



HAMBURGER MARY'S® BAR & GRILLE

**CALIFORNIA FRANCHISE AGREEMENT
HAMBURGER MARY'S® BAR & GRILLE FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT is made and entered into this ___ day of _____, 200_ by and between Hamburger Mary's® International, LLC, a California limited liability company ("HMI") and ("Franchisee").

WHEREAS, HMI has expended substantial time, effort, and money to acquire and develop expertise in the development, operation, and promotion of specialty restaurants selling select menu items;

WHEREAS, HMI has acquired and developed unique methods and techniques for establishing and operating restaurants featuring select menu items designed to appeal to the particular population of select urban areas, and producing and merchandising top quality products through those restaurants, employing its particular menu design and selection, management and operating methods, products, ingredients, recipes, sales techniques, personnel training and supervision methods, and marketing, advertising, and promotion techniques (collectively, the "HMI Method"), all of which constitute trade secrets and proprietary information belonging to HMI;

WHEREAS, there is a unique reputation and public recognition for products and services merchandised under the trade name Hamburger Mary's® (the "HMI Trade Name"), the trademark Hamburger Mary's® registered in the United States Patent and Trademark Office under registration number 1224441, and certain other trade and service marks belonging to HMI (the "HMI Marks"), and there is substantial goodwill associated with the HMI Trade Name and Marks;

WHEREAS, Franchisee desires to engage in the operation of a Hamburger Mary's® Bar & Grille at the location described or to be described in Exhibit A, using the HMI Trade Name, Marks, and Method on all the terms and conditions set forth in this Franchise Agreement (the "Franchise Business"), and to receive training and assistance from HMI; and

WHEREAS, HMI desires to have another restaurant operating under the HMI Trade Name and Marks and in accordance with the standards embodied in and resulting from the HMI Method and to have Franchisee operate that restaurant;

NOW, THEREFORE, in consideration of the covenants, terms, and conditions set forth in this Franchise Agreement, and their performance, HMI and Franchisee hereby agree:

1. TRADE NAME, MARKS, AND TRADE SECRET LICENSE.

1.1 Grant of License

HMI grants Franchisee the right to operate a Hamburger Mary's® Bar & Grille at the location described or to be described in Exhibit A (the "Franchise Location"), using the HMI Trade Name, Marks, and Method for the duration of this Franchise Agreement, subject to and on all the terms and conditions set forth in this Franchise Agreement.

1.2 Exclusivity of License.

So long as Franchisee complies with each and every covenant, term, and condition of this Franchise Agreement, HMI shall not at any time during the term of this Franchise Agreement establish any other Hamburger Mary's® Bar & Grille nor grant to any other person or entity a license to use the HMI Trade Name, Marks, or Method in connection with the operation of a Hamburger Mary's® Bar & Grille in the territory described or to be described in Exhibit A (the "Territory"). Nothing in this Franchise Agreement shall prohibit HMI from selling any food products in the Territory under the HMI Trade Name or Marks, whether in grocery stores, to institutional customers, or otherwise and HMI expressly reserves the right to do so within or outside of the Territory and without regard to proximity to the Franchise Location. Nothing contained in this Franchise Agreement shall prevent HMI or its franchisees from soliciting, accepting, or delivering orders in the Territory. Nothing in this Franchise Agreement shall prohibit HMI from owning, operating, or franchising others to own or operate restaurants or any other business in the Territory under a name or marks other than the HMI Trade Name or Marks.

1.3 Restricted and Required Use.

(A) Franchisee shall use the HMI Trade Name, Marks, and Method solely in connection with the operation of the Franchise Business. Franchisee shall adopt and strictly adhere to the HMI Method, as supplemented or modified by HMI from time-to-time, in the conduct of the Franchise Business and use of the Franchise Location, and shall use only the HMI Trade Name and Marks, without any prefix, suffix, modifier, or other descriptive term, to describe and identify the Franchise Location, the food products sold from it, and the Franchise Business. Should Franchisee at any time operate the Franchise Business through an entity, Franchisee shall not use the HMI Trade Name or any of the HMI Marks, or any derivative of any of them, or any similar name in its entity name.

(B) HMI may require Franchisee to modify or discontinue use of the HMI Trade Name and/or Marks, and/or use one or more additional or substitute names or marks if HMI deems modification or discontinuance necessary or desirable. Should HMI require Franchisee to modify or discontinue use of the HMI Trade Name or Marks, HMI shall reimburse Franchisee, as long as the Franchisee is in good standing under the terms of this Franchise

Agreement, for the costs of complying with this obligation, but shall not be required to reimburse Franchisee for any intangible loss.

1.4 Protection of Trade Name, Marks, and Trade Secrets.

(A) Franchisee shall do all things necessary to prevent Franchisee's authorized use of the HMI Trade Name and Marks from diminishing the legal protection granted to the HMI Trade Name and Marks and shall accompany its use of the HMI Trade Name and Marks with notices appropriate for that purpose. Franchisee shall cause to be filed all statements appropriate or necessary to protect HMI's rights in the HMI Trade Name and Marks in connection with Franchisee's use of any of them, including (without limitation) assumed or fictitious business name statements.

(B) Franchisee shall do all things necessary to preserve the confidentiality of the HMI Method, the information contained in the Hamburger Mary's® Recipe, Portion & Styling Manual® ("RPS Manual"), Operations Manual, The Mary Show® (HMI's operating program) and the Pre-Opening Manual, described in Section 7.1 (collectively, the "HMI Owners Manuals"), and all other proprietary or confidential information, trade secrets, recipes, processes, methods, procedures, formulae, techniques, ingredients, and materials revealed or provided to Franchisee by HMI (collectively, the "Other Proprietary Information"). Franchisee agrees that all of that information and all information HMI designates as proprietary information shall be presumed to be proprietary information and trade secrets belonging to HMI, except to the extent that Franchisee conclusively proves that any of it is in the public domain. Franchisee shall not at any time, directly or indirectly, disclose, divulge, disseminate, display, duplicate, reveal, reproduce, publish, sell, show, or communicate the HMI Method, any of the information contained in the HMI Owners Manuals or any of the Other Proprietary Information to any person or entity. Franchisee shall cause each of its employees who have access to the HMI Method, the information contained in the HMI Owners Manuals or any of the Other Proprietary Information to sign and deliver to HMI an HMI Nondisclosure Agreement. Nothing in this Franchise Agreement or elsewhere shall be construed to give Franchisee any right to disclose, duplicate, license, reveal, or sell the HMI Method, the contents of the HMI Owners Manual or HMI Bar Guide and Recipe Book, or any of the Other Proprietary Information to any person or entity.

(C) Franchisee shall notify HMI of any infringement of, challenge to, or unauthorized use of the HMI Trade Name or Marks that comes to Franchisee's attention. HMI shall have sole and complete discretion regarding whether to take any action and what action to take in response to any infringement, challenge, or use.

(D) HMI shall indemnify and hold harmless Franchisee from all costs and expenses (including attorney's fees, unless HMI has offered to provide counsel for Franchisee and Franchisee has elected to proceed with Franchisee's own counsel) incurred by Franchisee in any action or proceeding for infringement brought against Franchisee by any party other than HMI arising out of Franchisee's authorized use of the HMI Trade Name or Marks. HMI shall have the right, but no obligation, to control any litigation involving the HMI Trade Name or Marks.

1.5 Ownership of Trademarks and Trade Secrets.

(A) The HMI Trade Name, Marks, and Method and the Other Proprietary Information are, and shall remain, the sole and exclusive property of HMI and are merely licensed to Franchisee for a limited period, on specified terms and conditions, and for limited usage. Franchisee shall not register the HMI Trade Name or Marks with any state or federal agency.

(B) Nothing in this Franchise Agreement shall be construed to authorize or permit Franchisee's use of the HMI Trade Name, Marks, or Method or the Other Proprietary Information for any purpose or at any location other than as described in Section 1.3. Nothing in this Franchise Agreement shall give Franchisee any right, title, or interest in or to the HMI Trade Name, Marks, or Method, the Other Proprietary Information, or any other trade names, trademarks, service marks, insignia, symbols, labels, designs, logotypes, copyrighted material, or goodwill now or hereafter owned by or associated with HMI, except a mere privilege and license to display and use the HMI Trade Name and Marks and to employ the HMI Method for the duration of and on the terms and conditions set forth in this Franchise Agreement.

(C) Franchisee shall not at any time directly or indirectly contest HMI's right to, title to, ownership of, or interest in the HMI Trade Name, Marks, or Method or the Other Proprietary Information, or HMI's sole and exclusive right to register, use, and license others to use the HMI Trade Name, Marks, and Method and the Other Proprietary Information.

2. DURATION; RENEWAL

2.1 Duration.

The initial term of this Franchise Agreement and the franchise granted by it shall be five years from the date HMI signs this Franchise Agreement (the "date of this Franchise Agreement") unless this Franchise Agreement is cancelled or terminated in accordance with its terms prior to its expiration.

2.2 Renewal

(A) Subject to HMI's rights pursuant to Sections 1.3(B) and 3.7 and except as provided in this Section 2.2, Franchisee may renew the franchise granted by this Franchise Agreement for additional consecutive five year terms so long as Franchisee continues to have the right to occupy the Franchise Location, by: (i) delivering to HMI written notice of the exercise of that right not less than 120 days nor more than 180 days before the expiration of the initial or any extended term of this Franchise Agreement; (ii) receiving the form of Franchise Offering Circular then being distributed by HMI in the state where the Franchise Location is situated and executing the form of Franchise Agreement then being offered by HMI to franchisees of individual franchise locations, amended to delete the provisions relating to initial franchise fee and mandatory training and modify or delete (as appropriate) the provisions relating to renewal, and provide for a duration of the shorter of five years or so long as Franchisee continues to have the right to occupy the Franchise Location; and (iii) delivering to HMI with the notice of exercise, in lieu of the initial franchise fee set forth in the form of Franchise Agreement then being offered by HMI, a renewal fee in the sum then set forth in the fee schedule maintained and disseminated by HMI as part of the HMI Owners Manuals (the "Fee Schedule").

(B) Notwithstanding the foregoing, Franchisee may not renew the franchise granted by this Franchise Agreement and Franchisee's notice shall be void and of no effect if Franchisee has received three or more notices of default during any 12 month period during the initial term of this Franchise Agreement or more than five notices of default throughout the initial term of this Franchise Agreement, whether or not those defaults were cured, and Franchisee may not renew the franchise granted by this Franchise Agreement at any time when Franchisee has breached and not cured or is in default under any agreement between HMI and Franchisee. Should Franchisee be in breach or default under any agreement between HMI and Franchisee at any time after giving notice of renewal and prior to the first day of the renewal term, HMI may declare Franchisee's notice void and of no effect and the existing term of the Franchise Agreement between HMI and Franchisee shall expire as if notice had not been given.

2.3 Statutory Notice.

Should any applicable law, ordinance, rule, or regulation of any governmental entity or agency require that HMI give Franchisee notice prior to the expiration of the term of this Franchise Agreement, if that notice is not given within the required time period this Franchise Agreement shall remain in effect on a month-to-month basis until HMI has given the required notice and the notice period has expired.

3. **LOCATION; CANCELLATION; RELOCATION; LEASE TERMS; IMPROVEMENTS; REFURBISHMENT; MAINTENANCE; INSPECTION.**

3.1 Location Selection.

(A) If the Franchise Location is not set forth in Exhibit A on the date of this Franchise Agreement, HMI shall deliver a site approval request packet to Franchisee within three business days after the date of this Franchise Agreement and Franchisee shall select and obtain a right to occupy a Franchise Location approved by HMI within 180 days after the date of this Franchise Agreement. Franchisee shall promptly submit to HMI a site approval request packet for each prospective location for the Franchise Business proposed by Franchisee. HMI shall visit Franchisee's city, at Franchisee's request, twice to visit one or more proposed restaurant sites without charge. Should Franchisee need Franchisor to visit Franchisee's city more than twice to inspect one or more proposed restaurant sites, Franchisee shall submit to HMI with each site approval request a site inspection fee then set forth in the Fee Schedule. HMI shall give Franchisee notice of its approval or disapproval of each proposed location for the Franchise Business within 14 days after it receives a complete site approval request packet and any other information it requests regarding the proposed location. If HMI determines that a proposed location for the Franchise Business is unsatisfactory, Franchisee shall continue diligent efforts to locate a suitable site and shall propose other prospective locations for the Franchise Business until a proposed location is agreed upon and approved by HMI. Upon selection and approval of the franchise location, its address shall be set forth in Exhibit A, which shall then be signed and dated by HMI and Franchisee.

(B) Franchisee understands and agrees that HMI's approval of the Franchise Location does not constitute a warranty of the suitability, condition, viability, success, or any

other matter pertaining to the Franchise Location. If the Franchise Location is not set forth in Exhibit A on the date of this Franchise Agreement, Franchisee shall be solely and completely responsible for selecting an appropriate location for the Franchise Business, obtaining HMI's approval of it, and obtaining a right to occupy it, all within 180 days after the date of this Franchise Agreement.

3.2 Right to Cancel For Failure to Establish and Operate Location.

(A) HMI may cancel this Franchise Agreement by giving Franchisee notice of cancellation pursuant to this Section 3.2 (A) if Franchisee fails to select and obtain a right to occupy a location for the Franchise Business approved by HMI within one hundred eighty (180) days after the date of this Franchise Agreement. Upon cancellation pursuant to this Section 3.2(A) HMI and Franchisee shall wind up the Franchise Business in accordance with Section 22, HMI shall cause to be refunded from Escrow to Franchisee, the initial franchise fee, less \$15,000, and all other rights and obligations of HMI and Franchisee under this Franchise Agreement shall terminate.

(B) If through no fault of HMI'S, the Franchise Location has not opened for business within three hundred and sixty (360) days after the date of this Franchise Agreement, HMI may cancel this Franchise Agreement by giving Franchisee notice of cancellation pursuant to this Section 3.2(B) at any time prior to the day the Franchise Location opens for business. Provided, however, that if Franchisee is unavoidably delayed in or prevented from performing any duty or act necessary to opening the Franchise Location for business by reason of any unavoidable delay in delivery of supplies or materials, labor action, power failure, government action, national emergency, act of Nature, or disaster not Franchisee's fault, the time for opening the Franchise Location shall be extended for a period equal to the period of that unavoidable delay or prevention. Upon cancellation pursuant to this Section 3.2(B), HMI and Franchisee shall wind up the Franchise Business in accordance with Section 22, after which HMI shall refund from Escrow to Franchisee, the initial franchise fee, less \$15,000, and all other rights and obligations of HMI and Franchisee under this Franchise Agreement shall thereupon terminate.

(C) Franchisee acknowledges and agrees that in the event of cancellation pursuant to this Section 3.2, HMI shall incur certain losses and expenses the exact amount of which it would be extremely difficult and impracticable to ascertain, which may include (without limitation) costs incurred in finding and entering into a contract with Franchisee, costs incurred in finding and entering into a contract with another franchisee for operation of the Franchise Location, lost revenue and goodwill from the delay in expansion of the Hamburger Mary's® franchise system, the value of lost opportunities, rental payments for the Franchise Location until a new franchisee is located, and losses attributable to the training, if any, given Franchisee. Therefore, Franchisee agrees that in the event of cancellation pursuant to this Section 3.2, HMI shall retain as liquidated damages the amounts provided for in this Section 3.2, which amounts Franchisee agrees reasonably approximate the losses and expenses HMI will suffer as a result of cancellation pursuant to this Section 3.2.

3.3 Right to Relocate.

If, through no fault of its own Franchisee loses the right to occupy the Franchise Location at any time during the term of this Franchise Agreement other than by expiration of its

lease of the Franchise Location, Franchisee may relocate the Franchise Business to another location approved by HMI within the Territory, if: (a) as soon as practicable after Franchisee learns that its right to occupy the Franchise Location will be terminated and in no event more than 30 days thereafter, HMI receives written notice of Franchisee's intention to relocate the Franchise Business; (b) Franchisee diligently pursues the selection and approval in accordance (except as to time) with Section 3.1, procurement on terms complying with Section 3.4, improvement in accordance (except as to time) with Section 3.5, and preparation in accordance (except as to time) with Section 4.1 of an alternate location for the Franchise Business within the Territory; and (c) within 180 days after first learning that the right to occupy the Franchise Location will be terminated, Franchisee commences operation of the Franchise Business at the approved new location in full compliance with Section 7. Upon such relocation, HMI and Franchisee shall execute an amendment to Exhibit A, setting forth the new location, which shall thereafter be the Franchise Location. Should Franchisee fail to relocate the Franchise Business as provided in this Section 3.3, this Franchise Agreement shall terminate and HMI and Franchisee shall wind up the Franchise Business in accordance with Section 22.

3.4 Lease Terms.

(A) If Franchisee does not own the Franchise Location, prior to entering into any rental agreement, lease, or other agreement, written or oral, giving it the right to occupy the Franchise Location ("Franchisee's Lease"), Franchisee shall obtain HMI's approval of the terms of Franchisee's Lease. Franchisee's Lease shall be for a period of not less than five years with not less than one option to renew for five years and shall contain provisions giving HMI the right to: (i) receive notice from the landlord of any default by Franchisee under Franchisee's Lease simultaneously with the delivery of notice to Franchisee, but not less than 30 days prior to the termination or cancellation date; (ii) cure any default by Franchisee under Franchisee's Lease; and (iii) substitute itself as tenant, succeed to the tenant's interest under Franchisee's Lease, and cause the landlord to evict Franchisee from the Franchise Location if Franchisee defaults under Franchisee's Lease or this Franchise Agreement.

(B) Franchisee irrevocably designates, constitutes, and appoints HMI as its attorney-in-fact to do all things necessary or desirable to permit HMI to succeed to Franchisee's interest in Franchisee's Lease upon Franchisee's default under this Franchise Agreement or Franchisee's Lease and/or to cure any default by Franchisee under Franchisee's Lease. Whether or not HMI succeeds to Franchisee's interest in Franchisee's Lease, Franchisee shall reimburse HMI on demand for any and all sums expended by HMI to cure any default by Franchisee under Franchisee's Lease, together with interest at the maximum rate then legally permitted for commercial transactions from the date the monies were expended by HMI until reimbursement is received.

3.5 Improvements.

(A) Within 15 days after the later of the date of this Franchise Agreement or the date the Franchise Location has been approved, HMI shall deliver to Franchisee standards and specifications for the layout, design, fixturation, and equipping of the Franchise Location ("Specifications") as necessary. HMI shall consult with and advise Franchisee with respect to the Specifications as requested by Franchisee and reasonably necessary to fulfillment of Franchisee's obligations pursuant to this Franchise Agreement. Within 15 days after its receipt of

Specifications if the Franchise Location is an existing restaurant location (a "remodel") or 30 days after its receipt of Specifications if the Franchise Location is to be newly built out (a "build out"), Franchisee shall submit to HMI for its approval two copies of all plans, diagrams, construction drawings, and similar documents necessary to construct, remodel, alter, improve, fixturize, and equip the Franchise Location so it will comply with the Specifications and all laws, ordinances, rules, and regulations applicable to the Franchise Location and the Franchise Business ("Franchisee's Plans"). Within five business days after its receipt of Franchisee's Plans, HMI shall notify Franchisee of its approval or disapproval of Franchisee's Plans. Should HMI disapprove of Franchisee's Plans, within 10 days after Franchisee's receipt of notice of HMI's disapproval, Franchisee shall submit to HMI revised Franchisee's Plans modified to eliminate the cause of HMI's disapproval.

(B) Franchisee shall not commence any construction, remodeling, alteration, improvement, fixturization, or equipping of the Franchise Location unless and until HMI has approved Franchisee's Plans, as evidenced by HMI initialing one set of Franchisee's Plans and returning it to Franchisee together with written notice to commence the work called for by Franchisee's Plans (the "Improvements"). HMI's approval of Franchisee's Plans shall not constitute any representation or warranty of regulatory approval, soundness of design, safety, construction feasibility, or any other matter pertaining to Franchisee's Plans. Franchisee shall rely solely on the design and construction specialists engaged by Franchisee for advice regarding design and construction.

(C) Franchisee shall commence work on the Improvements within 10 days after receipt of HMI's notice to commence work and shall cause the Improvements to be completed in accordance with the Specifications and Franchisee's Plans as approved by HMI within 60 days after work commences if it is a remodel and within 90 days after work commences if it is a build out. Franchisee shall take possession of the Franchise Location and begin operation of the Franchise Business immediately upon completion of the Improvements and not more than three hundred and sixty (360) days after the date of this Franchise Agreement. Provided, however, that if Franchisee is unavoidably delayed in or prevented from completing any of its duties pursuant to this Section 3.5(C) within the time provided by reason of any unavoidable delay in delivery of supplies or materials, labor action, power failure, government action, national emergency, act of Nature, or disaster not the fault of Franchisee, the time in which Franchisee may fulfill its obligations pursuant to this Section 3.5 (C) shall be extended for a period equal to the period of that unavoidable delay or prevention. Franchisee shall have the interior of its restaurant fully decorated before the restaurant is opened for business to the public. All improvements to the Franchise Location shall be completed, all equipment that is to be acquired pursuant to this Agreement will be acquired and fully functional, displays and cabinets shall be in place, all Private Label Merchandise shall be properly displayed and the training of Franchisee and its employees shall be complete pursuant to Section 5 of this Agreement prior to opening of the Franchise Location ("Pre-Opening Work"). Upon HMI's reasonable satisfaction that the Pre-Opening Work has been completed by Franchisee, HMI will provide Franchisee notification, in writing, of its reasonable satisfaction of the Pre-Opening Work ("Opening Certificate"). Franchisee shall not open its restaurant without first obtaining the Opening Certificate.

(D) Franchisee may, as approved in writing by HMI, decorate the interior of the Franchise Location in any style and manner selected by Franchisee compatible with the local

area, incorporating art work, movie posters, street signs, chandeliers, and antiques of Franchisee's choice to create the atmosphere and eclectic appearance characteristic of Hamburger Mary's® Bar & Grilles. The style and manner in which the restaurant is decorated shall be in good taste as determined by HMI in its sole and absolute discretion.

(E) Franchisee shall not construct or cause to be constructed on the Franchise Location any improvements or structures other than the Improvements and shall not alter the Improvements or the decor or appearance of the Franchise Location without HMI's prior written consent.

3.6 Maintenance, Repair, and Renovation.

Franchisee shall keep the Franchise Location and all improvements to it, including (without limitation) the Improvements, signs, storefronts, plumbing, wiring, windows, glass, doors, any separate heating and air conditioning system, and interior and exterior walls, in good condition and repair, perform regular maintenance and upkeep, paint as necessary, promptly repair any damage to or wear or deterioration of the Franchise Location and all improvements, signs, and decorations in or on it, and promptly make replacements as necessary.

3.7 Refurbishment.

If Franchisee exercises the right to extend the term of this Franchise Agreement, during the sixth and eleventh years after the date of this Franchise Agreement, Franchisee shall refurbish, renovate, and remodel the Franchise Location and cause it to comply with any layout, design, appearance, or other specifications then established for new Hamburger Mary's® franchise locations. Refurbishment shall include, to the extent necessary but without limitation, replacement of signs; changes in decor, fixtures, and equipment; restriping or resurfacing of parking areas; interior or exterior painting; and other similar undertakings, but shall not include major structural changes or modifications of the basic building design. Refurbishment shall be made at Franchisee's sole cost and expense and shall be performed in strict conformity with plans and specifications approved by HMI in writing. Refurbishment shall be completed to HMI's satisfaction prior to the end of the sixth and eleventh calendar years after the date of this Franchise Agreement; provided, however, that if Franchisee is unavoidably delayed in or prevented from performing its obligation to refurbish by reason of any unavoidable delay in delivery of supplies or materials, labor action, power failure, government action, national emergency, act of Nature, or disaster not Franchisee's fault, the time in which Franchisee may fulfill its obligation to refurbish shall be extended for a period equal to the period of that unavoidable delay or prevention.

3.8 Use; Compliance With Laws.

Franchisee shall use the Franchise Location only as a Hamburger Mary's® Bar & Grille. Franchisee shall comply with all laws, ordinances, rules, and regulations applicable to the Franchise Location or the Franchise Business.

3.9 Entry and Inspection: Remedy.

(A) HMI's representatives may enter the Franchise Location at any time and may observe the operation of the Franchise Business and inspect the Franchise Location and the equipment, supplies, goods, books, and records located in it to confirm Franchisee's compliance with each and every provision of this Franchise Agreement and the HMI Owners Manuals. Should HMI or its representatives desire to enter the Franchise Location at any time when Franchisee is not open for business, a duplicate or master key may be used to obtain entry.

(B) Should Franchisee fail to comply with the provisions of Section 3.6, 3.7, or 3.8 within 10 days after HMI's demand for compliance, HMI and its representatives may enter the Franchise Location and clean, paint, perform repairs, renovate, refurbish, remove alterations, and make replacements. Franchisee shall pay HMI on demand all charges incurred by HMI for that work, plus interest at the maximum rate then legally permitted for commercial transactions from the date the charges were paid by HMI until reimbursement is received.

4. **FIXTURES AND EQUIPMENT; OPENING INVENTORY AND SUPPLIES.**

4.1 Fixtures and Equipment.

(A) Prior to the date Franchisee first opens the Franchise Location for business (the "Commencement Date") and within the time provided in Section 3.5(C) for Franchisee to complete the Improvements, Franchisee shall acquire and install in the Franchise Location in accordance with the Specifications all fixtures and equipment described in the Specifications (respectively, the "Fixtures" and the "Equipment"). Provided, however, that if Franchisee is unavoidably delayed in or prevented from installing any or all of the Fixtures or Equipment by reason of any unavoidable delay in delivery of Fixtures or Equipment, unavoidable delay in completion of the Improvements, labor action, power failure, government action, national emergency, act of Nature, or disaster not Franchisee's fault, the time in which Franchisee may fulfill its obligation pursuant to this Section shall be extended for a period equal to the period of that unavoidable delay or prevention.

(B) Franchisee may alter or modify the Fixtures or Equipment or install in or place on the Franchise Location any fixtures or equipment other than the Fixtures and Equipment only after obtaining HMI's prior written consent. Franchisee shall not encumber or grant any lien against the Fixtures or Equipment without HMI's prior written consent.

(C) Franchisee shall maintain all Fixtures and Equipment in good repair and working order and clean and sanitary condition at all times and shall replace them as necessary. Should any Fixture or item of Equipment become obsolete or mechanically impaired so as to require replacement, Franchisee shall replace that Fixture or item of Equipment with a Fixture or item of Equipment that meets the specifications then set forth in the HMI Owners Manuals.

(D) Upon notice from HMI at any time more than 15 months prior to the date on which any renewal term of this Franchise Agreement would expire if the right to renew were exercised, Franchisee shall acquire and install in the Franchise Location within the period designated by HMI any and all additional fixtures or equipment designated by HMI, which shall

become part of the Fixtures and Equipment. Notwithstanding the provisions of this paragraph, Franchisee shall not be required to acquire any new Fixture or item of Equipment costing more than three (3%) percent of Franchisee's gross revenue during the preceding calendar year.

4.2 Opening Inventory and Supplies.

(A) Prior to the Commencement Date, Franchisee shall cause the Franchise Location to be stocked with the products, ingredients, and supplies described in the HMI Owners Manuals. HMI shall give Franchisee a copy of the current the HMI Owners Manuals no more than 31 days after the Franchise Location is approved. To the extent requested by Franchisee, HMI shall assist Franchisee in making initial contact with any suppliers of materials included in any List of Approved Brands and Suggested Suppliers HMI may at any time maintain and disseminate as part of the HMI Owners Manual.

(B) Franchisee must display and sell at its Hamburger Mary's® Bar & Grille merchandise with the Hamburger Mary's® logo, including, but not limited to, beer glasses, t-shirts, hats, mugs, and other small goods identified by HMI as "Private Label Merchandise." Franchisee **must** purchase the Private Label Merchandise from HMI only, which is the exclusive supplier of these items. **No royalty fees are payable to HMI on sales of Private Label Merchandise.**

The amount of Private Merchandise Franchisee must display and offer for sale, and how that merchandise should be marketed to Franchisee's customers, is set forth in HMI's Owners Manuals.

5. TRAINING AND CONSULTATION.

5.1 Minimum Training and Competency.

(A) Prior to the Commencement Date, Franchisee, or at least one equity owner of Franchisee designated by Franchisee with experience operating a sit-down restaurant with a full bar, and approved by HMI, to oversee operation of the Franchise Business (the "Designated Operator"), the kitchen lead approved by HMI, and a restaurant manager approved by HMI (the "Approved Manager"), all of whom (the "Approved Trainees") shall have executed a Hamburger Mary's® Bar & Grille Nondisclosure Agreement, shall attend and satisfactorily complete training for no less than 7 - 14 days provided by HMI for the Approved Trainees at no charge, except as set forth in Section 5.1.D, so long as all are trained simultaneously, at a location designated by HMI. If the Approved Manager should leave the employ of Franchisee, for any reason, Franchisee shall notify HMI and shall replace the Approved Manager immediately. The new manager, upon approval by HMI, shall become the Approved Manager and shall attend HMI's training course as if the Approved Manager was the Initial Approved Manager and shall attend training the next time it is offered by HMI. Should HMI in its sole discretion determine that any of the Approved Trainees requires and would benefit from additional pre-opening training, HMI will provide that training and the designated Approved Trainees shall attend and satisfactorily complete the additional training for the period designated by HMI. The curriculum, dates, hours, location or locations, and duration of the training shall be designated by HMI, provided that HMI shall cause the training to be completed prior to the Commencement Date. If at any time during

or upon completion of the training, HMI in its sole discretion determines that Franchisee or any of the Approved Trainees have not demonstrated satisfactory ability to operate the Franchise Business, HMI may cancel this Franchise Agreement by giving Franchisee notice of cancellation not more than 48 hours after the training has been completed, setting forth the particulars on which HMI bases its conclusion. Upon cancellation, HMI and Franchisee shall wind up the Franchise Business in accordance with Section 22, after which Escrow shall refund to Franchisee the initial franchise fee, less \$10,000, and all other rights and obligations of HMI and Franchisee under this Franchise Agreement shall terminate. Further, should any of the Approved Trainees be replaced by Franchisee, and after approval by HMI, as set forth above, of the Franchisee's designated replacement Approved Trainee, the replacement Approved Trainee shall attend training the next time it is offered by HMI.

(B) Franchisee acknowledges and agrees that in the event of cancellation pursuant to Section 5.1(A), HMI shall incur certain losses and expenses the exact amount of which it would be extremely difficult and impracticable to ascertain, that may include (without limitation) costs incurred in finding and entering into a contract with Franchisee, costs incurred in finding and entering into a contract with another franchisee for operation of the Franchise Location, lost revenue and goodwill from the delay in expansion of the Hamburger Mary's® franchise system, the value of lost opportunities, rental payments for the Franchise Location until a new franchisee is located, and losses attributable to the training given Franchisee and its Approved Trainees. Therefore, Franchisee agrees that in the event of cancellation pursuant to Section 5.1(A), HMI shall retain as liquidated damages \$10,000, which amount Franchisee agrees reasonably approximates the losses and expenses HMI will suffer as a result of cancellation pursuant to Section 5.1 (A).

(C) Not more than once each calendar year HMI may, at its election, provide an annual refresher course or training conference, the curriculum, dates, hours, and location or locations of which shall be designated by HMI not less than 30 days in advance of the program date. Franchisee and its Approved Trainees shall attend any annual refresher course provided by HMI at their sole cost and expense. HMI shall not charge a fee for any such course.

(D) No charge shall be made for any of the training described in this Section 5.1. Franchisee shall pay all expenses, costs, and losses incurred by Franchisee, its Approved Trainees, or any of its other employees in connection with attendance at any training described in this Section 5.1, including but not limited to, hotel and travel expenses. HMI will not compensate Franchisee or any of its Approved Trainees for attending or completing any training.

5.2 Dry Run.

No less than two weeks prior to conducting the grand opening of the Franchise Business, Franchisee shall conduct a mock operation training session ("dry run") for its entire restaurant staff at the Franchise Location for no less than one day and no more than one week. Based on the results of the mock operation training session, Franchisee shall make adjustments and changes in its staff and staffing as necessary or desirable.

5.3 Trial Run.

Prior to conducting the grand opening of the Franchise Business, Franchisee shall operate the Franchise Business on a trial run basis for up to two weeks, as determined by HMI in its sole discretion, which may include the period of the dry run. During this period, Franchisee shall monitor the performance of all restaurant and bar staff, the actual operation of the Point-of-Sale cash register/computer system, kitchen, service areas, and dining and bar areas, and the suitability, popularity, quality, and feasibility of all menu items and, after consulting with HMI, make adjustments as necessary.

5.4 Additional Training.

At any time during the term of this Franchise Agreement, HMI shall provide additional training in franchise operation and management as requested by Franchisee for Franchisee, its equity owners, any Approved Manager, or any of Franchisee's employees who have executed a Hamburger Mary's® Nondisclosure Agreement. The dates, hours and location or locations of the training described in this Section 5.4 shall be designated by HMI, provided, however, that HMI shall cause the training to commence within 10 days after its receipt of payment. Franchisee shall pay HMI for additional training the fee then set forth in the Fee Schedule no less than two weeks prior to the date the training begins. All or any part of the training fee deposited in advance shall be refunded if Franchisee gives no less than 48 hours advance notice of the cancellation of all or any part of training requested by Franchisee. HMI shall not have any responsibility whatsoever for payment of any expenses, costs, or losses incurred by Franchisee or its equity owners or employees in connection with attendance at any training described in this Section 5.4.

5.5 Telephone Assistance.

Telephone consultation with an HMI representative regarding the Franchise Business shall be available to Franchisee throughout the term of this Franchise Agreement by telephoning or sending a facsimile transmission to HMI's principal office between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, Pacific Time ("Business Hours") and requesting consultation. If a representative is not immediately available, one shall respond to Franchisee's inquiry by the end of the second business day after the request during Business Hours.

6. **INITIAL FRANCHISE FEE AND ROYALTY PAYMENTS.**

6.1 Initial Franchise Fee.

(A) Franchisee shall pay to HMI's Escrow Account, at International City Bank, 249 East Ocean Boulevard, Long Beach, California 90802, a \$65,000 initial franchise fee by Wire Transfer or Cashier's Check, made payable to HMI's escrow account, concurrently with Franchisee's execution of this Franchise Agreement (the "Escrow"). The initial franchise fee shall be held in Escrow pursuant to the terms of this Agreement and in accordance with California Code of Regulations Sections 310.113-113.4, and pursuant to any orders issued by the Department of Corporations thereunder (the "Regulations"), until Franchisee's Hamburger

Mary's® restaurant is opened. HMI shall provide Franchisee with a fully executed Purchase Receipt, in the form of Exhibit A-2 attached hereto, to acknowledge receipt of the initial franchise fee. The deposited funds shall be held in Escrow pursuant to this Agreement until a written order of the Commissioner of the Department of Corporations is obtained by HMI, releasing the funds from Escrow.

(B) The initial franchise fee shall be deemed fully earned by HMI when it is paid. Thereafter the initial franchise fee shall be **nonrefundable** in whole or in part unless HMI cancels this Franchise Agreement pursuant to Section 3.2 or 5.1, in which case HMI shall refund to Franchisee all or a portion of the initial franchise fee in accordance with the applicable provisions of this Franchise Agreement.

6.2 Royalty.

(A) Each month during the term of this Franchise Agreement, Franchisee shall pay HMI a monthly royalty fee equal to 5% of Franchisee's gross revenue, as defined in Section 6.3, for the preceding calendar month. Franchisee shall deliver to HMI, prior to the opening of Franchisee's restaurant location, all documents necessary to authorize HMI to automatically debit Franchisee's business checking account on the 10th business day of every month for the royalties due on the gross revenue obtained in the preceding month. HMI has prepared a Bank Account Debit Authorization Form, attached hereto as Exhibit C, which Franchisee shall execute along with any other forms necessary for HMI to debit Franchisee's business account. On the first business day of each month, HMI must receive a Gross Revenue Report, as defined in Section 6.4 below, setting forth the Gross Revenue that was obtained by Franchisee for the previous month. HMI will debit Franchisee's account on the 10th business day of the month. If Franchisee fails to report its Gross Revenue for the previous month as required, Franchisee authorizes HMI to debit its account for the same royalty that it debited from Franchisee's account for the previous month. If the royalty HMI debits from Franchisee's account is greater than the royalty Franchisee actually owes to HMI (once HMI has reasonable determined Franchisee's true and correct Gross Revenue for the month), HMI will credit the excess against the amount HMI would otherwise debit from Franchisee's account on the 10th business day of the following month. If the royalty HMI debits from Franchisee's account is less than the royalty Franchisee actually owes, HMI will debit Franchisee's account for the balance of the royalty on the following business day after such reasonable determination is made by HMI.

HMI can require Franchisee to pay the royalty by means other than automatic debit (for example, by check) whenever HMI deems it appropriate in its absolute discretion.

If Franchisee does not report its Gross Revenue as required, or if the royalty is not available in Franchisee's account for debiting when due, a late payment fee will be imposed of 5% of the royalty amount due or \$20.00, whichever is greater ("Late Royalty Payment"), for each week past due. Additionally, interest will be imposed at the rate of 10% per annum or the maximum rate permitted by applicable law, whichever is greater, from the date such amounts were originally due until the date paid. HMI is authorized to debit Franchisee's account for both the late payment and the interest fees.

Franchisee acknowledges that this Section does not constitute HMI's agreement to accept any payments after they are due or a commitment by HMI to extend credit to, or otherwise

finance the operations of, the Franchisee's restaurant operations. Notwithstanding the provisions of this Section, your failure to pay all amounts when due constitutes grounds for termination of this Agreement, as provided in Section 20 below.

(B) After the occurrence of three Late Royalty Payments in any calendar year ("Delinquent Payment Status"), the royalty fee due HMI shall automatically increase to 6% unless such increase is waived in writing by HMI in its sole and absolute discretion ("Royalty Fee Increase"). The 6% royalty fee shall apply for the remainder of the calendar year in which Delinquent Payment Status was achieved. Beginning January 1st of the calendar year following the calendar year in which Delinquent Payment Status was achieved, the royalty fee shall be the initial royalty fee set forth in Section 6.2(A) above unless and until Franchisee obtains Delinquent Payment Status again at which time the royalty fee shall be increased to 6% and the procedure set forth above in this Section 6.2(B) shall be repeated.

6.3 Gross Revenue Defined.

Gross revenue means the gross selling price of all goods or services sold, delivered, or performed in or from the Franchise Location, including (without limitation) the gross amount received for orders taken, originated, accepted, or received elsewhere but filled at the Franchise Location all income from catering, cover charges, gaming revenue (where applicable), vending machines, coin operated music playing machines and from orders taken, originated, accepted, or received at the Franchise Location but filled, delivered, or performed elsewhere, less refunds made to customers (or employee discounts) and amounts actually paid for sales, excise, or other taxes added to the selling price of goods and collected from customers. Notwithstanding the foregoing, gross revenue does not include the proceeds from the sale of certain non-food or beverage items identified by HMI as "Private Label Merchandise." Private Label Merchandise may include, but is not limited to, clothing, mugs, hats, pins and other small goods bearing the HMI logo or marks.

6.4 Gross Revenue Reports.

Franchisee shall accompany each royalty payment with a report of Franchisee's gross revenue for the reporting period, set forth on the form provided by HMI for that purpose and certified by Franchisee to be complete and accurate. A LATE FEE of \$25.00 will be assessed if a report of Franchisee's gross revenue is not included with the royalty payment in addition to any interest charges if the royalty payment and report are not provided to HMI in a timely manner, as set forth in Section 6.2 above.

7. **OWNERS MANUALS; PRODUCTS AND SUPPLIES; RPS ITEMS.**

7.1 HMI Owners Manuals and Other Proprietary Documents.

(A) To preserve for Franchisee and all franchisees of Hamburger Mary's® Bar & Grilles the uniform quality and appearance that is an integral part of the value of the HMI Trade Name and Marks and the rights granted to Franchisee by this Franchise Agreement and to assist Franchisee in the operation of the Franchise Business, HMI shall loan Franchisee one copy of each of the HMI Owners Manuals for a term commencing on the day Franchisee begins the

training described in Section 5.1 and ends on the last day of the term of this Franchise Agreement. HMI may modify, amend, delete, or add to the rules, regulations, standards, procedures, instructions, specifications, and other materials in the HMI Owners Manuals at any time as it deems necessary or appropriate, so long as no modification materially diminishes Franchisee's rights pursuant to this Franchise Agreement. HMI shall loan Franchisee for the term of this Franchise Agreement one copy of all modifications, amendments, deletions, and additions, which shall be binding upon Franchisee upon receipt.

(B) Franchisee shall abide by, conform to, and strictly comply with the rules, regulations, standards, procedures, policies, instructions, and specifications set forth in the HMI Owners Manuals, as modified, amended, and supplemented by HMI from time-to-time, and shall conduct the Franchise Business in strict compliance with those rules, regulations, standards, procedures, policies, instructions, and specifications.

(C) The HMI Owners Manuals shall be and remain the sole and exclusive property of HMI and shall remain in Franchisee's possession only during the term of this Franchise Agreement. Franchisee shall not duplicate or make or permit to be made any copies or photocopies of the HMI Owners Manuals or any part of them and shall not at any time, directly or indirectly, disclose, disseminate, display, reveal, reproduce, publish, sell, show, or communicate to any person or entity any of the contents of the HMI Owners Manuals except to its employees who have executed a Hamburger Mary's® Confidential Nondisclosure Agreement, as permitted by this Franchise Agreement.

7.2 Products, Ingredients, and Supplies.

(A) To assure the quality and uniformity of the HMI standard menu items prepared and sold by Franchisee, all ingredients, foodstuffs, beverages, and similar items (collectively, "Food Products") purchased by Franchisee for use or sale at the Franchise Location and all ingredients used in the preparation of Food Products sold at the Franchise Location shall meet HMI's subjective quality standards. HMI may require you to purchase Food Products from select wholesale vendors in order to maintain HMI's quality standards. Franchisee shall not purchase Food Products from retail markets or club stores without HMI's written approval which may be withheld in its sole and absolute discretion. If at any time HMI develops or distributes ingredients or foodstuffs based upon proprietary blends, recipes, or formulae belonging to HMI, Franchisee shall acquire those ingredients and foodstuffs solely from HMI or any producer HMI licenses to provide them and shall use only those ingredients or foodstuffs in the preparation of the menu items designated by HMI. All menu items shall be prepared in strict compliance with HMI's standards and recipes and, unless use of some other description or brand name is approved or designated by HMI, shall be referred to as Hamburger Mary's® products.

(B) All forms of menus and all paper goods used by Franchisee shall at all times have the appearance, content, and format designated by HMI from time to time, shall meet any specifications from time-to-time established by HMI, and shall bear a clear and accurate representation of the HMI Trade Name and Marks. The cover of the menu shall at all times include the depiction of "Hamburger Mary" designated by HMI. Franchisee shall bear the cost of admats, other than for the Grand Opening Advertising, and artwork on computer disk (or other form of electronic presentation and/or compilation) such as for the menu design and for other

items used in displaying HMI's name, products and/or marks, as supplied by HMI or its designated advertising agency.

7.3 Menu and Bar Items.

(A) Franchisee shall produce or carry and sell at the Franchise Location all items from time-to-time as designated in the HMI Owners Manuals. Franchisee shall not produce, dispense, or sell at the Franchise Location any other items, products, goods, wares, or merchandise without HMI's prior written consent which may be withheld in HMI's absolute discretion. HMI may add, eliminate, or change items on the Standard Menu and Bar List contained in its Owner's Manuals, including, but not limited to, its RPS Manual, by giving Franchisee 30 days notice of those changes, but Franchisee shall be permitted to use up its existing stock of any discontinued standard menu or bar item or foodstuffs used only to prepare the discontinued menu or bar item prior to discontinuation. Franchisee shall use the format and content of HMI's Standard Menu for its menu as outlined in the HMI Owners Manuals. All items on the menu must be featured at all times. The menu must include a list of the location and telephone numbers of all other franchised or company operated Hamburger Mary's® Bar & Grilles. All proposed menus, and revisions thereto, must be submitted to HMI for final review and written approval.

(B) After establishment of (each) Regional Advertising Group, each month Franchisee shall feature one menu and/or bar item designated by HMI. Franchisee shall purchase from HMI at HMI's actual cost advertising slicks and other materials designated by HMI and use those materials to promote the featured item.

(C) Franchisee may develop and submit, in writing, to HMI for approval up to six "Mary's Special-Tease"™ food and/or beverage items characteristic of the geographic region in which the Franchise Location is located. Upon receipt of HMI's written approval, which may be granted or withheld, in its absolute discretion, Franchisee shall include those "Mary's Special-Tease"™ in Franchisee's Standard Menu by attaching to each menu a separate card describing the "Mary's Special-Tease"™, or as part of the printed menu if, and only if, the item(s) is clearly identified as a "Mary's Special-Tease"™ of [your city] and if HMI approves, in writing, the addition to your preprinted menu. The unapproved use of any more than six "Mary's Special Tease"™ items, use of an unapproved "Mary's Special Tease"™ item, or the unauthorized deviation from HMI's standard menu ("Unauthorized Menu Items") is a cause for termination of this Agreement. HMI may require Franchisee to reprint its menu deleting the Unauthorized Menu Items in lieu of terminating this Agreement. Such reprint of the Menu shall be done within thirty days of notice from HMI and at Franchisee's sole cost and expense.

(D) Every Sunday Franchisee shall offer a Sunday brunch buffet from no later than 11 a.m. until at least 2 p.m. in the style and featuring the items designated by HMI in the HMI Owners Manuals.

(E) Should the preparation or service of any item added to the Standard Menu or Bar List require a fixture or piece of equipment in addition to the Fixtures or Equipment, Franchisee shall acquire that fixture or equipment and it shall become part of the Fixtures and Equipment, provided, however, that Franchisee shall not be required to acquire any new Fixture

or item of Equipment costing more than three (3%) percent of Franchisee's gross revenue during the preceding calendar year.

7.4 Adequate Stock.

Franchisee shall keep on hand at the Franchise Location at all times a stock of products, ingredients, and supplies sufficient to meet the reasonably anticipated needs of the Franchise Business and serve all items on the Standard Menu and Bar List.

8. NONCOMPETITION; EMPLOYEE SOLICITATION.

8.1 Noncompetition.

Neither Franchisee nor any of its members, owners, or managers if it is a limited liability company, partners if it is a partnership, or stockholders, officers, or directors if it is a corporation, shall directly or indirectly own any interest in, be employed by, provide advice or consultation to, or operate any other restaurant at any location in the state in which the Franchise Location is situated at any time during the term of this Franchise Agreement without HMI's prior written consent. For a period of one year following the expiration or termination of this Franchise Agreement, neither Franchisee nor any of its members, owners, or managers if it is a limited liability company, partners if it is a partnership, or shareholders, officers, or directors if it is a corporation, shall directly or indirectly own any interest in, be employed by, provide advice or consultation to, or operate any sit down specialty restaurant business within a 10 mile radius of the boundaries of the Territory without HMI's prior written consent. To obtain HMI's consent, Franchisee shall prove to HMI's wholly subjective satisfaction that the proposed activity will not involve the use of any trade secret, proprietary information, or other benefit obtained from HMI or involve any unfair competition with HMI or its franchisees.

8.2 Employee Solicitation.

Franchisee shall not at any time solicit or induce any person employed by HMI or any other HMI franchisee to sever that employment and enter Franchisee's employ.

9. RECORDKEEPING; REPORTS; INSPECTIONS; AND AUDITS.

9.1 Registers; Checks; Records.

(A) Franchisee shall enter all orders, charges, payments, credits, and sales made at or from the Franchise Location (other than from pay telephones or vending machines) on the computer system designated in the HMI Owners Manuals (the "Computer System"), so as to create a complete and accurate record in the Computer System of each individual sale and a cumulative total of all gross revenue and all components of gross revenue. All bookkeeping and accounting records, financial statements, and reports maintained or prepared by Franchisee shall be entered and maintained on the Computer System database and shall conform to the standards, forms, and requirements from set forth in the HMI Owners Manuals, and which are subject to

periodic review and revision at HMI's discretion. Complete records of income from cover charges and gaming income, where applicable, must also be submitted on monthly reports.

(B) Franchisee shall keep at the Franchise Location and on the Computer System database at all times during the term of this Franchise Agreement and in Franchisee's possession for three years after the termination or expiration of that term, complete books of account, records, ledgers, receipts, check records, and all other documentation of the receipts and expenses of the Franchise Location in the form designated in the HMI Owners Manuals, which is subject to periodic review and revision at HMI's discretion, including (without limitation), the Computer System database, records of cash receipts, sales tax returns and statements, payroll records, cancelled checks, invoices, bank statements for all accounts into which receipts from the Franchise Location are deposited or out of which expenses of the Franchise Location are paid, and all other records or reports used by Franchisee to record, compile, account for, or report cash flow, expenses, gross or net income, or gross or net revenue or sales (collectively, "Franchisee's Records") for the preceding three years.

9.2 Franchisee's Periodic Reports.

On or before the fifteenth day of each calendar month, Franchisee shall deliver to HMI a monthly report and a profit and loss statement for the Franchise Business for the preceding calendar month, both of which shall be on and in the form specified by HMI in the HMI Owners Manuals. Within 30 days after the end of each calendar year, Franchisee shall deliver to HMI a profit and loss statement and balance sheet for the Franchise Business for the preceding calendar year on the form provided by HMI as part of the HMI Owners Manuals. All reports, profit and loss statements, and balance sheets shall be prepared in accordance with generally accepted accounting principles consistently applied from applicable period to applicable period and certified by Franchisee or its chief executive or financial officer to be true, correct, and complete. A LATE FEE of \$25.00 will be assessed if either the monthly report with the profit and loss statement or the profit and loss statement and balance sheet for the preceding calendar year is not received by HMI as set forth above.

9.3 Sales Tax Returns; Other Reports.

Franchisee shall deliver to HMI on or before the 15th day of each calendar month a copy of all sales tax returns, occupation tax reports, and other similar returns or reports prepared by or on behalf of the Franchise Business that month. Franchisee shall deliver to HMI within five days after receipt by Franchisee, a copy of any report or statement of earnings, sales, or receipts, profit and loss statement, balance sheet, cost accounting, report of audit, and any other document reporting, summarizing, compiling, or projecting the gross or net income, sales, profits, expenses, or costs of the Franchise Business or Franchise Location prepared by, for, on behalf of, or at the request of Franchisee, including (without limitation) reports of sales from vending machines located at the Franchise Location. A LATE FEE of \$25.00 will be assessed if the sales tax returns, occupation tax report and other required reports are not received by HMI as set forth above.

9.4 HMI's Database Access; Inspections and Audits; Penalties.

(A) Franchisee shall at all times provide HMI modem-access to every part of the Computer System database and permit HMI to poll the database at any time and review, extrapolate, copy, reproduce, or print any and all information on the database. Franchisee will cause a monthly report to be generated by the Computer System and will electronically transfer the information to HMI on a monthly basis ("Computer Report"). Such Computer Report is to be sent to HMI by the first (1st) day of each month. Franchisee shall not at any time change the modem line number, password, or other means or requirement for access to the Computer System without giving HMI no less than one business day prior written notice of the change and the information necessary to access the Computer System database.

(B) HMI's representatives may inspect, copy, and audit Franchisee's Records and inspect and audit Franchisee's cash register totals and inventories at any time during the term of this Franchise Agreement and for three years after the termination or expiration of that term, but not more than once each calendar year unless a prior audit has shown a discrepancy between actual and reported gross revenues or except as provided in Section 9.5. Franchisee shall deliver Franchisee's Records to HMI at a location designated by HMI on demand and shall cooperate with HMI and its representatives in the conduct of any inspection and audit. HMI can debit from Franchisee's account any deficiency in the amount of percentage royalties owed to HMI revealed by any audit conducted by HMI, together with interest at the rate of 10% or the maximum rate then legally permitted, whichever is greater, for commercial transactions from the date the royalties were due until payment is received by HMI. Should any audit conducted by HMI indicate that Franchisee's gross revenue was understated by 2% or more in any statement of gross revenue delivered to HMI, Franchisee shall pay HMI on demand for all expenses HMI incurred in connection with the audit and collection of the past due royalties, including (without limitation) accountant's and attorney's fees, plus interest at the maximum rate then legally permitted for commercial transactions from the date the expenses were paid by HMI until reimbursement is received.

(C) HMI will assign an auditor or auditors to visit the Franchise Location for an initial audit within four-six months to a year from the date of the opening of the franchise. Thereafter, HMI may perform an annual audit. Franchisee shall reimburse HMI for the initial audit and the annual audit up to a maximum amount of \$4,000 per calendar year ("Annual Audit Fee"). Notwithstanding the foregoing, HMI may perform additional audits and may be reimbursed for those audits, in addition to the Annual Audit Fee, as set forth in Sections 9.4(B) and 9.5, and as set forth below in this Section 9.4(C). In addition, HMI may install a field auditor or auditors at the Franchise Location at any time to monitor Franchisee's gross revenue by observing and noting all sales transactions taking place at or from the Franchise Location. Should the field auditor's monitoring, during an initial, annual or additional audit, reveal actual weekly gross revenue during any two week period (the "Audit Period") of 10% more than the average weekly gross revenue reported by Franchisee during the preceding three month period (the "Measuring Period"), Franchisee shall pay HMI on demand an additional royalty for the Measuring Period in an amount equal to the difference between the average amount of weekly gross revenue made during the Audit Period and gross revenue reported for each week of the Measuring Period, plus interest on the additional royalty at the maximum rate then legally permitted for commercial transactions from the last day of the week of the Measuring Period for which the additional royalty is payable until the date it is received by HMI.

(D) HMI's representatives may inspect Franchisee's federal, state, and local income tax returns. Franchisee waives any privilege not to disclose those tax returns, and the information contained therein, and shall produce said returns for inspection by HMI and its representatives upon demand. Franchisee agrees to sign such authorizations as are necessary to enable HMI to obtain copies of Franchisee's income tax return.

9.5 Failure to Keep Records or Make Reports.

Should Franchisee fail to maintain records (including, without limitation, the information required to be in its Computer System database) or furnish any report or statement as required and in the time specified in Section 6.4 or this Section 9, after giving Franchisee five days notice of its intention to do so, HMI may appoint a certified public accountant to inspect and audit Franchisee's Records and/or the Franchise Business and prepare a statement of Franchisee's gross revenues (the "Auditor's Statement). The auditor's determination of Franchisee's gross revenues as reflected in the Auditor's Statement shall be conclusive and binding on Franchisee. Franchisee shall pay HMI on demand all royalties that audit shows to be due to HMI and all charges HMI incurred in connection with the audit, preparation of the statement, and collection of past due royalties, including (without limitation) accountant's and attorney's fees, travel expenses, plus interest on all the past due fees and all charges HMI incurred at the maximum rate then legally permitted for commercial transactions from the date the royalties were due or the charges were paid by HMI, respectively, until payment is received.

9.6 Publication of Sales, Earnings, and Profits.

HMI may use Franchisee's gross and net revenue, expenses, income, earnings, and profits in any gross or net revenue or sales, earnings, or profits projections, forecasts, or reports in any offering circular or earnings projections prepared by HMI, and may identify the Franchise Location as a franchise operation on which those projections, forecasts, and reports are based.

10. ADVERTISING AND PROMOTION; SIGNS; TELEPHONES, WEBSITES AND FACSIMILES.

10.1 Definition.

For purposes of this Franchise Agreement, the term advertising material shall mean all printed, audio, visual, electronic, or other materials prepared for the purpose of increasing, encouraging, or promoting patronage of the Franchise Location or of Hamburger Mary's® Bar & Grilles in general, and shall include (without limitation) signs, radio spots, television advertisements, newspaper, magazine, or other printed media advertisements, websites, slogans, jingles, contests, menu inserts, table cards, posters, flyers, leaflets, brochures, handbills, direct mail presentations, and matchbooks.

10.2 Advertising Approval.

Franchisee shall not use, display, disseminate, or publish, or cause to be used, displayed, disseminated, or published, any advertising material that has not been pre-approved in

writing by HMI. Should Franchisee fail to remove on demand any unapproved advertising material displayed by it or others, HMI may enter the Franchise Location and remove and destroy that material without being guilty of trespass, conversion, or any other tort or take any other action necessary to cause such advertising material to no longer be displayed, disseminated, or published. Franchisee may create or maintain a website which must have a link to HMI's Internet site or web page. The website must be approved by HMI, in HMI's absolute discretion, and must display an approved link to HMI's Internet site ("**HamburgerMarys.Net**") or web page ("Approved Website"). Any changes to the Approved Website or link must be authorized by HMI in its absolute discretion. Should Franchisee create or maintain a website without obtaining HMI's consent or should a change or changes be made to an Approved Website, but Franchisee fails to notify HMI and/or get its authorization for the change(s), HMI may remove, disassemble, disable, or destroy all or any part of that Internet site or web page without being guilty of trespass, conversion, or any other tort or crime. Franchisee shall pay HMI on demand all charges incurred by HMI in taking that corrective action, plus interest at the maximum rate then legally permitted for commercial transactions from the date the charges were paid by HMI until reimbursement is received. Franchisee shall at all times adhere to all retail prices advertised by it and shall not advertise in any deceptive or misleading manner under Federal, State or local law.

ALL advertising must contain the name "**Hamburger Mary's® Bar & Grille**" as well as the local phone number and/or address of your local restaurant. This must be in the same font (**Deftone Stylus**) and size type as the event or bar name you are promoting.

In the event that your franchise has selected to name your bar separately from Hamburger Mary's®, you must first obtain written permission from HMI to use such a name. All signs and use of the **Hamburger Mary's** name must be in the same font used by HMI (Deftone Stylus) in its printed menus and publicity matters.

10.3 Required Use, Participation, and Approved Website Link.

Franchisee shall display at the Franchise Location for the period specified by HMI all advertising materials specified from time-to-time in the HMI Owners Manuals or furnished to Franchisee by HMI and shall join and participate in all advertising campaigns and programs, contests, drawings, and similar promotional events or activities prepared by HMI, so long as no statute, law, ordinance, rule, or regulation prohibits Franchisee's required participation. All Approved Websites must contain a link to www.HamburgerMarys.net for purpose of franchise sales.

10.4 Franchisee's Local Advertising.

Subject to any requirements with respect to format, representations, and media set forth in the HMI Owners Manuals, Franchisee shall spend annually for local advertising and promotion an amount equal to at least 2% of Franchisee's yearly gross revenues, in addition to the cost of Franchisee's classified telephone directory listing and advertising. Within 90 days after the close of Franchisee's fiscal year, Franchisee shall deliver to HMI a statement containing the computation of the amount Franchisee was required to spend for local advertising pursuant to this Section 10.4 and an itemized accounting of the amount actually spent. Should Franchisee have spent less than the required amount, it shall immediately contribute to HMI for use in the

advertising and promotional fund described in Section 10.5 an amount equal to the difference between the amount required to be spent and the amount actually spent. Franchisee shall not be entitled to apply excess local advertising expenditures in any year to reduce the amount required to be spent in any subsequent year. Prior to commencement of the advertising and promotional fund contribution described in Section 10.5, HMI may require Franchisee to spend on local advertising pursuant to this Section 10.4 an amount equal to the amount Franchisee could be required to contribute to the advertising and promotional fund, in addition to the amounts provided for in this Section 10.4.

10.5 Advertising and Promotional Fund Contributions.

(A) Upon receipt of written notice from HMI of the commencement of HMI's advertising and promotional program, Franchisee shall contribute to the HMI advertising and promotional fund an amount equal to 2% of Franchisee's monthly gross revenue ("APF Contribution"). HMI will obtain the monthly APF Contribution, in arrears, by debiting Franchisee's business account on the 10th business day of the month. HMI will reasonably determine the APF Contribution by reviewing Franchisee's Gross Revenue Report due on the first day of the month. If Franchisee fails to report its Gross Revenue for the previous month as required, Franchisee authorizes HMI to debit its account for the same APF Contribution that it debited from Franchisee's account for the previous month. If the APF Contribution HMI debits from Franchisee's account is greater than the APF Contribution Franchisee actually owes to HMI (once HMI has reasonable determined Franchisee's true and correct Gross Revenue for the month), HMI will credit the excess against the amount HMI would otherwise debit from Franchisee's account on the 10th business day of the following month. If the APF Contribution HMI debits from Franchisee's account is less than the APF Contribution Franchisee actually owes, HMI will debit Franchisee's account for the balance of the APF Contribution on the following business day after such reasonable determination is made by HMI.

HMI can require Franchisee to pay the APF Contribution by means other than automatic debit (for example, by check) whenever HMI deems it appropriate in its absolute discretion.

If the APF Contribution is not available in your account for debiting when due, a late payment fee will be imposed of 5% of the APF Contribution due or \$20.00, whichever is greater, for each week past due. Additionally, interest will be imposed at the rate of 10% per annum or the maximum rate permitted by applicable law, whichever is greater, from the date such amounts were originally due until the date paid. HMI is authorized to debit Franchisee's account for both the late payment and the interest fees.

Franchisee acknowledges that this Section does not constitute HMI's agreement to accept any payments after they are due or a commitment by HMI to extend credit to, or otherwise finance the operations of, the Franchisee's restaurant operations. Notwithstanding the provisions of this Section, your failure to pay all amounts when due constitutes grounds for termination of this Agreement, as provided in Section 20 below. HMI shall not be a trustee of advertising and promotional fund contributions and may commingle them with any other funds belonging to HMI but shall segregate them in HMI's books of account as an advertising fund consisting of like payments made by HMI franchisees. Until Franchisee receives notice from HMI of the commencement of the advertising and promotional fund, Franchisee shall expend on local

advertising as required by Section 10.4 the 2% of gross revenue Franchisee could otherwise be required to contribute to the HMI advertising and promotional fund.

In the event that HMI discontinues operation of any Advertising and Promotions Fund, Franchisee shall spend monies for local advertising and promotion, in both the manner and amount, set forth in Section 10.4 of this Franchise Agreement.

(B) HMI shall allocate the advertising and promotional fund as HMI deems appropriate to create and develop regional and national advertising and public relations and promotional campaigns using print, radio, television, or other media to promote and enhance the value of the HMI Marks and Hamburger Mary's® Bar & Grilles in general. HMI may retain a portion of the advertising and promotional fund not to exceed 15% of all contributions to reimburse it for its actual administrative expenses with respect to the advertising and promotional fund and the cost of its production of advertising and other promotional materials or devices. HMI shall have the right, but no obligation, to rebate to Franchisee at any time a portion of the sums on deposit in the advertising and promotional fund and to require Franchisee to spend the rebated amount on local advertising.

(C) Within 120 days after the end of each calendar year, HMI shall deliver to Franchisee a statement covering the preceding year certified by HMI's chief financial officer or chief executive officer to be true, correct, and complete. The statement will show the amounts collected by HMI for the advertising and promotional fund, the amount actually spent, the amount rebated, if any, and the amount remaining, which shall be carried over for use during the following year.

10.6 Signs.

(A) Franchisee shall install and maintain in locations at the Franchise Location approved by HMI the signs specified by HMI at any time during the term of this Franchise Agreement, all at Franchisee's sole cost and expense. If HMI so requires by specification at any time during the term of this Franchise Agreement, Franchisee shall keep the signs illuminated during all operating hours after dusk, unless any applicable law, ordinance, rule, or regulation prohibits doing so. Franchisee shall not erect or display in, on, or about the Franchise Location any signs other than those approved by HMI or display any trademark, service mark, trade name, logotype, or other commercial symbol without HMI's prior written consent.

(B) Should Franchisee fail to install and maintain the signs described in this Section 10.6, install signs other than those permitted by this Section 10.6, or fail to illuminate the signs as required by HMI within 10 days after HMI's demand for compliance, HMI and its representatives may enter the Franchise Location and erect and/or maintain the specified signs, remove signs installed in violation of this Section 10.6, or illuminate Franchisee's signs, without being guilty of trespass, conversion, or any similar tort. Franchisee shall pay HMI on demand all charges incurred by HMI in taking that corrective action, plus interest at the maximum rate then legally permitted for commercial transactions from the date the charges were paid by HMI until reimbursement is received.

10.7 Copyrights.

(A) All advertising materials disseminated by HMI shall be the sole and exclusive property of HMI, which shall be the sole owner of the copyright to them. All rights in and to the design and content of the Hamburger Mary's® menu and the signs described in Sections 10.6 are and shall be the sole and exclusive property of HMI, which shall be the sole owner of the copyrights to them. Franchisee shall not have any license, power, or right to claim or register a copyright on any of those materials. Franchisee shall use and display those materials only as designated by HMI.

(B) Franchisee shall not at any time contest, directly or indirectly, HMI's sole and exclusive copyrights in any advertising materials disseminated by HMI, any signs described in Section 10.6, or any other copyrighted materials disseminated or licensed to Franchisee pursuant to this Franchise Agreement.

10.8 Telephones; Facsimile Machine and E-Mail Access.

(A) Franchisee shall subscribe for and maintain at the Franchise Location throughout the term of this Franchise Agreement one or more telephone numbers devoted solely to the Franchise Business, which shall be listed and identified exclusively with the Franchise Business in all official and unofficial telephone directories distributed in any geographical area that includes the Territory and in all local advertising prepared by Franchisee. All telephone listings shall identify the Franchise Business as a Hamburger Mary's® Bar & Grille franchise.

(B) Franchisee shall subscribe for and maintain at the Franchise Location throughout the term of this Franchise Agreement one or more telephone lines dedicated to a private back office line for Franchisee business and to be used with a facsimile machine meeting the specifications from time-to-time set forth in the HMI Owners Manuals and used solely in the Franchise Business, including (without limitation) for receipt of customer orders by facsimile transmission.

(C) Franchisee shall subscribe for and maintain at the Franchise Location throughout the term of this Franchise Agreement a telephone line dedicated to a computer that can receive and send e-mails.

10.9 Grand Opening.

Immediately after the end of the trial run period required by Section 5.3, Franchisee shall conduct a grand opening promotional program complying with the grand opening guidelines then set forth in the HMI Owners Manuals. HMI shall consult with Franchisee regarding the elements and scope of the grand opening promotional program.

11. **PERSONNEL; FRANCHISEE'S EFFORTS.**

11.1 Personnel.

Franchisee or appropriate team leader shall give each of its employees such training and supervision as is necessary to ensure that each new employee can and is performing the work assigned to him or her in a competent fashion.

11.2 Uniforms; Hygiene.

Franchisee shall require each of its employees to wear during the time the employee is working at the Franchise Location a uniform of the style and color designated for employees in the HMI Owners Manuals. Franchisee shall require that all employees present in the Franchise Location practice good personal hygiene, wear clean uniforms, and conform to the highest standards of sanitation.

11.3 Nondiscrimination.

Franchisee shall not discriminate on the basis of age, sex, national origin, race, ethnicity, religion, or sexual orientation in the hiring, termination, or promotion of employees.

11.4 Franchisee's Efforts and Hours.

Franchisee, or, if Franchisee is an entity, the Designated Operator, or an Approved Manager shall be present at and work in the Franchise Location no less than 40 hours per week, 48 weeks per year and shall supervise, oversee, administer, and manage operation of the Franchise Business throughout the term of this Franchise Agreement. Franchisee or, if Franchisee is an entity, the Designated Operator, and the Approved Manager shall not have any other employment or occupation during normal business hours. **Franchisee shall employ Franchisee's best efforts to operate the Franchise Location and the Franchise Business in a manner that will produce the maximum volume of gross revenue.** Franchisee shall keep the Franchise Location open for business seven days each week, except Thanksgiving Day and Christmas Day, except to the extent prohibited by any applicable law, ordinance, rule, or regulation of any governmental entity or agency or any shopping center of which the Franchise Location is a part.

11.5 Sales Volume.

If Franchisee does not maintain an average monthly sales volume that HMI deems adequate for that Territory, based on that restaurant's previous quarterly figures (or the prior year's sales volume for that quarter), HMI may terminate the Franchise Agreement at its sole discretion. Prior to terminating the Franchise Agreement pursuant to this Section 11.5, HMI shall give Franchisee a period of 90 days to increase sales volume to a level consistent with that restaurant's prior year's sales volume for the quarter reflected during the 90-day period. If HMI elects to terminate the Franchise Agreement after the 90-day period, Franchise shall wind up the Franchise Business in accordance with Section 22 of the Franchise Agreement.