

KIDS 'N' CLAY DEVELOPMENT, LLC

FRANCHISE AGREEMENT

EXHIBIT C TO THE OFFERING CIRCULAR

Revised: August 2, 2005

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EXHIBITS

- A. GENERAL RELEASE
- B. NONDISCLOSURE AND NON-COMPETITION AGREEMENT
- C. GUARANTY AND ASSUMPTION OF OBLIGATIONS
- D. HOLDERS OF LEGAL OR BENEFICIAL INTEREST IN FRANCHISEE; OFFICERS; DIRECTORS
- E. MULTI-STATE ADDENDA

**KIDS ‘N’ CLAY DEVELOPMENT, LLC
FRANCHISE AGREEMENT**

This Franchise Agreement made this ____ day of _____, 20____, is by and between KIDS ‘N’ CLAY DEVELOPMENT, LLC, a California limited liability company, having its principal place of business at 1824 5th Street, Berkeley, California 94710 (“Franchisor”), and _____, an individual/partnership/corporation/limited liability company established in the State of _____ and whose principal address is _____ (“Franchisee”).

WITNESSETH:

WHEREAS, Franchisor and its Affiliate* have developed, and are in the process of further developing, a System identified by the service mark “KIDS ‘N’ CLAY” and relating to the establishment and operation of studios teaching children the ceramic arts, including techniques such as hand building, wheel throwing, sculpting, glazing and finishing, referred to as “KIDS ‘N’ CLAY Pottery Studios;” and

WHEREAS, in addition to the service mark “KIDS ‘N’ CLAY” and certain other Marks, the distinguishing characteristics of the System include, among other things, uniform standards and procedures for efficient business operations; procedures and strategies for marketing, advertising and promotion; student service and development techniques; distinctive interior and exterior design, layout and décor; other strategies, techniques and trade secrets; and the Manual; and

WHEREAS, Franchisor grants to qualified persons and business entities the right to own and operate a single KIDS ‘N’ CLAY Pottery Studio using the System and the Marks; and

WHEREAS, Franchisee desires to operate a KIDS ‘N’ CLAY Pottery Studio, has applied for the Franchise and its application has been approved by Franchisor in reliance upon all of the representations made therein; and

WHEREAS, Franchisee understands and acknowledges the importance of Franchisor’s high and uniform standards of quality, operations and service and the necessity of operating its Franchised Business in strict conformity with Franchisor’s System.

NOW, THEREFORE, Franchisor and Franchisee, intending to be legally bound, agree as follows:

1. DEFINITIONS

Whenever used in this Agreement, the following words and terms have the following meanings:

“Affiliate” means any business entity that controls, is controlled by, or is under common control with Franchisor;

*Capitalized terms not otherwise defined are defined in Section 1.

“Agreement” means this agreement entitled “KIDS ‘N’ CLAY DEVELOPMENT, LLC Franchise Agreement” and all instruments supplemental hereto or in amendment or confirmation hereof;

“Approved Location” means the site for the operation of the Franchised Business selected by Franchisee and approved in writing by Franchisor;

“Approved Supplier” has the meaning given to such term in Section 13.1;

“Competitive Business” means any business that offers or provides (or grants franchises or licenses to others to operate a business that offers) ceramic arts instruction or facilities the same as or similar to that provided by KIDS ‘N’ CLAY Pottery Studios or in which Confidential Information could be used to the disadvantage of Franchisor, its Affiliate(s) or its other franchisees; provided, however, that the term “Competitive Business” shall not apply to (a) any business operated by Franchisee under a Franchise Agreement with Franchisor, or (b) any business operated by a publicly-held entity in which Franchisee owns less than a five percent (5%) legal or beneficial interest;

“Confidential Information” means any trade secret and any information or matter that is or may be used to gain a competitive advantage over Franchisor or its Affiliate and is not generally known by the public, whether or not in written or tangible form and regardless of the media (if any) on which it is stored, relating to the System (including know-how, knowledge of and experience in operating a KIDS ‘N’ CLAY Pottery Studio; instructional methods; techniques for the creation of ceramic art; business management and operating systems and techniques; record keeping and reporting methods; management and personnel training techniques; sales and promotion techniques; specifications and designs for signs, displays, forms, interior and exterior décor and layout for the Approved Location; the Manual; lists of franchisees and suppliers; suggested pricing and cost information; prospective and existing student data; and other specifications, policies, procedures, information or systems that Franchisor or its Affiliate have developed or may develop and introduce as part of the System) and any other information or material identified to Franchisee by Franchisor as confidential;

“Controlled Entity” has the meaning given to such term in Section 18.3;

“Cooperative Advertising” means the combined advertising program of two (2) or more franchisees established within a common market that Franchisor may require for KIDS ‘N’ CLAY Pottery Studios within a particular region;

“Designated Area” has the meaning given to such term in Section 2.3;

“Designated Manager” means the person designated by Franchisee who has primary responsibility for managing the day-to-day affairs of the Franchised Business, and if Franchisee is an individual and not a business entity, the Designated Manager shall be Franchisee;

“Effective Date” means the date on which this Agreement is fully executed, thereby commencing its effectiveness and term;

“Electronic Depository Transfer Account” means an account established at a national banking institution approved by Franchisor and providing Franchisor with access to electronically withdraw any funds due Franchisor;

“Franchise” means the right granted to Franchisee by Franchisor to use the System and the Marks;

“Franchise Fee” has the meaning given to such term in Section 3.1;

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“Franchised Business” means the KIDS ‘N’ CLAY Pottery Studio to be established and operated by Franchisee pursuant to this Agreement;

“Franchisee” means the individual or entity defined as “Franchisee” in the introductory paragraph of this Agreement, and if Franchisee is a business entity, such term also includes all holders of a legal or beneficial interest in the entity (each of whom is identified in Exhibit D and has executed the supplemental signature page with respect to his or her individual obligations hereunder);

“Franchisor” means Kids ‘N’ Clay Development, LLC;

“Franchisor Indemnities” has the meaning given to such term in Section 21.2;

“Grand Opening Advertising” has the meaning given to such term in Section 11.1;

“Gross Sales” means the aggregate of all revenue from the sale of products and services from all sources in connection with the Franchised Business whether or not collected by Franchisee and whether for check, cash, credit or otherwise including, without limitation, all proceeds from any business interruption insurance, but excluding all refunds made in good faith, any sales and equivalent taxes that are collected by Franchisee for or on behalf of any governmental taxing authority and paid thereto, and the value of any allowance issued or granted to any client or student, or parent of a student, of the Franchised Business that is credited by Franchisee in full or partial satisfaction of the price of any products and services offered in connection with the Franchised Business;

“Gross Sales Reports” has the meaning given to such term in Section 12.2;

“Incapacity” means the inability of Franchisee to operate or oversee the operation of the Franchised Business on a regular basis by reason of any continuing physical, mental or emotional condition, chemical dependency or other limitation;

“Internet” means any one (1) or more local or global interactive communications media that is now available, or that may become available, including sites and domain names on the World Wide Web;

“Local Advertising” has the meaning given to such term in Section 11.2;

“Manual” means the KIDS ‘N’ CLAY Operations Manual, and any other items as may be provided, added to, changed, modified or otherwise revised by Franchisor from time to time that contain or describe the standards, methods, procedures and specifications of the System, including other operations, administration and managers’ manuals and all books, computer programs, password-protected portions of an Internet site, pamphlets, memoranda and other publications prepared by, or on behalf of, Franchisor;

“Marketing Fund” has the meaning given to such term in Section 3.3;

“Marketing Fund Contribution” has the meaning given to such term in Section 3.3;

“Marks” mean the service mark “KIDS ‘N’ CLAY” and such other trade names, trademarks, service marks, trade dress, designs, graphics, logos, emblems, insignia, fascia, slogans, copyrights, drawings and other commercial symbols as Franchisor may designate to be used in connection with KIDS ‘N’ CLAY Pottery Studios;

“**Protected Territory**” means the geographic area of territorial exclusivity granted to Franchisee under this Agreement as defined by Section 2.5;

“**Royalty Fee**” has the meaning given to such term in Section 3.2; and

“**System**” means the uniform standards, methods, procedures and specifications developed by Franchisor and as may be added to, changed, modified, withdrawn or otherwise revised by Franchisor, in its sole discretion, for the operation of KIDS ‘N’ CLAY Pottery Studios.

2. GRANT OF FRANCHISE; APPROVED LOCATION

2.1 Grant

Franchisor hereby grants to Franchisee, and Franchisee undertakes and accepts, upon the terms and conditions herein contained, a revocable, limited license to operate one (1) KIDS ‘N’ CLAY Pottery Studio using the System and Marks.

2.2 Approved Location

The street address (or detailed description of the premises) of the Approved Location is:

2.3 Approved Location Not Determined

If the Approved Location of the Franchised Business is not determined as of the Effective Date, then the geographic area in which the Franchised Business is to be located shall be within the geographic area described below (“Designated Area”). When the Approved Location is determined, its address shall be inserted into Section 2.2. The failure to insert such address shall not automatically affect the enforceability of this Agreement. The Designated Area is delineated for the sole purpose of site selection and does not confer any territorial exclusivity or protection. A detailed description of the geographic area or boundaries of the Designated Area is:

2.4 Sub-franchising/Agents

Franchisee shall not sublicense the use of the System or Marks to any person or entity to perform any part of Franchisee’s rights or obligations licensed hereunder, or to grant any person or entity the right to act as Franchisee’s agent to perform any part of Franchisee’s rights or obligations hereunder.

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| 2.5 <u>Territorial Protection - Protected Territory</u> | |

Franchisor shall not, so long as this Agreement is in force and effect and Franchisee is not in default under any of the terms hereof, license, own or operate any other KIDS ‘N’ CLAY Pottery Studio or other substantially similar business within an area surrounding the Approved Location (“Protected Territory”) containing approximately two hundred thousand (200,000) persons, of which the percentage of the school-age population is approximately the national average. Franchisor shall have the right to redefine the boundaries of the Protected Territory based on changes in the area’s demographics. Franchisor shall not redefine the Protected Territory more than one (1) time in any five (5) year period. The Protected Territory shall initially be defined by and exist within the following physical, political or natural boundaries:

2.6 **Franchisor’s Rights**

Except to the extent provided in Section 2.5, Franchisor retains all of its rights and discretion with respect to the System and Marks, including the right to:

2.6.1 establish or operate, and license others to establish or operate, KIDS ‘N’ CLAY Pottery Studios outside of the Protected Territory as Franchisor deems appropriate;

2.6.2 establish or operate, and license others to establish or operate, other businesses under other systems using other trademarks at such locations and on such terms and conditions as Franchisor deems appropriate;

2.6.3 provide the services and sell any products authorized for KIDS ‘N’ CLAY Pottery Studios using the Marks or other trademarks and commercial symbols through alternate channels of distribution, such as joint marketing with partner companies, direct mail, and Internet and catalog sales, on such terms and conditions as Franchisor deems appropriate; provided, however, that no such sales shall be made to any Competitive Business within the Protected Territory; and

2.6.4 engage in any activities not expressly forbidden by this Agreement.

3. **FEES**

3.1 **Franchise Fee**

Upon execution of this Agreement, Franchisee shall pay a fee (“Franchise Fee”) to Franchisor of _____ DOLLARS (\$_____). The Franchise Fee shall be deemed fully earned upon execution of this Agreement and is nonrefundable, except under certain conditions set forth under Section 8.3. The Franchise Fee is payment, in part, for expenses incurred by Franchisor in furnishing assistance and services to Franchisee as set forth in this Agreement and for costs incurred by Franchisor, including general sales and marketing expenses, training, legal, accounting and other professional fees.

3.2 Bi-Monthly Royalty Fee

On the third (3rd) day and eighteenth (18th) day of each month, Franchisee shall pay to Franchisor without offset, credit or deduction of any nature, so long as this Agreement shall be in effect, a bi-monthly fee (“Royalty Fee”) equal to seven percent (7%) of Gross Sales for the previous bi-monthly period. The bi-monthly periods are the first (1st) day of the month through and including the fifteenth (15th) day of the month, for which Royalty Fees are due on the eighteenth (18th) day of the month, and the sixteenth (16th) day of the month through and including the last day of the month, for which Royalty Fees are due on the third (3rd) day of the following month. If the third (3rd) day or eighteenth (18th) day of the month falls on a Sunday, Franchisee shall pay the Royalty Fee and submit the Gross Sales Report on the fourth (4th) day or nineteenth (19th) day of the month. Each bi-monthly Royalty Fee payment shall accompany the Gross Sales Report for the same period, as required by Section 12.2. If Franchisor requires Franchisee to pay Royalty Fees through electronic transfer as set forth in Section 3.5, then such reports shall instead be submitted to Franchisor via facsimile or electronic transmission.

3.3 Marketing Fund Contribution

Franchisor has the right to establish and administer a System-wide marketing, advertising and promotion fund (“Marketing Fund”). If a Marketing Fund is established, Franchisee may be required to contribute bi-monthly to the Marketing Fund an amount specified by Franchisor (“Marketing Fund Contribution”), which shall not exceed two percent (2%) of Gross Sales for such bi-monthly period. Marketing Fund Contributions shall be made at the same time and in the same manner as Royalty Fee payments provided in Section 3.2. If established, the Marketing Fund shall be maintained and administered by Franchisor or its designee in accordance with the provisions contained in Section 11.3.

3.4 Taxes

Franchisee shall pay to Franchisor an amount equal to all sales taxes, use taxes and similar taxes imposed on the fees payable by Franchisee to Franchisor hereunder and on services or goods furnished to Franchisee by Franchisor at the same time as Franchisee remits such fees to Franchisor, whether such services or goods are furnished by sale, lease or otherwise, unless the tax is an income tax assessed on Franchisor for doing business in the state where the Franchised Business is located.

3.5 Electronic Transfer

3.5.1 Franchisor has the right to require all Royalty Fees, Marketing Fund Contributions, amounts due for purchases by Franchisee from Franchisor and other amounts due to Franchisor to be paid through an Electronic Depository Transfer Account. At Franchisor’s request, Franchisee shall open and maintain an Electronic Depository Transfer Account and shall provide Franchisor with continuous access to such account for the purpose of receiving any payments due to Franchisor. Every week, Franchisee shall make deposits to the account sufficient to cover amounts owed to Franchisor prior to the date such amounts are due. Franchisee shall execute any documents Franchisor’s or Franchisee’s bank requires to establish and implement the Electronic Depository Transfer Account. Once established, Franchisee shall not close the Electronic Depository Transfer Account without Franchisor’s written consent.

3.5.2 Franchisor, in its sole discretion, may allow Royalty Fees, Marketing Fund Contributions, amounts due for purchases by Franchisee from Franchisor and other amounts due to Franchisor to be paid through electronic transfers initiated by Franchisee from Franchisee’s primary business checking account. Franchisor may allow Franchisee to pay, or may at any time revoke Franchisee’s privilege to pay, fees and other amounts due in such manner based on Franchisor’s evaluation of Franchisee’s financial condition.

3.6 Late Fees

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All Royalty Fees, Marketing Fund Contributions, amounts due for purchases by Franchisee from Franchisor and other amounts that are not received by Franchisor within five (5) days after the due date shall bear interest at the rate of eighteen percent (18%) per annum (or the highest rate allowed by law, whichever is lower) from the date payment is due to the date payment is received by Franchisor. Franchisee shall pay Franchisor for all costs incurred by Franchisor in the collection of any unpaid and past due Royalty Fees, Marketing Fund Contributions or any other amounts due Franchisor, including reasonable accounting and legal fees.

3.7 Application of Payments

Notwithstanding any designation by Franchisee, Franchisor shall have the sole discretion to apply any payments by Franchisee to any past due indebtedness of Franchisee and accrued interest thereon for Royalty Fees, Marketing Fund Contributions, purchases from Franchisor or any other amount owed to Franchisor.

4. TERM AND RENEWAL

4.1 Initial Term

This Agreement shall be effective and binding for an initial term of ten (10) years from the Effective Date, unless sooner terminated pursuant to Section 16.

4.2 Renewal Term

Subject to the conditions below, Franchisee has the right to renew the Franchise at the expiration of its term. Franchisee's right to enter into a successor franchise agreement is limited to three (3) successive renewal terms of five (5) years each, such that the total term of the Franchise shall not exceed twenty-five (25) years. To qualify for a renewal, each of the following conditions shall have been fulfilled and remain true as of the last day of the term of this Agreement:

4.2.1 Franchisee has, during the entire term of this Agreement, substantially complied with all material provisions;

4.2.2 Franchisee has access to and, for the duration of the renewal term, the right to remain in possession of the Approved Location, or a suitable substitute location approved by Franchisor, which is in full compliance with Franchisor's then-current specifications and standards, for the duration of the renewal term;

4.2.3 Franchisee has, at its expense, made such capital expenditures as were necessary to maintain uniformity with any Franchisor-required System modifications such that the Franchised Business reflects Franchisor's then-current standards and specifications;

4.2.4 Franchisee has satisfied all monetary obligations owed by Franchisee to Franchisor (or any Affiliate), and has timely met these obligations throughout the term of this Agreement;

4.2.5 Franchisee is not in default of any provision of this Agreement or any other agreement between Franchisee and Franchisor;

4.2.6 Franchisee has given written notice of renewal to Franchisor not less than nine (9) months nor more than twelve (12) months prior to the end of the term of this Agreement;

4.2.7 Franchisee has executed Franchisor's then-current form of franchise agreement, or has executed renewal documents at Franchisor's election (with appropriate modifications to reflect the fact that the Franchise Agreement relates to the grant of a renewal franchise), which franchise agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement by requiring, among other things, a different percentage Royalty Fee or Marketing Fund Contribution; provided, however, that Franchisee shall not be required to pay the then-current Franchise Fee;

4.2.8 Franchisee has complied with Franchisor's then-current qualifications for a new franchisee and has agreed to comply with any training requirements; and

4.2.9 Franchisee has executed a general release, in a form the same as or similar to the General Release attached as Exhibit A, of any and all claims against Franchisor, its Affiliate(s) and against their officers, directors, shareholders, managers, members, partners, owners and employees, except to the extent prohibited by the laws of the state where the Franchised Business is located.

5. APPROVED LOCATION

5.1 Selection of Site

Franchisee shall promptly select a site for the Franchised Business and shall notify Franchisor of such selection. If Franchisor approves of such selection, the site will be designated as the Approved Location for purposes of this Agreement. If Franchisor does not approve of such selection, Franchisee shall continue to select new sites until Franchisor approves of a selection. Franchisor shall provide Franchisee with general guidelines to assist Franchisee in selecting a site suitable for the Approved Location. Franchisor has the right to approve or disapprove a proposed location based on such factors as it deems appropriate, including the condition of the premises, demographics of the surrounding area, proximity to other KIDS 'N' CLAY Pottery Studios, lease requirements, available parking or drop-off/pick-up areas and overall suitability. Franchisee shall not locate the Franchised Business on a selected site without the prior written approval of Franchisor. *Franchisor does not represent that it or any of its Affiliates, owners or employees have special expertise in selecting sites. Neither Franchisor's assistance nor approval is intended to indicate or indicates that the Franchised Business will be profitable or successful at the Approved Location. Franchisee is solely responsible for finding and selecting a site for the Franchised Business.*

5.2 Lease of Approved Location

After the designation of the Approved Location (and if the site is to be leased or purchased), Franchisee shall execute a lease for, or a binding agreement to purchase, the Approved Location, the terms of which must have been previously approved by Franchisor. Franchisor shall not unreasonably withhold its approval. *Franchisor's review of a lease or purchase agreement, or any advice or recommendation offered by Franchisor, shall not constitute a representation or guarantee that Franchisee will succeed at the Approved Location nor constitute an expression of Franchisor's opinion regarding the terms of such lease or purchase agreement.* Franchisor shall be entitled to require that nothing therein contained is contradictory to, or likely to interfere with, Franchisor's rights or Franchisee's duties under this Agreement. Franchisee shall take all actions necessary to maintain the lease, if any, of the Approved Location while this Agreement is in effect. Any default for which the lease may be terminated shall also be deemed a default hereunder and the time to cure the same shall expire when the lease is terminated. Franchisor has the right to require that the lease for the Approved Location be collaterally assigned by Franchisee to Franchisor, pursuant to the terms of its standard collateral assignment of lease form, to secure performance by Franchisee of its obligation under this Agreement. Franchisor's approval of a lease or

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purchase agreement shall be conditioned upon inclusion of terms in the lease acceptable to Franchisor and, at Franchisor's option, the lease or purchase agreement shall contain such provisions as Franchisor may reasonably require, including:

5.2.1 a provision reserving to Franchisor the right, at Franchisor's election, to receive an assignment of the leasehold interest upon termination or expiration of the Franchise grant;

5.2.2 a provision expressly permitting the lessor of the premises to provide Franchisor all sales and other information lessor may have obtained or received relating to the operation of the Franchised Business, as Franchisor may request;

5.2.3 a provision requiring the lessor to provide Franchisor with a copy of any written notice of deficiency sent by the lessor to Franchisee, and granting to Franchisor, in its sole discretion and sole option, the right (but not the obligation) to cure any deficiency under the lease should Franchisee fail to do so within fifteen (15) days after the expiration of the period in which Franchisee may cure the default;

5.2.4 a provision allowing Franchisee to display the Marks in accordance with the specifications required by the Manual, subject only to the provisions of applicable law;

5.2.5 a provision prohibiting the premises from being used for any purpose other than the operation of the Franchised Business;

5.2.6 a provision stating that any default under the lease (or a purchase agreement, as the case may be) shall constitute a default under this Agreement;

5.2.7 a provision stating that upon default of this Agreement, Franchisor or its nominee has the right to take possession of the Approved Location and operate the Franchised Business; and

5.2.8 a provision allowing Franchisor, upon expiration or termination of the lease, to enter the premises and remove any signs containing the Marks.

5.3 Development of Approved Location

Franchisor shall make available to Franchisee, at no charge to Franchisee, copies of standard plans and specifications for the development of a KIDS 'N' CLAY Pottery Studio (that will not be construction drawings or blueprints), including specifications for exterior and interior design and layout, fixtures, equipment, décor and signs. Such plans and specifications are subject to alteration as may be necessary in Franchisor's sole discretion. Franchisee shall cause the Approved Location to be developed, equipped and improved in accordance with such plans and specifications within one hundred twenty (120) days after the Effective Date. In connection with the development of the Approved Location, Franchisee shall:

5.3.1 employ a competent licensed architect or engineer to prepare, for Franchisor's approval, preliminary plans and specifications for improvement of the Approved Location adapted from the plans furnished by Franchisor;

5.3.2 obtain all zoning classifications and clearances that may be required by state and local laws, ordinances or regulations, and submit to Franchisor, for Franchisor's approval, final plans for construction based upon the preliminary plans and specifications;

5.3.3 obtain all building, utility, sign, health, and business permits and licenses, and any other permits and licenses required for the build-out and operation of the Franchised Business and certify in writing and provide evidence to Franchisor that all such permits and certifications have been obtained;

5.3.4 employ a qualified, licensed general contractor approved by Franchisor to complete construction of all required improvements to the Approved Location;

5.3.5 purchase any supplies necessary for the operation of the Franchised Business;

5.3.6 purchase and install all equipment, signs, furniture and fixtures, including any computer equipment, required for the operation of the Franchised Business;

5.3.7 obtain at least one (1) telephone number and one (1) facsimile number solely dedicated to the Franchised Business; and

5.3.8 establish and maintain an Internet connection with at least one (1) e-mail address dedicated to the Franchised Business.

5.4 Opening

5.4.1 Before opening the Franchised Business and commencing business, Franchisee must:

5.4.1.1 fulfill all of the obligations of Franchisee pursuant to the other provisions of this Section 5 and any pre-opening requirements contained in the Manual;

5.4.1.2 furnish Franchisor with copies of all insurance policies required by this Agreement, or by the lease, or such other evidence of insurance coverage and payment of premiums as Franchisor may reasonably request;

5.4.1.3 complete initial training to the satisfaction of Franchisor;

5.4.1.4 hire and train the personnel necessary or required for the operation of the Franchised Business;

5.4.1.5 if Franchisee is a business entity, cause each of its stock certificates or other ownership interest certificates to be conspicuously endorsed upon the face with a statement in a form satisfactory to Franchisor that such ownership interest is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon transfers and assignments by this Agreement; and

5.4.1.6 pay in full all amounts due to Franchisor.

5.4.2 Franchisee shall comply with these conditions and be prepared to open and continuously operate the Franchised Business within six (6) months after the Effective Date. Time is of the essence.

5.4.3 If Franchisee is unable to commence the operation of the Franchised Business due to circumstances beyond Franchisee's reasonable control, then Franchisee may be entitled to such additional time as may be reasonably required and as to which Franchisor may consent.

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5.5 Use of Approved Location

Franchisee shall not use the Approved Location for any purpose other than for the operation of a KIDS 'N' CLAY Pottery Studio in full compliance with this Agreement and the Manual, unless approved in writing by Franchisor.

5.6 Relocation

Franchisee shall not relocate the Franchised Business without the prior written consent of Franchisor, which may be withheld or delayed at Franchisor's sole discretion. If the lease for the Approved Location expires or terminates without the fault of Franchisee or if the Franchised Business's premises is destroyed, condemned or otherwise rendered unusable, or as otherwise may be agreed upon in writing by Franchisor and Franchisee, Franchisor may, in its reasonable discretion, allow Franchisee to relocate the Franchised Business. Any such relocation shall be at Franchisee's sole expense, and shall proceed in accordance with the requirements set forth in Sections 5.1 through 5.4. Franchisor has the right to charge Franchisee for any costs incurred by Franchisor in providing assistance to Franchisee, including legal and accounting fees. Notwithstanding the foregoing, Franchisor has no obligation to provide relocation assistance. If no relocation site meets with Franchisor's approval, this Agreement shall terminate as provided in Section 16.2.1.1.

6. PROPRIETARY MARKS

6.1 Ownership

Franchisee's right to use the Marks is derived solely from this Agreement, is nonexclusive and is limited to the conduct of business by Franchisee pursuant to, and in compliance with, this Agreement and all applicable standards, specifications and operating procedures prescribed from time to time by Franchisor. Any unauthorized use of the Marks by Franchisee is a breach of this Agreement and an infringement of the rights of Franchisor in and to the Marks. Franchisee's use of the Marks, and any goodwill created thereby, shall inure to the benefit of Franchisor. Franchisee shall not at any time acquire an ownership interest in the Marks by virtue of any use it may make of the Marks. This Agreement does not confer any goodwill, title or interest in the Marks to Franchisee. Franchisee shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Marks or assist any other person in contesting the validity or ownership of any of the Marks.

6.2 Limitations on Use

Franchisee shall not use any Mark or portion of any Mark as part of any business entity name or trade name, with any prefix, suffix or other modifying words, terms, designs or symbols or in any modified form, without the prior written consent of Franchisor. Franchisee shall not use any Mark in connection with the sale of any unauthorized product or service or in any other manner not expressly authorized in writing by Franchisor. Franchisee shall give such notices of trademark and service mark registrations as Franchisor specifies and obtain such fictitious or assumed name registrations as may be required under applicable law. Franchisee shall not register or seek to register as a trademark or service mark, either with the United States Patent and Trademark Office or any state or foreign country, any of the Marks or a trademark or service mark that is confusingly similar to any Mark licensed to Franchisee. Franchisee shall include on its letterhead, forms, cards and other such identification, and shall display

at the Approved Location, a prominent notice stating that the Franchised Business is Franchisee's "Independently Owned and Operated KIDS 'N' CLAY Franchise."

6.3 Notification of Infringements and Claims

Franchisee shall immediately notify Franchisor of any infringement of the Marks or challenge to its use of any of the Marks or claim by any person of any rights in any of the Marks. Franchisee shall not communicate with any person other than Franchisor and Franchisor's counsel in connection with any such infringement, challenge or claim; provided, however, Franchisee may communicate with Franchisee's counsel at Franchisee's expense. Franchisor shall have sole discretion to take such action as deemed appropriate and the right to exclusively control any litigation or other proceeding arising out of any infringement, challenge, or claim or otherwise relating to any of the Marks. Franchisee shall execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of Franchisor's counsel, shall be necessary or advisable to protect and maintain Franchisor's interests in any such litigation or other proceeding or to otherwise protect and maintain Franchisor's interest in the Marks.

6.4 Indemnification for Use of Marks

Franchisor shall reimburse Franchisee for all expenses reasonably incurred by Franchisee in any trademark or similar proceeding disputing Franchisee's authorized use of any Mark, provided that Franchisee has timely notified Franchisor of such proceeding and has complied with this Agreement and Franchisor's directions in responding to such proceeding. At Franchisor's option, Franchisor or its designee may defend and control the defense of any proceeding arising directly from Franchisee's use of any Mark. This indemnification shall not include the expense to Franchisee of removing signage or discontinuance of the use of the Marks. This indemnification shall not apply to litigation between Franchisor and Franchisee wherein Franchisee's use of the Marks is disputed or challenged by Franchisor. This indemnification shall not apply to any separate legal fees or costs incurred by Franchisee in seeking independent counsel separate from the counsel representing Franchisor and Franchisee in the event of litigation disputing Franchisor and Franchisee's use of the Marks.

6.5 Discontinuance of Use

If it becomes necessary, in Franchisor's sole discretion, for Franchisee to modify or discontinue use of any of the Marks, and/or use one (1) or more additional or substitute trade names, trademarks, service marks or other commercial symbols, Franchisee shall comply with Franchisor's directions within a reasonable time after notice to Franchisee by Franchisor. Franchisor shall not be required to reimburse Franchisee for its expenses in modifying or discontinuing the use of a Mark or any loss of goodwill associated with any modified or discontinued Mark or for any expenditures made by Franchisee to promote a modified or substitute Mark.

6.6 Right to Inspect

To preserve the validity and integrity of the Marks and any copyrighted materials licensed hereunder, and to ensure that Franchisee is properly employing the Marks in the operation of the Franchised Business, Franchisor and its designees have the right to enter and inspect the Franchised Business and the Approved Location at all reasonable times and, additionally, have the right to observe the manner in which Franchisee renders services and conducts activities and operations, and to inspect facilities, equipment, accessories, products, supplies, reports, forms and documents and related data to ensure that Franchisee is operating the Franchised Business in accordance with the quality control provisions and performance standards established by Franchisor. Franchisor and its agents shall have the right, at any reasonable time, to remove sufficient quantities of products, supplies or other inventory items offered for retail sale, used in the preparation of products offered for retail sale or used in rendering services, to test whether such products or items meet Franchisor's then-current

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standards. Franchisor or its designee has the right to observe Franchisee and its employees during the operation of the Franchised Business and to interview students, parents and employees and to photograph the premises.

6.7 Franchisor's Sole Right to Domain Name

Franchisee shall not establish, create or operate an Internet site or website using a domain name or uniform resource locator containing the Marks or the words "KIDS 'N' CLAY" or any variation thereof. Franchisor has the exclusive right to advertise on the Internet and create websites using or containing the "KIDS 'N' CLAY" name and any other Mark. Franchisor is the sole owner of all right, title and interest in and to such domain names, as Franchisor shall designate in the Manual.

7. CONFIDENTIAL INFORMATION

7.1 Requirement of Confidentiality

Franchisor shall disclose Confidential Information to Franchisee during the training program, through the Manual, and as a result of guidance furnished to Franchisee during the term of this Agreement. Franchisee shall not acquire any interest in the Confidential Information, other than the right to utilize it in the development and operation of the Franchised Business and in performing its duties during the term of this Agreement. Franchisee acknowledges that the use or duplication of the Confidential Information in any other business venture would constitute an unfair method of competition. Franchisee acknowledges that the Confidential Information is proprietary, includes Franchisor's trade secrets and is disclosed to Franchisee solely on the condition that Franchisee (and all holders of a legal or beneficial interest in Franchisee and all officers, directors, executives, managers and members of the professional staff of Franchisee): (a) shall not use the Confidential Information in any other business or capacity; (b) shall maintain the absolute confidentiality of the Confidential Information during and after the term of this Agreement; (c) shall not make any unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and (d) shall adopt and implement all reasonable procedures prescribed from time to time by Franchisor to prevent unauthorized use or disclosure of the Confidential Information. Franchisee shall enforce this Section as to its employees, agents and representatives and shall be liable to Franchisor for any unauthorized disclosure or use of Confidential Information by any of them.

7.2 Student/Client Information

Student or client names, addresses, contact information and other personal data, whether acquired or compiled by Franchisee or Franchisor, shall be the sole and exclusive property of Franchisor, and Franchisor grants Franchisee the right to use such information while this Agreement is in full force and effect, only upon the terms and conditions contained herein. Franchisee shall deliver all such information to Franchisor not more than five (5) days after the beginning of any multiple-session course, class or event or five (5) days after any one (1) time course, class or event.

7.3 Additional Developments

All ideas, concepts, techniques or materials concerning the Franchised Business, whether or not protectable intellectual property and whether created by or for Franchisee or its owners or employees, must be promptly disclosed to Franchisor and will be deemed the sole and exclusive property of Franchisor and works made-for-hire for Franchisor, and no compensation will be due to Franchisee or its owners or employees therefor. At Franchisor's discretion, such items may be incorporated into the System. To the extent any item does not qualify as a "work made-for-hire" for Franchisor, Franchisee shall assign ownership of that item, and all related rights to that item, to Franchisor and shall sign any assignment or other document as Franchisor requests to assist Franchisor in obtaining or preserving intellectual property rights in the item. Franchisor shall disclose to Franchisee concepts and developments of other franchisees that are made part of the System. As Franchisor may reasonably request, Franchisee shall take all actions to assist Franchisor's efforts to obtain or maintain intellectual property rights in any item or process related to the System, whether developed by Franchisee or not.

7.4 Exclusive Relationship

Franchisee acknowledges that Franchisor would be unable to protect the Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among KIDS 'N' CLAY franchisees if owners of KIDS 'N' CLAY Pottery Studios and members of their immediate families and households were permitted to hold an interest in or perform services for any Competitive Business. Therefore, during the term of this Agreement, neither Franchisee nor any holder of a legal or beneficial interest in Franchisee (or any member of their immediate families and households), nor any officer, director, executive, manager or member of the professional staff of Franchisee, either directly or indirectly, for themselves, or through, on behalf of or in conjunction with any person, partnership, corporation, limited liability company or other business entity, shall:

7.4.1 Divert or attempt to divert any business or student of the Franchised Business to any Competitive Business, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System; or

7.4.2 Own an interest in, manage, operate, or perform services for any Competitive Business wherever located.

7.5 Nondisclosure and Non-Competition Agreements with Certain Individuals

Franchisor has the right to require Franchisee and any holder of a legal or beneficial interest in Franchisee (and any member of their immediate families or households), and any officer, director, executive, manager or member of the professional staff of Franchisee to execute a standard form nondisclosure and non-competition agreement, in a form the same as or similar to the Nondisclosure and Non-Competition Agreement attached as Exhibit B, upon execution of this Agreement or prior to each such person's affiliation with Franchisee. Upon Franchisor's request, Franchisee shall provide Franchisor with copies of all nondisclosure and non-competition agreements signed pursuant to this Section. Such agreements shall remain on file at the offices of Franchisee and are subject to audit or review as otherwise set forth herein. Franchisor shall be a third party beneficiary with the right to enforce covenants contained in such agreements.

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| 7.6 <u>Reasonableness of Restrictions</u> | |

Franchisee acknowledges that the restrictive covenants contained in this Section are essential elements of this Agreement and that without their inclusion, Franchisor would not have entered into this Agreement. Franchisee acknowledges that each of the terms set forth herein, including the restrictive covenants, is fair and reasonable and are reasonably required for the protection of Franchisor, the System and the Marks.

8. TRAINING AND ASSISTANCE

8.1 Initial Training

Franchisor shall make an initial training program available to the Designated Manager and up to one (1) assistant. Prior to the opening of the Franchised Business, the Designated Manager must attend and successfully complete, to Franchisor's satisfaction, an initial training program consisting of approximately two (2) weeks of classroom and on-the-job instruction pertaining to operation of the Franchised Business including, but not limited to, teaching experience in the studio; sales and marketing methods; financial controls; maintenance of quality standards; customer service techniques, record keeping and reporting procedures and other operational issues. Franchisor shall conduct the initial training program at its headquarters or at another designated location. Franchisor shall not charge tuition or similar fees for initial training, however, all expenses incurred by Franchisee in attending such program including, but not limited to, travel costs, room and board expenses and employees' salaries, shall be the sole responsibility of Franchisee. Franchisee shall be responsible for training its management and other employees.

8.2 Opening Assistance

In conjunction with, and prior to, the beginning of operation of the Franchised Business, Franchisor shall make available to Franchisee, at Franchisor's expense, for approximately five (5) days, one (1) of Franchisor's representatives, experienced in the System, for the purpose of providing general assistance and guidance in connection with the opening of the Franchised Business. If Franchisee requests additional assistance with respect to the opening or continued operation of the Franchised Business, and should Franchisor deem it necessary and appropriate to comply with such request, Franchisee shall pay Franchisor's then-current standard rates, plus expenses, for such additional assistance.

8.3 Failure to Complete Initial Training Program

If Franchisor determines, in its sole discretion, that the Designated Manager is unable to satisfactorily complete the training program described above, Franchisor has the right to terminate this Agreement. If this Agreement is terminated pursuant to this Section 8.3, Franchisor shall return to Franchisee fifty percent (50%) of the Franchise Fee paid by Franchisee upon Franchisor's receipt of a general release in a form the same as or similar to the General Release attached as Exhibit A. If Franchisee is a business entity and the Designated Manager fails to complete the initial training program to Franchisor's reasonable satisfaction, in Franchisor's sole discretion, Franchisee may be permitted to select a substitute manager and such substitute manager must complete the initial training to Franchisor's reasonable satisfaction. Franchisee may be required to pay Franchisor's then-current rates for additional training, if any, for providing the substitute manager an initial training program.

8.4 New Designated Manager

If Franchisee is a business entity and, after beginning operations, Franchisee names a new Designated Manager, then the new Designated Manager must complete the initial training program to Franchisor's satisfaction within thirty (30) days. Franchisee shall pay Franchisor's standard training fees for the training of any new Designated Manager and shall be responsible for all travel costs, room and board and employees' salaries incurred in connection with the new Designated Manager's attendance at such training.

8.5 Ongoing Training

From time to time Franchisor may provide, and if it does, has the right to require that the Designated Manager attend, ongoing training programs or seminars during the term of this Agreement. Franchisor shall not charge a fee for any mandatory ongoing training. Franchisor shall not require the Designated Manager to attend more than two (2) sessions in any calendar year and collectively not more than four (4) days in any calendar year. Franchisee shall be responsible for all travel costs, room and board and employees' salaries incurred in connection with the Designated Manager's attendance at such training.

9. MANUAL

9.1 Loan by Franchisor

While this Agreement is in effect, Franchisor shall loan to Franchisee one (1) copy of the Manual. Franchisee shall conduct the Franchised Business in strict accordance with the provisions set forth in the Manual. The Manual may consist of one (1) or more separate manuals and other materials as designated by Franchisor and may be in written or electronic form. The Manual shall, at all times, remain the sole property of Franchisor and shall promptly be returned to Franchisor upon expiration or termination of this Agreement.

9.2 Revisions

Franchisor has the right to add to or otherwise modify the Manual from time to time to reflect changes in the specifications, standards, operating procedures and rules prescribed by Franchisor; provided, however, that no such addition or modification shall alter Franchisee's fundamental status and rights under this Agreement. Franchisor may make such additions or modifications without prior notice to Franchisee. Franchisee shall immediately, upon notice, adopt any such changes and shall ensure that its copy of the Manual is up-to-date at all times. If a dispute as to the contents of the Manual arises, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's headquarters shall be controlling.

9.3 Confidentiality

The Manual contains proprietary information of Franchisor and shall be kept confidential by Franchisee both during the term of the Franchise and subsequent to the expiration or termination of this Agreement. Franchisee shall at all times ensure that its copy of the Manual is available at the Approved Location in a current and up-to-date manner. Franchisee shall maintain the Manual in a locked receptacle at the Approved Location and shall only grant authorized personnel, as defined in the Manual, access to the key or combination of such receptacle. Franchisee shall not disclose, duplicate or otherwise use any portion of the Manual in an unauthorized manner.

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10. FRANCHISE SYSTEM

10.1 Uniformity

Franchisee shall strictly comply, and shall cause the Franchised Business to strictly comply, with all requirements, specifications, standards, operating procedures and rules set forth in this Agreement, the Manual or other communications supplied to Franchisee by Franchisor.

10.2 Modification of the System

Franchisor has the right to change or modify the System from time to time including, without limitation, the adoption and use of new or modified Marks or copyrighted materials, and new or additional computer hardware, software, equipment, retail products, inventory, supplies or sales and marketing techniques. Franchisee shall accept and use any such changes in, or additions to, the System as if they were a part of this Agreement as of the Effective Date. Franchisee shall make such expenditures as such changes, additions or modifications in the System may reasonably require; provided, however, Franchisee shall not be required to implement or conform to any such changes, additions or modifications if the cost to do so would exceed (a) ONE DOLLAR (\$1.00) during the first (1st) year of the term of this Agreement; (b) TEN THOUSAND DOLLARS (\$10,000.00) during the entire term of this Agreement (which amounts may be increased consistent with increases to the Consumer Price Index, [U.S. City Average, all items, 1982-84=100], as published by the United States Department of Labor, Bureau of Labor Statistics); or (c) ONE DOLLAR (\$1.00) during the final year of the term of this Agreement if Franchisee provides written notice of its intention not to renew the Franchise. Any required expenditure for changes or upgrades to the System shall be in addition to expenditures for repairs and maintenance as required in Section 13.2.

10.3 Variance

Franchisor has the right, at its sole discretion and as it may deem in the best interests of all concerned in any specific instance, to vary standards or specifications for any franchisee based upon that particular franchisee's qualifications, the peculiarities of the particular site or circumstances, the demographics of the trade area, business potential, existing business practices or any other condition which Franchisor deems to be of importance to the successful operation of any particular KIDS 'N' CLAY Pottery Studio. Franchisor shall not be required to disclose or grant to Franchisee a like or similar variance hereunder.

11. ADVERTISING AND PROMOTIONAL ACTIVITIES

11.1 Grand Opening Advertising

Franchisee shall spend no less than TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) during the first three (3) months of operation of the Franchised Business on local advertisement and promotion of the initial opening ("Grand Opening Advertising"). Prior to their use, all materials to be used in Grand Opening Advertising must be approved by Franchisor through the process set forth in Section 11.2.2. Grand Opening Advertising expenditures shall be in addition to any Local Advertising expenditures and Marketing Fund Contributions.

11.2 Local Advertising

11.2.1 Franchisee shall continuously promote the Franchised Business. Every month, Franchisee shall spend at least two percent (2%) of the previous month's Gross Sales on advertising, promotions and public relations within the immediate locality surrounding the Franchised Business ("Local Advertising"). Such expenditures shall be made directly by Franchisee, subject to the approval and direction of Franchisor. Franchisor will provide general guidelines to Franchisee for conducting Local Advertising. Within thirty (30) days after the end of each month, Franchisee shall furnish to Franchisor an accurate accounting of the expenditures on Local Advertising for the preceding month.

11.2.2 Franchisee shall submit to Franchisor, for its prior approval, all advertising and promotional materials to be used by Franchisee including, but not limited to, ad copy, coupons, flyers, scripts, press releases and direct mail. Franchisor shall use reasonable efforts to provide notice of approval or disapproval within twenty (20) days from the date all requested material is received by Franchisor. If Franchisor does not approve submitted materials within twenty (20) days, such materials shall be deemed to have not received the required approval. Franchisee shall not use any marketing or promotional material prior to approval by Franchisor. The submission of advertising materials to Franchisor for approval shall not affect Franchisee's right to determine the prices at which Franchisee sells products or provides services.

11.3 Marketing Fund

When not less than 10 Kids 'N' Clay Pottery Studio businesses are operating in the United States of America, franchisor has the right (but not the obligation) to establish a Marketing Fund, as defined in Section 3.3. If established, Franchisee may be required to make weekly Marketing Fund Contributions, the amount of which will be set by Franchisor and may be adjusted from time to time but shall not exceed two percent (2%) of that week's Gross Sales. Franchisor shall notify Franchisee at least thirty (30) days before implementing or changing Marketing Fund Contribution requirements. The Marketing Fund shall be maintained and administered by Franchisor or its designee as follows:

11.3.1 Franchisor shall oversee all marketing programs, with sole discretion over the creative concepts, materials and media used in such programs, and the placement and allocation thereof. Franchisor does not warrant that any particular franchisee will benefit directly or *pro rata* from expenditures by the Marketing Fund. The program(s) may be local, regional or Franchise-wide.

11.3.2 Franchisee's Marketing Fund Contributions may be used to meet the costs of producing, maintaining, administering and directing consumer advertising (including, without limitation, the cost of preparing and conducting television, radio, Internet, magazine, newspaper, and direct mail advertising campaigns and other public relations activities; developing and/or hosting an Internet web page or site and similar activities; employing advertising agencies to assist therein; and providing promotional brochures and other marketing materials to franchisees). All Marketing Fund Contributions shall be maintained in a separate account from the monies of Franchisor and shall not be used to defray any of Franchisor's general operating expenses, except for such reasonable costs and expenses, if any, that Franchisor may incur in activities reasonably related to the administration of the Marketing Fund.

11.3.3 Franchisor shall endeavor to spend all Marketing Fund Contributions on marketing programs and promotions during Franchisor's fiscal year within which such contributions are made. If excess amounts remain in any Marketing Fund at the end of such fiscal year, all expenditures in the following fiscal year(s) shall be made first out of such excess amounts, including any interest or other earnings of the Marketing Fund, and next out of prior year contributions and then out of current contributions.

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| 11.3.4 | Although Franchisor intends the Marketing Fund, if established, to be of perpetual duration, Franchisor has the right to terminate the Marketing Fund at any time. The Marketing Fund shall not be terminated, however, until all Marketing Fund Contributions have been expended for advertising and promotional purposes or returned to Franchisee and other franchisees on a <i>pro rata</i> basis based on total Marketing Fund Contributions made in the aggregate by each franchisee. |
| 11.3.5 | Each KIDS ‘N’ CLAY Pottery Studio operated by Franchisor or any Affiliate shall make Marketing Fund Contributions at the same rate as KIDS ‘N’ CLAY franchisees. |
| 11.3.6 | An accounting of the operation of the Marketing Fund shall be prepared annually and shall be available to Franchisee upon request. Franchisor retains the right to have the Marketing Fund audited, at the expense of the Marketing Fund, by an independent certified public accountant selected by Franchisor. |
| 11.3.7 | Franchisee acknowledges that the Marketing Fund is not a trust and Franchisor assumes no fiduciary duty in administering the Marketing Fund. |
| 11.3.8 | When and if Franchisor establishes a Marketing Fund, Franchisor will establish an advisory board of franchisees, in such a manner and form as Franchisor deems appropriate, to provide advice and counsel regarding Franchisor’s use of Marketing Fund Contributions and the operations of Franchised Businesses. Such board shall function in an advisory capacity and shall not exercise any authority over the Marketing Fund or over Franchisor. |

11.4 Cooperative Advertising

Franchisor has the right, but not the obligation, to create a Cooperative Advertising program for the benefit of KIDS ‘N’ CLAY Pottery Studios located within a particular region. Franchisor has the right to (a) allocate any portion of the Marketing Fund to a Cooperative Advertising program; and (b) collect and designate all or a portion of the Local Advertising for a Cooperative Advertising program. Franchisor has the right to determine the composition of all geographic territories and market areas for the implementation of each Cooperative Advertising program and to require that Franchisee participate in such Cooperative Advertising programs when established within Franchisee’s region. If a Cooperative Advertising program is implemented in a particular region, Franchisor has the right to establish an advertising council to self-administer the Cooperative Advertising program. Franchisee shall participate in the council according to the council’s rules and procedures and Franchisee shall abide by the council’s decisions.

11.5 Internet Advertising

Franchisee may not establish a presence on, or market using, the Internet in connection with the Franchised Business without Franchisor’s prior written consent. Franchisor has established and maintains an Internet website at the uniform resource locator www.kidsnclay.com that provides information about the System and the services that Franchisor and its franchisees provide. Franchisor may (but is not required to) include at the KIDS ‘N’ CLAY website an interior page containing information about the Franchised Business. If Franchisor includes such information on the KIDS ‘N’ CLAY website, Franchisor has the right to require Franchisee to prepare all or a portion of the page, at Franchisee’s expense, using a template that Franchisor provides. All such information shall be subject to Franchisor’s approval prior to posting. Franchisor retains the sole right to market on the Internet, including the use of websites, domain names, uniform resource locators, linking, search engines (and

search engine optimization techniques), banner ads, meta-tags, marketing, auction sites, e-commerce and co-branding arrangements. Franchisee may be requested to provide content for Franchisor's Internet marketing and shall be required to follow Franchisor's intranet and Internet usage rules, policies and requirements. Franchisor retains the sole right to use the Marks on the Internet, including on websites, as domain names, directory addresses, search terms and meta-tags, and in connection with linking, marketing, co-branding and other arrangements. Franchisor retains the sole right to approve any linking to, or other use of, the KIDS 'N' CLAY website. Franchisee may not establish a presence on, or market using, the Internet in connection with the Franchised Business without Franchisor's prior written consent.

11.6 Telephone Directory Advertising

Franchisee must list and advertise the telephone number(s) for the Franchised Business in the "white pages" telephone directory and the classified or "yellow pages" telephone directory distributed in its trade area and in such directory heading or category as specified by Franchisor. Franchisee must place the classified directory advertisement and listings together with other KIDS 'N' CLAY Pottery Studios operating within the distribution area of the directories. If a joint listing is obtained, all KIDS 'N' CLAY Pottery Studios listed together shall pay a *pro rata* share of the cost of the advertisements and listings. Telephone directory advertising expenditures are in addition to Franchisee's Local Advertising obligations.

12. ACCOUNTING, RECORDS AND REPORTING OBLIGATIONS

12.1 Records

During the term of this Agreement, Franchisee shall maintain full, complete and accurate books, records and accounts in accordance with the standard accounting system prescribed by Franchisor in the Manual or otherwise in writing. Franchisee shall retain during the term of this Agreement, and for three (3) years thereafter, all books and records related to the Franchised Business including, without limitation, purchase orders, invoices, payroll records, sales tax records, state and federal tax returns, bank statements, cancelled checks, deposit receipts, cash receipts and disbursement journals, general ledgers, and any other financial records designated by Franchisor or required by law.

12.2 Gross Sales Reports

Franchisee shall maintain an accurate record of Gross Sales and shall deliver to Franchisor a signed and verified statement of Gross Sales ("Gross Sales Report") for the previous bi-monthly period in a form that Franchisor approves or provides in the Manual. The Gross Sales Report for the preceding period must be provided to Franchisor by the third (3rd) day or eighteenth (18th) day of the month or as otherwise provided in Section 3.2.

12.3 Financial Statements

Franchisee shall supply to Franchisor on or before the eighteenth (18th) day of each month, in a form approved by Franchisor, a balance sheet as of the end of the last day of the preceding month and an income statement for the preceding month and the fiscal year-to-date. Franchisee shall, at its expense, submit to Franchisor within ninety (90) days after the end of each fiscal year, an income statement for the fiscal year just ended and a balance sheet as of the last day of the fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis. If required by Franchisor, such financial statements shall be reviewed or audited by a certified public accountant. Franchisee shall submit to Franchisor such other periodic reports in the manner and at the time specified in the Manual or otherwise in writing.

12.4 Other Reports

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Franchisee shall submit to Franchisor copies of all state sales tax returns that are required to be filed with the appropriate governmental agency and such other records as Franchisor may reasonably request from time to time or as specified in the Manual. Franchisor shall have the right to release financial and operational information relating to the Franchised Business to Franchisor's lenders or prospective lenders. Franchisee shall certify as true and correct all reports to be submitted pursuant to this Agreement.

12.5 Computer System

Franchisee shall purchase, install and use a computer system consisting of hardware and software in accordance with Franchisor's specifications. Franchisor shall have full access to all of Franchisee's computer and sale data and systems and all related information by means of direct access, either in person or by telephone, modem or Internet to permit Franchisor to verify Franchisee's compliance with its obligations under this Agreement.

12.6 Right to Inspect

Franchisor or its designee has the right, during normal business hours, to examine, copy and audit the books, records and tax returns of Franchisee. If the audit or any other inspection should reveal that any payments to Franchisor have been underpaid, then Franchisee shall immediately pay to Franchisor the amount of the underpayment plus interest from the date such amount was due until paid at the rate of eighteen percent (18%) per annum (or the highest rate allowed by law, whichever is lower). If the inspection discloses an underpayment of three percent (3%) or more of the amount due for any period covered by the audit, Franchisee shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, travel expenses and reasonable accounting and attorneys' fees). The foregoing remedies shall be in addition to any other remedies Franchisor may have.

12.7 Release of Records

At Franchisor's request, Franchisee shall authorize and direct any third parties, including accounting professionals, to release to Franchisor all accounting and financial records arising from or relating to the operation of the Franchised Business including, but not limited to, records evidencing Gross Sales, profits, losses, income, tax liabilities, tax payments, revenues, expenses, and any correspondence, notes, memoranda, audits, business records, or internal accounts within said third parties' possession, custody or control, and to continue to release such records to Franchisor on a monthly basis for the length of the unexpired term of this Agreement or until such time as Franchisor withdraws its request. Franchisee shall execute all documents necessary to facilitate the release of records referenced herein to Franchisor.

13. STANDARDS OF OPERATION

13.1 Authorized Products, Services and Suppliers

13.1.1 Franchisee acknowledges that the reputation and goodwill of the System is based in large part on offering high quality services to its students. Accordingly, Franchisee shall provide or offer for use at the Franchised Business only those products, supplies, signs, equipment and other items and services that Franchisor from time to time approves (and which are not thereafter disapproved) and that comply with

Franchisor's specifications and quality standards. If required by Franchisor, any such items or services shall be purchased only from "Approved Suppliers" that Franchisor designates or approves (which might include, or be limited to, Franchisor or its Affiliate). Franchisee shall not offer for sale, sell or provide through the Franchised Business or from the Approved Location any products or services that Franchisor has not approved.

13.1.2 Franchisor shall provide Franchisee, in the Manual or other written or electronic form, with a list of specifications and, if required, a list of Approved Suppliers for some or all of the supplies, signs, equipment and other approved or specified items and services, and Franchisor may from time to time issue revisions to such list. If Franchisor or an Affiliate is an Approved Supplier, Franchisee shall execute a standard form purchase or supply agreement for the items to be supplied by Franchisor or its Affiliate. If Franchisee desires to use any services or products that Franchisor has not approved (for services and products that require supplier approval), Franchisee shall first send Franchisor sufficient information, specifications and/or samples for Franchisor to determine whether the service or product complies with its standards and specifications or whether the supplier meets its Approved Supplier criteria. Franchisee shall bear all reasonable expenses incurred by Franchisor in connection with determining whether it shall approve an item, service or supplier. Franchisor will decide within a reasonable time (usually thirty [30] days) after receiving the required information whether Franchisee may purchase or lease such items or services or may use such supplier. Approval of a supplier or product may be conditioned on the supplier's ability to provide sufficient quantity of product; quality of products or services at competitive prices; production and delivery capability; dependability and general reputation. Nothing in this Section shall be construed to require Franchisor to approve any particular supplier, or to require Franchisor to make available to prospective suppliers, standards and specifications that Franchisor, in its discretion, deems confidential.

13.1.3 Notwithstanding anything contrary in this Agreement, Franchisor has the right to review from time to time its approval of any items or suppliers. Franchisor may revoke its approval of any item, service or supplier at any time, and in its sole discretion, by notifying Franchisee and/or the supplier. Franchisee shall, at its own expense, promptly cease using or providing any items or services disapproved by Franchisor and shall promptly cease purchasing from suppliers disapproved by Franchisor.

13.1.4 Franchisor has the right to designate certain products and services, not otherwise authorized for general use as part of the System, to be used or offered locally or regionally based upon such factors as Franchisor determines including, but not limited to, franchisee qualifications, test marketing and regional or local differences. Such determination will be based upon the factors set forth in Section 10.3 and shall not create any rights in Franchisee to provide the same products or services.

13.1.5 Franchisor has the right to retain volume rebates, markups and other benefits from suppliers or in connection with the furnishing of suppliers. Franchisee shall have no entitlement to or interest in any such benefits.

13.2 Appearance and Condition of the Franchised Business

Franchisee shall maintain the Franchised Business and the Approved Location in "like new" condition, and shall repair or replace equipment, fixtures and signage as necessary to comply with the health and safety standards and specifications of Franchisor and Franchisee's lessor and any applicable laws or regulations. The expense of such maintenance shall be borne by Franchisee and shall be in addition to any required System modifications, as described in Section 10.2.

13.3 Ownership and Management

The Franchised Business shall, at all times, be under the direct supervision of Franchisee. The Designated Manager shall devote his or her full-time efforts to the management of the day-to-day operation of the Franchised Business. "Full-time" means the expenditure of at least thirty-five (35) hours per week, excluding

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vacation, sick leave and similar absences. Franchisee shall keep Franchisor informed, in writing, at all times of the identity of its Designated Manager. Franchisee must not engage in any business or other activities that will conflict with its obligations under this Agreement.

13.4 Days of Operation

Franchisee shall keep the Franchised Business open for business during normal business hours on the days specified in the Manual.

13.5 Licenses and Permits

Franchisee shall secure and maintain in force all required licenses, permits and certificates necessary for the operation of the Franchised Business and shall operate the Franchised Business in full compliance with all applicable laws, ordinances and regulations. Franchisor makes no representation to Franchisee with regard to any legal requirements that Franchisee must satisfy or comply with in connection with the operation of the Franchised Business. Franchisee shall be solely responsible for investigating and complying with all such laws, ordinances and regulations with regard to the operation of the Franchised Business.

13.6 Notification of Proceedings

Franchisee shall notify Franchisor in writing of the commencement of any action, suit or proceeding involving Franchisee or the Franchised Business, and of the issuance of any order, writ, injunction, award or decree which may affect the operation or financial condition of the Franchised Business not more than five (5) days after such commencement or issuance. Franchisee shall deliver to Franchisor not more than five (5) days after Franchisee's receipt thereof, a copy of any inspection report, warning, certificate or rating by any governmental agency relating to any health or safety law, rule or regulation that reflects Franchisee's failure to meet and maintain the highest applicable rating or Franchisee's noncompliance or less than full compliance with any applicable law, rule or regulation.

13.7 Compliance with Good Business Practices

Franchisee acknowledges that the quality of customer service, and every detail of appearance and demeanor of Franchisee and its employees, is material to this Agreement and the relationship created hereby. Therefore, Franchisee shall endeavor to maintain high standards of quality and service in the operation of the Franchised Business. Franchisee shall at all times give courteous and efficient service to students of the Franchised Business. The Franchised Business shall in all dealings with its students, parents of students, vendors and the general public adhere to the highest standards of honesty, fair dealing and ethical conduct. If Franchisor deems that Franchisee did not fairly handle a complaint, Franchisor has the right to intervene and satisfy the student or parent. Franchisor has the right to terminate this Agreement for repeated violation of this Section. Franchisee shall reimburse Franchisor for all costs incurred by Franchisor in satisfying a student, or parent of a student, of the Franchised Business pursuant to this Section.

13.8 Vending Machines

Franchisee shall not install or use at the Franchised Business any vending machines, amusement devices, jukeboxes, video machines or other similar devices without Franchisor's written approval.

13.9 Credit Cards

Franchisee shall, at its expense, lease or purchase the necessary equipment and/or software and shall have arrangements in place with Visa, MasterCard, American Express and such other credit card issuers as Franchisor may designate, from time to time, to enable the Franchised Business to accept such methods of payment from its students.

13.10 Best Efforts

Franchisee shall use its best efforts to promote and increase the sales and recognition of services offered through the Franchised Business. Franchisee shall require all of Franchisee's employees, managers, officers, agents and representatives to make a good faith effort to enhance and improve the System and the sales of all services and products provided as part of the System.

14. FRANCHISOR'S ADDITIONAL OPERATIONS ASSISTANCE

14.1 General Advice and Guidance

Franchisor shall be available to render advice, discuss problems and offer general guidance to Franchisee by telephone, e-mail, facsimile, newsletters and other methods with respect to planning, opening and operating the Franchised Business. Franchisor shall not charge for this service, however, Franchisor retains the right to discontinue this service should Franchisee, in Franchisor's discretion, be deemed to be utilizing this service too frequently or in an unintended manner. Franchisor's advice or guidance to Franchisee relative to tuition or prices that, in Franchisor's judgment, constitutes good business practice is based upon the experience of Franchisor and its franchisees in operating KIDS 'N' CLAY Pottery Studios and an analysis of costs and prices charged for competitive products and services. Franchisee shall have the sole right to determine the tuition or prices to be charged by the Franchised Business.

14.2 Periodic Visits

Franchisor or Franchisor's representative shall make periodic visits to the Franchised Business for the purposes of consultation, assistance and guidance with respect to various aspects of the operation and management of the Franchised Business. Franchisor and Franchisor's representatives who visit the Franchised Business may prepare, for the benefit of both Franchisor and Franchisee, written reports detailing any problems or concerns discovered during any such visit and outlining any required or suggested changes or improvements in the operations of the Franchised Business. A copy of any such written report may be provided to Franchisee. Franchisee shall implement any required changes or improvements in a timely manner.

14.3 System Improvements

Franchisor shall communicate improvements in the System to Franchisee as such improvements may be developed or acquired by Franchisor and implemented as part of the System.

14.4 Marketing and Promotional Materials

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Franchisor may periodically provide advertising and promotional materials including ad-slicks, brochures, fliers and other materials to Franchisee for use in the operation of the Franchised Business.

15. INSURANCE

15.1 Types and Amounts of Coverage

At its sole expense, Franchisee shall procure within sixty (60) days of the Effective Date, and maintain in full force and effect during the term of this Agreement, the types of insurance listed below. All policies (except any workers' compensation insurance) shall expressly name Franchisor as an additional insured or loss payee and all shall contain a waiver of all subrogation rights against Franchisor and its successors and assigns. In addition to any other insurance that may be required by applicable law, or by lender or lessor, Franchisee shall procure:

15.1.1 "all risk" property insurance coverage on all assets including inventory, furniture, fixtures, equipment, supplies and other property used in the operation of the Franchised Business. Franchisee's property insurance policy shall include coverage for fire, vandalism and malicious mischief and must have coverage limits of at least full replacement cost;

15.1.2 workers' compensation insurance that complies with the statutory requirements of the state in which the Franchised Business is located and employer liability coverage with a minimum limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) or, if higher, the statutory minimum limit as required by state law;

15.1.3 comprehensive general liability insurance against claims for bodily and personal injury, death and property damage caused by, or occurring in conjunction with, the operation of the Franchised Business, or Franchisee's conduct of business pursuant to this Agreement, with a minimum liability coverage of THREE MILLION DOLLARS (\$3,000,000.00) per occurrence or, if higher, the statutory minimum limit required by state law;

15.1.4 automobile liability insurance for owned or hired vehicles, with a combined single limit of at least THREE HUNDRED THOUSAND (\$300,000.00) or, if higher, the statutory minimum limit required by state law; and

15.1.5 such insurance as necessary to provide coverage under the indemnity provisions set forth in Section 21.2.

15.2 Future Increases

Franchisor has the right to reasonably increase the minimum liability protection requirement annually and require different or additional insurance coverage(s) to reflect inflation, changes in standards of liability, future damage awards or other relevant changes in circumstances.

15.3 Carrier Standards

Such policies shall be written by an insurance company licensed in the state in which Franchisee operates and having at least an “A” Rating Classification as indicated in the latest issue of A.M. Best’s Key Rating Guide.

15.4 Evidence of Coverage

Franchisee’s obligation to obtain and maintain the foregoing policies shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee’s performance of this obligation relieve it of liability under the indemnity provisions set forth in Section 21.2. Franchisee shall provide, annually, certificates of insurance showing compliance with the foregoing requirements. Such certificates shall state that said policy or policies shall not be canceled or altered without at least thirty (30) days’ prior written notice to Franchisor and shall reflect proof of payment of premiums.

15.5 Failure to Maintain Coverage

Should Franchisee not procure and maintain insurance coverage as required by this Agreement, Franchisor has the right (but not the obligation) to immediately procure such insurance coverage and to charge the premiums to Franchisee, which charges, together with a reasonable fee for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.

16. DEFAULT AND TERMINATION

16.1 Termination by Franchisee

If Franchisee is in substantial compliance with this Agreement and Franchisor materially breaches this Agreement and fails to commence reasonable efforts to cure such breach within thirty (30) days after receiving written notice identifying the claimed breach, Franchisee has the right to terminate this Agreement unless the breach cannot reasonably be cured within such thirty (30) days. If the breach cannot reasonably be cured in such thirty (30) days, Franchisee has the right to terminate this Agreement only if Franchisor does not promptly undertake and continue efforts to cure such material breach within a reasonable period of time and furnish Franchisee reasonable proof of such efforts.

16.2 Termination by Franchisor

16.2.1 Franchisor has the right to terminate this Agreement, without any opportunity to cure by Franchisee, if Franchisee:

16.2.1.1 fails to establish and equip the Franchised Business pursuant to Section 5;

16.2.1.2 fails to satisfactorily complete any training program pursuant to Section 8;

16.2.1.3 made any material misrepresentation or omission in its application for the Franchise or otherwise to Franchisor in the course of entering into this Agreement;

16.2.1.4 is convicted of or pleads no contest to a felony or other crime or offense that is likely to adversely affect the reputation of Franchisor, Franchisee or the Franchised Business;

16.2.1.5 discloses, duplicates or otherwise uses in an unauthorized manner any portion of the Manual or any other Confidential Information;

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16.2.1.6 abandons, fails or refuses to actively operate the Franchised Business for five (5) or more consecutive days (unless the Franchised Business has not been operational for a purpose approved by Franchisor), or, if first approved by Franchisor, fails to promptly relocate the Franchised Business following the expiration or termination of the lease for the Approved Location, the destruction or condemnation of the Approved Location or any other event rendering the Approved Location unusable;

16.2.1.7 surrenders or transfers control of the operation of the Franchised Business without Franchisor's approval, makes or attempts to make an unauthorized direct or indirect assignment of the Franchise or an ownership interest in Franchisee, or fails or refuses to assign the Franchise or the interest in Franchisee of a deceased or incapacitated owner thereof as herein required;

16.2.1.8 fails to maintain the Franchised Business under the primary supervision of a Designated Manager during the one hundred eighty (180) days following the death or incapacity of Franchisee or any holder of a legal or beneficial interest in Franchisee pursuant to Section 18.6;

16.2.1.9 submits to Franchisor on two (2) or more separate occasions at any time during the term of the Franchise any reports or other data, information or supporting records that understate any Royalty Fee or any other fees owed to Franchisor by more than three percent (3%) for any accounting period and Franchisee is unable to demonstrate that such understatements resulted from inadvertent error;

16.2.1.10 is adjudicated as bankrupt, becomes insolvent, commits any affirmative act of insolvency, or files any action or petition of insolvency; if a receiver of its property or any part thereof is appointed by a court; if it makes a general assignment for the benefit of its creditors; if a final judgment remains unsatisfied of record for thirty (30) days or longer (unless *supersedeas* bond is filed); if execution is levied against Franchisee's business or property; if a suit to foreclose any lien or mortgage against its Approved Location or equipment is instituted against Franchisee and not dismissed within thirty (30) days or is not in the process of being dismissed;

16.2.1.11 misuses or makes an unauthorized use of any of the Marks or commits any other act which can reasonably be expected to impair the goodwill associated with any of the Marks;

16.2.1.12 fails on two (2) or more separate occasions within any period of twelve (12) consecutive months to submit reports or other information or supporting records when due, to pay any Royalty Fee, Marketing Fund Contribution, amounts due for purchases from Franchisor and any Affiliate, or other payment when due to Franchisor or any Affiliate, whether or not such failures to comply are corrected after notice thereof is delivered to Franchisee;

16.2.1.13 fails to comply with the requirements of Section 13.7;

16.2.1.14 continues to violate any health or safety law, ordinance or regulation, or operates the Franchised Business in a manner that presents a health or safety hazard to its students, employees or the public; or

16.2.1.15 defaults under any other agreement between Franchisor (or any Affiliate) and Franchisee, such that Franchisor or its Affiliate, as the case may be, has the right to terminate such agreement or such agreement automatically terminates.

16.2.2 Except as otherwise provided in Section 16.2.1, Franchisor has the right to terminate this Agreement for the following breaches and defaults by giving notice of such termination stating the nature of the default; provided, however, that Franchisee may avoid termination by curing such default or failure (or by providing proof acceptable to Franchisor that Franchisee has made all reasonable efforts to cure such default or failure and shall continue to make all reasonable efforts to cure until a cure is effected if such default or failure cannot reasonably be cured before the effective date of the termination) within the specified period:

16.2.2.1 within five (5) days of receiving notice of Franchisee's failure to pay any amounts due to Franchisor; or

16.2.2.2 within thirty (30) days of receiving notice of any other default by Franchisee or upon Franchisee's failure to comply with any mandatory specification, standard or operating procedure prescribed in the Manual or otherwise prescribed in writing.

16.3 Reinstatement and Extension

If provisions of this Agreement provide for periods of notice less than those required by applicable law, or provide for termination, cancellation or non-renewal other than in accordance with applicable law, Franchisor may reinstate or extend the term of this Agreement for the purpose of complying with applicable law by submitting a written notice to Franchisee without waiving any of Franchisor's rights under this Agreement.

17. RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION

17.1 Actions to be Taken

Except as otherwise provided herein, upon termination or expiration, this Agreement and all rights granted hereunder to Franchisee shall terminate and Franchisee shall:

17.1.1 immediately cease to operate the Franchised Business and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor;

17.1.2 cease to use the Confidential Information, the System and the Marks including, without limitation, all signs, slogans, symbols, logos, advertising materials, stationery, forms and any other items which display or are associated with the Marks;

17.1.3 cease to use, and deliver or return to Franchisor, all student or client information, lists, databases or files;

17.1.4 upon demand by Franchisor, at Franchisor's sole discretion, immediately assign (or, if an assignment is prohibited, sublease for the full remaining term, and on the same terms and conditions as Franchisee's lease) its interest in the lease then in effect for the Approved Location to Franchisor and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement, and Franchisor has the right to pay rent and other expenses directly to the party to whom such payment is ultimately due;

17.1.5 take such action as may be necessary to cancel or assign to Franchisor, at Franchisor's option, any assumed name or equivalent registration filed with state, city or county authorities which contains the

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name “KIDS ‘N’ CLAY” or any other Mark, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement;

17.1.6 pay all sums owing to Franchisor and its Affiliate(s) which may include, but not be limited to, all damages, costs and expenses, including reasonable attorneys’ fees, unpaid Royalty Fees, and any other amounts due to Franchisor or its Affiliate(s);

17.1.7 pay to Franchisor all costs and expenses, including reasonable attorneys’ fees, incurred by Franchisor subsequent to the termination or expiration of the Franchise in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement;

17.1.8 immediately return to Franchisor the Manual and all other Confidential Information including records, files, instructions, brochures, agreements, disclosure statements and any and all other materials provided by Franchisor to Franchisee relating to the operation of the Franchised Business (all of which are acknowledged to be Franchisor’s property);

17.1.9 assign all telephone listings and numbers and e-mail accounts for the Franchised Business to Franchisor and shall notify the telephone company and all listing agencies of the termination or expiration of Franchisee’s right to use any telephone numbers or facsimile numbers associated with the Marks in any regular, classified or other telephone directory listing and shall authorize transfer of same to or at the direction of Franchisor; and

17.1.10 comply with all other applicable provisions of this Agreement.

17.2 Post-Termination Covenant Not to Compete

17.2.1 Franchisee acknowledges that the restrictive covenants contained in this Section and in Section 7 are fair and reasonable and are justifiably required for purposes including, but not limited to, the following:

17.2.1.1 to protect the trade secrets of Franchisor;

17.2.1.2 to induce Franchisor to grant a Franchise to Franchisee; and

17.2.1.3 to protect Franchisor against its costs in training Franchisee and its officers, directors, executives, professional staff and Designated Managers.

17.2.2 Except as otherwise approved in writing by Franchisor, neither Franchisee, nor any holder of a legal or beneficial interest in Franchisee, nor any officer, director, executive, manager or member of the professional staff of Franchisee, shall, for a period of two (2) years after the expiration or termination of this Agreement, regardless of the cause of termination, either directly or indirectly, for themselves or through, on behalf of or in conjunction with, any person, persons, partnership, corporation, limited liability company or other business entity:

17.2.2.1 own an interest in, manage, operate or provide services to any Competitive Business located or operating (a) within a twenty-five (25) mile radius of the Approved Location or within the Protected Territory (whichever is greater), or (b) within a twenty-five (25) mile radius of the location of any other KIDS 'N' CLAY Pottery Studio in existence at the time of termination or expiration; or

17.2.2.2 solicit or otherwise attempt to induce or influence any employee or other business associate of Franchisor to terminate or modify his, her or its business relationship with Franchisor or to compete against Franchisor.

17.2.3 In furtherance of this Section, Franchisor has the right to require certain individuals to execute standard form nondisclosure or non-competition agreements as provided in Section 7.5.

17.3 Unfair Competition

If Franchisee operates any other business, Franchisee shall not use any reproduction, counterfeit, copy or colorable imitation of the Marks, either in connection with such other business or the promotion thereof, that is likely to cause confusion, mistake or deception, or that is likely to dilute Franchisor's rights in the Marks. Franchisee shall not utilize any designation of origin, description or representation that falsely suggests or represents an association or connection with Franchisor. This Section is not intended as an approval of Franchisee's right to operate other businesses and in no way is it intended to contradict Section 17.1 or 17.2. If Franchisor elects not to receive an assignment or sublease of the Approved Location, Franchisee shall make such modifications or alterations to the Approved Location (including changing telephone and facsimile numbers) immediately upon termination or expiration of this Agreement as may be necessary to prevent any association between Franchisor or the System and any business subsequently operated by Franchisee or others at the Approved Location. Franchisee shall make such specific additional changes to the Approved Location as Franchisor may reasonably request for that purpose including, without limitation, removal of all physical and structural features identifying or distinctive to the System. If Franchisee fails or refuses to comply with the requirements of this Section, Franchisor has the right to enter upon the Approved Location for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee shall pay upon demand.

17.4 Franchisor's Option to Purchase Certain Business Assets

Franchisor has the right (but not the duty), for a period of thirty (30) days after termination or expiration of this Agreement, to purchase any or all assets of the Franchised Business including leasehold improvements, equipment, supplies and other inventory. The purchase price shall be equal to the assets' fair market value, excluding any goodwill. If Franchisor elects to exercise this option to purchase, it has the right to set off all amounts due from Franchisee under this Agreement, if any, against the purchase price. If Franchisor and Franchisee cannot agree on a fair market value, an independent appraiser selected by Franchisor will determine the fair market value.

17.5 Survival of Certain Provisions

All obligations of Franchisor and Franchisee, which expressly or by their nature survive the expiration or termination of this Agreement, shall continue in full force and effect subsequent to and notwithstanding their expiration or termination and until satisfied or by their nature expire.

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| 18. <u>TRANSFERABILITY OF INTEREST</u> | |

18.1 Transfer by Franchisor

This Agreement and all rights and duties hereunder are fully transferable in whole or in part by Franchisor and such rights will inure to the benefit of any person or entity to whom transferred; provided, however, that with respect to any assignment resulting in the subsequent performance by the assignee of the functions of Franchisor, the assignee shall assume the obligations of Franchisor hereunder and Franchisor shall thereafter have no liability for the performance of any obligations contained in this Agreement.

18.2 Transfer by Franchisee to a Third Party

The rights and duties of Franchisee as set forth in this Agreement, and the Franchise herein granted, are personal to Franchisee (or its owners), and Franchisor has entered into this Agreement in reliance upon Franchisee’s personal or collective skill and financial ability. Accordingly, neither Franchisee nor any holder of a legal or beneficial interest in Franchisee may sell, assign, convey, give away, pledge, mortgage, sublicense or otherwise transfer, whether by operation of law or otherwise, any interest in this Agreement, the Franchise granted hereby, the Approved Location used in operating the Franchised Business, its assets or any part or all of the ownership interest in Franchisee without the prior written approval of Franchisor. Any purported transfer without such approval shall be null and void and shall constitute a material breach of this Agreement. If Franchisee is in compliance with this Agreement, Franchisor’s consent to such transfer shall be conditioned upon the satisfaction of the following requirements:

18.2.1 Franchisee has complied with the requirements set forth in Section 19;

18.2.2 all obligations owed to Franchisor, and all other outstanding obligations relating to the Franchised Business, are fully paid and satisfied;

18.2.3 Franchisee (and any transferring owners, if Franchisee is a business entity) has executed a general release, in a form the same as or similar to the General Release attached as Exhibit A, of any and all claims against Franchisor, including its officers, directors, shareholders, managers, members, partners, owners and employees, in their corporate and individual capacities including, without limitation, claims arising under federal, state or local laws, rules or ordinances, and any other matters incident to the termination of this Agreement or to the transfer of Franchisee’s interest herein or to the transfer of Franchisee’s ownership of all or any part of the Franchise; provided, however, that if a general release is prohibited, Franchisee shall give the maximum release allowed by law;

18.2.4 the prospective transferee has satisfied Franchisor that it meets Franchisor’s management, business and financial standards, and otherwise possesses the character and capabilities, including business reputation and credit rating, as Franchisor may require, in its sole discretion, to demonstrate ability to conduct the Franchised Business;

18.2.5 the transferee and, if Franchisor requires, all persons owning any interest in the transferee, have executed the then-current Franchise Agreement for new franchisees, which may be substantially different from this Agreement, including different Royalty Fee and Marketing Fund Contribution rates and other material provisions, and the franchise agreement then executed shall be for the term specified in such agreement;

18.2.6 the transferee has executed a general release, in a form the same as or similar to the General Release attached as Exhibit A, of any and all claims against Franchisor and its officers, directors, shareholders, managers, members, partners, owners and employees, in their corporate and individual capacities, with respect to any representations regarding the Franchise or the business conducted pursuant thereto or any other matter that may have been made to the transferee by Franchisee;

18.2.7 Franchisee has provided Franchisor with a complete copy of all contracts and agreements and related documentation between Franchisee and the prospective transferee relating to the intended sale or transfer of the Franchise;

18.2.8 Franchisee, or the transferee, has paid to Franchisor a transfer fee in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00);

18.2.9 the transferee, or all holders of a legal or beneficial interest in the transferee, has agreed to be personally bound jointly and severally by all provisions of this Agreement for the remainder of its term;

18.2.10 Franchisee has agreed to be bound to the obligations of the new franchise agreement and to guarantee the full performance thereof by the transferee, if required by Franchisor;

18.2.11 the transferee has obtained all necessary consents and approvals by third parties (such as the lessor of the Approved Location) and all applicable federal, state and local laws, rules, ordinances and requirements applicable to the transfer have been complied with or satisfied;

18.2.12 Franchisee has, and if Franchisee is an entity, all of the holders of a legal and beneficial interest in Franchisee have executed and delivered to Franchisor a nondisclosure and non-competition agreement in a form the same as or similar to the standard form Nondisclosure and Non-Competition Agreement attached as Exhibit B; and

18.2.13 the transferee agrees that its Designated Manager shall complete, to Franchisor's satisfaction, a training program in substance similar to the initial training described in Section 8.1 prior to assuming the management of the day-to-day operation of the Franchised Business.

18.3 Transfer to a Controlled Entity

18.3.1 If Franchisee wishes to transfer this Agreement or any interest herein to a corporation, limited liability company or other legal entity which shall be entirely owned by Franchisee ("Controlled Entity"), which Controlled Entity is being formed for the financial planning, tax or other convenience of Franchisee, Franchisor's consent to such transfer shall be conditioned upon the satisfaction of the following requirements:

18.3.1.1 the Controlled Entity is newly organized and its charter provides that its activities are confined exclusively to the operation of the Franchised Business;

18.3.1.2 Franchisee or all holders of a legal or beneficial interest in Franchisee own all of the equity and voting power of the outstanding stock or other capital interest in the Controlled Entity;

18.3.1.3 all obligations of Franchisee to Franchisor or any Affiliate are fully paid and satisfied; provided, however, that neither Franchisee nor the transferee shall be required to pay a transfer fee as required pursuant to Section 18.2.8;

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| 18.3.1.4 the Controlled Entity has entered into a written agreement with Franchisor expressly assuming the obligations of this Agreement and all other agreements relating to the operation of the Franchised Business. If the consent of any other party to any such other agreement is required, Franchisee has obtained such written consent and provided the same to Franchisor prior to consent by Franchisor; | |
| 18.3.1.5 all holders of a legal or beneficial interest in the Controlled Entity have entered into an agreement with Franchisor jointly and severally guaranteeing the full payment of the Controlled Entity's obligations to Franchisor and the performance by the Controlled Entity of all the obligations of this Agreement; | |
| 18.3.1.6 each stock certificate or other ownership interest certificate of the Controlled Entity has conspicuously endorsed upon the face thereof of a statement in a form satisfactory to Franchisor that it is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon transfers and assignments by this Agreement; and | |
| 18.3.1.7 copies of the Controlled Entity's articles of incorporation, bylaws, operating agreement, and other governing regulations or documents, including resolutions of the board of directors authorizing entry into this Agreement, have been promptly furnished to Franchisor. Any amendment to any such documents shall also be furnished to Franchisor immediately upon adoption. | |

18.3.2 The term of the transferred franchise shall be the unexpired term of this Agreement, including all renewal rights, subject to any and all conditions applicable to such renewal rights.

18.3.3 Franchisor's consent to a transfer of any interest in this Agreement, or of any ownership interest in the Franchised Business, shall not constitute a waiver of any claims Franchisor may have against the transferor or the transferee, nor shall it be deemed a waiver of Franchisor's right to demand compliance with the terms of this Agreement.

18.4 Franchisor's Disclosure to Transferee

Franchisor has the right, without liability of any kind or nature whatsoever to Franchisee, to make available for inspection by any intended transferee of Franchisee all or any part of Franchisor's records relating to this Agreement, the Franchised Business or to the history of the relationship of the parties hereto. Franchisee hereby specifically consents to such disclosure by Franchisor and shall release and hold Franchisor harmless from and against any claim, loss or injury resulting from an inspection of Franchisor's records relating to the Franchised Business by an intended transferee identified by Franchisee.

18.5 For-Sale Advertising

Franchisee shall not, without prior written consent of Franchisor, place in, on or upon the location of the Franchised Business, or in any communication media, any form of advertising relating to the sale of the Franchised Business or the rights granted hereunder.

18.6 Transfer by Death or Incapacity

Upon the death or incapacity (as determined by a court of competent jurisdiction) of any individual franchisee or any holder of a legal or beneficial interest in Franchisee, the appropriate representative of such person (whether administrator, personal representative or trustee) will, within a reasonable time not exceeding one hundred eighty (180) days following such event, transfer such individual's interest in the Franchised Business or in Franchisee to a third party approved by Franchisor. Such transfers, including transfers by will or inheritance, shall be subject to the conditions for assignments and transfers contained in this Agreement. During such one hundred eighty (180) day period, the Franchised Business must remain at all times under the primary management of a Designated Manager who otherwise meets Franchisor's management qualifications.

19. RIGHT OF FIRST REFUSAL

19.1 Submission of Offer

If Franchisee, or any of its owners, proposes to sell the Franchised Business (or any of its assets outside of the normal course of business), any ownership interest in Franchisee or any ownership interest in the Franchise granted hereunder, Franchisee shall obtain and deliver a *bona fide*, executed written offer or proposal to purchase, along with all pertinent documents including any contract or due diligence materials, to Franchisor. The offer must apply only to an approved sale of the assets or interests listed above and may not include any other property or rights of Franchisee or any of its owners.

19.2 Franchisor's Right to Purchase

Franchisor shall, for thirty (30) days from the date of delivery of all such documents, have the right, exercisable by written notice to Franchisee, to purchase the offered assets or interest for the price and on the same terms and conditions contained in such offer communicated to Franchisee. Franchisor has the right to substitute cash for the fair market value of any form of payment proposed in such offer. Franchisor's credit shall be deemed at least equal to the credit of any proposed buyer. After providing notice to Franchisee of Franchisor's intent to exercise this right of first refusal, Franchisor shall have up to sixty (60) days to close the purchase. Franchisor shall be entitled to receive from Franchisee all customary representations and warranties given by Franchisee as the seller of the assets or such ownership interest or, at Franchisor's election, such representations and warranties contained in the proposal.

19.3 Non-Exercise of Right of First Refusal

If Franchisor does not exercise this right of first refusal within thirty (30) days, the offer or proposal may be accepted by Franchisee or any of its owners, subject to Franchisor's prior written approval as required by Section 18.2. Should the sale fail to close within one hundred twenty (120) days after the offer is delivered to Franchisor, Franchisor's right of first refusal shall renew and be implemented in accordance with this Section.

20. BENEFICIAL OWNERS OF FRANCHISEE

Franchisee represents, and Franchisor enters into this Agreement in reliance upon such representation, that the individuals identified in Exhibit D as Holders of a Legal or Beneficial Interest, each of whom have executed the supplemental signature page below with respect to his or her individual obligations under this Agreement, are the sole holders of a legal or beneficial interest (in the stated proportions) of Franchisee.

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| 21. | <u>RELATIONSHIP AND INDEMNIFICATION</u> | |

21.1 Relationship

This Agreement does not appoint or make Franchisee an agent, legal representative, joint venturer, partner, employee, servant or independent contractor of Franchisor for any purpose whatsoever. Franchisee may not represent or imply to third parties that Franchisee is an agent of Franchisor, and Franchisee is in no way authorized to make any contract, agreement, warranty or representation on behalf of Franchisor, or to create any obligation, express or implied, on Franchisor’s behalf. During the term of this Agreement, and any extension or renewal hereof, Franchisee shall hold itself out to the public only as a franchisee and an owner of the Franchised Business operating the Franchised Business pursuant to a franchise from Franchisor. Franchisee shall take such affirmative action as may be necessary to do so including, without limitation, exhibiting a notice of that fact in a conspicuous place on the Approved Location and on all forms, stationery or other written materials, the content of which Franchisor has the right to specify. Under no circumstances shall Franchisor be liable for any act, omission, contract, debt nor any other obligation of Franchisee. Franchisor shall in no way be responsible for any injuries to persons or property resulting from the operation of the Franchised Business. Any third party contractors and vendors retained by Franchisee to convert or construct the premises are independent contractors of Franchisee alone.

21.2 Indemnification

Franchisee shall hold harmless and indemnify Franchisor, its Affiliate, all holders of a legal or beneficial interest in Franchisor and all officers, directors, executives, managers, members, partners, owners, employees, agents, successors and assigns (collectively “Franchisor Indemnitees”) from and against all losses, damages, fines, costs, expenses or liability (including attorneys’ fees and all other costs of litigation) incurred in connection with any action, suit, demand, claim, investigation or proceeding, or any settlement thereof, which arises from or is based upon Franchisee’s (a) ownership or operation of the Franchised Business; (b) violation, breach or asserted violation or breach of any federal, state or local law, regulation or rule; (c) breach of any representation, warranty, covenant, or provision of this Agreement or any other agreement between Franchisee and Franchisor (or its Affiliate); (d) defamation of Franchisor or the System; (e) acts, errors or omissions of any nature, including those committed or incurred in connection with the Franchised Business, and including any negligent or intentional acts; or (f) infringement, violation or alleged infringement or violation of any Mark, patent or copyright or any misuse of the Confidential Information.

21.3 Right to Retain Counsel

Franchisee shall give Franchisor immediate notice of any such action, suit, demand, claim, investigation or proceeding that may give rise to a claim for indemnification by a Franchisor Indemnitee. Franchisor has the right to retain counsel of its own choosing in connection with any such action, suit, demand, claim, investigation or proceeding. In order to protect persons, property, Franchisor’s reputation or the goodwill of others, Franchisor has the right to, at any time without notice, take such remedial or corrective actions as it deems expedient with respect to any action, suit, demand, claim, investigation or proceeding if, in Franchisor’s sole judgment, there are grounds to believe any of the acts or circumstances listed above have occurred. If Franchisor’s exercise of its rights under this Section causes any of Franchisee’s insurers to refuse to pay a third party claim, all cause of action and legal remedies Franchisee might have against such insurer shall automatically be assigned to Franchisor without the need for any further action on either party’s part. Under no circumstances shall Franchisor be required or obligated to seek

coverage from third parties or otherwise mitigate losses in order to maintain a claim against Franchisee. The failure to pursue such remedy or mitigate such loss shall in no way reduce the amounts recoverable by Franchisor from Franchisee.

22. GENERAL CONDITIONS AND PROVISIONS

22.1 No Waiver

No failure of Franchisor to exercise any power reserved to it hereunder, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom nor practice of the parties in variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms of this Agreement. Waiver by Franchisor of any particular default by Franchisee shall not be binding unless in writing and executed by Franchisor and shall not affect nor impair Franchisor's right with respect to any subsequent default of the same or of a different nature. Subsequent acceptance by Franchisor of any payment(s) due shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

22.2 Injunctive Relief

As any breach by Franchisee of any of the restrictions contained in Sections 6, 7 and 17 would result in irreparable injury to Franchisor, and as the damages arising out of any such breach would be difficult to ascertain, in addition to all other remedies provided by law or in equity, Franchisor shall be entitled to seek injunctive relief (whether a restraining order, a preliminary injunction or a permanent injunction) against any such breach, whether actual or contemplated.

22.3 Notices

All notices required or permitted under this Agreement shall be in writing and shall be deemed received: (a) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (b) on the next business day after transmission by facsimile or other reasonably reliable electronic communication system; (c) two (2) business days after being sent via guaranteed overnight delivery by a commercial courier service; or (d) five (5) business days after being sent by Registered Mail, return receipt requested. Either Party may change its address by a written notice sent in accordance with this Section 22.3. All notices, payments and reports required by this Agreement shall be sent to Franchisor at the following address:

Kids 'N' Clay Development, LLC
Attention: President
1824 5th Street
Berkeley, California 94710-1915

22.4 Cost of Enforcement or Defense

If Franchisor or Franchisee is required to enforce this Agreement in a judicial or arbitration proceeding, the prevailing party shall be entitled to reimbursement of its costs, including reasonable accounting and attorneys' fees, in connection with such proceeding.

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22.5 Guaranty and Assumption of Obligations

All holders of a legal or beneficial interest in Franchisee of five percent (5%) or greater shall be required to execute, as of the date of this Agreement, the Guaranty and Assumption of Obligations attached as Exhibit C, through which such holders agree to assume and discharge all of Franchisee's obligations under this Agreement and to be personally liable hereunder for all of the same.

22.6 Approvals

Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefor and, except as otherwise provided herein, any approval or consent granted shall be effective only if in writing. Franchisor makes no warranties nor guarantees upon which Franchisee may rely, and assumes no liability nor obligation to Franchisee or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or services to Franchisee in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefore.

22.7 Entire Agreement

This Agreement, its exhibits and the documents referred to herein shall be construed together and constitute the entire, full and complete agreement between Franchisor and Franchisee concerning the subject matter hereof and shall supersede all prior agreements. No other representation, oral or otherwise, has induced Franchisee to execute this Agreement, and there are no representations (other than those within Franchisor's KIDS 'N' CLAY Offering Circular), inducements, promises or agreements, oral or otherwise, between the parties not embodied herein, which are of any force or effect with respect to the matters set forth in or contemplated by this Agreement or otherwise. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing by both parties.

22.8 Severability and Modification

22.8.1 Except as noted below, each paragraph, part, term and provision of this Agreement shall be considered severable. If any paragraph, part, term or provision herein is ruled to be unenforceable, unreasonable or invalid, such ruling shall not impair the operation of or affect the remaining portions, paragraphs, parts, terms and provisions of this Agreement, and the latter shall continue to be given full force and effect and bind the parties; and such unenforceable, unreasonable or invalid paragraphs, parts, terms or provisions shall be deemed not part of this Agreement. If Franchisor determines that a finding of invalidity adversely affects the basic consideration of this Agreement, Franchisor has the right to, at its option, terminate this Agreement.

22.8.2 Notwithstanding the above, each of the covenants contained in Sections 7 and 17 shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of any such covenant is held to be unenforceable, unreasonable or invalid, then it shall be amended to provide for limitations on disclosure of Confidential Information or on competition to the maximum extent provided or permitted by law.

22.9 Construction

All captions herein are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

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| 22.10 <u>Force Majeure</u> | |
| <p>Whenever a period of time is provided in this Agreement for either party to perform any act, except pay monies, neither party shall be liable nor responsible for any delays due to strikes, lockouts, casualties, acts of God, war, terrorism, governmental regulation or control or other causes beyond the reasonable control of the parties, and the time period for the performance of such act shall be extended for the amount of time of the delay. This clause shall not result in an extension of the term of this Agreement.</p> | |
| 22.11 <u>Timing</u> | |
| <p>Time is of the essence; except as set forth in Section 22.10, failure to perform any act within the time required or permitted by this Agreement shall be a material breach.</p> | |
| 22.12 <u>Withholding Payments</u> | |
| <p>Franchisee shall not, for any reason, withhold payment of any Royalty Fees or other amounts due to Franchisor or to its Affiliate. Franchisee shall not withhold or offset any amounts, damages or other monies allegedly due to Franchisee against any amounts due to Franchisor. No endorsement or statement on any payment for less than the full amount due to Franchisor will be construed as an acknowledgment of payment in full, or an accord and satisfaction, and Franchisor has the right to accept and cash any such payment without prejudice to Franchisor's right to recover the full amount due, or pursue any other remedy provided in this Agreement or by law. Franchisor has the right to apply any payments made by Franchisee against any of Franchisee's past due indebtedness as Franchisor deems appropriate. Franchisor shall set off sums Franchisor owes to Franchisee against any unpaid debts owed by Franchisee to Franchisor.</p> | |
| 22.13 <u>Further Assurances</u> | |
| <p>Each party to this Agreement will execute and deliver such further instruments, contracts, forms or other documents, and will perform such further acts, as may be necessary or desirable to perform or complete any term, covenant or obligation contained in this Agreement.</p> | |
| 22.14 <u>Duty of Reasonableness and of Good Faith</u> | |
| <p>To honor the intent and purpose of this Agreement, and of any of the documents referenced herein, both Franchisor and Franchisee shall act reasonably and in good faith. If the consent of either party is required or contemplated hereunder, the party whose consent is required shall not unreasonably withhold consent, unless such consent is expressly subject to such party's sole discretion pursuant to the terms of this Agreement.</p> | |
| 22.15 <u>Third-Party Beneficiaries</u> | |
| <p>Anything to the contrary notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Franchisee, and their respective successors and assigns as may be contemplated by this Agreement, any rights or remedies under this Agreement.</p> | |
| 22.16 <u>Multiple Originals</u> | |

Both parties will execute multiple copies of this Agreement, and each executed copy will be deemed an original.

23. DISPUTE RESOLUTION

23.1 Choice of Law

Except to the extent this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California (without reference to its conflict of laws principles), excluding any law regulating the sale of franchises or governing the relationship between a franchisor and franchisee, unless the jurisdictional requirements of such laws are met independently without reference to this Section. The Federal Arbitration Act shall govern all matters subject to arbitration. References to any law refer also to any successor laws and to any published regulations for such law as in effect at the relevant time. References to a governmental agency also refer to any regulatory body that succeeds the function of such agency. Certain provisions of this Agreement may be preempted by state or federal law. Certain applicable state laws are disclosed on the Multi-State Addenda attached as Exhibit E.

23.2 Consent to Jurisdiction

Any action brought by either party, except those claims required to be submitted to arbitration, shall be brought in the appropriate state or federal court located in or serving the County of Alameda, California. The parties waive all questions of personal jurisdiction or venue for the purposes of carrying out this provision. The parties hereby submit to service of process by registered mail, return receipt requested or by any other manner provided by law. Claims for injunctive relief may be brought by Franchisor where Franchisee is located. This exclusive choice of jurisdiction and venue provision shall not restrict the ability of the parties to confirm or enforce judgments or arbitration awards in any appropriate jurisdiction.

23.3 Cumulative Rights and Remedies

No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be in addition to every other right or remedy. Nothing contained herein shall bar Franchisor's right to obtain injunctive relief against threatened conduct that may cause it loss or damages, including obtaining restraining orders and preliminary and permanent injunctions.

23.4 Limitations of Claims

Any claim concerning the Franchised Business or this Agreement or any related agreement will be barred unless an action for a claim is commenced within one (1) year from the date on which Franchisee or Franchisor knew or should have known, in the exercise of reasonable diligence, of the facts giving rise to the claim.

23.5 Limitation of Damages

Franchisee and Franchisor each waive, to the fullest extent permitted by law, any right or claim for any punitive or exemplary damages against the other and agree that if there is a dispute with the other, each will be limited to the recovery of actual damages sustained by it including reasonable accounting and legal fees as provided in Section 22.4. Franchisee waives and disclaims any right to consequential damages in any action or claim against Franchisor concerning this Agreement or any related agreement. In

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any claim or action brought by Franchisee against Franchisor concerning this Agreement, Franchisee's contract damages shall not exceed and shall be limited to refund of Franchisee's Franchise Fee and Royalty Fee payments.

23.6 Waiver of Jury Trial

Franchisee and Franchisor each irrevocably waive trial by jury in any action, whether at law or equity, brought by either of them.

23.7 Arbitration

This Agreement evidences a transaction involving commerce and, therefore, the Federal Arbitration Act, Title 9 of the United States Code is applicable to the subject matter contained herein. Except for controversies or claims relating to the ownership of any of Franchisor's Marks or the unauthorized use or disclosure of Franchisor's Confidential Information and except for claims for injunctive relief, all disputes arising out of or relating to this Agreement or to any other agreements between the parties, or with regard to interpretation, formation or breach of this or any other agreement between the parties, shall be settled by binding arbitration conducted in the County of Alameda, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The proceedings will be held by a single arbitrator agreed upon by the parties or otherwise appointed by the Superior Court for the State of California and located in the County of Alameda, California. The decision of the arbitrator will be final and binding upon the parties. Judgment upon the award rendered by the arbitrator may be entered in any court having personal and subject matter jurisdiction.

Franchisee acknowledges that it has read the terms of this binding arbitration provision and affirms that this provision is entered into willingly and voluntarily and without any fraud, duress or undue influence on the part of Franchisor or any of Franchisor's agents or employees.

24. ACKNOWLEDGMENTS

24.1 Receipt of this Agreement and the Uniform Franchise Offering Circular

Franchisee represents and acknowledges that it has received, read and understands this Agreement and Franchisor's Uniform Franchise Offering Circular; and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of its own choosing about the potential benefits and risks of entering into this Agreement. Franchisee represents and acknowledges that it has received an exact copy of this Agreement and its exhibits at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further represents and acknowledges that it has received, at least ten (10) business days prior to the date on which this Agreement was executed, the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures.

24.2 Consultation by Franchisee

Franchisee represents that it has been urged to consult with its own advisors with respect to the legal, financial and other aspects of this Agreement, the business franchised hereby and the prospects for that business. Franchisee represents that it has either consulted with such advisors or has deliberately declined to do so.

24.3 True and Accurate Information

Franchisee represents that all information set forth in any and all applications, financial statements and submissions to Franchisor is true, complete and accurate in all respects, and Franchisee acknowledges that Franchisor is relying upon the truthfulness, completeness and accuracy of such information.

24.4 Risk

Franchisee represents that it has conducted an independent investigation of the business contemplated by this Agreement and acknowledges that, like any other business, an investment in a KIDS 'N' CLAY Pottery Studio involves business risks and that the success of the venture is dependent, among other factors, upon the business abilities and efforts of Franchisee. Franchisor makes no representations or warranties, express or implied, in this Agreement or otherwise, as to the potential success of the business venture contemplated hereby.

24.5 No Guarantee of Success

Franchisee represents and acknowledges that it has not received or relied on any guarantee, express or implied, as to the revenues, profits or likelihood of success of the Franchised Business. Franchisee represents and acknowledges that there have been no representations by Franchisor's directors, employees or agents that are not contained in, or are inconsistent with, the statements made in the Uniform Franchise Offering Circular or this Agreement.

24.6 No Violation of Other Agreements

Franchisee represents that its execution of this Agreement will not violate any other agreement or commitment to which Franchisee or any holder of a legal or beneficial interest in Franchisee is a party.

TABLE OF CONTENTS (continued)

SECTION

PAGE

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby have duly executed this Agreement.

KIDS 'N' CLAY DEVELOPMENT, LLC:

By: _____

Name: _____

Title: _____

FRANCHISEE: _____

(type/print name)

By: _____

Name: _____

Title: _____

[or] [if an individual]

Signed: _____

Name printed: _____

[SUPPLEMENTAL SIGNATURE PAGE FOLLOWS]

The following have duly executed this Agreement with respect to, and agree to be personally bound by, the obligations contained in this Agreement including, without limitation, those contained in Sections 7, 17, 18, 19, 20, 21 and 23:

Signed: _____

Name printed: _____

Relationship to Franchisee: _____

Signed: _____

Name printed: _____

Relationship to Franchisee: _____

Signed: _____

Name printed: _____

Relationship to Franchisee: _____

Signed: _____

Name printed: _____

Relationship to Franchisee: _____

Signed: _____

Name printed: _____

Relationship to Franchisee: _____

Signed: _____

Name printed: _____

Relationship to Franchisee: _____