and binding upon Franchisee. Franchisee shall not settle or compromise any such claim without the prior written consent of Curves. Curves agrees to indemnify and hold Franchisee harmless against any claim or demand arising from Franchisee's authorized use of the Curves Marks provided Franchisee has promptly notified Curves of the claim or demand as required by this Section.

6. **Trademarks and Trade Names.** In connection with the operation of Franchisee's Facility, including advertising, Franchisee shall use no name or service mark other than the names *Curves*® or *Curves for Women*® or any derivative of such name, or such other name as may be specified by Curves. Franchisee shall not use the Curves Marks, or any other mark Curves owns or will own, in any advertising that has not been provided to Franchisee by Curves or previously approved in writing by Curves. Franchisee shall identify itself as a holder of a license from Curves International, Inc., unless applicable law requires other or additional identification. Franchisee shall use the name and service mark in such format and with such suffix or prefix as Curves may from time to time designate. Franchisee shall not register the Curves Marks with any authority unless required to do so by this Agreement. Except when necessary to comply with required purchases in accordance with this Agreement, Franchisee shall not place the Curves Marks nor give any third party the Curves Marks for the purpose of placing the Curves Marks on any products, supplies, or any other item in any form for any purpose unless Franchisee acquires prior written approval by Curves.

7. **Assumed Name Registration.** In the event that Franchisee is required to do so by any statute or ordinance, Franchisee shall promptly upon the execution of this Agreement by Curves file with applicable government agencies or offices, notice of its intent to conduct its business under the name "Curves". Promptly upon the expiration or termination of this Agreement for any reason whatsoever, Franchisee shall promptly execute and file such documents as may be necessary to revoke or terminate such assumed name registration, and if Franchisee shall fail to promptly execute and file such documents as may be necessary to effectively revoke and terminate such assumed name registration, Franchisee hereby irrevocably appoints Curves as its attorney-in-fact to do so for and on behalf of Franchisee.

B. Independent Contractor.

1. It is specifically acknowledged, understood and agreed by the Franchisee and Curves that this Agreement does not create a fiduciary relationship between Franchisee and Curves, that Franchisee is an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever. Nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty, or representation on Curves' behalf, or to incur any debt or other obligation in Curves' name.
2. During the Term of this Agreement, and any extension hereof, Franchisee shall hold itself out to the public as an independent contractor operating Franchisee's Facility pursuant to a franchise agreement with Curves. Franchisee agrees to conspicuously post notices to that effect in such locations and by such means determined reasonably necessary by Curves to inform the public, customers and suppliers. Curves reserves the right to specify the content of such notices as well as where and when the notices shall be posted.
3. Franchisee shall be responsible for, and shall promptly pay when due, all expenses of Franchisee's Facility, including all taxes and levies of any kind in connection with Franchisee's Facility and the income arising from such Franchisee's Facility. Curves shall not be liable for any such expenses, taxes, levies, or disbursements otherwise paid or incurred in connection with the establishment and operation of Franchisee's Facility. Failure of Franchisee to timely make all tax payments referred to herein shall be a material default of this Agreement.
4. Curves shall not regulate the hiring or discharge of Franchisee's employees, officers or agents, the parties from whom Franchisee may accept business, the working conditions of Franchisee's employees, officers or agents or Franchisee's contracts with customers, suppliers or others.
5. Franchisee shall represent that it is doing business as a Franchisee under the trade name and style of *Curves®* or *Curves For Women®*. For this purpose, Franchisee shall publicly display at Franchisee's Facility during all times this Agreement is in effect Curves' certificate of good standing as required by Curves. Franchisee shall prominently display a notice or certificate in the public area of Franchisee's Facility, as well as a statement on Franchisee's letterhead and on all forms, printed materials and advertising materials to be

distributed to the public, which clearly states that "EACH FACILITY IS INDEPENDENTLY OWNED AND OPERATED."

13. COMPETITION AND ECONOMIC DEVELOPMENT

- A. **Unfair Competition.** Franchisee acknowledges the uniqueness of the Curves System and that Curves is making its knowledge, know-how and expertise available to it for the purpose of operating Franchisee's Facility. Franchisee agrees that it would be an unfair method of competition for Franchisee to use or duplicate or to allow others to use or duplicate any of the knowledge, know-how and expertise received from Curves for any use other than for the operation of Franchisee's Facility. Franchisee, therefore, warrants that, during the Term of this Agreement, it will utilize its best and continuing efforts to promote and develop the business at Franchisee's Facility and during the Term of this Agreement and at all times thereafter will not directly or indirectly engage in the operation of any facility, other than Franchisee's Facility and other Curves' only facilities franchised from Curves, which utilizes or duplicates the Curves System, any trade secrets of Curves, the Curves Marks or the present or any former Curves current image.
- B. **Impact of Curves' Economic Development.**
1. **Franchised Territory.** Franchisee and Curves agree that there are no other territorial rights that arise or will be inferred under this Agreement except those rights expressly given to Franchisee in this Agreement. Curves expressly reserves the right to own, operate or license another person to own or operate or license a Curves facility outside of the Franchised Territory. In consideration of the grant of the Franchised Territory, Franchisee agrees that there are no implied covenants of good faith and/or fair dealing or other theories that limit or modify Curves' rights herein.
 2. **Other Curves' Brands, Replacements, and Development.** Curves shall have the absolute right, without regard to the economic impact on Franchisee, to own, operate or license a person to own or operate any business not identified as a *Curves®* or *Curves for Women®* even if using the Curves' name and other Curves' facilities or time-share concepts or other business operations of any type whatsoever at any location other than the Curves, including locations within the Franchised Territory. Curves has the right during the Term of this Agreement to develop or authorize another person to develop a *Curves®* or *Curves for Women®* franchise and conduct normal pre-opening activities in the Franchised Territory so long as such Curves does not open until the expiration or termination of this Agreement.
 3. **Chain Acquisition.** Curves may acquire a brand, the rights to license a brand, or commonly owned group of Curves' facilities of four or more units through merger, acquisition, or otherwise, and, without regard to the economic impact on Franchisee, to license or operate such units as *Curves®* or *Curves for Women®*. If the acquired brand has businesses operating in the Franchised Territory that will continue to operate in the Franchised Territory after acquisition by Curves, and Franchisee objects to such acquisition, then Franchisee shall be entitled to terminate this Agreement by giving six (6) months written notice no later than twelve (12) months after the *Curves®* or *Curves for Women®*

has commenced operation in the Franchised Territory, and Curves will release Franchisee from this Agreement provided that Franchisee timely fulfills its obligations under Sections 19 and 20.

4. **Coordination With Other Systems.** In addition to *Curves*® or *Curves for Women*®, Curves owns or has rights with respect to other brands or businesses that may now or during the Term of this Agreement have locations within the Franchised Territory. Curves may use or benefit from, or may authorize others to use or benefit from, common corporate and executive personnel, reservations and other systems, communications, equipment, services, administrative systems, marketing and advertising programs, personnel, and central purchasing.
5. **Termination of Franchised Territory.** The Franchisee's rights to the designated Franchised Territory described in Exhibit A herein terminates upon five (5) years from the date of this Agreement, subject only to renewals in accordance with Section 2A of this Agreement.
6. **The "Harm" Standard.** Curves is free to pursue its own business interests as it seeks them, and is not obligated to do or refrain from doing anything except as expressly set forth in this Agreement, regardless of any adverse effect of whatever degree on Franchisee's Facility and without any duty to consider such effect.

14. INSURANCE; INDEMNIFICATION

- A. **Insurance.** At Franchisee's sole cost and expense, Franchisee shall purchase and maintain, in effect at all times during the Term of this Agreement, a policy or policies of insurance, naming Curves as an additional insured on the face of each policy, as follows:
1. Public liability in no less than the following amounts, which amounts may be changed from time to time on written notice by Curves: Bodily injury-One Million Dollars (\$1,000,000) each person, One Million Dollars (\$1,000,000) each accident; and, property damage-One Million Dollars (\$1,000,000) each accident;
 2. Workers' compensation insurance as required by state law; and,
 3. Automobile liability insurance as required by state law.

All such policies of insurance shall contain a statement that they cannot be canceled without thirty (30) days' prior written notice to Franchisee and to Curves. Franchisee shall provide documentary evidence to Curves that such insurance is in full force and effect at least thirty (30) days prior to the opening of Franchisee's Facility. Franchisee shall promptly notify Curves of any and all claims against Franchisee and/or Curves. All policies shall be renewed, and a renewal certificate of insurance mailed to Curves in Waco, Texas, or at such other location as may be specified by Curves prior to the expiration date of the policies. All policies must be purchased and maintained by an insurance company with an "A" rating or better. This obligation of Franchisee to maintain insurance is separate and distinct from its obligation to indemnify Curves under the provisions of

Section 14B.

B. INDEMNIFICATION.

1. Franchisee agrees to indemnify and hold harmless Curves, its officers, agents and employees from any and all liability, loss or damage Curves may suffer as a result of claims, demands, costs or judgments against Curves arising out of the operation of Franchisee's Facility or any acts of Franchisee, its officers, agents or employees, whether the liability, loss or damage is caused by or arises out of the negligence of Curves, its officers, agents, employees, or otherwise. The indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement. Curves' right to indemnity under this Agreement shall arise and be valid notwithstanding that joint or concurrent liability may be imposed on Curves by statute, ordinance, regulation or other law. The indemnification of Curves by Franchisee shall not be limited by the amount of insurance required under Section 14A. This indemnity obligation shall include, but not be limited to, claims related to the employment of Franchisee's employees. This obligation of Franchisee to indemnify and defend Curves is separate and distinct from its obligation to maintain insurance under the provisions of Section 14A.

2. Franchisee agrees to defend, indemnify and save Curves and Curves' officers, directors, agents, employees, attorneys, accountants, subsidiaries, affiliated and parent companies, harmless of, from and with respect to any claims, demands, losses, obligations, costs, expenses, liabilities, debts or damages any of them may incur (including, but not limited to, reasonable attorney's fees) arising from or relating to the sale of securities of Franchisee, including, but not limited to, claims, demands, losses, obligations, costs, expenses, liabilities, debts or damages arising from or related to any alleged violation of any federal or state securities law in connection with a sale of securities of Franchisee. Curves shall notify Franchisee of any claims, and Franchisee shall be given the opportunity to assume the defense of the matter. If Franchisee fails to assume the defense, Curves may defend the action in the manner it deems appropriate, and Franchisee shall pay to Curves all costs, including attorney's fees, incurred by Curves in effecting such defense, in addition to any sum Curves may pay by reason of any settlement or judgment against Curves. Curves' right to indemnity under this Agreement shall arise and be valid notwithstanding that joint or concurrent liability may be imposed on Curves by statute, ordinance, regulation or other law. Curves and the other indemnities shall, in all instances, have the right to be represented by counsel of its/their own choosing, at Franchisee's expense, and to participate in the defense of any such claim.

- C. **Defense of Claims.** Curves shall notify Franchisee of any claims subject to indemnification by Franchisee, and Franchisee shall be responsible for the costs of defense of the matter. Curves shall have the right to choose the attorney to defend any such claim or action at Franchisee's cost and expense. If Franchisee fails to pay the costs of the defense of any claim covered by the indemnification provisions of Section 14B, Curves may defend the action in the manner it deems appropriate, and Franchisee shall pay to Curves all costs, including attorney's fees, incurred by

Curves in effecting such defense, in addition to any sum which Curves may pay by reason of any settlement or judgment against Curves. No settlement of any claim against Curves shall be made by Franchisee which is in excess of the amount of insurance referred to in Section 14A or which would subject Curves to liability in any amount not covered by such insurance without the prior written consent of Curves.

15. TAXES

Franchisee shall pay, when due, all taxes levied or assessed in connection with the possession, ownership or operation of Franchisee's Facility, the Curves Equipment or any other equipment or in connection with amounts paid or received under this Agreement, including without limitation any sales, use or other ad valorem taxes (other than any tax that is measured by or related to the net income of Curves or to its corporate status in a state). If any such tax shall be paid by Curves, Franchisee shall promptly reimburse Curves the amount paid. In the event of any bona fide dispute as to the liability for a tax assessed against Franchisee, Franchisee may contest the validity or the amount of the tax in accordance with procedures of the taxing authority. Franchisee shall not permit a tax sale or seizure against Franchisee's Facility or the Curves Equipment.

Without derogating from the above, and for avoidance of doubt, all payments to Curves under and/or in connection with this Agreement shall be made net of any deductions and/or withholding of any amount (including without limitation of taxes) and in the event that the Franchisee will have to withhold any amounts from payments payable to Curves under and/or in connection with this Agreement, including without limitation, any withholding of income taxes or any other taxes, the Franchisee shall gross up such payment such that Curves will receive, as its net payment, the amount payable under and/or in connection with this Agreement after all withholdings and deductions. Any duties imposed under, if imposed, in relation to this Agreement or the Franchisee, will be borne and paid solely by Franchisee.

16. ASSIGNMENT: CONDITIONS AND LIMITATIONS

- A. Full Compliance.** Any purported assignment or transfer of Franchisee's rights and obligations under this Agreement that is not in full compliance with this Section 16 shall be of no force or effect and null and void and give Curves the right to immediately terminate without opportunity to cure pursuant to Section 18A of this Agreement.
- B. Transfer.** As used in Section 16 of this Agreement, the term "transfer" shall mean and include the voluntary, involuntary, conditional, direct or indirect assignment, sale, gift or other transfer by Franchisee or any of its owners of any interest in or grant of any security interest in: (a) this Agreement; (b) Franchisee's Facility; (c) Franchisee; or (d) some or all of the assets of Franchisee's Facility (other than inventory items in the ordinary course of business). As used above, an assignment, sale or other transfer shall include the following events: (1) the transfer of ownership of shares or a partnership or membership interest; (2) merger or consolidation or issuance of additional securities representing an ownership interest; (3) any sale of voting shares of Franchisee or any security convertible to voting shares of Franchisee or any agreement granting the right to exercise or control the exercise of the voting rights of any holder of an ownership interest; or (4) transfer in a divorce, insolvency, corporate, business or partnership dissolution proceeding or, in the event of the death of Franchisee or an owner of Franchisee, by will, declaration of or transfer

in trust, or under the laws of intestate succession or otherwise by operation of law.

C. Transfer and/or Assignment by Franchisee. Franchisee shall not have the right to transfer or assign this Agreement without the express written approval of Curves. Franchisee shall not have the right to transfer or assign this Agreement prior to opening Franchisee's Facility. Franchisee acknowledges that Curves is entering into this Agreement in reliance upon and in consideration of Franchisee's business skill, financial capacity, aptitude and other qualifications. Accordingly, the rights and duties created by this Agreement are personal to Franchisee and neither Franchisee's interest in this Agreement nor any of its rights or privileges hereunder nor Franchisee's Facility or any interest therein may be assigned, transferred, shared or divided, voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, in any manner, without the prior written consent of Curves. Any actual or intended assignment, transfer or sale made or accomplished in violation of the terms of this Section shall be null and void and shall constitute a material breach of this Agreement which gives Curves the right to immediately terminate without opportunity to cure pursuant to Section 18A of this Agreement. Curves' consent to a proposed transfer of any type will not be unreasonably withheld conditioned upon the strict compliance of the following requirements by Franchisee and proposed assignee, and Franchisee agrees that the following requirements are reasonable:

1. The payment by Franchisee to Curves of a transfer fee in the amount of Five Thousand Dollars (\$5,000.00), which payment shall be by automatic withdrawal from Franchisee's Bank Account or in any other method of payment that Curves in its sole discretion and right requires. Franchisee agrees that such transfer fee is reasonably required to cover Curves' expenses relating to said transfer; and
2. The payment by the proposed assignee to Curves of a Training Fee in the amount of One Thousand Dollars (\$1,000.00), unless proposed assignee is an existing franchisee of Curves who previously has satisfactorily completed Curves' Initial Training Program, and Curves, in its sole discretion and right, determines that no additional training is necessary; and
3. The remittance by Franchisee to Curves of an amount of One Thousand Eight Hundred Dollars (\$1,800.00) ("Escrow Amount") that will be held by Curves and from which Curves can withdraw any and all amounts that become due by Franchisee under this Agreement, including but not limited to any Monthly Royalty Fees and Monthly Advertising Fees, during the process of completing the requested transfer. Curves will return any unused amount from the Escrow Amount to Franchisee upon completion and execution of all legal documents effecting such requested transfer; and
4. That Franchisee is not in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Franchisee and Curves or its affiliates; and
5. Curves' receipt of required notification by Franchisee as required herein, all forms required by Curves that Curves is then using in evaluating prospective purchasers of new franchises and any other information Curves may request concerning the proposed assignee or the proposed transaction between Franchisee and the prospective assignee; and

6. The proposed assignee, in Curves' sole judgment, satisfies all of Curves' business and financial standards and requirements; has the aptitude and ability to operate Franchisee's Facility; and that the proposed assignee complete and be approved through Curves' standard franchise application and selection process including satisfactorily demonstrating to Curves that the proposed assignee meets the financial, character, managerial, ownership and such other criteria and conditions as Curves shall then be applying in considering applications for new franchises; and
7. That the proposed assignee shall have delivered to Curves a letter from an independent certified public accountant unaffiliated with Franchisee acknowledging, among other things, that such accountant has reviewed the terms of the proposed assignment, transfer or sale with the prospective assignee; and
8. That all of Franchisee's accrued monetary obligations and all other outstanding obligations to Curves and its affiliates, whether arising under this Agreement or otherwise, have been satisfied; and
9. Payment of all taxes, debts and obligations owed to third parties which were incurred by Franchisee in connection with Franchisee's Facility or assumption of such liabilities by the proposed assignee; and
10. That Franchisee and each transferor execute a general release, in a form satisfactory to Curves, of any and all claims against Curves, its affiliates, and their respective officers, directors, agents, and employees, in their corporate and individual capacities; and
11. The proposed assignee's execution of the then-current franchise agreement; and
12. Proof of receipt by the proposed assignee of any information required by the rules and regulations of any franchise disclosure legislation to be delivered to the proposed assignee by Curves at least ten (10) days prior to any assignment; and
13. The satisfactory completion, in Curves' sole opinion, of the Initial Training Program then required of all new franchisees of Curves, unless such training is waived by Curves in writing by reason of the assignee's prior experience or training; and
14. The delivery by Franchisee or assignee to Curves, prior to assignment of the franchise, an executed copy of the contract setting out an intent to sell by Franchisee and an intent to buy by the proposed assignee of Franchisee's Facility , and Curves shall, in its reasonable judgment, not have objected to such contract within twenty (20) days after receipt of such contract. Approval of such contract by Curves does not constitute approval of the transfer by Curves.

D. Notice of Proposed Transfer by Franchisee. Franchisee and its owners may not transfer Franchisee's Facility or any interest therein without the express written consent of Curves. Franchisee shall notify Curves of such intention to transfer by written notice by certified mail

setting forth the proposed assignee's name, address, statement of financial qualification and business experience during the previous five (5) years. If Curves does not exercise its right of first refusal under Section 17 herein, Curves shall notify Franchisee as to whether or not Curves approves the proposed assignee in accordance with this Section. If Curves does not exercise its right of first refusal under Section 17 herein, Curves shall have sixty (60) days from the completion of the conditions set out in Section 16C above and receipt of such notice as required in this paragraph to remit to Franchisee and the proposed assignee the necessary documentation to effect the transfer of Franchisee's Facility.

- E. Franchisee Information.** Curves shall have the right, but not the obligation, to furnish any prospective assignee with copies of all financial statements and Monthly Gross Sales Reports which have been furnished by Franchisee to Curves in accordance with this Agreement during the three (3) year period prior to the date of the approval of the proposed assignment, transfer or sale is sought. Curves shall also have the right, but not the obligation, to advise any prospective assignee of any uncured breaches or defaults by Franchisee under this Agreement, or any other agreement relating to Franchisee's Facility proposed to be assigned, transferred or sold. Curves' approval of such proposed transaction shall not, however, be deemed a representation or guarantee by Curves that the terms and conditions of the proposed transaction are economically sound or that, if the transaction is consummated, the proposed assignee will be capable of successfully conducting Franchisee's Facility and no inference to such effect shall be made from such approval.
- F. Transfer of Equity Securities.** Equity securities of Franchisee may not be transferred by Franchisee or by any owner unless, in addition to obtaining the prior written consent of an authorized officer of Curves as required above, such transferor complies with all policies or guidelines Curves may then have in effect for approval of a proposed distribution of securities of franchisees. Prior to such approval, Franchisee also must provide the applicable prospectus to Curves. Franchisee and any other participants in any offering of securities of Franchisee shall fully indemnify Curves in connection with such offering, as provided in Section 14B.
- G. Prohibition Against Encumbrance.** Without Curves' prior written consent, Franchisee shall not grant any security interest in this Agreement, in Franchisee's Facility, or in any membership agreements or membership check drafts used in the operation of Franchisee's Facility, nor shall any ownership interest in any corporate, limited liability or partnership Franchisee be pledged or encumbered. If Curves consents to the grant of a security interest, the secured party must agree that in the event of Franchisee's default under the security interest, Curves or its designee shall be notified of the default and shall have the right but not the obligation to be substituted as an obligor to the secured party and/or to cure the default. In no event shall this requirement be construed to make Curves liable to Franchisee or to the secured party.
- H. Continuing Liability.** In the event of a transfer to a third party of Franchisee's interest in this Agreement or Franchisee's Facility or, if Franchisee is an entity, the transfer of interests of Franchisee, Franchisee, or owner of Franchisee, shall remain personally liable for all Monthly Royalty Fees, Monthly Advertising Fees, and other payments which come due under the franchise agreement signed by the proposed assignee for twelve (12) consecutive months beginning on the execution date of proposed assignee's franchise agreement with Curves.

I. Transfer Due to Death or Incapacity. The transfer of Franchisee's interest in this Agreement in the event of the death or legal incapacity or permanent disability of Franchisee or the operating principal, if a transfer or assignment is necessary as a result of such an event, shall not require payment of a transfer fee, as set forth herein, so long as the person designated by Franchisee's heirs, legatees, personal representative, conservator or guardian, as applicable shall timely do the following:

1. Apply in writing to Curves within ninety (90) days after death or legal incapacity or permanent disability of Franchisee requesting Curves' approval to transfer Franchisee's Facility, or the interest of the deceased or disabled shareholder if Franchisee's Facility is held by a corporation to the applicant; and
2. Meet and agree to the terms and conditions of Section 16C herein.

In the event of death or legal incapacity or permanent disability of Franchisee or the operating principal requiring a transfer or assignment of Franchisee's interests in this Agreement or in Franchisee's Facility, Curves may, at its sole discretion, assume the operation of Franchisee's Facility pending the transfer or assignment. Curves may, in its sole discretion, require the applicant to sign a then current franchise agreement.

J. No Waiver. Curves' consent to a transfer shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Curves' right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

K. Assignment by Curves. Curves may assign this Agreement and all of its rights and privileges hereunder to any other person, firm or corporation.

L. Organization of Franchisee. If an individual Franchisee desires to assign this Agreement to a corporation or limited liability company formed or controlled by Franchisee, in addition to Franchisee's compliance with the conditions set out in Section 16C4, 8, and 9 above, Curves may grant its consent, provided:

1. Franchisee is, and covenants to remain, the owner of one hundred percent (100%) of the voting stock of the corporation or, if Franchisee is more than one individual, each individual shall have the same proportionate ownership interest in the corporation as that individual had in Franchisee's Facility prior to the transfer; and
2. The payment by Franchisee to Curves of an assignment fee in the amount of One Thousand Dollars (\$1,000.00), which payment shall be by automatic withdrawal from Franchisee's Bank Account or in any other method of payment that Curves in its sole discretion requires. Franchisee agrees that such assignment fee is reasonably required to cover Curves' expenses relating to said transfer; and
3. All documents of the transferee entity reasonably required by Curves are provided to Curves prior to the transfer; and
4. Franchisee or another qualified individual is designated "operating principal" in accordance

with Section 6L hereof; and

5. Franchisee and all the shareholders, officers and directors of the assignee corporation or entity personally guarantee the obligations to be performed under this Agreement by the Franchisee corporation or entity and each must sign a franchise agreement; and
6. Franchisee may not assign to a trust, limited partnership, or other entity not acceptable to Curves; and
7. Transferee entity shall assume the obligations to be performed under this Agreement and must sign a then-current franchise agreement.

M. Reasonableness. Franchisee shall have the sole burden of proving that Curves acted unreasonably in any respect.

17. RIGHT OF FIRST REFUSAL

- A.** In the event Franchisee wishes to accept an offer from a third party to purchase all or substantially all of the assets constituting Franchisee's Facility or a controlling interest in the voting equity of Franchisee, Franchisee shall give Curves written notice setting forth the name and address of the prospective purchaser, the price and terms of the offer, together with a franchisee application completed by the prospective purchaser, a copy of the Purchase and Sale Agreement, which must include a non-compete provision against Franchisee, executed by both Franchisee and purchaser, and all exhibits, copies of any real estate purchase agreement or agreements, proposed security agreements and related promissory notes, assignment documents, title insurance commitment and any other information that Curves may request in order to evaluate the offer. Curves, its subsidiaries and affiliated companies, shall then have the prior option to purchase the interests covered by the offer at the price and upon the same terms of the offer. If the consideration is not money, Curves shall have the right to substitute the equivalent cash as solely determined by Curves for all non-cash consideration. Curves shall have twenty (20) days after receipt of the notice of offer and the furnishing of all reasonably requested information within which to notify Franchisee of Curves' intent to exercise its right hereunder. Should Curves not exercise this option and the terms of the unaccepted offer be altered, Curves must be notified of the altered terms and shall have twenty (20) additional days from the date of notification to purchase on the altered terms. Silence on the part of Curves shall constitute rejection. If the proposed sale includes assets of Franchisee not related to the operation of Franchisee's Facility, Curves may, at its option, elect to purchase only the assets related to the operation of franchised Curves' facilities and an equitable purchase price shall be allocated to each asset included in the proposed sale. An offer from a third party includes any transfer, conveyance, assignment, consolidation, merger or any other transaction in which legal or beneficial ownership of Franchisee's Facility granted by this Agreement is vested in someone or some entity other than Franchisee.
- B.** The election of Curves not to exercise its right of first refusal as to any offer shall not affect its right of first refusal as to any subsequent offer or the right to refuse a pending sale by Franchisee.
- C.** Any sale, attempted sale, assignment or other transfer of the interests described in Sections 16 or 17 herein, without first giving Curves the right of first refusal described herein, shall be void and

of no force and effect. Any waiver by Curves of the right of first refusal described herein shall not relieve Franchisee from complying with Section 17 herein.

18. TERMINATION BY CURVES

A. **Default and Termination Without Right to Cure.** Franchisee shall be deemed to be in default of this Agreement, and Curves may, at its sole option and right, terminate the Agreement and all rights hereunder, without affording Franchisee an opportunity to cure the default, effective immediately upon delivery of notice by Curves to Franchisee's address listed herein or the last home address of which Franchisee has notified Curves in writing, if:

1. Franchisee becomes insolvent or makes a general assignment for the benefit of creditors; or proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee or a petition in bankruptcy is filed by Franchisee or such a petition if filed against and not opposed by Franchisee or Franchisee is adjudicated as bankrupt or insolvent or a bill in equity or other 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 a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction. Franchisee expressly and knowingly waives any rights that it may have under the provisions of the Bankruptcy Code and consents to the termination of this Agreement or any other relief which may be sought in a complaint filed by Curves to lift the provisions of the automatic stay of the Bankruptcy Code. Additionally, Franchisee agrees not to seek an injunctive order from any court in any jurisdiction relating to insolvency, reorganization or arrangement proceedings which would have the effect of staying or enjoining this provision; or
2. A final judgment related to Franchisee remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed); or the assets of Franchisee's Facility are liquidated; or execution is levied against Franchisee; or suit to foreclose any lien or mortgage against Franchisee's Facility or its equipment is instituted against Franchisee and not dismissed within thirty (30) days; or the real or personal property of Franchisee's Facility must be sold after levy thereupon by any sheriff, marshal or constable; or
3. Franchisee has made any material misrepresentations or misstatements, or omits any material facts to Curves on the application to be a franchisee, or with respect to the ownership of Franchisee's Facility; or
4. Franchisee abandons the franchise relationship and/or Franchisee's Facility without the prior consent of Curves at any time during the Term of this Agreement. The cessation of operation of Franchisee's Facility on the premises other than with the consent of Curves, or the failure of Franchisee to commence operating Franchisee's Facility within one hundred and eighty (180) days from the execution of this Agreement by Curves in accordance with Section 5 herein, whether the premises remain vacant or are converted to any use, shall be considered abandonment of the franchise relationship provided, however, that Franchisee's Facility shall not be deemed abandoned if the cessation is due to circumstances beyond

Franchisee's reasonable control (such as lack of electrical power not due to any action or inaction by Franchisee, weather conditions, earthquakes, strikes and the like) and Franchisee diligently undertakes to resume operations after the reason for such cessation has been abated; or

5. Franchisee ceases to occupy the premises. If the loss of possession is the result of governmental exercise of eminent domain, Franchisee may, with Curves' consent and subject to availability, relocate to other premises in the same market area for the balance of the Term of this Agreement; or
6. Engages in a similar business to that licensed and established under and pursuant to this Agreement without obtaining Curves' prior consent and paying Monthly Royalty Fees, or violates the covenant against competition, or markets any service or product under a name or mark which, in Curves' sole opinion, is confusingly similar to the Curves Marks; or
7. Franchisee is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Curves believes is reasonably likely to have an adverse effect upon Franchisee's Facility, the Curves Marks, the goodwill associated therewith, or Curves' interest therein; or
8. Franchisee discloses or divulges the contents of the Confidential Operations Manual or other confidential information provided to Franchisee by Curves, whether intentional or not, contrary to the terms of this Agreement, or Franchisee or any owner uses or duplicates the Curves System or engages in unfair competition in violation of Section 20 or discloses any trade secrets of Curves in violation of Section 20; or
9. Any sale, assignment, merger or transfer in violation of Sections 16 or 17 of this Agreement occurs; or
10. Franchisee knowingly maintains false books or records, or knowingly submits any false or fraudulent reports, statements or documents to Curves; or
11. Franchisee misuses or makes any unauthorized use of the Curves Marks or any other identifying characteristics of the Curves System, or otherwise materially impairs the goodwill associated therewith or Curves' rights therein; or
12. Franchisee fails to maintain insurance at all times in accordance with this Agreement; or
13. Franchisee is repeatedly in default for failing to comply with any part of this Agreement, whether or not cured after notice.
14. Franchisee contests Curves' ownership of the Curves Marks or any other trademarks owned or used by Curves.

B. Default With Opportunity to Cure. Except as set forth in Section 19A herein, Franchisee will have ten (10) days after receipt of a written Notice of Default from Curves within which to remedy

any default under this Agreement and provide evidence thereof to Curves; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default and curing it to Curves' satisfaction within the ten (10) day period (or within such longer period as Curves may, at its sole option, grant), and by promptly providing proof thereof to Curves. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee, effective immediately upon the expiration of the ten (10) day period or such longer period as applicable law may require. Franchisee shall be in default under this Agreement for failure to comply with any of the requirements imposed by this Agreement or the Confidential Operations Manual as it may from time to time be reasonably supplemented or fails to carry out the terms of this Agreement in good faith.

- C. **No Waiver.** The failure of Curves to terminate this Agreement upon the occurrence of one or more events of default will not constitute a waiver or otherwise affect the right of Curves to terminate this Agreement because of a continuing or subsequent failure to cure one or more of the aforesaid events of default or any other default.

- D. **Notice of Default As Required by Law.** Notwithstanding anything to the contrary contained in this Section, if applicable law or regulation limits Curves' rights to terminate or requires longer notice periods than those set forth above, this Agreement shall be deemed amended to conform to the minimum notice periods or restrictions upon termination required by such laws and regulations. Curves shall not, however, be precluded from contesting the validity, enforceability or application of such laws or regulations in any action, arbitration, hearing or dispute relating to this Agreement or the termination thereof.

- E. **Cross-Default.** Any default by Franchisee under the terms and conditions of this Agreement or any other agreement between Curves and Franchisee, which permits Curves to terminate this Agreement or any other agreements, shall be deemed to be a default of each and every other franchise agreement and any other agreements. Furthermore, in the event of termination, for any cause, of this Agreement or any other agreement between the parties hereto, Curves may, at its option, terminate any or all said agreements and all other franchise agreements.

19. EFFECT OF TERMINATION

- A. **Effect of Termination.** Upon termination, expiration or non-renewal of this Agreement for any reason, Franchisee shall do the following:
 - 1. Cease to use the Curves Marks or any confusingly similar name, device, mark, service mark, trademark, trade name, slogan or symbol used in connection with Franchisee's Facility, including any reproduction, counterfeit copy, variation, emulation or colorable imitation thereof which is likely to cause confusion or mistake or deceive the public; and take any steps necessary to change the name of any corporation or entity which Franchisee may have formed, or under this Franchisee trades or does business, so that the name will not likely be confused with Curves Marks; and

2. Immediately return to Curves the Confidential Operations Manual, or any other operations manual loaned to it, together with all materials containing Curves' trade secrets or Curves Marks or otherwise marked by Curves as confidential; and
3. Cease to use Curves' System and methods of operation and comply with the post-term covenants contained in Section 20B herein; and
4. Grant to Curves the option to purchase all equipment used in the operation of Franchisee's Facility and other usable items bearing the Curves Marks at fair market value not to exceed \$1,000 and, regardless of Curves exercising that option, shall not use for any business purposes or sell or give to any third parties for any business purposes any equipment used in the operation of Franchisee's Facility or other usable items bearing the Curves Marks; and
5. Promptly assign to Curves, upon Curves' demand, any interest and right that Franchisee may have in the premises where Franchisee's Facility granted herein is located and operates, unless Franchisee owns said premises; where landlord's consent is required to any such assignment Franchisee shall use its best efforts to procure such consent; or, if Curves does not so demand such assignment, immediately make such removals or changes in signs and the building as Curves shall request, so as to effectively distinguish the building and premises from its former appearance and from any other Curves facility. In the event Franchisee fails to make the changes, Franchisee consents to Curves entering the building and premises to make non-structural changes at Franchisee's expense; and
6. Promptly assign to Curves any interest that Franchisee may have in the telephone number and telephone listing used by Franchisee in connection with the operation of Franchisee's Facility. Franchisee shall promptly transfer all telephone calls by call-forwarding to Curves, or to such other party or entity as Curves shall direct and execute any such instruments and take such actions as Curves may deem necessary to affect such transfer and call-forwarding of telephone calls. Franchisee acknowledges that this Agreement shall be conclusive evidence of Curves' rights to such telephone number and directory listings and its authority to direct this transfer; and
7. Promptly assign and deliver to Curves, at Franchisee's expense, any and all check drafts for any and all memberships, any and all membership lists, past and present, and any and all leads for potential members for Franchisee's Facility. Franchisee shall not duplicate any membership lists or leads, past or present, used in any manner with Franchisee's Facility, and after deliverance of said materials to Curves, Franchisee shall destroy any and all copies of membership lists, leads and check drafts used in any manner with Franchisee's Facility; and
8. Promptly pay all sums and debts owing to all third-party creditors of Franchisee's Facility, as well as to Curves and its affiliates, whether such sums and debts owing to Curves and its affiliates are evidenced by promissory note, invoice, bill or other writing and notwithstanding the fact that such sums and debts owing to Curves and its affiliates may not at that time be fully due and payable, such debts being accelerated automatically

without further notice to Franchisee. If termination is for any default of Franchisee, sums owing to Curves shall include all damages, costs and expenses (including reasonable attorney's fees) incurred by Curves as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in favor of Curves against any and all of the vehicles, personal property, furnishings, equipment, signs, inventory, fixtures or other assets owned by Franchisee and used in Franchisee's Facility at the time of default, and Franchisee authorizes Curves to file any documents Curves deems necessary to perfect this lien; and

9. Upon termination, expiration or non-renewal of this Agreement for any reason, Franchisee shall satisfactorily resolve all customer disputes or reimburse Curves or any franchisee who does so for the reasonable cost of such services.

B. **Execution of Documents.** Curves may, if Franchisee fails or refuses to do so, execute in Franchisee's name and on its behalf, any and all documents necessary to effect the obligations of Franchisee under Section 19A, and Franchisee hereby irrevocably appoints Curves as Curves' attorney-in-fact to do so.

C. **Curves' Rights Not Prejudiced.** The expiration, termination or non-renewal of this Agreement for any reason shall be without prejudice to Curves' rights against Franchisee and such expiration, termination or non-renewal shall not relieve Franchisee of any of its obligations to Curves existing at the time of expiration, termination or non-renewal, including claims for damages arising directly or indirectly out of any breach or default, nor will it terminate those obligations of Franchisee which by their nature survive the expiration, termination or non-renewals of this Agreement.

20. RESTRICTIVE COVENANTS

A. **Manuals and Confidential Information.** During the Term of this Agreement or any time thereafter, Franchisee shall not (except as otherwise contemplated by this Agreement) communicate, divulge or use for itself or for the benefit of any other person, persons, partnership, association, corporation or entity any information, knowledge or know-how concerning the Confidential Operations Manual and Curves System. Franchisee acknowledges that the Confidential Operations Manual and Curves System are confidential, proprietary and trade secrets and will not, at any time, contest the confidentiality of the information in them or Curves' sole ownership of them.

B. **Covenant Not to Compete.** Franchisee acknowledges that any type of ownership as prohibited below of a competing business of a Curves Franchise in any way would be inherently unfair to Curves and all of Curves' franchises. Therefore Franchisee shall not own an interest in, conduct or operate, directly or indirectly, or be employed by or associated in any way with any aerobics, fitness and/or weight loss business, men's, women's or co-ed, including the sale of other weight loss products, other than that of Curves during the Term of this Agreement. Franchisee acknowledges that the Curves Marks and the business reputation and goodwill associated thereto, the methods and techniques employed by Curves, the training and instruction to be provided under and pursuant to this Agreement, the knowledge of the services and methods of Curves, and the opportunities, associations and experience established and acquired by Franchisee under and pursuant to this Agreement and as a member of the license system, are of considerable value. In

consideration thereof, Franchisee therefore covenants and agrees that, except for any interest which Franchisee has in a competitive business on the effective date of this Agreement, by its signature hereinbelow, specifically consents that Franchisee shall not, directly or indirectly, as a proprietor, partner, investor, shareholder, member, director, officer, employer, employee, principal, agent, adviser, franchisor, franchisee, consultant or in any other individual or representative capacity or otherwise for a period of one (1) year immediately following the later of the expiration, termination or non-renewal of this Agreement for any reason or the date on which Franchisee actually ceases operation:

1. Engage in or participate in or derive any benefit from any similar business to that licensed and established under and pursuant to this Agreement within ten (10) miles of the location of Franchisee's Facility and within ten (10) miles of the location of any other Curves Franchise; or
2. Employ or seek to employ any person who is employed by Curves or any other Franchisee, or otherwise induce or seek to induce such person to leave his or her employment; or
3. Interfere or attempt to interfere with any of the business relationships and/or advantages of Curves or any other Franchisee; or
4. Divert or attempt to divert any customer or business from Curves or any other Franchisee or solicit or endeavor to obtain the business of any person who shall have been a customer of Franchisee's Facility.

C. **Curves Manuals, Curves System and Curves Marks.** Upon the expiration, termination or non-renewal of this Agreement for any reason or the date on which Franchisee actually ceases operation, Franchisee shall never use any confidential information from Curves' manuals or Curves System in any manner in any similar business to that licensed and established under and pursuant to this Agreement, and Franchisee shall never use the Curves Marks, or any form of the Curves Marks, any other mark owned by Curves at the time of expiration, termination or non-renewal of this Agreement, or any confidential information from Curves' manuals or Curves System in any manner to engage in or participate in or derive any benefit from any similar business to that licensed and established under and pursuant to this Agreement.

D. **Injunctive Relief.** Franchisee acknowledges and agrees that the damage caused to Curves by Franchisee's violation of any portion of this Section 20 shall constitute irreparable injury for which there is no adequate remedy at law and, accordingly, acknowledges and agrees that Curves may seek enforcement of this Section 20 by temporary restraining order, temporary and/or permanent injunction, and such other legal or equitable relief as may be appropriate.

E. **Ancillary to Agreement.** Franchisee acknowledges that the restrictive covenants set forth in this Section 20 are ancillary to this Agreement and are reasonable and necessary for the protection of Curves' legitimate interests in the goodwill of the business operated by Curves, but, if it is determined that the covenants set forth in this Section 20 are not enforceable for any reason (including but not limited to being unenforceable for the full stated period of time or the stated geographic region), such covenants shall not be stricken, but shall be reformed to the extent

required to be enforceable under and comply with applicable law and as reformed shall be fully enforceable.

21. RESOLUTION OF DISPUTES

- A. **Non-Binding Mediation.** Franchisee agrees to attempt to resolve any dispute between Franchisee and Curves that arises out of this Agreement, save and except any dispute relating to Section 20 herein. The mediation procedure to be followed by the parties shall be set forth in Curves then current procedures for resolving disputes (the "Procedures") which shall be made available to Franchisee upon written request to Curves. All non-binding mediation shall occur at the Curves' offices in Waco, Texas. All parties shall pay their respective costs and expenses of mediation.
- B. **Institution of Legal Proceedings.** Franchisee shall not institute any legal or administrative proceeding for claims arising out of a dispute pursuant to this Agreement without first attempting to resolve the dispute through negotiation and non-binding mediation. If the dispute has not been resolved through negotiation or mediation pursuant to the Procedures, either party may initiate litigation in Waco, Texas.

22. MISCELLANEOUS: GENERAL CONDITIONS

- A. **Fiduciary Duty.** Curves and Franchisee specifically agree and acknowledge that Curves shall not be deemed a fiduciary for or with respect to Franchisee or the operation of Franchisee's Facility.
- B. **Construction and Interpretation.** The Introduction and Recitals shall be considered a part of this Agreement. Section captions are used only for convenience and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular Sections to which they refer. Words of any gender used in this Agreement shall include any other gender, and words in the singular shall include the plural, where the context requires. If any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. The Section headings used herein are descriptive only and shall have no legal force or effect whatsoever. The term "affiliate" as used in this Agreement is applicable to any company directly or indirectly owned or controlled by Curves. The word "corporation(s)" as used in this Agreement shall include limited liability companies and such other similar organizations as are duly formed and existing pursuant to state law. The word "partnership(s)" as used in this Agreement shall include limited liability partnerships and such other similar organizations as are duly formed and existing pursuant to state law. All words in this Agreement shall be deemed to include all genders and the singular as well as the plural, as the context of this Agreement requires.
- C. **Governing Law, Forum Selection and Compliance.**
1. This Agreement shall become valid when executed and accepted by Curves. The parties agree that it shall be deemed made and entered into in the State of Texas and shall be governed and construed under and in accordance with the laws of the State of Texas.

2. Franchisee and Curves acknowledge and agree that the U.S. District Court for the Western District of Texas or the judicial district courts (or successor) in and for McLennan County, Texas, shall be the venue and exclusive proper forum in which to adjudicate any case or controversy arising either, directly or indirectly, under or in connection with this Agreement or the relationship between Curves and Franchisee except to the extent otherwise provided in this Agreement and the parties further agree that, in the event of litigation arising out of or in connection with this Agreement or the relationship between Curves and Franchisee in these courts, they will not contest or challenge the jurisdiction or venue of these courts.
3. Anything in this Agreement to the contrary notwithstanding, Franchisee shall conduct its business in a lawful manner and faithfully comply with applicable laws or regulations of the United States and the state, city or other political subdivision in which Franchisee's Facility is located.
4. Performance of this Agreement shall be in McLennan County, Texas. Both parties agree that this Agreement is executed in and is performable in McLennan County, Texas.

D. Reasonable Business Judgment. Reasonable Business Judgment (as defined herein) shall be applied in all circumstances involving or requiring Curves' approval or consent, unless provided otherwise in the Agreement. Reasonable Business Judgment means that Curves' determinations or choices shall prevail, even if other alternatives are also reasonable or arguably preferable, if Curves intends to benefit or is acting in a way that could benefit the Curves System by, for example, enhancing the value of the Marks, increasing customer satisfaction, minimizing possible customer confusion as to the Marks or location, or increasing the financial strength of Curves. Except where otherwise indicated in this Agreement, Curves agrees to use Reasonable Business Judgment when discharging its obligations and exercising its rights and discretion. Franchisee has agreed to this concept of Reasonable Business Judgment in recognition of the fact that Curves should have at least as much discretion in administering the Curves System as a corporate board of directors has in directing a corporation, and because the long-term interests of the Curves System, all franchisees and owners of Curves' facilities in the Curves System, and Curves and its shareholders, taken together, require that Curves have the latitude to exercise Reasonable Business Judgment. Curves shall not be required to consider Franchisee's particular economic or other circumstances or to slight its own economic or other business interests when exercising its Reasonable Business Judgment. Franchisee acknowledges that Curves has a legitimate interest in seeking to maximize the return to its shareholders and the fact that Curves benefits economically from an action will not be relevant to showing that Curves did not exercise Reasonable Business Judgment. Neither Franchisee nor any third party (including but not limited to any third party acting as a trier of fact) shall substitute its judgment for Curves' Reasonable Business Judgment. Franchisee shall have the sole burden of proving that Curves failed to exercise this Reasonable Business Judgment in any respect.

E. Severability. Each provision contained in this Agreement shall for all purposes be construed to be separate and independent. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of this Agreement; and the remainder of the Agreement, and the application of such provision to persons

or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, it being hereby agreed that such provisions are severable and that this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. Each provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

F. Notices.

1. All notices to Curves shall be in writing and shall be delivered or sent by registered or certified mail, postage fully prepaid, addressed to it at its offices at 100 Ritchie Road, Waco, Texas 76712, Attention: General Counsel, or at such other address as Curves shall from time to time designate in writing.
2. All notices to Franchisee shall be in writing and shall be hand delivered, which includes but is not limited to delivery by any courier service, or sent by registered or certified mail or telegraph or facsimile, addressed to Franchisee at Franchisee's Facility or Franchisee's address as provided in this Agreement. Franchisee is solely responsible for notifying Curves by certified mail addressed to the Legal Department at 100 Ritchie Road, Waco, Texas 76712, Attention: General Counsel of any change of address where, upon such notification, Curves shall deliver any notices as required or permitted under this Agreement.
3. Notices shall be deemed delivered on the earlier of actual receipt or the third (3rd) day after being deposited in the U.S. Mail or with any courier service as provided herein..

G. Performance. This Agreement shall be performed in McLennan County, Texas.

H. Waiver and Delay. The acceptance by Curves of any payment specified to be paid by Franchisee hereunder with knowledge of a breach of any covenant or agreement hereof shall not be, nor be construed to be, a waiver of any breach of any term, covenant or condition of this Agreement. The failure or delay to enforce any of the provisions of this Agreement shall not constitute a waiver of rights or a waiver of any subsequent enforcement of the provisions of this Agreement. The waiver or remedy of any default or breach hereunder shall not waive or affect the default remedied or any prior or subsequent default. However, either party may, by written notice, unilaterally waive or reduce any obligation or restriction of the other party. The waiver or reduction may be revoked at any time for any reason on ten (10) days' written notice. All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law, and said rights and remedies may be exercised and enforced concurrently and whenever and as often as the occasion therefore arises. If one (1) year has elapsed since an action that Franchisee has against Curves for any default or breach of this Agreement or the relationship between Franchisee and Curves first originated, then, if Curves has not received written notification of such action from Franchisee, Franchisee agrees that such action is waived and Franchisee is restricted from seeking recovery for such action.

I. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original; and it shall not be necessary in making proof of this

Agreement to produce or account for more than one such counterpart.

- J. Savings Clause.** If any term hereof may be construed to obligate Franchisee to pay interest in excess of the highest legal amount, it is agreed that such term is a mistake in calculation or wording and, notwithstanding same, it is agreed that neither Franchisee nor any other person or entity obligated for the payment of any sums hereunder shall ever be obligated to pay interest in excess of the highest lawful amount.
- K. Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection therewith shall be binding only if placed in writing and signed by all parties hereto.
- L. Legal Fees.** In the unlikely event that a dispute occurs or an action in law or equity arises between Curves and Franchisee concerning the operation, enforcement, construction or interpretation of this Agreement, Curves, if it prevails on most issues, shall be entitled to recover reasonable attorney's fees, court costs and expenses incurred in the action.
- M. Acknowledgments.** Franchisee acknowledges that Curves and its subsidiaries and affiliates have certain rights reserved to them to grant licenses and rights to others, which may or may not be similar to the license and rights conveyed hereunder; to market Curves-approved products; and to otherwise use Curves Marks and Curves System as set forth in this Agreement. Franchisee acknowledges that, prior to the execution of this Agreement, Franchisee has had the opportunity to contact existing franchisees of Curves. Franchisee acknowledges that Franchisee had the opportunity to independently investigate, analyze and construe both the business opportunity being offered hereunder and the terms and provisions of this Agreement itself, utilizing the services of such independent attorneys, accountants, or other advisers as Franchisee so elects. Franchisee acknowledges that no representation or statement has been made by Curves or any employee, agent or salesman thereof and relied upon by Franchisee regarding the future growth of Curves' franchise system, the anticipated income, earnings and growth of Franchisee, the actual sales or income of existing Curves businesses or the viability of the business opportunity conveyed hereunder. FRANCHISEE ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND ACKNOWLEDGES THAT IT HAS READ ALL OF THE FOREGOING AGREEMENT AND THAT IT HEREBY ACCEPTS AND AGREES TO EACH AND ALL OF THE PROVISIONS, COVENANTS AND CONDITIONS THEREOF.
- N. No Implied Covenant.** Curves and Franchisee have negotiated the terms of this Agreement and agree that neither party shall claim the existence of an implied covenant of good faith and fair dealing to contravene or limit any term, condition or covenant of this Agreement.
- O. Submission of Agreement.** Submission of this Agreement does not constitute an offer, and this Agreement shall become effective only upon the execution hereof by both Curves and Franchisee and delivery of an executed copy to Franchisee. THIS AGREEMENT SHALL NOT BE BINDING ON CURVES UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY CURVES AND FRANCHISEE HAS RECEIVED AN EXECUTED COPY OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL AND UNLESS FRANCHISEE SHALL HAVE BEEN FURNISHED BY CURVES WITH ALL

DISCLOSURE DOCUMENTS, IN WRITTEN FORM, AS MAY BE REQUIRED UNDER OR PURSUANT TO APPLICABLE LAW, FOR REQUISITE TIME PERIODS.

- P. Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties and may not be altered, amended or added to unless such amendment or addition is in writing and signed by both an authorized officer of Curves and by Franchisee. This Agreement shall be deemed to cancel and supersede the terms of all prior written or oral agreements and understandings, if any, between Curves and Franchisee pertaining to such license.
- Q. Effective Date.** This Agreement is effective as of the date first above written.

IN WITNESS WHEREOF, the parties have duly executed this Agreement in multiple originals, each of which may stand alone as an original, and acknowledge that they signed this in their stated capacities, on the date set forth hereinabove.

CURVES INTERNATIONAL, INC.

By: _____
Roger Schmidt, Sr. Vice President

ATTEST:

FRANCHISEE:

(Signature)

PERSONAL GUARANTY

WHEREAS, the undersigned, (hereinafter referred to as "Guarantor"), constitute both all person(s) that have any ownership interests in Assignee and all director(s)/officer(s) of Assignee; and

WHEREAS, Guarantor promises and agrees to unconditionally and absolutely guarantee to Curves that Guarantor shall pay to Curves all monies owed under this Agreement, assume all liabilities as the Franchisee under this Agreement and fulfill and perform all obligations, covenants, warranties, non-competition covenants and all other terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration as cited herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

- (1) Guarantor hereby unconditionally and absolutely guarantees to Curves the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, any and all indebtedness, liabilities and obligations of this Agreement, together with interest and collection costs as are provided for in this Agreement; and
- (2) Guarantor hereby unconditionally and absolutely guarantees to Curves the performance of and compliance with all obligations, covenants, warranties, non-competition covenants and all other terms and conditions as set forth in this Agreement; and
- (3) Curves shall not be required to pursue any other remedies before invoking the benefits of Guarantor's guaranty herein; especially, without limitation, Curves shall not be required to commence, pursue or exhaust any remedy against Franchisee and/or any of Franchisee's partners, shareholders or members; and
- (4) In the event Franchisee ceases to exist through any means, whether by sale, dissolution, bankruptcy, etc., Guarantor covenants to immediately thereafter promptly honor, perform and timely pay any and all of the liabilities and obligations to Curves under this Agreement; and
- (5) In the event any payment by Franchisee to Curves is held to constitute a preference under the bankruptcy laws, or, if for any other reason Curves is required to refund such payment or pay the amount thereof to any other party, such payment by Franchisee to Curves shall not constitute a release of Guarantor from any liability hereunder, and Guarantor agrees to pay such amount to Curves on demand.
- (6) Guarantor agrees that Curves, at its sole discretion, and Franchisee may from time to time amend this Agreement and the exercise of, or failure to exercise, such right to amend the Agreement shall in no way impair or diminish the obligations of Guarantor hereunder.
- (7) This Guaranty shall inure to the benefit of any transferee, assignee, heir and successor in interest. Curves, as used herein, shall mean and include any successor to Curves or any such heir, transferee, assignee or subsequent owner.

- (8) Guarantor agrees that this Guaranty is performable in Waco, McLennan County, Texas, waives the right to be sued elsewhere, and agrees that this Guaranty is to be construed and enforced in accordance with the laws of the State of Texas.

Name, Individually

Name, Individually

THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing Security Agreement and he acknowledged to me that he executed this Guaranty for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____,
_____.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____