



## 12. INSURANCE.

### 12.1 Liability.

Franchisee shall obtain and maintain in full force and effect throughout the term of this Franchise Agreement, at Franchisee's sole cost and expense, public liability, property damage, and product liability insurance with a single combined liability limit of not less than \$2,000,000, insuring against all liability of Franchisee and its agents and employees arising out of or in connection with Franchisee's operation of the Franchise Business or use of the Franchise Location, including all damage from signs, glass, fixtures, equipment, or other appurtenances now or hereafter situated on the Franchise Location. H.M.I. must be clearly named in Franchisee's policy as an "additional insured party." (See § 12.4)

### 12.2 Fire, Theft, and Extended Coverage.

Franchisee shall obtain and maintain throughout the term of this Franchise Agreement, at Franchisee's sole cost and expense, a policy of standard fire, theft, and extended coverage insurance, with vandalism and malicious mischief endorsements, covering all Franchisee's personal property, improvements, alterations, trade fixtures, and equipment in, on, or about the Franchise Location to the extent of at least 100% of their actual replacement value. The proceeds of this policy shall be used to replace and/or restore the Improvements, Fixtures and Equipment, and goods, products, and supplies used in the Franchise Business and all improvements on and alterations to the Franchise Location.

Franchisee shall provide HMI with a report, within five days of receipt of any insurance proceeds, identifying the amount of proceeds received and how the proceeds are proposed to be spent by Franchisee.

### 12.3 Business Interruption.

Franchisee shall obtain and maintain throughout the term of this Franchise Agreement, at Franchisee's sole cost and expense, a business interruption insurance policy insuring that a royalty based on no less than Franchisee's gross revenues during the preceding 12 month period shall be paid to HMI for a period of up to two years if the Franchise Location is destroyed or rendered inaccessible by a risk insured against under a standard fire, theft, and extended coverage insurance policy with vandalism and malicious mischief endorsements. Franchisee shall also obtain and maintain, throughout the term of this Franchise Agreement, at Franchisee's sole cost and expense, a business interruption insurance policy providing Franchisee with reimbursement for any interruption in its operations for a period of up to a year if the Franchise Location is destroyed or rendered inaccessible or unusable by a risk insured against in a standard fire, theft and extended coverage insurance policy with vandalism and malicious mischief endorsements.

### 12.4 Additional Insured; Provisions; Other Coverage.

HMI shall be named as an additional insured on all policies of insurance carried by Franchisee on the Franchise Location or its contents or with respect to the Franchise Business. All policies of insurance carried by Franchisee shall: (a) be primary and noncontributing with any

other insurance; (b) be written by a reputable company or companies authorized to engage in the business of general liability insurance in the state in which the Franchise Location is situated; (c) contain cross-liability endorsements; and (d) contain an endorsement requiring 30 days written notice to HMI before the policy may be cancelled or altered. Franchisee shall deliver to HMI no less than 15 days before the Commencement Date and no less than 20 days before expiration of each policy term certificates of insurance evidencing the coverage required by this Section 12, together with evidence that the premiums have been paid. Franchisee may obtain any other or additional insurance it deems desirable or appropriate. HMI makes no representation or warranty that the insurance required by this Section 12 covers all the risks against which Franchisee, the Franchise Business, or the Franchise Location should be insured.

#### 12.5 Waiver of Subrogation.

HMI and Franchisee release one another from any claims for damage to any person, the Franchise Location, and/or the buildings, fixtures, equipment, personal property, improvements, and alterations located in or on it caused by or resulting from risks insured against under any insurance policies carried by HMI or Franchisee and in force at the time of the damage. Franchisee shall cause each insurance policy obtained by Franchisee to provide that the insurance company waives all right of recovery by way of subrogation against HMI in connection with any damage covered by any policy.

#### 12.6 Remedies.

Should Franchisee fail to obtain or maintain any of the insurance required by this Section 12 within five days after HMI's demand for compliance, HMI shall have the right, but no obligation, to obtain and maintain that coverage for itself and Franchisee. Franchisee shall pay HMI on demand all charges incurred by HMI to obtain and maintain the coverage, 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.

#### 12.7 Increases in Coverage.

Franchisee shall cause its insurance agent to review the adequacy of its insurance coverage no less than 45 days prior to its annual renewal and deliver to Franchisee and HMI a written report on that review. Franchisee shall increase its insurance coverage as recommended by the agent in the annual report. Franchisee shall increase the insurance coverage required by this Section 12 at any time during the term of this Franchise Agreement, but not more frequently than once each year, upon receipt of notice that HMI has determined that the amount of that insurance is inadequate, and shall deliver to HMI within 30 days after receipt of that notice a certificate evidencing the increased coverage.

### 13. **INDEMNITY.**

Franchisee shall indemnify, defend, and hold harmless HMI and its officers, directors, agents, and employees from and against any and all losses, claims, costs, demands, liabilities, obligations, damages, actions, and expenses of any kind or nature whatsoever (including, without limitation, attorneys' fees) arising out of or related in any manner whatsoever to the Franchise

Business or Franchisee's use of the Franchise Location or any improvements, fixtures, or equipment located in or on it.

#### **14. TAXES AND ASSESSMENTS; PERMITS AND LICENSES.**

##### **14.1 Franchisee's Duty.**

Franchisee shall pay on or before the due date all payroll, personal property, franchise, sales, and other taxes or assessments imposed by any governmental entity or agency on or on account of the conduct of the Franchise Business or on its receipts, other than income taxes on income of HMI. If any of those taxes are levied against or paid by HMI, Franchisee shall reimburse HMI for those taxes on demand. Franchisee shall obtain and timely renew all permits and licenses required by any governmental entity or agency for operation of the Franchise Business.

##### **14.2 Remedies.**

Should Franchisee fail to pay any taxes or obtain any permits or licenses as required by this Franchise Agreement within ten days after the earlier of notification of noncompliance or HMI's demand for compliance, HMI shall have the right, but no obligation, to pay those taxes (including any penalties and/or interest charges) or obtain those permits or licenses for and on behalf of Franchisee in addition to the other remedies provided for in this Agreement; including, but not limited to, the remedies set forth in Section 20, Subsections (G), (H) and (N). Franchisee hereby irrevocably designates, constitutes, and appoints HMI its attorney-in-fact for that purpose. Franchisee shall pay HMI on demand all sums spent by HMI for those taxes, permits, and licenses, plus interest at the maximum rate then legally permitted for commercial transactions from the date the monies were spent by HMI until repayment is received.

#### **15. LIMITATIONS ON ASSIGNMENT.**

##### **15.1 Consent Required.**

To ensure Franchisee's personal responsibility for the operation of the Franchise Business and to protect the HMI Trade Name, Marks, Method, goodwill, and reputation and the Other Proprietary Information for the benefit of HMI, Franchisee, and all HMI franchisees, Franchisee shall not assign, sell, transfer, encumber, or otherwise dispose of all or any part of Franchisee's interest in this Franchise Agreement, the Franchise Business, or the Franchise Location, voluntarily or by operation of law, without HMI's prior written consent. HMI's consent shall not be unreasonably withheld, but may be conditioned on fulfillment of any reasonable conditions (including, without limitation, those set forth in Sections 16 and 18) and may be denied on any reasonable grounds, including (without limitation) that: (a) HMI deems the proposed recipient to be unqualified to operate the Franchise Business based upon an assessment of the proposed recipient's business acumen, aptitude, capability, financial stability or responsibility, or other relevant characteristics; (b) Franchisee does not propose to assign, sell, transfer, or otherwise dispose of all of Franchisee's interest in this Franchise Agreement, the Franchise Business, and

the Fixtures and Equipment; or (c) Franchisee is in default under this Franchise Agreement. No transfer shall be made unless Franchisee assigns to the transferee Franchisee's Lease, or sublets the Franchise Location to the transferee for the balance of the existing term of this Franchise Agreement or if Franchisee owns the Franchise Location, grants the transferee the right to occupy the Franchise Location for the balance of the term of this Franchise Agreement.

### 15.2 Deemed Transfers.

The following shall be deemed to be transfers requiring consent pursuant to this Section 15: (a) any transfer to a corporation, limited liability company, partnership, or individual; (b) if Franchisee is a corporation or limited liability company, any dissolution, merger, consolidation, or other reorganization, or sale or other transfer of a number of shares or membership units sufficient to affect control of the corporation or limited liability company, or a sale of assets having a value equal to 50% or more of the total value of its assets; (c) if Franchisee is a partnership or limited liability company, any change in or withdrawal of any partner or member owning 15% or more of the partnership or limited liability company or dissolution of the entity; (d) if Franchisee consists of more than one person, any transfer of an ownership interest in the partnership or limited liability company from one such person to any other; or (e) any proposed sale, transfer, encumber, or otherwise dispose of Franchisee's interest in this Franchise Agreement or the Franchise Business, or any part thereof.

### 15.3 Additional Conditions.

(A) In addition to the conditions set forth in Section 18 and any other reasonable conditions, HMI's consent to an assignment, sale, transfer, or other disposition of Franchisee's interest in this Franchise Agreement or the Franchise Business to a corporation or limited liability company may be conditioned on any or all of the following: (i) Franchisee owning all the shares of stock of the corporation or membership units of the limited liability company or HMI consenting to the transfer of a portion of the shares or membership units to holders other than Franchisee and Franchisee agreeing in writing to own legally and beneficially a majority of the shares of the corporation or limited liability company membership units at all times during the Franchise Agreement; (ii) the certificates evidencing shares of the term of this corporation or limited liability company membership units bearing an appropriate legend prominently disclosing the existence of the restrictions on transfer set forth in this Franchise Agreement; (iii) Franchisee agreeing to serve as the principal executive officer of the corporation or limited liability company at all times during the term of this Franchise Agreement; and/or (iv) each shareholder or member executing a personal guarantee of the corporation or limited liability company's obligations to HMI.

(B) In addition to the conditions set forth in Section 18 and any other reasonable conditions, HMI's consent to an assignment, sale, transfer, or other disposition of Franchisee's interest in this Franchise Agreement or the Franchise Business to a partnership or limited liability company may be conditioned on any or all of the following: (i) HMI's approval of the composition of the partnership or limited liability company and the business acumen, aptitude, financial stability or responsibility, and other relevant characteristics of each partner or member; (ii) the execution of a written partnership agreement or operating agreement that provides that no interest in the partnership or limited liability company shall be transferred or that no change in partnership or limited liability company composition be made without HMI's prior

written consent and approval; and/or (iii) in the case of the partnership, the partnership being a general partnership.

#### 15.4 Effect; Information.

(A) Any attempt to assign, sell, transfer, encumber, or otherwise dispose of any interest in this Franchise Agreement or the Franchise Business other than in accordance with the provisions of this Franchise Agreement shall be null and void. Consent by HMI to one assignment, sale, transfer, encumbrance, or other disposition shall not be deemed a waiver of this provision or a consent to any subsequent assignment, sale, transfer, encumbrance, or other disposition. HMI's approval of any proposed transfer by Franchisee shall not be construed as a representation or warranty by HMI that the terms or conditions of the proposed transfer are economically sound or that the proposed transferee will be capable of successfully conducting the Franchise Business.

(B) HMI shall have the right, but no obligation, to furnish any prospective transferee with copies of any and all records or reports delivered to HMI by Franchisee during the three-year period prior to the date on which approval of the proposed transfer is requested. HMI shall have the right, but no obligation, to advise any prospective transferee of any uncured breach or default by Franchisee under this Franchise Agreement, or any other agreement relating to the Franchise Business.

(C) Notwithstanding the foregoing, should Franchisee be a corporation, partnership, or limited liability company ("Franchise Entity") if the original owners of the Franchise Entity, (as constituted and in the ownership percentages existing at the time this Franchise Agreement is executed) transfer any ownership interest: (i) among the owners of the Franchise Entity or (ii) to a third party, the Franchisee shall give HMI notice of the transfer even if the transfer does not constitute a "deemed transfer" pursuant to Section 15.2.

#### 15.5 Transfer by HMI.

HMI may sell, assign, or encumber all or any portion of its interest in this Franchise Agreement at any time so long as HMI has a reasonable basis for believing that any person or entity who will become responsible for performance of the obligations of the franchiser under this Franchise Agreement is at the time financially responsible and economically capable of performing those obligations, and so long as that person or entity expressly assumes those obligations in writing at the time of the transfer.

### 16. **RIGHT OF FIRST REFUSAL.**

#### 16.1 Right.

(A) Should Franchisee propose to assign, sell, transfer, encumber, or otherwise dispose, with or without consideration, of all or any portion of Franchisee's interest in this Franchise Agreement or the Franchise Business (other than by a transfer during Franchisee's lifetime to the trustee of a trust the sole beneficiaries of which are Franchisee, Franchisee's spouse, domestic partner, or issue, or some combination of them that will not result in any

change in the day-to-day management of the Franchise Business), Franchisee shall promptly give HMI written notice of the proposed assignment, sale, transfer, or other disposition, including a description of the interest of which Franchisee proposes to dispose, the identity of the proposed transferee, the nature of the proposed disposition, and the proposed consideration, terms, and conditions, if any. HMI or its nominee shall have the first right to acquire the interest described in Franchisee's notice by giving Franchisee notice of its exercise of this right within 30 days after its receipt of Franchisee's notice. The notice of exercise shall set forth a place and a date not less than 30 nor more than 120 days thereafter for transfer to HMI of the interest described in Franchisee's notice in return for the consideration, if any, described in Franchisee's notice. Provided, however, that HMI or its nominee may substitute an equivalent sum of cash for any consideration other than cash.

(B) On the date and at the place described in the notice of exercise, Franchisee shall deliver appropriate written evidence of transfer to HMI or its nominee of the interest described in Franchisee's notice, subject to fulfillment by HMI of the conditions, if any, set forth in Franchisee's notice and delivery by HMI or its nominee of the consideration, if any, described in Franchisee's notice.

#### 16.2 Non-Exercise.

Should HMI fail to exercise the right of first refusal set forth in Section 16.1, subject to the provisions of Sections 15 and 18, Franchisee may dispose of the interest described in Franchisee's notice to the party named in Franchisee's notice, in the manner, for the consideration, if any, and on the terms and conditions, if any, set forth in Franchisee's notice; provided, however, that if the transfer is not made within 90 days after the expiration of the right of first refusal set forth in Section 16.1, any subsequent disposition shall be deemed to be a disposition subject to that right of first refusal. Nothing contained in this Section 16 shall be deemed or construed to give Franchisee the right to dispose of any interest in this Franchise Agreement or the Franchise Business other than in accordance with Sections 15 and 18.

### 17. **CONDITIONS FOR SALE UPON DEATH OR DISABILITY; RIGHT TO APPOINT MANAGER.**

#### 17.1 Conditions.

(A) Should Franchisee die, be rendered incapable of attending to the Franchise Business for a period in excess of 45 days in any nine month period, be certified as mentally incompetent by a medical doctor duly licensed to practice medicine, or have a guardian or conservator appointed (individually and collectively, an "Option Occurrence"), whether or not the Franchise Business has previously been transferred to a trust, HMI may require that Franchisee or Franchisee's heirs, beneficiaries, personal representative, estate, guardian, conservator, or other successor in interest or the trustee of any trust (individually and collectively, "Franchisee's Successor") list with a licensed broker qualified to sell business opportunities, and sell within 180 days for the best offer obtained within 120 days after listing, all of Franchisee's interest in this Franchise Agreement, the Franchise Business, the Fixtures and Equipment, and Franchisee's Lease, or otherwise grant the buyer the right to occupy the

Franchise Location for the balance of the term of this Franchise Agreement, subject to the provisions of Sections 15, 16, and 18.

(B) Within 10 days after any Option Occurrence, Franchisee or Franchisee's Successor shall deliver to HMI written notice of that occurrence. HMI shall exercise the option set forth in Section 17.1(A) by giving Franchisee or Franchisee's Successor notice of exercise within 45 days after it receives written notice from Franchisee or Franchisee's Successor of the Option Occurrence. Within 20 days after receipt of HMI's notice of exercise, Franchisee or Franchisee's Successor shall deliver to HMI written evidence of the listing required by Section 17.1(A).

(C) Should HMI fail to exercise the option set forth in Section 17.1(A), if Franchisee is not then in default pursuant to this Franchise Agreement, Franchisee may continue to operate the Franchise Business or Franchisee's Successor may succeed to Franchisee's interest in this Franchise Agreement and the Franchise Location and operate the Franchise Business after satisfying the conditions set forth in Section 18.

#### 17.2 Right to Appoint Manager.

During any period of Franchisee's incapacity or on the happening of any Option Occurrence HMI may appoint a manager to operate the Franchise Business until Franchisee is capable of attending to the Franchise Business or a transfer of Franchisee's interest in this Franchise Agreement is effected in accordance with this Franchise Agreement. Franchisee or Franchisee's Successor shall reimburse HMI for the salary of that manager within 30 days after receipt of an invoice.

#### 18. **CONDITIONS TO ASSUMPTION OF FRANCHISEE'S INTEREST; TRANSFER FEE.**

No person or entity may succeed to Franchisee's interest in this Franchise Agreement or operate the Franchise Business in place and stead of Franchisee, unless and until:

(A) That person or a Designated Operator of that entity has satisfactorily completed training prescribed by HMI;

(B) That person or entity has agreed in writing to be bound by and executed a copy of the form of Franchise Agreement then being offered by HMI to prospective franchisees (provided that the provision relating to initial franchise fees shall be deleted and the provision relating to duration shall be appropriately revised);

(C) That person or entity has the right to occupy the Franchise Location for the balance of the term of the Franchise Agreement;

(D) HMI has received payment of the franchise transfer fee then set forth in the Fee Schedule if such is required;

(E) Any breach by Franchisee of its contractual obligations to HMI has been cured;

(F) All sums then or thereafter payable by Franchisee to HMI have been paid or arrangements have been made for the assumption of those obligations by Franchisee's successor in a manner approved by HMI;

(G) Franchisee has executed a general release in favor of HMI;

(H) All taxes due and owing any federal, state, county or local taxing authority shall be paid in full and HMI shall be given written proof of such payment.

#### **19. FRANCHISEE'S TERMINATION RIGHT.**

Franchisee may terminate this Franchise Agreement if HMI defaults in the performance of any material obligation under this Franchise Agreement and that default is not cured within 30 days after HMI's receipt of written notice of the default from Franchisee, or, if the default is not susceptible of cure within a 30 day period, if corrective action has not been commenced within the 30 day period.

#### **20. HMI'S TERMINATION RIGHTS.**

In addition to the cancellation rights given it in Sections 3.2 (opening for business and right to possession), 5.1 (training), 11.5 (sales volume) and all other rights given it by this Franchise Agreement or by law, HMI may terminate this Franchise Agreement if Franchisee:

(A) Fails to pay when due any sum due and payable to HMI pursuant to this Franchise Agreement and does not make that payment, including all applicable late charges and interest, within five days after receipt of notice from HMI;

(B) Fails to adhere to the product, supply, fixtures, equipment, decorating of restaurant, and other specifications, standards, rules, regulations, methods, techniques, and procedures set forth in the HMI Owners Manuals, including periodic revisions thereto, and does not take appropriate corrective action within three days after receipt of notice from HMI;

(C) Fails to carry any menu item on a daily basis designated by HMI, carries any menu item other than those approved, in writing, by HMI, carries any "Mary's Special-Tease"<sup>™</sup> items without proper designation on the menu as set forth in Section 7.3, or fails to prepare any menu item in accordance with any recipe for that item set forth in the RPS Manual, including periodic revisions thereto, and does not take appropriate corrective action within three days after receipt of notice from HMI;

(D) Violates the provisions of Section 1.3 regarding the restricted and the required use of the HMI Trade Name, Marks, or Method and does not take appropriate corrective action within three days after receipt of notice from HMI;

(E) Violates the provisions of Section 1.3 regarding restrictions on use of the HMI Trade Name, Marks, or Method;



(F) Discloses, divulges, disseminates, displays, duplicates, reveals, reproduces, publishes, sells, shows, or communicates the HMI Method, any of the contents of the HMI Owners Manuals, or any of the Other Proprietary Information to any person or entity;

(G) Fails to make any report or maintain and retain any records in accordance with Sections 6.4, 9.1, 9.2, or 9.3, and does not cure that failure within ten days after receipt of notice from HMI;

(H) Submits to HMI on three or more occasions during the term of this Franchise Agreement, whether or not consecutive, reports of gross revenue that any audit or audits conducted by HMI pursuant to Section 9.4 reveal to have understated gross revenue by 3% or more;

(I) Fails to have a Designated Operator or fails to devote or cause a Designated Owner or Approved Manager to devote no less than 40 hours per week to the operation of the Franchise Location, except as a result of a national emergency, an act of Nature, or a disaster;

(J) Fails to deliver to HMI on or before the date described in Section 12.4 evidence of the insurance coverage required by Section 12 and does not obtain that insurance within five days after receipt of notice from HMI;

(K) Suffers a cancellation by the carrier of any insurance described in Section 12 and fails to obtain replacement coverage no less than 10 days before the cancellation date and/or fails to name HMI as an additional insured or fails to maintain HMI as "additional insured";

(L) Purports to assign, sell, transfer, encumber, or otherwise dispose of all or any portion of its interest in this Franchise Agreement or the Franchise Business in violation of Section 15, 16, or 18;

(M) Ceases to operate the Franchise Business or does not open the Franchise Location for business for more than five days in succession, unless that failure is due to a labor action, national emergency, act of Nature, or disaster;

(N) Fails to comply with any law, ordinance, rule, or regulation applicable to the Franchise Business or the Franchise Location, fails to pay any taxes, or fails to obtain any permits described in Section 14.1 within ten days after the earlier of notification of noncompliance or receipt of HMI's demand for compliance;

(O) Defaults in the performance of any of its covenants, duties, or obligations pursuant to this Franchise Agreement or fails to fulfill any condition of this Franchise Agreement not described in subparagraphs (a) through (n) of this Section 20 and does not cure that default within 10 days after notice from HMI;

(P) Fails on three or more occasions in any 12-month period to pay when due any sum due and payable to HMI pursuant to this Franchise Agreement;

(Q) Fails to comply with each and every term, covenant, and condition and to perform timely each of its duties and obligations pursuant to this Franchise Agreement, other than its obligation to pay money to HMI, on three or more occasions in any 12 month period or on more than 10 occasions throughout the term of this Franchise Agreement;

(R) Defaults in the performance of any of its covenants, duties, or obligations pursuant to any other agreement between it and HMI or any third party relating to the Franchise Business, the Fixtures or Equipment, the Franchise Location, or the financing of the initial franchise fee described in Section 6.1, and does not cure that default within the time, if any, allowed for cure;

(S) Has any decree or order for relief issued with regard to it in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect or appointing a receiver, liquidator, assignee, custodian, trustee, or similar official for it or any substantial part of the property of the Franchise Business, or ordering the winding up or liquidation of its affairs, and that decree or order remains unstayed and in effect for a period of 60 consecutive days;

(T) Commences a voluntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect, or consents to the entry of an order for relief in any voluntary case under any such law, or consents to the appointment of a receiver for it or the Franchise Business, or taking by a receiver, liquidator, assignee, custodian, trustee, or similar official for it of any substantial part of the property of the Franchise Business, or makes any general assignment for the benefit of creditors, fails generally to pay its debts as they become due, admits its inability to pay its debts as they become due, or takes any action in furtherance of those;

(U) Fails to obtain release of any writ of attachment or execution levied against its interest in the Franchise Business, the Franchise Location, or any fixtures, equipment, monies, goods, or inventory located in or on the Franchise Location within five days after levy;

(V) Fails to satisfy any final judgment against it or the Franchise Business for 30 days without filing a supersedeas or other appeal bond and the Franchise Business, the Franchise Location, or any fixtures, equipment, monies, goods, or inventory situated at or in the Franchise Location is seized, taken over, or foreclosed on by any government official, creditor, lienholder, or lessor;

(W) Fails to pay within 45 days after the due date any debt to any creditor for equipment or fixtures located in or on the Franchise Location or goods sold or services rendered to the Franchise Business, unless it in good faith disputes the accuracy or legitimacy of that debt and is actively attempting to resolve the dispute;

(X) Commits any act or engages in any conduct that reflects materially and unfavorably on, endangers, or damages the HMI Trade Name, Marks, goodwill, or reputation, or the reputation or operation of the Franchise Business, including (without limitation) being convicted of a felony or other criminal misconduct;

(Y) Makes any material misrepresentation to HMI; or

(Z) Ceases to have the right to occupy the Franchise Location and fails to relocate the Franchise Business as provided in Section 3.3.

## **21. CONTINUING LIABILITY.**

### **21.1 Ongoing Liability.**

Notwithstanding the termination of this Franchise Agreement pursuant to Section 20, HMI shall retain all rights and remedies given it by this Franchise Agreement or by law and Franchisee shall remain fully liable for the performance of its duties and obligations arising out of this Franchise Agreement or the operation of the Franchise Business, including (without limitation) payment of: (a) all amounts then due to HMI or that have become due to HMI as a result of that termination; (b) the salaries of Franchisee's employees and all taxes related to those salaries; and (c) all costs and expenses incurred and all profits lost by HMI as a result of the termination.

### **21.2 Amended Operating Agreement.**

Upon Franchisee's default under any provision of this Agreement, including but not limited to, the provisions in Section 20 above, Franchisor may, at its sole and absolute discretion, in lieu of declaring an immediate default, give Franchisee the option of executing a new revised Franchise Agreement or an amendment to this current Agreement. The new revised Franchise Agreement, or the amendment to this Agreement, shall contain the same provisions found in the Franchise Agreement in use with other Franchisees at the time when Franchisor exercises the aforementioned option. Notwithstanding the foregoing, Franchisor is not obligated to give Franchisee the option of executing a new revised Franchise Agreement or an amendment to this current Agreement.

## **22. PROCEDURE FOR WINDING UP FRANCHISE BUSINESS.**

### **22.1 Procedure.**

(A) Upon cancellation, termination, or expiration of this Franchise Agreement, Franchisee shall:

(i) Cease to use the HMI Trade Name, Marks, and Method, the VIM guest promotion system and the Other Proprietary Information, or any of them, in any manner whatsoever and execute all documents necessary to give notice of cessation, including (without limitation) a statement of abandonment of fictitious business name;

(ii) Maintain the confidence and not thereafter disclose or use any information disseminated to Franchisee regarding the HMI Method or the Other Proprietary Information;

(iii) Immediately deliver to HMI the HMI Owners Manuals and the HMI Bar Guide and Recipe Book, complete and intact, all materials containing the HMI Trade Name or Marks, or any other trade names or marks then belonging to HMI, all materials relating or referring to or containing the HMI Method or the Other Proprietary Information, and all materials containing the copyright, symbols, devices, insignia, designs, labels, or logotypes of HMI, including (without limitation) all HMI bulletins, instruction sheets, memoranda, guidelines, and forms;

(iv) Do any and all things necessary or appropriate to transfer to HMI or its nominee any telephone numbers used in connection with the Franchise Business and make appropriate changes in directory listings; and

(v) Pay all sums owing to HMI, including those incurred on or before the expiration date or the effective date of the termination of all sums due or to become due to HMI pursuant to this Franchise Agreement. Upon termination pursuant to any default by Franchisee, such sums shall include, but not be limited to, actual and consequential damages, costs and expenses (including reasonable attorneys' fees) incurred by Franchisor as a result of the default, and shall also include, in the case of termination resulting from Franchisee's breach of this Agreement (as stipulated damages and not as a penalty), the greater of (i) Twenty Five Thousand Dollars (\$25,000) or (ii) an amount equal to the last 12 months' royalty fees due and payable pursuant to Paragraph 6.2 hereof multiplied by the number of years (pro rated for partial month) left in the term of this Agreement.

(B) Upon cancellation of this Franchise Agreement prior to the Commencement Date pursuant to Sections 3.2 or 5.1, in addition to the requirements of Section 22.1(A), if HMI so requires, Franchisee shall: (i) vacate the Franchise Location and assign Franchisee's Lease to HMI or its nominee, or, if Franchisee owns the Franchise Location, lease the Franchise Location to HMI or its nominee for a period equal to the initial term of this Franchise Agreement with two options to renew for five years each, at the fair rental value of the Franchise Location and on terms generally offered for comparable commercial premises at the time this Franchise Agreement is cancelled but including the provisions described in Section 3.4; (ii) sell and assign to HMI or its nominee all of Franchisee's interest in all or any portion of the signs, fixtures, or equipment located on or at the Franchise Location, and HMI or its nominees shall accept and assume Franchisee's obligations under any lease of those signs, fixtures, or equipment and pay Franchisee for those signs, fixtures, or equipment a sum equal to the aggregate of the payments made by Franchisee to acquire its interest in those signs, fixtures, and items of equipment; and/or (iii) sell to HMI or its nominee the goods, supplies, merchandise, and Food Products at the Franchise Location for the same price Franchisee paid for them. If HMI or its nominee exercises the right to acquire a leasehold interest in the Franchise Location, within 30 days after Franchisee's submission to HMI of an itemized statement accompanied by receipted bills detailing the expenses incurred by Franchisee in connection with the Improvements, all supporting data, and mechanic's and materialman's lien releases covering all of the work described in the statement, HMI or its nominee shall, pay Franchisee the amount shown in the statement.

(C) Upon termination of this Franchise Agreement pursuant to Section 20, in addition to the requirements of Section 22.1(A), if HMI so requires, Franchisee shall: (i) vacate the Franchise Location on or before the effective date of the cancellation or termination and

assign Franchisee's Lease to HMI or its nominee or, if Franchisee is the owner of the Franchise Location, lease the Franchise Location to HMI or its nominee for a period equal to the balance of the existing term of this Franchise Agreement, with an option to renew for two consecutive five year terms, at the fair rental value and on terms comparable to those generally offered for comparable commercial premises on the cancellation date but including the provisions described in Section 3.4; (ii) sell or assign to HMI all of Franchisee's interest in all or any portion of the signs, fixtures, or equipment located on or at the Franchise Location and HMI shall pay Franchisee for its interest in those signs, fixtures, or equipment owned by Franchisee a sum equal to the aggregate of the payments made by Franchisee to acquire its interest in those signs, fixtures, or items of equipment, less any portion of that sum paid by Franchisee as interest and a depreciation allowance of 10% for each year since their purchase; and (iii) sell the goods, supplies, merchandise, and Food Products in the Franchise Location to HMI for the same price Franchisee paid for them.

(D) Notwithstanding the foregoing, HMI shall not be required to purchase any fixtures, equipment, goods, supplies, merchandise, or Food Products of a brand not then approved by HMI or not meeting HMI's subjective quality standards or any specifications established by HMI.

#### 22.2 Failure to Perform.

Should Franchisee fail to perform any act described in Section 22.1 within the time period set forth, in addition to all other rights given it by this Franchise Agreement or by law, HMI may:

(A) Enter the Franchise Location without being deemed guilty of trespass or conversion or any other tort and without liability to Franchisee or Franchisee's successors in interest and make the changes and removals described in Section 22.1 for and at the expense of Franchisee, who shall pay that expense on demand;

(B) Execute for and in the name of Franchisee any instruments necessary to accomplish the things described in Section 22.1, and Franchisee hereby irrevocably appoints, constitutes, and designates HMI as Franchisee's attorney-in-fact to do any and all acts and things necessary to accomplish the winding up of the Franchise Business in accordance with Section 22.1; and

(C) If it has a right to be permitted to occupy the Franchise Location, remove from the Franchise Location and store at Franchisee's expense at a location selected by HMI all personal property in the Franchise Location that HMI does not acquire pursuant to Section 22.1. All that property shall be forfeited to HMI for storage costs if it is not claimed and all storage costs are not paid within 90 days after the cancellation or termination of this Franchise Agreement.

### 23. **RIGHT TO SPECIFIC PERFORMANCE AND INJUNCTION.**

Because the Franchise Business is part of a system of commercial establishments having a common appearance and menu and presenting a uniform public identity and because the HMI

Trade Name, Marks, and Method are unique, Franchisee's failure to comply with the terms of this Franchise Agreement would cause irreparable damage to HMI, other Hamburger Mary's® Bar & Grille franchisees, and the HMI Trade Name, Marks, and Method. Accordingly, should Franchisee fail to comply with any of its obligations pursuant to this Franchise Agreement, other than its obligations to pay money to HMI, HMI shall be entitled to a decree of specific performance enforcing those provisions and/or an injunction against Franchisee's continued conduct in violation of this Franchise Agreement.

## **24. LATE CHARGE; APPLICATION OF PAYMENTS; SERVICE CHARGES.**

### **24.1 Late Charge.**

Franchisee acknowledges that if HMI does not receive payment of any sum payable to it pursuant to this Franchise Agreement on or before the due date, HMI shall incur certain expenses not contemplated by this Franchise Agreement, including (without limitation) processing, accounting, legal (pursuant to Section 25), collection, and other administrative expenses, the exact amount of which it would be extremely difficult and impracticable to ascertain. Therefore, Franchisee agrees that if any payment due HMI from Franchisee pursuant to this Franchise Agreement, other than a royalty payment pursuant to Section 6.2, or an APF Contribution pursuant to Section 10.5, is not received by HMI within five days after the due date, Franchisee shall deliver to HMI with the past due payment, in addition to the applicable accrued interest on the past due amount, a late charge equal to \$350.00 or 10% of the past due payment whichever is greater is due and payable. Franchisee agrees that this late charge represents a fair and reasonable estimate of the expenses HMI will incur by reason of late payments. Acceptance of any late charge shall not constitute a waiver of Franchisee's default with respect to the past due amount or prevent HMI from exercising any other rights given it by this Franchise Agreement or by law. Notwithstanding this Paragraph 24.1, late charges and fees for royalty payments and the APF Contribution shall be governed by Sections 6.2 and 10.5, respectively.

### **24.2 Application of Payments.**

HMI may apply any payments received from Franchisee to any items then due or past due from Franchisee regardless of any designation made by Franchisee.

### **24.3 Service Charge.**

Franchisee acknowledges that if HMI exercises any of the rights given it by Sections 3 (maintenance, repairs, renovations, refurbishment), 9.5 (reports), 10.6 (signs), 12.6 (insurance), or 14.2 (taxes and licenses), HMI will be performing for and on behalf of Franchisee certain obligations and duties of Franchisee pursuant to this Franchise Agreement and, in so doing, HMI shall incur certain expenses not otherwise contemplated by this Franchise Agreement, the exact amount of which it would be extremely difficult and impracticable to ascertain. Those expenses include (without limitation) administrative costs related to the procurement and supervision of the remedial work, and processing, accounting, legal (pursuant to Section 25) and collection costs. Therefore, Franchisee agrees that if HMI takes any remedial action permitted by Sections 3, 9.5, 10.6, 12.6, or 14.2, Franchisee shall pay HMI on demand a service charge equal to 5% of the charges incurred by HMI in taking that remedial action, but in

no event less than \$350.00. Franchisee agrees that this service charge represents a fair and reasonable estimate of the costs HMI will incur in taking that remedial action. Acceptance of any service charge shall not constitute a waiver of Franchisee's default with regard to the obligation or duty HMI elected to fulfill, or prevent HMI from exercising any other rights given it by this Franchise Agreement or by law.

## **25. ATTORNEYS' FEES AND COLLECTION COSTS.**

### **25.1 Litigation.**

Should any action or proceeding be brought to enforce rights pursuant to any portion of this Franchise Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees (including, without limitation, those incurred in connection with any appeal) as costs of suit (and not as damages). For purposes of this Section, prevailing party shall mean the party who is legally entitled to recover costs of suit. A party not entitled to recover costs of suit shall not recover attorney's fees pursuant to this Section. Neither the amount of attorney's fees awarded to a party nor the portion of an award to a party equal to the amount offered to that party in any statutory offer to compromise shall be included in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover costs or attorney's fees.

### **25.2 Collection and Termination Costs.**

Franchisee shall pay HMI on demand all attorney's fees and other expenses incurred by HMI in connection with the collection of any sums past due from Franchisee pursuant to this Franchise Agreement and/or the termination of this Franchise Agreement, whether or not a legal proceeding is commenced or final judgment is obtained, unless Franchisee is awarded attorney's fees pursuant to Section 25.1 in a lawsuit brought by HMI to collect those sums or terminate Franchisee's interest.

## **26. NOTICES; PAYMENTS.**

### **26.1 Addresses.**

All notices and demands required or permitted to be given pursuant to this Agreement shall be given in writing and delivered personally, by facsimile transmission with original following by mail, or by registered or certified United States mail, postage prepaid, addressed as follows:

If to HMI:

Hamburger Mary's International, LLC  
Post Office Box 456  
Corona del Mar, CA 92625  
Facsimile (949) 675-9979

If to Franchisee:

The address will be as set forth immediately below Franchisee's signature to this Agreement

The addresses set forth in this Section may be changed by giving notice of that change in accordance with this Section.

26.2 Constructive Receipt.

Notice shall be deemed to have been received upon delivery as to communications that are personally delivered, upon facsimile transmission if transmitted any business day before 5:00 p.m. local time at the place of receipt or on the next business day if transmitted after 5:00 p.m. local time, and upon the earlier of actual receipt or two days after deposit in any United States mail post office box in the state to which the notice is addressed or four days after deposit in any United States mail post office box other than in the state to which the notice is addressed, postage prepaid and addressed as set forth in this Section.

26.3 Delivery of Payments and Reports.

All payments and reports to be made or delivered to HMI pursuant to this Franchise Agreement shall be made or delivered to it at the address set forth in Section 26.1.

27. MISCELLANEOUS.

27.1 Time of Essence.

Time is of the essence for each provision of this Franchise Agreement.

27.2 Successors and Assigns.

Except as otherwise provided in Sections 15 through 18, the terms of this Franchise Agreement shall apply to, be binding upon, inure to the benefit of, and be enforceable by the respective personal representatives, successors in interest, heirs, and assigns of HMI and Franchisee.

27.3 Severability; Modification.

(A) If any term, covenant, or condition of this Franchise Agreement or the application of it to any person, entity, or circumstance is held invalid or unenforceable to any extent by a final decision of a court of competent jurisdiction, after all appeal rights have been exhausted or have expired, that term, covenant, or condition shall be deemed amended to the extent and for purposes of that application so as to render it enforceable to the fullest extent permitted by law. The remainder of this Franchise Agreement, or the application of that term, covenant, or condition to persons, entities, or circumstances other than those as to which it is held invalid or unenforceable shall not be affected and shall be valid and enforced to the fullest extent permitted by law.



(B) Except as otherwise provided in this Section 27.3, no amendment to or modification of this Franchise Agreement shall be effective unless set forth in a writing signed by HMI and Franchisee.

#### 27.4 Entire Agreement.

(A) This Franchise Agreement is intended to be a final expression of the agreement between HMI and Franchisee regarding the Franchise Business; its terms may not be contradicted by evidence of any prior or contemporaneous agreements. HMI and Franchisee further intend this Franchise Agreement to be a complete and exclusive statement of the terms of their agreement regarding the Franchise Business; no extrinsic evidence other than the related agreements to which reference is made in this Franchise Agreement may be used to interpret, explain, or supplement this Franchise Agreement.

(B) Franchisee represents and warrants to HMI that: (i) it has neither received nor reviewed and is not relying upon any earnings claims other than those, if any, set forth in the Franchise Offering Circular delivered in connection with the offer and sale of the franchise; (ii) it has not received or relied upon any promises regarding any financial assistance to be obtained from or through HMI; (iii) it has not received or relied upon any claim, representation, statement, or projection regarding future growth, income, or viability of the Franchise Business or the Hamburger Mary's® Bar & Grille franchise system; and (iv) neither HMI nor its agents or representatives have made any representations or promises not expressly set forth in this Franchise Agreement or the Franchise Offering Circular delivered in connection with the offer and sale of the franchise.

#### 27.5 Headings.

The headings in this Franchise Agreement are for convenience only and shall have no effect on its interpretation.

#### 27.6 Waiver.

No waiver by HMI of any of its rights pursuant to this Franchise Agreement shall be effective unless set forth in a writing delivered to Franchisee. No course of dealing, delay in exercising any right, power, or remedy, acceptance of payments, late charges, or performance from Franchisee when Franchisee is in default, or enforcement of any remedy shall operate as a waiver or otherwise prejudice HMI's rights, powers, or remedies pursuant to this Franchise Agreement.

#### 27.7 Remedies Cumulative.

All rights and remedies of HMI pursuant to this Franchise Agreement shall be cumulative and none shall exclude any other right or remedy given it by this Franchise Agreement or by law. The exercise by HMI of any right or remedy provided by this Franchise Agreement or by law shall not prejudice, exclude, or waive HMI's right to avail itself of any other right or remedy provided by this Franchise Agreement or by law and shall not act as or be deemed an election of remedies.

27.8 Survival of Covenants.

Wherever the context requires, Franchisee's covenants and duties pursuant to this Franchise Agreement shall survive the cancellation, termination, or expiration of this Franchise Agreement.

27.9 Governing Law.

The franchise which is the subject of this Franchise Agreement is granted by a California limited liability company; all or a substantial portion of each party's performance under this Franchise Agreement will take place in California. Therefore, the laws of the State of California, except its laws on choice of law, shall govern the validity, construction, performance, and enforcement of this Franchise Agreement.

27.10 Relationship of the Parties.

The relationship between HMI and Franchisee is, and shall at all times be, only that of licensee and licensor. Franchisee is not and shall not hold itself out as an agent, employee, legal representative, subsidiary, joint venturer, or partner of HMI and nothing contained in this Franchise Agreement or elsewhere shall be construed to create any relationship between HMI and Franchisee other than independent contractors. Franchisee shall not have any right or power to and shall not attempt to bind, make liable, or obligate HMI in any manner whatsoever.

27.11 Joint and Several Liability.

The liability of each individual or entity executing this Franchise Agreement, as Franchisee shall be joint and several.

27.12 Exhibits.

The Exhibits referred to in this Franchise Agreement are attached to it and incorporated in it by this reference.

27.13 Use of Pronoun.

The word Franchisee includes each and every person or persons entity executing or authorizing execution of this Franchise Agreement as Franchisee and each officer, director, shareholder, member, manager, or partner of Franchisee. The use of the neuter singular shall be deemed to include the plural, feminine, and masculine.

27.14 Covenants and Conditions.

Each obligation and duty of Franchisee pursuant to this Franchise Agreement shall be deemed to be not only a covenant but also a condition to any obligation or duty of HMI.

27.15 Information; Investigation; Compliance With FTC Rule and Franchise Investment Law

Franchisee acknowledges that it: (a) has had an opportunity to investigate and analyze the Franchise Business independently and discuss with such advisors as it deems appropriate and with other operators of Hamburger Mary's® Bar & Grilles the advisability, risks, and merits of purchasing and operating a Hamburger Mary's® Bar & Grille franchise; (b) has had an opportunity to investigate, review, and analyze independently the Franchise Location, understands that HMI's approval of that location does not constitute any warranty regarding its desirability, viability, or condition, and is not relying on any implicit or explicit representation from HMI regarding the Franchise Location; (c) received a copy of the Hamburger Mary's® Franchise Offering Circular at the first personal meeting between Franchisee and HMI or its authorized franchise broker and no less than 10 business days before the date of this Franchise Agreement and the date any consideration was paid to HMI; and (d) received a copy of this Franchise Agreement and any Addendum to it in form for execution no less than five business days before the date this Franchise Agreement was executed.

**[Signature Page Follows This Page]**

IN WITNESS WHEREOF, HMI and Franchisee have executed this Franchise Agreement on the date first written above (page 1 of the agreement). 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 HMI franchised restaurant. Franchisee also 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 Offering Circular or this agreement. The parties hereto, intending to be personally bound by the obligations set forth in this document, duly execute this document.

**HMI**

Hamburger Mary's® International, LLC,  
a California limited liability company

By \_\_\_\_\_  
Stan Sax, President

**FRANCHISEE**

\_\_\_\_\_  
(Print Franchisee's Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Address for Notice Pursuant to Section 26.1)

The following individuals also have duly executed this agreement with respect to the HMI Franchise Agreement, and agree to be personally bound by all of its terms and conditions:

Signed By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Relationship to Franchisee: \_\_\_\_\_

Signed By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Relationship to Franchisee: \_\_\_\_\_

Signed By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Relationship to Franchisee: \_\_\_\_\_

EXHIBIT "A"

TO FRANCHISE AGREEMENT BETWEEN  
HAMBURGER MARY'S® INTERNATIONAL, LLC

AND

\_\_\_\_\_  
FOR THE FRANCHISE EXCLUSIVE REGION

TO BE LOCATED:

\_\_\_\_\_  
(CITY/STATE)\_\_\_\_\_

THIS ABOVE FRANCHISE LOCATION HAS BEEN SELECTED BY THE UNDERSIGNED  
FRANCHISEE AND APPROVED BY HMI, LLC

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

BY: \_\_\_\_\_  
STAN SAX, President  
for HAMBURGER MARY'S INTERNATIONAL, LLC

and

BY: \_\_\_\_\_

\_\_\_\_\_  
(Print Name and any Corporate, Limited Liability or Partnership Title)

Name of Franchise Entity if Applicable:

\_\_\_\_\_

EXHIBIT "A-1"  
To the Franchise Agreement

Confidential Nondisclosure Agreement Form

The undersigned individual as a prospective franchisee of **Hamburger Mary's® International** ("HMI") agrees to treat the distinct elements of **Hamburger Mary's® Gar & Grille** business operations as strictly confidential and acknowledges that these operational techniques will not be revealed or discussed with any person(s) other than franchisee's employees or other franchise owners/staff.

Upon signing of the Franchise Agreement, HMI will deliver to the franchisee our Owners Manuals. Franchisee agrees that receipt and use of these distinctive HMI documents will be subject to the terms set forth in this Agreement. Franchisee concedes that these books as well as our financial statements, trade-name and trademarks, HMI's marketing strategies and other systems of business operation are all an integral part of this Agreement and therefore are the sole and exclusive property of HMI.

As noted throughout the Franchise Agreement and the UFOC, all materials provided by HMI will be returned to the master franchisor (HMI) upon dissolution of the individual's franchise operation. This includes but is not limited to the **Hamburger Mary's® Bar & Grille** menu format, signs, Owners' Manuals as well as HMI's RPS manual.

Franchisee further acknowledges that the above-mentioned documents are pertinent to the unique operations of a **Hamburger Mary's® Bar & Grille**. As such materials of this highly specialized restaurant chain are important to its unique function and fundamental for the profitable portion of its restaurant operations, franchisee therefore agrees not to disclose, disseminate, photocopy or publish any of these materials either directly or indirectly.

The undersigned acknowledges that HMI has a legitimate business interest in protecting this confidential information and, in the event Franchisee breaches this Agreement, is aware that HMI will protect its interest by exercising all remedies and rights available at law at equity. Franchisee further agrees that HMI shall be entitled to seek specific performance and to obtain a restraining order, preliminary injunctions, and all permanent injunctions in connection with any breach by franchisee of this Agreement. This includes but is not limited to seeking an award of monetary damages of each violation or violations. HMI will take all legal actions to rectify the situation. Court costs and attorney's fees as well as damages as determined by the court, will be the sole responsibility of the undersigned franchisee. Noncompetitive restrictions are a separate matter that vary from state to state and as such are to be treated as distinct from this form.

**[Signature Page Follows this Page]**

This Agreement shall be construed according to the laws of the State of California. Franchisee and HMI both agree that any action brought in connection with this Agreement shall be instituted in a Federal or State court of competent jurisdiction with the venue only in Orange County, California. Franchisee and HMI consent to a service of process in the same manner as Notices and may be served to the personal jurisdiction of a competent court located in Orange County, California.

Signed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Corporate Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Email: \_\_\_\_\_

WITNESSED BY:

\_\_\_\_\_  
\_\_\_\_\_  
(Printed Name)

for Hamburger Mary's® International

EXHIBIT "A-2"  
To the Franchise Agreement

Purchase Receipt

|  |  |
|--|--|
| 1. Purchaser:  | <p>_____</p> <p>_____</p> <p>[Insert Full Name of Individual or Entity and State of Organization, if Applicable]</p> <p>_____</p> <p>_____</p> <p>[Insert Address]</p> |
| 2. Seller (Franchisor):  | <p>Hamburger Mary's International, LLC<br/>4221 Dolphin-Striker Way<br/>Newport Beach, CA 92660<br/>Attn: Stan Sax</p>   |
| 3. General Location of Franchise being Purchased:                          | <p>_____</p> <p>[Insert General Proposed Location for the Franchise]</p>   |
| Total Purchase Price:  | \$ _____   |
| 4. Amount of Payment Received:   | \$ _____   |
| 5. The Depository Where Payment Will be Held in Escrow (the "Depository"): | <p>International City Bank<br/>249 East Ocean Boulevard<br/>Long Beach, CA 90802<br/>Attn: Bill Patterson</p>  |
| 6. Date of Payment:  | _____, __, 2006  |
| Dated: _____, __, 2006   | <p><b>FRANCHISOR:</b></p> <p>Hamburger Mary's International, LLC</p> <p>By: _____</p> <p>Stan Sax, its Chief Executive Officer and Managing Member</p>                 |

**[THIS PURCHASE RECEIPT MUST BE EXECUTED IN TRIPPLICATE WITH ONE FULLY EXECUTED ORIGINAL TO BE KEPT BY FRANCHISEE, ONE BY THE FRANCHISOR AND ONE BY THE DEPOSITARY]**



EXHIBIT "A-2"

Purchase Receipt

|  |  |
|--|--|
| 1. Purchaser:  | <p>_____</p> <p>_____</p> <p>[Insert Full Name of Individual or Entity and State of Organization, if Applicable]</p> <p>_____</p> <p>_____</p> <p>[Insert Address]</p> |
| 2. Seller (Franchisor):  | Hamburger Mary's International, LLC<br>4221 Dolphin-Striker Way<br>Newport Beach, CA 92660<br>Attn: Stan Sax   |
| 3. General Location of Franchise being Purchased:                          | <p>_____</p> <p>[Insert General Proposed Location for the Franchise]</p>   |
| Total Purchase Price:  | \$ _____   |
| 4. Amount of Payment Received:   | \$ _____   |
| 5. The Depository Where Payment Will be Held in Escrow (the "Depository"): | International City Bank<br>249 East Ocean Boulevard<br>Long Beach, CA 90802<br>Attn: Bill Patterson  |
| 6. Date of Payment:  | _____, __, 2006  |
| Dated: _____, __, 2006   | <b>FRANCHISOR:</b><br><br>Hamburger Mary's International, LLC<br><br>By: _____<br>Stan Sax, its Chief Executive Officer and Managing Member                            |

**[THIS PURCHASE RECEIPT MUST BE EXECUTED IN TRIPPLICATE WITH ONE FULLY EXECUTED ORIGINAL TO BE KEPT BY FRANCHISEE, ONE BY THE FRANCHISOR AND ONE BY THE DEPOSITARY]**

EXHIBIT "A-2"

Purchase Receipt

|  |   |
|--|---|
| 1. Purchaser:  | _____<br>_____<br>[Insert Full Name of Individual or Entity and State of Organization, if Applicable]<br>_____<br>_____<br>[Insert Address] |
| 2. Seller (Franchisor):  | Hamburger Mary's International, LLC<br>4221 Dolphin-Striker Way<br>Newport Beach, CA 92660<br>Attn: Stan Sax                                |
| 3. General Location of Franchise being Purchased:                          | _____<br>[Insert General Proposed Location for the Franchise]   |
| Total Purchase Price:  | \$ _____  |
| 4. Amount of Payment Received:   | \$ _____  |
| 5. The Depository Where Payment Will be Held in Escrow (the "Depository"): | International City Bank<br>249 East Ocean Boulevard<br>Long Beach, CA 90802<br>Attn: Bill Patterson   |
| 6. Date of Payment:  | _____, ___, 2006  |
| Dated: _____, ___, 2006  | <b>FRANCHISOR:</b><br><br>Hamburger Mary's International, LLC<br><br>By: _____<br>Stan Sax, its Chief Executive Officer and Managing Member |

**[THIS PURCHASE RECEIPT MUST BE EXECUTED IN TRIPPLICATE WITH ONE FULLY EXECUTED ORIGINAL TO BE KEPT BY FRANCHISEE, ONE BY THE FRANCHISOR AND ONE BY THE DEPOSITARY]**

EXHIBIT "B"  
To the Franchise Agreement

Guaranty and Assumption of Obligations

This Guaranty and Assumption of Obligations is given this \_\_\_ day of \_\_\_\_\_, 20\_\_.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement of above date herewith ("Agreement") by Hamburger Mary's International, LLC ("HMI"), as the "Franchisor", each of the undersigned hereby personally and unconditionally guarantees to Franchisor and its successors and assigns for the term of the Agreement and thereafter as provided in the Agreement, that \_\_\_\_\_ ("Franchisee") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement. Each of the undersigned shall be personally bound by, and personally liable for Franchisee's breach of any provision in the Agreement, including those relating to monetary obligations and all other obligations to take, or refrain from taking, specific actions or engaging in specific actions, such as contemplated in the Franchise Agreement.

Each of the undersigned waives: (A) Acceptance and Notice of Acceptance by Franchisor of the foregoing undertakings; (B) Notice of Demand for payment of any indebtedness or non-performance of any obligation hereby guaranteed; (C) protest and Notice of Default to any party with respect to the indebtedness or non-performance of any obligations hereby guaranteed; (D) any right it may have to require that an action be brought against Franchisee or any other person(s) as a condition of liability, and (E) any and all other notice and legal or equitable defenses to which it may be entitled.

Furthermore, each of the undersigned consents and agrees that: (A) Its direct and immediate liability under the Guaranty shall be joint and several; (B) it shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (C) such liability shall not be contingent or conditioned upon pursuit by Franchisor or any remedies against Franchisee or any other person; and (D) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person including without limitations, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable during the term of this Agreement.

IN WITNESS WHEREOF, this Guaranty has been entered into the day and year first written above.

PERSONAL GUARANTEE

By: \_\_\_\_\_  
Personally and Individually  
Printed Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Percent of Franchise Ownership: \_\_\_\_%

By: \_\_\_\_\_  
Personally and Individually  
Printed Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Percent of Franchise Ownership: \_\_\_\_%

By: \_\_\_\_\_  
Personally and Individually  
Printed Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Percent of Franchise Ownership: \_\_\_\_%

PERSONAL GUARANTEE

By: \_\_\_\_\_  
Personally and Individually  
Printed Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Percent of Franchise Ownership: \_\_\_\_%

By: \_\_\_\_\_  
Personally and Individually  
Printed Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Percent of Franchise Ownership: \_\_\_\_%

By: \_\_\_\_\_  
Personally and Individually  
Printed Name: \_\_\_\_\_  
Home Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Percent of Franchise Ownership: \_\_\_\_%

EXHIBIT "C"

To the Franchise Agreement

Bank Account Debit Authorization

Hamburger Mary's International, LLC ("HMI")

Automatic Debit of Monthly Amount Due to HMI

Franchisee: \_\_\_\_\_

I, \_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_ (Franchisee), authorize HMI to debit, on the 10<sup>th</sup> business day of every month, from Franchisee's bank account, the amount of royalty, marketing and any late fees or interest, due to HMI based on Gross Revenue of the above-referenced HMI franchise, for each and every preceding month beginning on the 1st day of the month and ending on the 31<sup>st</sup> day of the month, in accordance with the provisions of the Franchise Agreement executed between HMI and Franchisee.

Franchise Owner Bank Information:

|                    |  |
|--------------------|--|
| Bank Name          |  |
| Bank Address       |  |
| Account Name       |  |
| Account Number     |  |
| ABA Routing Number |  |

Signature of Authorized Signer:

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

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