

EXHIBIT B
FRANCHISE AGREEMENT

Curves®

Franchise Agreement

*Curves International, Inc.
100 Ritchie Road
Woodway, Texas 76712*

*800-848-1096
254-399-9285
facsimile 254-399-9731*

CURVES INTERNATIONAL, INC.
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FRANCHISE AGREEMENT

Franchisee No. _____

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is made and entered into this _____ day of _____, 20____, by and between CURVES INTERNATIONAL, INC., a Texas corporation having its principal place of business at 100 Ritchie Road, Woodway, Texas 76712, hereinafter referred to as "Curves;" and, of _____, hereinafter referred to as "Franchisee."

INTRODUCTION AND RECITALS

WHEREAS, Curves has invested considerable time, effort and money to develop a system and method of operating a thirty minute fitness and weight loss center (the "Curves Franchise") and has developed public goodwill and certain trade names, service marks and logos including, but not limited to, the marks *Curves®* and *Curves for Women®* for its services throughout the United States of America and internationally; and

WHEREAS, Curves is the exclusive licensee of certain trademarks and service marks, including, but not limited to, *Curves®* and *Curves For Women®*, which are registered with the United States Patent and Trademark Office, and is the owner or exclusive licensee of other marks authorized for use in Curves Franchises (the "Curves Marks"); and

WHEREAS, Curves is engaged in the business of granting franchises to operate Curves Franchises using certain standards, product specifications and operating procedures (the "Curves System") and the Curves Marks; and

WHEREAS, Franchisee recognizes the benefits to be derived from being identified with the Curves System and licensed by Curves to use its name and the Curves Marks; and

WHEREAS, Franchisee recognizes the value of uniformity in a system of fitness and weight loss centers, and Franchisee further recognizes the value of Curves' knowledge and experience gained through the operation of Curves Franchises and the value of the Curves Marks; and

WHEREAS, Franchisee has studied and fully understands the Curves System, Curves Marks, and logos of Curves, the importance of maintaining Curves' high standards and the terms and conditions herein, has reviewed Curves' disclosure statement and a complete copy of this Agreement, and has had the opportunity to visit and examine more than one (1) Curves Franchise to familiarize itself with the Curves System; and

WHEREAS, Franchisee desires to acquire and operate a Curves Franchise within the area set out in Exhibit A herein (the "Franchisee's Territory") for the entire Term of this Agreement (as defined below), Franchisee acknowledges receipt of a copy of the Franchise Disclosure Document of Curves, and Franchisee has had a full and adequate opportunity to be thoroughly advised of the terms and conditions of this Agreement by financial and legal counsel of Franchisee's own choosing prior to its execution, and is entering into this Agreement after having made an independent investigation of Curves' operations and not upon any representation as to

the profits and/or sales volume which Franchisee might be expected to realize, nor upon any representations or promises by Curves which are not contained in this Agreement; and

WHEREAS, FRANCHISEE ACKNOWLEDGES THAT (1) THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED HEREIN INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON THE ABILITY OF THE FRANCHISEE AS AN INDEPENDENT BUSINESS PERSON AND HIS/HER ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS, AND (2) NO ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN GIVEN AS TO THE POTENTIAL SUCCESS OF SUCH BUSINESS VENTURE OR THE GROSS REVENUES, VOLUME OR EARNINGS LIKELY TO BE ACHIEVED, AND (3) NO STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, EXCEPT AS SET FORTH HEREIN, IS BINDING ON CURVES INTERNATIONAL, INC. IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.

BEFORE SIGNING THIS AGREEMENT, THE FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions contained herein and other good and valuable consideration, the parties hereto agree as follows:

1. GRANT OF FRANCHISE

- A.** Curves hereby grants to Franchisee, and Franchisee accepts, one (1) Curves Franchise to open and operate for the following stated terms, and on the conditions hereinafter set forth, and to use only the Curves Marks, trade names, logos and emblems associated with and developed by Curves ("Franchisee's Facility"). The Curves Franchise is granted for the Franchised Territory only.
- B.** Franchisee's Facility must be conducted by Franchisee at one (1) location only, located within the limits or boundaries of the Franchised Territory. For the purpose of this Agreement, Franchisee's Facility is deemed to include any and all activities in the nature of exercise, diet, diet supplements and weight loss. Franchisee is restricted from operating any other type of business other than a Curves Franchise in the same building where the Franchisee's Facility is located.
- C.** In order to adequately respond to changing market conditions, subject to the restrictions described in this Agreement, Curves reserves the right to, and may, use other channels of distribution, or license the use of alternative proprietary marks or methods in connection with the operation of businesses which may be similar to or different from the Curves Franchise at any location on any terms and conditions Curves deems advisable without granting Franchisee any right thereto.

2. TERM OF AGREEMENT

- A.** The term of this Agreement shall be for a period of five (5) years from the date of this Agreement (the "Term of this Agreement"). Upon the expiration of the Term of this Agreement, Curves shall have the sole right to renew this Agreement for an additional

period of five (5) years ("Renewal"); however, Franchisee shall be required to execute a new franchise agreement in the form then being used by Curves. Curves shall notify Franchisee at least ninety (90) days, and no more than one hundred eighty (180), prior to the expiration of this Agreement as to Curves' exercising of its sole right to grant Franchisee a Renewal. Franchisee is required to provide written notice to Curves within thirty (30) days of receiving such notice from Curves in the event Franchisee does not accept such Renewal. Failure to provide Curves such written notice of not accepting such Renewal shall result in Franchisee accepting such Renewal and executing a new franchise agreement in the form then being used by Curves and complying with the conditions set out below. In the event Curves does not approve an extension to the Term of this Agreement, Curves shall provide Franchisee written notice of the denial of extension to the Term of this Agreement at least ninety (90) days, and no more than one hundred and eighty (180) days, prior to the expiration of the Term of this Agreement. Upon extension, Franchisee expressly agrees to the following:

1. Franchisee must add or replace equipment, fixtures and signs and modify Franchisee's Facility and location to bring it into compliance with specifications and standards then applicable for new Curves Franchises, including any applicable re-imaging; and
2. Franchisee and its owners must execute a general release of any and all claims that Franchisee and its owners have or may have at that time against Curves, its officers, directors, agents, and employees in the form prescribed by Curves; and
3. Franchisee and its owners must execute a new franchise agreement in the form then being used by Curves, which may differ from this Agreement as to fees, services, terms, provisions and obligations.

- B. There are no conditions contained in this Agreement under which Franchisee may terminate this Agreement prior to the expiration of the Term of this Agreement except by mutual agreement with Curves and execution of a mutual release, or by sale of the Curves Franchise to another franchisee in good standing or to a qualified third party in accordance with this Agreement.

3. FEES AND PAYMENTS

- A. **Method of Payment.** All payments made by Franchisee to Curves under this Agreement must be made by electronic funds transfer or cashier's check as set out herein or in any other form that Curves, in its sole right, accepts. Curves has the sole right to determine which method of payment will be acceptable in regards to all payments under this Agreement. Personal and/or company checks are not acceptable. All electronic funds transfers for payments owed to Curves by Franchisee may be initiated by Curves. Franchisee, upon signing this Agreement, shall provide Curves with a bank account from which Franchisee and Curves are legally authorized to withdraw funds ("Franchisee's Bank Account"). Such legal authorization to Franchisee's Bank Account must be provided to Curves in writing by Franchisee; however, such authorization to Curves is deemed given and effective by Franchisee's signature on this Agreement and Curves can act on such authorization to initiate an electronic funds transfer from Franchisee's Bank Account for any and all payments due under this Agreement. Franchisee further agrees

that it will not terminate such authorization as long as this Agreement is in effect. Franchisee agrees not to close Franchisee's Bank Account without prior notice to Curves and the establishment of a substitute bank account authorizing electronic funds transfers initiated by Curves. Failure of the Franchisee to provide Franchisee's Bank Account or remit payments in accordance with this Agreement is a material intentional default of this Agreement.

- B. Initial Franchise Fee.** In consideration of the Curves Franchise granted in this Agreement by Curves to Franchisee, Franchisee agrees to pay to Curves the sum of Twenty-Four Thousand Nine Hundred Dollars (\$24,900.00) upon execution of this Agreement. The Initial Franchise Fee includes the cost for the equipment listed on Exhibit B of this Agreement ("Curves Equipment"). The Initial Franchise Fee must be paid in the form of a cashier's check, or any other form as determined solely by Curves, payable to Curves in Waco, Texas.

The Initial Franchise Fee is allocated as follows:

Franchise Rights	\$10,185
(Includes all intellectual property rights and territory rights)	
Training and Pre-Opening Services	\$3,500
Document Preparation and Processing.....	\$5,000
Curves Equipment	\$6,215

The Initial Franchise Fee does not include any amount for taxes. As required by Section 15 of this Agreement, Franchisee is responsible for all taxes owed for any part of the Initial Franchise Fee. In the event Curves is required by law to collect taxes from Franchisee for any part of the Initial Franchise Fee, Franchisee must remit payment to Curves for such taxes in addition to the Initial Franchise Fee upon execution of the Agreement. Although Franchisee remits payment to Curves for the Curves Equipment and any taxes for the Curves Equipment, the Curves Equipment is purchased directly by Franchisee from a Curves authorized equipment representative without Curves acquiring any ownership to the Curves Equipment.

Franchisee hereby acknowledges and agrees that the grant of this Curves Franchise and the agreements of Curves contained in this Agreement including without limitation pre-opening assistance and training constitute the sole and only consideration for the payment of the Initial Franchise Fee, and the Initial Franchise Fee is fully earned by Curves upon execution of this Agreement as defined in this Agreement. In that regard, upon the payment of the Initial Franchise Fee, it is deemed fully earned and non-refundable in consideration of the administrative and other expenses incurred by Curves granting this Curves Franchise and for Curves' lost or deferred opportunity to offer to sell or sell this franchise to others. In the event Franchisee does not open Franchisee's Facility to be operated under this Agreement within one hundred and eighty (180) days from the date of execution of this Agreement by Curves in accordance with Section 5A of this Agreement by Curves, Curves will have the sole right to terminate this Agreement without refunding any part of the Initial Franchise Fee.

- C. Delivery Fee.** In addition, Franchisee agrees to pay to Curves the costs of delivery of the Curves Equipment, including shipping, handling and crating costs, as determined solely

by Curves. The Delivery Fee must be paid upon execution of this Agreement in the form of a cashier's check, or any other form as determined solely by Curves, payable to Curves in Waco, Texas.

- D. Training Fee.** In the event the Curves Franchise granted to Franchisee herein was a result of a transfer of any interests of the Curves Franchise by another owner to Franchisee, whether by purchase or by gift, the sum of One Thousand Dollars (\$1,000.00) will be transferred electronically from Franchisee's Bank Account as a Training Fee prior to the transfer of any such interests.
- E. Applicable Law.** Franchisee understands that it may be required, under applicable federal, state, or local law, to secure permission from the appropriate government authority to operate a thirty minute fitness and weight loss center. It is Franchisee's responsibility to familiarize itself with all applicable laws and regulations of their state or locality, and Curves has made no representations as to the nature of such laws or Franchisee's ability to qualify under such laws. Franchisee is responsible for any local or state sales tax, or any other tax applicable to the purchase of the franchise and/or the fitness equipment included in the Initial Franchise Fee and any bond requirements.

4. FRANCHISE FACILITY LOCATION

- A. Location of Franchise.** Franchisee is solely responsible for site selection and securing a lease for the premises of Franchisee's Facility. Franchisee must have Franchisee's Facility completed and furnished in accordance with Curves' specifications prior to the opening of Franchisee's Facility to the general public.
- B. Pre-Approval.** Prior to execution of any lease by Franchisee for the location site of Franchisee's Facility and prior to the approval by Curves of the Scheduled Opening Date (as defined below), Franchisee must receive written approval from Curves for said location site. Curves has the sole right and discretion to approve or not approve said location site.
- C. No Guarantee.** Curves, by reason of the granting of a license or approval of any location site by Curves as set out herein to Franchisee, does not warrant, represent, guarantee or assure Franchisee that the Curves Franchise herein granted will be successful or profitable, nor that the location site selected by the Franchisee will be a viable one for the operation of a Curves Franchise, nor that the Curves Franchise granted herein will meet Franchisee's expectations. Franchisee hereby waives and releases any right or claim in connection therewith against Curves or any of its affiliates, including, but not limited to, any claim relating to the selection or location of Franchisee's Facility, as well as the location and profitability of Franchisee's Facility not meeting Franchisee's expectations. Franchisee understands and acknowledges that the suitability of a location and the success of any franchise operation, including the one licensed pursuant to this Agreement, depends on many factors outside the control of Curves or Franchisee (including, without limitation, such factors as interest rates, unemployment rates, demographic trends, social fads and the general economic climate), but depends primarily upon the Franchisee's efforts and abilities in the operation of the franchise thereon.
- D. Re-Location.** Franchisee agrees not to move or relocate Franchisee's Facility without the

prior written approval by Curves and the payment by Franchisee to Curves of a Re-Location Fee in the amount of Five Hundred Dollars (\$500.00) in accordance with Section 3A herein. Such Re-Location Fee is not refundable regardless of whether Franchisee actually relocates Franchisee's Facility. Curves has the sole right and discretion to approve or not approve said new location site. In the event Franchisee desires to relocate Franchisee's Facility, Franchisee is required to submit to Curves a written request stating the new proposed location and a copy of the proposed lease for the proposed location at least sixty (60) days prior to the date of intended relocation. Failure by Curves to respond to such request is not deemed as an approval of the new location site. The location of Franchisee's Facility must always remain within the boundaries of the Franchised Territory.

5. OPENING

- A. **Opening.** Franchisee is required to open Franchisee's Facility within one hundred eighty (180) days from execution of this Agreement by Curves. Upon written request by Franchisee, Curves may, but is not obligated to, grant Franchisee's written request for an extension of such one hundred eighty (180) days. Any approval by Curves for such an extension must be in writing to be effective. If Curves, in its sole right, grants such an extension, Franchisee must begin paying to Curves the Minimum Monthly Royalty Fee and the Minimum Monthly Advertising Fee as defined in Section 10 below beginning the first month after the expiration of one hundred eighty (180) days from execution of this Agreement by Curves and continue such payments until Franchisee opens the Franchise for which Franchisee will pay its Monthly Royalty Fee and Monthly Advertising Fee in accordance with this Agreement. Nothing in this provision restricts Curves' right to terminate this Agreement in accordance with Section 18 below.
- B. **Opening Date.** Franchisee must request in writing from Curves for approval of an opening date for Franchisee's Facility. Curves has the sole discretion in granting such approval of an opening date for Franchisee's Facility ("Scheduled Opening Date"). In exercising such discretion, Curves may consider the following factors: (i) Franchisee's strict compliance with all provisions of this Agreement and any other agreement between Franchisee and Curves; (ii) the availability of independent contractors used by Curves to assist Franchisee; and, (iii) the availability of delivery dates for the Curves Equipment. Curves reserves the sole right to cancel or delay Franchisee's Scheduled Opening Date. If Franchisee's Scheduled Opening Date is delayed due to no fault of Franchisee and such delay would result in Franchisee's violation of Section 5A herein, then Curves will grant an extension of the time period set out in Section 5A.
- C. **Delay of Opening.** If Franchisee, prior to opening Franchisee's Facility, is in violation of any provision of this Agreement or any other agreement with Curves, Curves has the sole right to cancel Franchisee's Scheduled Opening Date, stop delivery of the Curves Equipment, and reschedule each to a date solely determined by Curves. If Franchisee does not open Franchisee's Facility by the Scheduled Opening Date for any reason or if Franchisee, after already having a Scheduled Opening Date, has to receive approval from Curves for a different Scheduled Opening Date, then Franchisee will remit to Curves a fee for such change in the amount of One Thousand Dollars (\$1,000.00) in accordance with Section 3A herein. If such delay under this subsection results in Franchisee not opening within one hundred and eighty (180) days from execution of this Agreement by

Curves in accordance with Section 5A herein, Curves will have the right to terminate this Agreement without refunding any part of the Initial Franchise Fee.

6. STANDARDS AND CONSISTENCY OF OPERATION

- A. **Manuals and the Curves System.** In order to protect the reputation and goodwill of Curves, to promote uniform standards of service and operation under Curves Marks and Curves System, to promote the goodwill of the Curves System, and for the mutual benefit of Curves and Franchisee, Franchisee is required to operate Franchisee's Facility in strict compliance with the standard procedures, policies, rules and regulations established by Curves and incorporated in Curves' operations manual(s) as same may be amended and revised from time to time, including all bulletins, supplements, ancillary manuals, videos, digital video or versatile discs, compact discs, video or audio cassettes and any electronic medium (collectively referred to herein as the "Confidential Operations Manual"). Curves will make available to Franchisee, for the exclusive use of the Franchisee and its employees in the operation of Franchisee's Facility, one (1) copy of the Confidential Operations Manual. Such copy may be provided to the Franchisee through the Curves Community Website (identified below). The Confidential Operations Manual will remain the property of Curves, and Franchisee acknowledges that such Manual is confidential, proprietary and trade secrets, and Franchisee does not acquire any right, title or interest in the Confidential Operations Manual. Franchisee can only divulge any part of the Confidential Operations Manual and Curves System to those employees of Franchisee who must have access to it in order to participate in the operation of Franchisee's Facility. Franchisee must also cause its spouse, all its employees and, if Franchisee is a corporation, partnership or other legal entity, its shareholders, officers, members, directors and partners, to sign a non-competition agreement and a confidentiality agreement in forms acceptable to Curves concerning the Confidential Operations Manual and Curves System and provide Curves with a copy of such agreements. To the extent not prohibited by any laws, rules or regulations of duly-constituted governmental bodies relating to Franchisee's Facility, Franchisee is required to conduct the operation of Franchisee's Facility in accordance with the Confidential Operations Manual and the Curves System. The Confidential Operations Manual may include, but not be limited to, any of the following: forms, information regarding services provided, cash control, general operations, labor schedules, personnel, Monthly Gross Sales (defined below) reports, employee forms and information; design specifications for the operation of Franchisee's Facility; display of signs and notices; authorized and required equipment and fixtures; usage of Curves Marks; insurance requirements; decor; standards for management and personnel, hours of operation; yellow page and local advertising formats; standards of maintenance and appearance of Franchisee's Facility.

Curves has the right to make revisions or modifications to the Confidential Operations Manual at any time as Curves deems necessary, and such revisions and modifications will become part of the Confidential Operations Manual. Such modifications are binding upon Franchisee immediately after Franchisee's actual or deemed receipt of such modifications; provided, however, that such modifications do not alter Franchisee's status and rights under this Agreement. Franchisee agrees that such modifications may become necessary and desirable from time to time and agrees to accept and comply with such modifications to the Confidential Operations Manual which Curves in the good faith exercise of its judgment believes to be desirable and reasonably necessary. The

Confidential Operations Manual, as modified from time to time as hereinabove provided, is an integral part of this Agreement.

Franchisee acknowledges and agrees that prompt adoption of and adherence to Curves' comprehensive facility format and operating system, including design, decor, equipment system, color scheme and style of building and signage, standards, specifications and procedures of operation, quality of products and services offered and the provisions of the Confidential Operations Manual, as amended from time to time, are reasonable, necessary and essential to the image and success of all Curves Franchises. The Confidential Operations Manual contains the official mandatory franchise operating standards, specifications and procedures prescribed from time to time by Curves for the operation of a Curves Franchise. Access to the Confidential Operations Manual and any and all subsequent changes or additions thereto made by Curves shall be made available by Franchisee at Franchisee's Facility at all times. Franchisee shall not make, cause or allow to be made any copies or reproductions of all or any portion of the Confidential Operations Manual without Curves' express prior written consent. In the event of any conflict between the Confidential Operations Manual kept at Franchisee's Facility and the master copy maintained by Curves in Waco, Texas (or such other place as may be designated by Curves), the master copy controls. Upon the expiration or termination of this Agreement for any reason whatsoever, Franchisee will immediately return any copy of the Confidential Operations Manual to Curves.

Franchisee also acknowledges that Curves has developed, and may continue to develop or revise in the future, the Curves System pertaining to Franchisee's Facility, and further acknowledges that this Curves System, together with information pertaining to customers of the Curves System, are trade secrets of Curves which have been developed through the research of and at the expense of Curves.

- B. Compliance.** Franchisee agrees that the uniformity and consistency of operation of all Curves franchises in compliance with the Confidential Operations Manual and the Curves System is mutually beneficial for Curves and Franchisee. Franchisee also agrees that full and strict compliance by Franchisee with all parts of the Confidential Operations Manual and the Curves System and any changes thereto is essential, material and vital to the relationship between Curves and Franchisee and this Agreement; is necessary to protect the reputation and goodwill of Curves and to promote the reputation, goodwill, value and integrity of the Curves Marks and the Curves System; and, is essential, material and vital to the operation of Franchisee's Facility. Therefore, Franchisee promises and agrees to always be in full and strict compliance with all parts of the Confidential Operations Manual and the Curves System and any changes thereto and failure to so fully and strictly comply is a material default of this Agreement subject to the remedies outlined in this Agreement. In addition, in the event Franchisee does not at any time during the Term of this Agreement fully and strictly comply with any part of the Confidential Operations Manual and the Curves System and any changes thereto, Franchisee will pay to Curves the following fees and agrees that such fees are reasonable:

- 1. Monitoring Fee.** To monitor Franchisee's Facility in the event Franchisee does not fully and strictly comply with any part of the Confidential Operations Manual and the Curves System and any changes thereto, Franchisee will remit to Curves a continuing monthly fee in the amount of up to Two Hundred Dollars (\$200.00)

until Franchisee is fully and strictly compliant with all parts of the Confidential Operations Manual and the Curves System and any changes thereto ("Monitoring Fee"). The calculation and assessment of the Monitoring Fee will be in accordance with the standards and procedures set out in the Confidential Operations Manual. Franchisee agrees that the payment of the Monitoring Fee will be automatically withdrawn by Curves in accordance with Section 3A herein.

2. **Brand Protection Fee.** Franchisee acknowledges and agrees that failure to fully and strictly comply with all parts of the Confidential Operations Manual and the Curves System and any changes thereto results in financial damages to the Curves Marks and the Curves System and thus to Curves. Therefore, in the event Franchisee does not fully and strictly comply with any part of the Confidential Operations Manual and the Curves System and any changes thereto and due to the difficulty of ascertaining the amount of damages caused by Franchisee as a result of such action, Franchisee agrees to pay to Curves for such damages, and not as a penalty, based on a reasonable estimate of the probable damages that Curves would suffer, a continuing monthly fee in the amount of up to Two Hundred Dollars (\$200.00) for each act of noncompliance until Franchisee is fully and strictly compliant with all parts of the Confidential Operations Manual and the Curves System and any changes thereto ("Brand Protection Fee") and agrees that such amount is reasonable. The calculation and assessment of the Brand Protection Fee will be in accordance with the standards and procedures set out in the Confidential Operations Manual. Franchisee agrees that the payment of the Brand Protection Fee will be automatically withdrawn by Curves in accordance with Section 3A herein.

- C. **Internet Site for Franchisee.** Curves provides an internet site accessible only to Curves franchisees ("Curves Community Website"). Any information provided on Curves Community Website is confidential, proprietary and owned by Curves. Franchisee will not provide to any third party access to Curves Community Website except to the manager of Franchisee that has signed a non-competition agreement and a confidentiality agreement in accordance with Section 6A above. In the event a third party receives or acquires access to Curves Community Website through Franchisee's password due to no fault of Curves, Franchisee will be responsible to take all legally available action to prevent said third party from accessing Curves Community Website, including notifying Curves in writing of any unauthorized access to Curves Community Website. Any use of the Curves Community Website is subject to the terms of use as posted on such website.

- D. **Franchisee's Facility.** Franchisee's Facility will be constructed, improved, operated and/or decorated in the manner authorized and approved by Curves, and the appearance of Franchisee's Facility will not thereafter be altered except as approved in writing by Curves. Franchisee will, at its expense, continuously throughout the Term of this Agreement maintain Franchisee's Facility in good condition and repair in accordance with Curves' current repair and maintenance standards. Franchisee must improve, alter and remodel Franchisee's Facility to bring it into conformance with the national and local plans, specifications and/or other standards for new or remodeled Curves Franchises as may hereafter be reasonably changed and defined from time to time by Curves.

- E. **Signs.** The Curves Marks will only be erected and displayed in the manner and at such locations as are approved and authorized by Curves, in writing. Franchisee agrees to maintain and display signs reflecting the current image of Curves Franchises and shall not place additional signs or posters at Franchisee's Facility without the prior written consent of Curves. Franchisee will discontinue the use of and destroy such signs as are declared obsolete by Curves within the reasonable time specified by Curves. Such signs are fundamental to the Curves System, and Franchisee hereby grants to Curves the right to enter Franchisee's Facility to remove and destroy unapproved or obsolete signs in the event that Franchisee has failed to do so within thirty (30) days after the written request of Curves. Curves reserves the right to proceed under Section 18B of this Agreement in the event Franchisee is in violation of this provision.
- F. **Equipment.** Curves will procure that Curves' authorized suppliers furnish to Franchisee, exclusively for use in Franchisee's Facility, the Curves Equipment. In order to provide products and services of the highest quality and in the most expeditious manner, and in order to protect the trade secrets of Curves, Franchisee will only use the Curves Equipment or only equipment prescribed, approved and required by Curves in the operation of Franchisee's Facility and no other equipment. Franchisee will purchase directly from a Curves authorized equipment representative, at Franchisee's own expense, any and all equipment that Curves, in Curves' sole right, requires at any time during the Term of this Agreement or any extension thereto for the operation of Franchisee's Facility. All equipment must be maintained in a condition that meets operational standards specified in the Confidential Operations Manual, and, as any equipment becomes obsolete, worn or inoperable, Franchisee will replace such equipment with the types and kinds of equipment as are then approved for use in Curves Franchises. Curves, or its authorized representatives, at all reasonable times, has the right to access Franchisee's Facility to inspect all equipment used in Franchisee's Facility.
- G. **Products and Services.** Franchisee agrees to offer and sell only the products and services which are approved by Curves in writing and no other products and services. Franchisee will offer all goods and services that Curves designates as required for all franchisees. Curves restricts services provided by Franchisee to thirty minute fitness and weight-loss services and to offering for sale weight-loss related products approved by Curves. Curves reserves the right to add additional authorized services and products that Franchisee is required to offer. Curves, or its authorized representatives, at all reasonable times, has the right to access Franchisee's Facility to inspect all products and services offered or made available by Franchisee's Facility.
- H. **Hours of Operation.** Franchisee agrees to open Franchisee's Facility for business, at a minimum, from 9:00 a.m. to 12:00 p.m. and 4:00 p.m. to 7:00 p.m., Monday through Friday, fifty-two (52) weeks a year, excluding federal holidays, unless otherwise authorized or directed by Curves in writing or unless prohibited by applicable law.
- I. **Vending Machines, Etc.** Public telephones, newspaper racks, juke boxes, cigarette, gum and candy machines, rides, lottery ticket terminals, video games or any other games, vending or amusement machines, or any unapproved products will not be installed at Franchisee's Facility without the prior written approval of Curves.
- J. **Manner of Operation.** Franchisee agrees to maintain the highest standards of quality

and service in its operation of Franchisee's Facility in accordance with the standards established by Curves in order to provide the highest quality service to customers of Franchisee and to preserve and enhance the value of the Curves Marks licensed hereunder. Unless Curves consents in writing, Franchisee is required to personally operate and/or exercise personal supervision over the operation of Franchisee's Facility. Franchisee is required to have an employee trained under the Curves Systems and Curves Operational Manual present in Franchisee's Facility at all times that Franchisee's Facility is open or available for business. Franchisee must insure that no person is allowed to use any part of Franchisee's Facility without Franchisee or an employee of Franchisee trained under the Curves Systems and Curves Operational Manual present in Franchisee's Facility. Franchisee must keep and maintain a safe, neat, clean and orderly facility at a location in keeping with the standards established in the Curves Operational Manual. To maintain uniformity within the Curves System and to maintain the standard practices that are necessary to promote the goodwill of the Curves System, Franchisee must use in the operation of Franchisee's Facility only the standard form of reports, stationery and printed material uniformly prescribed by Curves for use by members of its Curves System to the extent such materials are not prohibited by any laws, rules or regulations of duly-constituted governmental bodies relating to Franchisee's Facility.

- K. **Advertising and Promotional Materials.** Only those advertising and promotional materials or items which are authorized by Curves in writing prior to use shall be used, sold or distributed by Franchisee, and no display or use of the Curves Marks shall be made without the prior written approval of Curves. Franchisee must place in the yellow pages of the telephone directory serving its market area advertisement(s) as prescribed by Curves in the Confidential Operations Manual. Additional yellow page advertisements may be placed by Franchisee, but only in the most recent form prescribed by Curves.

From time to time during the Term of the Agreement, Curves has the right to establish and conduct promotional campaigns on a national or regional basis, which may by way of illustration and not limitation promote particular products or marketing themes. Franchisee agrees to participate in such promotional campaigns. Franchisee acknowledges and agrees that such participation may require Franchisee to purchase point of sale advertising material, posters, flyers, product displays and other promotional material. Nothing herein shall be construed to require Franchisee to charge any prices for any goods and services offered at Franchisee's Facility other than those determined by Franchisee in its sole and absolute discretion.

Franchisee will not engage in any deceptive, misleading, unlawful or unethical advertising which, in the sole discretion of Curves, might be injurious or detrimental to Curves, Curves Marks, the Curves System or the public. Franchisee must use the Curves Marks only in the forms prescribed by Curves. All advertising or promotional materials, signs or other items using the Curves Marks and/or connected in any way to Franchisee's Facility must be approved in writing by Curves.

- L. **Right of Entry and Inspection.** Curves, or a representative of Curves, has the unrestricted right to enter Franchisee's Facility to conduct such activities as it deems necessary to ascertain Franchisee's compliance with this Agreement. The inspections may be conducted without prior notice at any time when Franchisee or one of Franchisee's employees is at Franchisee's Facility. The inspections will be performed in a

manner which minimizes interference with the operation of Franchisee's Facility.

M. Interference With Employment Relations of Others. Franchisee agrees not to attempt, directly or indirectly, to entice or induce, or attempt to entice or induce any employee of Curves or of another franchisee of Curves to leave such employment.

N. Management of Franchisee's Facility.

1. Franchisee is required to always have an individual who has successfully completed the Initial Training Program (defined below) managing and/or supervising Franchisee's Facility throughout the Term of the Agreement. The manager and/or supervisor is required to supervise the day-to-day operations of Franchisee's Facility in accordance with the Confidential Operations Manual and the Initial Training Program.
2. If Franchisee is a corporation, partnership or other legal entity, Franchisee must designate a shareholder, partner or member as the "operating principal" who must be acceptable to Curves, and furnish all organizational and other documents regarding the formation of Franchisee's entity, together with any and all amendments and modifications thereto, to Curves, as well as such other documents as Curves may request from time to time.

O. Information Technology Requirements. Franchisee is required to have available in Franchisee's Facility the necessary computer hardware and software to carry on business with Curves over the internet and online, including an active email address which must, at all times, be provided to Curves. Franchisee is responsible for all communications sent to Franchisee by Curves via such e-mail address. Franchisee is responsible for all communications sent to any e-mail address assigned and provided to Franchisee by Curves. Curves has the right to require Franchisee to use a specific software program for the operation of Franchisee's Facility and to provide Curves access to such program.

P. Franchisee Website. Prior to Franchisee creating and having its own website on the Internet to advertise and promote Franchisee's Facility, featuring the Curves Marks or any part of the Curves Marks, Franchisee will comply with the following:

1. Franchisee must obtain Curves prior written approval for Franchisee's domain name and the form and content of Franchisee's website before it is used on the Internet so that Curves can maintain the common identity of the franchise network. Franchisee will not use any of the Curves Marks or similar words as part of Franchisee's domain name. The domain name will be registered in the name of Curves and licensed to Franchisee for the Term of this Agreement; and
2. Franchisee shall provide on its own website a hyperlink to the Curves website. Prior to placing any hyperlinks to third party websites, Franchisee must obtain written approval of such hyperlinks from Curves. Franchisee will not indulge in deep linking, framing, word stuffing, or other unlawful or unethical activities including any activities detailed in the Confidential Operations Manual; and
3. Franchisee must have taken appropriate legal advice regarding the content of

Franchisee's website and ensure that it complies with all relevant legislation and regulations; and

4. Franchisee agrees that e-commerce is a rapidly developing field and that the provisions of this clause may need to be modified in the future or that guidelines on use of the Internet may be introduced in the Confidential Operations Manual. In the event of such modification or the issue of such guidelines by Curves, Franchisee agrees that they will be legally binding on Franchisee; and
5. On termination of this Agreement for any reason Franchisee will immediately assign ownership of all domain names and websites operated pursuant to this Clause to Curves or to another person or entity as directed by Curves, and Franchisee will undertake all such actions as Curves requires to dissociate Franchisee with the website and the domain name; and
6. Franchisee will fully indemnify Curves against any and all claims made against Curves relating to Franchisee's website; and
7. Franchisee acknowledges Curves right to operate via the Internet without territorial restriction.

Q. Cash Control System. Franchisee, at its sole expense, is required to install and use any necessary computers, hardware and computer accessories to use in Franchisee's Facility a computer-based cash control, management, operation or "point of sale" system or any other system as approved and required by Curves.

R. Check Drafts or Electronic Funds Transfer. Franchisee must purchase check drafts or facilitate electronic transfers for membership dues for its members through Curves or an approved supplier as designated by Curves. Curves reserves the right to prohibit Franchisee from using any form of reports, stationery or printed matters purchased from other suppliers that deviate in any way, either in content or in the standards of quality that have been established by Curves in the past or may be established by Curves in the future.

Should the Franchisee desire to print its own "check drafts" or have an approved third party print check drafts or use electronic funds transfer for membership dues, Franchisee will have to obtain a surety bond in the amount of at least \$20,000, with Curves as beneficiary, to insure against theft, fraud and misuse of the draft printing or electronic funds transfer process. Further, such bond must be posted prior to Franchisee ever printing any drafts or having any approved third party print the Franchisee's drafts or using electronic funds transfer. Proof of bond must be delivered to Curves before Franchisee will be approved to print its own check drafts or use electronic funds transfer.

S. Compliance with Laws, Rules and Regulations. Franchisee must, at all times, comply with all requirements set forth in this Agreement and in the Confidential Operations Manual and with all laws, rules and regulations of duly-constituted governmental bodies relating to Franchisee's Facility. Franchisee is solely responsible for knowing and understanding all such requirements, laws, rules and/or regulations, and any information acquired from Curves regarding such shall not be construed as legal advice nor as any

representation by Curves as to the interpretation of any such requirements, laws, rules and/or regulations. Franchisee is solely responsible to obtain and maintain, at all times, at its own cost, all necessary licenses, approvals and permits required for playing and/or displaying and/or demonstrating any composition or work of art (including without limitation, music and video) in the Franchisee's Facility and/or in connection with the operation of the Franchisee's Facility.

- T. **Personal Qualifications.** This Agreement is made and entered into by Curves with Franchisee in reliance upon and in consideration of the personal qualifications made by Franchisee with respect to this Agreement, who will be trained by Curves in accordance with Section 9A herein, and who represents to Curves that Franchisee will actively participate in the operation of Franchisee's Facility.
- U. **Educational Requirements.** Franchisee and/or the manager of Franchisee's Facility, at Franchisee's own expense, is required to satisfactorily complete and obtain a certification in the field of health and wellness as approved and defined by Curves within twenty-four (24) months from the execution of this Agreement. Where Franchisee sells food supplements and diet products that have been approved by Curves as required by this Agreement and that require advice, approval or any other requirements from a legally qualified dietician/nutritionist, Franchisee may not commence any such sale or diet advice unless it has complied with any such advice, approval or any other requirements in accordance with the laws of the Franchised Territory. Curves has the right to decide in its sole discretion if any such certification meets the standards necessary for the operation of a Curves' facility. Upon the opening of Franchisee's Facility, Franchisee must always have Franchisee's Facility managed by an individual who has the certification as required under this provision.

7. SERVICES AND SUPPLIES

- A. **Services Available to Franchisee.** Curves agrees to make available certain services to Franchisee and use reasonable efforts to provide such services in a manner reasonably designed for the Curves System, the content of and manner by which any and all services are to be delivered by Curves are within Curves' sole reasonable discretion and right. Such services and items may include the following:
1. Providing access to a reproducible copy of the standard Curves Marks and specifications for current approved logo and signage reproductions. Any modifications of the Curves Marks and specifications, whether requested or required by planning and zoning boards, building codes, landlords, or otherwise, are the responsibility of Franchisee and must be approved in writing by Curves and must be paid for by the Franchisee.
 2. A pre-opening training program conducted at Curves' training facilities as set out in Section 9A of this Agreement.
 3. Assistance to Franchisee by independent contractors of Curves at Franchisee's Facility for up to four (4) days during the opening period of Franchisee's Facility or such other times as Curves deems appropriate under the circumstances. Curves is not required to provide such opening assistance and, in exercising its own

discretion and right, may consider the following factors: the experience of Franchisee, whether the assistance is for a new opening or the re-opening after a transfer of ownership of an already operating Curves facility, the prior Curves System experience of Franchisee's management, and any other factors that Curves deems appropriate for consideration.

4. Periodic training seminars for Franchisee at such times and in such locations as selected by Curves. Franchisee's attendance at those seminars may be required at the sole discretion and right of Curves. All expenses of Franchisee and its personnel incident to attendance at the training seminars are to be borne by Franchisee.
5. Provided Franchisee is in current compliance with all obligations in this Agreement and upon Franchisee's written request, periodic review of Franchisee's sales, promotional efforts and financial status of Franchisee's Facility with suggestions as to any improvements in the operation of Franchisee's Facility.
6. Providing access to the Confidential Operations Manual, a copy of which will be loaned to Franchisee for the Term of this Agreement. Such copy may be provided to Franchisee via the Curves Community Website.
7. Such merchandising, marketing and advertising research data and advice as may be developed, from time to time, by Curves and deemed by it to be helpful in the operation of a Curves facility. Franchisee is responsible for ensuring that such marketing is legal in the Franchised Territory and must notify Curves immediately in writing of any concerns that Franchisee has in this regard. Curves will decide in its sole discretion and right what amendments (if any) to make to such marketing due to such Franchisee's comments.
8. Communication of new developments, techniques and improvements to the Curves System.
9. Such ongoing support as Curves deems reasonably necessary to continue to communicate and advise Franchisee as to the Curves System, including the operation of Franchisee's Facility.

B. Curves System Supply.

1. Franchisee is required to purchase all equipment, inventory, advertising materials, services, and other supplies, products and materials required for the operation of Franchisee's Facility solely from suppliers who demonstrate, to the continuing reasonable satisfaction of Curves, the ability to meet Curves' standards, specifications and requirements for such items regarding quality, variety, service, safety and health; who possess adequate quality controls and capacity to supply Curves' needs promptly and reliably; who have a sound financial condition and business reputation; who will supply such items to a sufficient number of franchises to enable Curves to economically monitor compliance by the supplier with Curves' standards, specifications, and requirements; and who have been approved for such items in writing by Curves and not thereafter disapproved.

Curves reserves the right to increase or decrease the number of approved suppliers and to designate itself an approved supplier and to make a profit or otherwise receive value in kind or rebates from the designation of approved suppliers and/or from the sale of supplies to Franchisee.

2. If Franchisee, during the Term of this Agreement, desires to purchase any products for use in Franchisee's Facility from a supplier who has not been approved by Curves, Franchisee may request, in writing, approval by Curves of such supplier. Curves may approve such proposed supplier if, in its sole judgment and discretion, it is satisfied that the supplier can meet and maintain Curves' specifications, standards and requirements. Franchisee, in making such request, must furnish Curves, at Franchisee's cost, with adequate samples of the items for which approval is being requested, or if that is not feasible, then with copies of descriptions, specifications, pictures of such items and any other information concerning the supplies that Curves may reasonably request. A lack of response by Curves to such request by Franchisee is not deemed as approval of such request. Franchisee must not sell, dispense or use any such items until such approval has been granted and notice thereof given to Franchisee in writing. Nothing contained herein shall be construed to require Curves to approve an unreasonable number of suppliers for any particular item or service. Curves reserves the right, as a condition precedent to approving or disapproving any request for a new or additional supplier of any item or service, to charge such proposed supplier the reasonable costs and expenses incurred by Curves in evaluating, investigating and determining any such request. Nothing contained in this Agreement is to be construed as an attempt by Curves to limit the sources from which Franchisee may procure supplies, products, services or other items.

8. FRANCHISEE'S FACILITY

During the Term of this Agreement, the site at which Franchisee shall operate Franchisee's Facility must be used exclusively for the purpose of operating a franchised Curves facility and no other business. In the event Franchisee's Facility shall be damaged or destroyed by fire or other casualty, or be required to be repaired or reconstructed by any governmental authority, Franchisee shall, at its own expense, repair or reconstruct Franchisee's Facility within a reasonable time under the circumstances in accordance with the then current image, design and specifications of Curves facilities.

9. TRAINING

- A. **Initial Training.** Curves must provide training classes for Franchisee at a location and time designated by Curves (the "Initial Training Program"). The Initial Training Program will consist of four (4) to five (5) days of training in exercise physiology, nutritional counseling, marketing, sales, business systems and instructions on use of fitness equipment. Attendance by Franchisee prior to opening is mandatory. In the event Franchisee purchased the Curves Franchise as an already open facility, then Franchisee is required to attend and successfully complete the Initial Training Program within ninety (90) days of the execution of the Agreement.

- B. **Owner.** The Initial Training Program must be satisfactorily completed by Franchisee before Franchisee can open Franchisee's Facility. Curves reserves the right to terminate this Agreement should Franchisee fail, in the sole opinion of the Curves, to satisfactorily complete the Initial Training Program.
- C. **Charges and Costs.** All expenses of Franchisee and its personnel incident to attendance at the Initial Training Program, including travel, lodging, meals, transportation, compensation of and worker's compensation insurance for the attendees enrolled in the Initial Training Program and any other personal and/or incidental expenses, must be borne by the Franchisee.
- D. **Franchisee Training and Staffing.** Franchisee must train and instruct each person employed in the operation of Franchisee's Facility, other than those instructed by Curves, in the methods and techniques developed by Curves. Such training and instruction must be based upon and given in accordance with the Confidential Operations Manual and are to be provided prior to participation by such employee in Franchisee's Facility. If Franchisee requests training in addition to that provided for above, Curves may provide such instruction to Franchisee or its employees at such time and place and for such duration as may be mutually convenient; provided, however, that the costs of such additional training, including transportation, subsistence and a reasonable charge for the services of Curves' representative, must be borne by Franchisee and, if requested by Curves, paid in advance.

10. ROYALTY AND ADVERTISING CONTRIBUTION

- A. **Monthly Royalty Fee.** Franchisee agrees to pay to Curves, subject to the limitations listed below, a continuing monthly royalty fee ("Monthly Royalty Fee") in United States Dollars in an amount equal to five percent (5%) of Franchisee's monthly Gross Sales as hereinafter defined and in accordance with Section 10D below for the use of the Curves System and the Curves Marks. The Monthly Royalty Fee is payable on or before the fifth (5th) day of each month in accordance with Section 10F below for the Term of this Agreement commencing either upon the opening of Franchisee's Facility to the general public or the expiration of one hundred eighty (180) days from the execution of this Agreement by Curves, whichever occurs first. Monthly Royalty Fees must be paid in accordance with Section 3A herein.

Notwithstanding anything to the contrary in this Agreement, in no event will the Monthly Royalty Fee be less than one hundred ninety-five dollars (\$195.00) ("Minimum Monthly Royalty Fee") nor more than seven hundred ninety-five dollars (\$795.00) ("Maximum Monthly Royalty Fee") for the Term of this Agreement. The Monthly Royalty Fee is not refundable, with the exception of any fees that may have been overpaid to Curves in error by Franchisee.

- B. **Advertising, Sales Promotion and Public Relations.** Franchisee also agrees to pay to Curves, subject to the limitations listed below, a continuing monthly advertising fee ("Monthly Advertising Fee") in United States Dollars in an amount equal to three percent (3%) of Franchisee's monthly Gross Sales as hereinafter defined and in accordance with Section 10D below. The Monthly Advertising Fee is payable on or before the twentieth

(20th) day of each month in accordance with Section 10F below for the Term of this Agreement commencing either upon the opening of Franchisee's Facility to the general public or the expiration of one hundred eighty (180) days from the execution of this Agreement by Curves, whichever occurs first. Monthly Advertising Fees must be paid in accordance with Section 3A herein.

Notwithstanding anything to the contrary in this Agreement, in no event will the Monthly Advertising Fee be less than ninety-five dollars (\$95.00) ("Minimum Monthly Advertising Fee") nor more than three hundred ninety-five dollars (\$395.00) ("Maximum Monthly Advertising Fee") for the Term of the Agreement. The Monthly Advertising Fee is not refundable, with the exception of any fees that may have been overpaid to Curves in error by Franchisee.

Curves will assist in developing all advertising materials, and Franchisee must have written approval from Curves of all materials developed or altered by Franchisee prior to the use of same. All Monthly Advertising Fee contributions, interest, dividends and other amounts earned thereon ("Advertising Fund"), less direct administrative expenses, will be used, with any interest being used first in its entirety before any other component of the Advertising Fund, for (a) market research expenditures directly related to the development and evaluation of the effectiveness of advertising and sales promotions, (b) creative, production and other costs incurred in connection with the development of advertising, sales promotions and public relations, both the market area of Franchisee's Facility, as reasonably defined from time to time by Curves, and on a national basis, and (c) various methods of delivering the advertising or promotional message, including, without limitation, television, radio, outdoor and print. If less than the total of all contributions to the Advertising Fund are expended during any fiscal year, such excess may be accumulated for use during subsequent years. If Curves advances money to the Advertising Fund, Curves will be entitled to be reimbursed for such advances.

The Advertising Fund will be used on national, regional or local media or other marketing techniques or programs designed to promote and enhance the image, identity or patronage of the franchises and to communicate the services of the franchises to the public in the sole discretion and right of Curves, as well as for any creation and production costs incurred by Curves and for any reasonable accounting, administrative and legal expenses associated with the Advertising Fund and for other purposes deemed appropriate by Curves to enhance and promote the general recognition of the Curves System and Curves Marks. The allocation of the Advertising Fund between national, regional and local expenditures and administrative expenditures will be made by Curves in its sole business judgment. Curves will not be liable for any act or omission with respect to the Advertising Fund which is consistent with this Agreement or done in good faith.

- C. **Other Fees, Costs, Expenses, Taxes, Etc.** Franchisee must remit to Curves any and all payments fees, costs, expenses, taxes and charges which are from time to time paid by Curves, in Curves' sole discretion and without any obligation to do so, on behalf of Franchisee in connection with products, services, supplies, marketing materials, equipment, goods, materials or inventory furnished to Franchisee by Curves or by any third party, or otherwise, including, but not limited to, amounts paid to vendors, contractors, insurance carriers and any sales, use, transfer or other taxes, assessments or

charges paid to governmental agencies arising from the existence, operation or maintenance of Franchisee's Facility. Any payment due under this paragraph must be remitted in accordance with Section 3A of this Agreement.

- D. **Gross Sales.** The term "Gross Sales" as used in this Agreement means all sums received or receivable by Franchisee, directly or indirectly, in and from the operation of Franchisee's Facility, including, but not limited to, all revenues generated from any and all sources on account of the sale of memberships, any products and goods and from the rendering of any service of any kind or nature, at or from Franchisee's Facility, or under, or in any way connected with the use of, Curves Marks, whether for cash, check, credit, barter or otherwise, without reserve or deduction for inability or failure to collect the same. Gross Sales includes all such revenue described above regardless of where the sale originated or where the delivery or performance of such is made. Gross Sales also includes any sums or receipts derived from the sale of products and memberships to employees of Franchisee's Facility. There will be deducted from Gross Sales for purposes of said computation (but only to the extent that they have been included) the amount of all sales tax receipts or similar tax receipts which, by law, are chargeable to members or customers, if such taxes are separately stated when the member or customer is charged, and the amount of any actual refunds, rebates, over-rings and allowances given to members or customers in good faith.
- E. **Reporting.** On or before the fifth (5th) day of each month of the Term of this Agreement, Franchisee is required to submit to Curves a monthly sales report signed by Franchisee, on electronic format through the Curves Community Website, reporting all Gross Sales for Franchisee's Facility for the preceding month and such additional financial information as Curves may from time to time request ("Projection Sheet"). Any Projection Sheet not submitted electronically through the Curves Community Website will not be deemed as received by Curves. Franchisee is solely responsible for any reports submitted to Curves through the Curves Community Website using the password to access the Curves Community Website provided to Franchisee by Curves. In the event the Curves Community Website becomes temporarily or permanently inoperable, Curves reserves the sole right to determine an alternative method for Franchisee to provide the Projection Sheets.
- F. **Payments.** In accordance with Section 3A of this Agreement, Curves has the right to automatically withdraw from Franchisee's Bank Account Monthly Royalty Fees at any time after the fifth (5th) day of each month. In accordance with Section 3A of this Agreement, Curves has the right to also automatically withdraw from Franchisee's Bank Account Monthly Advertising Fees on the twentieth (20th) day of each month. Each Monthly Royalty Fee and Monthly Advertising Fee shall be computed in accordance with this Section based upon the Gross Sales for the preceding month as provided by Franchisee in the Projection Sheet. For each month that Franchisee fails to submit a Projection Sheet in accordance with this Agreement, the amount of the Monthly Royalty Fee will be the Maximum Monthly Royalty Fee and the amount of the Monthly Advertising Fee will be the Maximum Monthly Advertising Fee.
- G. **Late Payments and Remedies.** Any Monthly Royalty Fee or Monthly Advertising Fee or any other fee or payment owing to Curves that is more than five (5) days late will incur a fee of Thirty-Five Dollars (\$35.00), or the maximum allowed by law, whichever is

less. Curves has the right to automatically withdraw from Franchisee's Bank Account any fees as provided in this paragraph at the time such fees become due. In addition, any amount owed to Curves that is outstanding more than thirty (30) days will 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 is to 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 will 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 are to 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, upon request by Curves, to furnish Curves with a quarterly and fiscal year-to-date profit and loss statement in the format prescribed by Curves. Franchisee, upon request by Curves, also agrees to submit to Curves quarterly balance sheets for the operation of Franchisee's Facility. All profit and loss statements and balance sheets must be prepared in accordance with generally accepted accounting principles and, if requested by Curves, must 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, must 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 must be maintained and retained by Franchisee for the Term of this Agreement and for five (5) years thereafter.
- B. **Annual Financial Statements.** Franchisee's fiscal year must begin on January 1 and end on December 31 of each year. Upon request by Curves, Franchisee must 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 must 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 will 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 will be borne and paid by Franchisee. Any such cost and expense and any amounts found to be due but not paid will be set forth in a written invoice delivered to Franchisee by Curves. Franchisee must reimburse Curves for the invoice amount within seven (7) days after the invoice has been delivered to Franchisee.
2. Curves has 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 will be borne and paid by Franchisee. Any such cost and expense and any amounts found to be due but not paid will be set forth in a written invoice delivered to Franchisee by Curves. Franchisee must 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, has 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. Upon request by Curves, and subject to any applicable state or federal data protection laws, Franchisee agrees to furnish to Curves in whatever format required by Curves all member lists and records for Franchisee's Facility, both active and inactive, which includes, but is not 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 will 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 is to 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 can 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 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 must 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 will procure from each owner and employee an executed 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 must promptly conform its use of the Curves Marks as directed, in writing, by Curves. It is 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 will 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 must 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 cannot 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 must 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 must 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 must 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 will 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 has 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 will be final and binding upon Franchisee. Franchisee must 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 will 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 must 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 must identify itself as a holder of a license from Curves International, Inc., unless applicable law requires other or additional identification. Franchisee must use the name and service mark in such format and with such suffix or prefix as Curves may from time to time

designate. Franchisee must not register the Curves Marks with any authority unless required to do so by this Agreement.

7. **Assumed Name Registration.** In the event that Franchisee is required to do so by any statute or ordinance, Franchisee must 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 must promptly execute and file such documents as may be necessary to revoke or terminate such assumed name registration, and if Franchisee fails 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, Franchisee must hold itself out to the public as an independent contractor operating Franchisee's Facility pursuant to a franchise agreement with Curves. Franchisee agrees to post notices as specified by Curves to that effect in such locations and by such means determined reasonably necessary by Curves to inform the public, customers and suppliers.
3. Franchisee is 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.
4. Curves does 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 must represent that it is doing business as a Franchisee under the trade name and style of *Curves®*. Franchisee must 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 has 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 will be entitled to terminate this Agreement by giving six (6) months written notice no later than twelve (12) months after such acquisition, 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. **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 is required to 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 must contain a statement that they cannot be canceled without thirty (30) days' prior written notice to Franchisee and to Curves. Franchisee must 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 must promptly notify Curves of any and all claims against Franchisee and/or Curves. All policies must 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. In the event Franchisee fails to provide Curves with proof of insurance as required herein, Franchisee agrees that Curves has the right, but not the obligation, to purchase and maintain insurance as required herein for Franchisee's Facility and automatically withdraw all payments made by Curves for such insurance in accordance with Section 3A herein.

- 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 will 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 is not limited by the amount of insurance required under Section 14A. This indemnity obligation does include, but is not 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 will notify Franchisee of any claims, and Franchisee will 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 must 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 arises and is valid notwithstanding that joint or concurrent liability may be imposed on Curves by statute, ordinance, regulation or other law. Curves and the other indemnittees, 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 will notify Franchisee of any claims subject to indemnification by Franchisee, and Franchisee will be responsible for the costs of defense of the matter. Curves will 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 must 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 can 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 must 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 is paid by Curves, Franchisee must 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 must 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 must 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 must 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 Franchised Facility, 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 will 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" means and includes 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).
- C. **Transfer and/or Assignment by Franchisee.** Franchisee does not have the right to transfer or assign this Agreement without the express written approval of Curves. Franchisee does 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 will be null and void and will 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) in a method of payment determined by Curves. 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); 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 are or become due from Franchisee to Curves or its affiliates. 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 notification by Franchisee as required herein, all information and forms required by Curves to evaluate the proposed assignee and any other information Curves may request concerning the proposed transaction between Franchisee and the proposed 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; and
7. That the proposed assignee must deliver to Curves, upon request by Curves, a letter from an independent certified public accountant acknowledging, among other things, that such accountant has reviewed the terms of the proposed assignment, transfer or sale with the proposed 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 as required by state and/or federal laws; and
 13. 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, in its reasonable judgment, does not object 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 must 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 will 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 submit to Franchisee and the proposed assignee the necessary documentation to effect the transfer of Franchisee's Facility.
- E. **Franchisee Information.** Curves has the right, but not the obligation, to furnish any proposed assignee with copies of all financial statements and Projection Sheets 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 also has the right, but not the obligation, to advise any proposed 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 will 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 must fully indemnify Curves in connection with such offering, as provided in Section 14B.

- G. Prohibition Against Encumbrance.** Without Curves' prior written consent, Franchisee must 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.
- 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, Franchisee agrees to 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, will 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 timely does 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 does not constitute a waiver of any claims it may have against the transferring party, nor will 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 16C 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 has 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) in a method of payment determined by Curves. 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 must assume the obligations to be performed under this Agreement and must sign a then-current franchise agreement.
- M. **Reasonableness.** Franchisee has 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 must 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 complete sales 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, will 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 will have the right to substitute the equivalent cash as solely determined by Curves for all non-cash consideration. Curves will 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 the terms of the offer be altered by Franchisee or the prospective purchaser, Curves must be notified in writing of the altered terms and will