

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
**FRANCHISE DISCLOSURE DOCUMENT**



FRANCHISE DISCLOSURE DOCUMENT  
DICKY'S BARBECUE RESTAURANTS, INC.,  
A TEXAS CORPORATION  
801 E. Plano Parkway, #135  
PLANO, TEXAS 75074  
(972) 423-2201  
WWW.DICKEYS.COM



Dickey's Barbecue Restaurants, Inc. sells franchises to operate, under the name and mark "Dickey's Barbecue Pit", fast casual restaurants specializing in freshly prepared barbecue style meats and other food products. We also offer a Development Agreement under which you must develop a specified number of restaurants within a defined geographic area according to a development schedule.

The total investment necessary to begin operation of a Dickey's Barbecue Pit franchised business ranges from \$122,404 to \$503,404. This includes \$25,706 to \$39,056 that must be paid to the franchisor or affiliate. The total investment necessary for a two restaurant Development Agreement ranges from \$239,104 to \$911,904. A Development Agreement requires payment to us of a non-refundable development fee of \$15,000 for the first restaurant plus a \$10,000 deposit for each additional restaurant you agree to develop. The amount due at signing depends on the number of restaurants you agree to develop. The minimum development fee for a Development Agreement is \$25,000.

This Disclosure Document summarizes certain provisions of your franchise agreement and other information in plain English. Read this Disclosure Document and all accompanying agreements carefully. You must receive this Disclosure Document at least fourteen (14) calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in a different formats, contact our franchise development office at (972)248-9899 or Franchise Development at 4514 Cole Avenue, Suite 1015, Dallas, Texas 75205.

The terms of your contract will govern your franchise relationship. Do not rely on the Disclosure Document alone to understand your contract. Read all of your contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as "[A Consumer's Guide to Buying a Franchise](#)", which can help you understand how to use this Disclosure Document, is available from the Federal Trade Commission ("FTC"). You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington D.C. 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit a public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

ISSUANCE DATE: August 28, 2015.

## STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in **Exhibit D** for information about the franchisor, or about franchising in your state.

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

Please consider the following RISK FACTORS before you buy this franchise:

1. THE FRANCHISE AND DEVELOPMENT AGREEMENTS REQUIRE YOU TO RESOLVE MOST DISPUTES WITH DICKEY'S BY NON-BINDING MEDIATION IN TEXAS. IF MEDIATION FAILS, YOU ARE BE REQUIRED TO SUBMIT TO BINDING ARBITRATION IN THE OFFICE OF THE AMERICAN ARBITRATION ASSOCIATION CLOSEST TO OUR HOME OFFICE IN PLANO, TEXAS, OR LITIGATE IN THE JUDICIAL DISTRICT WHERE OUR HOME OFFICE IS LOCATED, WHICH IS CURRENTLY IN COLLIN COUNTY, TEXAS. OUT OF STATE ARBITRATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO MEDIATE, ARBITRATE, OR LITIGATE WITH US IN TEXAS THAN IN YOUR OWN STATE.
2. THE FRANCHISE AND DEVELOPMENT AGREEMENTS REQUIRE THAT TEXAS LAW GOVERN EACH AGREEMENT (UNLESS AN ADDENDUM ATTACHED TO YOUR AGREEMENT PROVIDES OTHERWISE), AND TEXAS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. THE FRANCHISEE'S OWNER/OPERATOR AND ANY INVESTORS ARE REQUIRED TO SIGN A PERSONAL GUARANTY OF THE FRANCHISE AGREEMENT. SUCH PARTIES ARE JOINTLY AND SEVERALLY LIABLE FOR THE FRANCHISE'S OBLIGATIONS TO US, WHETHER OR NOT INVOLVED IN THE OPERATION OF THE FRANCHISED BUSINESS. THIS REQUIREMENT PLACES THE PERSONAL ASSETS OF THE FRANCHISE OWNERS AT RISK.
4. UNLESS WAIVED BY DICKEY'S IN WRITING, IN COMMUNITY PROPERTY STATES (ARIZONA, CALIFORNIA, IDAHO, LOUISIANA, NEVADA, NEW MEXICO, TEXAS, WASHINGTON, AND WISCONSIN) THE SPOUSE OF A DEVELOPER, OWNER/OPERATOR AND EACH GUARANTOR OF THE FRANCHISEE, IS REQUIRED TO SIGN THE DEVELOPMENT AGREEMENT OR PERSONAL GUARANTY, AS APPLICABLE, MAKING THE SPOUSE JOINTLY AND SEVERALLY LIABLE FOR THE FRANCHISE'S OR DEVELOPER'S OBLIGATIONS TO US WHETHER OR NOT THE SPOUSE IS INVOLVED IN THE OPERATION OF THE FRANCHISED BUSINESS OR DEVELOPER. THIS REQUIREMENT PLACES THE PERSONAL ASSETS OF THE SPOUSE AT RISK.
5. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

LOCAL LAW MAY SUPERSEDE THESE FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT PROVISIONS. SEE THE STATE SPECIFIC ADDENDA IN THIS FRANCHISE DISCLOSURE DOCUMENT ABOUT ANY ADDITIONAL INFORMATION FOR YOUR STATE.

**We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.**

Effective Date: See the following page for individual state-specific effective dates.

## STATE EFFECTIVE DATES

The following states require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This Franchise Disclosure Document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws or business opportunity laws with the following effective dates:

STATES	EFFECTIVE DATE
California	
Hawaii	
Illinois	August 31, 2015
Indiana	August 31, 2015
Maryland	
Michigan	August 28, 2015
Minnesota	
New York	
North Dakota	
Rhode Island	
South Dakota	August 31, 2015
Virginia	
Washington	
Wisconsin	August 31, 2015

In all the other states, the effective date of this Franchise Disclosure Document is the Issuance Date of August 28, 2015.

**THE FOLLOWING PROVISIONS APPLY ONLY TO TRANSACTIONS GOVERNED  
BY THE MICHIGAN FRANCHISE INVESTMENT LAW**

THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.

(a) A prohibition on the right of a franchisee to join an association of franchisees.

(b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.

(c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.

(d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.

(e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

(f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.

(g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

(i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.

(ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.

(iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

(h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000, the franchisor shall, at the request of a franchisee, arrange for the escrow of initial investment and other funds paid by the franchisee until the obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the franchise offering are fulfilled. At the option of the franchisor, a surety bond may be provided in place of escrow.

THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENFORCEMENT BY THE ATTORNEY GENERAL.

Any questions regarding this notice should be directed to:

State of Michigan Consumer Protection Division  
Attn: Franchise  
670 G. Mennen Williams Building  
525 West Ottawa  
Lansing, Michigan 48933  
(517) 373-7117

Despite subparagraph (f) above, we intend to enforce fully the provisions of the arbitration section contained in our Franchise Agreement. We believe that subparagraph (f) is unconstitutional and cannot preclude us from enforcing our arbitration section. You acknowledge that we will seek to enforce that section as written.

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## ITEM 1

### THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES

The Franchisor is Dickey's Barbecue Restaurants, Inc. To simplify the language in this Disclosure Document we refer to the Franchisor as "Dickey's", "we" and "our". We refer to the person interested in buying the franchise as "you" or "your" and, if such person is a partnership, corporation, limited liability company or other entity, it includes persons that own equity interests in such entity.

#### **The Franchisor**

We were formed on March 7, 1994 as a Texas corporation. Our principal place of business is 801 E. Plano Parkway, #135, Plano, Texas 75074. We do business under our company name. You will operate a restaurant business under the name "Dickey's Barbecue Pit" (a "Restaurant"). We do not have any parent companies or any affiliates which offer franchises in any line of business or provide products or services to franchisees. We have no predecessors. We do not do business under any other name. Since our formation, we have offered Restaurant franchises. The names and addresses of our agents for service of process appear in **Exhibit E** to this Disclosure Document.

We do not operate any Restaurants of the kind described in this Disclosure Document. Dickey's Barbecue Pit, Inc. ("DBP"), Restaurant Growth, Inc. ("RGI"), and Pitmaster Team, Inc. ("PTI"), each a Texas corporation affiliated with us having a principal place of business at 801 E. Plano Parkway, #135, Plano, Texas 75074 and an operating office at 4514 Cole Avenue, Suite 1015, Dallas, Texas 75205, have operated similar Restaurants since 1941, 2007, and 2013, respectively. Dickey's Love Field JV, LLC ("Love Field JV"), a joint venture between RGI and a franchisee, has operated a similar Restaurant since 2013. Except as described in this Item 1, we, DBP, RGI, PTI, and Love Field JV have not and do not engage in any other kinds of business or offered or offer franchises in any other lines of business. As of the issuance date of this Disclosure Document, DBP, RGI, PTI, and Love Field JV operate seven Restaurants in the Dallas-Fort Worth, Texas metropolitan area. Our reference in this Disclosure Document to "company-owned" or "company-operated" Restaurants" means Restaurants owned and operated by DBP, RGI, PTI, and Love Field JV.

Dickey's requires all franchisees to execute a Smokestack Customer Agreement (attached as **Exhibit K**) with our affiliate, Spark Intelligence, Inc. ("Spark"), for a subscription which allows you to access to the Smokestack sales data collection and reporting system. Spark's principal place of business is 4514 Cole Ave, Suite 1015, Dallas, Texas 75205. Spark has never operated a business similar to a Restaurant or offered franchises in any line of business.

Our affiliate, Wycliff at Douglas, LLC ("Wycliff"), sells certain paper and food products that are utilized in the operation of the Restaurant to suppliers who resell them to Dickey's franchisees. Wycliff's principal place of business is 12770 Perimeter Road, Suite A-100, Dallas, Texas 75228. Wycliff has never operated a business similar to a Restaurant or offered franchises in any line of business.

#### **The Business**

We offer the opportunity to operate a fast casual Restaurant using the comprehensive and unique Dickey's Barbecue Pit business format system (the "System") under the franchise agreement you sign with us. A Restaurant operated under the System specializes in freshly prepared food featuring barbecued meats and is branded with the service mark (the "Mark") displayed on the cover page of this Disclosure Document. The System includes rights to use the Mark and various trade names, trademarks and service marks as well as distinctive exterior and interior design, décor, color schemes, furnishings and equipment for Restaurant premises; confidential recipes, procedures, specifications and formulas for preparing food and beverage products and for operations; inventory and management control methods; initial and ongoing training and seminars; our Operations Manual and such other manuals, written materials and directives as we designate for use in the Restaurant (the "Manuals"); and advertising and promotional services and assistance. We acquired our right to use and sublicense to franchisees the Mark under a license agreement with DBP, our affiliate (see Item 13). The Restaurants utilize modern



barbecue cooking technology and several proprietary concepts and recipes, including the barbecue sauce and spices. We believe that our distinctive offering of barbecue-style food, freshly prepared with high quality ingredients and proprietary recipes, served quickly at affordable prices and in a comfortable, friendly setting differentiates our brand from other fast casual and barbecue restaurants.

Our Restaurants are a combination of quick service and fast casual dining where the customer places a protein order at the beginning of the service counter, selects side dishes while moving toward check out, and then picks up the completed order at the end of the counter. Most of the Restaurants are located within suburban shopping centers or in stand-alone buildings located on busy streets. Restaurants are also located in "non-traditional" venues such as food courts, convenience stores, sports stadiums or within institutional settings where the Restaurant operator does not control access or hours of operation. We grant franchises for non-traditional venues, but we and our affiliates reserve the right to operate company-operated Restaurants in non-traditional venues. Non-traditional franchises are operated under the System, except as provided by the Non-Traditional Addendum attached as **Exhibit J**.

Our current business model for new franchises focuses on developing Restaurants in leased spaces of between 1,400 and 2,500 square feet located in shopping centers. Second generation space is usually less expensive and faster to develop into a Restaurant when some of the mechanical systems, equipment and fixtures are already in place in good working order and condition. This Disclosure Document provides information on Restaurants to be opened by franchisees under this second generation usage model. This Disclosure Document also provides information on Restaurants opened in "non-traditional" venues.

If you are considering opening more than one Restaurant, we may offer you the opportunity to sign a Development Agreement covering a defined area for development and specifying the number of Restaurants to be developed and opened according to a specific development schedule. The "developer" must sign the then current Franchise Agreement and pay the balance of the initial fee for each Restaurant opened under the development schedule. In each case the candidate must demonstrate to us that the resources necessary for immediate Restaurant development in the desired geographic area are immediately available.

The Franchise Agreement and Development Agreement are each referred to in this Disclosure Document as an "Agreement." Each Agreement may be signed with an individual or a group of individuals, but we require that a franchisee and a developer must create and maintain in good standing a separate business entity for operating its Restaurants, having its own employer identification number and engaging in no other business.

You may elect to purchase an existing Restaurant from a franchisee, a third party or one of our Affiliates, including in circumstances where the Restaurant has been closed for some period of time. The terms of purchase and the transition of asset ownership and management of the Restaurant will vary from the transactions described in this Disclosure Document. We may, in our sole discretion and when business circumstances warrant, facilitate such a transaction by modifying or waiving certain terms and conditions of the Franchise Agreement for the transaction. The seller of the Restaurant and not the franchisor is solely responsible for the terms, conditions, representations and warranties associated with the purchase and sale of the Restaurant, and we do not act as a broker or reseller of the Restaurant.

We also offer franchises to certain franchisees to represent us as area representatives ("Area Representatives") within defined geographic areas under a separate disclosure document. (We pay Area Representatives a portion of certain fees we receive for each of the Restaurants developed and opened in the respective Area Representative's territory. (See Items 5 and 6) As of the end of our last fiscal year, there were 4 Area Representatives.

### **Market and Competition**

The market for fast casual restaurants featuring barbecued meats is highly competitive and well developed. There are many single location barbecue restaurants, regional and national restaurant systems currently offering barbecue-style restaurants which feature menu items similar to the menu items

we offer under the System, although we believe we have a unique format and presentation in the fast casual restaurant segment featuring barbecue meats. You will also compete with other fast casual and quick service restaurants that serve customers at a counter. Competition for qualified management and supervisors, skilled labor and unskilled labor for the restaurant industry is significant, which may cause labor costs to be higher than average. The supply of suitable second generation restaurant space for lease in suitable locations is limited and is subject to increasing demand from other restaurant concepts and non-restaurant retailers.

### **Industry Regulation**

The restaurant industry is heavily regulated. In addition to the laws, rules and regulations that apply to businesses generally, all Restaurants must comply with federal, state and local laws applicable to the operation and licensing of a restaurant business, including obtaining truth in menu and labeling laws, health and safety permits, restaurant inspections and approvals by municipal, county or state health departments that regulate food service preparation, handling, storage and sales and food service operations generally. Your Restaurant must also meet applicable municipal, county, state and federal building codes and accessibility codes. You should consider these laws and regulations when evaluating your purchase of a franchise.

The U.S. Food and Drug Administration, the U.S. Department of Agriculture and state and local health departments administer and enforce regulations that govern food preparation and service and restaurant sanitary conditions. State and local agencies inspect restaurants to ensure that they comply with these laws and regulations.

Restaurants operate on-premises meat smokers to prepare the barbecue protein menu items. The Federal Clean Air Act and various state laws require certain state and local areas to meet national air quality standards limiting emissions of ozone, carbon monoxide and particulate matters, including caps on emissions from commercial food preparation. Franchisees may need to install and maintain emission control, scrubber, and ventilation equipment to comply with certain laws, comply with emission restrictions in space leases, or to prevent smoke infiltration to neighboring tenants. Some state and local governments have also adopted, or are considering, proposals that would regulate indoor air quality, including the limitation of smoking tobacco products in public places such as restaurants. All Restaurants are non-smoking under our System.

The Payment Card Industry Data Security Standard ("PCI") requires that all companies that process, store, or transmit credit or debit card information maintain a secure environment. PCI applies to all organizations or merchants, regardless of size or number of transactions, that accepts, transmits or stores any cardholder data. Franchisees must also be sure to comply with applicable state and federal laws regulating the privacy and security of sensitive consumer and employee information. Additional details can be found at <https://www.pcisecuritystandards.org/merchants> for additional information. Compliance resources are available from the Federal Trade Commission. You can contact the FTC at (202) 326-2222 or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's business center on privacy and security at <http://www.business.ftc.gov/privacy-and-security/> for additional information.

## **ITEM 2 BUSINESS EXPERIENCE**

Unless otherwise indicated below, these officers of Dickey's work at both the headquarters office in Plano, Texas and the operations office in Dallas, Texas.

### Director/Chairman: Roland R. Dickey

Roland R. Dickey has served as our Chairman of the Board of Dickey's since May 2011. Mr. Dickey previously served as our Chief Executive Officer from February 2006 until May 2011. He acted as the President of DBP between 1971 and 2006.

### President and Chief Executive Officer: Roland R. Dickey, Jr.

Roland Dickey, Jr., son of Roland R. Dickey, was named our Chief Executive Officer in May 2011. He has served as our President since February 2006.

### Director: Martha Dickey

Martha Dickey was elected a Director of Dickey's in June 2011. She is the sister-in-law of Roland R. Dickey and has been a real estate investor for more than the past five years.

### Chief Administrative Officer: Michelle Frazier

Ms. Frazier was appointed Chief Administrative Officer of Dickey's in June 2014. Ms. Frazier served as our Vice President of Human Resources and Administration from January 2008 until her promotion to Chief Administrative Officer. Ms. Frazier works at our Dallas, Texas offices.

### Chief Intelligence Officer: Laura Rea Dickey

In May 2015, Ms. Dickey was appointed as the Chief Intelligence Officer for Dickey's. Since May 2010, Ms. Dickey has served in various temporary management positions in the Dickey's training, marketing, and information technology departments.

### Senior Vice-President of Development: Trinity Dawn Hall

In December 2014, Ms. Hall was appointed the Senior Vice President of Development. From March 2014 to December 2014, Ms. Hall was appointed Vice-President of Construction & Finance. Ms. Hall previously served as our Equipment Specialist from August 2011 to November 2011, then Manager of Design from December 2011 to January 2013, and as Director of Design from January 2013 to March 2014. Ms. Hall works at our Dallas, Texas office.

### Chief Brand Officer: Christie Finley

Christie Finley was appointed Dickey's Chief Brand Officer in March 2014. Prior to joining Dickey's, Ms. Finley was Chief Brand Officer for Capital One Bank in Plano, Texas from March 2006 to October 2013. Ms. Finley works at our Dallas, Texas office.

### Senior Vice-President of Training: Steve M. Hawter, III

Mr. Hawter was appointed Senior Vice-President of Training in June of 2015. From October 2013 through May of 2015, Mr. Hawter served as Vice President of Training for Dickey's. Prior to joining Dickey's, Mr. Hawter was Vice President of Training and Franchise Services for Cici's Enterprise from November 2000 to August 2013. Mr. Hawter works at our Dallas, Texas office.

Vice President of Franchise Sales: Anthony Fedele

Mr. Fedele was appointed Vice President of Franchise Sales in September of 2012. Prior to joining Dickey's, Mr. Fedele served as a Real Estate Agent from May 2010 to September 2012 for Virginia Cook Realtors in Dallas, Texas.

Vice President of Purchasing: Tamala Fowler

Ms. Fowler was appointed Vice President of Purchasing in July of 2015. Prior to joining Dickey's, Ms. Fowler served as Senior Director of Development from December 2013 to October 2014 and Managing Director –Asia Pacific from July 2004 to December 2013 for TGI Fridays in Carrollton, Texas. Ms. Fowler works out of our Dallas, Texas office.

Director of Commodity Buying: Owen Edwards

Mr. Edwards served as Director of Franchise Development from January 2005 until March 2011 when he became Director of Commodity Buying. Mr. Edwards works at our Plano, Texas offices.

Vice President of Communications: Jeffrey Gruber

Mr. Gruber became Vice President of Communications in October 2014. From May 2011 to September 2014, Mr. Gruber served as Director of Communications and Operations. He joined Dickey's as a Director of Marketing in March 2008. Mr. Gruber works out of our Dallas, Texas offices.

**ITEM 3  
LITIGATION**

Except for the actions described below, there is no litigation that must be disclosed in this Item.

**Litigation as of August 28, 2015**

Dickey's Barbecue Restaurants, Inc. v. Chorley Enterprises, Inc., Matthew C. Chorley, and Carla Chorley. American Arbitration Association Case Number 01-14-0000-2105  
Chorley Enterprises, Inc., Matthew and Carla Chorley v. Dickey's Barbecue Restaurants, Inc., Roland Dickey, Jr., and Jerrel Denton. United States District Court for the District of Maryland, Northern Division, Civil Action No. 1:14 –cv-01650-MJG

Dickey's filed a demand for arbitration on May 1, 2014, against Chorley Enterprises, Inc. and Matthew C. Chorley and Carla Chorley, former franchisees/guarantors, seeking a declaratory action and asserting a claim for breach of their obligations under the franchise agreement. On May 21, 2014, Chorley Enterprises, Inc. and Matthew and Carla Chorley filed suit against Dickey's Barbecue Restaurants, Inc., Roland Dickey, Jr. and Jerrel Denton asserting claims and counter-claims for violations of the Maryland Franchise Registration and Disclosure Law and fraud. This case was consolidated with the Trouard matter below.

Dickey's Barbecue Restaurants, Inc. v. Justin Trouard and Jessica Chelton. American Arbitration Association Case Number 71 114 Y 00028 14  
Justin Trouard and Jessica Chelton v. Dickey's Barbecue Restaurants, Inc., Roland Dickey, Jr., and Jerrel Denton. United States District Court for the District of Maryland, Southern Division, Civil Action No. 14 –cv-1703

Dickey's filed a demand for arbitration on January 16, 2014, against Justin Trouard and Jessica Chelton, former franchisees, for: (i) breach of their obligations under the franchise agreement and the abandonment of the restaurant; and (ii) and submission of fraudulent sales reports for the restaurant. On May 28, 2014, Justin Trouard and Jessica Chelton filed suit against Dickey's Barbecue Restaurants, Inc., Roland Dickey, Jr. and Jerrel Denton asserting claims and counter-claims for violations of the Maryland

Franchise Registration and Disclosure Law and fraud.

The District Court consolidated these cases for consideration of common facts. On August 1, 2014, the District Court ruled that the franchise agreements in both cases were ambiguous on the question of whether the franchisor and the franchisees agreed to arbitration as the chosen method of dispute resolution, ordering a jury trial on that limited issue and continuing the stay of arbitration pending the outcome of the trial. Both parties appealed the District Court ruling. On August 5, 2015, the appellate court overturned the District Court's decision and agreed that Dickey's claims should be arbitrated and it directed the Chorley, Trouard, and Chelton's claims to be pursued in the District Court. Dickey's filed a petition for rehearing related to the appellate court's determination on the remaining issues as to whether Trouard and Chorley's claims are also subject to arbitration.

Dickey's Barbecue Restaurants, Inc. v. James L. Neighbors, United States District Court for the Eastern District of Texas, Cause No. 4:14-cv-484

Dickey's filed a complaint and request for an injunction on July 28, 2014. Dickey's sought liquidated damages as a result of defendants' breach of the franchise agreement and further sought an injunction preventing the defendants from operating their franchise restaurant under Dickey's marks following the termination of the franchise agreement. On August 4, 2014, the court granted Dickey's motion for a preliminary injunction. On August 18, 2014, Defendant Neighbors filed an Answer and Counterclaim, asserting claims against Dickey's for misrepresentation and breach of contract related to the availability of financing, training, and total investment required. On June 9, 2015, Dickey's filed a Motion for Summary Judgment, which is currently pending before the court.

Amy Meadows et al. v. Dickey's Barbecue Restaurants, Inc. United States District Court, Cause No. 3:15-cv-02139 (N.D. Cal.)

On May 12, 2015, former franchisees Amy Meadows, Dawn Toff, Donna Schiano and Alfred Pena filed a putative class action complaint asserting claims for fraud, violation of the California Franchise Investment Law, violation of California's Unfair Competition Law, and declaratory relief based their contention that Dickey's made certain alleged misrepresentations to each of them in connection with each of their decisions to become franchisees. On June 12, 2015, former franchisees Christy Bagby, James Domsic, George Jones, Cheryl Hart, and GJones3 Ventures, LLC were added in a First Amended Complaint. Plaintiffs seek to represent a class of all companies and individuals who own or have owned some portion of a Dickey's Barbecue Pit franchise restaurant in the State of California. Plaintiffs seek an unspecified amount of alleged damages, declaratory and injunctive relief, and punitive damages. Dickey's filed a motion to compel arbitration and is contesting the matter. The motion is pending.

Dickey's Barbecue Restaurants, Inc. and Restaurant Growth, Inc. v. Roger Dennis Perry, American Arbitration Association Case Number 712014000167

Dickey's filed a demand for arbitration against Roger Dennis Perry, former franchisee, on March 24, 2014 for breach of his obligations under the franchise agreement following his abandonment of the restaurant. Roger Dennis Perry filed an Answering Statement on May 19, 2014 asserting a counter-claim for breach of contract, fraud in the inducement, fraudulent misrepresentation, negligent misrepresentation, quantum meruit, and all other claims. Dickey's was able to regain operational control of the franchise business and as part of a settlement reached on January 6, 2015, Dickey's agreed to pay Perry \$14,000 and each party released all claims against the other.

#### **ITEM 4 BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

## **ITEM 5 INITIAL FEES**

Franchise Fee. You pay an initial franchise fee to us of \$15,000 (the "Franchise Fee") in a lump sum at the time you sign the Franchise Agreement for each Restaurant. The Franchise Fee is uniformly imposed, except that (i) the Franchise Fee may be reduced or waived if you are purchasing an existing Restaurant from us or an affiliate, (ii) we offer a \$5,000 veteran's discount if you are a retired or honorably discharged veteran of the United States Armed Forces or the National Guard as evidenced by your submission to Dickey's of a valid military identification, Certificate of Release or Discharge From Active Duty (DD Form 214) or other similar evidence as Dickey's reasonably requires, (iii) you may receive credit toward your Franchise Fee if you entered into a previously terminated Franchise Agreement with us and your Restaurant under that Franchise Agreement was never developed, (iv) we reserve the right, but are not obligated to, reduce initial Franchise Fee for existing Dickey's franchisees who elect to purchase additional Restaurant franchises; (v) the Franchise Fee may be waived or reduced if you sign a Development Agreement and pay a Development Fee to us as noted below; and (vi) the Franchise Fee for a non-traditional franchise is \$10,000. The Franchise Fees we charged during the fiscal year ending May 31, 2015 ranged from no fee to the full \$15,000 amount. The Franchise Fee is non-refundable.

Development Fee. If you agree to develop and operate two or more Restaurants under a Development Agreement you sign with us, you pay a fee (the "Development Fee") of \$15,000 for the first Restaurant plus \$10,000 for each additional Restaurant you agree to develop in a lump sum when you sign the Development Agreement. We apply the first \$15,000 of the Development Fee to the Franchise Fee for the first Restaurant under the Development Agreement. If you timely develop and open your Restaurants and comply with the other terms of the Development Agreement, we will reduce the Franchise Fee for each Restaurant. We apply each \$10,000 deposit of the Development Fee to the Franchise Fee for each subsequent Restaurant when you sign the then current Franchise Agreement for such Restaurant, so that no additional Franchise Fee is due when you sign the then current Franchise Agreement for such Restaurants. However, if you do not timely develop and open your Restaurants and comply with the other terms of the Development Agreement, the standard Franchise Fee of \$15,000 applies to each Restaurant you develop. You must pay the balance of the Franchise Fee to us in a lump sum after the deposit is applied when you sign the then current Franchise Agreement.

Our Development Fee is uniformly imposed, except the Development Fee may be reduced or waived under the same circumstances as noted above for the Franchise Fee, or when business circumstances warrant, such as when you are developing Restaurants in a new market for us. During the fiscal year ending May 31, 2015, we charged Development Fees ranging from no fee to \$15,000 for the first Restaurant to be developed under a Development Agreement, and no fee to \$10,000 for each subsequent Restaurant to be developed under a Development Agreement. The Development Fee is non-refundable.

Restaurant Opening Fee. On or before the initial "orientation call" with us, you must pay \$5,000 to \$8,000 to Dickey's as the "Restaurant Opening Fee." Dickey's may consult with you if we have not opened any Restaurants in your market area. We will use the Restaurant Opening Fee on your behalf to pay the local advertising and promotional marketing expenses we believe are appropriate for the Restaurant's pre-opening and grand opening campaigns and in some cases, a post-opening campaign.

Inspection Reimbursement. You are required to reimburse us for the expenses we incur to perform any site inspection of a proposed location for your Restaurant in excess of the first three site inspection visits we provide to you at no additional cost.

Training Fee. You must pay a \$2,500 Training Fee to us for the initial training program which your Owner/Operator will attend at Barbecue University. The Training Fee also covers online training and on-site training and certification for Restaurant managers you select. The training fee also includes the cost of training materials but not uniforms for the trainees. The training fee is due when you register your Owner/Operator for training.

Day One Deposit. You are required to pay us a "Day One Deposit" of up to \$8,100 within one business day after the "orientation call" with us for your Restaurant. We will use this deposit to pay approved vendors the deposits for your Restaurant's architectural design services, equipment, and signage, all of which are listed as part of your pre-opening expenses in Item 7. If you do not open the Restaurant and your Franchise Agreement terminates for non-performance of your pre-opening obligations, we will retain the Day One Deposit to cover payments to approved vendors and as liquidated damages. See Item 17.

The Restaurant Opening Fee, Inspection Reimbursement, Training Fee and Day One Deposit are uniformly imposed on all franchisees, are payable in a lump sum and are non-refundable. We offer a referral fee program for franchisees and their employees and employees of a Dickey's approved vendor to refer new leads on prospective franchisees that result in the sale of a franchise. We may reduce or waive the Restaurant Opening Fee and Day One Deposit if you develop your Restaurant in a non-traditional location or purchase an existing Restaurant.

Smokestack Sales Reporting System Software Fee. Dickey's requires all franchisees to purchase a subscription to Spark's Smokestack sales reporting system for a Restaurant fee of \$58 per month plus \$40 per month for each manager with access to the system. If you own and operate more than one Restaurant, the fee for your second and any additional Restaurants is \$40 per month. You must also pay a \$100 annual infrastructure support fee for each Restaurant that you own and operate, which fee will be prorated and billed monthly to support the data infrastructure related to the data store, data transfers, POS integration and BOSS integration.

Alternate Architect or General Contractor Fee. You are required to use an architect and general contractor we approve for the planning, design and construction of your Restaurant. Dickey's will provide you with a list of approved architectural firms and general contractors. If you prefer to use an architect or general contract that is not on our approved list, you must submit the architect's or general contractor's information for Dickey's prior approval. Any franchisee requesting an alternate architect or general contractor must submit its proposal to Dickey's along with a \$2,500 non-refundable evaluation fee and any other information Dickey's requires in order to have the proposal evaluated. The alternate architect and/or general contractor will be required to sign Dickey's then current form of agreement for alternate architects or general contractors (which may require the architect or general contractor to pay an additional fee for its approved status).

Insurance Fee. You must obtain all required insurance policies solely from insurance agents/brokers or other providers Dickey's approves. If you desire to purchase the required insurance policies from an unapproved insurance agent/broker or provider, you shall submit to Dickey's a written request for such approval. If approval is granted by Dickey's for the use of an unapproved insurance agent/broker or other provider, you must pay to Dickey's a \$350 fee to cover the costs of reviewing the insurance coverage procured by the unapproved vendor.

**ITEM 6  
OTHER FEES**

Type of Fee	Amount	Due Date	Remarks
Royalty	5% of Net Sales	Payable weekly on the Monday following the calendar week to which such payments relate	See footnotes (1), (2) and (3).
Marketing Fund	4% of Net Sales for Restaurants located in venues other than non-traditional venues  2% of Net Sales for Restaurants located in non-traditional venues	Payable weekly on the Monday following the calendar week to which such payments relate	See footnotes (1), (2), (3) and (10).
Technology Support Fee	\$99 per month	Payable with the first weekly payment each month	May vary with required technology and desired level of support
Smokestack Sales Reporting System Software Fee	\$58 per month for the first Restaurant plus \$40 per month for each manager with access to the system; \$100 annual infrastructure support fee per Restaurant	Payable monthly or as agreed	See footnote (11) and Items 5, 8 and 11.
Insurance	Premiums vary depending on location	As agreed or upon billing	We have the right to obtain insurance for your Restaurant at your expense for premium if you fail to purchase or renew your required insurance and provide proof of coverage to us. See footnote (4).
Unapproved Insurance Vendor Review Fees	\$350 for costs of reviewing insurance coverages procured by proposed vendor; additional \$150 for each subsequent review of insurance coverages due to insufficient coverage or changes	Upon invoice	Payable if Dickey's approves your request to purchase require insurance from an unapproved insurance agent/broker or provider. See Item 8.



Type of Fee	Amount	Due Date	Remarks
Training Instruction and Materials	\$1,000 for each Owner/Operator and any other individual(s) you designate and Dickey's approves to attend initial training; \$1,500 for online and onsite training for up to 2 managers, which includes manager certification; and \$750 for training of any successor or replacement manager and manager certification	Due at time of registration for training	See footnotes (1) and (5).
Audit	Cost of audit plus the lesser of 15% simple interest or maximum rate allowed by law	30 days after billing	Payable only if audit shows understatement of at least 2% of Net Sales for any month. See footnotes (1), (3), (6) and (7).
Site Evaluation Fee and Costs	All of Dickey's reasonable costs and expenses plus a site evaluation fee of \$1,000	30 days after billing	Dickey's provides 3 on-site evaluations for your Restaurant at no charge to you. See footnotes (1) and (8).
Replacement or Update of the Manuals or other forms used in running the Restaurant	Actual cost of replacement or update and delivery of Manuals or other forms necessary for running your Restaurant	Upon invoice	Payable to Dickey's or its designated vendor if Dickey's makes arrangements for automatic delivery to you of the revised Manuals and/or forms
Transfer	Greater of \$10,000 or Dickey's reasonable costs and expenses	5 days prior to confirmation of transfer	Payable to Dickey's when you transfer the franchise or your ownership. No charge for transfer to an entity which you control; we may defer, reduce or waive the fee for transfer of a distressed Restaurant. See footnotes (1) and (6).
Renewal	\$10,000	5 days prior to commitment of 10-year renewal term	Payable to Dickey's if you elect to renew your franchise prior to expiration of initial 20-year term. See footnote (1) and (6).
Securities Offering Review	\$1,000 or Dickey's costs incurred for review of offering materials, whichever is greater	Upon invoice	Payable if you engage in a public or private securities offering that includes a prospectus or offering memorandum that Dickey's reviews

Type of Fee	Amount	Due Date	Remarks
Management Fee	5% of Net Sales	Payable monthly	Only payable if Dickey's or an affiliate operates the Restaurant after your death or disability. See footnotes (1) and (3).
Indemnification	Actual legal fees, costs and expenses	Upon billing	Payable if and when we defend a claim for which you indemnify us under the Franchise Agreement, or we incur costs to collect amounts due from you under the Franchise Agreement.
Interest	15% or maximum rate allowed by law, whichever is less	Upon billing	See footnotes (1) and (6).
Legal	Actual legal fees and expenses	Upon billing	Incurred only if a court determines you have breached the Franchise Agreement. See footnotes (1) and (9).
Termination	Liquidated Damages equal to the present value of your Royalty for the number of months remaining in the term of the Franchise Agreement	Upon billing after termination	See footnotes (1), (3) and (12).

#### **Footnotes:**

(1) The fee is uniformly imposed for all new franchisees, is collected by and payable only to Dickey's, and is nonrefundable.

(2) You are required to pay to Dickey's a royalty fee equal to 5% of Net Sales of the Restaurant and a contribution to the Marketing Fund equal to 4% of Net Sales (unless the Restaurant is located in a non-traditional venue, in which case the Marketing Fund contribution will equal 2% of Net Sales) for each calendar week period (the "Sales Period"). These payments are electronically drafted from your account by ACH transfer based upon your statement certifying Net Sales for the Sales Period. We may negotiate these fees when the circumstances warrant such negotiation.

(3) "Net Sales" includes all revenue from the sale of food, beverages, services and products from in-store dining, carry-out, on-line orders, delivery, third-party voucher sales, catering, and otherwise, including the sale of food and beverages, redemption of gift cards, and merchandise (e.g., bottled barbecue sauce, packaged food products, T-shirts, sweatshirts, caps, watches, etc.) and all other income of whatever nature or kind relating to the Restaurant, whether for cash or credit and regardless of collection in the case of credit; provided, that Net Sales excludes sales tax or other taxes collected from customers by you and paid to the appropriate taxing authority, employee meals and discounts for meals purchased with promotional coupons approved by Dickey's.

(4) If you, for any reason, fail to obtain or maintain the insurance required by each Franchise Agreement entered into between Dickey's and you, as these requirements may be revised by Dickey's in the Manuals or otherwise in writing, Dickey's has the right and authority (but not the obligation), to immediately obtain such insurance and to charge the same to you, which charges, together with a

reasonable fee for Dickey's expenses in so acting, will be payable by you immediately upon notice. Insurance costs are non-refundable. Insurance coverage requirements are uniformly imposed on all new franchisees. However, the costs of this coverage may not be uniform for all franchisees because premiums may vary according to the insurer, marketplace conditions, the location of the insured's premises, the insurance requirements of applicable law and other factors. These costs will not be collected or imposed in whole or in part on behalf of any third party by Dickey's, and are payable to the applicable insurer or agent.

(5) Dickey's reserves the right to charge a fee for training instructions, manuals and materials of \$1,000 for each Owner/Operator and any other individual(s) you designate and Dickey's approves to attend Barbecue University in Dallas, Texas. You must also pay \$1,500 to Dickey's for online and on-site training of up to 2 managers during the Restaurant opening, which includes manager certification, and \$750 for training any successor or replacement manager, which includes manager certification.

(6) Interest is charged when any of the Royalty, Marketing Fund contribution, transfer or renewal fee payments, or any other sum due to Dickey's is not paid when due or an audit reveals underpayments based on incorrect Net Sales.

(7) Although audit costs are uniformly imposed on all franchisees subject to this Disclosure Document, the cost of each audit may not be the same for each franchisee. Audit costs will vary depending on factors such as the audit firm utilized, billing arrangements and time spent to complete the audit.

(8) Although site evaluation costs are uniformly imposed on all franchisees subject to this Disclosure Document, for each additional site evaluation in excess of the three site evaluations provided by Dickey's at no cost, the cost of each such additional site evaluation may not be the same for each franchisee. Site evaluation costs will vary depending on factors such as the location of the franchisee, travel expenses and duration of the site visit.

(9) Legal fees and expenses will vary depending on factors such as the nature of the legal matter, venue and the complexity of the legal matter.

(10) Dickey's may require that you participate in an approved local or regional advertising cooperative with certain other franchisees. If you are required to participate in a Dickey's-approved advertising cooperative, a certain percentage of your Marketing Fund contribution will be applied towards the local or regional advertising, marketing and promotions targeting the geographic area in which your Restaurant is located. Under the terms of Dickey's current standard cooperative advertising agreement, fees are not assessed by the advertising cooperative. For additional information, see Item 11, Paragraph C, titled "Advertising".

(11) These fees are payable to our affiliate, Spark (see Item 1). If you own and operate more than one Restaurant, the fee for your second and any additional Restaurants is \$40 per month. You may elect to pay the direct manager access fee in a lump sum, in which case the fee will be discounted by 10%. Spark reserves the right to change the fees and institute new fees for the use of the Smokestack sales reporting system. Any changes and new fees will become effective on 30 days' notice.

(12) Unless otherwise indicated in writing from Dickey's, and to the extent permitted by applicable law, you must pay to Dickey's in a single lump sum payment, as liquidated damages and not as a penalty, after early termination of the Franchise Agreement, liquidated damages equal to royalty fees for the number of months remaining in the term of the Franchise Agreement (or the renewal term, if applicable) based on the monthly average of the royalty payable to us. If the Franchise Agreement terminates after the second year of the term, then liquidated damages shall be calculated based upon the average monthly Net Sales of your Restaurant reported for the 12 months preceding termination. Liquidated Damages are the present value of the annuity represented by the Royalty for the months remaining in your Franchise Agreement term assuming these average Net Sales, without adjustment for inflation. The discount rate for calculating present value is 110% of the long term Applicable Federal Rate

for monthly compounding published by the Internal Revenue Service immediately prior to termination. If your Restaurant has not yet opened, or has not been open for at least 24 months at the time of termination, the average monthly Net Sales used to calculate Liquidated Damages will be based upon the average monthly Net Sales of all Dickey's Restaurants for the preceding fiscal year as determined from the audited financial statements of Dickey's published in its Franchise Disclosure Document. An example of these calculations is included in the Operations Manual. Both assume an aggregated monthly average of the Royalties paid each week, and that Royalties represent 63% of the "Operating Income" revenue line in our audited financial statements.

**ITEM 7  
ESTIMATED INITIAL INVESTMENT**

<b>YOUR ESTIMATED INITIAL INVESTMENT - SINGLE FRANCHISE AGREEMENT</b>						
<b>TYPE OF EXPENDITURE</b>	<b>AMOUNT<sup>(20)</sup></b>			<b>METHOD OF PAYMENT</b>	<b>WHEN DUE</b>	<b>TO WHOM PAYMENT IS TO BE MADE</b>
	<b>NON-TRADITIONAL CONVERSION</b>	<b>RESTAURANT CONVERSION</b>	<b>RETAIL SPACE CONVERSION AND SHELL BUILDING FINISH-OUT</b>			
Architectural Plans <sup>(2), (15)</sup>	\$9,000 - \$11,500	\$9,000 - \$11,500	\$9,000 - \$11,500	Installment	\$5,000 Deposit due immediately upon signing of each Franchise Agreement; remainder due as invoiced by Architect	Architectural Firm
Permits <sup>(6), (15)</sup>	\$0 - \$5,000	\$0 - \$5,000	\$0 - \$5,000	Lump Sum	As Incurred	State or Municipal Agencies
Leasehold Improvements <sup>(3), (15)</sup>	\$30,000 - \$60,000	\$60,000 - \$180,000	\$100,000 - \$215,000	Negotiable	Negotiable	Landlord/Contractors
Furniture, Fixtures, Equipment, and Cargo Van <sup>(4), (15)</sup>	\$7,000 - \$21,000	\$67,000 - \$105,000	\$90,000 - \$115,000	Lump Sum	\$2,100 Deposit due immediately upon signing of each Franchise Agreement; remainder due as invoiced by Equipment Vendor	Vendor/Contractors
Signage <sup>(5)</sup>	\$2,000 - \$10,000	\$7,000 - \$10,000	\$7,000 - \$10,000	Installment	\$1,000 Deposit due immediately upon signing of each Franchise Agreement; remainder due as invoiced by Sign Vendor	Sign Vendor
Point of Sale Computer and Technology in A Box	\$17,600 - \$20,600	\$17,600 - \$20,600	\$17,600 - \$20,600	Lump Sum	As Incurred	POS/TIBS Vendor

YOUR ESTIMATED INITIAL INVESTMENT - SINGLE FRANCHISE AGREEMENT						
TYPE OF EXPENDITURE	AMOUNT <sup>(20)</sup>			METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	NON-TRADITIONAL CONVERSION	RESTAURANT CONVERSION	RETAIL SPACE CONVERSION AND SHELL BUILDING FINISH-OUT			
<b>SUB-TOTAL (Construction)</b>	<b>\$65,600 - \$128,100</b>	<b>\$160,600 - \$332,100</b>	<b>\$223,600 - \$377,100</b>			
Franchise Fee <sup>(1), (14)</sup>	\$15,000	\$15,000	\$15,000	Lump Sum	Execution of Franchise Agreement	Dickey's
Lease Deposits <sup>(15), (16)</sup>	\$3,500 - \$8,000	\$3,500 - \$11,000	\$3,500 - \$11,000	Lump Sum	As Incurred	Landlord/Utilities
Training <sup>(17)</sup>	\$2,500	\$2,500	\$2,500	Lump Sum	Upon Training Registration	Dickey's
ServSafe Training <sup>(18), (15)</sup>	\$185	\$185	\$185	As Arranged	As Arranged	ServSafe approved instructor
Opening Inventory and Services <sup>(8), (15)</sup>	\$4,000 - \$8,000	\$6,000 - \$18,000	\$6,000 - \$18,000	Lump Sum	Vendors' Terms/As Incurred	Vendors/Dickey's
Additional Funds – 3 Months <sup>(9), (11), (15)</sup>	\$15,000 - \$34,000	\$15,000 - \$34,000	\$15,000 - \$34,000	Cash	As Needed	Various Payees
Insurance <sup>(7), (15)</sup>	\$8,000 - \$12,000	\$8,000 - \$12,000	\$8,000 - \$12,000	Annually	Annually	Insurance Agents
Restaurant Opening Promotion <sup>(10), (14)</sup>	\$8,000	\$8,000	\$8,000	Cash	60 Days Prior to Opening	Dickey's
Professional Fees <sup>(12), (15)</sup>	\$0 - \$5,400	\$0 - \$5,400	\$0 - \$5,400	As Arranged	As Arranged	Vendors
Closing and Finance Costs <sup>(13), (15)</sup>	\$0 - \$20,000	\$0 - \$20,000	\$0 - \$20,000	As Arranged	As Arranged	Lender
Smokestack Sales Reporting System Software Fee <sup>(19)</sup>	\$319	\$319	\$319	As Arranged	Monthly	Spark
<b>SUB-TOTAL (Other Start-Up Expenses)</b>	<b>\$56,504 - \$113,404</b>	<b>\$58,504 - \$126,404</b>	<b>\$58,504 - \$126,404</b>			
<b>TOTAL<sup>(20)</sup></b>	<b>\$122,104 - \$241,504</b>	<b>\$219,104 - \$458,504</b>	<b>\$282,104 - \$503,504</b>			

**YOUR ESTIMATED INITIAL INVESTMENT – 2 RESTAURANT DEVELOPMENT AGREEMENT**

TYPE OF EXPENDITURE	AMOUNT <sup>(20)</sup>			METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	NON-TRADITIONAL CONVERSION	RESTAURANT CONVERSION	RETAIL SPACE CONVERSION AND SHELL BUILDING FINISH-OUT			
Architectural Plans <sup>(2), (15)</sup>	\$18,000 - \$23,000	\$18,000 - \$23,000	\$18,000 - \$23,000	Installment	\$5,000 Deposit due immediately upon signing of each Franchise Agreement; remainder due as invoiced by Architect	Architectural Firm
Permits <sup>(6), (15)</sup>	\$0 - \$10,000	\$0 - \$10,000	\$0 - \$10,000	Lump Sum	As Incurred	State or Municipal Agencies
Leasehold Improvements <sup>(3), (15)</sup>	\$60,000 - \$120,000	\$120,000 - \$360,000	\$200,000 - \$430,000	Negotiable	Negotiable	Landlord/Contractors
Furniture, Fixtures, Equipment, and Cargo Van <sup>(4), (15)</sup>	\$14,000 - \$42,000	\$124,000 - \$210,000	\$180,000 - \$230,000	Lump Sum	\$2,100 Deposit due immediately upon signing of each Franchise Agreement; remainder due as invoiced by Equipment Vendor	Vendor/Contractors
Signage <sup>(5)</sup>	\$4,000 - \$20,000	\$14,000 - \$20,000	\$14,000 - \$20,000	Installment	\$1,000 Deposit due immediately upon signing of each Franchise Agreement; remainder due as invoiced by Sign Vendor	Sign Vendor
Point of Sale Computer and Technology in a Box	\$35,200 - \$41,200	\$35,200 - \$41,200	\$35,200 - \$41,200	Lump Sum	As Incurred	POS/TIBS Vendor
<b>SUB-TOTAL (Construction)</b>	<b>\$131,200 - \$256,200</b>	<b>\$321,200 - \$664,200</b>	<b>\$447,200 - \$754,200</b>			
Franchise Fee <sup>(1), (14)</sup>	\$25,000	\$25,000	\$25,000	Lump Sum	Execution of Franchise Agreement	Dickey's
Lease Deposits <sup>(15), (16)</sup>	\$7,000 - \$16,000	\$7,000 - \$22,000	\$7,000 - \$22,000	Lump Sum	As Incurred	Landlord/Utilities
Training <sup>(17)</sup>	\$5,000	\$5,000	\$5,000	Lump Sum	Upon Training Registration	Dickey's

YOUR ESTIMATED INITIAL INVESTMENT – 2 RESTAURANT DEVELOPMENT AGREEMENT						
TYPE OF EXPENDITURE	AMOUNT <sup>(20)</sup>			METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	NON-TRADITIONAL CONVERSION	RESTAURANT CONVERSION	RETAIL SPACE CONVERSION AND SHELL BUILDING FINISH-OUT			
ServSafe Training <sup>(18)</sup> <sup>(15)</sup>	\$370	\$370	\$370	As Arranged	As Arranged	ServSafe approved instructor
Opening Inventory and Services <sup>(8)</sup> , <sup>(15)</sup>	\$8,000 - \$16,000	\$12,000 - \$36,000	\$12,000 - \$36,000	Lump Sum	Vendors' Terms/As Incurred	Vendors/Dickey's
Additional Funds – 3 Months <sup>(9)</sup> , <sup>(11)</sup> , <sup>(15)</sup>	\$30,000 - \$68,000	\$30,000 - \$68,000	\$30,000 - \$68,000	Cash	As Needed	Various Payees
Insurance <sup>(7)</sup> , <sup>(15)</sup>	\$16,000 - \$24,000	\$16,000 - \$24,000	\$16,000 - \$24,000	Annually	Annually	Insurance Agents
Restaurant Opening Promotion <sup>(10)</sup> , <sup>(14)</sup>	\$16,000	\$16,000	\$16,000	Cash	60 Days Prior to Opening	Dickey's
Professional Fees <sup>(12)</sup> , <sup>(15)</sup>	\$0 - \$10,800	\$0 - \$10,800	\$0 - \$10,800	As Arranged	As Arranged	Vendors
Closing and Finance Costs <sup>(13)</sup> , <sup>(15)</sup>	\$0 - \$40,000	\$0 - \$40,000	\$0 - \$40,000	As Arranged	As Arranged	Lender
Smokestack Sales Reporting System Software Fee <sup>(19)</sup>	\$534	\$534	\$534	As Arranged	Monthly	Spark
<b>SUB-TOTAL (Other Start-Up Expenses)</b>	<b>\$107,904 - \$221,704</b>	<b>\$111,904 - \$247,704</b>	<b>\$111,904 - \$247,704</b>			
<b>TOTAL <sup>(20)</sup></b>	<b>\$239,104 - \$477,898</b>	<b>\$433,104 - \$911,904</b>	<b>\$433,104 - \$911,904</b>			

#### **Footnotes:**

(1) See Item 5 for initial fee required for single units under a Franchise Agreement and multiple unit arrangements under a Development Agreement, and for circumstances when the Franchise Fee may be discounted and/or negotiated. Neither Dickey's nor any affiliate of Dickey's offers any financing for your Franchise Fee or any portion of your initial investment. Dickey's will be pleased to refer you to independent lenders who may finance some portion of your initial investment, but Dickey's makes no promises that any such financing will be available to you, and Dickey's does not guarantee any such loans to you.

(2) These amounts are estimated costs for acquiring and adapting Dickey's prototype plans for use in connection with each proposed Restaurant. The second table assumes that per-Restaurant costs double for the second unit.

(3) Dickey's requires that you lease the premises for a Restaurant. The amounts provided are based on a Restaurant within a shopping center, free-standing structure, or non-traditional setting containing the approximate footprint size for a Non-Traditional Conversion, Restaurant Conversion, Retail

Space Conversion or Shell Building Finish-Out Restaurant, as applicable, described in footnote (19) below. Construction costs at the low end of this estimate assume previously finished out Non-Traditional or Restaurant Conversions in which some existing design features may be retained, as determined by Dickey's in its sole discretion. Your costs may be lower if the landlord assumes the costs of converting and finishing out the space to Dickey's prototypical standards and specifications. Any such contribution by the landlord will likely, however, be factored into a higher lease rental rate. These amounts are Dickey's best estimate based upon commercial leasing and remodeling/finish-out rates and conditions in the Dallas-Fort Worth, Texas metropolitan area and may vary substantially based upon local commercial leasing conditions, cost of utility deposits, and labor rates and conditions and the availability and prices of materials.

(4) These amounts include costs for tables, chairs, track lighting fixtures, chandelier lighting, cabinets and decor items required for a Restaurant, costs for the Point-of-Sale system and our proprietary Technology in A Box and Smokestack Management System or a similar transaction reporting software application we designate, computer hardware and software, refrigeration and other kitchen equipment, hood and fire and ventilation system and stainless steel, a cargo van (with Dickey's "wrap") and smallwares, catering equipment, and a barbecue cooking system. These figures can vary substantially. Costs at the low end of this estimate assume existing useable fixtures and equipment with very few additional items to be purchased. Costs at the high end of this estimate assume that all furniture, fixtures, and equipment are purchased new. These figures are Dickey's best estimate based on current equipment costs and financing conditions in the Dallas-Fort Worth, Texas metropolitan area. Costs may vary substantially depending on geographic location, creditworthiness and financing arrangements. A portion of the Day One Deposit referenced in Item 5 is applied to these costs.

(5) These amounts include interior and exterior signage. The cost of signage may vary significantly depending on the location of the Restaurant, landlord and municipal requirements, and market conditions. A portion of the Day One Deposit referenced in Item 5 is applied to these costs.

(6) Permit fees will vary depending on location and on whether any applicable federal, state or municipal laws or regulations require the payment of occupational taxes for restaurants. Permit fees will be greater for any construction for the finish-out or renovation of the Restaurant and will likely take more time to obtain. Permit fees will also likely be higher if your Restaurant is required to serve alcoholic beverages. Any state income or franchise taxes required to be paid for corporate franchisees are not included.

(7) The costs of insurance may vary substantially depending on the insurer, the location of the Restaurant, the value of the equipment and improvements and your claims history. The cost does not include any premium for worker's compensation insurance (or any non-subscription alternatives), liquor liability, auto liability, employment practices liability insurance, data privacy/cyber liability. The amount of such premiums will vary widely based upon state insurance markets, number of employees, and other factors.

(8) Dickey's estimates that the range given will be sufficient to cover food and paper inventory needs for the first week of operations when training and dry-runs of Restaurant services occur prior to the opening of the Restaurant to the general public. These amounts may vary according to your sales volume during the indicated period, current market conditions, and local suppliers' terms.

(9) The amounts stated will be used by you to cover costs and expenses such as debt service, wages, rent and other occupancy costs, initial stocking of inventory, food stocks and supplies, and other operating expenses during the initial three months of operations. These amounts may vary depending upon your sales volume, your management skill, how closely you follow Dickey's methods and procedures, local economic conditions and wage rates, competition, your financing costs and upon other circumstances. These amounts are estimates, and Dickey's cannot guaranty that you will not have additional expenses starting the Restaurant, or that the period of time during which the Restaurant operates with negative cash flow will not be longer than anticipated. You should arrange for additional capital resources to be available to you if your initial investment expenses exceed this estimate.



(10) The amounts shown include costs and expenses of a new store opening promotion/initial marketing package for the Restaurant, for which you are required in the Franchise Agreement to pay to Dickey's \$8,000 to be spent by Dickey's, in its discretion, on your behalf in connection with your Restaurant opening promotion (including, to fund local advertising, marketing materials and promotional support during the first six months of the operation of your Restaurant). An accounting of the sums spent by Dickey's in connection with your opening promotion will be provided at your request. While Dickey's will exercise best efforts to spend the full \$8,000 in connection with your opening promotion, any remaining balance after the first six months of the operation of your Restaurant will be deposited into the Marketing Fund and applied by Dickey's using the procedures described below for the utilization of the proceeds of the Marketing Fund.

(11) This estimate also reflects the cost of your Owner/Operator and two Restaurant managers to attend and complete the initial training (but excluding the fees described in footnote 17 below). These amounts include estimated transportation costs, the cost of lodging and meals, employee wages (but no salary for the Owner/Operator), and incidental expenses. Your costs may be greater depending upon your distance from the Dallas-Fort Worth, Texas metropolitan area and the lodging and meals chosen, and your employee wages.

(12) These amounts include \$400 - \$600 per month payable to a third party accounting firm for accounting services during your first 3 months of operating the Restaurant. These amounts only apply if you choose to employ professionals to review this Disclosure Document and assist you in your organization and formation and are Dickey's best estimate of legal and accounting fees associated with such costs and expenses. Your actual costs may vary substantially depending on difficulties encountered, the individual professionals utilized and organizational structure chosen. These fees assume you use the same legal entity for the second Restaurant.

(13) These amounts only apply if you choose to finance certain costs related to opening the Restaurant (including any finish-out or renovation costs and equipment, inventory and working capital) with a third-party lender. These amounts are not payable to Dickey's and will vary depending on the terms of the financing you negotiate with your lender and the fees, costs and expenses incurred by lender and any other party involved in the financing. All amounts are estimates only based upon Dickey's experience to date.

(14) These amounts are non-refundable. The Initial Fee for the second Restaurant is reduced to \$10,000 under a Development Agreement.

(15) These amounts may or may not be refundable depending on the nature of the expenditure and your arrangement with the supplier.

(16) The amounts provided are based on Restaurants located within shopping centers, free standing structures or non-traditional settings as the footprint size for a Non-Traditional Conversion, Restaurant Conversion, Retail Space Conversion or Shell Building Finish-Out Restaurant, as applicable, described in footnote 20 below.

(17) This amount represents the fee assessed by Dickey's for its initial training program which your Owner/Operator and two Restaurant managers are required to complete. It also includes the cost of training manuals. The training fee is \$1,000 for each Owner/Operator and any other personnel attending Barbecue University in Dallas, Texas and \$1,500 for online and on-site training of up to 2 individuals during the Restaurant opening which includes manager certification and Barbecue University online. The training fee does not include any costs for uniforms (which you are required to purchase from Dickey's approved supplier), or any additional costs or expenses incurred by your trainees in connection with the initial training program including costs of travel, lodging, meals, and wages. If more than three trainees attend training, you will incur an additional training fee of \$750 per person for manager certification and an additional \$1,000 for Owner/Operator certification.

(18) This estimate assumes that your Owner/Operator and two other managers will be required to attend and complete training from a ServSafe-approved instructor and become ServSafe certified. The current cost of ServSafe training is approximately \$145 per person online or \$186 per person for an instructor led class.

(19) This estimate includes your required subscription to Spark's Smokestack sales reporting system and assumes that you operate one Restaurant and purchase access to the system for one manager. This amount is for the subscription and infrastructure support fees for a 3-month period. These fees will increase if you purchase access to the system for multiple managers or you operate multiple Restaurants.

(20) Dickey's has relied on its recent experience to compile these estimates. We cannot assure you that you will incur the same costs in your market. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. The Initial Investment estimates relate to a single Restaurant in each listed category. Each additional Restaurant developed under a Development Agreement will require a similar level of investment.

(21) These tables provide estimates of your initial investment for a Dickey's Restaurant constructed using Dickey's current prototype plans and specifications having 40-50 seats for dining depending upon the square footage of the Restaurant premises under a single unit Franchise Agreement and under a two-restaurant Development Agreement. If you decide to incur additional costs to develop your Restaurant design that varies from our prototype, or you select a location where the landlord requires that you make design changes that incur costs that exceed our estimates, even if we approve the variation or changes, you are responsible for the additional costs and their impact on the performance and finances of your restaurant. For purposes of the tables, a "Non-Traditional Conversion" means a conversion of an existing food service facility located within a convenience store, food court or other "non-traditional" setting containing 400 square feet. A "Restaurant Conversion" means the conversion of a previously finished out, equipped restaurant facility containing approximately 1,800 square feet. A "Retail Space Conversion" means the conversion of previously finished out retail "white space" not equipped with restaurant facilities and containing approximately 1,800 square feet. "Shell Building Finish Out" means unfinished retail space in a "shell" condition, typically located within a retail strip center and containing approximately 1,800 square feet. The tables assume in all cases that you will lease the location of your Restaurant(s). We do not estimate the cost of new construction, free standing restaurants.

## **ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

### **Required Purchases and Approved Suppliers**

You are required to purchase your barbecue sauce (batch and prepackaged), barbecue sauce seasonings, salad dressings, pre-made salads, spices and other ingredients for proprietary recipes from approved suppliers. Dickey's does not permit franchisees to contract with any alternative suppliers for the products described in this paragraph, nor does it issue specifications for these items.

You must also purchase your food products, paper stocks and other supplies only from approved suppliers under the standards and specifications prescribed in the Manuals or otherwise identified in writing by Dickey's. Dickey's has developed a list of approved suppliers for these items. You may request that Dickey's approve alternative suppliers.

Dickey's requires that you purchase and utilize its approved point of sale system and related hardware and software (currently, the Aloha Point-of-Sale system with the Smokestack information management system), and may require franchisees to utilize point of sale and restaurant operating hardware and software programs in the future that replace or add to the point of sale system then approved and required for use in Restaurants. (See Item 11) Dickey's has developed a list of approved suppliers for the approved point of sale system and related software and hardware. In addition to the Technology in a Box support system described below, Dickey's may require you to use point of sale systems, operations,

catering, back office, accounting, customer service, loyalty program processing, on-line ordering and delivery, and other hardware and software in the operation of your Restaurant.

In addition, Dickey's may require you to purchase and utilize any upgrades, additions, enhancements or replacements of the hardware or software, some or all of which are developed and licensed by or on behalf of Dickey's or an affiliate, or otherwise required by Dickey's at such cost as Dickey's or its approved vendors make such upgrades, additions, enhancements, and replacements available to franchisees (See Items 6 and 11). Dickey's does not permit franchisees to contract with any alternative suppliers of computer hardware and software for use with or in the Restaurant, nor does it issue specifications for these items. You may use standard, off the shelf general business applications software such as Microsoft Office obtained from an authorized reseller for use in the franchised Restaurant.

Dickey's has contracted with a supplier for you to obtain the Technology in a Box support system ("TIBS") that you will purchase from Dickey's supplier. This TIBS system costs approximately \$8,500.00 for installation and the required hardware and software. The TIBS system includes application software that provides frequent reports to Dickey's on store operations, a wifi hot spot for Restaurant customers while on premises, software for customer loyalty and feedback data collection and reporting, and other features, functions and applications as may be determined by Dickey's. See Item 11.

You must purchase or lease all of your equipment, including barbecue pits, under any specifications prescribed in the Manuals. These specifications include standards for temperature, design and performance, and are based on Dickey's sole judgment and discretion, based on the experience of the company-owned Restaurants and Dickey's experience as a franchisor. Dickey's has developed a list of approved equipment suppliers; however, you may purchase this equipment from any supplier approved by Dickey's.

You are required to use an architect we approve for the planning and design of your Restaurant. Dickey's will provide you with a list of approved architectural firms. If you prefer to use an architect that is not on our approved list, you must submit the architect's information and your contract for Dickey's prior approval. We may withhold our approval if we determine that your proposed architect does not demonstrate the experience, credentials or qualifications for a project such as your Restaurant, or our prior experience with the architect has not been satisfactory. Any franchisee requesting an alternate architect must submit its proposal to Dickey's along with a non-refundable evaluation fee (see Item 5) and Dickey's then current form of agreement for alternate architects executed by the alternate architect in order to have the proposal evaluated. You will be required to independently and at your own expense have the design plans and specifications adapted for the finish-out or renovation of your Restaurant by a Dickey's-approved architect. Dickey's reserves the right to require you to use one of Dickey's then-current approved architects, if your architect fails to adapt Dickey's prototypical design plans and specifications to our satisfaction or fails to meet the development timeframe in your Franchise Agreement.

You are required to use a general contractor we approve for the construction of the Restaurant. If you prefer to use a general contractor that is not on our approved list, you must submit the general contractor's qualification information to Dickey's along with a non-refundable evaluation fee (see Item 5). In order to be approved, the general contractor must execute Dickey's then current master service agreement with Dickey's, which provides for paying you damages if the contractor does not finish the work on time and requires that certain terms be included in the contract executed between you and the general contractor and which may require the general contractor to pay an additional fee for its approved status. At any time during construction, Dickey's reserves the right to require you to use one of Dickey's then-current approved general contractors if your contractor fails to complete construction to our satisfaction or fails to meet the development timeframe in your Franchise Agreement.

You are required to use an accounting firm we approve to provide comprehensive accounting services for your Restaurant. If you prefer to use an accounting firm that is not on our approved list, you must submit the accountant's information and your contract with the accounting firm for Dickey's prior approval. We may withhold our approval if we determine that your proposed accountant does not demonstrate the

experience, credentials or qualifications necessary to provide accounting services for your business and the System.

You are required to subscribe to any third-party on-line ordering or delivery services that Dickey's has approved and may be available to provide services in your area. Mobo Systems, Inc. is the currently approved vendor for on-line orders placed through the website maintained by Dickey's. Mobo Systems, Inc. currently charges \$99 per month for access to this service. For other on-line orders and delivery services, Dickey's will provide you with a list of currently approved vendors in your area. You may, but are not required to, participate in third-party discount voucher programs (i.e. Groupon or Living Social) that have been approved by Dickey's. You may not use any third-party on-line, delivery, or voucher company that has not been approved by Dickey's. Dickey's may add or remove vendors from the approved list at any time. Dickey's may also provide you with written guidelines governing the minimum standards and specifications of certain products, services and equipment which you procure from unrelated third parties. These standards and specifications may be set forth in the Manuals. Dickey's may modify these standards and specifications, as well as the other standards and specifications discussed in this Item 8, by providing you with written notification.

Dickey's requires all franchisees to execute a Smokestack Customer Agreement with Spark for a subscription which allows you to access to the Smokestack sales data collection and reporting system. Certain paper and food products utilized in the operation of the Restaurant are also manufactured or purchased for redistribution by Wycliff. Dickey's reserves the right in the future to designate Dickey's, an affiliate or a supplier in which an officer of Dickey's owns an interest, as an approved supplier for additional items.

Dickey's requires all franchisees to obtain and maintain certain insurance coverage within thirty (30) days after the execution of the lease for the Restaurant. Franchisee must obtain all required insurance policies solely from insurance agents/brokers or other providers approved by Dickey's (including a Dickey's affiliate or subsidiary). Dickey's may or may not receive compensation or other economic benefits from these approved insurance agents/brokers or other providers. If you desire to purchase the required insurance policies from an unapproved insurance agent/broker or provider, you shall submit to Dickey's a written request for such approval. If approval is granted by Dickey's for the use of an unapproved insurance agent/broker or other provider, you shall pay to Dickey's a \$300 fee to cover the costs of reviewing the Coverages procured by the unapproved vendor. Should Dickey's review of the procured Coverages determine that the unapproved vendor procured insufficient Coverages, you must procure the Coverages identified by Dickey's within 7 business days upon receiving notification from Dickey's. Additionally, you shall pay Dickey's an additional \$150 fee to review these subsequent changes (and a \$150 fee to review in the event that any additional changes are necessary).

Such policy or policies shall be written by an insurance carrier or insurance carriers with a Best's Insurance Guide rating of "A" or better, and shall include, at a minimum, the following:

- A. Commercial general liability insurance, with bodily injury, property damage, and advertising and personal injury coverage parts. The medical payments coverage part shall have a per occurrence liability limit of \$5,000.00 per Restaurant location. The commercial general liability policy shall have a minimum per occurrence liability limit of \$1,000,000 per Restaurant location and a general aggregate liability limit of \$2,000,000 per Restaurant location.
- B. Crime (inside/outside) and employee dishonesty insurance with a minimum per occurrence liability limit of \$10,000 per Restaurant location for inside crime and a minimum per occurrence liability limit of \$10,000 per Restaurant location for outside crime. Employee dishonesty coverage shall have a minimum per occurrence liability limit of \$50,000 per Restaurant location.
- C. Worker's compensation insurance in amounts provided by applicable law

- D. Automobile liability insurance coverage for owned, non-owned, and hired vehicles with a liability limit of not less than \$1,000,000 combined single limit (which shall include coverage for your delivery, including home delivery, if applicable, and catering operations).
- E. Liquor liability insurance if you sell alcoholic beverages at your Restaurant, with a minimum per occurrence liability limit of \$1,000,000 per Restaurant location.
- F. Building and personal property insurance coverage for physical loss or damage to personal property and real property including the leasehold improvements, at each Restaurant location. The coinsurance percentage shall not be less than eighty percent (80%).
- G. Umbrella liability insurance over the above described general commercial liability, liquor liability, automobile liability, products/completed operations, and employer's liability insurance coverage parts with a per occurrence limit of \$1,000,000, and an aggregate limit of \$1,000,000 per Restaurant. The umbrella policy shall be written on an occurrence reporting basis.
- H. Employment practices liability coverage in such form and amounts required by Dickey's and with coverage limits of not less than \$1,000,000. This policy must include coverage for third party claims. In addition, the policy must have a sublimit for defense costs relating to wage and hour claims.
- I. Data Privacy/Cyber Liability Insurance, including first party coverage (forensics investigation, notification, credit monitoring, loss of business income, crisis management) and third party coverage, with coverage limits of no less than \$1,000,000.
- J. Any insurance which may be required by statute or rule of the state or locality in which your Restaurant will be operated.
- K. For the period of any construction, finish-out, renovation, refurbishment or remodeling of your Restaurant, you or your approved general contractor shall maintain builder's all risk insurance and performance/completion and payment bonds in forms and amounts, and written by a carrier or carriers, reasonably satisfactory to Dickey's.
- L. Additional insurance coverages, together with waivers of subrogation, exclusions, endorsements, naming of additional insureds and notice provisions for all insurance policies, that may reasonably be specified by Dickey's in accordance with standards and specifications set forth in the Manuals or otherwise in writing.

You may not have any deductible, self-insured retention or self-funded retention for any of these coverages in excess of the amount approved by Dickey's, which may require first dollar coverage for some of this insurance without a deductible or a self-insured retention. Within thirty (30) days after the execution of the lease for the Restaurant and, thereafter, at least sixty (60) days prior to the expiration of any such policy, you shall deliver to Dickey's certificates of insurance indicating the contracted for insurance coverages as well as the description of special provisions (e.g. additional named insured status). You shall also provide a binder, declarations page, or confirmation of insurance, describing and confirming the coverages afforded by the required policies described above upon request.

### **Approval of Alternate Suppliers**

We reserve the right at our discretion to approve suppliers and to revoke the approval of any supplier. We will notify you in writing when an approval of a previously approved supplier has been revoked. We must approve alternative suppliers in writing before you use them. If you request approval of a new supplier, you must do so in writing, and must include pertinent information about the supplier, your reasons for the request, and a list of products to be supplied by the proposed supplier. If your request is approved or denied, we will notify you in writing within 30 days. While Dickey's does not maintain written

criteria for alternate suppliers, upon request, Dickey's will evaluate alternative suppliers based upon many factors such as their ability to meet our standards and specifications, meat and produce quality and freshness and dry goods quality, and based upon the supplier's financial position, business reputation, delivery performance, accessibility, credit rating, and other criteria. We may establish and revise approved supplier criteria as we deem appropriate and will make them available to our franchisees upon written request. Any charges incurred by Dickey's in connection with the testing and inspection of the proposed supplier's offering must be paid by the franchisee requesting such approval. Any franchisee requesting an alternate architect or general contractor must submit its proposal to Dickey's along with an evaluation fee and the alternate architect or general contractor must execute Dickey's required form of agreement. See Items 8 and 22.

### **Revenue from Franchisee Purchases and Payments from Designated Suppliers**

During the 2015 fiscal year, Dickey's received no revenue or other material consideration from required purchases or leases by franchisees. During the 2015 fiscal year, our affiliate, Wycliff, received a total of \$7,486,847 from indirect purchases by franchisees of certain paper and food products. The information about our Wycliff's revenue is from our internal unaudited records. No other affiliates received revenue or other material consideration from required purchases or leases by franchisees.

Certain approved suppliers currently or may in the future pay to Dickey's or an affiliate compensation or otherwise credit the account of Dickey's or an affiliate sales incentives or rebates in amounts based on the purchases you may make from such suppliers. Currently, approved suppliers pay to Dickey's and its affiliates the following sales incentives or rebates: (1) food and beverage items, paper goods and cleaning products: either (i) a flat amount per pound or case (or other specified measure) purchased by Dickey's franchisees or (ii) a percentage of the supplier's total sales to Dickey's franchisees; (2) credit card processing services: a flat amount per credit card transaction processed; (3) firewood: a flat amount per case purchased; (4) Restaurant equipment: a percentage of the supplier's total sales to Dickey's franchisees; and (5) insurance: a percentage of the insurance broker's commission realized on each policy purchased by Dickey's franchisees. During the 2015 fiscal year, Dickey's and its affiliates received a total of \$8,086,070 from these vendor rebate credits.

Dickey's and its affiliates apply such sums to defray its costs in discharging its duties and obligations to its franchisees, to partially fund the Marketing Fund, and to generate revenues.

### **Percentage of Total Purchases Represented by Required Purchases**

We anticipate that the required purchases and leases from approved suppliers will constitute the substantial majority of all purchases by you for the development and operation of the Restaurant. Dickey's estimates that up to 50% of your initial investment to establish and open the Restaurant shall be applied to required purchases and leases, and that up to 75% of your expenditures to operate the Restaurant shall be applied to required purchases and leases.

### **Cooperatives**

There are no purchasing or distribution cooperatives, although Dickey's retains the right to establish them.

### **Negotiated Purchases**

Dickey's has negotiated volume discount arrangements with certain designated suppliers for its franchisees (including pricing and payment terms), based upon volume purchases by the System. These suppliers may require you to enter into separate contracts with them. The primary designated supplier is US Foods, Inc.

### **Material Benefit**

Dickey's does not provide any material benefits to franchisees based upon their use of designated or approved suppliers. We reserve the right not to grant franchises or confer other benefits to any franchisee, for any reason or no reason, which may include the failure to follow and support the Dickey's System, including its recommended purchase of particular products or services or use of particular supplies.

## ITEM 9 FRANCHISEE'S OBLIGATIONS

**This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this Disclosure Document.**

FRANCHISEE'S OBLIGATIONS			
Obligation	Disclosure Document Item	Article in Franchise Agreement	Article in Development Agreement
a. Site selection and acquisition/lease	Item 11	Articles 3 and 7	Article 3
b. Pre-opening purchases/leases	Items 7 and 11	Articles 7 and 8	Article 3
c. Site development and other pre-opening requirements	Item 11	Article 7	Article 3
d. Initial and ongoing training	Item 11	Articles 3, 8, 9 and 15	Articles 5 and 8
e. Opening	Item 11	Articles 3, 5 and 7	Article 3
f. Fees	Items 5 and 6	Articles 4 and 5	Articles 2, 5, 6, 7, 8 and 9
g. Compliance with standards and policies/operating manual	Items 8 and 16	Articles 3, 8 and 11	None
h. Trademarks and proprietary information	Items 13 and 14	Articles 1, 8, 10, 11 and 12	Articles 6, 7 and 8
i. Restrictions on products/services offered	Item 16	Article 8	Articles 5 and 6
j. Warranty and customer service requirements	Item 16	Article 8	Articles 9 and 15
k. Territorial development and sales quotas	Item 12	None	Articles 1, 3, 4 and 6
l. Ongoing product/service purchases	Item 8	Article 8	None
m. Maintenance, appearance and remodeling requirements	Items 16 and 17	Articles 2, 7, 8, 14 and 17	Article 6
n. Insurance	Item 7	Articles 8 and 14	None
o. Advertising	Items 6, 7 and 11	Articles 3, 5 and 8	Article 1
p. Indemnification	Item 11	Articles 9, 10, 15 and 20	Article 9

<b>FRANCHISEE'S OBLIGATIONS</b>			
<b>Obligation</b>	<b>Disclosure Document Item</b>	<b>Article in Franchise Agreement</b>	<b>Article in Development Agreement</b>
q. Owner/Operator's participation/management/staffing	Item 15	Articles 8 and 9	Articles 5, 8 and 9
r. Records and reports	Item 6	Articles 4, 5 and 13	Article 5
s. Inspections and audits	Items 6 and 11	Articles 3, 7, 8 and 13	None
t. Transfer	Item 17	Article 15	Articles 3, 6, 7, 5 and 9
u. Renewal	Item 17	Article 2	None.
v. Post-termination obligations	Item 17	Articles 17 and 18	Articles 4, 6 and 9
w. Non-competition covenants	Item 17	Article 18	Attachment B
x. Dispute resolution	Item 17	Article 27	Article 14

## **ITEM 10 FINANCING**

Dickey's does not offer direct or indirect financing. Upon request, Dickey's will refer you to independent lenders who may finance some portion of your initial investment. Dickey's makes no promises that any such financing will be available to you. Dickey's does not receive any consideration for placing financing with any lenders. Additionally, Dickey's does not guarantee your note, lease or any other obligation.

## **ITEM 11 FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING**

**Except as listed below, Dickey's is not required to provide you with any assistance.**

### **Pre-Opening Obligations**

Before you open your business, Dickey's will:

Designate your protected territory. (Franchise Agreement - Article 1).

Integrate you into Dickey's "Phases and Stages" program, an integrated instructional/communications program to assist you in the planning, development and opening of your Restaurant, and in which you will be obligated to participate. (Franchise Agreement – Article 3).

Provide you with its site selection counseling and such other assistance as Dickey's deems advisable. (Franchise Agreement - Article 3).

Provide a site evaluation as Dickey's determines necessary. (Franchise Agreement - Article 3).

Accept or not accept a site for your Restaurant location. For additional information, see Item 11, "Site Selection". (Franchise Agreement - Articles 1 and 7).



Provide you with the contract information for Dickey's approved architect who is the only architect we have supplied with a set of prototypical architectural and design plans for a Restaurant. Dickey's must review and approve all plans and specifications for the finish-out or renovation of your Restaurant. Dickey's does not assist in conforming the prototype plans or your premises to local ordinances and building codes or in obtaining any required permits. (Franchise Agreement - Articles 3 and 7).

Provide you with the contract information for Dickey's approved general contractors for the finish-out or renovation of your Restaurant. (Franchise Agreement - Articles 3 and 7)

Provide you with a list of the accounting firms we approve to provide comprehensive accounting services for your Restaurant. (Franchise Agreement – Article 13)

Provide you with assistance and advice concerning equipment, signs, fixtures, supplies and will specify your opening inventory selection and purchasing in connection with the opening of the Restaurant, as Dickey's deems appropriate. See Item 8 regarding equipment, opening inventory and supplies provided by Dickey's or its approved suppliers and any written specifications for those items. Dickey's does not provide any of these items directly and will not deliver or install any such items. (Franchise Agreement - Article 3).

Provide an initial training program for two managers you designate and your Owner/Operator. For additional information, see Item 11, "Training." Dickey's will not provide any assistance in hiring any of your employees; however, all employees must meet Dickey's then-current standards and criteria for the applicable position and any applicable training requirements. (Franchise Agreement - Articles 3, 8 and 9).

Provide a single print copy of the Manuals; however, you may receive such print copy of the Manuals before you buy a Dickey's Barbecue Pit franchise if you first sign and return to us a Non-Disclosure Agreement in the form attached to this Disclosure Document as Exhibit G. You must strictly comply with the Operations Manual and other Manuals in operating the business. Dickey's has the right to revise the contents of the Manuals at any time. You must comply with all changes to the Manuals when you receive notice of them. (Franchise Agreement - Articles 3 and 11).

Provide you with a list of approved suppliers and preferred vendors, as set forth in the Manuals and other written directives as Dickey's deems appropriate. (Franchise Agreement - Articles 3 and 8).

Approve any advertising and promotional items to be used in connection with your "Restaurant opening" promotion, and provide you, at your expense, with at least one trained representative of Dickey's to provide on-site training, supervision and assistance around the time of your "Restaurant opening". For additional information, see Item 11, "Training". (Franchise Agreement - Articles 5 and 9).

### **Site Selection**

Dickey's typically requires that you lease the Restaurant site. Generally, Dickey's does not own the Restaurant sites leased to its franchisees. The site for the Restaurant is selected by you, subject to the acceptance of Dickey's. The Restaurant may not be relocated without Dickey's prior written consent. Before you lease the site for the Restaurant, you are required to locate a site that satisfies the Dickey's site selection guidelines and submit to Dickey's, in the form specified by Dickey's, a description of the site, including evidence satisfactory to Dickey's demonstrating that the site satisfies Dickey's site selection guidelines, together with other information and materials that Dickey's may require, including a letter of intent or other evidence that confirms your favorable prospects for obtaining the site. You shall submit such information for the proposed site to Dickey's for its acceptance no later than 60 days after the execution of the Franchise Agreement. Dickey's will have 30 days after receipt of this information and materials from you to accept or not accept, in its sole discretion, the proposed site as the location for the Restaurant. You are required to acquire by lease, at your expense, the site for your Restaurant within 90 days after execution of the Franchise Agreement unless Dickey's decides, in its discretion, to extend such period. You must obtain the acceptance from Dickey's of any lease for the Restaurant premises prior to

execution by you. If you fail to acquire a site for the Restaurant within the required period, Dickey's may, among other things, terminate the Franchise Agreement upon notice to you and retain the Franchise Fee and any other fees you paid under the Franchise Agreement. You must request from the landlord the execution of the lease rider in the form attached to the Franchise Agreement. You shall furnish to Dickey's a copy of the executed lease, including the lease rider, for your Restaurant site within ten days of its execution. (Franchise Agreement - Articles 1, 3 and 7).

Dickey's will provide to you such site selection guidelines and such site selection counseling and assistance as Dickey's deems advisable. Dickey's guidelines for site selection require an evaluation of the building type, square footage and the functional utilities of the site. (Franchise Agreement - Articles 1, 3 and 7).

Dickey's will also provide on-site evaluation of a proposed site if Dickey's deems this to be necessary or in response to your request for site assistance; Dickey's will not provide on-site evaluation for any proposed site prior to the receipt of the materials required to be submitted to Dickey's as described above. Dickey's will provide up to three on-site evaluations for your Restaurant (and for each Restaurant under a Development Agreement) at no additional charge to you. Thereafter, if additional on-site evaluations are deemed necessary by Dickey's, on its own initiative or at your reasonable request, you must pay a fee of \$1,000 for each additional on-site evaluation and must reimburse Dickey's for all reasonable expenses in connection with such on-site evaluation, including the cost of travel, lodging, meals, and wages. (Franchise Agreement - Articles 1, 3 and 7).

Dickey's estimates that the time from execution of the Franchise Agreement to the commencement of operations of the Restaurant will be from six months to eight months. The actual time required may vary depending upon the time necessary to locate and then approve a site, financing, the permits and licenses necessary for the finish-out or renovation of the Restaurant and the operation of the Restaurant, the finish-out or renovation of the Restaurant as it may be affected by weather conditions, shortages, delivery schedules and other similar factors, preparation of the interior and exterior of the Restaurant (including decorating, purchasing and installing fixtures, equipment and signs, and landscaping) and complete preparation for the operation of the Restaurant (including purchasing inventory and supplies). If you lease the site for the Restaurant, the finish-out or remodeling of your Restaurant must be completed within 120 days of the date you sign your lease. If you own the Restaurant premises, then the finish-out or remodeling of your Restaurant must be completed within 150 days of the effective date of the Franchise Agreement. You are obligated to open the Restaurant and commence business on or before the expiration of eight months following the execution of the Franchise Agreement, or according to the development schedule set forth in the Development Agreement, as applicable. (Franchise Agreement - Articles 1, 3 and 7).

### **Obligations After Opening**

During your operation of the franchised business, Dickey's will:

Notify you of any additions, replacements or other changes regarding the menu items or pricing or products and services approved for sale by Dickey's. (Franchise Agreement - Article 8).

Provide on-site training, additional initial training programs for successor and replacement managers and Restaurant personnel, and other training programs and seminars as Dickey's deems appropriate. Dickey's will not provide any assistance in hiring any of your employees; but all employees must be able to perform the job responsibilities for the position. For additional information, see Item 11, "Training". (Franchise Agreement - Articles 3 and 9).

Provide, as Dickey's deems appropriate, advice and written materials concerning techniques of managing and operating the Restaurant, including new developments and improvements in restaurant equipment, food products, packaging, preparation, and operational systems. (Franchise Agreement - Article 3).

Provide you with guidelines on pricing policies. You have the right to sell your food products and merchandise and offer services at any prices you may determine, so long as you are in compliance with Dickey's general guidelines on pricing policies as set forth in the Manuals or otherwise in writing. Subject to applicable legal constraints, you must participate in and comply with all sales and promotional programs promulgated by Dickey's. (Franchise Agreement - Article 5).

Provide indemnification against and reimbursement for all damages for which you are held liable in any proceeding arising out of your use of any of the Proprietary Marks, if your conduct and the conduct of each person owning an equity interest in you with respect to such proceeding and use of the Proprietary Marks is in compliance with the terms of the Franchise Agreement. (Franchise Agreement - Article 10).

Loan to you, upon your request, subject to the approval of Dickey's and at such cost as Dickey's makes these materials available to other franchisees operating under the System, copies of any then-current training films and instructional videos and audio materials that may be developed and made available to franchisees by Dickey's. (Franchise Agreement - Article 3).

Conduct, in its discretion, meetings, seminars, and other related activities regarding the operation of Restaurants for franchisees generally, which you may attend. Except as approved by Dickey's, any costs incurred by you or Restaurant personnel in attending such events will be your responsibility. (Franchise Agreement - Article 3).

Provide ongoing operational assistance as Dickey's deems necessary, subject to the availability of appropriate Dickey's personnel. (Franchise Agreement - Article 3).

Inspect the Restaurant and evaluate the Restaurant's products and services at such times as Dickey's may deem advisable to maintain the high standards of quality, appearance and service of the System, in person or remotely by telephone where possible. Require the Owner/Operator and other personnel on site during an inspection to correct any standards deviations that may be discovered during the inspection. (Franchise Agreement - Article 3 and 8.22)

Provide interim management of the Restaurant in the event of the death or permanent disability of your Owner/Operator, or any other person with a direct or indirect beneficial ownership interest in you if Dickey's determines, in its sole discretion, that such person had substantial control or supervision over the management of your Restaurant. Such interim management is provided by Dickey's at its option and Dickey's will charge a monthly management fee of five percent (5%) of Net Sales plus pass through costs and expenses. In addition, if Dickey's provides one of its employees as manager, you must pay Dickey's the manager's then-current salary for the time of such interim management. (Franchise Agreement - Article 15).

Approve or disapprove of any advertising and promotional materials and programs you propose within 30 days after your submission of the materials and programs for approval. For additional information, see Item 11, "Advertising". (Franchise Agreement - Articles 3, 5 and 8).

Continue to furnish you with a list of approved vendors and/or specifications for certain products and services or notify you of any additions to or changes to the approved vendors and/or specifications. (Franchise Agreement - Articles 3, 7 and 8).

Provide additional or remedial training. For additional information, see Item 11, "Training". Dickey's will not provide any assistance in hiring any employees; but, all employees must be able to perform the job responsibilities for the position. (Franchise Agreement - Articles 3, 8 and 9).

Establish or modify a promotional gift card acceptance program for so long as Dickey's elects to do so. (Franchise Agreement - Article 5).

Assign to you a franchise business manager or Area Representative in Dickey's sole discretion to advise you as to any operational matters regarding your Restaurant as Dickey's may require. (Franchise Agreement - Article 8).

Establish or maintain a catering hotline in which you are required to participate subject to the policies, procedures, terms and conditions prescribed in the Manuals. By participating in the catering hotline, you will be required to offer certain standard catering options required by Dickey's. Dickey's reserves the right to discontinue or modify the catering hotline at any time.

Except as listed above, we do not have any obligation to provide you with assistance regarding (1) establishing and using administrative, bookkeeping, accounting or inventory control procedures or (2) resolving operating problems you may encounter.

### **Advertising**

Dickey's has no obligation to conduct advertising except through the Marketing Fund described below. Dickey's advertises nationally through its web site, and places most broadcast advertising in local and regional media placements. We will direct all programs that the Marketing Fund finances, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. We have an in-house advertising function that works with outside regional and national advertising agencies. We have no obligation to spend any amount on advertising in an area or territory where each franchisee is located.

Dickey's will spend the \$8,000 payable to Dickey's for "Promotional and Pre-Opening Expenses" described in Item 7, in our discretion, on your behalf for your Restaurant opening promotion. We use this amount, in our discretion, to fund marketing materials, local advertising and promotional support for your Restaurant opening. We will provide to you at your request an accounting of how we spend these funds for your Restaurant opening promotion. While Dickey's will exercise commercially reasonable efforts to spend the full \$8,000 for your Restaurant opening promotion, any balance remaining six months after your Restaurant opening will be deposited into the Marketing Fund to be used as described below.

Dickey's has established and intends to maintain a URL website, [www.dickeys.com](http://www.dickeys.com), promoting the System and identifying the location of franchise and company-owned Restaurants. You are required to authorize Dickey's to identify and promote your Restaurant on Dickey's website and further authorize Dickey's to modify its website and to conduct promotions on a system-wide basis, and you and your Restaurant will participate in all such promotions. You are prohibited from establishing or utilizing your own URL website, mobile apps appearing on smartphones or other electronic devices (including, for example, Android Marketplace or the Apple Store), or social media webpage to promote your Restaurant, except that you must create and maintain a Facebook page under the name "Dickey's Barbecue Pit - [City, State]". (Franchise Agreement - Article 5).

*Advisory Council.* Dickey's has established the National Franchise Advertising and Advisory Council (the "Council") to advise franchisees on advertising policies. The Council is composed of franchisees and representatives of Dickey's. The Council members are elected by franchisees in the Council member's region. In the event of a vacancy on the Council, Dickey's may appoint an interim representative to the Council to serve until the next election. The Council serves in an advisory capacity only and does not have operational or decision-making power. Dickey's has the power to dissolve or change the Council at any time without notice to you and may form other advisory councils.

*Cooperatives.* You may be required to participate in a local or regional advertising cooperative organized and approved by Dickey's, and composed of certain other franchisees located in the geographic area in which you are located. Membership in, and the coverage of, each advertising cooperative is defined geographically, typically based upon the metropolitan area in which the Restaurant is located. Not all areas will have a Dickey's-approved advertising cooperative. If you are required to participate in a Dickey's-approved advertising cooperative, a certain percentage of your Marketing Fund contribution may be applied towards advertising, marketing and promotions targeting the local or regional area comprising

your advertising cooperative under a cooperative advertising agreement. The same percentage of each advertising cooperative member's sales revenue designated for advertising and marketing purposes under a franchise agreement with Dickey's will be applied towards such local or regional advertising, marketing and promotions. Advertising cooperatives are not required to prepare financial statements, but an accounting of the funds utilized by an advertising cooperative will be provided upon request by an advertising cooperative member. Each advertising cooperative is governed by the terms of an advertising cooperative agreement approved by Dickey's. Dickey's standard cooperative advertising agreement is available to you for review upon request. Advertising, marketing and promotional activities are based on a majority vote of the members of the advertising cooperative; however, Dickey's must approve all such activities and reserves the right to initiate any advertising, marketing and promotional activity on account of the advertising cooperative. Additionally, Dickey's administers the application of the funds designated for use by advertising cooperatives. Dickey's may terminate an advertising cooperative under each particular cooperative advertising agreement (typically by providing 30 days prior written notice of its intent to terminate the advertising cooperative as of December 31 of the year the notice is given). Dickey's reserves the right to require advertising cooperatives to be formed, changed, dissolved or merged. Company-owned Restaurants are not required to participate in advertising cooperatives but may elect to do so. (Franchise Agreement - Article 5).

*Marketing Fund.* Dickey's or an affiliate administers a marketing fund for the purpose of producing marketing materials for the System on a System-wide basis (the "Marketing Fund"). Sums from the Marketing Fund will not be applied towards Promotional and Pre-Opening Expenses related to your Restaurant opening (including new store opening kits or related local advertising or promotional support). You are required to make a continuous contribution to the Marketing Fund in an amount equal to 4% of the Net Sales unless the Restaurant is located in a non-traditional venue, in which case the Marketing Fund contribution will equal 2% of Net Sales. As of the date of this Disclosure Document, all new franchisees under the System are required to contribute these percentages of their Net Sales towards the Marketing Fund. However, certain franchisees who executed older forms of Agreements or that operate in non-traditional franchise venues may contribute a lower percentage of their sales towards the Marketing Fund. The Marketing Fund is maintained and administered by Dickey's or its designee, in its sole discretion, as follows:

The Marketing Fund is intended to maximize general public recognition and acceptance of the Proprietary Marks. Dickey's will direct all programs that the Marketing Fund finances, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. DBP, RGI and PTI will contribute to the Marketing Fund on behalf of company-operated Restaurants at the same rate as franchised Restaurants that opened at the same time. In administering the Marketing Fund, Dickey's and its designees are not required to make expenditures for you which are equivalent or proportionate to your contribution or to ensure that any particular franchisee benefits directly or pro rata from the placement of advertising.

The Marketing Fund may be used by Dickey's in its sole discretion to satisfy or defray any and all costs of maintaining, administering, directing and preparing marketing campaigns, promotions and advertising, including the cost of preparing and conducting television, radio, internet/web-based, magazine, newspaper, and electronic media advertising campaigns; developing, implementing, and maintaining an electronic commerce website and/or related strategies; the cost of market research, costs of administering customer loyalty programs, direct mail and outdoor billboard advertising; public relations activities; employing advertising agencies to assist therein; costs of Dickey's personnel and other departmental costs for advertising that is internally administered or prepared by Dickey's; costs associated with customer loyalty programs; costs of providing other advertising materials to Restaurants; and costs of maintaining national "1-800" customer and/or franchisee service telephone numbers if Dickey's elects to establish this service. All sums paid by you to the Marketing Fund will be maintained in a separate account by Dickey's or its designees and will not be used to defray any of Dickey's general operating expenses, except for such reasonable administrative costs, salaries and overhead, that Dickey's may incur in activities reasonably related to the administration or direction of the Marketing Fund and development and implementation of marketing programs for franchisees and the System. Any funds not spent in the fiscal year in which they accrue will be carried forward and used in connection with

advertising activities conducted during the following fiscal year. The Marketing Fund will not be used by Dickey's for the targeted purpose of promoting franchise sales, but application of the Marketing Fund may indirectly benefit franchise sales. The Marketing Fund and its earnings will not otherwise inure to the benefit of Dickey's and will be operated solely as a conduit for collecting and expending the advertising fees as outlined above.

A statement of the operations of the Marketing Fund will be prepared annually by Dickey's and will be made available to you upon request, as well as an accounting of Marketing Fund expenditures. Dickey's is not obligated to provide an accounting of each marketing program and spend for your individual Restaurant. The Marketing Fund is audited on an annual basis as part of Dickey's annual audit. For fiscal year ending May 31, 2015, monies in the Marketing Fund were expended as follows:

<u>Category</u>	<u>Percentage</u>
Administrative	6.84%
Production	14.99%
Media Placement	57.73%
Other <sup>1</sup>	20.44%

Although the Marketing Fund is intended to be of perpetual duration, Dickey's may terminate the Marketing Fund in its discretion. The Marketing Fund will not be terminated, however, until all monies in the Marketing Fund have been expended for advertising or promotional purposes or returned to contributing franchised or company-operated Restaurants, without interest, on the basis of their respective contributions. (Franchise Agreement - Article 5).

### **Technology**

Before commencement of the operation of the franchised Restaurant, you must purchase the required computer hardware, software, internet connections and service, required dedicated telephone and power lines and other related accessories, peripherals, consoles and equipment required to operate Dickey's then-current mandatory point of sale system and Technology in a Box. Dickey's requires that its franchisees use the Aloha Point-of-Sale system (including such add-on consoles as Dickey's may require). The Aloha Point-of-Sale system is available from Radiant Systems, Inc., the only supplier currently approved by Dickey's. The current cost of this point of sale system is approximately \$10,000 to \$15,000. Dickey's requires that you implement and use a reporting system as approved by Dickey's. Dickey's is currently exploring alternative point of sale systems and may select a different vendor as the approved vendor for point of sale systems in the Restaurants. If (and when) Dickey's selects a new point of sale systems, Dickey's may require you to convert to the new system.

The Smokestack sales reporting system, a product of Spark, is currently the only supplier approved by Dickey's for sales reporting software. (See Item 6) The Smokestack sales reporting system is used to provide you with sales data and customizable reports regarding your Restaurant to assist you in the management of your Restaurant. The Smokestack Customer Agreement which you must sign requires you pay a per Restaurant and user fee for access to the system as well as an infrastructure support fee to support data infrastructure related to data store, data transfers, POS integration and BOSS integration. You may (at your portion) request store and district level data interpretation and email broadcasts for additional fees payable to Spark. Spark may changes the fees and institute new fees for the use of the Smokestack sales reporting system or system-support effective on 30 days' notice to you. Dickey's also requires that you pay a Technology Support Fee (see Item 6), which is used by Dickey's, in its sole discretion, to provide basic technology support for point-of sale, back of house computer, and other basic office equipment to its franchisees during Restaurant operating hours. We may modify the Technology Support Fee once each calendar year on at least 60 days' prior written notice to cover the costs of technology support and implementation of new technology. You must maintain the point of sale system and related consoles and keep them in good repair. Dickey's may at any time require that you upgrade

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<sup>1</sup> The category of "Other" includes Branding Support Social Media and Public Relations.

payment processing hardware and software including requiring you use "chip and pin" technology, to ensure that credit card payment processing is consistent with the current PCI standards.

Dickey's requires the use of its proprietary "Technology in a Box" support system ("TIBS") that provides in-store technology to facilitate store operations, marketing, and data capture and reporting. The equipment will be purchased or leased to each franchisee by Dickey's approved vendor, which as of the Effective Date, is expected to be General Datatech, 999 Metromedia Place, Dallas, Texas 75247. The current cost of the initial technology package ranges between \$7,000 and \$9,000 and includes a tablet computer, router, wireless access point to offer a free to customer in-Restaurant WiFi hot spot, customer loyalty program and guest feedback data capture software, and reporting and interface software for polling data from the point of sale system during the operating hours of the Restaurant. You must maintain high speed commercial internet service with a local provider that will connect the TIBS to the internet.

Dickey's may require you to purchase, license and use point of sale systems, operations, catering, on-line ordering, delivery, back office, accounting, customer service, loyalty program processing and other hardware and software in the operation of your Restaurant, including additions, upgrades, enhancements and replacements of the current software and hardware (including TIBS and point of sale systems). Some or all of these may be developed, supplied or licensed by or on behalf of Dickey's or an affiliate, at such cost as Dickey's or its approved vendors make such systems, hardware, software, upgrades, enhancements and replacements available to franchisees. The cost of maintaining, updating, upgrading or replacing your point of sale system and other required technology cannot be estimated at this time because it will depend on your repair history, local costs of computer maintenance and service in your area and technological advances which Dickey's cannot predict. (Franchise Agreement - Article 8).

The point of sale system will store information concerning your sales, inventory, accounting and other operations. You may not further modify or manipulate (except for pricing) the database for the computer software systems without Dickey's prior consent. Dickey's may retrieve from your point of sale system and other technology any and all information we consider necessary, desirable or appropriate. There is no contractual limitation on Dickey's right to access information from your point of sale system or other required technology. If necessary, Dickey's may utilize remote access to provide required upgrades and installation of hardware your point of sale system and TIBS. You will have independent access to the information that will be generated or stored in the point of sale and reporting system, but you may not manipulate the data that is generated or block or restrict Dickey's access to the data. (Franchise Agreement - Article 8)

### **Operations Manual**

Before buying a franchise, you may view the Operations Manual after you and all of the individuals you include as part of your group sign and return to us the Non-Disclosure Agreement attached to this Disclosure Document as Exhibit G. The Non-Disclosure Agreement binds you to certain additional covenants prohibiting your solicitation of certain employees and opening a competitive restaurant. See Exhibit G.

### **Training**

Not later than 60 days before the opening date of the Restaurant, your Owner/Operator and two other managers are required to have completed, to Dickey's satisfaction, Dickey's initial training program. Each participant must satisfy Dickey's then-current requirements for admission to the initial training program. To be admitted into the initial training program, Dickey's currently requires that each potential trainee has (a) attended and successfully completed at its own cost such ServSafe training classes and obtained the ServSafe Food Manager Certificates and such other ServSafe certifications required by Dickey's, (b) successfully completed a phone interview with a representative of Dickey's, (c) delivered to Dickey's fully completed copies of Dickey's current application forms and payment of the training fees for the initial training program, and (d) completed all other pre-training requirements, as identified in the Manuals. Dickey's intends to offer initial training monthly. Training for the Owner/Operator will be conducted at

Dickey's corporate training center and/or at a company-operated Restaurant or another location designated by Dickey's. Currently, all such locations are in the North Texas area. Training for the two managers will be completed online and certification will occur just before the Restaurant opening. Dickey's will determine, in its sole discretion, whether your employees have satisfactorily completed initial training. Dickey's anticipates that completion of the initial training program for the Owner/Operator will require up to four weeks. If any of your designated participants fail to meet the admission requirements for the initial training program, if the initial training program is not satisfactorily completed by your trainees after meeting the admission requirements, or if Dickey's, in its reasonable business judgment based upon the performance of your trainees, determines that the initial training program cannot be satisfactorily completed by such person(s), you must immediately designate a replacement trainee(s), as applicable, to apply for and complete such training within 30 days from the date of any such occurrence (but in any event not later than 60 days before the opening date of the Restaurant). (Franchise Agreement - Articles 3, 8 and 9).

If you fail to designate replacement trainee(s) who have satisfied the admission requirements, if the initial training program is not satisfactorily completed by any replacement trainee (or the initial trainee, if no replacement is designated) by the deadline set forth above, or if Dickey's determines that the training program cannot be satisfactorily completed by such person(s), Dickey's may, in its sole discretion, delay the opening of your Restaurant or terminate the Franchise Agreement upon notice to you and retain the Franchise Fee and any other fees paid by you under the Franchise Agreement. (Franchise Agreement - Articles 3, 8 and 9).

Dickey's will provide instructors and training materials for the initial training program at a cost to you of \$1,000 for each Owner/Operator and any other individual(s) you designate and Dickey's approves to attend initial training at Barbecue University and \$1,500 for online and on-site training of up to 2 managers during the Restaurant opening which includes manager certification. You must pay Dickey's an additional \$750 for training any successor or replacement manager, which includes manager certification. The training materials currently consist of the Manuals (including the Operations Manual, recipe book, training manual and marketing catalog), checklists, demonstrations and on the job-training. Dickey's reserves the right to charge additional amounts for uniforms. In addition, you are responsible for all expenses incurred by your trainees in connection with any initial training program including costs of travel, lodging, meals, and wages. (Franchise Agreement - Articles 3, 8 and 9).

The Owner/Operator and your employees may attend such additional or remedial training programs and seminars as Dickey's may offer. All certified managers shall be required to complete 12 credit hours of continuing education courses per year at a rate of one credit hour per month. Should a certified manager not fulfill the one credit hour per month requirement, that manager will lose their certified status and be required to complete Dickey's field certification program in order to be recertified. All hourly employees shall be required to be certified with Dickey's online training within 15 days of starting work. If any hourly employee fails to pass the online training, he or she shall repeat the online training until he or she passes. At Dickey's discretion, such additional training (including on-site remedial training), will be mandatory for such individuals and other Restaurant personnel as required by Dickey's. For all such training, Dickey's will provide the instructors and training materials; however, Dickey's reserves the right to impose a reasonable fee for such training, including costs of travel, lodging, meals, and wages for Dickey's representatives. You are responsible for any and all expenses incurred by you or your trainees in connection with such additional training including the costs of travel, lodging, meals, and wages. (Franchise Agreement - Articles 3, 8 and 9).

In connection with the opening of the Restaurant, Dickey's will provide you with at least one trained representative of Dickey's to provide on-site training, supervision and assistance, with respect to such matters and for such period of time determined by Dickey's in its sole discretion. The on-site training, supervision and assistance for consecutive days and may be provided either before and/or after the opening of the Restaurant. Except as otherwise provided in this Item 11, you will be responsible for training all Restaurant personnel under the specifications and standards regarding such training described in the Manuals or otherwise in writing by Dickey's. (Franchise Agreement - Article 9).



Dickey's training program is run by Steve Hawter. Mr. Hawter has been with Dickey's since October 2013 and has 38 years of restaurant experience. The following individuals are also training program instructors for Dickey's: Chris Kelly who has been with Dickey's for 4 years and has 22 years of restaurant experience; Andrew Nichols who has been with Dickey's for 2 year and 4 months and has 23 years of restaurant experience; Chris Patterson who has been with Dickey's for 1 year and has 24 years of restaurant experience; David Schmidt who has been with Dickey's for 1 year and has 29 years of restaurant experience; and Scott Nelson who has been with Dickey's for 1 year and has 15 years of restaurant experience.

Below is a summary of the subject matters, hours of classroom training, hours of on-the-job training and the location for Dickey's initial training program.

<b>TRAINING PROGRAM</b>			
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Restaurant Operation	Up to 8	Up to 66	Dickey's corporate training center, or at another Restaurant or location designated by Dickey's
Food Preparation and Service	Up to 8	Up to 40	Dickey's corporate training center, or at another Restaurant or location designated by Dickey's
Station Training	Up to 4	Up to 4	Dickey's corporate training center, or at another Restaurant or location designated by Dickey's
Purchasing	Up to 8	Up to 8	Dickey's corporate training center, or at another Restaurant or location designated by Dickey's
Accounting and Controls	Up to 24	Up to 12	Dickey's corporate training center, or at another Restaurant or location designated by Dickey's
Marketing and Advertising	Up to 18	Up to 8	Dickey's corporate training center, or at another Restaurant or location designated by Dickey's
Catering	Up to 20	Up to 14	Dickey's corporate training center, or at another Restaurant or location designated by Dickey's
<b>TOTAL</b>	<b>Up to 90</b>	<b>Up to 152</b>	

## ITEM 12 TERRITORY

The Franchise Agreement grants to you the right to operate a Restaurant at a single location selected by you and approved by Dickey's. You will offer the approved products and services of the System only through your Restaurant. You do not have the right to use alternative channels of distribution (e.g.,

catalog sales, internet sales, etc.) in connection with offering the products and services of the System unless otherwise approved by Dickey's.

The Restaurant will be located within a designated geographic area (the "Assigned Area") as described in the Franchise Agreement. At such time as you propose and Dickey's accepts your proposed Restaurant location identified by a specific street address within the Assigned Area so that it becomes the "Accepted Location," the Assigned Area shall automatically and without further writing be reduced to an area within a one (1)-mile radius of the Accepted Location (the "Primary Area"). Dickey's may request that you confirm the specific physical address of the Accepted Location in a writing provided by or acceptable in form and substance to Dickey's that you sign and deliver to Dickey's. You are required to operate the Restaurant only at this Accepted Location and may not relocate the Restaurant without Dickey's prior written consent based upon its sole judgment and discretion. Your Franchise Agreement does not give you any options, rights of first refusal or similar rights to acquire additional franchises, but you may apply for the right to operate additional Restaurants under separate Franchise Agreements.

When and if the Assigned Area converts to the Primary Area, Dickey's will not, except as provided below and as long as you are in full compliance with the Franchise Agreement, establish and operate or license or authorize any other party to establish or operate a Dickey's Barbecue Restaurant within the Primary Area for the balance of the Term of the Franchise Agreement. Except as expressly limited by the previous sentence, Dickey's and its affiliates retain all rights with respect to Restaurants, the Proprietary Marks, the sale of similar or dissimilar products and services, and any other activities Dickey's deems appropriate whenever and wherever Dickey's desires. Specifically, Dickey's and its affiliates reserves the following rights:

- (1) the right to establish and operate, and to grant to others the right to establish and operate businesses offering similar or dissimilar products and services through similar or alternative channels of distribution, at any locations inside or outside the Assigned Area or Primary Area under trademarks or service marks other than the Proprietary Marks and on any terms and conditions Dickey's deems appropriate. Neither Dickey's nor any of its affiliates currently plan to operate or franchise businesses under a different mark which will offer goods or services similar to those offered under the System. Dickey's is not required to compensate you in any way for offering or selling in your Assigned Area or Primary Area any of the products or services described in this paragraph;
- (2) the right to offer and sell (and authorize others to offer and sell) products and services which may be the same or similar to those offered by Restaurants, under the Proprietary Marks in the Assigned Area and Primary Area, if offered and sold through a distribution channel other than a Restaurant (e.g., product and catalog sales, internet sales, grocery store or supermarket sales, warehouse store sales, memorabilia or recipes through other retail outlets, and other channels of distribution) ("Alternative Channel Products"). The Alternative Channel Products may be packaged for retail sale, and Dickey's may request or require franchisees to sell or advertise the Alternative Channel Products in their Restaurants. Dickey's may, in its discretion, contribute a percentage of its revenues from the sale or license of Alternative Channel Products to the Marketing Fund. Dickey's may offer and sell (and may authorize others to offer and sell) products and services through alternative distribution channels, such as product and catalog sales, internet sales, grocery store sales, and other channels of distribution in the Assigned Area or Primary Area which may be similar to those offered by the Restaurants, under names and marks other than the Proprietary Marks;
- (3) the right to, and to grant to others the right to, at any time, advertise and promote the System, or fulfill customer orders (including catering and delivery services) in the Assigned Area and the Primary Area;
- (4) the right to establish and operate, and to grant to others the right to establish and operate, businesses offering dissimilar products and services, both inside and outside the Assigned Area or Primary Area under the Marks and on any terms and conditions we deem appropriate;

- (5) the right to operate, and to grant others the right to operate Restaurants located anywhere outside the Assigned Area or Primary Area under any terms and conditions we deem appropriate and regardless of proximity to your Restaurant;
- (6) the right to, directly or indirectly, operate, license, or grant a franchise to operate a Restaurant or any other food offering service within the Assigned Area or Primary Area if the location of the Restaurant is in a non-traditional venue including a stadium, corporate campus, shopping mall, airport, military base, health care facility, limited access highway rest stop, college or university campus, theme park, truck stop, casino or similar location;
- (7) the right to acquire the assets or ownership interests of one or more businesses providing products and services similar to those provided at Restaurants, and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating (including in the Assigned Area or Primary Area); and
- (8) the right to be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at Restaurants, or by another business, even if such business operates, franchises and/or licenses competitive businesses in the Assigned Area or Primary Area.

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

Dickey's, DBP, RGI, PTI, Love Field JV and any other Dickey's franchisee may also, at any time, advertise and promote the System, and may solicit, accept and fulfill consumer orders (including by providing catering and delivery services) in the Primary Area.

During the term of the Franchise Agreement, the territorial rights granted to you are not dependent upon the achievement of a certain sales volume, market penetration or other contingency, nor are there any circumstances which permit Dickey's to modify your territorial rights without your approval prior to the expiration or termination of the Franchise Agreement. Except as provided in any Development Agreement, you will not be granted any options, rights of first refusal or similar rights to acquire additional franchises.

Under a Development Agreement, you are assigned a geographic area (the "Territory") within which you are required to develop two or more Restaurants under a prescribed development schedule. Each Territory will be divided into a series of "Markets" to be developed. The size of the Territory may range from a portion of a city or an unincorporated area to a single or multi-county or single state area and will be described in the Development Agreement by reference to a description, an area marked on a map, streets or highways, political jurisdiction boundaries, by an area encompassed within a radius of a specific distance (or a range of distances) or of a distance sufficient to encompass a specified population (or range of populations) or by such other method of delineation as Dickey's may prescribe.

Subject to your full compliance with the Development Agreement and the remaining part of this paragraph, neither Dickey's nor its affiliates will establish, or authorize any other person or entity, other than you, to establish, a Restaurant in the Territory during the term of the Development Agreement; provided, however, that such exclusivity will terminate with respect to each Market included within the Territory upon execution of the last Franchise Agreement required to fulfill the obligation for such Market. At that time, the Primary Area for each Restaurant in the Market will remain as the only territorial protection in the Market and Dickey's is free to franchise or open Restaurants outside those Primary Areas. Dickey's, any Dickey's franchisee, and any other authorized person or entity may, at any time, advertise and promote the System, or fulfill customer orders (including providing catering and delivery services) in the Territory. Dickey's may also offer and sell (and may authorize others to offer and sell) products and services which may be similar to those offered by the Restaurants, under the Proprietary Marks in the Territory or elsewhere, if offered and sold other than through a Restaurant (e.g., product and

catalog sales, internet sales, grocery stores, and other channels of distribution) and Dickey's may offer and sell (and may authorize others to offer and sell) in the Territory or elsewhere, products and services, which may be similar to those offered by the Restaurants through alternative distribution channels, such as product and catalog sales, internet sales, grocery store sales, and other channels of distribution, under names and marks other than the Proprietary Marks. Neither Dickey's nor any of its affiliates currently plan to operate or franchise a business under a different mark which will offer goods or services similar to those offered under the System. Dickey's is not required to compensate you in any way for offering or selling in your Territory any of the products or services described in this paragraph. Further, Dickey's reserves the right to, directly or indirectly, operate, license, or grant a franchise to operate a Restaurant or any other food offering service within the Territory if the location of the Restaurant is in a non-traditional venue including a stadium, corporate campus, shopping mall, airport, military base, health care facility, limited access highway rest stop, college or university campus, theme park, truck stop, casino or similar location.

Each franchisee may solicit and accept orders from customers, and deliver catering orders outside the Primary Area. Dickey's catering system prioritizes catering orders received by telephone or on Dickey's web site according to the distance between the delivery location and the nearest Restaurants. You may compete with other Dickey's franchised and affiliate-owned Restaurants for off-premises catering and delivery orders, which may be delivered to locations in your Primary Area or in the Primary Area of another Restaurant. Franchisees may not use alternate distribution channels, such as product and catalog sales, grocery store sales, and other channels of distribution, to promote sales to customers outside of the Territory. All customer orders must be delivered on a ready to eat basis in the Restaurant for on-premises dining or take out, or by the Restaurant's cargo van or a third party local delivery service.



Under the Development Agreement, you must develop each of the first three Restaurants by the end of successive eight month development periods. If you agree to develop more than three Restaurants, you must develop the fourth and each additional Restaurant within development periods of six months. When you develop a Restaurant in a Market, the Territory is modified to delete the Market and your territorial rights in the Market will be defined by the Primary Area under the Franchise Agreement for that Restaurant. The territorial rights granted to you under the Development Agreement are not dependent upon the achievement of a certain sales volume, market penetration or other contingency except as stated in the following paragraph. Also, except as stated in the following paragraph, there are no circumstances under which the Territory may be altered prior to the expiration or termination of the Development Agreement.

If you fail to timely open the minimum number of Restaurants in compliance with the development schedule as required in the Development Agreement or otherwise commit a material event of default under the Development Agreement as described in Item 17, Dickey's may, in addition to other remedies, terminate, modify or reduce the Territory granted to you. If you develop a Restaurant outside of your Territory, then Dickey's will modify the Territory granted to you in your Development Agreement by requiring you to release a Market in your Territory.



### ITEM 13 TRADEMARKS

The Franchise Agreement grants you the right to use certain trademarks, trade names, service marks, symbols, emblems, logos and indicia of origin designated by or licensed to Dickey's, including the Mark (collectively, the "Proprietary Marks"), only in the manner authorized by Dickey's and only for the operation of the Restaurant at the location specified in the Franchise Agreement. The Development Agreement does not grant you any right to use or any interest in the Proprietary Marks.

The Proprietary Mark displayed on the cover page of this Disclosure Document, the principal commercial symbol which Dickey's will license to you, and the other Proprietary Mark listed below, are each owned by DBP and registered on the U.S. Patent and Trademark Office principal register as follows:

TM/SN/RN/Disclaimer	Status/Key Dates	Full Goods/Services	Owner
DICKY'S BARBECUE PIT SINCE 1941 and Design  SN: 78-646939 RN: 3,205,121 Disclaimer: "SINCE 1941" AND "BARBECUE PIT"	Registered 8 & 15 September 18, 2012 Principal Register Int'l Class: 43 First Use: August 27, 2004 Filed: June 9, 2005 Published: November 21, 2006 Registered: February 6, 2007	(Int'l Class: 43) Restaurant, carry-out restaurant and catering services	Dickey's Barbecue Pit, Inc. (Texas Corp.) 4514 Cole Avenue Suite 1100 Dallas, Texas 75206
DICKY'S BARBECUE PIT ORIGINAL BARBECUE SAUCE  SN: 85-538384 RN: 4,249,206 Disclaimer: "BARBECUE PIT" AND "ORIGINAL BARBECUE SAUCE"	Registered November 27, 2012 Principal Register Int'l Class: 30 First Use: May 1, 1991 Filed: February 9, 2012 Published: September 11, 2012	(Int'l Class: 30) Baking spices; barbecue dry rub; barbecue sauce; barbecue sauce; cooking sauces; dry spice rub for meats and fish; edible spices; flavourings and seasonings; food seasonings; grilling sauces; marinade mixes; marinades; ready-made sauces; sauce mixes; sauces; sauces for barbecued meat; seasoned coating for meat, fish, poultry; seasoned coating mixtures for foods; seasoning mixes; seasoning pastes; seasonings; spice rubs; spices	Dickey's Barbecue Pit, Inc. (Texas Corp.) Suite 1015 4514 Cole Avenue Dallas, Texas 75205
DICKY'S BARBECUE PIT ORIGINAL BARBECUE RIB RUB	Registered November 27, 2012 Principal Register Int'l Class: 30	(Int'l Class: 30) Baking spices; barbecue dry rub; barbecue sauce; barbecue sauce; chicken	Dickey's Barbecue Pit, Inc. (Texas Corp.) Suite 1015

TM/SN/RN/Disclaimer	Status/Key Dates	Full Goods/Services	Owner
<p>Dickey's Barbecue Pit Original Barbecue Rib Rub</p> <p>SN: 85-538404 RN: 4,249,207 Disclaimer: "BARBECUE PIT" AND "ORIGINAL BARBECUE RIB RUB"</p>	<p>First Use: May 1, 1991 Filed: February 9, 2012 Published: September 11, 2012</p>	<p>wing sauce; dry spice rub for meats and fish; flavourings and seasonings; food seasonings; marinade mixes; marinades; ready-made sauces; sauce mixes; sauces; sauces for barbecued meat; seasoned coating for meat, fish, poultry; seasoned coating mixtures for foods; seasoning mixes; seasoning pastes; seasonings; spice rubs; spices</p>	<p>4514 Cole Ave. Dallas, Texas 75205</p>
<p>DICKEY'S BARBECUE PIT</p> <p>Dickey's Barbecue Pit</p> <p>SN: 85-548611 RN: 4,249,263 Disclaimer: "BARBECUE PIT"</p>	<p>Registered November 27, 2012 Principal Register Int'l Class: 43 First Use: January 1, 1941 Filed: February 21, 2012 Published: September 11, 2012</p>	<p>(Int'l Class: 43) Fast-food restaurant services; restaurant and cafe services; restaurant and catering services; restaurant services; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises</p>	<p>Dickey's Barbecue Pit, Inc. (Texas Corp.) Suite 1015 4514 Cole Ave. Dallas, Texas 75205</p>
<p>DICKEY'S</p> <p><b>DICKEY'S</b></p> <p>SN: 78-921121 RN: 3,237,281</p>	<p>Registered 8 &amp; 15 September 18, 2012 Principal Register Int'l Class: 43 First Use: 1941 Filed: June 30, 2006 Published: February 13, 2007 Registered: May 1, 2007</p>	<p>(Int'l Class: 43) Restaurant, carry-out restaurant and catering services</p>	<p>Dickey's Barbecue Pit, Inc. (Texas Corp.) 4514 Cole Avenue Suite 1100 Dallas, Texas 75206</p>
<p>BIG YELLOW CUP CLUB</p> <p>SN: 86/101,484 RN: N/A Disclaimer: "CLUB"</p>	<p>Principal Register Int'l Class: 35 First Use: January 1, 2006 Filed: October 25, 2013 Published: May 20, 2014</p>	<p>(Int'l Class: 35) Customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes.</p>	<p>Dickey's Barbecue Pit, Inc. (Texas Corp.) Ste. 1015 4514 Cole Ave. Dallas, Texas 75205</p>

TM/SN/RN/Disclaimer	Status/Key Dates	Full Goods/Services	Owner
A TEXAS TRADITION SINCE 1941 DICKEY'S BARBECUE PIT and Design   SN: 74-509594 RN: 1,980,072 Disclaimer: "A TEXAS TRADITION SINCE 1941" AND "BARBECUE PIT"	Renewed June 11, 2006 Principal Register Int'l Class: 42 First Use: June, 1994 Filed: April 6, 1994 Published: May 9, 1995 Registered: June 11, 1996	(Int'l Class: 42) Restaurant services	Dickey's Barbecue Pit, Inc. (Texas Corp.) 4514 Cole Avenue Suite 1100 Dallas, Texas 75206
DICKEY'S BARBECUE PIT (STYLIZED)   SN: 86/223,177 RN: N/A Disclaimer: "BARBECUE PIT"	Pending Principal Register Int'l Class: 43 First Use: May, 2013 Filed: March 17, 2014 Published: August 19, 2014	(Int'l Class: 43) Restaurant, carry-out restaurant and catering services	Dickey's Barbecue Pit, Inc. (Texas Corp.) 4514 Cole Avenue Suite 1015 Dallas, Texas 75205

All affidavits and renewals required to maintain the federal registration of the above-identified Proprietary Marks have been filed. No application for the registration of the Proprietary Marks has been filed in any state.

Dickey's acquired from DBP the right to use and license the use of the Proprietary Marks and System under a perpetual license agreement between Dickey's and DBP. Under the license agreement, Dickey's is specifically permitted to sublicense the use of the Proprietary Marks to you provided that Dickey's use of the Proprietary Marks is limited to (i) the promotion and operation of Restaurants by Dickey's or its licensees, the promotion, marketing and selling of franchises by Dickey's or its sublicensees, and any other use necessary or incident thereto and (ii) any other use approved in writing by DBP. Any other assignment or transfer of Dickey's rights under the license agreement requires the prior written consent of DBP. The license agreement cannot be modified without the written consent of Dickey's and DBP. Additionally, the license agreement is perpetual in duration, but it may be terminated if either Dickey's or DBP are in default under the license agreement and such default is not cured within 30 days of written notice of the same. A party is in default under the license agreement if (i) it breaches any covenant or agreement set forth in the agreement, (ii) it files or has filed against it a bankruptcy proceeding, (iii) a final non-appealable judgment in excess of \$10,000 is taken against it without being satisfied within 30 days, (iv) it generally fails to pay its debts as they become due, or (v) it is legally dissolved. If the license

agreement is terminated (i) Dickey's will no longer be entitled to utilize or license to new franchisees the right to use the Proprietary Marks, (ii) DBP will be entitled to use and license the Proprietary Marks, (iii) Dickey's must assign to DBP, upon DBP's request, Dickey's right, title and interest in and to all Franchise Agreements and (iv) any then-existing franchisee to whom the right to utilize the Proprietary Marks has been licensed may continue to utilize the Proprietary Marks until the expiration of the term of its Franchise Agreement and any renewal or option periods available or afforded to such franchisee at law or by agreement.

Except for the license agreement between Dickey's and DBP described above, there are no agreements currently in effect which significantly limit Dickey's rights to use or license the Proprietary Marks to you.

You are required to immediately notify Dickey's of any infringement or challenge to your use of the Proprietary Marks or claim by any person to any rights in any of the Proprietary Marks. You are not permitted to communicate with any person other than Dickey's and Dickey's counsel in connection with any such infringement, challenge, or claim. Dickey's has sole discretion to take such action as it deems appropriate and the right to exclusively control any litigation or Patent and Trademark Office or other administrative proceeding arising out of any infringement, challenge or claim or otherwise relating to any of the Proprietary Marks. You are required to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the opinion of Dickey's counsel, be necessary or advisable to protect and maintain Dickey's interests in any such litigation or Patent and Trademark Office or other administrative or other agency proceeding or to otherwise protect and maintain Dickey's interest in the Proprietary Marks.

Dickey's will indemnify you against and reimburse you damages for which you are held liable in any proceeding arising out of your use of any of the Proprietary Marks, provided that your conduct with respect to such proceeding and use of the Proprietary Marks is in compliance with the terms of the Franchise Agreement.

Except as provided above, Dickey's is not obligated by the Franchise Agreement to protect any rights granted to you to use the Proprietary Marks or to protect you against claims of infringement or unfair competition with respect to them. However, although Dickey's is not contractually obligated to protect the Proprietary Marks or your right to use them, as a matter of corporate policy, DBP and Dickey's intend to defend the Proprietary Marks vigorously.

Dickey's may require you to discontinue or modify your use of any of the Proprietary Marks or to use one or more additional or substitute trade names, service marks, trademarks, symbols, logos, emblems, and indicia of origin if Dickey's, in its sole discretion, determines that such addition or substitution will be beneficial to the System.

You are required to comply with Dickey's instructions in filing and maintaining the requisite trade name or fictitious name registrations and you must execute any documents deemed necessary by Dickey's or its counsel to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability. In addition, you may not directly or indirectly contest the validity of DBP's or Dickey's ownership in the Proprietary Marks.

Your rights to the Proprietary Marks granted in the Franchise Agreement are nonexclusive to you. Dickey's and DBP, therefore, have and retain, subject only to your rights in the Territory and in the Assigned Area (See Item 12), certain rights with respect to the Proprietary Marks, including the following rights:

1. To use and to grant other licenses for the use of the Proprietary Marks in addition to those licenses already granted to existing franchisees;



2. To develop and establish other systems using the Proprietary Marks or other names or marks and to use and to grant licenses or franchises thereto without providing any rights therein to you; and
3. To engage, directly or indirectly, through its employees, representatives, licensees, assigns, agents and others, at wholesale, retail or otherwise, in (i) the production, distribution, license and sale of products and services and (ii) the use in connection with such production, distribution, license and sale, of the Proprietary Marks and any and all trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs, and other identifying characteristics as may be developed or used by Dickey's.

There are no currently effective material determinations of the U.S. Patent and Trademark Office, the Trademark Trial and Appeal Board or any state trademark administrator or court regarding the Proprietary Marks, nor are there any pending infringement, opposition or cancellation proceedings regarding the Proprietary Marks. Further, there is no pending material federal or state court litigation regarding Dickey's use or ownership rights to the Proprietary Marks. There are no superior prior rights or infringing uses regarding the Proprietary Marks known to Dickey's which could materially affect your use of the Proprietary Marks.

#### **ITEM 14 PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION**

There are no patents or copyrights material to the franchise and Dickey's does not have any pending patent applications. There have not been any material determinations of the U.S. Patent Office, the U.S. Copyright Office or a court regarding any patent or copyright material to the franchise.

Dickey's claims a common law copyright, trade secret protection, and proprietary interests in the recipes, sauces, spice mixes and rubs, development and operating procedures and know-how contained in the Manuals or otherwise used in connection with the development and operation of the Restaurants. You and each person owning an equity interest in you are prohibited, during the term of your Agreement, and thereafter, from communicating, divulging or using for the benefit of any other person, persons, partnership, association, corporation or other entity any confidential information, knowledge or know-how concerning the methods of development and operation of the Restaurants which may be communicated to you, your Owner/Operator or any other person affiliated with you, or of which they may be apprised by virtue of your development and operation of a Restaurant under the terms of any Agreement. You are permitted to divulge this confidential information only to your Owner/Operator and manager(s) of your Restaurant and such other personnel who must have access to it in order to operate the Restaurant. Neither you nor your Owner/Operator or any other person affiliated with you are permitted at any time, without Dickey's prior written consent, to copy, duplicate, record or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person. Any and all information, knowledge, know-how and techniques used in or related to the System which Dickey's communicates to you, your Owner/Operator or any other person affiliated with you, including the Manuals, recipes, sauces, plans and specifications, marketing information and strategies and site evaluation and selection guidelines and techniques, are deemed confidential for purposes of the Agreements.

At Dickey's request, you must require any person who has an ownership interest in you or who otherwise has or will have access to any confidential information of Dickey's, to execute and deliver to Dickey's an agreement by which the signatory covenants and agrees to maintain the confidentiality of the information received by such person or entity in connection with their relationship with Dickey's.

If you or your Owner/Operator develop any new concept, process, or improvement in the operation or promotion of a Restaurant, you are required to promptly notify Dickey's prior to implementation and provide Dickey's with all necessary related information, without compensation. Dickey's reserves the right to approve any such new concept, process or improvement prior to implementation. You and your Owner/Operator acknowledge that any such concept, process, or improvement will become the property

of Dickey's and Dickey's may use or disclose such information to other franchisees or developers as it determines to be appropriate.

Except as disclosed in this Item 14, there are no present agreements which limit the use of any patent, patent application or copyright material to the franchise. Dickey's is not obligated to protect any patent or copyright, nor does Dickey's have any contractual obligation to defend its franchisees against any claims arising from a franchisee's use of patented or copyrighted materials.

Dickey's is not aware of any claims of any patent or copyright infringement which could materially affect you.

## **ITEM 15**

### **OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

You must designate and retain an individual to serve as the "Owner/Operator" under the Franchise Agreement. You must designate your Owner/Operator within 30 days after you sign the Franchise Agreement. The Owner/Operator must meet the following qualifications:

As a corporation, limited liability company, limited partnership, or any other entity, the Owner/Operator shall, at all times during which he or she serves as Owner/Operator, (i) directly or indirectly hold an ownership interest of 20% or more in your equity, (ii) work on a "full time" basis in the Restaurant, and (iii) be fully authorized, directed and entitled to manage and control the day-to-day business affairs of you and to take any action which you are required to take or omit to take under the Franchise Agreement, all in such Owner/Operator's sole discretion, and without the approval or joinder of any person or entity.

Dickey's only permits one person to serve as the Owner/Operator under a Franchise Agreement. The Owner/Operator is required to execute the Franchise Agreement and is bound by all of the obligations of the Franchise Agreement. You may not change your Owner/Operator without Dickey's prior written consent. The Owner/Operator is required to successfully complete Dickey's initial training program.

Dickey's requires that the Owner/Operator participate in the on-premises supervision of your Restaurant on a full time basis. Full time is considered to be at least 40 hours per week. The Owner/Operator shall be Dickey's sole point of contact with regard to franchise matters.

In addition to the Owner/Operator, you must appoint at least two managers per Restaurant to assist in the day-to-day management and supervision of each such Restaurant. Each manager must be appointed in a timely manner in order to satisfy each manager's initial training obligation under the Franchise Agreement, and must devote full time and best efforts to the daily management and supervision of the Restaurant. Managers are not required to have any equity interest in the franchise.

The Owner/Operator and each manager must meet any other of Dickey's standards and criteria for such positions, as set forth in the Manual or otherwise in writing by Dickey's.

The Owner/Operator and any manager must satisfy the training requirements set forth in the Franchise Agreement. If, during the term of the Franchise Agreement, the Owner/Operator or any manager is not able to continue to serve in such capacity or no longer qualifies to act as such under the Franchise Agreement, you must promptly notify Dickey's and designate a replacement within 30 days after the Owner/Operator or manager ceases to serve. Any replacement will be subject to the same qualifications listed above. You must provide for interim management of the Restaurant until a replacement is designated, and this interim management must be conducted in compliance with the Franchise Agreement.

You are required to retain such additional managers, chefs, and other persons as Dickey's deems necessary for the operation and management of the Restaurant. All such personnel must satisfy Dickey's

educational and business criteria as provided to you in the Manuals or otherwise and must be individuals acceptable to Dickey's. These individuals must also satisfy the applicable training requirements set forth in the Franchise Agreement and the Manuals.

You may not employ any individual who is at the time or was at any time during the prior six months employed in a managerial or administrative position by Dickey's or any of its subsidiaries or affiliates without the prior written consent of Dickey's. As a condition to such consent, you may be required to compensate the former employer for the reasonable costs and expenses incurred by the employer in connection with the training of any replacement employee.

If you own 3 or more Dickey's locations, you are considered a multi-unit operator and in lieu of appointing an Owner/Operator, we and you will sign an addendum to the Franchise Agreement under which you may appoint a Director of Operations. Any individual that will be designated as the Director of Operations must (i) hold an ownership interest of 5% or more in your equity, (ii) attend, and complete to Dickey's satisfaction, all required training programs and be certified as typically required of an Owner/Operator as provided in Article 9 of the Franchise Agreement, and (iii) work on a "full time" basis in the Restaurant(s).

Under the Franchise Agreement and the Manuals, at Dickey's request, you shall require and obtain from your Owner/Operator, and other person or entity affiliated with you who has received or will receive confidential information or training from Dickey's, the execution of covenants not to compete and to maintain the confidentiality of information they receive as part of their employment, management or ownership relationship with your Restaurant. These covenants must be similar to those set forth in Article 18 of the Franchise Agreement. The form of Confidentiality and Non-Competition Agreement we prescribe is attached to this Disclosure Document as **Exhibit G**.

Each person who owns an equity interest in you, including the Owner/Operator, is required to jointly and severally guaranty payment and performance of your obligations to Dickey's. An "equity interest" means ownership of common stock if you are a corporation, a partnership interest in a partnership, a membership interest in a limited liability company, and a trust beneficiary interest of a trust. In community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin), the spouses of each guarantor must also sign personal guarantees of the Agreements, which guarantee the payment and performance of your obligations to us. The guarantees are binding on the guarantors, their respective personal representatives (guardians, conservators, executors and administrators), heirs and legatees under Article 21 of the Franchise Agreement.

#### **ITEM 16**

#### **RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You are required to use the Restaurant premises solely for the operation of the Restaurant and must maintain business hours as provided for in the Manuals or as Dickey's may specify in writing. You may not use or permit the use of the premises for any other purpose or activity at any time without first obtaining the written consent of Dickey's.

You are required to meet and maintain the highest health standards and ratings applicable to the operation of the Restaurant. You must furnish to Dickey's, within three days after receipt, a copy of any inspection report, warning, citation, certificate, rating and any other document issued by any federal, state, local or other administrative agency, instrumentality or organization with respect to the health or safety conditions of the Restaurant.

To ensure that the highest degree of quality and service is maintained, you must operate the Restaurant in strict conformity with such methods, standards and specifications as required by law and as Dickey's may prescribe in the Manuals or otherwise in writing. You must maintain in sufficient supply and use and sell at all times only such food and beverage items, ingredients, products, materials, equipment, supplies and paper goods that conform to Dickey's standards and specifications and that are acquired from vendors or suppliers approved by Dickey's; prepare all menu items in compliance with Dickey's recipes and procedures for preparation contained in the Manuals or other written directives, including the

prescribed measurements of ingredients; and refrain from deviating from Dickey's standards and specifications by the use or offer of non-conforming items or differing amounts of any items, without Dickey's prior written consent. You are required to sell and offer for sale only such menu items, products and services as have been expressly approved for sale in writing by Dickey's; to refrain from any deviation from Dickey's standards and specifications without Dickey's prior written consent; and to discontinue selling and offering for sale any menu items, products or services which Dickey's may, in its discretion, disapprove in writing at any time. (See Item 8). Dickey's may discard of any food product, without compensation to you, during any on-site inspection, if such food product does not meet Dickey's standards and specifications.

You are required to offer for sale and sell at the Restaurant all menu items and other designated products and services (including gift cards) required by Dickey's and to provide such products and services in the manner and style prescribed by Dickey's, including dining-in, catering and carry-out services. Dickey's has the unlimited right to add, alter or discontinue the types of authorized goods and services which you may offer. You do not have the right to change the menu items and other designated products and services which you are required to offer and sell at the Restaurant. To the fullest extent allowed by law, we may regulate the maximum, minimum, or other prices you charge for your products and services, including your acceptance, redeeming, and applying of any coupons or other discount promotions that Dickey's requires. Subject to the general policies and procedures set forth in the Manuals or otherwise announced by Dickey's (and specifically including periodic promotions) you have sole discretion as to the prices to be charged to customers for the offer and sale of any menu items, products, merchandise, and services.

Dickey's has developed and will continue to develop for use in the System certain products which are prepared from highly confidential secret recipes and which are trade secrets of Dickey's. Because of the importance of quality and uniformity of production and the significance of such products in the System, it is to the mutual benefit of the parties that Dickey's closely control the production and distribution of such products. Accordingly, if such products become a part of the System, you must use only Dickey's secret recipe products and must purchase solely from Dickey's or from a source designated by Dickey's all of your requirements for such products.

Dickey's will make available at a reasonable cost and, at its option will require you to purchase from Dickey's for resale to your customers certain promotional merchandise identifying the System such as prepackaged barbecue sauce, chips, rolls and other food items, gift cards, T-shirts, sweatshirts, caps, and watches, in amounts sufficient to meet your customers' demand.

You are required to maintain competent, conscientious, and trained personnel to operate the Restaurant in compliance with the Franchise Agreement and the Manuals and to take such steps as are necessary to ensure that your employees preserve good customer relations, comply with such dress code and/or wear uniforms as Dickey's may prescribe in the Manuals or otherwise and observe reasonable standards of grooming and cleanliness.

Dickey's does not restrict your solicitation of customers. All advertising and promotion by you in any medium must conform to the standards and specifications of Dickey's set forth in the Manuals or otherwise and all advertising and promotional plans and materials must be approved by Dickey's prior to your use of such plans and materials.

**ITEM 17**  
**RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this Disclosure Document.

<b>THE FRANCHISE RELATIONSHIP</b>		
<b>Provision</b>	<b>Section in Franchise or Other Agreement</b>  [Article in Franchise Agreement/ <i>Article in Development Agreement</i> ]	<b>Summary</b>  [Items shown in plain bold-face text depict summary from Franchise Agreement / <i>Items shown in italicized text depict summary from Development Agreement</i> ]
a. Length of the franchise term	<b>Article 2/</b> <i>Article 4</i>	<b>20 years for Restaurants located in traditional venues or 10 years for Restaurants located in non-traditional venues, subject to periodic remodeling./</b> <i>Depends on the number of Restaurants you commit to open.</i>
b. Renewal or extension of the term	<b>Article 2/</b> <i>Not applicable.</i>	<b>If you are not in default you can renew franchise for 10 additional years./</b> <i>Not applicable.</i>
c. Requirements for franchisee to renew or extend	<b>Article 2/</b> <i>Not applicable.</i>	<b>The "renewal" of the franchise means that you may continue to operate the franchise at the existing location for an additional 10 years provided, among other things, that you execute Dickey's then-current Franchise Agreement which may contain materially different terms and conditions from the original Franchise Agreement. The requirements for the franchisee to renew or extend the franchise term include that you pay a renewal fee of \$10,000, sign a new franchise agreement in the then-current form which may contain materially different terms and conditions, comply with the requirements of the new agreement (including higher royalties and advertising contributions, but excluding any franchise or renewal fees), remodel, give 6-12 months' notice, satisfy all monetary obligations, provide evidence of your right to possession for the renewal term, execute a release (unless prohibited by applicable local law), comply with the then-current qualifications and training, and your franchise must be above the 50<sup>th</sup> percentile of Net Sales/complaint on a chain wide basis./</b> <i>Not applicable.</i>
d. Termination by franchisee	<b>Articles 16 and 17/</b>	<b>You may terminate the Franchise Agreement but will be required to, among other things,</b>

THE FRANCHISE RELATIONSHIP		
Provision	Section in Franchise or Other Agreement  [Article in Franchise Agreement/ Article in Development Agreement]	Summary  [Items shown in plain bold-face text depict summary from Franchise Agreement / Items shown in italicized text depict summary from Development Agreement]
	Article 6	make a lump sum payment of the royalty fees due for the remaining term of the Franchise Agreement (also see Item 17i., below)./ <i>You may terminate the Development Agreement but will be required to comply with the matters set forth in Item 17i.</i>
e. Termination by franchisor without cause	Article 16/ Article 6	<b>Dickey's has no such rights./</b> <i>Dickey's has no such rights.</i>
f. Termination by franchisor with cause	Article 16/ Article 6	<b>Dickey's can terminate only if a franchisee defaults./</b> <i>Dickey's can terminate if a developer defaults.</i>
g. "Cause" defined – curable defaults	Article 16/ Article 6	<b>Curable defaults include 7 days to cure nonpayment of monetary obligations, violations of Dickey's standards for Restaurant development and operations, misuse or unauthorized use of Proprietary Marks, breach of covenants (including non-competition covenants), purchase of food and beverage or other products or utilizing non-approved vendors or suppliers, or failure to pay vendors, unless you are in good faith contesting your liability for amounts you owe to such vendors. If any of these are repeated more than twice in any 12-month period, you have no cure period. You have 30 days to cure other breaches of the terms and conditions of the Franchise Agreement and Manual which are not provided above, unless such breaches are repeated more than twice in any 12-month period. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F/</b> <i>You have 30 days to cure breaches of the Development Agreement other than those set forth in Item 17.h. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F.</i>
h. "Cause" defined – non-curable defaults	Article 16/ Article 6	<b>Except as permitted under state law, non-curable defaults include bankruptcy or insolvency (Dickey's right to terminate the franchise upon a franchisee's bankruptcy may not be enforceable under federal bankruptcy law), failure to locate a proposed site or</b>

THE FRANCHISE RELATIONSHIP		
Provision	Section in Franchise or Other Agreement  [Article in Franchise Agreement/ Article in Development Agreement]	Summary  [Items shown in plain bold-face text depict summary from Franchise Agreement / Items shown in italicized text depict summary from Development Agreement]
		<p>acquire accepted location, merger, consolidation or dissolution, levy or foreclosure of your assets, judgments against you, failure to meet health and safety standards, breach of confidentiality or non-compete obligations, unapproved transfers, failure to open your Restaurant within 1 year, default under your lease or any financing agreement, cessation of operations of the Restaurant, threat to health and safety of the public arising out of the operation of the Restaurant, repeated defaults even if cured, or a default under any other agreement you have with Dickey's, its subsidiaries, or affiliates that is not cured within any applicable grace or cure period. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F/</p> <p><i>Except as permitted under state law, non-curable defaults include bankruptcy or insolvency (Dickey's right to terminate upon a developer's bankruptcy may not be enforceable under federal bankruptcy law), judgments against you, levy or foreclosure of your assets, failure to pay the Development Fee, failure to comply with the development schedule, failure to timely execute Franchise Agreements and to pay Franchise Fee, failure to timely open Restaurants or replacement Restaurants, conviction or plea of nolo contendere to certain offenses by your Owner/Operator, threat or danger to public health or safety resulting from construction, maintenance or operation of any Restaurant, failure to designate a replacement Owner/Operator, failure to comply with certain covenants, representations and warranties, transfer or attempted transfer of obligations under the Development Agreement, failure to affect an approved transfer upon death or disability, misuse of the Proprietary Marks, repeated material defaults, or a default under any other agreement you have with Dickey's, its subsidiaries, or affiliates. Your local law may supersede this provision. See Disclosure Document Addenda for</i></p>

THE FRANCHISE RELATIONSHIP		
Provision	Section in Franchise or Other Agreement  [Article in Franchise Agreement/ Article in Development Agreement]	Summary  [Items shown in plain bold-face text depict summary from Franchise Agreement / Items shown in italicized text depict summary from Development Agreement]
		<i>Certain States at Exhibit F.</i>
i. Franchisee's obligations on termination/non-renewal	<b>Article 17/ Article 6</b>	<b>Obligations include ceasing operation of your Restaurant, making a lump sum payment of liquidated damages (described in Item 6), ceasing use of confidential information and the Proprietary Marks, retention on the Day One Deposit if termination occurs before the Restaurant Opens as liquidated damages, completing the de-identification with Dickey's, at Dickey's option, assigning your lease and telephone number to Dickey's or its designee, payment of Dickey's damages, costs, and expenses and other fees, returning all Manuals, materials, files and customer lists, delivering access to all social media accounts, selling to Dickey's, at Dickey's option, all of your assets, and complying with confidentiality covenants (also see Item 17r., below)./</b> <i>Obligations include loss, reduction or modification of Territory and compliance with non-competition covenants.</i>
j. Assignment of contract by franchisor	<b>Article 15/ Article 7</b>	<b>No restriction on Dickey's right to assign./</b> <i>No restriction on Dickey's right to assign.</i>
k. "Transfer" by franchisee-defined	<b>Article 15/ Article 7</b>	<b>Includes transfer of contract or assets or ownership change./</b> <i>Includes transfer of contract or assets or ownership change.</i>
l. Franchisor approval of transfer by you	<b>Article 15/ Article 7</b>	<b>Dickey's has the right to approve all transfers (except transfers which are not of a "controlling interest" and transfers of less than 1% interest in publicly held corporations) but will not unreasonably withhold approval./</b> <i>Dickey's has the right to approve all transfers (except for transfers which are not of a "controlling interest" and transfers of less than 1% interest in publicly traded corporations) but will not unreasonably withhold approval.</i>
m. Conditions for franchisor approval of transfer	<b>Article 15/ Article 7</b>	<b>Except as permitted under state law, conditions include payment of a \$10,000 transfer fee (or such greater amount if Dickey's costs and expenses exceed this amount), receipt of payment of all monetary</b>



THE FRANCHISE RELATIONSHIP		
Provision	Section in Franchise or Other Agreement  [Article in Franchise Agreement/ Article in Development Agreement]	Summary  [Items shown in plain bold-face text depict summary from Franchise Agreement / Items shown in italicized text depict summary from Development Agreement]
		<p>obligations, no default under any agreements, execution of a general release (to the extent not prohibited under applicable law), execution of an agreement by the new franchisee to assume your obligations, if required, execution of a new Franchise Agreement and other agreements, you remain liable for all of your obligations, the new franchisee completes training and otherwise qualifies and the new franchisee renovates the Restaurant as required./</p> <p><i>Except as permitted under state law, conditions include payment of a \$10,000 transfer fee (or such greater amount if Dickey's costs and expenses exceed this amount), payment of all monetary obligations, no default under any agreements, execution of a general release (to the extent not prohibited under applicable law), execution of an agreement by the new developer to assume your obligations, if required, execution of a new Development Agreement and other agreements, you remain liable for all of your obligations and new developer satisfies Dickey's requirements for a developer.</i></p>
n. Franchisor's right of first refusal to acquire franchisee's business	<b>Article 15/</b> <i>Article 7</i>	<p><b>Dickey's can match an offer for the franchisee's business./</b></p> <p><i>Dickey's can match an offer for the developer's business.</i></p>
o. Franchisor's option to purchase franchisee's business	<b>Article 17/</b> <i>N/A</i>	<p><b>Dickey's has option to purchase the assets of your business upon termination of the franchise./</b></p> <p><i>Dickey's does not have any such option.</i></p>
p. Death or disability of franchisee	<b>Article 15/</b> <i>Article 7</i>	<p><b>Interest in franchise must be transferred to an approved person within 12 months in the event of death and 6 months in the event of disability./</b></p> <p><i>Interest in development rights must be transferred to an approved person within 12 months in the event of death and 6 months in the event of disability.</i></p>

THE FRANCHISE RELATIONSHIP		
Provision	Section in Franchise or Other Agreement  [Article in Franchise Agreement/ Article in Development Agreement]	Summary  [Items shown in plain bold-face text depict summary from Franchise Agreement / Items shown in italicized text depict summary from Development Agreement]
q. Non-competition covenants during the term of the franchise	<b>Article 18/ Article 8</b>	<b>You will not divert any business or customer to a competitor and you will not be involved in a competing restaurant./</b> <i>You will not divert any business or customer to a competitor and you will not be involved in a competing restaurant.</i>
r. Non-competition covenants after the franchise is terminated or expires	<b>Article 18/ Article 8</b>	<b>No competing business for 2 years within 30 miles of your Restaurant or within 5 miles of another Restaurant (including after assignment)./</b> <i>No competing business for 2 years within 5 miles of the boundary of the Territory or within 5 miles of another Restaurant.</i>
s. Modification of the agreement	<b>Article 25/ Article 14</b>	<b>Generally, no modifications without your consent, except Dickey's may unilaterally change the scope of the competition covenants, Proprietary Marks and Manual./</b> <i>Generally, no modifications without your consent, except Dickey's may unilaterally change the scope of the competition covenants and the Proprietary Marks.</i>
t. Integration/merger clause	<b>Article 25/ Article 14</b>	<b>Only the terms of the Franchise Agreement are binding (subject to state law), except nothing in the Franchise Agreement disclaims the representations made in this Disclosure Document or its attachments and addenda. Any other promises or representations may not be enforceable.</b> <i>Only the terms of the Development Agreement are binding (subject to state law), except nothing in the Development Agreement disclaims the representations made in this Disclosure Document or its attachments or addenda. Any other promises or representations may not be enforceable.</i>
u. Dispute resolution by arbitration or mediation	<b>Article 27/ Article 14</b>	<b>Except for certain claims, all disputes must be mediated and, if not resolved, arbitrated, in Texas unless contrary to applicable state law./</b> <i>Except for certain claims, all disputes must be mediated and, if not resolved, arbitrated, in Texas unless contrary to applicable state law.</i>

THE FRANCHISE RELATIONSHIP		
Provision	Section in Franchise or Other Agreement  [Article in Franchise Agreement/ Article in Development Agreement]	Summary  [Items shown in plain bold-face text depict summary from Franchise Agreement / Items shown in italicized text depict summary from Development Agreement]
v. Choice of forum	<b>Article 27/ Article 14</b>	<p><b>Subject to arbitration requirement, litigation must be in the state district courts of Collin County, Texas or the U.S. District Court for the Eastern District of Texas, Sherman Division except as otherwise required by applicable state law./ Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F.</b></p> <p><i>Subject to arbitration requirement, litigation must be in the state district courts of Collin County, Texas or the U.S. District Court for the Eastern District of Texas, Sherman Division except as otherwise required by applicable state law. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F.</i></p>
w. Choice of law	<b>Article 27/ Article 14</b>	<p><b>Except for Federal Arbitration Act and other federal law, Texas law applies except as otherwise required by applicable state law./ Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F.</b></p> <p><i>Except for Federal Arbitration Act and other federal law, Texas law applies except as otherwise required by applicable state law. Your local law may supersede this provision. See Disclosure Document Addenda for Certain States at Exhibit F.</i></p>

## ITEM 18 PUBLIC FIGURES

Dickey's currently does not use, compensate or provide any benefit to any public figure to promote its franchise, but reserves the right to do so in the future.

## ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (i) a franchisor provides the actual records of an existing outlet you are considering buying; or (ii) a franchisor supplements the

information provided in this Item 19, for example, by providing information about performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's Legal Department by contacting General Counsel (at 801 E. Plano Parkway, #135, Plano, Texas 75074; Telephone Number: 972-423-2201), the Federal Trade Commission, and the appropriate state regulatory agencies.

## ITEM 20 OUTLETS AND FRANCHISEE INFORMATION

<b>TABLE NO. 1 SYSTEM-WIDE OUTLET SUMMARY FOR YEARS 2013 TO 2015</b>				
<b><u>Outlet Type</u></b>	<b><u>Year</u></b>	<b><u>Outlets at the Start of the Year</u></b>	<b><u>Outlets at the End of the Year</u></b>	<b><u>Net Change</u></b>
Franchised	2013	222	289	+67
	2014	289	406	+117
	2015	406	499	+93
Company-Owned	2013	8	11	+3
	2014	11	11	0
	2015	11	9	-2
Total Outlets	2013	230	300	+70
	2014	300	417	+117
	2015	417	508	+91

### **NOTES:**

1. The figures above and in each subsequent table presented in this Item 20 are for the fiscal years June 1, 2012 – May 31, 2013, June 1, 2013 – May 31, 2014, and June 1, 2014 – May 31, 2015.
2. Unless otherwise indicated, the company-owned Restaurants listed above and in each subsequent table presented in this Item 20 are owned by DBP, RGI, PTI, and Love Field JV.

<b>TABLE NO. 2</b> <b>TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS (OTHER THAN FRANCHISOR)</b> <b>FOR YEARS 2013 TO 2015</b>		
<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
ALABAMA	2013	0
	2014	0
	2015	1
ARKANSAS	2013	2
	2014	0
	2015	0
CALIFORNIA	2013	1
	2014	6
	2015	8
COLORADO	2013	3
	2014	2
	2015	4
FLORIDA	2013	1
	2014	1
	2015	2
IDAHO	2013	1
	2014	1
	2015	4
ILLINOIS	2013	1
	2014	0
	2015	0
GEORGIA	2013	1
	2014	3
	2015	1
MARYLAND	2013	0
	2014	0
	2015	1
MINNESOTA	2013	0
	2014	2
	2015	1

<b>TABLE NO. 2</b> <b>TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS (OTHER THAN FRANCHISOR)</b> <b>FOR YEARS 2013 TO 2015</b>		
<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
MISSOURI	2013	2
	2014	3
	2015	0
NEVADA	2013	0
	2014	0
	2015	1
NEW YORK	2013	0
	2014	3
	2015	0
NORTH CAROLINA	2013	0
	2014	2
	2015	0
NORTH DAKOTA	2013	0
	2014	1
	2015	1
OHIO	2013	0
	2014	0
	2015	1
PENNSYLVANIA	2013	0
	2014	0
	2015	1
TEXAS	2013	12
	2014	10
	2015	22
UTAH	2013	0
	2014	1
	2015	7
WISCONSIN	2013	1
	2014	3
	2015	2
WASHINGTON	2013	0
	2014	0
	2015	1

TABLE NO. 2 TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS (OTHER THAN FRANCHISOR) FOR YEARS 2013 TO 2015		
State	Year	Number of Transfers
Totals	2013	25
	2014	38
	2015	58

TABLE NO. 3 STATUS OF FRANCHISED OUTLETS FOR YEARS 2013 TO 2015								
State	Year	Outlets at Start of Year	Outlets Opened	Termination s	Non- Renewals	Reacquire d By Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
ALABAMA	2013	1	0					1
	2014	1	1					2
	2015	2	3					5
ARKANSAS	2013	2	0					2
	2014	2	0					2
	2015	2	6					8
ARIZONA	2013	2	1					3
	2014	3	3					6
	2015	6	0					6
CALIFORNIA	2013	18	11			1		28
	2014	28	25					53
	2015	53	28					81
COLORADO	2013	6	4					10
	2014	10	3					13
	2015	13	4					17
CONNECTICUT	2013	2	0					2
	2014	2	0	1				1
	2015	1	0				1	0
FLORIDA	2013	4	5			1		8
	2014	8	1			1	1	7
	2015	7	4				3	8
GEORGIA	2013	8	3					11
	2014	11	1				1	11
	2015	11	2					13

**TABLE NO. 3  
STATUS OF FRANCHISED OUTLETS  
FOR YEARS 2013 TO 2015**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired By Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
IDAHO	2013	3	0					3
	2014	3	3					6
	2015	6	1					7
ILLINOIS	2013	3	0				1	2
	2014	2	2				1	3
	2015	3	1					4
IOWA	2013	1	0					1
	2014	1	0				1	0
	2015	0	0					0
INDIANA	2013	2	0	0				2
	2014	2	3					5
	2015	5	1	1				5
KANSAS	2013	2	0					2
	2014	2	1					3
	2015	3	2					5
KENTUCKY	2013	1	0				1	0
	2014	0	0					0
	2015	0	2					2
LOUISIANA	2013	1	1				1	1
	2014	1	4					5
	2015	5	2					7
MARYLAND	2013	1	2					3
	2014	3	0				1	2
	2015	2	3	1				4
MICHIGAN	2013	1	1					2
	2014	2	4					6
	2015	6	2					8
MINNESOTA	2013	13	5				2	16
	2014	16					1	15
	2015	15	1	1			2	13
MISSISSIPPI	2013	5	2					7
	2014	7	3					10
	2015	10	1					11



**TABLE NO. 3  
STATUS OF FRANCHISED OUTLETS  
FOR YEARS 2013 TO 2015**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired By Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
MISSOURI	2013	7	0				1	6
	2014	6	1				1	6
	2015	6	2					8
MONTANA	2013	0	2					2
	2014	2	1					3
	2015	3	0					3
NEBRASKA	2013	3	2					5
	2014	5	2					7
	2015	7	4					11
NEVADA	2013	5	0					5
	2014	5	1					6
	2015	6	1					7
NEW JERSEY	2013	0						0
	2014	0						0
	2015	0	1					1
NEW MEXICO	2013	1	0				1	0
	2014	0	0					0
	2015	0	2					2
NEW YORK	2013	3	2				1	4
	2014	4	1					5
	2015	5	1	1			1	4
NORTH CAROLINA	2013	10	4					14
	2014	14	2					16
	2015	16	1				1	16
NORTH DAKOTA	2013	1	1					2
	2014	2	1					3
	2015	3	0					3
OHIO	2013	2	0					2
	2014	2	3					5
	2015	5	3					8

**TABLE NO. 3  
STATUS OF FRANCHISED OUTLETS  
FOR YEARS 2013 TO 2015**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired By Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
OKLAHOMA	2013	5	0					5
	2014	5	0			2		3
	2015	3	2					5
OREGON	2013	1	0				1	0
	2014	0	2					2
	2015	2	1					3
PENNSYLVANIA	2013	2	1					3
	2014	3	4					7
	2015	7	4					11
SOUTH CAROLINA	2013	3	0					3
	2014	3	3					6
	2015	6	0					6
SOUTH DAKOTA	2013	1	0			1		0
	2014	0	2				1	1
	2015	1	0					1
TENNESSEE	2013	0	0					0
	2014	0	2					2
	2015	2	2				1	3
TEXAS	2013	86	14			1		99
	2014	99	26					125
	2015	125	13	4			4	130
UTAH	2013	8	10					18
	2014	18	5					23
	2015	23	1				1	23
VIRGINIA	2013	3	2				1	4
	2014	4	4					8
	2015	8	2					10
WASHINGTON	2013	3	2					5
	2014	5	6				1	10
	2015	10	7					17

**TABLE NO. 3  
STATUS OF FRANCHISED OUTLETS  
FOR YEARS 2013 TO 2015**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired By Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
WISCONSIN	2013	2	4					6
	2014	6	5					11
	2015	11	3				1	13
WEST VIRGINIA	2013	0	1					1
	2014	1	3					4
	2015	4	3					7
WYOMING	2013	1	0					1
	2014	1	0					1
	2015	1	2					3
Totals	2013	223	80	0	0	4	10	289
	2014	289	128	1	0	3	9	404
	2015	404	118	8	0	0	15	499

**TABLE NO. 4  
STATUS OF COMPANY-OWNED OUTLETS  
FOR YEARS 2013 TO 2015**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of the Year
CALIFORNIA	2013	0	0	1			1
	2014	1	0			1	0
	2015	0	0			0	0
COLORADO	2013	1	0	0		1	0
	2014	0	0			0	0
	2015	0	0				0
FLORIDA	2013	0	0	1			1
	2014	1	0	1			2
	2015	2	0	0			2
OKLAHOMA	2013	0	0				0
	2014	0	0	2			2
	2015	2	0	0		2	0

**TABLE NO. 4  
STATUS OF COMPANY-OWNED OUTLETS  
FOR YEARS 2013 TO 2015**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of the Year
SOUTH DAKOTA	2013	0	1				1
	2014	1	0	0		1	0
	2015	0				0	0
TEXAS	2013	7	0	1			8
	2014	8	0			1	7
	2015	7	0	0	0	0	7
Totals	2013	8	1	3	0	1	11
	2014	11	0	3	0	3	11
	2015	11	0	0	0	2	9

**TABLE NO. 5  
PROJECTED OPENINGS AS OF MAY 31, 2015**

State	Franchise Agreement Signed But Outlet not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
ALABAMA	1	1	0
ALASKA	0	0	0
ARIZONA	2	2	0
ARKANSAS	0	0	0
CALIFORNIA	17	17	0
COLORADO	2	2	0
CONNECTICUT	0	0	0
FLORIDA	3	3	0
GEORGIA	0	0	0
IDAHO	0	0	0
ILLINOIS	1	1	0
INDIANA	0	0	0
Iowa	1	1	0
KANSAS	1	1	0
KENTUCKY	1	1	0
LOUISIANA	0	0	0

TABLE NO. 5 PROJECTED OPENINGS AS OF MAY 31, 2015			
State	Franchise Agreement Signed But Outlet not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
MARYLAND	0	0	0
MICHIGAN	1	1	0
MINNESOTA	1	1	0
MISSISSIPPI	2	2	0
MISSOURI	2	2	0
NEBRASKA	1	1	0
NEVADA	0	0	0
NEW JERSEY	0	0	0
NEW MEXICO	1	1	0
NEW YORK	0	0	0
NORTH CAROLINA	0	0	0
NORTH DAKOTA	1	1	0
OHIO	0	0	0
OKLAHOMA	1	1	0
OREGON	1	1	0
PENNSYLVANIA	1	1	0
SOUTH CAROLINA	0	0	0
TENNESSEE	0	0	0
TEXAS	11	11	0
UTAH	3	3	0
VIRGINIA	1	1	0
WASHINGTON	2	2	0
WEST VIRGINIA	1	1	0
WISCONSIN	1	1	0
WYOMING	0	0	0
Total	60	60	0

The contact information for current franchisees of open Restaurants and those under development appears in Appendix 1. The contact information for the 81 franchisees who have had a franchise terminated, cancelled, not renewed, transferred, or who otherwise voluntarily ceased to do business under his or her Franchise Agreement during the fiscal year ended May 31, 2015, or who has not communicated with Dickey's within 10 weeks of the Issuance Date, also appears in Appendix 1. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the Dickey's franchise System.

During the last three fiscal years, Dickey's franchisees have signed confidentiality clauses. In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with the Dickey's franchise System. You may wish to speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.

There are no trademark-specific franchisee organizations associated with the System known to Dickey's. See Item 11 for a description of the Advisory Council created by Dickey's.

## **ITEM 21 FINANCIAL STATEMENTS**

The following audited financial statements are attached to this Disclosure Document as **Exhibit I**:

1. Audited balance sheet of Dickey's as of May 31, 2015, and related statement of operations, shareholders' equity and cash flows for the year then ended.
2. Audited balance sheet of Dickey's as of May 31, 2014, and related statement of operations, shareholders' equity and cash flows for the year then ended.
3. Audited balance sheet of Dickey's as of May 31, 2013, and related statement of operations, shareholders' equity and cash flows for the year then ended.

## **ITEM 22 CONTRACTS**

Attached to this Disclosure Document are copies of all proposed agreements that are part of this franchise offering, including the following:

1. Franchise Agreement including ACH Authorization, Franchisee Questionnaire, Consent and Release for Training, State Addenda, and Lease Rider (attached as **Exhibit A**).
2. Development Agreement and State Addenda (attached as **Exhibit B**).
3. General Release (attached as **Exhibit C**).
4. Form of Non-Disclosure Agreement for prospective franchisees to be signed before disclosure of Operations Manual; this form includes covenants not to solicit employees or compete (attached as **Exhibit G**).
5. Form of Management Confidentiality and Non-Competition Agreement for Restaurant managers to sign (attached as **Exhibit H**).
6. Non-Traditional Venue Addendum (attached as **Exhibit J**).
7. Smokestack Customer Agreement (attached as **Exhibit K**).

## **ITEM 23 RECEIPTS**

Our and your copies of the Disclosure Document Receipt are located at the last 2 pages of this Disclosure Document.

**APPENDIX 1**  
**LIST OF CURRENT OUTLETS AS OF MAY 31 2015**

In the table below, an "\*\*\*" indicates a franchisee who has also signed a Development Agreement to open and operate multiple Restaurants.

<b><u>Franchisee</u></b>	<b><u>Outlet Street Address</u></b>	<b><u>City</u></b>	<b><u>State</u></b>	<b><u>Zip</u></b>	<b><u>Telephone</u></b>
John Lockett*	6882 Hwy 90 Suite G2	Daphne	Alabama	36526	251-210-2151
Larry Hoffmeister	6886 Governors W, Suite 112	Huntsville	Alabama	35806	256-270-4425
Wesley Harbin	13544 Hwy. 43 North	Northport	Alabama	34575	205-330-1147
Wesley Harbin	9750 Hwy 69 South	Tuscaloosa	Alabama	35405	205-344-6500
Raji Singh*	1800 McFarland Blvd., Suite 524	Tuscaloosa	Alabama	35404	205-758-1133
Thomas E. Emmons	1914 Power Rd.	Mesa	Arizona	85206	480-361-8053
Richard Dent	402 E. Greenway Pkwy. Suite 2	Phoenix	Arizona	85022	602-666-6320
Mitch Bailey	7337 Shea Blvd.	Scottsdale	Arizona	85260	480-368-5569
Erik Forrest	7919 E. Thomas Road Suite 111	Scottsdale	Arizona	85251	480-685-4979
Erik Forrest	521 S. College Ave. Suite 9	Tempe	Arizona	85281	480-704-3510
David Wirth	7850 N. Oracle	Tuscon	Arizona	85704	520-219-5742
Wesley Thomas	3213 Main St.	Bryant	Arkansas	72022	501-213-0074
Jared Thompson*	3316 W. Grove Dr	Fayetteville	Arkansas	72704	479-443-3333
Jared Thompson*	105 S. Dixieland Rd.	Lowell	Arkansas	72745	479-770-0123
Michael P. Anderson*	13503 Crystal Hill Rd	N. Little Rock	Arkansas	72113	501-851-8000
Jared Thompson*	4204 W. Green Acres Rd. Suite 140	Rogers	Arkansas	72758	479-631-9999
Joshua Hightower	407 S. Main Street	Searcy	Arkansas	72143	501-368-0008
Terry N. Tracy	1951 East Hwy 412	Silaom Springs	Arkansas	72761	479-238-1112
Matt Womack	2576 W. Sunset Ave. Ste. E	Springdale	Arkansas	72762	479-802-0051
Assim Shammami*	2165 Arnold Way	Alpine	California	91901	619-722-6052
Richard Aronson	3505 Coffee Road	Bakersfield	California	93312	661-589-4227
Edward W. Lew*	1668 E. 2nd St.	Beaumont	California	92223	951-267-3480
Stephen Huerth	2435 East Imperial hwy. Unit E	Brea	California	92821	714-529-3710
Damon Owens	2500 Sand Creek Road	Brentwood	California	94513	925-240-8600
Richard Foiles	8300 La Palma Ave. Ste. S00A1	Buena Park	California	90620	714-882-5875
Rafeal Armenta	1402 Camden Ave.	Campbell	California	95008	408-915-5051
Jimmy Lu	3835 E. Castro Valley Blvd.	Castro Valley	California	94552	510-247-1100
Christopher Green	11971 Central Ave., Suite A	Chino	California	91710	909-902-1320
Harish Sudarshan Sharma	4021 Grand Ave. Ste. D	Chino	California	91710	909-342-7823
Bryan Roche*	1610 Herndon Ave., Suite 106	Clovis	California	93611	559-322-7427
Damon & Shantel Owens	5434 Ygnacio Valey Rd.	Concord	California	94521	925-689-5525
Connie McKenney	540 Hidden Valley Pkwy. Ste. 101	Corona	California	92879	951-207-2469

<b>Franchisee</b>	<b>Outlet Street Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Telephone</b>
Thomas Iverson*	640 Covell Blvd.	Davis	California	95616	530-341-0623
Bill W. Seward	12569 Limonite Ave. Ste 330	Eastvale	California	91752	951-360-9700
Jared Katzenbarger	5110 Laguna Blvd. Suite 120	Elk Grove	California	95758	916-546-4400
John Sanchez	1586 Gateway Blvd., Suite C-7	Fairfield	California	94533	707-400-5040
Ann & Raymond Snook	1016 Riley Street Suite 4	Folsom	California	95630	916-550-9525
Bryan Roche*	16391 Sierra Lakes Pkwy	Fontana	California	92336	909-356-1295
Jimmy Lu	43321 Boscell Road, Suite P9-B	Fremont	California	94538	510-687-1805
Bryan Roche*	6611 N Riverside Dr Suite 106	Fresno	California	93722	559-271-7700
Tom Gomez*	1941 W Malvern Ave.	Fullerton	California	92835	714-451-4620
Bryan Roche*	240 North 12th Ave.	Hanford	California	93230	559-584-7427
Diana L. Haddock	1127 S. Sanderson	Hemet	California	92545	951-652-7427
Andre May	27949 Greenspot Rd. Ste. D	Highland	California	92346	909-862-2000
Bryan Roche*	551 McCray Street	Hollister	California	95023	831-636-7427
Richard Wolcott	12240 Industry Blvd. Suite 74	Jackson	California	95642	209-223-2748
Todd Morley	25606 Crown Valley Pkwy.	Ladera Ranch	California	92694	949-364-1729
Stephen Huerth	27931 La Paz Rd. Ste. D	Laguna	California	92677	949-349-0346
Kyong S. Kim	15338 S. Harlan Rd.	Lathrop	California	95330	209-624-1612
Malaak Gorgios	1524 N. Vasco Road	Livermore	California	94551	925-606-4200
Rod S. Cockrum	1379 South Lower Sacramento Rd.	Lodi	California	95242	209-365-9021
Todd Schwartz	9035 Reseda Blvd.	Los Angeles	California	91324	818-527-2271
Rod S. Cockrum	1446 Hulsey Rd.	Manteca	California	95336	209-239-2333
Jerrad Marsh	2816 McHenry Ave.	Modesto	California	95350	209-542-8505
Bryan Roche*	1031 Cochrane Ave.	Morgan Hill	California	95037	408-778-7171
Alice Kao	570 North Shoreline Blvd.	Mountain View	California	94043	650-933-4939
James (Jim) Hunter	5200 E Ramon Rd	Palm Springs	California	92264	760-699-2028
Jamie A. Bynum	1125 W. Rancho Vista Blvd., Suite B	Palmdale	California	93551	661-402-5123
Andrew Lee	2362 E. Colorado Blvd.	Pasadena	California	91107	626-993-2862
Anthony LoForte	1473 Fitzgerald Dr.	Pinole	California	94564	510-223-7427
Anthony LoForte	2634 Pleasant Hill Rd	Pleasant Hill	California	94523	925-476-5022
Gary Cooper	6654 Koll Center Pkwy.	Pleasanton	California	94566	925-426-6800
Bryan Roche*	73 North Main Street	Porterville	California	93257	559-783-2227
Ann & Raymond Snook	2320 Sunrise Blvd.	Rancho Cordova	California	95670	916-858-8195
Bryan Roche*	9670 Haven Ave.	Rancho Cucamonga	California	91730	909-477-4555
Alex K. Roth	407 N. Pacific Coast Hwy. Suite 102	Redondo Beach	California	90277	310-379-0202
Bill W. Seward	3540 Riverside Plaza Dr. Ste. 314	Riverside	California	92506	951-683-9700
Jared Katzenbarger*	5406 Crossings Drive, Suite 104	Rocklin	California	95677	916-652-7239
Tom & Tamara Sjoberg	701 Pleasant Grove Blvd. Suite 150	Roseville	California	95678	916-367-7700



<b>Franchisee</b>	<b>Outlet Street Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Telephone</b>
Jared Katzenbarger*	1901 J Street, Suite 40315	Sacramento	California	95811	916-265-2633
Jared Katzenbarger*	4630 Natomas Blvd., Suite 130	Sacramento	California	95835	916-378-4122
Jared Katzenbarger*	6013 Florin Rd.	Sacramento	California	95823	916-382-9811
Ming Yi "Elliot" Fu	1212 El Camino Real, Suite C-D	San Bruno	California	94066	650-553-0015
Assim Shammami*	5604 Balboa Ave. Ste. 105	San Diego	California	92111	858-278-8228
Jimmy Lu	5391 Prospect Rd	San Jose	California	95129	408-725-1619
Niral Patel*	799 Foothill Blvd. Suite A	San Luis Obispo	California	93405	805-996-0005
Todd Morley	763 Center Drive, Suite 103	San Marcos	California	92069	760-738-8900
Damon Owens	3191-D Crow Canyon Place	San Ramon	California	94583	925-277-9400
Anthony Pimentel	18742 Soledad Canyon Rd.	Santa Clarita	California	91351	661-251-0840
Bryan Roche*	2212 South Bradley Rd. Suite D3	Santa Maria	California	93454	805-925-6600
Bryan Roche*	880 Broadway Ave., Suite C	Seaside	California	93955	831-717-4486
Arman Grigoryan	2902 Tapo Canyon Rd.	Simi Valley	California	93063	805-577-7675
Rod S. Cockrum	5350 Pacific Ave. Suite J-2	Stockton	California	95207	209-957-7427
Rod S. Cockrum	10940-H Trinity Parkway	Stockton	California	95209	209-910-0744
Daniel Georgis	1255 S. Mary Ave.	Sunnyvale	California	94087	408-733-7427
Joshua McLaughlin	40315 Winchester Rd. Suite D	Temecula	California	92591	951-296-5105
Christopher S. Jenkins	2610 S. Tracy Blvd.m Suite 130	Tracy	California	95376	209-835-4227
Veronica Ruiz	2469 Naglee Rd., 4D	Tracy	California	95304	209-642-7752
Kelly Brooks	1348 East Prosperity Avenue	Tulare	California	93274	559-697-0061
Rafeal Armenta	3140 Countryside Dr.	Turlock	California	95380	209-643-1800
John P. Sanchez*	150 Nut Tree Pkwy.	Vacaville	California	95687	707-450-1810
Bryan Roche*	6100 Telegraph Road, Suite F	Ventura	California	93003	805-212-4240
Tim Zhou	15683 Roy Rogers Dr Ste. 304 & 305	Victorville	California	92392	714-200-9590
Kelly Brooks	4119 South Mooney Blvd. Suite K-1	Visalia	California	93277	559-697-0060
Christy Peterman	227 E. Main St.	Visalia	California	93291	559-732-1510
Jared Katzenbarger*	2155 Towne Center Plaza, Suite E110	West Sacramento	California	95691	916-371-8638
Kevin Vuu	13403 Telegraph Rd.	Whittier	California	90605	562-846-4332
Jatindera Singh Grewal	401 Pioneer Ave	Woodland	California	95776	530-406-0227
Joseph "Joey" Menichini*	21853 Ventura Blvd.	Woodland Hills	California	91364	818-313-9700
Thomas Iverson*	871 Gray Ave.	Yuba City	California	95991	530-491-0101
Larry Volf	10551 East Garden Dr. Suite 106	Aurora	Colorado	80012	720-343-7518
Seth Warren	323 Metzler Dr., Ste #101	Castle Rock	Colorado	80108	303-688-3383
Martin Perkins	10230 E. Arapahoe Rd.	Centennial	Colorado	80112	303-792-2444
Robert Rusnak*	1466 Garden of the Gods Rd. Suite 160	Colorado Springs	Colorado	80907	719-623-4007
Robert Rusnak*	4140 Austin Bluffs Pkwy. Suite 4146	Colorado Springs	Colorado	80918	719-593-5039
John Hightower	811 Cheyenne Meadows Road, #12	Colorado Springs	Colorado	80906	719-323-3228

<b>Franchisee</b>	<b>Outlet Street Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Telephone</b>
Brenda Black	2721 South College Ave.	Fort Collins	Colorado	80525	970-797-2610
Don Stevenson	17121 South Golden Rd. Unit C-100	Golden	Colorado	80401	303-278-3020
Derek O'Hara	2331 23rd Ave.	Greeley	Colorado	80634	970-330-7005
Derek O'Hara	6628 W. 10th St. Unit 102	Greeley	Colorado	80634	970-515-5168
Kenneth Turpin	4004 Red Cedar Dr.	Highlands Ranch	Colorado	80126	303-471-1654
Linda Nguyen	3140 S. Wadsworth	Lakewood	Colorado	80227	303-989-1550
Linda Nguyen	1509 Wadsworth Blvd. Unit B	Lakewood	Colorado	80214	303-731-4549
Don Stevenson	459 S. McCaslin Blvd.	Louisville	Colorado	80027	303-604-0223
Datshiri Sherpa	117th West 4th Street	Rifle	Colorado	81650	970-625-4227
Ingrid Jackson	9740 Grant St. Ste. 105	Thornton	Colorado	80229	303-920-1777
Larry Volf	8715 Sheridan Blvd.	Westminster	Colorado	80003	303-847-0860
Steven D. Phillips	19348 Cortez Blvd.	Brooksville	Florida	34601	352-269-0019
Justin Harris	9825 San Jose Blvd.	Jacksonville	Florida	32257	904-830-4554
Victor M. Tavarez, Jr.	11338 Miramar Pkwy.	Miramar	Florida	33025	954-450-2810
Patrick Bradford	599 South Chickasaw Trail	Orlando	Florida	32825	407-965-2203
Patrick Bradford	5414 Deep Lake Rd. Suite 1152	Oviedo	Florida	32765	407-571-9506
Timothy "Tim" Hershberger*	7175 N. Davis Hwy.	Pensacola	Florida	32504	850-476-7427
James W. Lewis	2119 Tyrone Blvd. N.	St. Petersburg	Florida	33710	727-388-6692
Ron & Charlotte Dykes	2653 Bruce B. Downs Blvd. Suite 101	Wesley Chapel	Florida	33544	813-406-4473
Nitesh Jayshwal	3070 Windward Plaza, Suite E	Alpharetta	Georgia	30005	678-867-0777
Alicia Marie Purdy	810 Hawthorne Ave.	Athens	Georgia	30606	706-850-7561
Scot Jones	6631 Roswell Rd	Atlanta	Georgia	30328	404-255-0017
Aaron Michals	415 Peachtree Pkwy. Suite 255	Cumming	Georgia	30041	678-853-2410
Winfield Wilson	3314 Highway 5	Douglasville	Georgia	30135	706-344-2011
Jeffrey Kerkes	535 South Glynn Street, Suite 1002	Fayetteville	Georgia	30214	770-460-5400
Shannon Skains	4005 Winder Hwy. Ste. 160	Flowery Branch	Georgia	30542	648-865-4928
Randy C. Schoening	1610 Ridenour Blvd.	Kennesaw	Georgia	30144	770-427-7655
Nitesh Jayshwal	13075 Hwy. 9 North	Milton	Georgia	30004	770-664-2504
Charles & Carla Kuehl	460 Crosstown Rd.	Peachtree City	Georgia	30269	678-364-9573
Ray Dubois	1109 US Hwy. 80, Unit E	Pooler	Georgia	31322	912-988-1286
Ray Dubois	13051 Abercorn Street	Savannah	Georgia	31419	912-200-3677
Carla Kuehl	15 Thomas Grace Annex Ln.	Sharpsburg	Georgia	30277	770-252-6080
Shannon Haley	2131 Hog Mountain Rd.	Watkinsville	Georgia	30677	706-705-1326
Ravinder Singh	12 N. Fisher Park Way	Eagle	Idaho	83616	208-938-6615
Skyler Jones	6708 N. Glenwood St.	Garden City	Idaho	83714	208-853-4259
Bob & Deanne Wilkins	2090 East 17th Street	Idaho Falls	Idaho	83404	208-528-7427
Skyler Jones	2845 E. Overland Rd. Suite 190	Meridian	Idaho	83642	208-884-8999

<b>Franchisee</b>	<b>Outlet Street Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Telephone</b>
Dana & Cheryl Phillips	1807 12th Avenue Rd.	Nampa	Idaho	83686	208-461-0600
Skyler Jones	16365 N. Marketplace Blvd.	Nampa	Idaho	83687	208-465-2909
Crystal Rubink	799 Cheney Dr.	Twin Falls	Idaho	83301	208-419-3229
Koteswararao Nallapati	1332 W 75th St.	Downers Grove	Illinois	60516	630-426-6277
Jordan R. Lisitza	1448 Waukegan Rd.	Glenview	Illinois	60025	847-724-7675
Bill Jensen	3419 Avenue of the Cities	Moline	Illinois	61265	309-797-1100
Dan Somerfield	206 Danada Square W.	Wheaton	Illinois	60189	630-590-9518
Hitesh Patel	9655 US Highway 36, Suite K	Avon	Indiana	46123	317-451-4794
Teresa Duck	8359 Indianapolis Blvd.	Highland	Indiana	46322	219-923-5776
Bruce Hazelgrove	2551 E. Main St. Suite 100	Plainfield	Indiana	46168	317-839-7100
Ramelito Biscocho	6200 US 6	Portage	Indiana	46368	219-764-9892
Gary Fouts	2310 LaPorte Ave	Valparaiso	Indiana	46383	219-246-2159
Samuel Kafoure	721 Wakarusa Suite 104	Lawrence	Kansas	66049	785-865-1313
Shawn Stobbe	214 E. 12th St.	Newton	Kansas	67114	316-282-8009
Sam Kafoure	7284 W. 121st St.	Overland Park	Kansas	66213	913-338-5900
Eric Wenrich	609 NW Hwy. 24	Topeka	Kansas	66608	785-215-8215
Ryan Wenrich*	2768 N. Maize Road, Suite 100	Wichita	Kansas	67205	316-773-9922
Amgad Rizk	1315 Winchester Rd., Suite 325	Lexington	Kentucky	40505	859-303-7445
David Robinson*	285 North Hubbards Lane	Louisville	Kentucky	40207	502-650-9065
Catherine Long	2620 Beene Blvd.	Bossier City	Louisiana	71111	318-742-9997
Alexander Hill	69292 Hwy. 21 Suite 300	Covington	Louisiana	70433	985-871-2225
Christopher Durant	1102 Oliver Rd	Monroe	Louisiana	71201	318-605-4024
William Lee Waskom	936 University Parkway	Natchitoches	Louisiana	71457	318-238-4227
Robert E. Dunning	6005 Jefferson Hwy.	New Orleans	Louisiana	70123	504-224-6810
Matthew B. Long*	4955 North Market	Shreveport	Louisiana	71107	318-222-2645
Alexander Hill	61103 Airport Rd.	Slidell	Louisiana	70460	985-720-0070
Randy W. Miller	3468-70 Emmorton Road	Abingdon	Maryland	21009	443-402-1277
Brian Patnett*	15904 Crain Highway	Brandywine	Maryland	20613	301-782-7099
Benjamin J. Schiner	18056 Mateny Rd.	Germantown	Maryland	20874	240-801-4570
David Spriggs	1121 State Route 3 N.	Grambills	Maryland	21054	410-451-2328
Dennis Walker*	41700 Garfield Rd.	Clinton Township	Michigan	48038	586-286-4400
Matthew Stritzinger	445 E. Chicago St.	Coldwater	Michigan	49036	517-278-2330
Peggy Anicka	4825 Carroll Lake Rd	Commerce Township	Michigan	48382	248-360-4055
Jason Irvine	23123 Woodward Avenue	Ferndale	Michigan	48220	248-565-3355
Timothy W. Brock	20755 Hall Road	Macomb	Michigan	48044	586-741-5270
Adam Wilson	44741 Five Mile Rd.	Plymouth	Michigan	48170	248-246-7211

<b>Franchisee</b>	<b>Outlet Street Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Telephone</b>
Manhal Kattula	1418 N. Rochester Rd.	Rochester Hills	Michigan	48307	248-266-6226
Gary & Kim Smith	3672 Rochester Rd.	Troy	Michigan	48083	248-250-9263
David Hlavac	1000 Paul Bunyan Dr. NW Suite 100	Bemidji	Minnesota	56601	218-444-6022
Dean Blinkewitz	250 East Travelers Trail	Burnsville	Minnesota	55337	952-882-4651
Dean Blinkewitz	214 Pioneer Trail	Chaska	Minnesota	55318	952-361-0199
Dean Blinkewitz	13131 Riverdale Dr. Suite 100	Coon Rapids	Minnesota	55448	763-270-0310
Tom Eggerud	3090 Courthouse Ln., Suite 100	Eagan	Minnesota	55121	651-905-7725
Sharon Wiser	4960 Miller Trunk Highway	Hermantown	Minnesota	55811	218-260-2271
Paul Bertino	501 Holly Ln.	Mankato	Minnesota	56001	507-625-4227
Dean Blinkewitz	11631 Fountains Dr.	Maple Grove	Minnesota	55369	763-208-1589
Anthony Nwakama	900 Clarice Ave.	Marshall	Minnesota	56258	507-401-2142
Richard Waytashek	5466 St. Croix Trail	North Branch	Minnesota	55056	651-400-7947
Daniel Stuttgen	14165 James Rd.	Rogers	Minnesota	55374	763-428-9834
Dean Blinkewitz	8088 Old Carriage Court N.	Shakopee	Minnesota	55379	952-405-6820
Daniel Stuttgen	2956 W. Division St. Suite 3	St. Cloud	Minnesota	56301	320-257-7675
John A. Lockett*	3821 Promenade Parkway #A	D'Iberville	Mississippi	39540	228-396-1819
Steve Earley*	268 Dogwood Blvd.	Flowood	Mississippi	39232	601-992-4200
John A. Lockett*	11240 Hwy. 49 N, Suite B	Gulfport	Mississippi	39503	228-539-0031
Justin Harris	50 Cross Creek Pkwy	Hattiesburg	Mississippi	39402	601-450-1710
Brent Lambert	2159 Hwy. 15 N.	Laurel	Mississippi	39440	601-428-5855
Steve Earley*	175 Grandview Blvd. Sulite 910	Madison	Mississippi	39110	601-605-4025
Doug Wilkerson	103 South Frontage Rd. Suite 200	Meridian	Mississippi	39301	601-483-3805
Brent Lambert	1225 Highway 42	Petal	Mississippi	39465	601-602-3476
Doug Wilkerson	200 Canal Place, Suite 180	Philadelphia	Mississippi	39350	601-656-5626
Steve Earley*	1201 Highway 49 South #5	Richland	Mississippi	39218	601-487-8139
Marty R. Ballard*	3952 N Gloster St., Suite F	Tupelo	Mississippi	38804	662-840-9500
Wade Bradley	1412 Forum Blvd. Suite 130	Columbia	Missouri	65203	573-303-3167
David Hammel	9000 NW Skyview Ave.	Kansas City	Missouri	64154	816-505-3900
Danessa Williams	2540 Granite Ln.	Lebanon	Missouri	65536	417-532-4227
Ryan Wenrich*	1736 NW Chipman Rd.	Lee's Summit	Missouri	64081	816-554-7427
Ryan Wenrich*	600 S. 291 Highway	Liberty	Missouri	64068	816-407-7427
Wade Bradley	111 N. Massey Blvd.	Nixa	Missouri	65714	417-724-1100
Wade Bradley	1360 Republic Rd.	Springfield	Missouri	65804	417-887-2227
Manoj Patel	1912 South Brentwood Blvd.	St. Louis	Missouri	63144	314-942-1412
Michael Goodale	2519 Montana Ave.	Billings	Montana	59101	406-969-3909
Michael Goodale	1515 West Bell St. Suite B1/B2	Glendive	Montana	59330	406-377-4033
Randy Neel	143 West Broadway	Missoula	Montana	59802	406-203-1557

<b>Franchisee</b>	<b>Outlet Street Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Telephone</b>
Brandon Kosek*	4102 Twin Creek Dr. Ste. 116	Bellevue	Nebraska	68128	402-905-9673
Rachel Witt	117 E. 17th	Falls City	Nebraska	68355	402-245-2000
Richard Cochran	217 E. Stolley Park Rd., Suite I	Grand Island	Nebraska	68801	308-210-3444
Richard Cochran	222 W. 42nd Street	Kearney	Nebraska	68847	308-234-4696
Will Carter	2662 Cornhusker Ste. 9	Lincoln	Nebraska	68521	402-423-0056
Will Carter	1226 P Street, Suite 101	Lincoln	Nebraska	68508	402-423-2324
Will Carter	6125 Apples Way te. 209	Lincoln	Nebraska	68516	402-423-0038
Will Carter	8222 Holdrege St. 110	Lincoln	Nebraska	68505	402-440-0064
Joe Nguyen	12241 West Center Rd.	Omaha	Nebraska	68144	402-932-0102
Steven Swift*	15825 West Maple Road, Suite 107	Omaha	Nebraska	68116	402-408-2878
Shannon Legg	3525 South Lincoln Ave.	York	Nebraska	68467	402-362-4227
Gunnar Clark	3250 Retail Drive, Suite 100	Carson City	Nevada	89706	775-883-0100
Jason Rivera	7430 Las Vegas Blvd. South Suite 110	Las Vegas	Nevada	89123	702-220-4227
Jason Rivera	5597 S. Rainbow, Suite 110	Las Vegas	Nevada	89118	702-776-4200
John D. Schouten	6584 N Decatur Blvd	Las Vegas	Nevada	89131	702-655-0027
Dean & Melissa Siracusa	395 East Plumb Lane	Reno	Nevada	89502	775-324-7427
Dean & Melissa Siracusa	290 Lemmon Drive, Suite 102	Reno	Nevada	89506	775-677-2089
Dean & Melissa Siracusa	1650 Robb Drive	Reno	Nevada	89523	775-787-1383
Joseline Garcia*	77 Tices Lane	East Brunswick	New Jersey	08816	732-479-1950
Deepak C. Shah	4320 The 25 Way NE, Suite 650	Albuquerque	New Mexico	87109	505-750-1331
Jason Scott	1010 W. Joe Harvey Blvd	Hobbs	New Mexico	88240	575-392-2277
James B. Hickin	160 Clinton Ave.	Cortland	New York	13045	607-222-8000
Carline Jefferson	305 Rockaway Turnpike	Lawrence	New York	11559	516-239-2410
David Nelson	71 Smithfield Blvd.	Plattsburgh	New York	12901	518-324-2271
Yves Le Breton	1789 Central Park Ave.	Yonkers	New York	10710	914-509-6569
Francine Noel	1636 Hendersonville Road	Asheville	North Carolina	28803	828-277-5221
Francine Noel	66 New Clyde Hwy	Canton	North Carolina	28716	828-492-1112
Greg Woloszczuk	200 Crossroads Blvd. Suite 100	Cary	North Carolina	27518	919-233-5801
Stacey Hart	15201 B John J Delaney	Charlotte	North Carolina	28277	704-341-7427
Greg Woloszczuk	5318 New Hope Commons Dr. Suite 201A	Durham	North Carolina	27707	919-419-1101
Michael Wiemers	235 St. John's Road, Ste 10 & 12	Fletcher	North Carolina	28732	828-303-2190
Jerry Brooks*	3103 E. Tenth Street	Greenville	North Carolina	27858	252-353-0190
Barbara Dobson	1036 Lenoir Rhyne Blvd. SE	Hickory	North Carolina	28602	828-855-9390
Jerry Brooks*	5872 Samet Drive	High Point	North Carolina	27265	336-905-7777
Jerry Brooks*	2001-C Widewaters Pkwy	Knightdale	North Carolina	27545	919-266-7072
Greg Woloszczuk	170 East Davie St.	Raleigh	North Carolina	27601	919-809-8830
Jerry Brooks*	14460 New Falls of Neuse Road	Raleigh	North Carolina	27614	919-263-1422

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Eric Davis	6552 Glenwood Ave.	Raleigh	North Carolina	27612	919-436-3995
Brad Evers	7841 Alexander Promenade	Raleigh	North Carolina	27617	919-908-1466
Eric Davis	10564 S.US Highway 15/501	Southern Pines	North Carolina	28387	910-246-1511
Jerry Brooks*	615 Jonestown Road	Winston Salem	North Carolina	27103	336-790-3246
Jaimie & Susan Deraney	3402 13th Ave. S. Suite A	Fargo	North Dakota	58103	701-232-1040
Jamie Van Pelt	623 S. Washington Street	Grand Forks	North Dakota	58201	701-757-3111
Randy Rhone	1720 S. Broadway St.	Minot	North Dakota	58701	701-852-4227
Patrick Harder	1227 Ohio Pike	Amelia	Ohio	45102	513-802-2700
William Bridges	820 Sunbury Road	Delaware	Ohio	43015	740-363-2400
William Bridges	8641 Columbus Pike, Ste. 1240	Lewis Center	Ohio	43035	740-549-2400
Randy Daniel*	9540 Mason Montgomery Rd.	Mason	Ohio	45040	513-770-1023
Anthony Salem	960 North Court St.	Medina	Ohio	44256	330-723-2300
Ronald Barnhart	9434 Mentor Ave.	Mentor	Ohio	44060	440-809-8483
Ronald Barnhart	7769 Day Drive	Parma	Ohio	44129	440-882-3808
Randy Daniel*	624 Corwin Nixon Blvd.	South Lebanon	Ohio	45065	513-770-1026
Joseph Vongsombath*	820 North Aspen	Broken Arrow	Oklahoma	74012	918-208-0777
Joseph Vongsombath*	408 South Air Depot	Midwest City	Oklahoma	73110	405-732-9300
Josh Park	115 SE 12th St. Suite 110	Norman	Oklahoma	73071	405-321-7427
Joseph Vongsombath*	2800 Northwest 63rd St. Suite 500	Oklahoma City	Oklahoma	73116	405-848-4200
Joseph Vongsombath*	6044 S. Yale Ave.	Tulsa	Oklahoma	74135	918-551-6500
Arless "Todd" Saperstein	14700 SW Murray Scholls Dr., Suite 102	Beaverton	Oregon	97007	503-746-5299
John A. Coleman	1680 Coburg Road	Eugene	Oregon	97401	541-393-6650
Roalynn Pace	715 Southgate	Pendleton	Oregon	97801	541-276-6162
Tony & Renee Trinchere	1042 Mill Creek Rd.	Allentown	Pennsylvania	18106	610-366-7484
Meg Heintzelman	3221 Schoenersville Rd.	Bethlehem	Pennsylvania	18017	610-625-2200
Sherman "Scott" Lefever	2481 Lincoln Highway East	Lancaster	Pennsylvania	17602	717-435-8444
Daniel J. Butler	301 N. Lewis Road #110	Limerick	Pennsylvania	19468	484-791-3452
James Heberlig	6520 Carlisle Pike, Suite 415	Mechanicsburg	Pennsylvania	17050	717-458-0515
Lamy Saint-Fleur	65 E. Germantown Pike	Norriton	Pennsylvania	19401	610-292-8800
Kenneth Edward Lynch	650 South Street	Philadelphia	Pennsylvania	19147	267-273-0364
Gary R. Rhodes	333 Benner Pike	State College	Pennsylvania	16801	814-867-2124
Kenneth E. Lynch	290 Frantz Road	Stroudsburg	Pennsylvania	18360	570-424-0353
Joe Mamary	1185 Highway 315	Wilkes-Barre	Pennsylvania	18702	570-270-2000
Frank Caloiaro	1153A Berkshire Blvd	Wyomissing	Pennsylvania	19610	484-709-2577
Donnell Brown	10136 Two Notch Rd. Suite 100-B	Columbia	South Carolina	29229	803-699-0727
Randy L. Goings	2003 West Lucas	Florence	South Carolina	29501	843-407-6129
Todd Brents	13921 Asheville Hwy.	Gramling	South Carolina	29348	864-472-2424

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Dennis C. Farmer	3735 Oleander Dr.	Myrtle Beach	South Carolina	29577	843-839-0209
Vedit Patel	7620 Rivers Ave. Suite 375	North Charleston	South Carolina	29406	843-202-0214
Todd Brents	6001 Wade Hampton Blvd.	Taylors	South Carolina	29687	864-848-0004
Cassi Andrews	1565 Haines Ave. Suite E.	Rapid City	South Dakota	55701	605-791-5400
John Clark	8113 Moores Ln., Ste. 1900	Brentwood	Tennessee	37027	615-622-2818
Marcia Winn	2345 Madison Street	Clarksville	Tennessee	37043	931-368-3030
Anthony "Tony" Hayes	11483 Parkside Drive, Suite 202	Knoxville	Tennessee	37934	865-675-8227
Ryan Curtis*	5001 US Highway 277 South	Abilene	Texas	79605	325-695-0047
Allen Bahrami	3711 Beltline Road	Addison	Texas	75001	972-241-1800
Dale Smith	405 Central Expwy. South	Allen	Texas	75013	214-495-8877
Ross Johnson	1317 N. Main St.	Andrews	Texas	79714	432-524-2211
Khai M. Nguyen	807 South Highway 75, Suite 300	Anna	Texas	75409	214-935-1711
Mohammad Afzal	5530 S. Cooper	Arlington	Texas	76017	817-468-0898
David Boisture	1801 Ballpark Way	Arlington	Texas	76006	817-261-6600
Ghasem Azodi	11416 RR 620 North	Austin	Texas	78726	512-250-8844
Jeff & Erik Moosa	13000 Seagoville Rd.	Balch Spring	Texas	75180	972-286-2358
Diana Humphreys	696 Hwy. 71 West	Bastrop	Texas	78602	512-772-4131
Shawn Boedecker	501 N. Industrial Blvd. Suite 100	Bedford	Texas	76021	817-354-5551
Mike Rowland	11824 M 2305	Belton	Texas	76513	254-780-9900
Connie Strickland	2602 South Gregg Street, Suite E-2	Big Spring	Texas	79720	432-714-4733
John Lusk	2710 W. Commerce	Buffalo	Texas	75831	903-322-6666
Ryan Curtis*	251 Southwest Wilshire Blvd. Suite 126	Burleson	Texas	76028	817-295-2006
Mohammad Afzal	3220 E. Hebron Parkway	Carrollton	Texas	75010	972-307-1100
Shane Ables	1630 Valwood Pkwy.	Carrollton	Texas	75006	972-280-9191
Mohammad Afzal	2626 N. Josey Ln. #112	Carrollton	Texas	75007	972-446-2700
Mark Kerr	642 Uptown Blvd.	Cedar Hill	Texas	75104	972-291-3060
Chris Jones	2750 S. Preston Rd., Suite 112	Celina	Texas	75009	972-347-4788
Mike Lott	1109 B Bay Area Blvd.	Clear Lake	Texas	77062	281-286-7427
Amberly A. Patrick	202 N. Main St.	Cleburne	Texas	76033	817-760-2900
Bobby & Lee Ann Jones	2297 Earl Rudder Fwy. S	College Station	Texas	77845	979-696-5400
Joseph Vongsombath*	2202 Live Oak	Commerce	Texas	75428	903-886-8808
Todd Shampoe	1418 North Loop 336 West	Conroe	Texas	77304	936-539-2560
Shane Ables	801 South Denton Tap Road	Coppell	Texas	75019	972-393-7800
Brain Zimmerman	4037 Saratoga Blvd. Ste. D	Corpus Christi	Texas	78413	361-855-7675
Jayeshkumar "Jayesh" Patel	2445 W. Northwest Hwy. Suite 106	Dallas	Texas	75220	214-350-3095
Jeffery Bass	2919 Forest Lane	Dallas	Texas	75234	972-247-1534
Allen Bahrami	14999 Preston Road, Suite 100C	Dallas	Texas	75254	972-661-2006

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Chris Yi	726 N. Harwood	Dallas	Texas	75201	214-740-1661
David Arterburn	2324 McKinney Ave.	Dallas	Texas	75201	469-248-3149
Maria Saucedo	1201 Elm St. Suite LL5	Dallas	Texas	75270	214-760-2400
Carlos Rodriguez	3254 Irving Blvd.	Dallas	Texas	75247	214-638-5123
Owais Siddiqui	9004 Garland Road	Dallas	Texas	75218	214-321-7018
Joseph Vongsombath*	4475 Adler Dr. Suite 106	Dallas	Texas	75211	214-331-8088
Joseph Vongsombath*	6243 Retail Rd., Suite 400B	Dallas	Texas	75231	469-232-9950
Van Dai	4727 Frankford Road, Ste 349	Dallas	Texas	75287	972-803-6411
Dale Smith	3721 S. I-35E	Denton	Texas	76208	940-566-5290
Nick Robinson*	2530 W. University, Suite 1110	Denton	Texas	76201	940-228-1151
Sandip Jasiwal	1001 N. Beckley, Suite 116A	DeSoto	Texas	75115	469-567-8341
Stan Hatcher	DFW Airport, Terminal C Gate 6	DFW Airport	Texas	75261	
Stan Hatcher	D/FW Airport, Terminal E, Gate 27	DFW Airport	Texas	75261	972-574-3867
Shawn E. Wash	106 E. Highway 67	Duncanville	Texas	75137	972-584-9099
Nizamuddin "Sam" Yousaf	401 W. Lennon HWY. 69 North	Emory	Texas	75440	903-473-5599
Patrick MacKay*	13605 Midway Road, Suite 120	Farmers Branch	Texas	75244	972-661-8000
Mohammad Afzal	3320 Long Prairie Road	Flower Mound	Texas	75022	972-691-0197
Mandeep Singh	120 E. Highway 80	Forney	Texas	75126	972-552-5301
Sarab Shwani	450 FM 548, Suite 112	Forney	Texas	75126	972-552-9520
Gregg Hudson	1989 Colonial Parkway	Fort Worth	Texas	76110	817-759-7400
Jeffery Bass	451 University Drive	Fort Worth	Texas	76107	817-231-8813
Shawn Boedecker	5412 Blue Mond Road	Fort Worth	Texas	76106	817-289-0027
Ryan Curtis*	6219 Oakmont Blvd.	Fort Worth	Texas	76132	817-346-0110
Ryan & Jeanne Curtis	951 North Beach Street	Fort Worth	Texas	76111	682-647-0222
Dale Smith	7070 Preston Rd.	Frisco	Texas	75034	972-377-7679
Mark VaHala	6841 Warren Parkway, Suite 205	Frisco	Texas	75034	214-705-9120
Mark VaHala	6065 Sports Village Rd.	Frisco	Texas	75034	214-705-1674
Yasmin Poonawala*	6721 Bridge St.	Ft. Worth	Texas	76112	817-451-4899
Jeff Bass	1413 W. Buckingham	Garland	Texas	75042	972-530-3137
Chung C. Yam	3906 US Hwy. 377 East	Granbury	Texas	76048	817-573-2897
Laura Guevara	2469 Dalworth Street	Grand Prairie	Texas	75050	972-641-9044
Mark Wong	3710 S. Carrier Pkwy.	Grand Prairie	Texas	75052	972-318-9659
Joseph Vongsombath*	13100 NW Highway 287 Suite 138	Haslet	Texas	76052	817-439-8028
Glenn Garrett	1510 Corsicana Highway	Hillsboro	Texas	76645	254-221-1076
David Bauman	1911 Taylor Street	Houston	Texas	77007	832-673-0077
Wendy J. Ridpath	6184 HIGHWAY 6 NORTH	Houston	Texas	77084	281-345-7528
Johnnie Wilson	21519 Tomball Parkway, Suite I	Houston	Texas	77070	281-251-0440



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Victor Anaya	9759 FM 1960 Bypass Rd. W	Humble	Texas	77338	281-570-6297
Laura Thomason	601 C St. Hwy. 75 N	Huntsville	Texas	77320	936-295-8700
Shawn Boedecker	1858 Precint Line Rd	Hurst	Texas	76054	817-656-0200
Mario Acosta	5330 N. MacArthur Blvd. Suite 168	Irving	Texas	75038	972-580-1917
Debra Haakinson	2912 N. Beltline Rd.	Irving	Texas	75062	972-255-0033
Genaro "Gene" Alberto Garcia	1315 W. Grand Parkway South, Suite 108	Katy	Texas	77450	281-347-3097
David Boisture	711 Keller Parkway	Keller	Texas	76248	817-741-7676
Thomas E. Freeman	881 Junction Highway	Kerrville	Texas	78028	830-792-0757
Gregg O. McCardle	532 Kingwood Dr.	Kingwood	Texas	77339	832-644-6879
Urmesh Dahya	5695 Kyle Parkway, Suite 100	Kyle	Texas	78640	512-268-3200
Nikki L. Wisdom	512 College Ave.	Levelland	Texas	79336	806-568-7675
Jeffery Bass	717 Hebron Pkwy. Suite 130	Lewisville	Texas	75057	972-956-0150
Mohammed "Mo" Afzal	1511 Justin Rd., Suite 118A	Lewisville	Texas	75077	972-317-3400
Tim Tolson	2587 FM-423, Suite 100	Little Elm	Texas	75068	469-362-6776
Aftab Ali Bawani	11978 Highway 59 North	Livingston	Texas	77351	936-398-2655
Evan Brown	5412 Slide Road, Suite 100	Lubbock	Texas	79414	806-791-5300
Evan Brown	5217 98th Street, Suite 900	Lubbock	Texas	79424	806-698-1798
Joseph Vongsombath*	4505 South Medford Dr. Suite 213	Lufkin	Texas	75901	936-238-3708
Aziz R. Maredia	795 S. Main St.	Lumberton	Texas	77657	409-227-4098
Aftab Ali Bawani	6011 FM 1488, Suite C	Magnolia	Texas	77534	281-259-5619
Brandon Monroe	3807 East Broad Street	Mansfield	Texas	76063	817-717-7295
Dale Smith	8628 Hwy. 121	McKinney	Texas	75070	972-727-1300
MJ Breaux	3700 Gus Thomasson	Mesquite	Texas	75150	972-686-6822
Gary Haskell	5210 W. Wadley, Suite 100	Midland	Texas	79707	432-689-4500
Alejandro Gomez Mortera	2521 E. US Expwy. 83, Suite 100	Mission	Texas	78572	956-682-6077
Jeff & Erik Moosa	3505 South St.	Nacogdoches	Texas	75964	936-559-5461
Shawn Boedecker	5209 Rufe Snow	North Richland Hills	Texas	76180	817-656-9999
Gary Haskell	6105 E. Highway 191	Odessa	Texas	79762	432-362-1000
Dale Smith	4032 Preston Rd	Plano	Texas	75093	972-398-3030
Philip Lezar	1441-A Coit Road	Plano	Texas	75075	972-867-2901
Daniel Lee Allen	501 E. Princeton Dr.	Princeton	Texas	75407	972-736-6442
Tesia Runnels	502 N. IH-35	Red Oak	Texas	75154	972-576-2121
Dale Smith	1150 North Plano Rd	Richardson	Texas	75081	972-907-8494
Mo Afzal	2160 N. Coit Road, Suite 146	Richardson	Texas	75080	972-644-9000
Shawn Boedecker	1224 US 377 Suite 221	Roanoke	Texas	76262	817-491-3100
Patrick MacKay*	2951 Ridge Road, Suite 119	Rockwall	Texas	75032	972-722-7776
Jerry G. Wade	661 Louis Henna Blvd. Suite 330	Round Rock	Texas	78664	512-244-2877

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Sami Ebrahim	1700 Dalrock Road	Rowlett	Texas	75088	972-475-1400
Guy New	5701 PGBT Suite 110	Rowlett	Texas	75089	972-412-0667
Gary T. Allen	4520 Sherwood, Suite 109	San Angelo	Texas	76901	325-949-4271
Marc Cohen	6531 FM 78, Suite 102	San Antonio	Texas	78244	210-560-3227
Stephen Cohen	7247 Bandera Rd.	San Antonio	Texas	78238	210-520-0833
Amish Patel	834 NW Loop 410, Suite 105	San Antonio	Texas	78216	210-979-7733
Tracy Andrew Norris	600 S. Stemmons Freeway	Sanger	Texas	76266	940-458-2853
Scotty M. Johnson	701 N. Main	Seminole	Texas	79360	432-758-1010
Bill Douglass	529 W. Lamar St.	Sherman	Texas	75090	903-870-2083
Ratna & Jay Devdhara	4509 College Ave.	Snyder	Texas	79549	325-436-0225
Joselio Sobrinho	260 N. Kimball Ave., Suite 262	Southlake	Texas	76092	817-442-5700
Becky Dutch	7316 Louetta Road, Suite B 300	Spring	Texas	77379	281-251-2809
Michael Elwood	1614 Louetta Rd.	Spring	Texas	77388	281-907-6000
Abid Masood	100 E Hwy 199	Springtown	Texas	76082	817-523-2033
Amish Patel	5207 Brodie Ste. 115	Sunset Valley	Texas	78745	512-892-2283
Jitendra "Jay" Devdhara	1806 Dent Drive	Sweetwater	Texas	79956	325-219-7037
David Arterburn	5745 E. TX-121	The Colony	Texas	75056	469-888-4295
Jeff Baker	10700 Kuykendahl Road	The Woodlands	Texas	77381	281-298-8422
Kristin Mason	28155 Tomall Parkway #2	Tomball	Texas	77375	281-255-2775
John D. Huml	1501 WSW Loop 323	Tyler	Texas	75701	903-534-7073
Clay & Stephanie Stockton	4201 College Dr.	Vernon	Texas	76384	940-553-4227
Ryan Curtis*	5900 Bosque Blvd	Waco	Texas	76710	254-751-1232
Shane Ables	1009 Highway 77 N.	Waxahachie	Texas	75165	972-937-3030
Joseph Vongsombath*	1001 Hwy. 377	Whitesboro	Texas	76273	469-358-7742
Clay & Stephanie Stockton	3911 Lawrence Rd. Suite 600	Wichita Falls	Texas	76308	940-692-4227
M.J. Breaux	1301 Century Way	Wylie	Texas	75098	972-429-8525
Kory Boyd	599 W. Pacific Dr.	American Fork	Utah	84003	801-492-0400
Brady River Tiffany	1190 South Sage Dr. Sutie D&E	Cedar City	Utah	84720	435-865-2716
Randy Routh	1917 W. 1800 N. Suite D8	Clinton	Utah	84015	801-820-5848
Jason Huang	162 E. 13800 S. and Bangerter Hwy. E-6	Draper	Utah	84020	801-572-2299
Matthew Jenson	290 N. Central Ave.	Farmington	Utah	84025	801-939-3030
Sky Galli	595 South Main Street	Heber City	Utah	84032	435-657-2278
John Thomson	2056 N. Hill Field Rd.	Layton	Utah	84041	801-825-1059
Kory Boyd	2951 W. Clubhouse Dr.	Lehi	Utah	84042	801-766-9076
Michael Argyle	55 E. 1400 N. Suite 120	Logan	Utah	84341	435-753-7681
John Thomson	1082 E. Fort Union Blvd. Suite 23	Midvale	Utah	84047	801-561-3227
John Thomson	185 W. 12th street, Suite D & E	Ogden	Utah	84404	801-627-8027

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Kory Boyd	1385 South State St.	Orem	Utah	84097	801-434-9600
Reed Rugg	178 W. 1500 S. Suite 124	Richfield	Utah	84071	435-633-4481
Ahmad Vedadi	12575 South Rhetski lane, Suite 103	Riverton	Utah	84065	801-256-6574
John Thomson	1830 South 355 W. Suite B	Salt Lake City	Utah	84115	801-467-6984
Kody Campbell	689 W. South Jordan Parkway	South Jordan	Utah	84095	801-446-4556
Carl Pierce	2610 S. Pioneer Dr.	St. George	Utah	84790	435-674-1206
Jason Huang	5578 South Redwood Rd. Suite D	Taylorsville	Utah	84123	801-803-6848
John Thomson	1024 N. Main St. Suite B	Tooele	Utah	84074	435-241-5103
John Thomson	2085 W. highway 40, Suite A	Vernal	Utah	84078	435-789-9227
Carl Pierce	755 West Telegraph St.	Washington	Utah	84780	435-986-1107
Jason Huang	7742 Campus View Dr., Suite 130/ Building B	West Jordan	Utah	84084	801-921-4106
Matthew T. Jensen	2592 South 5600 West #103	West Valley	Utah	84120	801-969-6600
Hala Sa'ad	14260 G&H Centerville Square	Centerville	Virginia	20121	571-281-4846
Duc M. Nguyen (Andrew)	11199-F Lee Highway	Fairfax	Virginia	22030	703-865-4333
Eric Wilbourne*	10008 Southpoint Pkwy. Suite 100	Fredericksburg	Virginia	22407	540-710-0700
Terry & Lisa Henshaw	9809 West Broad Street	Glen Allen	Virginia	23060	804-527-1318
Stuart Abbitt	4017 Wards Road	Lynchburg	Virginia	24502	434-237-8465
Terry & Lisa Henshaw	7037 Forest Hill Ave.	Richmond	Virginia	23225	804-323-1318
Rutledge A. Simmons*	2750- J Gallows Road	Vienna	Virginia	22180	703-722-9152
Matthew Burnett	1544 Laskin Rd., Unit 212	Virginia Beach	Virginia	23451	757-425-1534
Matthew Burnett	1920 Centerville Turnpike, Ste. 104	Virginia Beach	Virginia	23464	757-962-1020
Maricela Messner	2524 South Pleasant Valley Rd.	Winchester	Virginia	22601	540-665-1000
Gary & Megan Deeping	1118 Outlet Collection Way, SW Ste. 105	Auburn	Washington	98001	253-333-2991
Daniel C. Hsu	14150 NE 20th street, Suite E	Bellevue	Washington	98007	425-747-4659
Ted Barrans	21109 State Rte. 410 E. Suite G4A	Bonney Lake	Washington	98391	253-862-0425
Gary Depping	27149 185th Ave SE, #113	Conington	Washington	98042	253-243-7697
Chad Manivanah	617 SW 128th Street, Suite 107	Everett	Washington	98204	425-265-0041
Dustin Benson	2054 Main St.	Ferndale	Washington	98248	360-384-4227
Rachel Tyra*	710 NW Gilman Blvd. Suite D105	Issaquah	Washington	98027	425-392-2336
Dan R. Pelfrey*	122 Highway 395	Kennewick	Washington	99336	509-396-9898
Ted Barrans	1426 W. Meeker St., Ste 102	Kent	Washington	98032	253-852-5251
Chairman Benson	8082 Guide Meridian Rd. Suite 103	Lynden	Washington	98264	360-656-5861
Gina F. Young	1001 Cooper Point Rd. Suite 175	Olympia	Washington	98502	360-705-1600
Thomas Driver*	1800 Mile Hill Drive, Suite: 160 and 170	Port Orchard	Washington	98366	360-602-0424
Tim Barrans	3932 S. Meridian	Puyallup	Washington	98373	253-845-5061
Nick Cochrane	12628 North Division Street	Spokane	Washington	99218	509-465-9999

<b>Franchisee</b>	<b>Outlet Street Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Telephone</b>
Gary Deeping	8425 S. Hosmer St. Suite 106	Tacoma	Washington	98444	253-267-1899
Benjamin Harris	5104 6th Ave. Suite 102	Tacoma	Washington	98406	253-301-1937
Anna Mahoney	2706 W Nob Hill Blvd	Yakima	Washington	98902	509-388-0637
Perry McKinney	763 Ritter Drive	Beaverton	West Virginia	25813	681-238-5603
Stephanie Reeves*	1002 N. Eisenhower Dr.	Beckley	West Virginia	25801	304-252-7675
Stephanie Reeves*	2004 Harper Road	Beckley	West Virginia	25801	681-207-7032
Vic Malhorta	538 Emily Dr.	Clarksburg	West Virginia	26301	304-841-0247
Bonnita Pena	9001 Middletown Mall	Fairmont	West Virginia	26554	304-366-6636
Randy Miller*	1111 Van Voorhis Road Suite 1	Morgantown	West Virginia	26505	304-381-2460
Stephanie Reeves*	837 Robert C. Byrd Dr.	Sophia	West Virginia	25921	304-683-4742
Anthony Falbo	W3192 County Road KK	Appleton	Wisconsin	54915	920-364-0686
Travis Joncas	311 E. Clairemont Ave.	Eau Claire	Wisconsin	54701	715-830-9790
Anthony Falbo	895 Lombardi Ave.	Green Bay	Wisconsin	54304	920-884-2800
William Bill Zimmerman	11880 74th Place, Suite C	Kenosha	Wisconsin	53142	262-287-9889
Nick Ziegler	4833 Anamark Dr. Suite 200	Madison	Wisconsin	53704	608-249-4205
Travis Joncas	1320 North Broadway	Menomonie	Wisconsin	54751	715-231-3227
Nick Ziegler	8225 Greenway Boulevard, Suite 100	Middleton	Wisconsin	53562	608-827-9000
Craig Hatfield*	15175 W National Ave	New Berlin	Wisconsin	53151	262-649-7043
Craig A. Hatfield*	1273 Capitol Dr.	Pewaukee	Wisconsin	53072	262-696-6034
Kevin T. Shank	2719 Claumet Dr.	Sheboygan	Wisconsin	53083	920-783-6789
Philip A. Ries	2111 Stewart Ave.	Wausau	Wisconsin	54401	715-803-8585
Sherri Povolito	3180 North 124th street	Wauwatosa	Wisconsin	53222	844-6-DICKEYS
Lawrence Visk	2149 Miller Park Way	West Milwaukee	Wisconsin	53219	414-384-4227
Nathaniel Schott	1400 Dell Range Blvd, Suite 085A	Cheyenne	Wyoming	82009	307-635-2939
Brandon Morgan	2550 South Douglas Highway, Suite 190	Gillette	Wyoming	82718	307-686-8698
Lesly K. Solano	76 Gateway Blvd.	Rock Springs	Wyoming	82901	307-382-7427

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**LIST OF FRANCHISEES WHO HAVE SIGNED FRANCHISE AGREEMENT BUT OUTLET NOT OPEN  
AS OF MAY 31 2015**

NAME	CITY	STATE	Phone #
John Lockett	Mobile	AL	228-229-0027
Darryl Weaver	Marana	AZ	(520) 401-4656
Stacy Tinnell	Surprise	AZ	(623) 308-7233
Assim Shammami	Alpine	CA	(619) 322-5417
Andrew Lee	Asuza	CA	(626) 375-2176
Ms. Sia V. Tai	Auburn	CA	916-208-9361
Connie McKenney	Corona	CA	(951) 258-6467
Assim Shammami	El Cajon	CA	(619) 322-5417
Francisco "Frank" Morones	Lake Elsinore	CA	(951) 707-6027
Jamie Bynum	Lancaster	CA	(661) 317-9631
Andrew Lee	Montclair	CA	(626) 375-2176
Rod S. Cockrum	Park West Place	CA	(209) 603-7254
Steven Kyle Frydrych	Redlands	CA	760-409-9029
Rafael Armenta, Sr.	Riverbank	CA	(209) 596-1207
Bill W. Seward	Riverside	CA	310-947-7877
Harish Sharma	San Dimas	CA	(951) 743-4319
Richard A. Breedwell	Santa Rosa	CA	707.372.5525
Karl Reasoner	Sonora	CA	(925) 305-5843
David Johnson, Jr.	Tustin	CA	(714) 985-4514
Stephen Huerth	Yorba Linda	CA	(714) 272-6755
John Thomson	Dillon	CO	(801) 756-0700
Rex Schweers	Greeley	CO	(970) 405-6262
Dustin "Buck" Stine	Lake Nona	FL	(407) 353-7932
Sarah B. Maddox	Mariana	FL	(850) 372-3269
Frank C. Ilderton, Jr.	Panama City	FL	(808) 397-7893
Brandon Kosek	Council Bluffs	IA	(402) 202-8609
Ryan McPeek	Rockford	IL	(815) 275-5195
Ryan Wenrich	Wichita	KS	785- 554-6113
Leslie Sharp	Winchester	KY	(859) 333-1752
Carrie Wenzel	Sterling	MI	(248) 830-0435
Josh Laber	Rochester	MN	(507) 316-7873

NAME	CITY	STATE	Phone #
Ryan Wenrich	Independence	MO	785- 554-6113
Ryan Wenrich	Wyandatte Plaza	MO	785- 554-6113
Steven Earley	Clinton	MS	601.826.3781
John Thomas	Starkville	MS	(601) 416-6362
Randall "Randy" Rhone	Dickinson	ND	(701) 471-9451
Steven Swift	Omaha	NE	(903) 216-7195
Craig Stoabs	Farmington	NM	(505) 325-2464
Joseph Vongsombath	Catoosa	OK	(817) 907-8550
Arless "Todd" Saperstein	Beaverton	OR	(971) 221-5830
Ann Taylor	Easton	PA	(718) 200-2422
Javeed Hyder	Early	TX	(214) 566-2460
Kashif Kabani	Galveston	TX	(713) 478-2193
Perry Fagan	Lantana	TX	(469) 948-0241
Jani Foster	Madisonville	TX	(903) 390-4010
Gary Francis Haskell	Midland County	TX	(432) 212-3595
Azizbhai "Andy" Maredia	Nederland	TX	(409) 932-3832
Joseph Vongsombath	North Richland hills	TX	(817) 907-8550
Ufoma "David" Vese	Richmond	TX	(832) 798-5038
Agustin Tellez, Jr.	Stone Oak	TX	(210) 393-4507
Joseph Vongsombath	Whitesboro	TX	(817) 907-8550
Jim Kaden	Wickett	TX	(281) 681-1000
Clint Urry	Bountiful	UT	(801) 910-1462
John Thomson	Park City	UT	(801) 756-0700
Daniel Barton	Park City	UT	(801) 809-7753
James Wright, Jr.	Stafford	VA	(917) 603-8158
Dr. Thomas Driver	Poulsbo	WA	(360) 620-5017
Dan R. Pelfrey	Richland	WA	(435) 890-9073
Lawrence Visk	Mount Pleasant	WI	(262) 384-4227
Perry McKinney	Lewisburg	WV	(304) 731-3375

**LIST OF FRANCHISEES WITH TERMINATED, CANCELLED, NON-RENEWED, OR TRANSFERRED  
OUTLETS AND FRANCHISEES WHO CEASED TO DO BUSINESS OR HAVE NOT RECENTLY  
COMMUNICATED WITH DICKEY'S AS OF MAY 31, 2015**

<b>Name</b>	<b>City</b>	<b>State</b>	<b>Telephone</b>
Raji Signh	Taylorville	Alabama	205-454-8385
James R. Domsic	Davis	California	916-956-8312
Dawn Toff	Hollister	California	408.426.6432
Dave Colicchio	Morgan Hill	California	408-778-7171
Amy 'Stephens' Meadows	Pleasant Hill	California	408.710.6128
Ed Phillips	Porterville	California	559.789.2022
Donna Schiano	San Ramon	California	925.846.1075
Alfred "Nick" Pena	Tracy	California	209-629-4241
Steve Spittle	Ventura	California	805.628.2202
Linda Nguyen	Highlands Ranch	Colorado	303-570-9473
John Thomson	Lakewood	Colorado	801-756-0700
John Thomson	Lakewood/ S. Wadsworth Blvd.	Colorado	801-756-0700
John Thomson	Louisville	Colorado	801-756-0700
Robert Cacioppo	Naugatuck	Connecticut	516-606-9316
Jason D. Feldman	Boca Raton	Florida	305-968-9554
Adam Rodriguez	Ft. Myers	Florida	239-823-5122
David Lowe	Jacksonville	Florida	904.910.6223
Glenn Hughes	Oviedo	Florida	407.927.8110
Debra H. Lewis	Woodville	Florida	850-510-1520
Mr. Shannon Haley	Athens	Georgia	(706) 850-1254
Lance Hale	Eagle	Idaho	505-280-7218
Lance L. Hale	Garden City	Idaho	505-280-7218
Lance L. Hale	Meridian	Idaho	505-280-7218
Lance L. Hale	Nampa	Idaho	505-280-7218
Clarence "Sonny" DeWitt	schereville	Indiana	219-512-2731
Matthew Chorley	Frederick	Maryland	240-784-6226
Tom Eggerud	Eden Prairie	Minnesota	612-290-1969
Tom Eggerud	Plymouth	Minnesota	612-290-1969
Al V. Lee	Savage	Minnesota	651-331-1488
Tom Eggerud	Shakopee	Minnesota	612.290.1969
Hatice Gecol	Carson City	Nevada	775-742-9452
Robert Cacioppo	Clifton Park	New York	516-606-9316
Gerald Reid Grubbs	Queensbury	New York	917-873-8422
Eric Davis	Sanford	North Carolina	919-427-9557
Jami Van Pelt	Grand Forks	North Dakota	763- 464-5610
Burt F. Jackson	Mentor	Ohio	440-749-2161
Ka-Ron Thomas	Philadelphia	Pennsylvania	267-825-3595

<b><u>Name</u></b>	<b><u>City</u></b>	<b><u>State</u></b>	<b><u>Telephone</u></b>
James Neighbors	Johnson City	Tennessee	817-223-6201
Jeffrey Phillips	Austin	Texas	512-971-4700
Lowell Nix	Brenham	Texas	979-530-6730
Philip Lezar	Celina	Texas	469-682-6170
Todd Shampoe	Conroe	Texas	(281) 236-5099
Memo Galvan	Cotulla	Texas	210-264-8797
SW Minority Financial Group Inc	D/FW Airport, Terminal E, Gate 12	Texas	972-641-8500
Nadeem Iqbal	Dallas/Garland Rd.	Texas	214-914-5414
SW Minority Financial Group Inc	DFW Airport Terminal A. Gate 19	Texas	972-641-8500
Mark Kerr	Duncanville	Texas	972.217.0122
Mark Vahala	Frisco	Texas	972.989.7376
Viet (Kevin) D. Tran	Garland	Texas	469-556-5517
Wallace Owens	Grand Prairie	Texas	817.688.9573
Wallace Owens	Grand Prairie	Texas	817.688.9573
Tahira Siddiqui	Houston/Westheimer	Texas	713-992-0217
Aftab Bawani	Houston/Westheimer	Texas	936-718-9786
Krissy Whittenberg	Humble	Texas	281-761-9427
Roydon "Roy" John Carneiro	Katy	Texas	832.863.6718
Don C. Leggitt, Jr.	Kyle	Texas	830-708-5590
Memo Galvan	Laredo	Texas	210-264-8797
Joel Siperek	Lewisville	Texas	909 275 1452
Guillermo "Memo" Galvan	San Antonio	Texas	210-264-8797
Guillermo "Memo" Galvan	San Antonio	Texas	210-264-8797
Joselio Sobrinho	Southlake	Texas	(214) 208-5622
Chris Lottie	Sunset Valley	Texas	972-540-9471
Gregg O. McCardle	The Woodlands	Texas	832-607-7076
David Arriasola	The Woodlands	Texas	832-588-1958
Patrick L. Henggeler	Waxahachie	Texas	817-557-0539
Cathy Fowler	Wylie	Texas	214-282-6917
John Thomson	American Fork	Utah	801-756-0700
Clint Urry	Clinton	Utah	801-910-1462
Jason Huang	Lehi	Utah	801-592-8882
John Thomson	Orem	Utah	801-756-0700
John Thomson	Richfield	Utah	801-756-0700
Chris Sideris	Sandy	Utah	801-558-7897
John Thomson	Sandy	Utah	801-756-0700
Mel Jensen & Bonnie Jensen	St. George	Utah	(435) 627 - 1484
Mel and Bonnie Jensen	Washington	Utah	435.668.4409
Ted Schrader	Ferndale	Washington	360-927-1683
Benjamin Harris	Kent	Washington	253-861-7945
Dawn A. Carr	Spokane	Washington	509.999.5018



<b><u>Name</u></b>	<b><u>City</u></b>	<b><u>State</u></b>	<b><u>Telephone</u></b>
Philip A. Ries	Eau Claire	Wisconsin	715-497-3339
Philip A. Ries	Eau Claire	Wisconsin	715-497-3339
Dan Stuttgen	Menomonie	Wisconsin	320-828-0769

**NOTES:**

1. The above table lists information for each franchisee who had an outlet terminated, cancelled, not renewed, transferred or otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during the most recent completed fiscal year, or who has not communicated with Dickey's within 10 weeks of the issuance date of this disclosure document.

2. IF YOU BUY THIS FRANCHISE, YOUR CONTACT INFORMATION MAY BE DISCLOSED TO OTHER BUYERS WHEN YOU LEAVE THE FRANCHISE SYSTEM.

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INFORMATION REGARDING PREVIOUSLY OWNED FRANCHISED OUTLETS UNDER FRANCHISORS CONTROL AND AVAILABLE FOR PURCHASE AS OF MAY 31, 2015							
Franchisee	City	State	Current business Tel. / Last Known Home Tel. No.	Time Period When Previous Franchisee Controlled Outlet	Reason For Change in Ownership	Time Period When Franchisor Retained Control of Outlet	
Roger Dennis Perry	Daytona	FL	386-562-4953	2/22/2013-6/1/2013	Financial Hardship	6/1/2013-Present	
Restaurant Growth, Inc.	Daytona	FL	972-248-9899	12/31/2012-2/22/2013	Corporate Acquisition	12/31/2012-2/22/2013	
Craig Coleman	Daytona	FL	321-615-0543	3/7/2012-12/31/2012	Financial Hardship	12/31/2012-2/22/2013	
John Dethlefs	Daytona	FL	386-283-3881	7/20/2011-3/7/2012	Transfer to new Franchisee	N/A	
Restaurant Growth, Inc.	Starke	FL	972-248-9899	10/1/2013-Present	N/A	10/1/2013-Present	
David Lowe	Starke	FL	904-910-6223	5/24/2013-10/1/2013	Financial Hardship	N/A	
Howard Casey Duckett	Starke	FL	904-718-9221	2/7/2013-5/24/2013	Financial Hardship	N/A	

**NOTES:**

1. The above information for each outlet listed is for the time period constituting Dickey's last five fiscal years.

**EXHIBIT A**  
**FRANCHISE AGREEMENT**

Ex. A

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
**FRANCHISE AGREEMENT**



**DICKEY'S BARBECUE RESTAURANTS, INC.  
FRANCHISE AGREEMENT**

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**DICKEY'S BARBECUE RESTAURANTS, INC.  
FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** (the "Agreement") is made and entered into and effective on the Effective Date (herein so called) stated below, by and between DICKY'S BARBECUE RESTAURANTS, INC., a Texas corporation, hereinafter referred to as "Franchisor" or "Dickey's", and the party identified below in the Franchisee Summary as the Franchisee, hereinafter referred to as the "Franchisee" or "you". The purpose of this Agreement is to set forth the terms and conditions of the business relationship between Franchisor and the Franchisee.

**FRANCHISEE SUMMARY**

EFFECTIVE DATE (Date Executed by Dickey's): \_\_\_\_\_

TERM: Twenty (20) Years from Effective Date

REQUIRED OPENING DATE: Eight (8) Months after Effective Date

FRANCHISEE: \_\_\_\_\_

BUSINESS ENTITY: \_\_\_\_ corporation/ \_\_\_\_ partnership/ \_\_\_\_ individual/ \_\_\_\_ limited liability company,  
formed under the laws of: \_\_\_\_\_

FRANCHISEE'S ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

FRANCHISEE'S TELEPHONE: \_\_\_\_\_

FRANCHISEE'S FACSIMILE: \_\_\_\_\_

FRANCHISEE'S E-MAIL ADDRESS: \_\_\_\_\_  
For courtesy purposes only:

ATTORNEY OR ADVISOR: \_\_\_\_\_

ATTORNEY'S OR ADVISOR'S ADDRESS: \_\_\_\_\_

FRANCHISE FEE: \$15,000.00	ROYALTY: 5%	MARKETING FUND: 4%
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## **WITNESSETH:**

**WHEREAS**, Dickey's has acquired the right to develop and as a result of the expenditure of time, skill, effort and money has developed, a system relating to the establishment and operation of fast casual restaurants under the name and mark "Dickey's Barbecue Pit" (each a "Restaurant") featuring the sale of freshly-prepared barbecued meats and other food products (the "System");

**WHEREAS**, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior design, decor, color scheme and furnishings; special recipes and menu items, uniform standards, specifications and procedures for operations, quality and uniformity of products and services, inventory and management control, training and assistance and advertising and promotional programs; all of which may be changed, improved and further developed by Dickey's from time to time;

**WHEREAS**, Dickey's has determined to continue development of the System through the granting of franchises using certain trade names, service marks, trademarks, symbols, logos, name and emblems, and indicia of origin, including but not limited to the mark "Dickey's Barbecue Pit" and such other trade names, service marks and trademarks as Dickey's may develop in the future to identify for the public the source of services and products marketed under these marks and under the System and representing the System's high standards of quality, appearance, and service (collectively, the "Proprietary Marks");

**WHEREAS**, you acknowledge the importance of Dickey's high standards of quality, cleanliness, appearance and customer service and the necessity of operating the business franchised hereunder in conformity with Dickey's standards and specifications; and

**WHEREAS**, you desire to use the System in connection with the operation of a Restaurant under the name "Dickey's Barbecue Pit" at the location specified hereunder as well as to receive and apply the training and other assistance provided by Dickey's in connection therewith;

**WHEREAS**, you understand that the Franchise Agreement contains indemnity and arbitration agreements, release provisions, and additional insured obligations in favor of Dickey's;

**WHEREAS**, you represent and warrant that you are not relying upon any representations (oral or written) except for those contained in this Agreement and in the Franchise Disclosure Document provided to you by Dickey's;

**NOW, THEREFORE**, the parties, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

## **ARTICLE 1. FRANCHISE**

**1.1 GRANT.** Dickey's hereby grants to you, upon the terms and conditions in this Agreement, the right and franchise, and you undertake the obligation, to develop and operate a "Dickey's Barbecue Pit" Restaurant (your "Restaurant" or "franchised business") and to use, solely in connection with your operation of the Restaurant, the Proprietary Marks and the System, as such may be changed, improved and further developed by Dickey's from time to time, only at the Accepted Location (as defined in Article 1.2) within the Assigned Area (as defined in Article 1.3).

**1.2 ACCEPTED LOCATION.** The "Accepted Location" shall be the leased site for your Restaurant in the Assigned Area accepted by Dickey's pursuant to Article 7.4. You shall not relocate the franchised business without the prior written consent of Dickey's. This Agreement does not grant you the right or franchise to operate the Restaurant or to offer or sell any products or services described under this Agreement at or from any other location.

**1.3 ASSIGNED AREA & PRIMARY AREA.** The "Assigned Area" is initially the county in which this address is located:

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Prior to your designation and Dickey's acceptance of your proposed Restaurant location, Dickey's may grant to others franchises to open and operate Restaurants within the Assigned Area. You acknowledge that the Assigned Area is large enough for you to locate, establish and operate a Restaurant within such Assigned Area. At such time as you propose and Dickey's accepts your proposed Restaurant location identified by a specific street address within the Assigned Area so that it becomes the "Accepted Location," the Assigned Area shall automatically and without further writing be reduced to an area within a one (1)-mile radius of the Accepted Location and thereafter identified as the "Primary Area." Dickey's may request that you confirm the specific physical address of the Accepted Location in a writing provided by or acceptable in form and substance to Dickey's that you sign and deliver to Dickey's. When and if the Assigned Area converts to the Primary Area, Dickey's will not establish and operate or license or authorize any other party to establish or operate a Dickey's Barbecue Restaurant within the Primary Area for the balance of the Term of this Agreement. Except as expressly limited by the previous sentence, Dickey's and its affiliates retain all rights with respect to Restaurants, the Proprietary Marks, the sale of similar or dissimilar products and services, and any other activities Dickey's deems appropriate whenever and wherever Dickey's desires. Specifically, but without limitation, Dickey's and its affiliates reserves the following rights:

- (1) the right to establish and operate, and to grant to others the right to establish and operate businesses offering similar or dissimilar products and services through similar or alternative channels of distribution, at any locations inside or outside the Assigned Area and Primary Area under trademarks or service marks other than the Proprietary Marks and on any terms and conditions Dickey's deems appropriate. Neither Dickey's nor any of its affiliates currently plan to operate or franchise businesses under a different mark which will offer goods or services similar to those offered under the System. Dickey's is not required to compensate you in any way for offering or selling in your Assigned Area or Primary Area any of the products or services described in this paragraph;
- (2) the right to offer and sell (and authorize others to offer and sell) products and services which may be the same or similar to those offered by Restaurants, under the Proprietary Marks in the Assigned Area and Primary Area, if offered and sold through a distribution channel other than a Restaurant (e.g., product and catalog sales, internet sales, grocery store or supermarket sales, warehouse store sales, memorabilia or recipes through other retail outlets, and other channels of distribution) ("Alternative Channel Products"). The Alternative Channel Products may be packaged for retail sale, and Dickey's may request or require franchisees to sell or advertise the Alternative Channel Products in their Restaurants. Dickey's may, in its discretion, contribute a percentage of its revenues from the sale or license of Alternative Channel Products to the Marketing Fund. Dickey's may offer and sell (and may authorize others to offer and sell) products and services through alternative distribution channels, such as product and catalog sales, internet sales, grocery store sales, and other channels of distribution in the Assigned Area and Primary Area which may be similar to those offered by the Restaurants, under names and marks other than the Proprietary Marks;
- (3) the right to, and to grant to others the right to, at any time, advertise and promote the System, or fulfill customer orders (including but not limited to catering and delivery services) in the Assigned Area and the Primary Area;
- (4) the right to establish and operate, and to grant to others the right to establish and operate, businesses offering dissimilar products and services, both inside and outside the Assigned Area and Primary Area under the Marks and on any terms and conditions we deem appropriate;

- (5) the right to operate, and to grant others the right to operate Restaurants located anywhere outside the Assigned Area and Primary Area under any terms and conditions we deem appropriate and regardless of proximity to your Restaurant;
- (6) the right to, directly or indirectly, operate, license, or grant a franchise to operate a Restaurant or any other food offering service within the Assigned Area and Primary Area if the location of the Restaurant is in a non-traditional venue including a stadium, corporate campus, shopping mall, airport, military base, health care facility, limited access highway rest stop, college or university campus, theme park, truck stop, casino or similar location;
- (7) the right to acquire the assets or ownership interests of one or more businesses providing products and services similar to those provided at Restaurants, and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating (including in the Assigned Area and Primary Area); and
- (8) the right to be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at Restaurants, or by another business, even if such business operates, franchises and/or licenses competitive businesses in the Assigned Area and Primary Area.

## **ARTICLE 2. TERM AND RENEWAL**

**2.1 INITIAL TERM.** Except as otherwise provided herein, the initial term of this Agreement shall expire twenty (20) years from the Effective Date of this Agreement.

**2.2 RENEWAL.** To the extent permitted under applicable state law, you may, at your option, renew the franchise granted hereunder for an additional term of ten (10) years, such term to begin upon the expiration of the initial term, subject to the following conditions, all of which (as determined by Dickey's) must be satisfied prior to such renewal:

1. You shall give Dickey's written notice of your election to renew not less than six (6) months nor more than twelve (12) months prior to the end of the initial term;

2. You shall repair or replace, at your cost and expense, equipment, (including computer hardware and software), signs, menu boards (interior and drive-through, as applicable), interior and exterior decor items, fixtures, furnishings, supplies and other products and materials required for the operation of your Restaurant as Dickey's may reasonably require and you shall obtain, at your cost and expense, any new or additional equipment, fixtures, supplies and other products and materials which may be reasonably required by Dickey's for you to offer and sell new menu items from your Restaurant or to provide your Restaurant's services by alternative means such as drive-through, carry-out or delivery arrangements and shall otherwise modernize your Restaurant premises (including, without limitation, the modernization of your Restaurant to conform to Dickey's then-current Restaurant specifications and requirements), equipment (including computer hardware and software), signs, menu boards (interior and drive-through, as applicable), interior and exterior decor items, fixtures, furnishings, supplies, and other products and materials required for the operation of your Restaurant, as reasonably required by Dickey's to reflect the then-current standards and image of the System as contained in the Manuals (as defined in Article 3.8) or otherwise provided in writing by Dickey's; provided, that you shall not be required to modernize your Restaurant more frequently than once every five (5) years, that Dickey's shall provide you with a reasonable time period within which to effect such repairs, replacements or acquisitions, and that the total cost of such repairs, replacements or acquisitions during any five (5) year period shall not exceed \$50,000.00;

3. You shall not be in default of any provision of this Agreement or any other agreement between you and Dickey's or its subsidiaries or affiliates; and you shall have substantially and timely

complied with all the terms and conditions of this Agreement and such other agreements during their terms;

4. You shall have satisfied all monetary obligations owed by you to Dickey's and its subsidiaries and affiliates under this Agreement and any other agreement between you and Dickey's or its subsidiaries or affiliates and shall have timely met those obligations throughout the term thereof;

5. You shall present evidence satisfactory to Dickey's that you have the right to remain in possession of the Accepted Location for the duration of the renewal term of this Agreement;

6. If you satisfy all of the other conditions for a renewal franchise, you and your Owner/Operator and Investors agree to execute a renewal franchise agreement and any ancillary agreements Dickey's then customarily uses in granting franchises for Restaurants, including a personal guaranty for the renewal term (modified as necessary to reflect the fact that it is for a renewal franchise), which may contain provisions that differ materially from any and all of those contained in this Agreement. You and your Owner/Operator and Investors further agree to sign Dickey's then-current form of general release of any and all claims against Dickey's and its affiliates, shareholders, officers, directors, members, employees, agents, successors, and assigns. Dickey's will consider your or your Owner/Operator and Investors' failure to sign these agreements and releases and to deliver them to us for acceptance and execution within thirty (30) days after their delivery to you to be an election by you not to acquire a renewal franchise;

7. You shall pay Dickey's a franchise renewal fee of \$10,000.00;

8. To the extent not prohibited by applicable law, you and your Owner/Operator and Investors shall execute a general release, in a form prescribed by Dickey's, of any and all claims you may have, of whatever nature or kind, against Dickey's and its subsidiaries and affiliates and their respective officers, directors, shareholders, partners, employees, servants, representatives, independent contractors and agents, in their corporate and individual capacities, including without limitation, claims arising under this Agreement and any other agreement between you and Dickey's or its subsidiaries or affiliates and under any federal, state and local laws, rules and ordinances;

9. You shall comply with Dickey's then-current qualification and training requirements; and

10. Your franchise must score above the 50<sup>th</sup> percentile of the Net Sales/customer complaint ratio we calculate on a chain wide basis for the twelve month period preceding the date you give notice of your intent to renew.

### **ARTICLE 3. DICKEY'S DUTIES.**

Dickey's shall provide the following services and assistance to you:

**3.1 SITE SELECTION.** Dickey's shall provide the following site selection assistance:

1. Dickey's shall provide you with its counseling and assistance as Dickey's may deem advisable; and

2. Dickey's shall provide a site evaluation; provided, however, that Dickey's shall not provide an on-site evaluation for any proposed site prior to the receipt of all required information and materials concerning such site prepared pursuant to Article 7. Dickey's will provide up to three (3) on-site evaluations for your Restaurant (or for your first Restaurant under a Development Agreement). Thereafter, if additional on-site evaluations are deemed appropriate by Dickey's or as requested by you, you shall pay a reasonable fee for each such evaluation and shall reimburse Dickey's for all reasonable expenses incurred by Dickey's in connection with such on-site evaluation, including, without limitation, the cost of travel, lodging, meals, and wages. As used in this Agreement, "Development Agreement" means an agreement to establish more than one (1) Restaurant executed on or prior to the Effective Date by Dickey's and you or your affiliate, and pursuant to which agreement you are executing this Agreement.

**3.2 DESIGN PLANS AND CONSTRUCTION.** Dickey's shall maintain a list of approved architects and general contractors. Dickey's has provided a set of prototypical design plans for a Dickey's Barbecue Restaurant to the approved architects. You shall, independently and at your expense, have such design plans and specifications adapted for the finish-out or renovation of your Restaurant by a Dickey's-approved architect of your choice in accordance with Article 7.7. You may contract with an alternative architect or general contractor, subject to Dickey's approval. If you request an alternate architect or general contractor, you must submit your proposal to Dickey's prior to engaging the architect or general contractor along with a \$2,500 evaluation fee and the alternate architect and/or general contractor must execute Dickey's then-current form of agreement for alternate architects or general contractors (which may require the architect or general contractor to pay a fee) in order to have the proposal evaluated.

**3.3 TRAINING.** Dickey's shall provide an initial training program for certain of your personnel in accordance with Article 9 and shall make available such other training programs and seminars as it deems appropriate. All training provided by Dickey's shall be in accordance with Article 9.

**3.4 INITIAL PURCHASE.** Dickey's shall provide you assistance and advice concerning equipment and will specify your opening inventory selection and purchasing in connection with the opening of your Restaurant.

**3.5 PRE-OPENING, OPENING AND OPERATING ASSISTANCE.** Dickey's shall provide you with "pre-opening assistance" in accordance with Dickey's "stages and phases" program, and shall provide you with on-site opening supervision and assistance and thereafter such additional advisory assistance in the operation of the franchised business during the term of this Agreement as set forth in Article 9.

**3.6 MARKETING FUND.** Dickey's has established a system-wide marketing fund (the "Marketing Fund") promoting the System in accordance with Article 5.8. Dickey's may modify or terminate the Marketing Fund at any time in accordance with Article 5.8 and provide for the advertisement and promotion of your Restaurant and the System by such other methods as set forth in Article 5.

**3.7 ADVERTISING AND PROMOTIONAL MATERIALS.** Dickey's may, from time to time, make available to you at a reasonable cost certain advertising and promotional materials and information developed by Dickey's for your use in marketing and conducting local advertising for your Restaurant. Dickey's shall have the right to review and approve or disapprove all advertising and promotional materials that you propose to use pursuant to Articles 5 and 8.

**3.8 OPERATING MANUALS AND SOFTWARE.** Dickey's shall provide to you, on loan, and at the cost established by Dickey's or its vendors, one (1) set of the operations manual (the "Operations Manual") and such other manuals, written materials (collectively, as the same may be revised by Dickey's from time to time, the "Manuals") and software programs as Dickey's may, from time to time, develop for use in the franchised business, as more fully described in Articles 8 and 11. You will be required to utilize computer hardware and software pursuant to Article 8.13. Dickey's or Dickey's approved vendor or supplier shall also make available to you, from time to time, any upgrades, enhancements or replacements to the hardware and software that are developed by or on behalf of Dickey's, at such cost as Dickey's makes such upgrades, enhancements, and replacements available to other franchisees operating under the System.

**3.9 TRAINING MATERIALS.** Dickey's may create, from time to time, training films and other instructional video and audio materials. Upon request, Dickey's shall make available to you, from time to time, on loan, these materials at such cost as Dickey's makes such materials available to other franchisees operating under the System.

**3.10 ONGOING SEMINARS, ETC.** Dickey's shall, from time to time, in its discretion, conduct meetings, organize and conduct seminars and other related activities regarding the System for franchisees generally. Dickey's may require your attendance at such events. Except as approved by Dickey's, any costs incurred by you or your Restaurant personnel in attending such events shall be your responsibility. Any video or audio tapes relating to such meetings and seminars will be made available to

you, on loan, at such cost as Dickey's makes such materials available to other franchisees operating under the System.

**3.11 ONGOING INSTRUCTIONAL MATERIALS.** Dickey's shall provide to you, from time to time as Dickey's deems appropriate, advice and written materials concerning techniques of managing and operating your Restaurant, including new developments and improvements in restaurant equipment, food products, packaging, and preparation. Except as set forth herein, you are responsible for the training of your employees in accordance with Dickey's standards.

**3.12 ONGOING OPERATING ASSISTANCE.** Subject to the availability of appropriate personnel of Dickey's, Dickey's shall provide you ongoing operational assistance from time to time as Dickey's deems necessary.

**3.13 LIST OF APPROVED SUPPLIERS AND PREFERRED VENDORS.** Dickey's shall provide you, following execution of this Agreement and thereafter from time to time as Dickey's deems appropriate during the term of this Agreement, with a list of Dickey's approved suppliers and preferred vendors as described in Article 8.

**3.14 PROPRIETARY PRODUCT SALES.** Dickey's may make available at a reasonable cost and, at its option, may require you to purchase from Dickey's or an affiliate for resale to your customers, certain packaged food products such as bottled barbecue sauce, spices, gift cards available for redemption at any Dickey's Restaurant, and certain promotional merchandise identifying the System (such as gift cards, T-shirts, sweatshirts, and caps), in amounts sufficient to meet your customer demand.

**3.15 MAINTENANCE OF STANDARDS.** Dickey's shall seek to maintain the high standards of quality, appearance, and service of the System, and accordingly shall conduct, as it deems advisable, inspections of your Restaurant and evaluations of the products sold and services rendered therein, as more fully described in Article 8.10.

#### **ARTICLE 4. FRANCHISE AND ROYALTY FEES**

**4.1 FRANCHISE FEE.** You shall pay Dickey's an initial franchise fee ("Franchise Fee") in an amount equal to Fifteen Thousand Dollars (\$15,000.00) upon the execution of this Agreement. **Such initial Franchise Fee shall be nonrefundable.** If a Development Agreement has been executed, the initial Franchise Fee will be payable according to its terms.

**4.2 ROYALTY FEES.** You shall pay a continuing nonrefundable royalty fee throughout the term of this Agreement, equal to five percent (5%) of the Net Sales (as defined in Article 4.6) of your Restaurant, which shall be due and payable and shall be electronically drafted on your designated bank account on or before the Monday following the calendar week to which such payments relate. If the date on which such payments would otherwise be due is not a business day, then payment shall be due and drafted upon on the next business day. You shall not be entitled to withhold any payments due to Dickey's on grounds of alleged non-performance by Dickey's under this Agreement. The calendar week for which royalty fees are due is sometimes referred to as the "Sales Period".

**4.3 SALES REPORT.** You shall, during the term of this Agreement on or before the third (3<sup>rd</sup>) day of each calendar month, submit to Dickey's a report (the "Monthly Sales Report"), prepared and approved by you, setting forth (i) your Restaurant's Net Sales for each Sales Period during the previous calendar month, (ii) the amount of the royalty fee due for each Sales Period during the prior calendar month and (iii) the Marketing Fund contribution due for each Sales Period during the prior calendar month; and (iv) a Restaurant income statement and other reports. In addition, you shall submit to Dickey's on a daily or weekly basis, in such manner as Dickey's may require, a report detailing your Restaurant's Net Sales for the current Sales Period prior to the time that your royalty fees and Marketing Fund contribution for such Sales Period is due and payable.

**4.4 ACH TRANSFERS.** All payment of royalty fees, Marketing Fund contributions and any other sums owed to Dickey's hereunder shall be made by ACH electronic transfer drawn upon your account at your bank. Such payments shall be determined based upon information retrieved by Dickey's from the Point of Sale System (as defined in Article 8.13) regarding the applicable weekly Sales Period. You agree to accept Dickey's calculation of the royalty fees and Marketing Fund contributions due hereunder and not attempt to withhold any payments absent manifest mathematical error. You shall execute and deliver to Dickey's the ACH authorization in the form attached as **Attachment A** hereto (or such other form as may be required by Dickey's or its bank). You further covenant to maintain your account identified in the ACH transfer authorization throughout the term of this Agreement and to maintain within such account such funds as are necessary to process the payment and transfer of royalty fees or Marketing Fund contributions from time to time. Payment of royalty fees or Marketing Fund contributions to Dickey's by check or in any other manner may be made only upon the express written consent of Dickey's.

**4.5 LATE PAYMENTS.** If any payment or fee due under this Agreement is not paid by you when the payment or fee is due, you shall pay Dickey's, in addition to the overdue amount, interest on such amount from the date it was due until paid at the rate of fifteen percent (15%) per annum, or the maximum rate permitted by law, whichever is less. In addition, you shall reimburse Dickey's for any out-of-pocket expenses incurred by Dickey's in connection with any such late payment or the collection of any such late payment. If any payment or fee due under this agreement is returned NSF, you shall pay to Dickey's an additional amount of Thirty-Five Dollars (\$35.00) for each NSF occurrence. Any failure to comply with this Article 4.5 shall be an event of default under Article 16. Dickey's entitlement to such interest shall be in addition to any other remedies Dickey's may have in law or in equity, arising under this Agreement or otherwise.

**4.6 NET SALES.** As used in this Agreement, "Net Sales" shall include all revenue from the sale of services and products by in-store dining, carry-out, on-line orders, delivery, third-party voucher sales, catering, and otherwise, including, but not limited to, the sale of food and beverages, the redemption of gift cards, and the sale of merchandise, (e.g., prepackaged barbecue sauce or other food products, and any T-shirts, sweatshirts, etc.) and all other income of whatever nature or kind relating to the franchised business, whether for cash or credit and regardless of collection in the case of credit; provided that Net Sales shall not include any sales tax or other taxes collected from your customers and paid to the appropriate taxing authority, employee meals and the discounts offered for meals purchased with promotional coupons approved by Dickey's, and any accounts receivable representing Net Sales for which you have previously paid royalty fees but which subsequently you have deemed uncollectible. Dickey's may, from time to time, in writing, permit certain other items to be excluded from Net Sales. Any such permission may be revoked or withdrawn at any time in writing by Dickey's in its discretion.

**4.7 DAY ONE DEPOSIT.** You are required to pay Dickey's a "Day One Deposit" of up to \$8,100 within one business day after the "orientation call" with us for your Restaurant. We will use this deposit to pay approved vendors the deposits for your Restaurant's architectural design services, equipment, and signage. If you fail to meet your obligations to develop and commence operations of your Restaurant as provided in Article 7 of this Agreement, so that this Agreement terminates, Dickey's will retain any amounts paid as a "Day One Deposit" to cover payments to approved vendors and as liquidated damages for termination with cause.

**4.8 TECHNOLOGY SUPPORT FEE.** You are required to pay Dickey's or its designee a technology support fee in the amount of \$99 each month. This fee is payable with your first weekly payment each month. The technology support fee is used by Dickey's or its designee, in its sole discretion, to provide basic technology support for point-of sale, back of house computer, and other basic office equipment to its franchisees during Dickey's Barbecue Pit restaurant operating hours. We may modify this fee once a calendar year on at least 60 days' prior written notice to cover the costs of technology support and implementation of new technology.



## ARTICLE 5. ADVERTISING AND RELATED FEES

**5.1 PARTICIPATION.** You shall participate actively in and comply with all advertising, marketing, and sales promotion programs in complete accordance with the terms and conditions established by Dickey's for each program, subject to restrictions imposed by applicable law. In all aspects of these programs, including without limitation, the type, quantity, timing, placement and choice of media, market areas and advertising agencies, to the extent permitted by law, Dickey's procedures, standards and specifications shall be final and binding upon you.

**5.2 RESTAURANT OPENING.** You shall carry out a Restaurant opening promotion relating to the opening of your Restaurant in accordance with the Manuals or as otherwise required by Dickey's. Any advertising and promotional campaigns used by you in connection with such Restaurant opening promotion must be approved by Dickey's prior to use. You shall comply with the direct and local advertising and promotional campaign for restaurant openings devised by Dickey's and adapted for your Assigned Area. When required, but not later than on or before the initial "orientation call" with us, you shall pay to Dickey's Eight Thousand Dollars (\$8,000.00) (the "Restaurant Opening Promotion Funds") to be spent by Dickey's on your behalf in connection with such Restaurant opening promotion. The Restaurant Opening Promotion Funds will be used by Dickey's, in its discretion, to fund marketing materials, local advertising and promotional support related to the Restaurant pre-opening and grand opening campaigns, and in some cases post-opening campaigns. Upon your request, an accounting of the Restaurant Opening Promotion Funds spent by Dickey's in connection with your Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns will be provided. While Dickey's will exercise best efforts to spend the full amount of the Restaurant Opening Promotion Funds in connection with your Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns, any remaining balance after the first six (6) months of the operation of your Restaurant will be deposited into the Marketing Fund and applied by Dickey's in accordance with the procedures described herein for the utilization of the proceeds of the Marketing Fund.

**5.3 LOCAL MARKETING.** You shall build Dickey's brand awareness in your Assigned Area through direct local marketing and promotion of your Restaurant. Upon Dickey's request, you shall furnish to Dickey's, on a monthly basis, supporting documentation evidencing your efforts. Examples of local marketing include, but are not limited to, promotion through word of mouth, in-store sampling, and the offering of free dinner cards and Be My Guest cards (BMG). You may expend such sums on local marketing as you deem appropriate. Any advertising and promotional materials must be approved by Dickey's prior to use.

**5.4 GIFT CARDS.** Dickey's has established and administers a promotional gift card acceptance program. You will be required to purchase and carry a minimum carrying inventory of gift cards from Dickey's pursuant to such program. You shall honor any such gift card presented at your Restaurant for the purchase of food and beverage items.

**5.5 INTERNET PROMOTIONS.** Except as we expressly authorize in the Manuals, you are prohibited from establishing and operating a URL website, mobile apps appearing on smartphones or other electronic devices (including, but not limited to, Android Marketplace or the Apple Store), or social media account or webpage relating to your Restaurant, except that you must create and maintain a Facebook page under the name "Dickey's Barbecue Pit - [City, State]. Dickey's has established and intends (but is not obligated) to maintain a website under the domain name "Dickeys.com" (the "Dickey's Website"). You authorize Dickey's to identify and promote your Restaurant on Dickey's Website. We may provide guidance, suggestions, mandates and restrictions about web sites and social media for the Restaurant in the Manuals.

**5.6 PRICING; PARTICIPATION IN PROMOTIONS.** Dickey's reserves the right, to the fullest extent allowed by applicable law, to establish maximum, minimum, or other pricing requirements with respect to the prices you may charge for products and services. You acknowledge and agree that periodic discounts, "value deals," giveaways and other promotions are an integral part of the System. Therefore, you agree to offer and participate in such discounts, giveaways and other promotions at your sole cost

and expense, in accordance with Dickey's specifications. You further agree to honor the discounts, giveaways and other promotions offered by other Restaurant franchise owners under any such program Dickey's establishes, as long as such compliance does not contravene any applicable law, rule or regulation.

**5.7 GENERAL STANDARDS.** All advertising and promotion by you in any medium shall be conducted in a dignified manner and shall conform to the standards and requirements of Dickey's as set forth in the Manuals or otherwise in writing. You shall obtain Dickey's approval of all advertising and promotional plans and materials prior to use if such plans and materials have not been prepared by Dickey's or previously approved by Dickey's during the six (6) months prior to their proposed use. You shall submit such unapproved plans and materials to Dickey's and Dickey's shall approve or disapprove such plans and materials within thirty (30) days of Dickey's receipt thereof. You shall not use such unapproved plans or materials until they have been approved by Dickey's, and upon notice from Dickey's, you shall promptly discontinue use of any advertising or promotional plans or materials, whether or not previously approved.

**5.8 MARKETING FUND.** Dickey's has established a Marketing Fund for the purpose of promoting the System. The Marketing Fund may be operated by an affiliate of Dickey's. You agree to contribute to the Marketing Fund four percent (4%) of your Net Sales of your Restaurant as determined by Dickey's. Such fee shall be paid weekly at the time and in the manner for which royalty fees are paid as set forth in Article 4.

You agree that the Marketing Fund shall be maintained and administered by Dickey's or its designee, in its sole discretion, as follows:

1. Dickey's or its designee shall direct all programs that the Marketing Fund finances, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation. Dickey's will own the copyright in the design, content and materials created using Fund monies. You agree and acknowledge that the Marketing Fund is intended to maximize general public recognition and acceptance of the Proprietary Marks and enhance the collective success of all Restaurants operating under the System. In administering the Marketing Fund, Dickey's and its designee undertake no obligation to make expenditures for you which are equivalent or proportionate to your contributions or to ensure that any particular franchisee benefits directly or pro rata from the placement of advertising.

2. You agree that the Marketing Fund may be used by Dickey's or its designee, in its sole discretion, to satisfy any and all costs of maintaining, administering, directing and preparing advertising (including, without limitation, the cost of preparing and conducting television, radio, internet/web-based, magazine, newspaper, and electronic media advertising campaigns, developing, implementing, and maintaining an electronic commerce website and/or related strategies; the cost of market research, costs of administering customer loyalty programs, direct mail and outdoor billboard advertising, public relations activities, employing advertising agencies to assist therein, costs of Dickey's personnel and other departmental costs for advertising that is internally administered or prepared by Dickey's, costs of providing other advertising materials to Restaurants operated under the System, and the costs of maintaining Dickey's Website, and the costs of a national "1-800" customer and/or franchisee service telephone number if such service is implemented by Dickey's). All sums paid by you to the Marketing Fund shall be maintained in a separate account by Dickey's or its designee and shall not be used to defray any of Dickey's general operating expenses, except for such reasonable administrative costs and overhead, if any, as Dickey's or its designee may incur in activities reasonably related to the administration or direction of the Marketing Fund and advertising programs for franchisees and the System. The Marketing Fund and its earnings shall not otherwise inure to the benefit of Dickey's. The Marketing Fund is operated solely as a conduit for collecting and expending the marketing and advertising fees as outlined above and may also be used to establish a catering hotline.

3. A statement of the operations of the Marketing Fund shall be prepared annually by Dickey's and shall be made available to you upon request. Dickey's is not obligated to provide an accounting of each marketing program and spend for your individual Restaurant.

4. Although the Marketing Fund is intended to be of perpetual duration, Dickey's may terminate the Marketing Fund at any time. The Marketing Fund shall not be terminated, however, until all monies in the Marketing Fund have been expended for advertising or promotional purposes or returned to contributing franchised or Company-Operated Restaurants, without interest, on the basis of their respective contributions.

**5.9 ADVERTISING CO-OPS.** Dickey's may, in its sole discretion, require you to participate in certain local or regional advertising cooperatives organized and approved by Dickey's, and composed of certain other franchisees located in the geographic area in which you are located as defined in a cooperative advertising agreement. If you are required to participate in a Dickey's-approved advertising cooperative, you will be required to execute Dickey's then-current standard advertising cooperative agreement. Dickey's may terminate any advertising cooperative pursuant to the terms of each particular cooperative advertising agreement. Dickey's reserves the right to require advertising cooperatives to be formed, changed, dissolved or merged.

## **ARTICLE 6. YOUR ORGANIZATION**

**6.1 CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY.** If you are an individual, within 30 days after the Effective Date, you must form, organize and obtain a Federal Employer Identification Number for an entity such as a corporation, partnership, or limited liability company that will own and operate the Restaurant. On behalf of the entity you will form, or if you are an entity as of the Effective Date, you represent and warrant to, and covenant with Dickey's, and you will provide Dickey's with all documentation required by Dickey's which demonstrates, that:

1. You are duly organized and validly existing under the laws of your state of formation;
2. You are duly qualified to do business and in good standing in the jurisdiction where the Restaurant is located, and in each jurisdiction in which your business activities or the nature of the properties owned by you require such qualification;
3. Your organizational documents shall at all times provide that your activities are limited to the development and operation of Restaurants and that you will not engage in any other business;
4. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action on behalf of you and the holders of your ownership interests, and by all persons and entities which directly or indirectly control or manage your business and affairs (collectively, the "Management Group"), and such actions do not and will not violate, breach or constitute a default under any agreement, judgment, order, law, rule or regulation to which any of the foregoing is a party or by which bound;
5. Your ownership interests are accurately and completely described in Article 21. Further, upon Dickey's request from time to time, you shall provide to Dickey's a current list of all holders of direct and indirect, issued and contingent equity ownership interests in you;
6. If a change in any ownership interest in you occurs, directly or indirectly, you shall notify Dickey's in writing prior to such change and otherwise comply with the terms and conditions of Article 15, and you shall cause each new owner of an equity ownership interest in you to execute a joinder to this Agreement as one of your Investors (as defined in Article 26.3.3) and agree to be individually bound by all of your obligations hereunder as a condition to their equity investment;
7. If you have or at any time shall issue any certificate evidencing any ownership interest in you, you shall have conspicuously noted upon such certificate a statement in form satisfactory to Dickey's

that it is held subject to all restrictions on Transfers imposed by this Agreement. In addition, you shall maintain on your records instructions against the Transfer of any of your ownership interests which are prohibited under this Agreement without Dickey's prior written consent, and your organizational documents shall also provide that all ownership interests in you are subject to all restrictions on Transfers imposed by this Agreement;

8. You and, at Dickey's request, your Owner/Operator and each of your Investors, have provided Dickey's with your most recent financial statements and the most recent financial statements of your Owner/Operator and Investors. Such financial statements present fairly your financial position and that of each of your Investors, as applicable, at the dates indicated therein and with respect to you, the results of your operations and your cash flow for the years then ended. You agree that you shall maintain, and your Investors will cause you to maintain, at all times during the term of this Agreement, sufficient working capital to fulfill your obligations under this Agreement. Each of the entity financial statements mentioned above has been prepared in conformity with generally accepted accounting principles applicable to the respective periods involved and, except as expressly described in the applicable notes, applied on a consistent basis. No material liabilities, adverse claims, commitments or obligations of any nature exist as of the date of this Agreement, whether accrued, unliquidated, absolute, contingent or otherwise, which are not reflected as liabilities on your financial statements or those of your Owner/Operator or Investors.

**6.2 FRANCHISEE'S NAME.** You will not use the name "Dickey's," or any derivative thereof (including the acronym DBRI) in your entity name. You will hold yourself out to the public as an independent contractor operating your Restaurant pursuant to a franchise from Dickey's, and will place a highly visible sign, approved by Dickey's, to such effect at a prominent location within your Restaurant. You will file for a certificate of assumed name in the manner required by applicable state law so as to notify the public that you are operating your Restaurant as an independent business pursuant to this Agreement.

**6.3 YOU AND YOUR INVESTORS.** You and your Owner/Operator and Investors, as applicable, acknowledge and agree that the representations set forth above in this Article 6 are your continuing obligations and those of your Owner/Operator and Investors and that any failure to comply with such representations shall constitute an event of default under Article 16. You will cooperate with Dickey's in its efforts to verify compliance with such representations.

## **ARTICLE 7. SITE SELECTION. PLANS AND CONSTRUCTION**

**7.1 SITE SELECTION.** You assume all cost, liability, expense, and responsibility for locating, obtaining and developing your site for your Restaurant within the Assigned Area and for finish-out or renovation and equipping your Restaurant at the Accepted Location. You shall not make any binding commitment to a prospective lessor of real estate with respect to a site for your Restaurant unless the site is accepted as set forth below. You acknowledge that Dickey's acceptance of a prospective site and the rendering of assistance in the selection of a site does not constitute a representation, promise, warranty or guarantee by Dickey's that your Restaurant operated at that site will be profitable or successful. Except as expressly provided herein, no provision of this Agreement will be construed or interpreted to impose any obligation upon Dickey's to locate a site for the Accepted Location, to assist you in the selection of a suitable site for the Accepted Location, or to provide any assistance to you in the lease of the Accepted Location.

**7.2 SITE LOCATION.** Prior to acquiring by lease a site for your Restaurant, you shall locate a site for your Restaurant within the Assigned Area that satisfies the site selection guidelines provided to you by Dickey's pursuant to Article 3.1 and shall submit to Dickey's in the form specified by Dickey's a description of the site, including evidence satisfactory to Dickey's that the site satisfies Dickey's site selection guidelines, together with such other information and materials as Dickey's may reasonably require, and a letter of intent or other evidence satisfactory to Dickey's which confirms your favorable prospects for obtaining the site. Recognizing that time is of the essence, you agree that you will submit such information and materials for the proposed site to Dickey's for its acceptance no later than sixty (60) days

after the execution of this Agreement. Dickey's shall have thirty (30) days after receipt of this information and materials to accept or not accept, in its sole discretion, the proposed site as the location for your Restaurant. No site may be used for the location of your Restaurant unless it is first accepted by Dickey's. **You acknowledge and agree that Dickey's acceptance of your proposed site is not an assurance that the Restaurant will achieve a certain sales volume or profit level; it means only that your proposed site meets Dickey's minimum criteria for Dickey's Restaurants.**

**7.3 FAILURE TO ACQUIRE SITE.** Your failure to acquire the site for your Restaurant within the time stated in Article 7.5 below, and in the manner required in Article 7.2 above, shall constitute an event of default under this Agreement subject to termination upon notice from Dickey's.

**7.4 ACCEPTANCE OF LOCATION.** At such time as you locate and Dickey's accepts the proposed location within the Assigned Area, the Assigned Area shall automatically and without requirement of further action be reduced to an area within a one (1)-mile radius of the Accepted Location ("Primary Area"). Upon Dickey's request, the Accepted Location shall be confirmed in writing, in such form and substance acceptable to Dickey's, which describes the location of the Accepted Location and is executed by you and Dickey's.

**7.5 LEASE OF RESTAURANT SITE.** You shall be required to lease a site for your Restaurant constituting a space which is ready for finish-out or conversion to a Dickey's Restaurant. Within ninety (90) days after execution of this Agreement, you shall lease, at your expense, a location for your Restaurant at a site accepted by Dickey's as set forth above. You must request from the landlord the execution of the lease rider in the form attached to the Franchise Agreement as **Attachment E**. The lease rider allows us to step in to operate the Restaurant if you default under the lease, and assign the lease to a qualified successor franchisee that we recruit. It also provides for a category exclusive in your retail center that prevents the landlord from leasing to another barbecue restaurant. Unless Dickey's has granted you an extension in writing, if you fail to acquire an accepted site within such time period, Dickey's may terminate this Agreement effective immediately upon notice to you. In such event, Dickey's shall not be obligated to return the Franchise Fee or any other fees paid by you under this Agreement. You shall furnish to Dickey's a copy of the executed lease, including the lease rider, for your Restaurant site within ten (10) days of its execution.

**7.6 ZONING AND REGULATORY APPROVALS.** You shall be responsible for obtaining all zoning and regulatory approvals which may be required by state or local laws, ordinances or regulations or which may be necessary as a result of any restrictive covenants relating to your Restaurant premises. Prior to beginning the finish-out or renovation of your Restaurant, you shall (i) obtain all permits, licenses and certifications required for the lawful construction or remodeling and operation of your Restaurant and (ii) certify in writing to Dickey's that the insurance coverage specified in Article 14 is in full force and effect and that all required approvals, clearances, permits, and certifications have been obtained. Upon request, you shall provide to Dickey's additional copies of your insurance policies or certificates of insurance and copies of all such approvals, clearances, permits, and certifications.

**7.7 DESIGN SERVICES.** You must independently obtain, at your own expense, any architectural, engineering, and design services you deem necessary for the finish-out or renovation of your Restaurant, provided that you may only engage an architectural firm listed on Dickey's then-current list of approved architects, unless Dickey's approves in writing another architect which you request to engage. Any franchisee requesting an alternate architect must submit its proposal to Dickey's prior to engaging the architect along with a \$2,500 non-refundable evaluation fee and Dickey's then-current alternate architect agreement executed by the alternate architect in order to have the proposal evaluated. You will be required to independently and at your own expense have the design plans and specifications adapted for the finish-out or renovation of your Restaurant by a Dickey's-approved architect. Dickey's reserves the right to require you to use one of Dickey's then-current approved architects if your alternate architect fails to adapt Dickey's prototypical design plans and specifications to our satisfaction or fails to meet the development timeframe in your Franchise Agreement. With the assistance of a Dickey's-approved architect, you shall adapt the prototypical design plans and specifications for the finish-out or renovation of your Restaurant provided to you by Dickey's in accordance with Article 3.2 as necessary and shall

submit such adapted plans to Dickey's for review. If Dickey's determines, in its sole discretion, that any such plans are not consistent with the best interests of the System, Dickey's may prohibit the implementation of such plans, and in this event will notify you of any objection(s) within fifteen (15) days of receiving such plans. If Dickey's fails to notify you of an objection to the plans within this time period, you may use such plans. If Dickey's objects to any such plans, it shall provide you with a reasonably detailed list of changes necessary to make the plans acceptable. You shall resubmit your plans with such changes, and Dickey's will notify you within fifteen (15) days of receiving the resubmitted plans whether the plans are acceptable. If Dickey's fails to notify you of any objection within such time period, you may use the resubmitted plans. Dickey's will have no responsibility to you or any other party if the Accepted Location is not finished out or renovated by you or your contractor: (i) according to Dickey's prototype architectural design plans and specifications; (ii) in compliance with all applicable federal, state or local laws and ordinances; or (iii) in a good and workmanlike manner. Notwithstanding the foregoing, Dickey's reserves the right to require you to use an architectural firm listed on Dickey's then-current list of approved architects, if, at any time, the architect that you request to engage fails to adapt Dickey's prototypical design plans and specifications properly, in Dickey's judgment, or fails to meet Dickey's development timeframe.

**7.8 ASSIGNMENT OF LEASE AND NOTICES UNDER LEASE.** At Dickey's option, no lease for your Restaurant premises shall be accepted by Dickey's unless a rider to the lease permitting an assignment of the lease to Dickey's and providing for the delivery of all notices to Dickey's simultaneously with the delivery of such notices to you as tenant is attached to the lease and incorporated therein. You acknowledge and agree that Dickey's approval or acceptance of a lease does not mean that the economic terms of the lease are favorable; it means only that the lease contains certain lease terms that Dickey's requires.

**7.9 FINISH-OUT OR REMODELING.** You shall diligently pursue the finish-out or remodeling (as applicable) of your Restaurant under a written agreement with a general contractor licensed in the Approved Location and approved by Dickey's. You may not act as your own general contractor for the initial development of your Restaurant. If you prefer to use a general contractor that is not on our approved list, you must submit the general contractor's qualification information to Dickey's prior to engaging the general contractor along with a \$2,500 non-refundable evaluation fee. In order to be approved, the general contractor must execute Dickey's then-current master service agreement with Dickey's, which provides for paying you damages if the contractor doesn't finish the work on time, requires that certain terms be included in the contract executed between you and the general contractor, and requires the contractor to pay fees to Dickey's to establish and maintain its status as an approved general contractor. At any time during construction, Dickey's reserves the right to require you to use one of Dickey's then-current approved general contractors if your contractor fails to complete construction to our satisfaction or fails to meet the development timeframe in your Franchise Agreement. During the time of the finish-out or remodeling, you shall provide Dickey's with such periodic reports regarding the progress of the finishing-out or remodeling as may be reasonably requested by Dickey's or as required by the Contractor Addendum. You shall regularly communicate with Dickey's construction department regarding the status of the project. Dickey's may require that you engage a professional construction manager to oversee the project. In addition, Dickey's shall make such on-site inspections as it may deem reasonably necessary to evaluate such progress. The finish-out or remodeling of your Restaurant shall be completed no later than one hundred twenty (120) days following the date you sign your lease. In the event you own the Restaurant premises, the finish-out or remodeling shall be completed no later than one hundred and fifty (150) days after the Effective Date of this Agreement. Within a reasonable time after the date of completion of the finish-out or remodeling Dickey's shall, at its option, conduct an inspection of the completed Restaurant. You acknowledge and agree that you will not open your Restaurant for business without the written authorization of Dickey's, that authorization to open shall be conditioned upon your strict compliance with this Agreement, and that Dickey's will not unreasonably withhold its authorization.

**7.10 COMMENCE BUSINESS.** You acknowledge that time is of the essence. Subject to your compliance with the conditions stated below, you are obligated to open your Restaurant and commence

business on or before the expiration of eight (8) months after the Effective Date of this Agreement, unless you obtain an extension of such time period from Dickey's in writing or unless otherwise provided in a Development Agreement between you and Dickey's. Prior to opening, you shall complete all exterior and interior preparations for your Restaurant, including installation of equipment, fixtures, furniture, chairs, tables, lights, kitchen equipment, the barbecue pit and signage, pursuant to the plans and specifications and from vendors approved by Dickey's, and shall comply with all other pre-opening obligations of you, including but not limited to, those obligations described in Articles 4.1, 6.1, 7, 8, 9 and 12 to Dickey's satisfaction. If you fail to comply with any of such obligations, Dickey's shall have the right to prohibit you from commencing business. Your failure to open your Restaurant and commence business in accordance with the foregoing shall be deemed an event of default under Article 16.

## **ARTICLE 8. RESTAURANT OPERATIONS**

**8.1 OWNER/OPERATOR.** Within 30 days after execution of this Agreement, you shall designate an individual to serve as the "Owner/Operator" of your Restaurant, unless Dickey's waives such requirement in writing. The Owner/Operator shall satisfy the following qualifications, unless waived in writing by Dickey's:

1. As a corporation, limited liability company, limited partnership, or any other entity, the Owner/Operator shall, at all times during which he or she serves as Owner/Operator, (i) directly or indirectly hold an ownership interest of twenty percent (20%) or more in you, (ii) unless otherwise waived by Dickey's, work on a full-time basis (not less than forty (40) hours per week) in the Restaurant, and (iii) be fully authorized, directed and entitled (including, under your governing documents, and under any agreements and/or duly adopted resolutions by the shareholders, directors, officers, members, managers, and/or any other owner or governing body of you) to manage and control the day-to-day business affairs of you and to take any action which you are required to take or omit to take under this Agreement, all in such Owner/Operator's sole discretion, and without the approval or joinder of any person or entity. The Owner/Operator shall be Dickey's sole point of contact with regard to franchise matters.

2. Except as otherwise provided in this Agreement, the Owner/Operator's interest in you shall be and shall remain free of any pledge, mortgage, hypothecation, lien, charge, encumbrance, voting agreement, proxy, security interest or purchase right or options.

The Owner/Operator shall execute this Agreement and shall be individually, jointly, and severally bound by, and shall and hereby does guaranty payment and performance of, all your obligations hereunder. There shall be no change, removal, resignation or addition of the Owner/Operator without Dickey's prior written consent. You and your Investors hereby represent and warrant that, as of the date of this Agreement, the undersigned person executing this Agreement as the Owner/Operator has been designated as your Owner/Operator, and such person meets all of the qualifications set forth in this Article for the Owner/Operator.

**8.2 SUPERVISION AND MANAGEMENT.** Dickey's requires that the Owner/Operator must work at least forty (40) hours per week and participate in the on-premises supervision of your Restaurant. You shall also employ, in addition to the Owner/Operator, at least two (2) managers per Restaurant who are certified by Dickey's to carry out the day-to-day management and supervision of each such Restaurant. To be certified, such manager must satisfactorily complete the initial training obligations set forth in Article 9, shall meet Dickey's educational, managerial and business standards and shall be approved in writing by Dickey's. In addition, each manager must devote full time and best efforts to the daily management and supervision of your Restaurant.

**8.3 POSITION QUALIFICATIONS.** The Owner/Operator and at least two (2) managers shall meet any other of Dickey's standards and criteria for such positions, as set forth in the Manuals or otherwise in writing by Dickey's.

**8.4 TRAINING REQUIREMENTS.** The Owner/Operator and at least two (2) managers shall satisfy the training requirements set forth in Article 9. If, during the term of this Agreement, the Owner/Operator

or any manager is not able to continue to serve in such capacity or no longer qualifies to act as such in accordance with this Article 8, you shall promptly notify Dickey's and designate a replacement within thirty (30) days after the Owner/Operator or manager ceases to serve, such replacement being subject to the same qualifications listed above. You shall provide for interim management of your Restaurant until such replacement is so designated, and such interim management to be conducted in accordance with this Agreement.

**8.5 ADDITIONAL MANAGEMENT POSITIONS.** You shall retain such additional managers, chefs, and other persons as Dickey's, in its reasonable discretion, deems necessary for the operation and management of your Restaurant. All such personnel shall satisfy Dickey's educational and business criteria as provided to you in the Manuals or otherwise and shall be individuals acceptable to Dickey's. Such individuals shall satisfy the applicable training requirements in Article 9 and such other training required by Dickey's.

**8.6 HIRING.** You understand that compliance by all franchisees and developers operating under the System with Dickey's training and operational requirements is an essential and material element of the System, and that Dickey's consequently expends substantial time, effort, and expense in training personnel to in turn train and supervise Dickey's franchisees, their owner/operators and other personnel. Accordingly, you agree that, during the term of this Agreement, you shall not employ any individual who is at the time or was at any time during the prior six (6) months employed by Dickey's or any of its subsidiaries or affiliates, including but not limited to individuals employed by Dickey's or its affiliates to work in Company-Operated Restaurants, without the prior written approval of Dickey's, which approval may be withheld in Dickey's sole discretion. The parties expressly acknowledge and agree that no current or former employee of Dickey's, its subsidiaries and affiliates, or of any franchisee or developer under the System shall be a third party beneficiary of this Agreement or any provision hereof. Any such approval by Dickey's shall not constitute a representation or warranty (i) that you are legally entitled to employ such employee, or (ii) as to the future performance of such employee or former employee of Dickey's or its subsidiaries and affiliates, and Dickey's shall not be liable for any losses, of whatever nature or kind, incurred by you as a result of your hiring of such individual.

**8.7 USE OF RESTAURANT PREMISES.** You shall use your Restaurant premises solely for the operation of the franchised business, shall maintain business hours as provided for in the Manuals or as Dickey's may specify from time to time in writing and shall refrain from using or permitting the use of the premises for any other purpose or activity at any time without obtaining the prior written consent of Dickey's. Business hours of operation shall be prominently posted on each entrance door and all menu items shall be available for customers to purchase during the posted business hours of operation.

**8.8 PERSONNEL.** You agree to maintain competent, conscientious, and trained personnel to operate your Restaurant in accordance with this Agreement and the Manuals and all applicable laws, regulations, and codes of your jurisdiction and to take such steps as are necessary to ensure that your employees establish and preserve good customer relations, comply with such dress code and/or wear such uniforms as Dickey's may prescribe in the Manuals or otherwise and observe reasonable standards of grooming and cleanliness.

**8.9 HEALTH AND SAFETY STANDARDS.** You shall meet and maintain the highest health and safety standards and ratings applicable to the operation of your Restaurant. You shall furnish to Dickey's, within three (3) days after receipt thereof, a copy of any inspection report, warning, citation, certificate, rating, and any other document, of whatever nature or kind, issued by any federal, state, local, or other administrative agency, instrumentality or other organization with respect to the health or safety conditions of your Restaurant. To ensure the highest degree of health and safety of both your customers and employees, you shall prohibit unauthorized persons from gaining access to the kitchen.

**8.10 PRODUCTS AND SERVICES.** To ensure that the highest degree of quality and service is maintained, you shall operate your Restaurant in strict conformity with such methods, procedures, standards and specifications as Dickey's may from time to time prescribe in the Manuals or otherwise in writing. You further agree:



1. To open your Restaurant to the public during such hours of operation as may be required by Dickey's (currently 11:00 a.m. to 9:00 p.m., seven days a week) and to offer for sale and sell at your Restaurant all menu items and other designated products and services required by Dickey's and to provide such products and services in the manner and style prescribed by Dickey's;

2. To sell and offer for sale only the menu items, products and services that have been expressly approved for sale in writing by Dickey's, to refrain from deviating from Dickey's standards and specifications without Dickey's prior written consent, and to discontinue selling and offering for sale any menu items, products or services which Dickey's may, in its discretion, disapprove in writing at any time;

3. That Dickey's may discard any food or beverage product, without compensation to you, during any on-site inspection, if such food or beverage product does not meet Dickey's standards and specifications.

4. To maintain in sufficient supply and to use and sell at all times only such food and beverage items, ingredients, products, materials, supplies, uniforms, and paper goods that conform to Dickey's standards and specifications and that are purchased from vendors or suppliers approved by Dickey's, to prepare all menu items in strict accordance with Dickey's recipes and procedures for preparation contained in the Manuals or other written directives, including, but not limited to, the prescribed measurements of ingredients and serving sizes, and to refrain from deviating from Dickey's standards and specifications by the use or offer of non-conforming items or differing amounts of any items, without Dickey's prior written consent;

5. To permit Dickey's and its representatives and agents, at any reasonable time, to remove samples of food or non-food items from your inventory or from your Restaurant, without payment therefor, in amounts reasonably necessary for testing by Dickey's or an independent laboratory to determine whether such samples meet Dickey's then-current recipes, standards and specifications. In addition to any other remedies it may have under this Agreement, Dickey's may require you to bear the cost of such testing if the supplier of the item has not previously been approved by Dickey's or if the sample fails to conform with Dickey's specifications; and

6. To purchase or lease and install, at your expense, all fixtures, furnishings, barbecue cooking equipment, kitchen and dining room equipment, Point of Sale Systems, computer hardware (including internet connections and service, dedicated telephone and power lines and other related accessories, peripherals, consoles and equipment required to operate the Point of Sale System) and software (including without limitation the software described in Article 8.13), menu boards (interior and exterior, as applicable), decor items and signs required by Dickey's, all of which must be purchased from vendors and suppliers approved by Dickey's and must conform to Dickey's standards and specifications as Dickey's may reasonably direct from time to time in the Manuals or otherwise in writing, and to refrain from installing or permitting to be installed on or about your Restaurant premises, without Dickey's prior written consent, any fixtures, furnishings, kitchen and dining room equipment, computer hardware and software, menu boards, decor items, signs, games, vending machines or other items not previously approved by Dickey's. If any of the property described above is leased by you from a third party, such lease must be approved by Dickey's, in writing, prior to execution. Dickey's approval shall be conditioned upon such lease containing a provision which permits any of your interest in the lease to be assigned to Dickey's upon the termination or expiration of this Agreement and which prohibits the lessor from imposing an assignment or related fee upon Dickey's in connection with such assignment.

**8.11 APPROVED SUPPLIERS.** Except for those items which you are required to obtain from Dickey's or its designee, you shall obtain all food and beverage items, ingredients, supplies, equipment (including the Point of Sale Systems allowing remote access by Dickey's), computer hardware and software, materials and other products used or offered for sale at or from your Restaurant solely from vendors or suppliers (including manufacturers, distributors and other sources) approved by Dickey's and who demonstrate, to the continuing reasonable satisfaction of Dickey's, the ability to meet Dickey's then-current standards and specifications for such items, who possess adequate quality controls and capacity to supply your needs promptly and reliably and who have been approved in writing by Dickey's prior to

any purchases by you and have not thereafter been disapproved. Dickey's or any affiliate or subsidiary may be an approved supplier of certain items and products. Dickey's may limit the number of approved distributors or suppliers with whom you may deal, designate sources that you must use, and/or refuse any of your requests for any reason, including that Dickey's already designated an exclusive source (which might be Dickey's or its affiliate) for a particular item or service. Dickey's may or may not receive compensation or other economic benefits from these approved suppliers. If you desire to purchase, lease or use any products from an unapproved supplier, you shall submit to Dickey's a written request for such approval or may request the supplier to do so. You shall not purchase or lease from any supplier until such supplier has been approved in writing by Dickey's. Dickey's shall have the right to require that its representatives and agents be permitted to inspect the supplier's facilities and that samples from the supplier be delivered either to Dickey's or to an independent laboratory designated by Dickey's for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by you or the supplier. Dickey's reserves the right, at its option, to re-inspect from time to time the facilities and products of any such approved supplier and to revoke its approval upon the supplier's failure to continue to meet any of Dickey's then-current criteria. Nothing above shall require Dickey's to approve any particular supplier.

Dickey's may also provide you from time to time a list of preferred vendors offering products and services typically of use to persons owning Restaurants similar to your Restaurant. You are not required to subscribe to those services unless Dickey's so stipulates. Dickey's may or may not receive compensation or other economic benefits from these approved vendors. The list of approved vendors may be modified by Dickey's from time to time.

**8.12 SYSTEM SECRET RECIPES.** You acknowledge and agree that Dickey's has developed and may continue to develop for use in the System barbecue seasonings, barbecue sauce, salad dressings and other products which are prepared from highly confidential secret recipes and which are trade secrets of Dickey's or an affiliate. Because of the importance of quality and uniformity of production and the significance of such products in the System, it is to the mutual benefit of the parties that Dickey's closely control the production and distribution of such products. Accordingly, you agree that as and when such products become a part of the System, you shall use only Dickey's secret recipe products and shall purchase solely from Dickey's or from a source designated by Dickey's all of your requirements for such products.

**8.13 SOFTWARE AND HARDWARE.** Dickey's requires that you utilize certain computer hardware and software in connection with the operation of your Restaurant. You agree to implement and use in the operation of your Restaurant point of sale computer hardware, software and related consoles and modules approved and required by Dickey's (collectively, the "Point of Sale System") or any replacement hardware and/or software system Dickey's may designate from time to time. Additionally, you agree to implement and use QuickBooks accounting software in the operation of your Restaurant. Further, you agree to implement and use in the operation of your Restaurant any upgrades, enhancements, replacements and additions to any computer hardware and software (including, without limitation, with regard the Point of Sale System) required by Dickey's from time to time. You shall be licensed to use or subscribe to and implement and keep in good repair all accounting/financial reporting programs and systems as Dickey's may require (and any upgrades, enhancements, replacements, modifications or additions required by Dickey's thereto), including, without limitation, the Point of Sale System which allows Dickey's to access your accounting and cash receipts and sales directly, and in this regard, you acknowledge that Dickey's shall have exclusive control over such systems and programs and the data generated thereby, and you shall not attempt to modify, regulate, block or restrict Dickey's access to the information and data generated or stored in the Point of Sale System.

**8.14 PRE-PACKAGED FOOD ITEMS AND PROMOTIONAL MERCHANDISE.** Dickey's may make available at a reasonable cost and, at its option, will require you to purchase from Dickey's, for resale to your customers, certain prepackaged food items including, but not limited to, meats, barbecue sauce, potato chips and vegetables and certain promotional merchandise identifying the System (such as T-shirts, sweatshirts, etc.), in amounts necessary to meet your customer demand.

**8.15 ADVERTISING AND PROMOTIONAL MATERIALS.** You shall require all advertising and promotional materials, menu boards, signs, decorations, paper goods (including menus and all forms and stationery used in the franchised business), and other items which may be designated by Dickey's to bear the Proprietary Marks in the form, color, location and manner prescribed by Dickey's. You will not conduct any advertising, promotion, marketing, public relations or telemarketing program or campaign for your Restaurant unless and until Dickey's has given you prior written approval for all concepts, materials or media proposed on any such advertising, promotion, marketing, public relations or telemarketing program or campaign. You shall purchase collateral marketing materials from Dickey's or its designated supplier as required in connection with such advertising and marketing programs. You will not permit any third party to advertise its business, services or products on the premises of the Accepted Location without obtaining the prior written approval of Dickey's.

**8.16 MAINTENANCE.** You shall, at your expense, repair, paint and keep in a clean and sanitary condition the interior, the exterior, the parking lot, menu boards (interior and exterior, as applicable), signage, interior and exterior lighting, and the grounds of your Restaurant and the Accepted Location, and will replace all floor covering, wall coverings, light fixtures, curtains, blinds, shades, furniture, room furnishings, wall hangings, menu boards, signs, fixtures and other décor items as such items become worn-out, soiled or in disrepair. All mechanical equipment, including ventilation, heating and air conditioning, must be kept in good working order by you at all times and must meet Dickey's quality standards. All replacement equipment, décor items, furniture, fixtures, menu boards, signs, supplies and other items used in your Restaurant by you must comply with Dickey's then-current standards and specifications.

**8.17 REMODELING AND REDECORATION OF RESTAURANT.** At Dickey's request, you will make the reasonable capital expenditures necessary to extensively remodel, modernize, redecorate and renovate your Restaurant (including, without limitation, to conform your Restaurant to Dickey's then-current Restaurant specifications and requirements) and the Accepted Location and to replace and modernize the furniture, menu boards, fixtures, supplies and equipment so that your Restaurant will at all times reflect the then-current image of Dickey's Restaurants. All remodeling, modernization, redecoration and renovation must be done in accordance with the standards and specifications prescribed by Dickey's from time to time, and must have the prior written approval of Dickey's. All replacements for the furniture, menu boards, fixtures, supplies and equipment must conform to Dickey's then-current quality standards, and must be approved by Dickey's in writing. You will commence remodeling, modernizing, redecorating and renovating your Restaurant within six (6) months after the date you receive written notice from Dickey's specifying the required remodeling, modernization, redecoration and renovation, and will diligently complete such remodeling, modernization, redecoration and renovation within a reasonable time. You will not be required to extensively remodel, modernize, redecorate and renovate your Restaurant or to replace and modernize its furniture, menu boards, fixtures, supplies and equipment more than once every five (5) years during the term of this Agreement, or incur more than \$50,000.00 in costs for each such remodeling or renovation.

**8.18 SIGNAGE.** You shall only display signs on or within your Restaurant premises which comply with guidelines established by Dickey's or that have been approved by Dickey's in writing, and you shall not use or display any other signs of any kind or nature on or within your Restaurant without obtaining prior written approval of Dickey's. You will, at your expense, be responsible for any and all installation costs, sign costs, architectural fees, engineering costs, construction costs, permits, licenses, repairs, maintenance, utilities, insurance, taxes, assessments and levies in connection with the erection or use of the signs including, if applicable, all electrical work, construction of the base and foundation, relocation of power lines and all required soil preparation work. You will comply with all federal, state and local laws, regulations, lease requirements, building codes and ordinances relating to the erection, maintenance and use of the signs. You may not alter, remove, change, modify, or redesign the signs unless approved by Dickey's in writing. Dickey's reserves the right from time to time to redesign the layout or the plans and specifications for signage during the term of the Agreement without your approval or consent. Within thirty (30) days after receipt of written notice from Dickey's, you must, at your expense, either modify or replace your signage so that the signs at your Restaurant comply with Dickey's modified signage

requirements. You will not be required to modify or replace the signs more than once every five (5) years. Dickey's will be entitled to seek injunctive relief against you, without the posting of any bond or security, to require you, at your expense, to: (i) exhibit, use and display the approved signs at your Restaurant during the term of this Agreement; (ii) remove the signs upon the termination or expiration of this Agreement; and (iii) remove the signs from any former location upon any relocation of your Restaurant.

**8.19 VENDING AND GAMING MACHINES.** You will not permit any automated teller machine (ATM), juke box, video electronic games, vending machines, coin or token operated machines (including pinball), gambling machines or other gambling devices to be used in the premises of your Restaurant, other than those approved by Dickey's in writing. You will not keep or offer for sale or allow employees to offer for sale at your Restaurant any tickets, subscriptions, pools, chances, raffles, lottery tickets or pull tabs, except by written consent of Dickey's.

**8.20 ALCOHOLIC BEVERAGES.** You shall serve beer (and such other alcoholic beverages approved by Dickey's) at your Restaurant provided that there are no extenuating circumstances approved by Dickey's or applicable laws or regulations preventing the sale of alcohol at or by your Restaurant. You may request a waiver of this obligation from Dickey's, which Dickey's will not unreasonably withhold, delay or condition. You covenant to comply with all licensing, serving, server training, server qualification, insurance and other laws, regulations and requirements applicable to, and in a manner consistent with prudent business practices in connection with, the sale of alcoholic beverages. You will also comply with the alcoholic beverage liability insurance requirements outlined in Article 14 and which Dickey's may subsequently promulgate. Your obligations to indemnify and defend Dickey's and certain other parties set forth in Article 20 apply to your offer and sale of alcoholic beverages, as provided therein. Such indemnification obligations are incorporated herein by this reference.

**8.21 STANDARD ATTIRE OR UNIFORMS.** You will purchase and require your employees to wear the current standard attire uniforms as may be established and approved by Dickey's from time to time. All of your employees will wear clean and neat attire or uniforms and practice good personal hygiene as prescribed in the Manuals or other written directive.

**8.22 INSPECTIONS.** You hereby grant Dickey's and its representatives and agents the right to enter upon your Restaurant premises or call your Restaurant at any time for the purpose of conducting in person or telephonic inspections of your Restaurant and its operation. You shall cooperate with Dickey's representatives and agents by rendering such assistance as they may reasonably request and, upon notice from Dickey's or its representatives and agents and without limiting Dickey's other rights under this Agreement, you shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. Dickey's reserves the right to charge you, and you shall pay, the costs of any such inspections if deficiencies are detected. Should you fail to correct such deficiencies within a reasonable time as determined by Dickey's, Dickey's shall have the right (without, however, any obligation), to correct such deficiencies and to charge you a reasonable fee for Dickey's expenses in so acting, payable by you immediately upon demand.

**8.23 REFERRAL FEES.** Dickey's may, from time to time, offer existing franchisees a fee for referring prospects to Dickey's who ultimately become Dickey's franchisees. Any such prospect cannot be an existing Dickey's franchisee, and the assigned territory awarded such prospect must be outside the Assigned Area of any existing Dickey's franchisee. In the event Dickey's announces and implements any such referral fee program, you acknowledge that you will comply with the requirements of such program. You further acknowledge that you do not have the authority to discuss or negotiate the offer of a franchise to any prospect or otherwise to contract or act on Dickey's behalf. Dickey's will not be bound by any statements or representations you may make, and Dickey's is under no obligation to offer or enter into a franchise agreement with anyone you may refer to Dickey's.

**8.24 FIELD SERVICE MANAGER.** Dickey's may elect, in its sole discretion, to assign to you a Field Service Manager (herein so called), who shall be an employee, representative or agent of Dickey's. The Field Service Manager may advise you as to any operational matters regarding your Restaurant as Dickey's may require. Should Dickey's elect to assign a Field Service Manager, you will fully cooperate

with the Field Service Manager in implementing any recommendations made by the Field Service Manager regarding operational matters. Dickey's is not obligated to assign to you a Field Service Manager, and at any time, Dickey's may choose to terminate the assignment of any Field Service Manager or reassign to you a different Field Service Manager.

**8.25 CATERING.** You shall at all times offer catering services in accordance with Dickey's policies and procedures. You shall maintain a cargo van bearing the Dickey's logo and other identifying trade dress and promotional information as required by Dickey's in order to perform such services. You shall participate in Dickey's catering hotline centralizing catering orders and requests and comply with Dickey's policies and procedures regarding the hotline. You acknowledge that Dickey's reserves the right to suspend or terminate your hotline and any other catering lead referrals and redirect them to other Dickey's restaurants for service if Dickey's determines that you (i) do not comply with Dickey's policies and procedures, (ii) are not using suppliers approved by Dickey's for all items you are required to obtain from approved suppliers, or (iii) provide catering service that is deficient or is the subject of customer complaints Dickey's deems to be unacceptable. You also acknowledge that Dickey's reserves the right to direct any general catering request received through Dickey's catering hotline to any Dickey's franchisee based on such franchisee's experience, efficiency, relationship with or proximity to the customer placing the order. You shall process all catering orders and perform catering services in strict compliance with the standards proscribed by Dickey's and set forth in the Manuals.

**8.26 DRIVE-THROUGH SERVICES.** If your Restaurant contains drive-through facilities or may be developed to contain drive-thru facilities and Dickey's determines that your Restaurant should provide drive-through service, you shall provide drive-through service at your Restaurant in accordance with Dickey's policies and procedures.

**8.27 COMPLIANCE.** You acknowledge that you will at all times promote the Dickey's brand, goodwill and Proprietary Marks, shall take or suffer no action which would reflect negativity on Dickey's brand, goodwill and Proprietary Marks, and shall comply with all the covenants and obligations imposed upon you under this Agreement, the Manuals and Dickey's policies and procedures. Your failure to comply with any such covenants or obligations shall constitute an event of default under Article 16.

## **ARTICLE 9. TRAINING**

You agree that it is necessary to the continued operation of the System and your Restaurant that your Owner/Operator, at least two of your managers and other Restaurant personnel as specified in the Manuals or as Dickey's may otherwise require receive the training and accordingly agree as follows:

### **9.1 INITIAL TRAINING PROGRAM.**

1. Not later than sixty (60) days prior to the Opening Date on a date or dates designated by Dickey's, the Owner/Operator and two (2) other managers shall have completed, to Dickey's satisfaction, Dickey's initial training program. Prior to attending the initial training program, each participant must satisfy Dickey's then-current requirements for admission to the program, which requirements may include that the potential participant (i) has attended and successfully completed such ServSafe training classes and obtained such ServSafe certifications required by Dickey's, (ii) successfully completed a phone interview with a representative of Dickey's, and (iii) delivered to Dickey's fully completed copies of Dickey's current application forms and payment of the training fees for the initial training program. The Owner/Operator will attend training at Barbecue University which shall be conducted at Dickey's corporate training center, and the two restaurant managers will receive online training and on-site training at your Restaurant from a traveling trainer. Dickey's shall determine, in its sole discretion, whether your trainees have satisfactorily completed initial training. If any of your designated trainees fail to meet the admission requirements for the initial training program, if the training program is not satisfactorily completed by your trainees, or if Dickey's, in its reasonable business judgment based upon the performance of your trainees, determines that the training program cannot or will not be satisfactorily completed by all such person(s), you shall immediately designate replacement trainee(s), as applicable, to apply for and complete such initial training no later than thirty (30) days from the date of any such

occurrence (but in any event no later than sixty (60) days prior to the Opening Date). Your management personnel must successfully complete the training program as determined and certified in writing by Dickey's prior to commencing pre-opening operations, as defined in the Manuals. You shall be responsible for any and all expenses incurred by you or your trainees in connection with the initial training program, including, without limitation, costs of travel, lodging, meals, uniforms and wages.

2. Without limiting Dickey's right to terminate this Agreement pursuant to Article 16, if you fail to designate replacement trainee(s) who have satisfied the admission requirements for the initial training program, if the initial training program is not satisfactorily completed by any replacement trainee (or the initial designees if no replacement is designated) by the required deadline set forth above, or if Dickey's determines that the training program cannot or will not be satisfactorily completed by such person(s), as set forth above, Dickey's may, in its sole discretion, terminate this Agreement effective immediately upon notice to you. Dickey's shall not be obligated to return the Franchise Fee or any other fee paid by you under this Agreement.

3. Dickey's shall provide instructors and training materials for the initial training program at a fee equal to \$1,000.00 for each Owner/Operator and any other individual(s) you designate and Dickey's approves attending Barbecue University in Dallas, Texas and \$1,500.00 for online and onsite training during the opening of the Restaurant of up to two (2) individuals, which includes manager certification. Any successor or replacement Owner/Operator, managers, employees and any additional Restaurant personnel may be required by Dickey's to attend and complete, to Dickey's satisfaction, Dickey's initial training program. Dickey's reserves the right to impose a training fee for any such additional initial training programs. You shall be responsible for any and all expenses incurred by you or your trainees in connection with any initial training program including, without limitation, costs of travel, lodging, meals, uniforms, and wages.

**9.2 ADDITIONAL TRAINING.** You, the Owner/Operator, your managers and your other employees may attend such additional or remedial training programs and seminars as Dickey's may offer from time to time. All certified managers shall be required to complete twelve (12) credit hours of continuing education courses per year at a rate of one (1) credit hour per month. Should a certified manager not fulfill the one (1) credit hour per month requirement, that manager will lose their certified status and be required to complete Dickey's field certification program in order to be recertified. All hourly employees shall be required to be certified with Dickey's online training within 15 days of starting work. If any hourly employee fails to pass the online training, he or she shall repeat the online training until he or she passes. At Dickey's discretion such training (including on-site remedial training) shall be mandatory if Dickey's provides written notice setting forth the reasonable justification for such additional or remedial training in a manner consistent with Dickey's requirements throughout the System. For all such training, Dickey's will provide the instructors and training materials; however, Dickey's reserves the right to impose a reasonable fee for such training, including costs of travel, lodging, meals, and wages for Dickey's representatives. You shall be responsible for any and all expenses incurred by you or your employees in connection with such additional training including, without limitation, costs of travel, lodging, meals, uniforms, and wages.

**9.3 MANAGERS; CHANGES IN PERSONNEL.** If your Owner/Operator or any trained manager shall, for any reason, cease to serve in such capacity, your replacement must, at your expense, be trained at an approved Dickey's Restaurant, and must successfully complete the management training program prior to being able to work in your Restaurant. You may request that your Restaurant be approved by Dickey's as a certified training Restaurant by meeting Dickey's then-applicable criteria. If approved by Dickey's, you may train your own managers at your Restaurant, thus reducing the expense of training new management personnel at off-site locations. Your Restaurant may lose its status as an approved certified training Restaurant if Dickey's determines that your Restaurant is no longer in compliance with the standards of a certified training Restaurant. All certified training Restaurants must be recertified by Dickey's every three (3) years in order to maintain certification.

**9.4 ON-SITE TRAINING.** In connection with the opening of your Restaurant, Dickey's shall make available to you at your expense at least one (1) trained representative of Dickey's to provide on-site

training, supervision and assistance with respect to such matters and for such period of time determined by Dickey's in its sole discretion. Such on-site training, supervision and assistance need not be for consecutive days and may be provided either before and/or after the Opening Date of your Restaurant. Except as otherwise provided, you shall be responsible for training all Restaurant personnel in accordance with the specifications and standards regarding such training described in the Manuals or otherwise in writing by Dickey's.

**9.5 RELEASE.** As a condition to participation in Dickey's training program, your participating personnel shall execute and deliver to Dickey's the Consent and Release for Training in substantially the form attached as **Attachment C**.

## **ARTICLE 10. USE OF PROPRIETARY MARKS**

**10.1 USE OF PROPRIETARY MARKS.** In accordance with its rights under its license agreement with Dickey's Barbecue Pit, Inc., a Texas corporation affiliated with Dickey's, Dickey's hereby sublicenses you to use the Proprietary Marks during the term of this Agreement as follows:

1. With respect to your sublicensed use of the Proprietary Marks pursuant to this Agreement, you agree that:

A. You shall use only the Proprietary Marks designated by Dickey's and shall use them only in the manner authorized and permitted by Dickey's. Any unauthorized use of the Proprietary Marks shall constitute an infringement of Dickey's rights and an event of default under Article 16.

B. You shall use the Proprietary Marks only for the operation of your Restaurant at its Accepted Location or in connection with advertising related to your Restaurant and only during the term of this Agreement. You expressly agree to cease use of the Proprietary Marks after the termination or expiration of this Agreement and shall take appropriate action to remove the Proprietary Marks from your Restaurant premises and to cancel any advertising relating to your use of the Proprietary Marks;

C. Unless otherwise authorized or required by Dickey's, you shall operate and advertise the franchised business only under the name "Dickey's Barbecue Pit" without prefix or suffix;

D. During the term of this Agreement, you shall identify yourself as the owner of the franchised business (i) in conjunction with any use of the Proprietary Marks, including, but not limited to, uses on invoices, order forms, receipts and contracts and (ii) in a notice of such content and form and at conspicuous locations on your Restaurant premises;

E. You shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Dickey's;

F. Except as otherwise specified in this Agreement, you shall not use the Proprietary Marks as part of any website, domain name, e-mail address, or social media webpage;

G. You shall comply with Dickey's instructions in filing and maintaining any requisite trade name or fictitious name registrations and shall execute any documents deemed necessary by Dickey's or its counsel to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability; and

H. You shall immediately notify Dickey's of any infringement or challenge to its use of any of the Proprietary Marks or claim by any person of any rights in any of the Proprietary Marks. You, your Investors and your Owner/Operator agree that they will not communicate with any person other than Dickey's and Dickey's counsel in connection with any such infringement,

challenge or claim. Dickey's shall have sole discretion to take such action as it deems appropriate and the right to exclusively control any litigation, or Patent and Trademark Office action or other proceeding (including any claim or proceeding instituted before a foreign tribunal), arising out of any infringement, challenge or claim or otherwise relating to any of the Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the opinion of Dickey's counsel, be necessary or advisable to protect and maintain Dickey's interests in any such litigation or Patent and Trademark Office or other proceeding, or to otherwise protect and maintain Dickey's interest in the Proprietary Marks. DICKY'S WILL INDEMNIFY YOU AGAINST AND REIMBURSE YOU FOR ALL DAMAGES FOR WHICH YOU ARE HELD LIABLE IN ANY PROCEEDING ARISING OUT OF YOUR USE OF ANY OF THE PROPRIETARY MARKS, PROVIDED THAT THE CONDUCT OF YOU, YOUR INVESTORS AND YOUR OWNER/OPERATOR WITH RESPECT TO SUCH PROCEEDING AND USE OF THE PROPRIETARY MARKS IS IN COMPLIANCE WITH THE TERMS OF THIS AGREEMENT.

2. You expressly understand and acknowledge that:

A. Dickey's Barbecue Pit, Inc. and Dickey's are the owner and licensee, respectively, of all right, title and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them;

B. Pursuant to its license with Dickey's Barbecue Pit, Inc., Dickey's has the right to use and grant sublicenses to use the Proprietary Marks to franchisees in connection with the operation of businesses under the System;

C. The Proprietary Marks are valid and serve to identify Dickey's and Dickey's Barbecue Pit, Inc. as the source of origin of goods and services provided under them;

D. You shall not directly or indirectly contest the validity of Dickey's or Dickey's Barbecue Pit, Inc.'s ownership or interest in or validity of the Proprietary Marks;

E. Your use of the Proprietary Marks under this Agreement does not give you any ownership or other interest in or to the Proprietary Marks, except the sublicense granted by this Agreement;

F. Any and all goodwill arising from your use of the Proprietary Marks in your franchised business under this Agreement shall inure solely and exclusively to Dickey's benefit, and upon the expiration or termination of this Agreement and the sublicense herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with your use of the System or the Proprietary Marks;

G. The right and license of the Proprietary Marks granted hereunder to you is nonexclusive and Dickey's and Dickey's Barbecue Pit, Inc. thus have and retain the following rights, among others, subject only to the limitations of Article 1:

i. To use for their own account and to grant other sublicenses for use of the Proprietary Marks, in addition to those sublicenses already granted to existing franchisees;

ii. To develop and establish other systems using the Proprietary Marks or other names or marks and to grant sublicenses or franchises thereto without providing any rights to you; and

iii. To engage, directly or indirectly, through their employees, representatives, licensees, assigns, agents and others, at wholesale, retail or otherwise, in (1) the production, distribution, license and sale of products and services and (2) the



use in connection with such production, distribution and sale, of the Proprietary Marks and any and all trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs, and other identifying characteristics as may be developed or used from time to time by Dickey's; and

H. Dickey's reserves the right to add or substitute different trade names, service marks, trademarks, symbols, logos, emblems, and indicia of origin for the Proprietary Marks for use in identifying the System and the businesses operating thereunder; or if Dickey's, in its sole discretion, determines that the addition or substitution of different trade names, service marks, trademarks, symbols, logos, emblems, and indicia of origin will be beneficial to the System. In such event, Dickey's may require you to discontinue or modify your use of any of the Proprietary Marks or to use one or more additional or substitute trade names, service marks, trademarks, symbols, logos, emblems, and indicia of origin.

## **ARTICLE 11. CONFIDENTIAL FRANCHISE OPERATIONS MANUALS**

**11.1 PROVISIONS OF MANUAL.** You shall receive from Dickey's one (1) set of the Manuals at the cost established by Dickey's or its vendors and shall retain such set of the Manuals, or any replacement, for so long as this Agreement remains in effect. Dickey's may periodically update the Manuals and other forms necessary for running your business. In the event of updates, Dickey's may make arrangements for automatic delivery of the revised Manuals and/or forms and you must accept and begin to use the updated materials. Dickey's or its designated vendor will invoice you for the costs associated such replacement Manuals and other materials, which is payable by you upon its receipt.

**11.2 USE.** To protect the reputation and goodwill of Dickey's and to maintain high standards of operation under Dickey's Proprietary Marks, you shall conduct your business in accordance with the Manuals, other written directives which Dickey's may issue to you from time to time whether or not such directives are included in the Manuals, and any other manuals and materials created or approved by Dickey's for use in the operation of the franchised business.

**11.3 CONFIDENTIALITY.** You, your Owner/Operator and Investors, and any other person affiliated with you shall at all times treat the Manuals, any written directives of Dickey's, and any other manuals and materials, and the information contained therein, as confidential and shall maintain such information as secret and confidential in accordance with Article 12. You and such persons shall not at any time copy, duplicate, record, or otherwise reproduce these materials, in whole or in part, or otherwise make these materials available to any unauthorized person.

**11.4 OWNERSHIP.** The Manuals, written directives, other manuals and materials and any other confidential communications provided or approved by Dickey's shall at all times remain the sole property of Dickey's, shall at all times be kept in a secure place on your Restaurant premises and shall be returned to Dickey's immediately upon request or upon termination or expiration of this Agreement.

**11.5 SUPPLEMENTATION OF AGREEMENT.** The Manuals, any written directives and any other manuals and materials issued by Dickey's and any modifications to such materials shall supplement this Agreement.

**11.6 REVISIONS.** Dickey's may, from time to time, revise the contents of the Manuals and the contents of any other manuals and materials created or approved for use in the operation of the franchised business. You expressly agree to comply with each new or changed standard; provided, however, you shall have thirty (30) days in which to implement compliance with each new or changed standard.

**11.7 MAINTENANCE.** You shall, at all times, ensure that the Manuals are kept current and up to date. In the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by Dickey's at Dickey's corporate office shall control.

## **ARTICLE 12. CONFIDENTIALITY COVENANTS**

**12.1 DISCLOSURE OF CONFIDENTIAL INFORMATION.** You acknowledge that Dickey's will disclose to you confidential proprietary information and trade secrets of Dickey's as part of the training program and the other services to be rendered by Dickey's hereunder. You, your Owner/Operator, Investors and all other persons affiliated with you shall not, during the term of this Agreement and thereafter, communicate or divulge to, or use for the benefit of, any other person(s), partnership, association, corporation or other entity any confidential information, knowledge or know-how concerning the methods of operation of the franchised business which may be communicated to you or any of such persons or of which they may be apprised by virtue of your operation of the franchised business under this Agreement. You and your Owner/Operator and each of your Investors shall divulge such confidential information only to your manager(s) of your Restaurant and such other Restaurant personnel as may reasonably require access to it to operate the franchised business. Any and all information, knowledge, know-how and techniques used in or related to the System which Dickey's communicates to you or your Owner/Operator (including your Investors only if they are an Owner/Operator or have received the confidential information or training) including, but not limited to, the Manuals, recipes, sauces, spice mixes and rubs, plans and specifications, marketing information and strategies and site evaluation and selection guidelines and techniques, shall be deemed confidential for purposes of this Agreement. Neither you nor your Owner/Operator nor your Investors shall at any time, without Dickey's prior written consent, copy, duplicate, record or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person. The covenant in this Article 12.1 shall survive the expiration, termination or transfer of this Agreement or any interest herein and shall be binding upon you, your Owner/Operator and your Investors.

**12.2 CONFIDENTIALITY AGREEMENTS FROM OTHER PARTIES.** At Dickey's request, and in addition to the requirements of the other provisions of this Agreement, you shall obtain and deliver to Dickey's an executed confidentiality agreement, in such form and content satisfactory to Dickey's, from the holders of any direct or indirect ownership interest in you having access to any confidential information of Dickey's, pursuant to which agreement the signatory covenants and agrees to maintain the confidentiality of the information received by such person or entity in connection with your relationship with Dickey's.

**12.3 NEW CONCEPTS, PROCESSES OR IMPROVEMENTS.** If you, your Owner/Operator or any other person affiliated with you develop any new concept, process or improvement in the operation or promotion of your Restaurant, you agree to promptly notify Dickey's prior to implementation and provide Dickey's with all necessary related information, without compensation. Dickey's reserves the right to approve any such new concept, process or improvement prior to implementation in your Restaurant. You, your Owner/Operator and your Investors acknowledge that any such concept, process or improvement shall become the property of Dickey's and Dickey's may use or disclose such information to other franchisees or developers as it determines to be appropriate.

**12.4 INJUNCTIVE RELIEF.** You, your Owner/Operator and your Investors acknowledge that any failure to comply with this Article 12 shall constitute an event of default under Article 16 and will cause Dickey's irreparable injury for which no adequate remedy at law may be available, and you, your Owner/Operator and your Investors accordingly consent to the issuance of an injunction prohibiting any conduct by you or such persons in violation of this Article 12. You, your Owner/Operator and your Investors agree to pay all expenses (including court costs and reasonable legal fees), incurred by Dickey's in enforcing this Article 12 (including obtaining specific performance, injunctive relief or any other equitable or other remedy available to Dickey's for any violation of this Article 12). This remedy is in addition to any other remedies Dickey's may have hereunder or at law or equity.

## **ARTICLE 13. ACCOUNTING AND RECORDS**

**13.1 ACCOUNTING SERVICES.** Dickey's may require you to use an accounting firm approved by Dickey's (which Dickey's may limit to an exclusive source, including a Dickey's affiliate or subsidiary) to provide comprehensive accounting services for your Restaurant. If you prefer to use an accounting firm

that is not on our approved list, you must submit the accountant's information and your contract with the accounting firm to Dickey's for its approval prior to engaging the accountant. We may withhold our approval if we determine (in our judgment) that your proposed accountant does not demonstrate the experience, credentials or qualifications necessary to provide accounting services for your Restaurant and the System.

**13.2 MAINTENANCE OF RECORDS.** You shall maintain during the term of this Agreement and shall preserve for such period as may be required by law but not less than three (3) years from the dates of their preparation full, complete and accurate books, records and accounts including, but not limited to, sales slips, coupons, purchase orders, purchase invoices, payroll records, check stubs, bank statements, sales tax records and returns, cash receipts and disbursements, journals and ledgers in accordance with generally accepted accounting principles on a timely basis and in a consistent form and manner as prescribed by Dickey's from time to time in the Manuals or in other written directives.

**13.3 REPORTING REQUIREMENTS.** You and your accountant shall prepare all financial reporting on you and the Restaurant in accordance with the accounting methods, principles and practices prescribed by Dickey's for the accounting periods prescribed by Dickey's in the Manuals or otherwise in writing. During the term of this Agreement, you shall, at your expense, complete and submit to Dickey's on a continuous basis each of the following reports at the time set forth below and in the form prescribed by Dickey's in the Manuals or in other written directives:

1. A Monthly Sales Report, to be delivered to Dickey's in accordance with and on or before the dates set forth in Article 4.3;

2. A monthly advertising expenditure report consisting of invoices or other documents which accurately reflect your expenditures for local advertising for each Sales Period during the previous calendar month, to be delivered to Dickey's within ten (10) days following the end of the last monthly Sales Period during such calendar month;

3. True, complete and correct copies of your state sales tax reports and returns on or before ten (10) days following the date such reports and returns are to be filed with the appropriate governmental authority; and

4. Such other forms, reports, graphs, information, and data as Dickey's may reasonably request, in the form and at the times specified in the Manuals or other written directives.

**13.4 BALANCE SHEETS, INCOME AND STATEMENTS OF CHANGE.** You shall prepare and submit to Dickey's an unaudited balance sheet, income statement, and statement of changes in financial position for the franchised business, prepared in accordance with generally accepted accounting principles, dated as of the end of your fiscal year, within sixty (60) days after the end of your fiscal year, which financial statement shall be signed by you or by your chief financial officer attesting that it is true, complete, and correct.

**13.5 EXAMINATION OF AUDIT RECORDS.** Dickey's or its designees shall have the right at all reasonable times, during the term of this Agreement and for a 12-month period following termination or expiration of this Agreement, to access your point of sale system, to examine and copy, at Dickey's expense, your books, records and tax returns. Dickey's shall also have the right, at any time, to have an independent audit made of your books. If any audit reveals that you have understated Net Sales in any report or statement, then you shall immediately pay Dickey's the additional amount of fees owing as a result of such understatement, together with interest as provided in Article 4.5. If an audit reveals that Net Sales have been understated in any report or statement by two percent (2%) or more, you shall additionally pay and reimburse Dickey's for all costs of the audit, including, without limitation, travel, lodging, meals and wage expenses and reasonable accounting and legal fees. These remedies shall be in addition to any other remedies Dickey's may have at law or in equity. If, however, any inspection reveals that you have overstated Net Sales and that you have therefore overpaid any fees, the amount of the overpayment, without interest, shall be credited toward your future fees or payment on future invoices.

If you are at any time required to furnish any lender, lessor, government agency or other person audited financial statements with respect to the franchised business, you shall concurrently furnish Dickey's a copy of such audited financial statements.

**13.6 DISCLOSURE OF DATA.** You hereby authorize Dickey's to disclose data from your reports, if Dickey's determines, in its sole discretion, that such disclosure is necessary or advisable, which disclosure may include disclosure to prospective or existing franchisees, financial institutions, investment bankers or other third parties.

## **ARTICLE 14. INSURANCE**

**14.1 MAINTENANCE OF INSURANCE & APPROVED INSURANCE AGENT.** You shall obtain, within thirty (30) days after the execution of the lease for the Restaurant, and shall maintain in full force and effect at all times during the term of this Agreement, at your expense, all of the insurance policies in Article 14.2 ("Coverages") (except for liquor liability insurance if you do not sell alcoholic beverages at your Restaurant). You shall obtain all Coverages solely from insurance agents/brokers or other provider approved by Dickey's (which Dickey's may limit to an exclusive source, including a Dickey's affiliate or subsidiary). Dickey's may or may not receive compensation or other economic benefits from these approved insurance agents/brokers or other providers. If you desire to purchase the required Coverages from an unapproved insurance agent/broker or provider, you shall submit to Dickey's a written request for such approval prior to procuring the Coverages. If approval is granted by Dickey's for the use of an unapproved insurance agent/broker or other provider, you shall pay to Dickey's a \$350 fee to cover the costs of reviewing the Coverages procured by the proposed vendor. Should Dickey's review of the procured Coverages determine that the proposed vendor procured insufficient Coverages, you must procure the Coverages identified by Dickey's within 7 business days upon receiving notification from Dickey's. Additionally, you shall pay Dickey's an additional \$150 fee to review these subsequent changes (and a \$150 fee to review in the event that any additional changes are necessary).

**14.2 COVERAGES.** Such policy or policies shall be written by an insurance carrier or insurance carriers with a Best's Insurance Guide rating of "A" or better, and shall include, at a minimum, the following:

1. Commercial general liability insurance:

A. The commercial general liability insurance policy shall include bodily injury, property damage, advertising and personal injury, and medical payments coverage parts, written on an occurrence reporting basis. However, such coverage shall not include an insured versus insured exclusion or any exclusion that prevents coverage of a claim by one insured against another. The bodily injury, property damage, and advertising and personal injury coverage parts shall have a minimum per occurrence liability limit of \$1,000,000.00 per Restaurant location and a general aggregate liability limit of \$2,000,000.00 per Restaurant location. The medical payments coverage part shall have a per occurrence liability limit of \$5,000.00 per Restaurant location. The coverage shall include a separation of insureds provision.

B. The commercial general liability policy shall have a products/completed operations coverage part under ISO form CG 24 07 or equivalent coverage. Additionally, the commercial general liability policy shall have a minimum per occurrence liability limit of \$1,000,000.00 per Restaurant location and a general aggregate liability limit of \$2,000,000.00 per Restaurant location.

C. The commercial general liability policy shall also have the following endorsements:

i. An endorsement listing Dickey's, its subsidiaries, affiliates, successors and assigns as additional named insureds on all coverage parts. The additional insured coverage shall include premises-operations, contractual liability, independent contractors,

and products and completed operations. Also, the additional insured coverage shall be primary and non-contributory to any other insurance that Dickey's its subsidiaries, affiliates, successors and assigns has procured themselves. The additional insured coverage shall not be limited to Dickey's vicarious liability, and shall include coverage for liability arising out of or occurring upon or in connection with the condition, operation, use or occupancy of the franchised business. It is understood and agreed that the insurance coverages and limits required above shall not limit, and are independent of, the indemnification obligations.

ii. A waiver of subrogation in favor of Dickey's, its subsidiaries, affiliates, successors and assigns.

iii. An endorsement requiring the commercial general liability insurance carrier(s) to provide at least thirty (30) days' notice of any intent to cancel the commercial general liability policy, regardless of the reason for cancellation.

2. Crime (inside/outside) and employee dishonesty insurance:

A. Crime (moneys and securities) inside/outside coverage shall have a minimum per occurrence liability limit of \$10,000.00 per Restaurant location for inside crime and a minimum per occurrence liability limit of \$10,000.00 per Restaurant location for outside crime.

B. Employee dishonesty coverage shall have a minimum per occurrence liability limit of \$50,000.00 per Restaurant location.

3. Worker's compensation insurance in amounts provided by applicable law or, if permissible under applicable law, any legally appropriate alternative providing substantially similar compensation for injured workers satisfactory to Dickey's, provided that you (i) maintain an excess indemnity or "umbrella" policy covering employer's liability and a medical disability policy covering medical expenses for on the job accidents, which policy or policies shall contain such coverage amounts as you and Dickey's shall mutually agree upon and (ii) conduct and maintain a risk management and safety program for your employees as you deem appropriate. Such policies shall also include, if available, an "alternate employer endorsement" in favor of Dickey's, its subsidiaries, affiliates, successors and assigns, and a waiver of subrogation in favor of Dickey's, its directors, officers, shareholders, partners, employees, servants, representatives, agents, subsidiaries, affiliates, successors and assigns. The workers compensation insurance and employer's liability/medical disability policies must provide Coverage Part A for claims made by the injured worker and Coverage Part B for claims made by the injured worker's family members, including wrongful death claims.

4. Automobile liability insurance coverage for owned, non-owned, and hired vehicles with a liability limit of not less than \$1,000,000.00 combined single limit (which shall include, without limitation, coverage for your delivery, including home delivery, if applicable, and catering operations). The automobile liability insurance shall also have an endorsement listing Dickey's, its subsidiaries, affiliates, successors and assigns as additional named insured. The automobile liability insurance shall contain a waiver of subrogation in favor of Dickey's, its subsidiaries, affiliates, successors and assigns. Such coverage shall not include an insured versus insured exclusion or any exclusion that prevents coverage of a claim by one insured against another. The coverage shall include a separation of insureds provision.

5. Liquor liability insurance:

A. If you sell alcoholic beverages at the Restaurant, you shall carry liquor liability insurance with a minimum per occurrence liability limit of \$1,000,000.00 per Restaurant location.

B. The liquor liability insurance shall also have the following endorsements:

i. An endorsement listing Dickey's, its subsidiaries, affiliates, successors and assigns as additional named insureds. The additional insured coverage shall not be limited to Dickey's vicarious liability, and shall include coverage for liability arising out of or occurring upon or in connection with the condition, operation, use or occupancy of the franchised business. Also, the liquor liability insurance shall contain a waiver of subrogation in favor of Dickey's, its subsidiaries, affiliates, successors and assigns. The coverage shall include a separation of insureds provision.

ii. An endorsement making the liquor liability insurance policy issued in your name primary insurance coverage on a non-contributory basis with any other insurance available to Dickey's.

iii. An endorsement requiring the liquor liability insurance carrier(s) to provide at least thirty (30) days' notice of any intent to cancel the liquor liability policy, regardless of the reason for cancellation.

6. Building and personal property insurance coverage:

A. Property coverage for physical loss or damage to personal property and real property including the leasehold improvements, at each Restaurant location. This coverage shall include all risk replacement cost property insurance for your Restaurant and its contents, awnings, equipment, signs, glass, additions under construction, outdoor fixtures, personal property, as well as business interruption insurance for income loss, food spoilage endorsements, equipment breakdown coverage, business ordinance coverage, debris removal, preservation of property, fire department service charges, pollutant clean up and removal, newly acquired or constructed property, property of others, property off premises, and stock. The coinsurance percentage shall not be less than eighty percent (80%).

B. The building and personal property insurance shall also have the following endorsements:

i. An endorsement requiring the building and personal property insurance carrier(s) to provide at least thirty (30) days' notice of any intent to cancel the building and personal property insurance coverage, regardless of the reason for cancellation.

ii. A loss payable endorsement listing Dickey's as the loss payee for equipment and supplies financed by Dickey's either by a loan, line of credit, or an open account.

iii. A waiver of subrogation in favor of Dickey's, its subsidiaries, affiliates, successors and assigns.

7. Umbrella liability insurance:

A. Umbrella coverage over the above described general commercial liability, liquor liability, automobile liability, products/completed operations, and employer's liability insurance coverage parts with a per occurrence limit of \$1,000,000.00 and an aggregate limit of \$1,000,000 per Restaurant location (*i.e.*, if you have 2 Restaurant locations, you must purchase an umbrella policy with a per occurrence limit of \$1,000,000 and an aggregate limit of \$2,000,000 million; if you have 3 Restaurant locations, you must purchase an umbrella policy with a per occurrence limit of \$1,000,000 and an aggregate limit of \$3,000,000 million). The umbrella policy shall be written on an occurrence reporting basis. Such coverage shall not include an insured versus insured exclusion or any exclusion that prevents coverage of a claim by one insured against another. The coverage shall include a separation of insureds provision.

B. The umbrella liability insurance shall also have the following endorsements:

i. An endorsement listing Dickey's, its subsidiaries, affiliates, successors and assigns as additional named insureds. The additional insured coverage shall not be limited to Dickey's vicarious liability, and shall include coverage for liability arising out of or occurring upon or in connection with the condition, operation, use or occupancy of the franchised business. Also, the umbrella insurance shall contain a waiver of subrogation in favor of Dickey's, its subsidiaries, affiliates, successors and assigns.

ii. An endorsement requiring the umbrella liability insurance carrier(s) to provide at least thirty (30) days' notice of any intent to cancel the umbrella policy, regardless of the reason for cancellation.

8. Employment practices liability insurance ("EPLI") coverage with coverage limits of \$1,000,000.00 or more. The policy must include coverage for third party claims. In addition, the policy must have a sublimit for defense costs relating to wage and hour claims. The EPLI Policy shall also have an endorsement listing Dickey's, its subsidiaries, affiliates, successors and assigns as additional named insureds. In the event that an additional insured endorsement is not available, you shall have a vicarious liability endorsement protecting Dickey's, its subsidiaries, affiliates, successors and assigns. Such additional insured coverage (or alternatively, vicarious liability protection), shall be primary and non-contributory to any other insurance that Dickey's its subsidiaries, affiliates, successors and assigns has procured themselves.

9. Data Privacy/Cyber Liability Insurance ("Cyber Policy"), including first party coverage (forensics investigation, notification, credit monitoring, loss of business income, crisis management) and third party coverage, with coverage limits of no less than \$1,000,000. The Cyber Liability Policy shall also have an endorsement listing Dickey's, its subsidiaries, affiliates, successors and assigns as additional named insureds. The additional insured coverage shall not be limited to Dickey's vicarious liability, and shall include coverage for liability arising out of the operations of the franchised business. Also, the additional insured coverage shall be primary and non-contributory to any other insurance that Dickey's its subsidiaries, affiliates, successors and assigns has procured themselves. Further, the Cyber Policy shall contain a waiver of subrogation in favor of Dickey's, its subsidiaries, affiliates, successors and assigns.

10. Any insurance which may be required by statute or rule of the state or locality in which your Restaurant will be operated.

11. Additional insurance coverages that may reasonably be specified by Dickey's from time to time, in accordance with standards and specifications set forth in the Manuals or otherwise in writing.

**14.3 DEDUCTIBLES.** The coverages required under Articles 14.2.1, 14.2.4, 14.2.5, and 14.2.7 shall not have any deductible, self-insured retention, self-funded retention, or any similar provision unless prior written consent is given by Dickey's. Should consent be given by Dickey's for a deductible or similar provision to be included for the required coverages under Articles 14.2.1, 14.2.4, 14.2.5, or 14.2.7, the deductible or other similar provision amount may not exceed twenty thousand dollars (\$20,000). With respect to all other required coverages where deductible are permitted, the deductible may not exceed twenty thousand dollars (\$20,000). To the extent that Dickey's, its subsidiaries, affiliates, successors and assigns are additional insureds for a loss or lawsuit covered by an insurance policy required under Articles 14.2.1, 14.2.4, 14.2.5, and 14.2.7 and the policy contains a deductible, self-insured retention or any similar provision, you are responsible for payment of this amount. Also, in such a scenario, you shall assume and fully pay for the legal defense of Dickey's, its subsidiaries, affiliates, successors and assigns from any lawsuit or claim. This defense obligation shall begin immediately upon the filing of any lawsuit or claim that would be defended by the insurance required hereunder. The defense obligation shall continue until such time as the deductible, self-insured retention, self-funded retention, or any similar provision has been satisfied, or the insurer provides a defense to Dickey's, its subsidiaries, affiliates, successors and assigns. Finally, Dickey's, its subsidiaries, affiliates, successors and assigns, shall have the right to select the counsel of its choosing in defending itself from any lawsuit.

**14.4 BUILDER'S RISK.** In connection with any finish-out, renovation, refurbishment or remodeling of your Restaurant, you or your approved contractor shall maintain builder's all risk insurance and performance/completion and payment bonds in forms and amounts, and written by a carrier or carriers, reasonably satisfactory to Dickey's.

**14.5 NO RELIANCE UPON DICKEY'S INSURANCE.** Your obligation to obtain and maintain the above policies and bonds in the amounts specified or agreed to by Dickey's shall not be limited in any way by any insurance which may be maintained by Dickey's, nor shall your performance of that obligation relieve you of liability under the indemnity provisions set forth in Article 20. Moreover, you shall not claim, or authorize anyone on your behalf to claim (such as your own insurers), additional insured status on any policies purchased or maintained by Dickey's.

**14.6 RELEASE REGARDING INSURANCE.** YOU ACKNOWLEDGE THAT THE COVERAGES REQUIRED BY DICKEY'S ARE THE MINIMUM AMOUNTS OF COVERAGE THAT YOU MUST PROCURE UNDER THIS AGREEMENT. YOU FURTHER ACKNOWLEDGE THAT YOU ARE FREE TO BUY ADDITIONAL INSURANCE COVERAGE OR INCREASE THE AMOUNTS OF COVERAGE AS YOU DEEM FIT BASED ON YOUR OWN INVESTIGATION AS TO WHETHER ADDITIONAL COVERAGES OR HIGHER AMOUNTS ARE NECESSARY. YOU FURTHER AGREE THAT YOU ARE NOT RELYING UPON DICKEY'S TO DETERMINE THE AMOUNT OR TYPE OF INSURANCE COVERAGE NECESSARY FOR YOU. YOU RELEASE DICKEY'S FROM ANY AND ALL CLAIMS RELATING TO THE PROCUREMENT OF INSURANCE, INCLUDING CLAIMS THAT DICKEY'S DID NOT REQUIRE YOU TO PROCURE ADEQUATE INSURANCE.

**14.7 EVIDENCE OF INSURANCE.** Within thirty (30) days after the execution of the lease for the Restaurant and, thereafter, at least sixty (60) days prior to the expiration of any such policy, you shall deliver to Dickey's certificates of insurance indicating the contracted for insurance coverages as well as the description of special provisions (e.g. additional named insured status). You shall also provide a binder, declarations page, or confirmation of insurance, describing and confirming the coverages afforded by the required policies described in Article 14. Upon our request, you shall provide to Dickey's any information requested within ten (10) business days, including, but not limited to, complete copies of the policies, certificates of insurance, declaration pages, and confirmations of insurance.

**14.8 REMEDIES.** Should you, for any reason, fail to obtain or maintain the insurance required by this Agreement, as such requirements may be revised from time to time by Dickey's in the Manuals or otherwise in writing, Dickey's shall have the right (without the obligation) immediately to obtain such insurance and to charge same to you, which charges, together with a reasonable fee for Dickey's expenses, shall be payable by you immediately upon notice. These remedies shall be in addition to any other remedies at law or in equity that Dickey's may have.

## **ARTICLE 15. TRANSFER OF INTEREST**

**15.1 TRANSFER BY DICKEY'S.** Dickey's shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations hereunder to any person or legal entity without your consent. Specifically, and without limitation to the foregoing, you expressly affirm and agree that Dickey's may sell its assets, the Proprietary Marks or the System to a third party; may merge, acquire other corporations or be acquired by another corporation; may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of the Proprietary Marks or the System against Dickey's under this Agreement. Nothing contained in this Agreement shall require Dickey's to remain in the business of operating or licensing the operation of Dickey's Barbecue Pit Restaurants or other restaurants or to offer any services or products, whether or not bearing the Proprietary Marks, to you, if Dickey's exercises its rights hereunder to assign its rights in this Agreement.



## **15.2 TRANSFER BY YOU.**

1. You and your Owner/Operator and Investors understand and acknowledge that the rights and duties set forth in this Agreement are personal to you and that Dickey's has granted this franchise in reliance on the business skill, financial capacity and personal character of you and your Owner/Operator and Investors. Accordingly, neither you nor your Owner/Operator or any Investor may Transfer any direct or indirect ownership interest in you, this Agreement or the franchised business, without Dickey's prior written consent. In addition, neither you nor any permitted successor or assign to any part of your interest in this Agreement or the franchised business, nor any person or entity which directly or indirectly has or owns any interest in this Agreement, in the franchised business or in you, shall cause or permit a Transfer of a Controlling Interest (as defined in this Article 15.2.1) without the prior written consent of Dickey's; provided, however, that Dickey's prior written consent shall not be required for a Transfer of less than a one percent (1%) interest in a Publicly-Held Corporation. Within five (5) days of the completion of each Transfer of any ownership interest in you, you shall provide to Dickey's written notice of the completion of the Transfer and fully executed copies of all documents evidencing the Transfer and any and all amendments to the organizational documents of the applicable entity in connection with the Transfer.

For purposes of this Agreement, a "Transfer of a Controlling Interest" shall mean: (i) a Transfer, directly or indirectly, individually or cumulatively, of more than fifty (50%) of the ownership interest in you; or (ii) a Transfer of any ownership interest, which, directly or indirectly, individually or cumulatively, results in or may result in the change or removal of, or addition to, Owner/Operator. For purposes of this Agreement, a "Publicly-Held Corporation" is a corporation whose securities are registered under Section 12 of the Securities Exchange Act of 1934, as amended, or a corporation subject to the requirements of Section 15(d) of the Securities Exchange Act, as amended. For purposes of this Agreement, "Transfer" means any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law or otherwise.

Any purported Transfer, by operation of law or otherwise, not having the prior written consent of Dickey's required by this Article 15, shall be null and void and shall constitute an event of default under this Agreement, for which Dickey's may then terminate this Agreement pursuant to Article 16.

2. Subject to applicable state law, Dickey's shall not unreasonably withhold its consent to a Transfer so long as the Transfer has not been completed prior to Dickey's receipt of notice thereof; however, Dickey's may, in its sole discretion, require any or all of the following as conditions of its approval to any such Transfer requiring Dickey's prior written consent:

A. All of your accrued monetary and other outstanding obligations to Dickey's and its subsidiaries and affiliates arising under this Agreement or any other agreement between you and Dickey's or its subsidiaries or affiliates shall have been satisfied in a timely manner and you shall have satisfied all trade accounts and other debts, of whatever nature or kind, in a timely manner.

B. You are not in default of any provision of this Agreement or any other agreement between you and Dickey's or its subsidiaries or affiliates.

C. Unless otherwise prohibited by applicable law, the transferor and its Owner/Operator and Investors, as applicable, shall have executed a general release, in a form prescribed by Dickey's, of any and all claims against Dickey's and its subsidiaries and affiliates and their respective officers, directors, shareholders, partners, employees, servants, representatives, and agents, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement and any other agreement between you and Dickey's or its subsidiaries or affiliates and federal, state and local laws, rules and ordinances.

D. The transferee shall enter into a written agreement, in a form prescribed by Dickey's, assuming full, unconditional, joint and several liability for and agreeing to perform from

the date of the Transfer, all of your obligations, covenants and agreements contained in this Agreement; and if transferee is a corporation, partnership, limited liability company or other entity, the transferee's shareholders, partners, members or other owners, as applicable, shall also execute such agreement as principals of the transferee, including a guaranty of your obligations contained in this Agreement. The transferee shall assume operations of the franchised business within such timeframe required by Dickey's.

E. The transferee shall demonstrate to Dickey's satisfaction that the transferee meets the criteria which Dickey's considers when reviewing a prospective franchisee's application for a franchise, including Dickey's educational, managerial and business standards, transferee's good moral character, business reputation and credit rating, the transferee's aptitude and ability to conduct the franchised business (as may be evidenced by prior related business experience or otherwise), the transferee's financial resources and capital and the geographic proximity of other Restaurants operated by the transferee and territories with respect to which transferee is obligated to develop Restaurants pursuant to any agreements between Dickey's and the transferee, in relation to your Restaurant.

F. Unless prohibited by applicable law, the transferee shall, at Dickey's option, execute for a term ending on the expiration date of this Agreement and with such renewal term as may be provided by this Agreement, the form of franchise agreement then being offered to new System franchisees and other ancillary agreements as Dickey's may require for the franchised business, which agreements shall supersede this Agreement and its ancillary documents in all respects and the terms of which agreements may differ from the terms of this Agreement and may include, without limitation, a higher royalty fee and advertising fee and expenditure requirement; provided, however, that the transferee shall not be required to pay any initial Franchise Fee and if the transferee is a corporation, partnership, limited liability company or other entity, the transferee's shareholders, partners, member or other owners, as applicable, shall also execute such agreements as Owner/Operators and Investors of the transferee, including a guaranty of your obligations contained in such Agreement.

G. The transferee, at its expense, shall renovate, modernize and otherwise upgrade your Restaurant to conform to the then-current standards and specifications of System Restaurants (including, without limitation, the modernization of your Restaurant to conform to Dickey's then-current Restaurant specifications and requirements) as reasonably requested by Dickey's within the time specified by Dickey's; provided, that the transferee shall be provided a reasonable period within which to effect such renovation, modernization or upgrading, and provided further, that the costs of such work shall not be unreasonably expensive.

H. The transferor shall remain liable for all of the obligations to Dickey's in connection with the franchised business incurred prior to the effective date of the transfer and shall execute any and all instruments reasonably requested by Dickey's to evidence such liability.

I. Prior to completion of the Transfer to the transferee, at the transferee's expense, the transferee's Owner/Operator, managers, chefs, and other personnel designated by Dickey's shall complete the initial training program and any other training programs then required, upon such terms and conditions (including payment of a reasonable fee), as Dickey's may reasonably require.

J. You shall pay Dickey's a transfer fee of \$10,000.00 or such greater amount as is necessary to reimburse Dickey's for its reasonable costs and expenses associated with reviewing the application for Transfer, including, without limitation, legal and accounting fees.

K. If transferee is a corporation, partnership, limited liability company, or other entity, the transferee shall make and will be bound by any or all of the representations, warranties and covenants in Article 6.1 as Dickey's requests. Transferee shall provide to Dickey's evidence

satisfactory to Dickey's that the terms of Article 6.1 have been satisfied and are true and correct on the date of Transfer.

L. Prior to the Transfer, you shall deliver to Dickey's for review and approval copies of all documents which will evidence the Transfer and, if applicable, any and all amendments to the organizational documents of the applicable entity to be executed in connection with the Transfer.

3. You hereby acknowledge and agree that each condition which must be met by the transferee is reasonable and necessary to ensure the transferee's full performance of the obligations hereunder.

**15.3 TRANSFER FOR CONVENIENCE OF OWNERSHIP.** If a proposed Transfer is to a corporation, partnership, limited liability company or other entity formed solely for the convenience of ownership of the existing Investors, to the extent permitted under applicable state law, Dickey's consent may be conditioned upon any of the requirements in Article 15.2, except that the requirements in Articles 15.2.2.C, E, F, G, I and J shall not apply. In such event, you shall be the owner of all the outstanding ownership interests in the entity, and if you are more than one (1) individual Investor, each individual Investor shall have the same proportionate ownership interest in the transferee entity as such individual had prior to the Transfer.

#### **15.4 RIGHT OF FIRST REFUSAL.**

1. In the event you or any person or entity holding a direct or indirect interest in you (including any interest to be transferred pursuant to Article 15.5, in the franchised business or in this Agreement desire to accept any bona fide offer from a third party to purchase such interest, you shall promptly notify Dickey's in writing of each such offer and shall provide such information and documents relating to the offer as Dickey's may require. Dickey's shall have the right and option, exercisable within fifteen (15) days after receipt of such written notification, information and documents, to send written notice to the transferor that Dickey's intends to purchase the transferor's interest on the same terms and conditions offered by the third party. If Dickey's elects to purchase the transferor's interest, the closing on such purchase must occur within thirty (30) days from the date of notice to the transferor of the election to purchase by Dickey's, or such other date as may be agreed upon. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Dickey's as in the case of an initial offer. Failure of Dickey's to exercise the option afforded by this Article 15.4 shall not constitute a waiver of any other provision of this Agreement, including all provisions relating to a proposed Transfer.

2. If the offer from the third party provides for payment of consideration other than cash or involves certain intangible benefits, Dickey's may elect to purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on such amount, an independent appraiser shall be designated by each party to determine such amount. In the event that such appraisers shall agree on such amount, the determination shall be final and binding. In the event that such appraisers fail to agree within thirty (30) days, a third independent appraiser shall be designated by such appraisers, and the determination by a majority of appraisers shall be binding. Each party shall bear the costs and expenses of the appraiser appointment by such party, and the parties shall share equally the costs and expenses of the third appraiser.

3. If Dickey's elects to exercise the option described in this Article 15.4, it shall have the right to set off the cost of the appraisal described in Article 15.4.2 above, if any, against any payment made hereunder.

4. Failure to comply with the provisions of this Article 15.4 prior to the purchase of a direct or indirect interest in you, in the franchised business or in this Agreement, shall constitute an event of default under Article 16.

### **15.5 TRANSFER UPON DEATH OR PERMANENT DISABILITY.**

1. Upon the death of any person (the "Deceased") with a direct or indirect interest in this Agreement, the franchised business or in you, the executor, administrator or other personal representative of the Deceased shall transfer such interest to a third party, provided that any such transfer shall be subject to the terms, conditions and restrictions regarding Transfers set forth in Article 15.2 and the right of first refusal set forth in Article 15.4. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the estate of the Deceased, then the transfer of such interests to the distributee of such interests shall be subject to the terms, conditions and restrictions regarding Transfers set forth of Article 15.2. If the distributee is required to be approved by Dickey's, but not approved by Dickey's, then the distributee shall transfer such interest to a third party approved by Dickey's within twelve (12) months after the death of the Deceased, subject to the terms and conditions set forth in Article 15.2 and the right of first refusal set forth in Article 15.4.

2. Upon the Permanent Disability (as defined in this Article 15.5) of any person with a direct or indirect interest in this Agreement, the franchised business or in you, Dickey's may, in its sole discretion, require such interest to be transferred to a third party approved by Dickey's within six (6) months after notice to you, subject to the right of first refusal set forth in Article 15.4. "Permanent Disability" shall mean any physical, emotional or mental injury, illness or incapacity which would prevent a person from performing the obligations set forth in this Agreement for at least ninety (90) consecutive days and from which condition recovery within ninety (90) days from the date of determination of disability is unlikely. Permanent Disability shall be determined by two (2) licensed practicing physicians. One (1) licensed practicing physician shall be selected by Dickey's, while a second licensed practicing physician shall be selected by you. If these two (2) licensed practicing physicians cannot agree on whether a Permanent Disability exists, they shall appoint a third licensed practicing physician whose expert opinion shall be controlling. The costs of any examination required by this Article 15.5 shall be paid by Dickey's.

3. In the event of the death or Permanent Disability of your Owner/Operator, or any other person with a direct or indirect interest in this Agreement, the franchised business or in you, if Dickey's determines, in its sole discretion, that such person had substantial control or supervision over the management of your Restaurant, then Dickey's at its option may elect to operate your Restaurant during the interim twelve (12) months following such death or the interim six (6) months following such Permanent Disability, as applicable, until the interest of such person is transferred in accordance with this Article 15 or until the applicable interim period expires, whichever comes first. As compensation for managing you Restaurant, Dickey's will charge a management fee of five percent (5%) of the Net Sales of your Restaurant for each Sales Period, which will be in addition to the royalty fee, advertising contributions and any other fees or payments due and owing to Dickey's and, if Dickey's provides one of its employees as manager, you shall pay Dickey's the manager's then-current salary for the time of such interim management. In addition, you will remain responsible for payment of employee salaries, taxes, rent, utilities, supplies and all other costs and expenses associated with the operation of your Restaurant. Dickey's shall exercise its best efforts in managing your Restaurant, but shall not be liable for any losses incurred by your Restaurant during the time of such management and thereafter. IF DICKEY'S ELECTS TO OPERATE YOUR RESTAURANT PURSUANT TO THIS ARTICLE 15.5.3, YOU SHALL INDEMNIFY DICKEY'S FOR LOSSES AND EXPENSES INCURRED BY DICKEY'S AS A RESULT OF SUCH OPERATION TO THE SAME EXTENT AS PROVIDED IN ARTICLE 20.4.

4. Upon the death or claim of Permanent Disability of any person with a direct or indirect interest in this Agreement, the franchised business or you, you or your representative must promptly notify Dickey's of such death or claim of Permanent Disability. Any transfer upon death or Permanent Disability shall be subject to the same terms and conditions as described in Article 15.2 shall apply, except that the requirements of Articles 15.2.2.C, F and G shall not apply. If an interest is not transferred upon death or Permanent Disability as required in this Article 15.5, Dickey's may terminate this Agreement pursuant to Article 16.

**15.6 NON-WAIVER OF CLAIMS.** Dickey's consent to a Transfer of any interest in you, the franchised business or this Agreement shall not constitute a waiver of any claims it may have against the transferring

party, nor shall it be deemed a waiver of Dickey's right to demand exact compliance with this Agreement by the transferee.

**15.7 OFFERINGS BY YOU.** Securities in you may be offered to the public, by private offering or otherwise, only with the prior written consent of Dickey's (whether or not Dickey's consent is required under Article 15.2), which consent shall not be unreasonably withheld. All materials required for such offering by federal or state law shall be submitted to Dickey's for a limited review as discussed below prior to their being filed with any government agency; and any materials to be used in any exempt offering shall be submitted to Dickey's for such review prior to their use. Your offering shall not imply (by use of the Proprietary Marks or otherwise) that Dickey's is participating in an underwriting, issuance or offering of your securities or Dickey's securities or the securities of any subsidiary or affiliate of Dickey's; and Dickey's review of any offering materials shall be limited solely to the subject of the relationship between you and Dickey's and its subsidiaries and affiliates. Dickey's may, at its option, require your offering materials to contain a written statement prescribed by Dickey's concerning the limitations described in the preceding sentence. **YOU AND THE OTHER PARTICIPANTS IN THE OFFERING MUST FULLY INDEMNIFY DICKEY'S IN CONNECTION WITH THE OFFERING.** For each proposed offering, you shall pay to Dickey's a nonrefundable fee of \$1,000.00, or such other greater amount as is necessary to reimburse Dickey's for its reasonable costs and expenses associated with reviewing the proposed offering materials, including without limitation, legal and accounting fees. You shall give Dickey's written notice at least thirty (30) days prior to any offering or other transaction covered by this Article 15.7.

## **ARTICLE 16. DEFAULT AND TERMINATION**

**16.1 EVENTS OF DEFAULT NOT SUBJECT TO NOTICE AND CURE.** You shall be in default under this Agreement, and, to the extent permitted under applicable state law, at Dickey's option, all rights granted herein shall automatically terminate without prior notice to you or the opportunity to cure, if:

1. You file a bankruptcy, receivership or equivalent insolvency proceeding under the federal bankruptcy law or any state statute;
2. Any bankruptcy, receivership or insolvency proceeding is filed against you and is not dismissed within sixty (60) days following the filing thereof;
3. You are merged, consolidated or dissolved in violation of Article 15. ;
4. A final judgment against you remains unsatisfied or of record for thirty (30) days or longer (unless you have sooner filed an appropriate supersedeas bond);
5. Any lien against the equipment of the franchised business is foreclosed upon or if the equipment of the franchised business is levied or executed upon;

**16.2 EVENTS OF DEFAULT SUBJECT TO NOTICE BUT WITHOUT CURE.** You shall be in default and, to the extent permitted under applicable state law, Dickey's may, at its option, terminate this Agreement upon delivery of written notice and without providing you an opportunity to cure if:

1. You cease operation of your Restaurant, after opening, and such cessation continues for at least five (5) days;
2. Any transfer in violation of Article 15;
3. You are in default under your lease of your Restaurant premises;
4. You are in default under any loan or other agreement for the financing of your Restaurant;
5. You fail to locate a proposed site for your Restaurant within the time stated in, and otherwise comply with, Article 7.2;

6. You fail to acquire a site for your Restaurant within the time stated in and otherwise comply with, Article 7.5;

7. You fail to commence business within the time stated in, and otherwise in accordance with, Article 7.10;

8. You fail to comply with the provisions of Article 8.9;

9. You fail to comply with any confidentiality or non-compete provisions of this Agreement, including, without limitation, those set forth in Articles 11 and 1; or

10. A default occurs under any other agreement you, or any entity in which your Investors own majority equity ownership or otherwise control have entered into with Dickey's or its subsidiaries or affiliates, and such default is not cured within any applicable grace or cure period expressly provided for therein.

**16.3 EVENTS OF DEFAULT SUBJECT TO 7-DAY NOTICE AND CURE.** You shall be in default and, to the extent permitted under applicable state law, Dickey's may, at its option, terminate this Agreement after notice to you, upon the occurrence of any of the following breaches hereunder, and such breaches are not cured to Dickey's satisfaction within seven (7) days following the date of written notice of default from Dickey's, if:

1. You fail to operate your Restaurant in accordance with the provisions, standards and specifications of Dickey's set forth in Articles 7 and 8 or in the Manuals or other written directives of Dickey's (and in particular, and without limiting the generality of the foregoing, you shall comply with the provisions, standards and specifications set forth in Article 8); provided that any failure to operate your Restaurant pursuant to Article 8.9 shall be governed by Article 16.1;

2. You fail to timely pay your initial Franchise Fee, royalty fees, Marketing Fund contribution or any other monetary obligations owed to Dickey's or its affiliates under this Agreement or otherwise (including, without limitation, any interest accrued on any overdue payments), or, your failure to timely submit your Monthly Sales Report;

3. You misuse or make any unauthorized use of the Proprietary Marks or otherwise materially impair the goodwill associated with the Proprietary Marks or with the System or Dickey's rights therein;

4. You or your Owner/Operator or any of your Investors breach the covenants set forth in Article 18 of the Agreement; or

5. You, your Owner/Operator or any of your Investors purchase food and beverage or other products or utilize vendors or suppliers for the Restaurant which have not been approved by Dickey's, or you fail to pay your accounts with Dickey's approved vendors and suppliers when due, unless you are in good faith contesting your liability for amounts you owe to such vendors or suppliers.

Provided, if you commit or permit any of these breaches two (2) times during any twelve (12) month period, to the extent permitted under applicable state law, Dickey's shall not be obligated to provide you notice or an opportunity to cure any subsequent breaches prior to terminating your rights under this Agreement. If any fact or circumstance giving rise to any event of default described in Article 16.2 is not susceptible to cure, in the reasonable judgment of Dickey's, to extent permitted under applicable state law, such event of default shall be deemed an event of default under Article 16.2 and not subject to any further notice and cure.

**16.4 EVENTS OF DEFAULT SUBJECT TO 30-DAY NOTICE AND CURE.** You shall be in default and, to the extent permitted under applicable state law, Dickey's may, at its option, terminate this Agreement after notice to you, upon the occurrence of any of the following breaches hereunder, and such

breaches are not cured to Dickey's satisfaction within thirty (30) days following the date of written notice of default from Dickey's, if:

1. You or your Owner/Operator or any of your Investors breach any other covenant, agreement, obligation or term set forth in this Agreement (other than such breaches specified in Articles 16.1 and 16.2); or

2. If any representation or warranty made by you or your Owner/Operator or any of your Investors in this Agreement or in any certificate, report, notice, financial statement or other document furnished to Dickey's at any time in connection with this Agreement or the operation of your Restaurant shall be false, misleading or erroneous in any material respect when made; or

3. Any default occurs under any other agreement you have with Dickey's or its subsidiaries or affiliates and such default is not cured within any applicable grace or cure period expressly provided for therein.

Provided, if you commit or permit any of these breaches two (2) times during any twelve (12) month period, to the extent permitted under applicable state law, Dickey's shall not be obligated to provide you notice or an opportunity to cure any subsequent breaches prior to terminating your rights under this Agreement. If any fact or circumstance giving rise to any event of default described in Article 16.3 is not susceptible to cure, in the reasonable judgment of Dickey's, to the extent permitted under applicable state law, such event of default shall be deemed an event of default under Article 16.2 and not subject to any further notice and cure.

#### **ARTICLE 17. OBLIGATIONS UPON TERMINATION OR EXPIRATION**

Upon the termination or expiration of this Agreement, all rights granted hereunder to you shall terminate and:

1. Unless otherwise indicated in writing from Dickey's, and to the extent permitted by applicable law, you must pay to Dickey's in a single lump sum payment, as liquidated damages and not as a penalty, after early termination of the Franchise Agreement, liquidated damages equal to royalty fees for the number of months remaining in the term of the Franchise Agreement (or the renewal term, if applicable) based on the monthly average of the royalty payable to us. If the Franchise Agreement terminates after the second year of the term, then liquidated damages shall be calculated based upon the average monthly Net Sales of your Restaurant reported for the 12 months preceding termination. Liquidated Damages are the present value of the annuity represented by the Royalty for the months remaining in your Franchise Agreement term assuming these average Net Sales, without adjustment for inflation. The discount rate for calculating present value is 110% of the long term Applicable Federal Rate for monthly compounding published by the Internal Revenue Service immediately prior to termination. If your Restaurant has not yet opened, or has not been open for at least 24 months at the time of termination, the average monthly Net Sales used to calculate Liquidated Damages will be based upon the average monthly Net Sales of all Dickey's Restaurants for the preceding fiscal year as determined from the audited financial statements of Dickey's published in its Franchise Disclosure Document. An example of these calculations is included in the Operations Manual. Both assume an aggregated monthly average of the Royalties paid each week.

2. You shall immediately and permanently cease to use, in any manner, any confidential methods, procedures, techniques, and trade secrets associated with the System, the Proprietary Marks, and all other distinctive forms, slogans, signs, symbols and devices associated with the System, as set forth in the Manuals. In particular, you shall cease to use, without limitation, all signs, advertising materials, displays, stationery, forms, and any other articles which display the Proprietary Marks. All such items which display the Proprietary Marks shall be removed from your Restaurant premises at your cost within thirty (30) days of termination.

3. You shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains the Proprietary Marks or any part thereof or any other service mark or trademark of Dickey's and you shall furnish Dickey's with evidence satisfactory to Dickey's of compliance with this obligation within five (5) days after the termination or expiration of this Agreement.

4. You shall, at Dickey's option, assign to Dickey's or its designee any interest which you have in any lease or sublease for your Restaurant premises or for any equipment used in the operation of the franchised business. Dickey's may exercise such option at or within thirty (30) days after either termination or (subject to any existing right to renew) expiration of this Agreement. The time for closing on the assignment of lease, sublease or equipment shall be a date no later than ten (10) days after Dickey's exercise of the option(s) unless Dickey's is also exercising its option to purchase property described below in Article 17.5, in which case the date of closing shall be on the same date prescribed for the purchase option. Closing shall take place at Dickey's corporate office or at such other location as the parties may agree. If neither you nor Dickey's elect to exercise its option to acquire the lease or sublease for the premises of the franchised business, you shall make such modifications or alterations to such premises immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of such premises from that of other Restaurants operating under the System and shall make such specific additional changes as Dickey's may reasonably request. If you fail or refuse to comply with the requirements of this Article 17.4, Dickey's shall have the right to enter upon the premises of the franchised business, without being guilty of trespass or any other crime or tort, to make or cause to be made such changes as may be required, at your expense, which expense you shall pay upon demand.

5. A. Dickey's shall have the option, which it may exercise by providing written notice to you within thirty (30) days after termination or (subject to any right to renew) expiration of this Agreement, to purchase from you any or all of your furnishings, equipment (including any computer hardware and software), signs, fixtures, supplies or inventory related to the operation of the franchised business, at your cost or fair market value, whichever is less. Should Dickey's exercise such option.

B. Dickey's shall be purchasing your assets only and shall be assuming no liabilities. Notwithstanding anything contained herein to the contrary, Dickey's and you shall fully comply with the requirements of any "bulk transfer" or fraudulent conveyance statute or equivalent law in the jurisdiction in which your Restaurant is located, so that Dickey's shall not assume or acquire any "transferee" liability.

C. If the parties cannot agree on a fair market value within thirty (30) days from the date of Dickey's notice to exercise its option, an independent appraiser shall be designated by each party and the two (2) independent appraisers shall select a third independent appraiser. The determination of fair market value by the majority of the appraisers shall be binding. Each party shall bear the costs and expenses of the appraiser appointed by such party, and the parties shall share equally the costs and expenses of the third appraiser.

D. At closing, you shall deliver to Dickey's, in a form satisfactory to Dickey's, such bills of sale, assignments, releases of liens, and such other documents and instruments which Dickey's deems reasonably necessary to perfect Dickey's title and possession in and to the assets being purchased and to certify that the requirements of all taxing and other governmental authorities have been satisfied. If at the time of closing you have not obtained all of these certificates and other documents, Dickey's may, in its sole discretion, place the purchase price in escrow pending the issuance of any required certificates or documents.

E. The time and place for the closing of the purchase and sale of such assets shall be a date not later than thirty (30) days after the purchase price is determined by the parties or the appraisers, whichever is later, at the operating office of Dickey's in Dallas, Texas of Dickey's, unless the parties mutually agree to another date or place.



F. At closing, Dickey's shall have the right to set off all amounts you owe to Dickey's and its subsidiaries and affiliates and the cost incurred in connection with any escrow arrangement (including reasonable legal fees), against any payment for the assets, and shall pay the remaining amount in cash.

6. You, at Dickey's option, shall assign to Dickey's or its designee all rights to the telephone numbers of your Restaurant and execute all forms and documents required by any telephone company to transfer such service and numbers to Dickey's or its designee. You hereby appoint Dickey's your true and lawful agent and attorney-in-fact with full power and authority, for the sole purpose of taking such action as is necessary to complete such assignment. This power of attorney shall survive the expiration or termination of this Agreement. You shall thereafter use different telephone numbers at or in connection with any subsequent business conducted by you.

7. You agree, if you continue to operate or subsequently begin to operate any other business, not to use any reproduction, counterfeit, copy or colorable imitation of the Proprietary Marks, either in connection with such other business or its promotion, which is likely to cause confusion, mistake or deception or which is likely to dilute Dickey's rights in and to the Proprietary Marks, and further agree not to use any designation of origin or description or representation which falsely suggests or represents a continuing association or connection with Dickey's.

8. You shall promptly pay all sums owing to Dickey's and its subsidiaries and affiliates. In the event of termination for any default by you, such sums shall include interest on any past due amounts as set forth in this Agreement, and all damages, costs, and expenses, including reasonable legal fees, incurred by Dickey's as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in favor of Dickey's against any and all of the personal property, furnishings, equipment, signs, fixtures and inventory owned by you and on the premises of the franchised business at the time of default.

9. You shall pay to Dickey's all damages, costs, and expenses, including reasonable legal fees, incurred by Dickey's after the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Article 17.

10. You shall immediately deliver to Dickey's all materials, including the Manuals, records, files, instructions, correspondence, customer lists, access to all social media accounts, and all other writings or electronic data related to operating the franchised business, including, without limitation, brochures, agreements, invoices, and all other related materials in your possession, and all copies thereof (all of which are acknowledged to be Dickey's property), and shall retain no copy or record of any of the above, except your copy of this Agreement and of any correspondence between the parties and any other documents which you reasonably need for compliance with any applicable law.

11. You and your Owner/Operator and each of your Investors shall comply with the restrictions on confidential information contained in Article 12.1 and the covenants contained in Article 18.2.B. Any other person required to execute similar covenants pursuant to Articles 12.2 or 18 shall also comply with such covenants.

## **ARTICLE 18. COVENANTS**

1. You covenant that during the term of this Agreement, except as otherwise approved in writing by Dickey's, you and your Owner/Operator shall devote full time, energy and best efforts to the management and operation of the franchised business.

2. You and your Owner/Operator and each of your Investors specifically acknowledge that, pursuant to this Agreement, you and your Owner/Operator and each of your Investors will receive valuable specialized training, trade secrets and confidential information, including, without limitation, information regarding the operational, sales promotional and marketing methods and techniques of Dickey's and the System and proprietary recipes which are beyond your present skills and experience,

and that of your Owner/Operator, Investors and your managers and employees. You and your Owner/Operator acknowledge that such training, trade secrets, and confidential information provide a competitive advantage and will be valuable to you in the development of the franchised business and that gaining access to such training, trade secrets, recipes, and confidential information is, therefore, a primary reason for entering into this Agreement. In consideration for such training, trade secrets, and confidential information, you, your Owner/Operator and each of your Investors covenant as follows:

A. During the term of this Agreement, except as otherwise approved in writing by Dickey's, neither you nor your Owner/Operator nor any of your Investors shall, either directly or indirectly, for yourselves or through, on behalf of or in conjunction with any person, partnership, corporation or other entity:

i. Divert or attempt to divert any business or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System; or

ii. Own, maintain, operate, engage in or have any financial or beneficial interest in (including any interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations, joint ventures or other entities), advise, assist or make loans to, any person or entity engaged in any business which is similar to or competitive with the franchised business including, but not limited to, any restaurant or catering business that offers smoked meats or barbecue-style food, including chopped beef brisket, sliced beef brisket, pulled pork, Virginia style ham, marinated chicken breast, turkey breast, polish sausage, spicy cheddar sausage, or pork ribs as a primary or featured menu item.

B. With respect to you, for a continuous uninterrupted period commencing upon the expiration or termination of, or transfer of all of your interest in, this Agreement or with respect to your Owner/Operator and each of your Investors, for a continuous uninterrupted period commencing upon the earlier of: (i) the expiration, termination or transfer of all of your interest in this Agreement or (ii) the time such individual or entity ceases to satisfy the definition of your Owner/Operator or an Investor in Article 26.3.3, and for two (2) years thereafter (which two-year period shall be tolled during any period of noncompliance), except as otherwise approved in writing by Dickey's, neither you nor your Owner/Operator nor any of your Investors shall, either directly or indirectly, for yourselves or through, on behalf of or in conjunction with any person, partnership, corporation or other entity:

i. Divert or attempt to divert any business or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Dickey's Proprietary Marks and the System;

ii. Employ or seek to employ any person who is at that time employed by Dickey's, by an affiliate of Dickey's, or by any other franchisees or developer of Dickey's, or otherwise directly or indirectly induce such person to leave that person's employment, except as may be permitted under any existing Development Agreement or franchise agreement between Dickey's and you; or

iii. Own, maintain, operate, engage in or have any financial or beneficial interest in (including interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations, joint ventures or other entities), advise, assist or make loans to, any business that is similar to or competitive with the franchised business including, but not limited to, any restaurant or catering business that offers smoked meats or barbecue-style food, including chopped beef brisket, sliced beef brisket, pulled pork, Virginia style ham, marinated chicken breast, turkey breast, polish sausage, spicy

cheddar sausage, or pork ribs as a primary or featured menu item which business is, or is intended to be, located within a thirty (30)-mile radius of the location accepted hereunder or within a five (5)-mile radius of any Restaurant in existence or under construction as of date the time period set forth in Article 18.2.B commences for you or your Owner/Operator or any of your Investors, as applicable.

C. Articles 18.2.A.ii and 18.2.B.iii shall not apply to ownership of less than a one percent (1%) beneficial interest in the outstanding equity securities of any Publicly-Held Corporation.

D. Neither you nor your Owner/Operator nor any of your Investors shall publish or communicate in any way (or assist, encourage, or support) to any third party any statement that might reasonably be construed to be disparaging, defamatory, derogatory, negative, or critical of the personal or business reputation, acumen, skill, practices, or conduct of Dickey's, its subsidiaries, or affiliates, including each party's respective officers, directors or employees, in connection with this Agreement or any prior agreement between the parties and the purchase and operation of any Dickey's Barbecue Pit® Restaurant and franchise. **With regard to the this provision, the person alleged to have violated this provision agrees to waive his/her rights to prior restraint on speech and consents to the issuance of a temporary restraining order, temporary injunction, or other available injunctive relief designed to prevent any further breach of this provision. Additionally, if you or your Owner/Operator or any of your Investors publish or communicate any statement to a third-party that is disparaging, defamatory, derogatory, negative, or critical of the personal or business reputation, acumen, skill, practices, or conduct of Dickey's, its subsidiaries, or affiliates, including each party's respective officers, directors or employees the other party, you and your Owner/Operator and your Investors agree to assign all copyrights to such publications or communications to Dickey's. You and your Owner/Operator and your Investors agree to take whatever action (including signing assignment or other documents) that Dickey's requests to evidence its ownership or to help Dickey's obtain intellectual property rights in the copyrights to such publications or communications.**

3. The parties agree that each of the above covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Article 18 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Dickey's is a party, you, your Owner/Operator and your Investors expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Article 18.

4. You and your Owner/Operator and Investors understand and acknowledge that Dickey's shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Article 18.2, or any portion thereof, without your consent, effective immediately upon written notice to you; and you and your Owner/Operator and Investors agree that they shall immediately comply with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Article 25.

5. You and your Owner/Operator and Investors expressly agree that the existence of any claims you may have against Dickey's, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Dickey's of the covenants in this Article 18, you and your Owner/Operator and Investors agree to pay all costs and expenses (including reasonable legal fees), incurred by Dickey's in connection with the enforcement of this Article.

6. You and your Owner/Operator and Investors acknowledge that a violation of the terms of this Article 18 would result in irreparable injury to Dickey's for which no adequate remedy at law may be available, and you and your Investors accordingly consent to the issuance of an injunction prohibiting any conduct by you, your Owner/Operator or any of your Investors in violation of the terms of this Article. This remedy is in addition to any other remedies Dickey's may have hereunder or at law or equity.

7. At Dickey's request, you shall require and obtain execution of covenants similar to those set forth in this Article 18, from any other person or entity that now or hereafter satisfies the definition of your Investors or your Owner/Operator in Article 26.3.3 or any other person or entity who has received or will receive confidential information or training by Dickey's. Failure by you to obtain execution of the covenants required by this Article 18.7 shall constitute an event of default under Article 16.

## **ARTICLE 19. TAXES, PERMITS AND INDEBTEDNESS**

1. You shall promptly pay when due all taxes levied or assessed, including without limitation, income, payroll, property, unemployment and sales taxes and all accounts and other indebtedness of every kind incurred by you in the conduct of the franchised business.

2. You shall pay to Dickey's an amount equal to any sales tax, gross receipts tax, excise tax or any similar license or tax, directly or indirectly imposed on Dickey's with respect to any payment to Dickey's required under this Agreement. The preceding sentence shall not apply to any franchise tax or income, war profits or excess profits tax (or any tax in lieu thereof), imposed on Dickey's with respect to the above payments.

3. In the event of any bona fide dispute as to your liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with the procedures of the taxing authority or applicable law; however, in no event shall you permit a tax sale or seizure by levy of execution or similar writ or warrant or attachment by a creditor, to occur against the premises of the franchised business or any improvements thereon.

4. You shall comply with all federal, state and local laws, rules and regulations and shall timely obtain any and all permits, certificates or licenses necessary for the full and proper conduct of the franchised business, including, without limitation, licenses to do business, fictitious name registrations, sales tax permits, fire clearances, health permits, alcoholic beverage permits and licenses, and certificates of occupancy.

5. You shall notify Dickey's in writing within five (5) days of the commencement of any action, suit or proceeding or of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may adversely affect the operation or financial condition of the franchised business.

## **ARTICLE 20. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

**20.1 NO FIDUCIARY RELATIONSHIP.** The parties acknowledge and agree that this Agreement does not create a fiduciary relationship between them, that you shall be an independent contractor and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, employer, joint employer or servant of the other for any purpose.

**20.2 FRANCHISEE IS AN INDEPENDENT CONTRACTOR.** During the term of this Agreement, you shall hold yourself out to the public as an independent contractor operating the business pursuant to a franchise from Dickey's. You agree to take such action as shall be necessary to that end, including, without limitation, exhibiting a notice of that fact in a conspicuous place in the franchised premises, the content and form of which Dickey's reserves the right to specify in the Manuals or otherwise in writing.

**20.3 NO AUTHORITY TO BIND DICKEY'S.** You and your Owner/Operator and each of your Investors understand and agree that nothing in this Agreement authorizes you or your Owner/Operator and any of your Investors to make any contract, agreement, warranty or representation on Dickey's behalf, or to incur any debt or other obligation in Dickey's name; and that Dickey's shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall Dickey's be deemed liable for any act or omission of you, your Owner/Operator or any of your Investors in the conduct of the franchised business or for any claim or judgment arising therefrom. You and your Owner/Operator agree that Dickey's will not be responsible for any claims against any suppliers or approved vendors,

architects, contractors, accountants, or other third parties in connection with the development or operation of the Restaurant or other services provided in connection therewith.

**20.4 DELIVERY VEHICLES.** You and your Owner/Operator and each of your Investors understand and agree that Dickey's does not exercise any control over: a) the manner of operation of any delivery motor vehicles used by or on behalf of you or any of your employees, agents or independent contractors; and b) the manner or operation of any delivery motor vehicles used by or on behalf of an independent delivery service provider required under this Agreement. The safe operation of delivery service is your or the independent operator's sole responsibility.

**20.5 NO ASSUMPTION OF LIABILITY.** DICKEY'S AND ITS SUBSIDIARIES, AFFILIATES AND RELATED ENTITIES DO NOT ASSUME ANY LIABILITY FOR ACTS, ERRORS OR OMISSIONS OF THOSE WITH WHOM YOU, YOUR OWNER/OPERATOR, ANY OF YOUR INVESTORS OR YOUR SUBSIDIARIES AND AFFILIATES MAY CONTRACT, REGARDLESS OF THE PURPOSE.

**20.6 INDEMNIFICATION & RELEASE**

1. YOU, YOUR OWNER/OPERATOR AND EACH OF YOUR INVESTORS SHALL, AT ALL TIMES, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS TO THE FULLEST EXTENT PERMITTED BY LAW DICKEY'S, ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, SERVANTS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, AND REPRESENTATIVES (COLLECTIVELY, THE "INDEMNIFIED & RELEASED PARTIES" OR "INDEMNIFIED & RELEASED PARTY") FROM ALL "LOSSES AND EXPENSES" (AS DEFINED IN ARTICLE 20.4.5 BELOW) INCURRED IN CONNECTION WITH ANY ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INVESTIGATION OR INQUIRY (FORMAL OR INFORMAL), OR ANY SETTLEMENT THEREOF (WHETHER OR NOT A FORMAL PROCEEDING OR ACTION HAS BEEN INSTITUTED), WHICH ARISES OUT OF OR IS BASED UPON ANY OF THE FOLLOWING:

A. **NEGLIGENT ACTS, ERRORS OR OMISSIONS, WILLFUL MISCONDUCT, OR BREACH OF CONTRACT OR WARRANTY BY YOU, ANY OF YOUR SUBSIDIARIES AND AFFILIATES, YOUR OWNER/OPERATOR AND ANY OF YOUR INVESTORS AND YOUR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AGENTS, INDEPENDENT CONTRACTORS, SERVANTS, EMPLOYEES, AND REPRESENTATIVES AND THOSE OF YOUR SUBSIDIARIES AND AFFILIATES IN CONNECTION WITH THIS AGREEMENT AND THE ESTABLISHMENT AND OPERATION OF YOUR RESTAURANT, INCLUDING WITHOUT LIMITATION, MATTERS ARISING OUT OF, OR CLAIMED TO BE ARISING OUT OF, ANY INDEMNIFIED & RELEASED PARTY'S OWN NEGLIGENT ACTS, ERRORS OR OMISSIONS, BREACH OF WARRANTY, STRICT LIABILITY, OR BREACH OF CONTRACT. YOUR, YOUR OWNER/OPERATOR'S AND ANY OF YOUR INVESTOR'S OBLIGATION TO DEFEND AND INDEMNIFY AN INDEMNIFIED & RELEASED PARTY FOR ITS OWN NEGLIGENCE APPLIES WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE.**

B. THE INFRINGEMENT, ALLEGED INFRINGEMENT OR ANY OTHER VIOLATION OR ALLEGED VIOLATION BY YOU OR YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS OF ANY PATENT, MARK OR COPYRIGHT OR OTHER PROPRIETARY RIGHT OWNED OR CONTROLLED BY THIRD PARTIES (EXCEPT AS SUCH MAY OCCUR WITH RESPECT TO ANY RIGHTS IN THE PROPRIETARY MARKS OR COPYRIGHTS GRANTED UNDER THIS AGREEMENT), INCLUDING WITHOUT LIMITATION MATTERS CAUSED BY OR ARISING OUT OF, OR CLAIMED TO BE CAUSED BY OR ARISING OUT OF, THE INFRINGEMENT OR VIOLATION OF ANY PATENT, TRADEMARK OR COPYRIGHT BY THE INDEMNIFIED & RELEASED PARTIES;

C. THE VIOLATION, BREACH OR ALLEGED VIOLATION OR BREACH BY YOU, YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, RULING, STANDARD OR DIRECTIVE OR ANY INDUSTRY

STANDARD, INCLUDING WITHOUT LIMITATION (1) MATTERS ARISING FROM ALCOHOLIC BEVERAGE SERVICE AND CONSUMPTION AT THE RESTAURANT; (2) MATTERS ARISING OUT OF A DATA BREACH, INCLUDING, BUT NOT LIMITED TO DATA NOTIFICATION FINES & PENALTIES, AS WELL AS THIRD PARTY LAWSUITS BROUGHT BY CUSTOMERS, MERCHANTS, AND CREDIT CARD BRANDS; (3) ANY DISPUTE ARISING OUT OF EMPLOYMENT, INCLUDING, BUT NOT LIMITED TO ADMINISTRATIVE CLAIMS AND THIRD PARTY CLAIMS RELATING TO WAGE CLAIMS, UNFAIR LABOR PRACTICES (SUCH AS CLAIMS UNDER THE NATIONAL LABOR RIGHTS ACT), AGE DISCRIMINATION, DISCRIMINATION, DISABILITY, AND HARASSMENT; AND (4) MATTERS ARISING OUT OF DISCRIMINATION BASED ON PUBLIC ACCOMMODATION. THIS RELEASE AND INDEMNIFICATION PROVISION EXPRESSLY INCLUDES WITHOUT LIMITATION MATTERS ARISING OUT OF, OR CLAIMED TO BE ARISING OUT OF, THE INDEMNIFIED & RELEASED PARTIES' OWN NEGLIGENT ACTS, ERRORS, VIOLATIONS, BREACHES, OR INTENTIONAL CONDUCT WITH RESPECT TO SECTIONS (1)-(4) OF THIS PROVISION; AND

D. THE VIOLATION OR BREACH BY YOU, YOUR OWNER/OPERATOR OR BY ANY OF YOUR INVESTORS OF ANY WARRANTY, REPRESENTATION, AGREEMENT OR OBLIGATION IN THIS AGREEMENT OR IN ANY DEVELOPMENT AGREEMENT OR OTHER AGREEMENT BETWEEN YOU AND DICKEY'S OR ITS SUBSIDIARIES OR AFFILIATES.

2. YOU, YOUR OWNER/OPERATOR AND EACH OF YOUR INVESTORS AGREE TO GIVE DICKEY'S IMMEDIATE NOTICE OF ANY SUCH ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY OR INVESTIGATION. AT THE EXPENSE AND RISK OF YOU, YOUR OWNER/OPERATOR AND EACH OF YOUR INVESTORS, THE INDEMNIFIED & RELEASED PARTIES MAY ELECT TO CONTROL (BUT UNDER NO CIRCUMSTANCE IS OBLIGATED TO UNDERTAKE), AND ASSOCIATE COUNSEL OF THEIR OWN CHOOSING WITH RESPECT TO, THE DEFENSE AND/OR SETTLEMENT OF ANY SUCH ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY OR INVESTIGATION. SUCH AN UNDERTAKING BY THE INDEMNIFIED & RELEASED PARTIES SHALL, IN NO MANNER OR FORM, DIMINISH THE OBLIGATION OF YOU, YOUR OWNER/OPERATOR AND EACH OF YOUR INVESTORS TO INDEMNIFY DICKEY'S AND TO HOLD IT HARMLESS.

3. IN ORDER TO PROTECT PERSONS OR PROPERTY, OR ITS REPUTATION OR GOODWILL, OR THE REPUTATION OR GOODWILL OF OTHERS, AN THE INDEMNIFIED & RELEASED PARTY MAY, AT ANY TIME AND WITHOUT NOTICE, AS IT IN ITS JUDGMENT DEEMS APPROPRIATE, CONSENT OR AGREE TO SETTLEMENTS OR TAKE SUCH OTHER REMEDIAL OR CORRECTIVE ACTION AS IT DEEMS EXPEDIENT WITH RESPECT TO ANY ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY OR INVESTIGATION IF, IN SUCH INDEMNIFIED & RELEASED PARTY'S SOLE JUDGMENT, THERE ARE REASONABLE GROUNDS TO BELIEVE THAT:

A. ANY OF THE ACTS OR CIRCUMSTANCES IN ARTICLE 20.4.1 ABOVE HAVE OCCURRED; OR

B. ANY ACT, ERROR OR OMISSION AS DESCRIBED IN ARTICLE 20.4.1.E MAY RESULT DIRECTLY OR INDIRECTLY IN DAMAGE, INJURY OR HARM TO ANY PERSON OR ANY PROPERTY.

4. ALL LOSSES AND EXPENSES INCURRED UNDER THIS ARTICLE 20 SHALL BE CHARGEABLE TO AND PAID BY YOU, YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS PURSUANT TO YOUR OBLIGATIONS OF INDEMNITY UNDER THIS ARTICLE, REGARDLESS OF ANY ACTION, ACTIVITY OR DEFENSE UNDERTAKEN BY AN INDEMNIFIED & RELEASED PARTY OR THE SUBSEQUENT SUCCESS OR FAILURE OF SUCH ACTION, ACTIVITY OR DEFENSE.

5. AS USED IN THIS ARTICLE 20, THE PHRASE "LOSSES AND EXPENSES" SHALL INCLUDE, WITHOUT LIMITATION, ALL LOSSES, COMPENSATORY, EXEMPLARY OR PUNITIVE DAMAGES, FINES, CHARGES, COSTS, EXPENSES, LOST PROFITS, LEGAL FEES, COURT COSTS,

SETTLEMENT AMOUNTS, JUDGMENTS, COMPENSATION FOR DAMAGES TO AN INDEMNIFIED PARTY'S REPUTATION AND GOODWILL, COSTS OF OR RESULTING FROM DELAYS, FINANCING, COSTS OF ADVERTISING MATERIAL AND MEDIA TIME/SPACE AND COSTS OF CHANGING, SUBSTITUTING OR REPLACING THE SAME, AND ANY AND ALL EXPENSES OF RECALL, REFUNDS, COMPENSATION, PUBLIC NOTICES, AND OTHER SUCH AMOUNTS INCURRED IN CONNECTION WITH THE MATTERS DESCRIBED.

6. UNDER NO CIRCUMSTANCES SHALL ANY INDEMNIFIED & RELEASED PARTY BE REQUIRED TO SEEK RECOVERY FROM THIRD PARTIES OR OTHERWISE MITIGATE THEIR LOSSES TO MAINTAIN A CLAIM AGAINST YOU, YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS. YOU, YOUR OWNER/OPERATOR AND EACH OF YOUR INVESTORS AGREE THAT THE FAILURE TO PURSUE SUCH RECOVERY OR MITIGATE LOSS WILL IN NO WAY REDUCE THE AMOUNTS RECOVERABLE FROM YOU, YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS BY ANY INDEMNIFIED & RELEASED PARTY PURSUANT TO THIS ARTICLE.

7. EACH OF THESE INDEMNITY OBLIGATIONS IS SEPARATE FROM, AND INDEPENDENT OF, THE INSURANCE OBLIGATIONS FOUND IN THIS AGREEMENT.

8. You and your Investors and your Owner/Operator expressly agree that the terms of this Article 20.4 shall expressly survive the termination, expiration or transfer of this Agreement or any interest herein.

#### **ARTICLE 21. GUARANTY OF YOUR OWNER/OPERATOR AND INVESTORS**

1. In consideration of the grant by Dickey's of a license and franchise to open and operate a Restaurant to Franchisee, pursuant to this Agreement to which this Personal Guaranty (herein so called) is made a part thereof, and for other good and valuable consideration, the undersigned Owner/Operator and Investors of Franchisee, for themselves, their heirs, successors, and assigns, do individually, jointly and severally hereby become surety and guaranty for the payment of all amounts and the performance of the covenants, terms and conditions of this Agreement, to be paid, kept and performed by Franchisee.

2. The undersigned Owner/Operator and Investors, jointly and severally, hereby agree to be personally bound and obligated by each and every condition and term contained in this Agreement (specifically including, without limitation, the covenants set forth in Article 12 and Article 18 of the Agreement).

3. If any default should at any time be made herein by Franchisee, then the undersigned Owner/Operator and Investors, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise to agree to pay to Dickey's all monies due and payable to Dickey's under the terms and conditions of this Agreement.

4. In addition, if Franchisee fails to comply with any other terms and conditions of this Agreement, then the undersigned Owner/Operator and Investors, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise and agree to comply with the terms and conditions of this Agreement for and on behalf of Franchisee.

5. In addition, should Franchisee at any time be in default on any obligation to pay monies to Dickey's or any subsidiary or affiliate of Dickey's, whether for merchandise, products, supplies, furniture, fixtures, equipment or other goods purchased by Franchisee from Dickey's or any subsidiary or affiliate of Dickey's, or for any other indebtedness of Franchisee to Dickey's or any subsidiary or affiliate of Dickey's, then the undersigned Owner/Operator and Investors, their heirs, successors and assigns, do hereby, individually, jointly and severally, promise and agree to pay all such monies due and payable from Franchisee to Dickey's or any subsidiary or affiliate of Dickey's upon default by Franchisee.

6. This Personal Guaranty shall survive the termination or expiration of this Agreement and/or any other collateral agreement(s) or any determination that this Agreement or any portion of it is void or voidable.

7. It is further understood and agreed by the undersigned that the provisions, covenants and conditions of this Personal Guaranty will inure to the benefit of the successors and assigns of Dickey's.

8. **Except as precluded by applicable law, each of the undersigned Investors hereby submits to personal jurisdiction exclusively in the state and federal courts of the State of Texas with respect to any litigation, action or proceeding pertaining to this Personal Guaranty or this Agreement, and agrees that all such litigation will and must be venued in Plano, Texas.**

9. Franchisee and the undersigned Owner/Operator and Investors certify that the table immediately below contains a true, correct and complete listing of all of the holders of a direct or indirect ownership interest in Franchisee (including each Investor) and all persons and entities which directly or indirectly control or manage the business and affairs of Franchisee.

Name (Full Legal Name)	Address and Telephone No.	Type of Ownership Interest	Entity in which Ownership Interest is Held	Ownership %

## ARTICLE 22. APPROVALS, WAIVERS AND REMEDIES

**22.1 PRIOR APPROVAL OR CONSENT OF DICKEY'S.** Whenever this Agreement requires the prior acceptance, approval or consent of Dickey's, you shall make a timely written request to Dickey's and such acceptance, approval or consent shall be obtained in writing.

**22.2 NO WARRANTIES OR GUARANTIES.** Dickey's makes no warranties or guarantees upon which you, your Owner/Operator or your Investors may rely, and assumes no liability or obligation to you, your Owner/Operator, your Investors or any third party to which it would not otherwise be subject, by providing any waiver, acceptance, approval, consent or suggestion to you or your Owner/Operator, or your Investors in connection with this Agreement, or for any neglect, delay or denial of any request therefor.

**22.3 EFFECT OF DELAY, WAIVER, OMISSION OR FORBEARANCE.** No delay, waiver, omission or forbearance by Dickey's to exercise any right, option, duty or power arising out of any breach or default by you or your Owner/Operator or your Investors under this Agreement shall constitute a waiver by Dickey's to enforce any such right, option, duty or power against you or your Owner/Operator or your Investors, or as to a subsequent breach or default by you or your Owner/Operator or your Investors. Subsequent acceptance by Dickey's of any payments due to it hereunder shall not be deemed to be a waiver by Dickey's of any preceding breach by you, your Owner/Operator or your Investors of any terms, provisions, covenants or conditions of this Agreement.

**22.4 RIGHTS AND REMEDIES CUMULATIVE.** All rights and remedies of the parties to this Agreement shall be cumulative and not alternative, in addition to and not exclusive of any other rights or remedies which are provided for herein or which may be available at law or in equity in case of any breach, failure or default or threatened breach, failure or default of any term, provision or condition of this Agreement or any other agreement between you and Dickey's or its subsidiaries or affiliates. The rights and remedies of the parties to this Agreement shall be continuing and shall not be exhausted by any one (1) or more uses thereof, and may be exercised at any time or from time to time as often as may be expedient; and any option or election to enforce any such right or remedy may be exercised or taken at any time and from time to time. The expiration or earlier termination of this Agreement shall not discharge



or release you, your Owner/Operator, or any of your Investors from any liability or obligation then accrued, or any liability or obligation continuing beyond, or arising out of, the expiration or earlier termination of this Agreement.

## **ARTICLE 23. FORCE MAJEURE**

1. As used in this Agreement, the term "Force Majeure" shall mean any act of God, strike, lock-out or other industrial disturbance, war (declared or undeclared), riot, epidemic, fire or other catastrophe, act of any government, and any other similar cause not within the control of the affected party.

2. Except as provided in Article 16.1, if the performance of any obligation by any party under this Agreement is prevented, hindered or delayed because of Force Majeure, which cannot be overcome by use of normal commercial measures, the parties shall be relieved of their respective obligations to the extent the parties are respectively necessarily prevented, hindered or delayed in such performance during the period of such Force Majeure; provided, that you shall continue to be obligated to perform all of your monetary obligations under this Agreement. The party whose performance is affected by an event of Force Majeure shall give prompt notice of such Force Majeure event to the other party by telephone or facsimile (in each case to be confirmed in writing), setting forth the nature of the event, an estimate as to its duration and a plan for resuming compliance with this Agreement, which the party shall promptly undertake and maintain with due diligence. Such affected party shall be liable for failure to give such timely notice only to the extent of damage actually caused.

## **ARTICLE 24. NOTICES**

1. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or mailed by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by prepaid facsimile (provided that the sender confirms the facsimile by sending an original confirmation copy by certified or registered mail or expedited delivery service within three (3) business days after transmission), to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Dickey's shall be sent to:

Dickey's Barbecue Restaurants, Inc.  
801 E. Plano Parkway, #135  
Plano, Texas 75074  
Facsimile: 972-423-2232  
Telephone: 972-423-2201

with a copy to:

Dickey's Barbecue Restaurants, Inc.  
4514 Cole Avenue, Suite 1015  
Dallas, Texas 75205  
Attn: Legal Department  
Facsimile: 972-248-8667  
Telephone: 972-248-9899

Notices to you shall be sent to the address set forth on page 1 of this Agreement.

2. Any notice shall be deemed to have been given at the time of personal delivery or, in the case of facsimile, telegram or telex, upon transmission (provided confirmation is sent as described above) or, in the case of expedited delivery service or registered or certified mail, three (3) business days after

the date and time of mailing. Any change in the above addresses shall be made by giving fifteen (15) calendar days written notice of the change to the other party.

## **ARTICLE 25. ENTIRE AGREEMENT, NO RELIANCE ON REPRESENTATIONS OUTSIDE OF THIS AGREEMENT, AND WAIVER OF CERTAIN CLAIMS**

This Agreement, the documents referred to herein, the attachments hereto, any addenda and any Transfer and Assumption Agreement, if applicable, constitute the entire, full and complete Agreement between Dickey's, you, your Owner/Operator and your Investors concerning the subject matter hereof and supersede all prior related agreements (both written and oral) between Dickey's, you, your Owner/Operator and your Investors. **You, your Owner/Operator and your Investors hereby acknowledge that they are not relying upon any information, representation or promise by Dickey's in entering this Agreement or in connection with the relationship contemplated hereunder. FRANCHISEE FURTHER WAIVES ANY CLAIM OF NEGLIGENT MISREPRESENTATION OR FRAUDULENT INDUCEMENT.** Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require you to waive reliance on any representation made by Dickey's in its most recent franchise disclosure document (including exhibits and amendments) delivered to you or your representative. Except for those permitted to be made unilaterally by Dickey's hereunder, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by Dickey's and you and executed by their authorized officers or agents in writing.

## **ARTICLE 26. SEVERABILITY AND CONSTRUCTION**

**26.1 SEVERABILITY.** Except as expressly provided to the contrary herein, each portion, article, part, term and provision of this Agreement shall be considered severable; and if, for any reason, any article, part, term or provision is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, this shall not impair the operation of, or have any other effect upon, such other portions, articles, parts, terms and provisions of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and the invalid portions, articles, parts, terms and provisions shall be deemed not to be a part of this Agreement.

**26.2 NO ADDITIONAL RIGHTS OR REMEDIES.** Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or entity other than you, Dickey's, Dickey's officers, directors and personnel and Dickey's and your respective successors and assigns as may be contemplated and authorized by Article 15, any rights or remedies under or as a result of this Agreement.

**26.3 CONSTRUCTION.** You and your Owner/Operator and your Investors expressly agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately stated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision to which Dickey's is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

1. All captions in this Agreement are intended solely for the convenience of all parties and none shall be deemed to affect the meaning or construction of any provision of this Agreement.

2. All references to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable. Without limiting the obligations individually undertaken by your Owner/Operator and your Investors hereunder, all acknowledgments, promises, covenants, agreements and obligations herein made or undertaken by you shall be deemed jointly and severally undertaken by your Owner/Operator and all of your Investors.

3. Unless otherwise agreed to in writing between the parties, the term "Investor" as used in this Agreement shall include, collectively or individually, (a) each person or entity who now or hereafter directly or indirectly owns an equity interest in you or who now or hereafter executes this Agreement as an Investor or executes an agreement in which such person or entity agrees to be bound by this Agreement as an Investor, and (b) each such other person or entity which is required by Dickey's as a condition to a Transfer or otherwise pursuant to this Agreement to execute this Agreement as one of your Investors or an agreement by which such person or entity agrees to be bound by this Agreement as an Investor. For purposes of this Agreement, the term "Investor" shall also include your Owner/Operator.

4. Each reference in this Agreement to a corporation, limited liability company or partnership shall be deemed to refer to each and any of the foregoing entities interchangeably and to any other entity or organization. Further, each reference to the organizational documents, equity owners, partners, directors, managers, general partners, and officers of a corporation, limited liability company or partnership shall be deemed to refer to each and any of the foregoing interchangeably and to the functional equivalent of the foregoing for any entity or organization.

**26.4 COUNTERPARTS.** This Agreement may be executed in counterparts, and each copy so executed shall be deemed an original.

**26.5 EFFECTIVE DATE.** This Agreement shall not become effective until signed by the Chairman of the Board, Chief Executive Officer, or the President of Dickey's.

## **ARTICLE 27. APPLICABLE LAW, MEDIATION, ARBITRATION, COURT ACTIONS**

**27.1 MEDIATION.** Subject only to Article 27.3, and to the extent permitted under applicable state law, the parties agree to submit all disputes, controversies, claims, causes of action and/or alleged breaches or failures to perform arising out of or relating to this Agreement (and any attachments or addenda to this Agreement or any provision herein), or the relationship created by this Agreement (collectively, "Disputes") to non-binding mediation prior to filing any action in court or any in arbitration with respect to the Dispute. The mediation shall be conducted in Collin County, Texas. The parties shall attempt to select a mediator by agreement of the parties so long as the mediator selected is experienced in the mediation of disputes in the franchise and food service businesses. If the parties are unable to agree upon such a mediator within a reasonable period of time (not to exceed fifteen (15) days, then the mediation of any Dispute shall be submitted by either party to the American Arbitration Association ("AAA") for resolution in accordance with its rules governing mediation, at the office of the AAA located nearest to Dickey's corporate headquarters in Plano, Collin County, Texas. The costs and expenses of mediation, including compensation and expenses of the mediator, shall be borne by the parties equally. If the parties are unable to resolve the Dispute within ninety (90) days after the mediator has been appointed, then either party may submit such Dispute to binding arbitration in accordance with Article 27.2 below.

**27.2 ARBITRATION.** Subject only to Article 27.1 and 27.3, all Disputes that are not resolved through mediation in accordance with Article 27.1, including all disputes relating to the scope, validity, or enforceability of this Arbitration Agreement and any provision in this Section 27.2, shall be submitted for binding arbitration to the office of the AAA located nearest to Dickey's corporate headquarters in Plano, Collin County, Texas, on demand of either party. Such arbitration proceedings shall be conducted by an arbitrator who is experienced in the arbitration of disputes in the franchise and food service businesses, if such an arbitrator is available, and in accordance with the then-current commercial arbitration rules of the AAA. The arbitrator(s) shall have the right to award or include in their award any relief which they deem proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the due date), specific performance and injunctive relief. Provided, that, to the fullest extent permitted by law, the parties stipulate and agree that the arbitrators shall not provide for, and no arbitration award shall include, any punitive or exemplary damages, all of which are hereby waived by the parties. The award and decision of the arbitrator(s) shall be conclusive and binding

upon all parties and adjustment may be taken on the award notwithstanding the termination or expiration of this Agreement. Dickey's and you agree that arbitration shall be conducted on an individual, not a class-wide basis. Dickey's and you agree that any arbitration between Dickey's and you shall not be consolidated with any other arbitration that may be taking place between Dickey's and other party.

**27.3 CERTAIN CLAIMS BY EITHER PARTY.** Notwithstanding anything herein to the contrary and to the extent permitted under applicable state law, either party may bring an action in any court having jurisdiction and without first submitting such action to mediation or arbitration for injunctive relief or other extraordinary relief involving the possession or disposition of, or other relief relating to real property the unauthorized disclosure or use of Proprietary Marks or intellectual property, any violation of Article 12 or in aid of enforcing the parties' obligations to arbitrate under Section 27.2 above.

**27.4 ACCEPTANCE OF AGREEMENT IN TEXAS.** You have signed this Agreement and submitted it to Dickey's for acceptance and execution by Dickey's at Dickey's corporate headquarters in Plano, Collin County, Texas. You shall make all payments and perform other obligations arising hereunder at Collin County, Texas, and this Agreement is made and entered into at Collin County, Texas. The provisions of this Article 27.4 shall apply to the fullest extent permitted under applicable state law.

**27.5 GOVERNING LAW AND VENUE.** THIS AGREEMENT IS EXECUTED AND DELIVERED IN CONNECTION WITH A TRANSACTION NEGOTIATED AND CONSUMMATED IN COLLIN COUNTY, TEXAS. ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), OR OTHER FEDERAL LAW, THIS AGREEMENT AND ANY AND ALL CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES (REGARDLESS OF THE FORM OF THE CAUSE OF ACTION ASSERTED) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THE PARTIES AGREE THAT, WITH RESPECT TO ANY SUCH CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PARTIES' RELATIONSHIP CREATED BY THIS AGREEMENT, ANY SUCH CONTROVERSIES, DISPUTES, OR ACTIONS SHALL BE BROUGHT, MAINTAINED, AND CONCLUDED EXCLUSIVELY IN THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION. YOU, FOR YOURSELF AND YOUR SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY (A) SUBMIT TO THE JURISDICTION OF THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION, (B) WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT YOU MAY NOW OR IN THE FUTURE HAVE TO THE LAYING OF VENUE OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SET FORTH ABOVE; AND, (C) WAIVE ANY OBJECTION YOU MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. YOU HEREBY IRREVOCABLY AGREE THAT SERVICE OF PROCESS MAY BE MADE UPON YOU IN ANY LEGAL PROCEEDING RELATING TO ANY DISPUTE BY ANY MEANS ALLOWED BY TEXAS LAW. You and Dickey's acknowledge that the parties' agreement regarding applicable state law and forum set forth herein provide each of the parties with the mutual benefit of uniform interpretation of this Agreement and any Dispute covered herein. You and Dickey's further acknowledge the receipt and sufficiency of mutual consideration for such benefit. Notwithstanding the foregoing, the parties acknowledge and agree that either party may institute legal action for injunctive relief in any court of competent jurisdiction as set forth in Section 27.3 above.

**27.6 JURY TRIAL WAIVER.** YOU AND DICKEY'S IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT

BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.

**27.7 WAIVER OF PUNITIVE AND EXEMPLARY DAMAGES.** THE PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF COMPENSATORY DAMAGES SUFFERED BY THE PARTY.

**27.9 INDIVIDUAL CAPACITY.** In the event that an action in court is permitted, any legal action commenced by either party shall be brought in an individual capacity, and not on a class-wide basis. **All parties waive their rights to initiate a class-action lawsuit in any court.**

**27.10 STATUTE OF LIMITATIONS.** Except where not permitted by law, any claim or cause of action asserted by either party arising out of or related to use of this Agreement or the relationship of the parties must be filed within 2 years after such claim or cause of action arose or be forever barred when the applicable statute of limitations is greater than 2 years. This provision does not affect or apply to any claim or cause of action where the applicable statute of limitations is less than 2 years

## **ARTICLE 28. ACKNOWLEDGMENTS & WARRANTIES**

**28.1 COMPLETION OF INDEPENDENT INVESTIGATION.** You, your Owner/Operator and your Investors acknowledge and warrant that you have conducted an independent investigation of the franchised business and recognize that the business venture contemplated by this Agreement involves business risks and that its success will largely depend upon your ability, effort, and resources. Dickey's expressly disclaims making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement.

**28.2 WARRANTY OF RESPONSES TO FRANCHISEE QUESTIONNAIRE.** You, your Owner/Operator and your Investors represent and warrant that your responses to Dickey's the Franchisee Questionnaire, in the form of Attachment B were truthful and well considered. You, your Owner/Operator and your Investors further acknowledge that Dickey's relied upon your responses to the Franchisee Questionnaire in agreeing to move forward with this Franchisee Agreement. Moreover, if your responses to the Franchisee Questionnaire had been different from your current responses to the Franchisee Questionnaire, Dickey's would not have executed the Franchise Agreement.

**28.3 RECEIPT OF AGREEMENT AND DISCLOSURE DOCUMENT.** You, your Owner/Operator and your Investors acknowledge that you received from Dickey's a complete copy of its Franchise Disclosure Document at least fourteen (14) calendar days prior to the date on which this Agreement was executed and the date on which you first made any payments to Dickey's or an affiliate in connection with any franchise sale contemplated by this Agreement. You acknowledge that you received a copy of this Agreement and the related attachments and agreements in the form executed by you at least seven (7) calendar days prior to the date on which this Agreement was executed.

**28.4 REVIEW OF AGREEMENT.** You, your Owner/Operator and your Investors acknowledge and warrant that you have read and understood this Agreement and the related attachments and agreements and that Dickey's has provided you ample time and opportunity to consult with advisors and attorneys of your own choosing about the content of the Agreement and the potential benefits and risks of entering into this Agreement.

**28.5 AUTHORIZATION TO CONDUCT INVESTIGATION.** You, your Owner/Operator and your Investors acknowledge that, in order to enable Dickey's to evaluate your application to acquire the license and franchise herein granted, you have authorized Dickey's and its agents and representatives to conduct such investigations concerning you and your Owner/Operator and your Investors as Dickey's deems

necessary, in its sole discretion, including, without limitation, credit reports and references, financial and personal references and civil and criminal references.

**28.6 NO FINANCIAL REPRESENTATIONS.** You, your Owner/Operator and your Investors represent and warrant to Dickey's that neither Dickey's nor its agents or representatives have made any representations, and you have not relied on any representations made by Dickey's or its agents or representatives, concerning actual or potential sales or profits of a Dickey's Restaurant.

**28.7** You acknowledge that Dickey's rendering of initial or continuing training does not constitute a representation, promise, warranty or guarantee by Dickey's that your Restaurant operated at that site will be profitable or successful based on Dickey's training, and that Dickey's does not guaranty your success as a business person. You further acknowledge that your success or failure of your Restaurant and franchise will depend in large part upon your own skills and abilities regarding running a business and restaurant, your own hard work, the service you provide to your customers, competition, interest rates, the economy, inflation, labor and supply costs, lease terms, real estate, and the marketplace.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement on the day and year first above written.

**DICKEY'S:**

DICKEY'S BARBECUE RESTAURANTS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Roland Dickey, Jr., President

**FRANCHISEE:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OWNER/OPERATOR:**

[Individual]

\_\_\_\_\_  
\_\_\_\_\_, an individual

**INVESTORS:**

[Individual]

\_\_\_\_\_  
\_\_\_\_\_, an individual

[Individual]

\_\_\_\_\_  
\_\_\_\_\_, an individual

[Individual]

\_\_\_\_\_  
\_\_\_\_\_, an individual

**ATTACHMENT A**

**AUTHORIZATION AGREEMENT FOR  
PREAUTHORIZED PAYMENTS  
(ACH DEBITS)**

COMPANY NAME:		TAX ID NO.
I (we) hereby authorize Dickey's Barbecue Restaurants, Inc., hereinafter called "Company", to initiate debit entries from my <input type="checkbox"/> Checking <input type="checkbox"/> Savings Account (check one) indicated below and the depository named below, hereinafter called "Depository", to debit the same to such account		
DEPOSITORY NAME:		BRANCH:
STATE:	STATE:	ZIP CODE:
TRANSIT/ABA NO.	ACCOUNT NUMBER:	
This authority is to remain in full force and effect until Company has received notification from me (or either of us) of its termination in such time and in such manner as to afford Company and Depository a reasonable opportunity to act on it.		
NAME(S):		ID NO.:
SIGNED:		DATE:



**ATTACHMENT B**

**FRANCHISEE QUESTIONNAIRE**

Dickey's Barbecue Restaurants, Inc., a Texas corporation ("Dickey's") and you are preparing to enter into a Franchise Agreement for the operation of a Dickey's® Barbecue Pit restaurant (the "Franchise"). The purpose of this Questionnaire (herein so called) is to determine whether any statements or promises were made to you, the undersigned Franchisee, that Dickey's has not authorized and that may be untrue, inaccurate or misleading. Please review each of the following questions carefully and provide honest responses to each question.

1. Have you received and personally reviewed Dickey's Franchise Disclosure Document (the "Disclosure Document") provided to you?

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2. Did you sign a receipt for the Disclosure Document indicating the date you received it?

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3. Do you understand the information contained in the Disclosure Document and Franchise Agreement?

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4. Have you received and personally reviewed the Franchise Agreement and each exhibit attached to it?

---

5. Do you understand and accept your financial and other obligations under the Franchise Agreement?

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6. Have you discussed the economic and business risks of owning and operating the Franchise with an independent attorney, accountant or other professional advisor?

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7. Do you understand and accept the economic and business risks associated with operating the Franchise?

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8. Do you understand that the success or failure of the Franchise will depend in large part upon your skills and abilities, the service you provide to your customers, competition, interest rates, the economy, inflation, labor and supply costs, lease terms, real estate and the marketplace?

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9. Do you understand that you must satisfactorily complete the initial training course before Dickey's will allow your Franchise to open, or otherwise before we will consent to a transfer of your Franchise?

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11. Do you understand and acknowledge that Dickey's rendering of initial or continuing training does not constitute a representation, promise, warranty or guarantee by Dickey's that your Restaurant operated at that site will be profitable or successful based on Dickey's training, and that Dickey's does not guaranty your success as a business person?
- 
12. Do you understand that any disputes arising under the Franchise Agreement are subject to arbitration governed under Texas law, and that you are waiving your right to bring a class-action?
- 
13. Do you understand and agree that no financial performance representation has been made by Dickey's in the Disclosure Document (including with regard to the performance of its franchised outlets or company-owned outlets and the potential performance of your outlet) or outside the Disclosure Document, that Dickey's does not make or authorize anyone else to make any such representations, and you agree that Dickey's, its employees and other persons speaking on behalf of Dickey's have not made any such representations?
- 
14. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else regarding the amount of money you may gross or earn in operating the Franchise?
- 
15. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else concerning the total revenues the Franchise may generate?
- 
16. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else regarding the costs involved in operating the Franchise that are contrary to, or different from, the information contained in the Disclosure Document?
- 
17. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else concerning the actual, average or projected profits or earnings or the likelihood of success that you should or might expect from operating the Franchise?
- 
18. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else, other than those matters addressed in your Franchise Agreement, concerning advertising, marketing, media support, market penetration, training, support service or assistance relating to the Franchise that is contrary to, or different from, the information contained in the Disclosure Document?
- 
19. Has any employee or other person speaking on behalf of Dickey's made any promise or agreement that is contrary to, different from, or in addition to, the matters set forth in the Franchise Agreement?
-

20. If you answered "Yes" to any of the questions 14 through 19, please provide a full explanation of your answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below). If you answered "No" to each of the foregoing questions, please leave the following lines blank.

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21. Do you understand that the Franchise Agreement and attachments to the Franchise Agreement contain the entire agreement between us and you concerning the franchise for the Restaurant, meaning any prior oral or written statements not set out in the Franchise Agreement or the attachments to the Franchise Agreement will not be binding? When considering this question, please note that nothing in the Franchise Agreement or the attachments to the Franchise Agreement will disclaim or require you (the franchisee) to waive reliance on any representation that we made in our most recent franchise disclosure document (including its exhibits and amendments) delivered to you or your representative.

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You understand that your answers are important to us and that we will rely on them.

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions.

Further, by signing this Questionnaire, you agree that Dickey's has properly provided you with all of the appropriate franchise disclosures and has not made any financial claims or representations to you. You agree to hold harmless and release Dickey's and its affiliates, shareholders, officers, directors, agents, attorneys, successors and assigns from any and all liability in connection with the sale of the franchise to the extent that any statement or representation made herein is determined to be false and misleading and to the extent permitted under applicable law.

**FRANCHISEE:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT C**

**CONSENT AND RELEASE FOR TRAINING**

The undersigned is a franchisee of Dickey's Barbecue Restaurants, Inc., a Texas corporation ("Dickey's"), Owner/Operator of or an Investor in a Dickey's franchise or a manager of a Dickey's restaurant operated by a Dickey's franchisee who is commencing training. As part of such training, the undersigned may visit, inspect, train and work in one or more of the Dickey's restaurants owned or operated by Dickey's, Dickey's Barbecue Pit, Inc., a Texas corporation, their affiliates or by one or more Dickey's franchisees. As an inducement to cause the owner of such restaurant to permit the undersigned to visit, inspect, train and work in such restaurant, THE UNDERSIGNED HEREBY RELEASES, HOLDS HARMLESS, AND AGREES TO DEFEND & INDEMNIFY DICKEY'S BARBECUE RESTAURANTS, INC., DICKEY'S BARBECUE PIT, INC., THE OWNER(S) OF SUCH RESTAURANT(S), AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED & INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, INJURY, DAMAGE, COST AND EXPENSE SUFFERED OR INCURRED BY THE UNDERSIGNED AS A RESULT OF ANY SUCH VISIT, INSPECTION, TRAINING OR WORK. IT IS ACKNOWLEDGED THAT THE FOREGOING RELEASE AND INDEMNITY IS INTENDED TO BE AS BROAD AND COMPREHENSIVE AS PERMITTED BY LAW, AND INCLUDES LIABILITY, COST, DAMAGE, INJURY, COST AND EXPENSE SUFFERED AS A RESULT OR PARTLY AS A RESULT OF ANY NEGLIGENCE, ERROR OR OMISSION BY THE RELEASED & INDEMNIFIED PARTIES. The undersigned further represents that he has independently obtained or is covered by adequate insurance to cover the risk of loss or injury. Some states do not allow the limitations on liability set forth above. Accordingly, not all of the limitations set forth in this section may apply to undersigned.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME/TITLE (IF APPLICABLE)

**ATTACHMENT D**  
**STATE ADDENDA**

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
ILLINOIS FRANCHISE DISCLOSURE ACT**

This Addendum to the Franchise Agreement by and between DICKY'S BARBECUE RESTAURANTS, INC. ("we", "our" or "us") and \_\_\_\_\_ ("you") is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede and control any conflicting provisions of the Franchise Agreement:

1. Illinois law applies to this Agreement and supersedes any conflicting provision of the Franchise Agreement.

2. Subject to the parties arbitration obligation in Section 27.5 of the Franchise Agreement, all litigation by or between you and us, arising directly or indirectly from the franchise relationship, shall be commenced and maintained, at our election, in the state courts of Illinois or the United States District Court for Illinois with the specific venue, in either court system, determined by appropriate jurisdiction and venue requirements.

3. If any of the provisions of the Franchise Agreement are inconsistent with applicable state law, then the state law shall apply to the extent such law is constitutional and valid as applied.

4. Pursuant to 815 IL 705/41, no release language set forth in Sections 2.2, 9.5, and 15.2 or elsewhere in the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the Illinois Franchise Disclosure Act or any other law of the State of Illinois.

5. All other rights, obligations, and provisions of the Franchise Agreement shall remain in full force and effect. Only the Sections specifically added to or amended by this Addendum shall be affected. This Addendum is incorporated in and made a part of the Franchise Agreement for the State of Illinois.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**DICKY'S BARBECUE RESTAURANTS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

This Addendum to the Franchise Agreement by and between DICKY'S BARBECUE RESTAURANTS, INC. ("we", "our" or "us") and \_\_\_\_\_ ("you") is dated \_\_\_\_\_, 20\_\_.

1. Notwithstanding anything to the contrary set forth in the Franchise Agreement, the following provision shall supersede and apply to all franchises offered and sold under the laws of the State of Maryland:

No release language set forth in Sections 2.2, 9.5, or 15.2 or elsewhere in the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Maryland. The acknowledgements or representations of the franchisee made in the Franchise Agreement which disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law. Pursuant to such Maryland Franchise Registration and Disclosure Law, any claim by you under such law must be brought within three years of the grant of the franchise. You may file this action in any Maryland court or Federal court located in Maryland.

2. Section 16.1 of the Franchise Agreement provides that the Franchise may automatically terminate upon your bankruptcy. This provision may not be enforceable under Federal bankruptcy law (11 U.S.C. Section 101 et seq.).

3. You may obtain an accounting of our advertising expenditures once each year by, requesting the same in writing within 120 days after the end of our fiscal year. We will provide the accounting to you as Confidential Information subject to Article 12 of the Franchise Agreement.

4. Subject to the parties' arbitration obligation in Section 27 of the Franchise Agreement, you may bring a lawsuit in Maryland against us for claims arising under the Maryland Franchise Registration and Disclosure Law. For avoidance of doubt, the arbitrator in any arbitration proceeding brought under Article 27 has the power to decide any claims brought under the Maryland Franchise Registration and Disclosure Law. The parties acknowledge that the Federal Arbitration Act, 9 U.S.C. §1, *et. seq.*, shall be controlling,

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**DICKY'S BARBECUE RESTAURANTS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE MINNESOTA FRANCHISE INVESTMENT LAW**

This Addendum to the Franchise Agreement by and between DICKEY'S BARBECUE RESTAURANTS, INC. ("we", "our" or "us") and \_\_\_\_\_ ("you") is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede and control any conflicting provisions of the Franchise Agreement:

1. The following language is added as Section 27.5 of the Franchise Agreement:

Minnesota Statutes, Section 80C.21 and Minn. Rule 2860.4400(J) prohibit us from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, injunctive relief, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or this Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.

2. Minnesota law provides franchisees with certain termination and non-renewal rights. Minnesota Statutes, Section 80C. 14, Subdivisions 3, 4 and 5 require, except in certain specified cases, that a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the franchise agreement.

3. Pursuant to Minnesota Statutes, Section 80C.12, Subdivision 1(g), the following provision is added as Section 20.5 of the Franchise Agreement:

We will indemnify, defend and hold you harmless, to the fullest extent permitted by law, from and against all losses and expenses incurred by you in any action or claim arising from your proper use of the System alleging that your use of the System and any property we license to you is an infringement of a third party's rights to any trade secret, patent, copyright, trademark, service mark or trade name. You will promptly notify us in writing when you become aware of any alleged infringement or an action is filed against you. You will cooperate with our defense and resolution of the claim. We may resolve the matter by obtaining a license of the property for you at our expense, or by requiring that you discontinue using the infringing property or modify your use to avoid infringing the rights of others.

4. No release language set forth in Sections 2.2, 9.5, or 15.2 of the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the state of Minnesota.

5. Liquidated damages and termination penalties are prohibited by law in the state of Minnesota and, therefore, Section 17.1 of the Franchise Agreement is amended by deletion of all references to liquidated damages and termination penalties and the addition of the following language to the original language that appears therein:

Notwithstanding any such termination, and in addition to your other obligations, or in the event of termination or cancellation of the Franchise Agreement under any of the other provisions therein, you shall be, continue and remain liable to us for any and all damages which we have



sustained or may sustain by reason of such default or defaults and the breach of the Franchise Agreement on your part until the end of the term.

At the time of such termination of the Franchise Agreement, you covenant to pay to us within 10 days after demand compensation for all damages, losses, costs and expenses (including reasonable attorney's fees) incurred by us and/or amounts which would otherwise be payable for and during the remainder of the unexpired term of the Franchise Agreement but for such termination. This does not constitute a waiver of your right to a trial on any of the above matters.

6. All other rights, obligations, and provisions of the Franchise Agreement shall remain in full force and effect. Only the Sections specifically added to or amended by this Addendum shall be affected. This Addendum is incorporated in and made a part of the Franchise Agreement for the State of Minnesota.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**DICKEY'S BARBECUE RESTAURANTS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE NEW YORK GENERAL BUSINESS LAW**

This Addendum to the Franchise Agreement by and between DICKY'S BARBECUE RESTAURANTS, INC. ("we", "our" or "us") and \_\_\_\_\_ ("you") is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede and control any conflicting provisions of the Franchise Agreement:

1. Article 17 is amended by adding the following statement immediately after the word "terminate" in the beginning of the Section:

However, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the related regulations shall remain in force; it being the intent of this proviso to satisfy the non-waiver provisions of GBL, Sections 687.4 and 687.5.

2. Section 15.1 is amended by adding the following statement immediately after the first sentence of such Section:

However, no assignment shall be made except to an assignee who, in our good faith judgment, is willing and able to assume our obligations under this Agreement.

3. Nothing in Article 16 prevents you from asserting your rights under common law to terminate the Franchise Agreement if we commit a material breach of the Franchise Agreement.

4. Section 27.5 is amended by adding the following statement immediately after the first sentence of such Section:

The foregoing choice of law should not be considered a waiver of any right conferred upon you by the GBL of the State of N.Y., Article 33.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**DICKY'S BARBECUE RESTAURANTS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO THE  
NORTH DAKOTA FRANCHISE INVESTMENT LAW**

This Addendum to the Franchise Agreement by and between DICKY'S BARBECUE RESTAURANTS, INC. ("we", "our" or "us") and \_\_\_\_\_ ("you") is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede any conflicting terms in the Franchise Agreement:

1. The Franchise Agreement will be governed and construed under the laws of the State of North Dakota. Any provision in the Franchise Agreement which designates jurisdiction or venue, or requires the franchisee to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from the Franchise Agreement. Any non-competition covenants contained in the Franchise Agreement shall be subject to the North Dakota laws on franchising.

2. Liquidated damages are prohibited by law in the State of North Dakota. Section 17.1 of the Franchise Agreement is deleted and replaced with the following:

"If we terminate this Agreement, we shall seek and, to the extent permitted by North Dakota law you may be liable to us for, any and all damages which we have sustained or may sustain by reason of your breach of the Franchise Agreement until the end of the term."

3. No release language set forth in the Franchise Agreement (including but not limited to Sections 2.2, 9.5, and 15.2) shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of North Dakota.

4. Any provisions in the Franchise Agreement (including but not limited to Sections 27.6 and 27.7) which require the franchisee to waive the right to a jury trial or to exemplary or punitive damages are deleted from any Agreements issued in the State of North Dakota.

To the extent this Addendum is inconsistent with any terms or conditions of the Franchise Agreement or exhibits or attachments thereto, the terms of this Addendum shall govern.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**DICKY'S BARBECUE RESTAURANTS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE VIRGINIA RETAIL FRANCHISING ACT**

This Addendum to the Franchise Agreement by and between DICKY'S BARBECUE RESTAURANTS, INC. ("we", "our" or "us") and \_\_\_\_\_ ("you") is dated \_\_\_\_\_, 20\_\_.

The following provisions supersede any conflicting provisions in the Franchise Agreement:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act (the "Virginia Act"), it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement do not constitute reasonable cause, as that term may be defined in the Virginia Act or the laws of Virginia, that provision may not be enforceable.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**DICKY'S BARBECUE RESTAURANTS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ADDENDUM TO THE FRANCHISE AGREEMENT PURSUANT TO  
THE WASHINGTON FRANCHISE INVESTMENT PROTECTION ACT**

This Addendum to the Franchise Agreement by and between DICKY'S BARBECUE RESTAURANTS, INC. ("we", "our" or "us") and \_\_\_\_\_ ("you") is dated \_\_\_\_\_, 20\_\_.

The State of Washington has a statute, RCW 20.100.180, which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the State of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 20.100 RCW shall prevail.

A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date set forth above.

**DICKY'S BARBECUE RESTAURANTS, INC.:**

**FRANCHISEE:** \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

**ATTACHMENT E**  
**LEASE RIDER**

## LEASE RIDER

This Lease Rider is made and entered into as of \_\_\_\_\_, 20\_\_ by and among Dickey's Barbecue Restaurants, Inc., a Texas corporation ("Franchisor"), \_\_\_\_\_, a \_\_\_\_\_ ("Tenant/Operator") and \_\_\_\_\_, a \_\_\_\_\_ ("Landlord").

Recitals. Tenant/Operator and Landlord desire to enter into a lease (the "Lease") pursuant to which Tenant/Operator will occupy and finish the premises located at \_\_\_\_\_ (the "Premises") for use and operation of a Dickey's Barbecue Pit® restaurant (the "Franchised Business") authorized under a Franchise Agreement to be executed between Franchisor and Tenant/Operator prior to the opening of the Franchised Business (the "Franchise Agreement"). Franchisor conditions its approval of the Premises as the location for Tenant/Operator's Franchised Business on the execution and delivery of this Lease Rider by Landlord and Tenant/Operator.

NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

(1) The Lease authorizes Tenant/Operator to use the Premises only for the operation of the Franchised Business unless and until the Franchise Agreement terminates or expires without renewal or replacement with a successor agreement between Franchisor and Tenant/Operator.

(2) Landlord consents to Tenant/Operator's use and display of such proprietary marks (the "Proprietary Marks") and signs, decor items, color schemes, plans, specifications and related components of the Dickey's Barbecue Pit® restaurant chain (the "System") as Franchisor has prescribed in the common identity standards/décor plan furnished to Landlord, and may in the future prescribe, for the Franchised Business. Landlord agrees not to unreasonably withhold, delay or condition consent or approval of any future changes to the Premises required by Franchisor to conform to changes in the System and the Proprietary Marks.

(3) Landlord agrees to send Franchisor conformed, legible copies of any and all letters and notices sent to Tenant/Operator pertaining to the Lease and the Premises at the same time that such letters and notices are sent to Tenant/Operator.

(4) In the event of Tenant/Operator's default under the Lease, Franchisor may, but has no obligation, to cure the default. Franchisor shall make this determination within thirty (30) days after Franchisor receives notice of the Lease default from Landlord. If Franchisor elects to cure the default, Franchisor shall cure the default within thirty (30) days of such election or, if the default cannot be reasonably cured within such thirty (30) day period, then Franchisor shall commence and proceed to act diligently to cure the default within such time as is reasonably necessary to cure the default.

(5) Franchisor shall have the right, and Landlord consents to allow Franchisor, to enter the Premises to make any reasonable modification or alteration necessary to protect the

Franchised Business, the System and the Proprietary Marks or to cure any default under the Franchise Agreement, or under the Lease, without civil or criminal liability for such entry and action that would otherwise be a tort or subject Franchisor or its agents or contractors to criminal prosecution.

(6) Franchisor has an option but not the obligation to acquire the Franchised Business from Tenant/Operator if the Franchise Agreement expires or terminates or upon termination of the Lease by Landlord. If Franchisor exercises the option, it will notify Landlord when it notifies Tenant/Operator of its decision to exercise the option. Such notice will be sent to Landlord at the address for notices in the Lease no later than 30 days after the option becomes exercisable. If Franchisor so exercises its option, or makes a different arrangement with Tenant/Operator to acquire the Franchised Business, then Landlord shall permit Tenant/Operator to assign the Lease to Franchisor or to Franchisor's affiliated assignee or designee as successor in interest ("Successor") to Tenant/Operator. Successor shall be obligated to assume Tenant/Operator's obligations under the Lease. Landlord shall not seek to impose or effect any modification of the Lease terms and conditions upon Successor. Successor shall attorn to Landlord under the Lease and Landlord shall attorn to and agree not to disturb the tenancy of Successor. Successor shall also assume Tenant/Operator's occupancy rights, rights under any renewal or purchase options, and the right to sublease the Premises, for the remainder of the term of the Lease including any applicable renewal periods. Any prior payments towards such rights or options made by or for Tenant/Operator shall be credited to the account and benefit of Successor as if Tenant/Operator retained such rights or options.

(7) Landlord consents to such assignment to Successor in advance and agrees not to impose or assess any assignment fee or similar charge, increase or accelerate rent, cease any rent abatement, reduction or rebate granted to Tenant/Operator, or demand repayment of improvement costs or advances, under the Lease or any other agreement if and when such assignment occurs, or require Successor to pay any rent or other financial obligation of Tenant/Operator to Landlord arising prior to the assignment. Landlord agrees to look solely to the Tenant/Operator and its guarantors for any rents or other financial obligations owed to Landlord arising prior to such assignment. Landlord and Tenant/Operator acknowledge that neither Franchisor nor Successor is a party to the Lease and neither shall have any liability under the Lease, unless and until the Lease is assigned to, and assumed by Franchisor or Successor, as applicable

(8) Notwithstanding anything contained in this Lease Rider and in the Lease, Successor is expressly authorized, without the consent of the Landlord, to sublet the Leased Premises to an authorized System franchisee, provided such subletting is specifically subject to the terms of the Lease and further provided the franchisee expressly assumes in writing all obligations of the Lease. Franchisor agrees to notify Landlord as to the name of the franchisee within ten (10) days after such subletting.

(9) Tenant/Operator shall not assign or sublet the Lease or renew or extend the Lease's term without the prior written consent of Franchisor.

(10) Landlord and Tenant/Operator shall not amend or otherwise modify the Lease in any manner that could materially affect any of the above requirements without the prior written



consent of Franchisor.

(11) This Lease Rider will supersede any conflicting terms of the Lease.

(12) Landlord acknowledges that any landlord's lien or security interest arising under or from the Lease shall not apply to any movies, scripts, software, operations manuals or other tangible and intangible personal property of Tenant/Operator furnished by Franchisor or any supplier to Tenant/Operator under a use restriction, obligation of confidentiality or under license, and to any signage, printed materials, merchandise or other tangible media, goods, inventory, and supplies bearing any Proprietary Marks. At termination of the Lease, Franchisor shall arrange for recovery and removal of such items as provided in the Franchise Agreement.

13. Notwithstanding any term, condition or covenant of the Lease to the contrary, Landlord covenants with Tenant/Operator that during the Term of the Lease, Landlord will not enter into a lease, rental arrangement, license, usufruct or other agreement for space within the same shopping center as the Premises with, and will not sell any real property or outparcel adjoining the center or used as part of the center's parking lot to a party for use as, any restaurant serving as its primary menu item focus barbecued meats or poultry, whether prepared on or off premises, including without limitation any cuisine that is identified by reference to a country other than the United States. The prohibition shall extend to the granting of permission or consent by acquiescence to the presence of mobile food trucks, carts, stands or other serving vehicles on Landlord's property. This prohibition does not extend to any restaurant that offers a menu item prepared using barbecue methods that represents no more than 10% of the restaurant's gross sales. For avoidance of doubt, barbecued meats and poultry are those prepared in smoker ovens over low heat for periods longer than conventional roasting, baking and convection heating.

**IN WITNESS WHEREOF**, the parties have executed this Lease Rider as of the date first above written.

**FRANCHISOR:**

**DICKEY'S BARBECUE RESTAURANTS, INC.,**  
a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT/OPERATOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT B**

**DEVELOPMENT AGREEMENT**

**DICKEY'S BARBECUE RESTAURANTS, INC.**

**DEVELOPMENT AGREEMENT**



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**DICKEY'S BARBECUE RESTAURANTS, INC.  
DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is made and entered into by and between Dickey's Barbecue Restaurants, Inc., a Texas corporation (hereinafter referred to as "Dickey's") and the Developer identified below in the Developer Summary as the Developer (hereinafter referred to as "you" or "Developer").

**DEVELOPER SUMMARY**

EFFECTIVE DATE (Date Executed by Dickey's): \_\_\_\_\_

DEVELOPER: \_\_\_\_\_

BUSINESS ENTITY: \_\_\_\_\_ corporation/ \_\_\_\_\_ partnership/ \_\_\_\_\_ individual/ \_\_\_\_\_ limited liability company,  
formed under the laws of: \_\_\_\_\_

DEVELOPER'S ADDRESS: \_\_\_\_\_

DEVELOPER'S TELEPHONE: \_\_\_\_\_

DEVELOPER'S FACSIMILE: \_\_\_\_\_

DEVELOPER'S E-MAIL ADDRESS: \_\_\_\_\_

ATTORNEY OR ADVISOR: \_\_\_\_\_

ATTORNEY'S OR ADVISOR'S ADDRESS: \_\_\_\_\_

## RECITALS

WHEREAS, Dickey's has acquired the right to develop and as a result of the expenditure of time, skill, effort and money has developed, a distinctive system relating to the establishment and operation of restaurants under the mark Dickey's Barbecue Pit, which specializes in the sale of freshly-prepared, authentic, barbecued meats and other products (the "System");

WHEREAS, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior design, decor, color scheme and furnishings; special recipes and menu items; uniform standards, specifications and procedures for operations; quality and uniformity of products and services offered; procedures for inventory and management control; training and assistance; and advertising and promotional programs; all of which may be changed, improved and further developed by Dickey's from time to time;

WHEREAS, Dickey's identifies the System by means of certain trade names, service marks, trademarks, symbols, logos, emblems and indicia of origin, including, but not limited to, the mark "Dickey's Barbecue Pit" and such other trade names, service marks and trademarks as Dickey's may develop in the future to identify for the public the source of services and products marketed under these marks and under the System and representing the System's high standards of quality, appearance and service (collectively, the "Proprietary Marks"); and

WHEREAS, you wish to obtain the right to develop multiple Dickey's Barbecue Pit restaurants (the "Restaurants" or "Franchised Businesses") under the System within the geographic territory described in this Agreement, under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE 1 GRANT

A. Dickey's hereby grants to you and you hereby accept, pursuant to the terms and conditions of this Agreement, the right and obligation to develop Restaurants solely within the geographic area described below (the "Territory"), such development rights to be exercised pursuant to Article 3.A and in accordance with the development schedule in Article 3.B (the "Development Schedule").

The Territory shall consist of the following "Markets:"

Market One: \_\_\_\_\_  
Market Two: \_\_\_\_\_  
Market Three: \_\_\_\_\_  
Market Four: \_\_\_\_\_  
Market Five: \_\_\_\_\_  
Market Six: \_\_\_\_\_

B. When you sign the last Franchise Agreement (defined below) required to fulfill the obligation for each Market, the Market will be deleted from the Territory and your territorial rights for the Market will be replaced by the Primary Area as defined in each Franchise Agreement in the Market. Once deleted from the Territory, we may franchise and authorize a franchisee to operate, and our affiliates may develop, lease, manage and operate, a Restaurant in the deleted Market outside the Primary Area(s) of your Franchise Agreement(s).

C. If you develop a Restaurant outside of your Territory, then Dickey's will modify the Territory granted to you in Section 1.A by requiring you to release exclusivity to a Market in your Territory.

D. Except as otherwise provided in this Agreement and any Franchise Agreement between you and Dickey's, and subject to your full compliance with this Agreement, Dickey's shall not establish or authorize any other person or entity, other than you, to establish, a Restaurant in the Territory during the term of this Agreement. Except as expressly provided in this Agreement, Dickey's and its affiliates (and Dickey's and its affiliates respective successors and assigns, by purchase, merger, consolidation or otherwise) retain all of Dickey's rights and discretion with respect to the Proprietary Marks, the System and Restaurants anywhere in the world, and the right to engage in any business whatsoever, including the right to: (a) at any time, advertise and promote the System, or fulfill customer orders (including but not limited to catering and delivery services) in the Territory or to authorize any Dickey's franchisee or other authorized person or entity to engage in such actions, and Dickey's may offer and sell (and authorize others to offer and sell) products and services which may be similar to those offered by a Restaurant, under the Proprietary Marks, in the Territory, if offered and sold other than through a Restaurant (e.g., product and catalog sales through direct mailings or internet sales, pre-packaged food items through grocery stores or supermarkets, internet sales, or memorabilia or recipes through other retail outlets); (b) directly or indirectly, operate, license, or grant a franchise to operate a Restaurant or any other food offering service within the Territory if the location of the Restaurant is in a non-traditional venue including a stadium, corporate campus, shopping mall, airport, military base, health care facility, limited access highway rest stop, college or university campus, theme park, truck stop, casino or similar location; (c) operate, and grant to others the right to operate Restaurants outside the Territory at such locations and on such terms and conditions as we deem appropriate; (d) sell any products or services under the Marks or under any other trademarks, service marks or trade dress, through alternative channels of distribution, including without limitation, the internet or similar electronic media and supermarkets; (e) operate, and grant to others the right to operate, restaurants identified by trademarks, service marks or trade dress, other than the Proprietary Marks, pursuant to such terms and conditions as we deem appropriate; and (f) be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by a business providing products and services similar to those provided at Restaurants, or by another business, even if such business operates, franchises and/or licenses businesses similar to or competitive with Restaurants in the Territory.

E. This Agreement is not a franchise agreement and does not grant to you any right or franchise to operate a Restaurant or any right to use or any interest in the Proprietary Marks or the System.

## **ARTICLE 2 DEVELOPMENT FEE**

A. In consideration for the development rights granted to you herein and the rights granted to you under separate Franchise Agreements, you shall pay to Dickey's, upon execution of this Agreement, a non-refundable development fee ("Development Fee") equal to \$15,000.00 for the initial Restaurant plus \$10,000.00 for each subsequent Restaurant to be developed hereunder after the initial Restaurant. Pursuant to the Development Schedule set forth in Article 3.B, the total Development Fee is \$\_\_\_\_\_.

B. The Development Fee shall be applied to the initial franchise fees payable with respect to each Restaurant opened hereunder as follows:

1. For the initial Restaurant to be developed under this Agreement, \$15,000.00 of the Development Fee shall be applied to the initial franchise fee of \$15,000.00 due upon execution of the Franchise Agreement for the initial Restaurant.

2. For each additional Restaurant to be developed under this Agreement, \$10,000.00 of the Development Fee shall be applied to the franchise fee due upon the execution of each applicable Franchise Agreement (each a "Subsequent Franchise Fee"). So long as you develop Restaurants in accordance with the Development Schedule and otherwise comply with the terms and conditions of this Agreement, the amount of the Subsequent Franchise Fee for each subsequent Restaurant shall be \$10,000.00 (it being understood that the initial franchise fee



for the first Restaurant shall be equal to \$15,000.00). If you do not develop Restaurants in accordance with the Development Schedule or you do not otherwise comply with the terms and conditions of this Agreement, and provided that Dickey's remains willing, in its sole discretion, to continue to grant you franchises, the amount of each Subsequent Franchise Fee shall be \$15,000.00, and the balance shall be paid out of your separate funds.

C. The Development Fee and all franchise fees shall be nonrefundable.

### **ARTICLE 3 SCHEDULE AND MANNER FOR EXERCISING DEVELOPMENT RIGHTS**

A. You shall exercise the development rights granted hereunder only by entering into a separate franchise agreement ("Franchise Agreement") with Dickey's for each Restaurant for which a development right is granted. Dickey's current form of Franchise Agreement is attached as Attachment A. Upon execution of this Agreement, you shall execute and deliver a Franchise Agreement in the form attached as Attachment A for the first Restaurant to be developed hereunder. You shall additionally execute the form of Franchise Agreement then being used by Dickey's for new franchisees operating under the System, with respect to each subsequent Restaurant developed hereunder, not later than eight (8) months prior to the projected opening date of the applicable Restaurant. These subsequent forms of Franchise Agreements may contain terms and conditions, including monetary obligations, which differ materially from the form of Franchise Agreement attached hereto, and shall also be included in the term "Franchise Agreements," as used herein.

1. Acknowledging that time is of the essence, you agree to exercise your development rights hereunder and according to the Development Schedule (herein so called) below, which schedule designates the number of Restaurants in the Territory to be established and in operation by you upon the expiration of each of the designated development periods (the "Development Periods"):

Commencement Date of Development Period	Expiration Date of Development Period <sup>1</sup>	Cumulative Total Number of Restaurants Located in the Territory Which Developer Shall Have Open and in Operation
Effective Date	Eight Months After Effective Date	One
Eight Months After Effective Date	Sixteen Months After Effective Date	Two
Sixteen Months After Effective Date	Twenty-Four Months After Effective Date	Three
Twenty-Four Months After Effective Date	Thirty-Two Months After Effective Date	Four
Thirty-Two Months After Effective Date	Forty Months After Effective Date	Five
Forty Months After Effective Date	Forty-Eight Months After Effective Date	Six

During any of the Development Periods set forth above, subject to the terms and conditions of

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<sup>1</sup> This schedule is illustrative as we reserve the right to offer a schedule that requires a different number of Restaurants, prioritizes certain Markets for earlier or late development, or has different Development Period time frames.

this Agreement, you may develop more than the total minimum number of Restaurants, which you are required to develop during that Development Period. Any Restaurants developed during a Development Period in excess of the minimum number of Restaurants required to be developed upon expiration of that Development Period shall be applied to satisfy your development obligation during the next succeeding Development Period, if any. Notwithstanding the above, you are not authorized to operate within the Territory more than the cumulative total number of Restaurants you are obligated to develop under this Agreement as set forth above in the Development Schedule without the prior written approval of Dickey's.

2. If during the term of this Agreement, you cease to operate any Restaurant developed under this Agreement, you shall develop a replacement Restaurant to fulfill your obligation to have open and in operation the required number of Restaurants upon the expiration of each Development Period. The replacement Restaurant shall be developed within a reasonable time to be agreed upon by the parties after you cease to operate the Restaurant to be replaced. If you transfer your interest in a Restaurant developed under this Agreement in accordance with the terms of its Franchise Agreement during the term of this Agreement, the transferred Restaurant shall continue to be counted in determining whether you have complied with the Development Schedule so long as (i) the transferee and its guarantors have signed and delivered a Franchise Agreement, all related documents and a Guaranty, (ii) all fees due and payable in connection with the transfer are timely paid, (iii) the Restaurant continues to be operated as a Dickey's Barbecue Pit, and (iv) the transferee is in good standing and not in default under its Franchise Agreement. If these conditions are not met during the term of this Agreement, we will notify you that you must develop a replacement Restaurant within a reasonable time to be agreed upon by the parties in order to satisfy your obligations hereunder. In either case (closure or transfer and the transferee's failure to maintain good standing), the reasonable time period shall, subject to Dickey's consent, extend the term of the applicable Development Period to the end of the mutually agreed upon time period; provided, however, that in no event shall such time period or extension exceed six (6) months from the end of the applicable Development Period.

3. At the end of each Development Period, you shall provide Dickey's with written notice of the projected opening date of each Restaurant required to be developed during the next Development Period.

4. Failure by you to adhere to the Development Schedule or to any time period for the development of replacement Restaurants as set forth in Article 3.B.2 shall constitute an event of default under this Agreement.

#### **ARTICLE 4 TERM**

Unless sooner terminated in accordance with this Agreement, the term of this Agreement and all rights granted by Dickey's under this Agreement shall expire on the last day of the last Development Period specified in Article 3 on the Development Schedule. The term will be extended by Dickey's for a reasonable additional time period equal to any extension of time granted under Article 3.A.2 for the last Development Period. Following termination of this Agreement, Dickey's shall have the right to establish and operate, or license others to establish and operate, additional Dickey's restaurants in the Territory so long as the location of such restaurants does not infringe upon the protected territory of your Restaurants as set forth in the Franchise Agreements relating to your Restaurants.

#### **ARTICLE 5 YOUR DUTIES**

You make the following representations, warranties and covenants and accept the following obligations:

A. You shall comply with all terms and conditions set forth in this Agreement.

B. 1. If you are a corporation, limited liability company, partnership or any other entity, you represent, warrant and covenant that:

a. You are duly organized and validly existing under the state law of its formation;

b. You are duly qualified and are authorized to do business in each jurisdiction in which your business activities or the nature of the properties owned by you require such qualification;

c. Your organizational documents shall at all times provide that your activities are limited to the development and operation of Restaurants;

d. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action on behalf of you and the holders of ownership interests in you, and by all persons and entities which directly or indirectly control or manage your business and affairs (collectively, the "Management Group"), and such actions do not and will not violate, breach or constitute a default under any agreement, judgment, order, law, rule or regulation to which any of the foregoing is a party or by which bound;

e. If you corporation, limited liability company, partnership or any other entity copies of your organizational documents, other governing documents, and any and all amendments thereto shall be furnished to Dickey's prior to the execution of this Agreement, including evidence of the consent and approval of the entry into and performance of this Agreement by the requisite number or percentage of your owners and other persons governing or managing your business and affairs, if any such approval or consent is required by your organizational documents or other governing documents; and copies of each of the foregoing for each of the Management Group;

f. If you are a corporation, limited liability company, partnership or any other entity, the ownership interests in you and each of the Management Group are accurately and completely described in Attachment B. Further, if you are a corporation, limited liability company, partnership or any other entity, you shall at all times maintain a current list of all of the owners of a direct or indirect ownership interest in you and the Management Group. You shall make your list of owners available to Dickey's upon request;

g. If there should be a change in any owner of your direct or indirect ownership interest which results in such owner directly or indirectly holding percent (20%) or more of your outstanding ownership interest or any change in the ownership or composition of the Management Group, you shall notify Dickey's in writing prior to any such change and otherwise comply with the terms and conditions of Article 6, and you shall cause each such person or entity to execute this Agreement as one of your Investors (as defined in Article 26.3.3) and be individually bound by all of your obligations hereunder;

h. If you have or at any time shall issue any certificate evidencing any ownership interest in you, you shall have conspicuously noted upon such certificate a statement in form satisfactory to Dickey's that it is held subject to all restrictions on Transfers imposed by this Agreement. In addition, you shall maintain on your records instructions against the Transfer of any of your ownership interest which are prohibited under this Agreement without Dickey's prior written consent, and your organizational documents shall also provide that all ownership interests in you are subject to all restrictions on Transfers imposed by this Agreement;

i. You and, at Dickey's request, each of your Investors have provided Dickey's with their most recent financial statements. Such financial statements present fairly the financial position of you and each of your Investors, as applicable, at the dates indicated therein and with respect to you, the results of your operations and your cash flow for the years then ended. You agree that you shall maintain at all times, during the term of this Agreement, sufficient working capital to fulfill your obligations under this Agreement. Each of the financial statements mentioned above has been prepared in conformity with generally accepted accounting principles applicable to the respective periods involved and, except as expressly described in the applicable notes, applied on a consistent basis. No material liabilities, adverse claims, commitments or obligations of any nature exist as of the date of this Agreement, whether accrued, unliquidated, absolute, contingent or otherwise, which are not reflected as liabilities on the financial statements of you or such Investors.

j. You and your Investors acknowledge and agree that the representations, warranties and covenants set forth above in Article 5.B.1 are continuing obligations of you and that any failure to comply with such representations, warranties and covenants shall constitute an event of default under this Agreement, you agree that you will cooperate with Dickey's in any efforts made by Dickey's to verify compliance with such representations, warranties and covenants.

2. Upon the execution of this Agreement, you shall designate and retain an individual to serve as the Owner/Operator of you (the "Owner/Operator"). The Owner/Operator shall satisfy the following qualifications, unless waived in writing by Dickey's:

a. If you are an individual, you shall perform all obligations of the Owner/Operator.

b. If you are a corporation, limited liability company, limited partnership, or any other entity, the Owner/Operator shall, at all times during which he or she serves as Owner/Operator, (i) directly or indirectly hold an ownership interest in you, (ii) be fully authorized, directed and entitled (including, under the governing documents of you and the Management Group, and under any agreements and/or duly adopted resolutions by the shareholders, directors, officers, members, managers, and/or any other owner or governing body of you and each of the Management Group) to manage and control the day-to-day business affairs of you and to take any action which you are required to take or omit to take under this Agreement, all in such Owner/Operator's sole discretion, and without the approval or joinder of any person or entity.

c. Except as otherwise provided in this Agreement, the Owner/Operator's interest in you shall be and shall remain free of any pledge, mortgage, hypothecation, lien, charge, encumbrance, voting agreement, proxy, security interest or purchase right or options.

The Owner/Operator shall, during the entire period he or she serves as such, devote full time and best efforts to the supervision and performance of the development activities contemplated under this Agreement, shall execute this Agreement as one of your Investors, shall be individually, jointly and severally bound by all obligations of you and your Investors hereunder, and shall be authorized to represent you and enter into agreements and undertakings on your behalf. You represent and warrant that, as of the date of this Agreement, each undersigned person executing this Agreement as an Owner/Operator has been designated by as an Owner/Operator, and each such person meets all of the qualifications set forth in this Agreement for an Owner/Operator. You shall not cause or permit a change in any Owner/Operator without Dickey's prior written consent.

3. If you execute a Development Agreement for three (3) or more Restaurants, notwithstanding anything contained herein which may be to the contrary, you may designate multiple Owner/Operators.

4. You understand that compliance by all developers and franchisees operating under the System with Dickey's training, development and operational requirements is an essential and material element of the System and that Dickey's and developers and franchisees operating under the System consequently expend substantial time, effort and expense in training management personnel for the development and operation of their respective Dickey's Barbecue Pit restaurants. Accordingly, you agree that if during the term of this Agreement, you shall designate as your Owner/Operator any individual who is at the time or was at any time during the six (6) months prior to your engagement employed or engaged in a managerial position by Dickey's or any of its subsidiaries or affiliates, including but not limited to, individuals employed by Dickey's to work in its Dickey's Barbecue Pit restaurants, or by any other developer or franchisee operating under the System, such former employer shall be entitled to be compensated for the reasonable costs and expenses, of whatever nature or kind, incurred by such employer related to training such employee. The parties agree that such expenditures may be uncertain and difficult to ascertain and, therefore, agree that the compensation specified herein reasonably represents such expenditures and is not a penalty. An amount equal to the annual compensation of such employee at the time of the termination of his employment with the former employer shall be paid by you to such former employer prior to such employee assuming the position of Owner/Operator. The parties expressly acknowledge and agree that no current or former employee of Dickey's, its subsidiaries or affiliates or any developer or franchisee under the System shall be a third party beneficiary of this Agreement or any provision hereof. Dickey's expressly disclaims any representations and warranties regarding the performance of any employee or former employee of Dickey's, its subsidiaries or affiliates, or any developer or franchisee operating under the System, who is designated as Owner/Operator or employed by you in any capacity, and Dickey's shall not be liable for any losses, of whatever nature or kind, incurred by you in connection therewith.

5. You and each of your Investors shall not, during the term of this Agreement and thereafter, communicate or divulge to, or use for the benefit of, another person, persons, partnership, association, corporation or other entity any confidential information, knowledge or know-how concerning the methods of development and operation of the Restaurants which may be communicated to you or any of your Investors or of which they may be apprised under this Agreement. You and each of your Investors shall disclose such confidential information only to your Investors and your personnel who must have access to it in connection with their employment with you. Any and all information, knowledge, know-how, techniques and any materials used in or related to the System which Dickey's communicates to you or your Investors shall be deemed confidential for the purposes of this Agreement. Neither you nor your Investors shall at any time, without Dickey's prior written consent, dissolve, disseminate, copy, duplicate, record or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person. The covenants in this Article 5.B.5 shall survive the expiration, termination or transfer of this Agreement or any interest herein and shall be perpetually binding upon you and each of your Investors.

a. Your Owner/Operator and each of your Investors are hereby bound and personally obligated to comply with the foregoing covenant.

b. You and your Investors acknowledge that any failure to comply with the requirements of this Article 5.B.5 shall constitute an event of default under this Agreement and will cause Dickey's irreparable injury. Therefore, you and your Investors agree to pay all court costs and reasonable legal fees incurred by Dickey's in obtaining specific performance, injunctive relief or any other remedy available to Dickey's for any violation of the requirements of such article.

6. You shall comply with all requirements of federal, state and local laws, rules and regulations.

## **ARTICLE 6 DEFAULT, TRANSFER AND TERMINATION**

A. You shall be deemed to be in default under this Agreement and all rights granted herein shall automatically terminate without notice to you: (1) if you become insolvent or make a general assignment for the benefit of creditors or file a voluntary petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state or admit in writing your inability to pay your debts when due; or (2) if you are adjudicated bankrupt or insolvent in proceedings filed against you under any section or chapter of federal bankruptcy law or any similar law or statute of the United States or any state, without further possibility of appeal or review; or (3) if a bill in equity or other proceeding for the appointment of a receiver of you or other custodian for your business or assets is filed and consented to by you, or if a receiver or other custodian permanent or temporarily of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or (4) if proceedings for a composition with creditors under any state or federal law are instituted by or against you; or (5) if a final judgment against you remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed); or (6) if you are dissolved; or (7) if execution is levied against your business or property; or (8) if suit to foreclose any lien or mortgage against the premises or equipment of such business operated hereunder or under any Franchise Agreement is instituted and not dismissed within thirty (30) days; or (9) if the real or personal property of any business operated hereunder or under any Franchise Agreement shall be sold after levy by any sheriff, marshal or constable.

B. You shall be deemed to be in default and Dickey's may, at its option, terminate this Agreement and all rights granted hereunder, without affording you any opportunity to cure the default except as provided below, effective immediately upon written notice to you, upon the occurrence of any of the following events of default:

1. If you fail to timely pay Development Fees, timely comply with the Development Schedule, timely execute Franchise Agreements and pay franchise fees, timely open Restaurants, or timely open replacement Restaurants in accordance with Article 3 hereof (and time is hereby stipulated to be of the essence);

2. If you or any of your Investors is convicted of, or shall have entered a plea of nolo contendere to, a felony, a crime involving moral turpitude or any other crime or offense that Dickey's believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith or Dickey's interest therein;

3. If a threat or danger to public health or safety results from the construction, maintenance or operation of any Restaurant developed under this Agreement;

4. If you fail to designate a qualified replacement Owner/Operator within thirty (30) days after any initial or successor Owner/Operator ceases to serve as such, all as required under Article 5.B.2;

5. If you or any of your Investors breach or fail to perform any of the representations, warranties and covenants in Article 5;

6. Any Transfer in violation of Article 7;

7. If you or any of your Investors fail to comply with the covenants in Article 5.B.5 or 8.B or if you fail to obtain the execution of the covenants required under Article 5.B.5.a or Article 8.H within thirty (30) days following Dickey's request that you obtain the execution of such covenants;

8. If an approved transfer upon death or permanent disability is not affected within the time period and in the manner prescribed by Article 7.E;

9. If you misuse or make any unauthorized use of the Proprietary Marks or otherwise materially impair the goodwill associated therewith or with the System or Dickey's rights therein and do not cure such default within twenty-four (24) hours following notice from Dickey's;

10. If you fail, refuse or neglect promptly to pay when due any monetary obligation owing to Dickey's or its subsidiaries or affiliates under this Agreement, any Franchise Agreement or any other agreement between you and Dickey's or its subsidiaries or affiliates, other than those monetary obligations described in Article 6.B.1, and do not cure such default within seven (7) days following notice from Dickey's;

11. Any default occurs under a Franchise Agreement or any other agreement you have with Dickey's or its subsidiaries or affiliates and such default is not cured within any applicable grace or cure period expressly provided for therein; or

12. If you repeatedly commit an event of default under this Agreement, whether or not such defaults have been cured by you after notice by Dickey's.

C. Except as provided above in Article 6.B, you shall be in default hereunder if you or any of your subsidiaries or affiliates fail to comply with any other term or condition imposed by this Agreement or any other development or other agreement between you or any of your affiliates and Dickey's, as such may from time to time be amended. In such event, and to the extent permitted under applicable state law, Dickey's may terminate this Agreement by giving written notice of termination stating the nature of such default to you at least thirty (30) days prior to the effective date of termination (or, in the case of a breach under any other development agreement or other agreement between you or any of your subsidiaries or affiliates and Dickey's, such other period of time expressly provided therein for the cure of such breach after notice thereof, if any) (the "Cure Period"); provided, however, that you may avoid termination by immediately initiating a remedy to cure such default and curing it to Dickey's satisfaction within the Cure Period and by promptly providing proof thereof to Dickey's. If any such default is not cured within the Cure Period, or such longer period as applicable law may require, this Agreement shall, subject to Article 6.D, terminate without further notice to you effective immediately upon the expiration of the Cure Period or such longer period as applicable law may require.

D. Upon a default under Article 6.B or Article 6.C, and to the extent permitted under applicable state law, Dickey's has the option, in its sole discretion, in addition to or in lieu of exercising its option to terminate this Agreement as provided in Article 6.B and Article 6.C, to do any one or more of the following:

1. Terminate or modify any territorial rights granted to you in Article 1.C;
2. Reduce the area of such territorial rights;
3. Reduce the number of Restaurants which you may establish pursuant to Articles 1 and 3.B.1; or
4. Accelerate the Development Schedule; or
5. Increase the amount of the Subsequent Franchise Fee to \$15,000.

E. 1. Upon the termination or expiration of this Agreement, you shall have no further right to establish or operate any Restaurant for which a Franchise Agreement has not been executed by Dickey's and delivered to you at the time of termination or expiration.

2. If, as a result of your default, Dickey's does not elect to terminate this Agreement but instead elects to modify such territorial rights or modify your Development Schedule, you shall

continue to perform your duties and obligations hereunder and develop Restaurants in accordance with the Development Schedule as modified by Dickey's.

3. If Dickey's exercises any of its rights in Article 6.D, or if this Agreement otherwise expires or terminates, Dickey's shall be entitled to establish, and to license or permit others to establish, restaurants, or conduct any other activity, in the Territory or in the portion thereof no longer a part of the Territory or pursuant to any other modification of your territorial rights, except as may be otherwise provided under any Franchise Agreement which is then in effect between Dickey's and you.

F. Dickey's exercise of any of its lesser options under Article 6.D shall not, in the event of a default, constitute a waiver by Dickey's to exercise its option to terminate this Agreement at any time with respect to a subsequent event of default of a similar or different nature to the extent permitted under applicable state law.

G. No default under this Agreement shall constitute a default under any Franchise Agreement between the parties hereto, unless the default is also a default under the terms of such Franchise Agreement.

H. No right or remedy herein conferred upon or reserved to Dickey's is exclusive of any other right or remedy provided or permitted by law or in equity.

I. Upon termination or expiration of this Agreement regardless of the cause of such termination, you and your Investors shall comply with the restrictions on confidential information contained in Article 5.B.5 and the covenants against competition contained in Article 8.B.2. Any other person required to execute similar covenants pursuant to Articles 5.B.5.a or 8.H shall also comply with such covenants.

## **ARTICLE 7 TRANSFER OF INTEREST**

### **A. Transfer by Dickey's**

Dickey's shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations herein to any person or legal entity without your consent. Specifically, and without limitation to the foregoing, you expressly affirm and agree that Dickey's may sell its assets, the Proprietary Marks or the System to a third party; may merge, acquire other entities, or be acquired by another entity or person; may undertake a refinancing recapitalization, leveraged buyout or other economic or financial restructuring, and, with regard to any or all of the above sales, assignments and dispositions, you expressly and specifically waive any claim, demand or damage arising from or related to the loss of the right to develop Restaurants under the System against Dickey's under this Agreement. Nothing contained in this Agreement shall require Dickey's to remain in the business of operating or licensing the operation of Dickey's Barbecue Pit restaurants or other restaurants or to offer any services or products, whether or not bearing the Proprietary Marks, to you, if Dickey's exercises its rights hereunder to assign its rights in this Agreement.

### **B. Transfer by you**

Except as prohibited under applicable state law:

1. You and your Investors understand and acknowledge that the rights and duties set forth in this Agreement are personal to you and that Dickey's has granted this franchise in reliance on the business skill, financial capacity and personal character of you and your Investors. Accordingly, neither you nor any Investor may Transfer any direct or indirect ownership interest in you, this Agreement or the franchised business, without Dickey's prior written consent. In addition, neither you nor any permitted successor or assign to any part of your interest in this Agreement or the franchised business, nor any person or entity which directly or indirectly has or



owns any interest in this Agreement, in the franchised business or in you, shall cause or permit a Transfer of a Controlling Interest (as hereinafter defined) without the prior written consent of Dickey's; provided, however, that Dickey's prior written consent shall not be required for a Transfer of less than a one percent (1%) interest in a Publicly-Held Corporation. Within five (5) days of the completion of each Transfer of any ownership interest in you or any of the Management Group, you shall provide to Dickey's written notice of the completion of the Transfer and fully executed copies of all documents evidencing the Transfer and any and all amendments to the organizational documents of the applicable entity in connection with the Transfer. For purposes of this Agreement, a "Transfer of a Controlling Interest" shall mean: (i) a Transfer, directly or indirectly, individually or cumulatively, of more than fifty (50%) of the ownership interest in you or any of the Management Group; or (ii) a Transfer of any ownership interest, which, directly or indirectly, individually or cumulatively, results in or may result in the change or removal of, or addition to, (a) any of the Management Group, or (b) the Owner/Operator. For purposes of this Agreement, a "Publicly-Held Corporation" is a corporation whose securities are registered under Section 12 of the Securities Exchange Act of 1934, as amended, or a corporation subject to the requirements of Section 15(d) of the Securities Exchange Act, as amended. For purposes of this Agreement, "Transfer" means any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law or otherwise. Any purported Transfer, by operation of law or otherwise, not having the written consent of Dickey's required by this Article 7 shall be null and void and shall constitute an event of default under this Agreement.

2. Dickey's shall not unreasonably withhold its consent to a Transfer so long as the Transfer has not been completed prior to Dickey's receipt of notice thereof; however, Dickey's may, in its sole discretion, require any or all of the following as conditions of its approval to any such Transfer requiring Dickey's prior written consent:

a. All accrued monetary and other outstanding obligations to Dickey's and its subsidiaries and affiliates arising under this Agreement or any Franchise Agreement or other agreement between you or any of your subsidiaries or affiliates and Dickey's or its subsidiaries or affiliates shall have been satisfied in a timely manner, and you and your subsidiaries and affiliates shall have satisfied all trade accounts and other debts, of whatever nature or kind, in a timely manner;

b. You are not in default of any provision of this Agreement nor is there any default under any Franchise Agreement or any other agreement between you or your subsidiaries or affiliates and Dickey's or its subsidiaries or affiliates;

c. Unless otherwise prohibited by applicable law, the transferor and its Investors, as applicable, shall have executed a general release, in a form prescribed by Dickey's, of any and all claims of transferor, of whatever nature or kind, against Dickey's and its subsidiaries and affiliates and their respective officers, directors, shareholders, partners, employees, servants, representatives and agents, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement, any Franchise Agreement and any other agreement between you or your subsidiaries or affiliates and Dickey's or its subsidiaries or affiliates and federal, state and local laws, rules and ordinances;

d. The transferee shall enter into a written agreement, in a form prescribed by Dickey's, assuming full, unconditional joint and several liability for and agreeing to perform from the date of the Transfer, all obligations, covenants and agreements of you in this Agreement; and if transferee is a corporation, partnership, limited liability company or other entity, the transferee's shareholders, partners, members or other owners, as applicable, shall also execute such agreement as Investors of the transferee, including a guaranty of your obligations contained in this Agreement.

e. The transferee shall demonstrate to Dickey's satisfaction that transferee meets the criteria considered by Dickey's when reviewing a prospective developer's application for development rights, including Dickey's educational, managerial and business standards, transferee's good moral character, business reputation and credit rating, transferee's aptitude and ability to conduct the business contemplated hereunder (as may be evidenced by prior related business experience or otherwise), transferee's financial resources and capital, and the geographic proximity of other territories with respect to which transferee has been granted development rights or of other Dickey's Barbecue Pit restaurants operated by transferee, if any;

f. Unless prohibited by applicable law, the transferee shall execute the standard form development agreement then being offered to new System developers or a revised form of this Agreement, as Dickey's deems appropriate, and such other ancillary agreements as Dickey's may require, which agreements shall supersede this Agreement and its ancillary documents in all respects and the terms of which agreements may differ from the terms of this Agreement (except that the Development Schedule and the Development Periods will not change), and if the transferee is a corporation, a limited liability company, partnership or other entity, transferee's shareholders, members, partners or other owners, as applicable, shall also execute such agreements as Investors of the transferee, including a guaranty of your obligations contained in this Agreement;

g. You shall pay a transfer fee of \$10,000.00 or such greater amount as is necessary to reimburse Dickey's for its reasonable costs and expenses associated with reviewing the application to Transfer, including, without limitation, legal and accounting fees;

h. If transferee is a corporation, limited liability company, partnership or any other entity, transferee shall make and will be bound by any or all of the representations, warranties and covenants in Article 5.B.1 as Dickey's requests. Transferee shall provide to Dickey's evidence satisfactory to Dickey's that the terms of Article 5.B.1 have been satisfied and are true and correct on the date of Transfer. The transferor shall remain liable for all of the obligations to Dickey's in connection with this Agreement incurred prior to, the effective date of the transfer and shall execute any and all instruments reasonably requested by Dickey's to evidence such liability.

i. Prior to the Transfer, you shall deliver to Dickey's for review and approval copies of all documents which will evidence the Transfer and, if applicable, any and all amendments to the organizational documents of the applicable entity to be executed in connection with the Transfer.

3. You acknowledge and agree that each condition, which must be met by the transferee, is reasonable and necessary to ensure the transferee's full performance of the obligations hereunder.

C. Transfer for Convenience of Ownership

If a proposed Transfer is to a corporation, partnership, limited liability company or other entity formed solely for the convenience of ownership, to the extent permitted under applicable state law, Dickey's consent may be conditioned upon any of the requirements in Article 15.2, except that the requirements in Articles 7.B.2.c, e, f and g shall not apply. In such event, you shall be the owner of all the outstanding ownership interests in the entity, and if you are more than one (1) individual, each individual shall have the same proportionate ownership interest in the entity as such individual had prior to the Transfer.

D. Right of First Refusal

1. You or any person holding a direct or indirect interest in you (including any interest to be transferred pursuant to Article 7.E) or in this Agreement and who desires to accept any bona fide offer from a third party to purchase your interests hereunder or any interest in you shall promptly notify Dickey's in writing of each such offer and shall provide such information and documents relating to the offer as Dickey's may require. Dickey's shall have the right and option, exercisable within sixty (60) days after receipt of such written notification, to send written notice that Dickey's intends to purchase the transferor's interest on the same terms and conditions offered by the third party. If Dickey's elects to purchase the transferor's interest, closing on such purchase must occur within thirty (30) days from the date of Dickey's notice electing to purchase, or such other date as may be agreed upon. Any material change in the terms of any third party offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Dickey's as in the case of an initial offer. Failure of Dickey's to exercise the option afforded by this Article 7.D shall not constitute a waiver of any other provision of this Agreement, including all provisions relating to a proposed Transfer.

2. If the offer from a third party provides for payment of consideration other than cash or involves certain intangible benefits, Dickey's may elect to purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on such amount, an independent appraiser shall be designated by each party to determine such amount. In the event that such appraisers shall agree on such amount, the determination shall be final and binding. In the event that such appraisers fail to agree within thirty (30) days, a third independent appraiser shall be designated by such appraisers, and the determination by a majority of appraisers shall be binding. Each party shall bear the costs and expenses of the appraiser appointment by such party, and the parties shall share equally the costs and expenses of the third appraiser.

3. If Dickey's elects to exercise the option described in this Article 7.D, it shall have the right to set off the cost of the appraisal described in Article 7.D.2 above, if any against any payment made hereunder.

4. Failure to comply with the provisions of this Article 7.D prior to the transfer of any direct or indirect interest in you or this Agreement shall constitute an event of default under this Agreement.

#### E. Transfer Upon Death or Permanent Disability

Except as prohibited under applicable state law:

1. Upon the death of any person with a direct or indirect interest in this Agreement or in you (the "Deceased"), the executor, administrator or other personal representative of the Deceased shall transfer such interest to a third party, provided that any such transfer shall be subject to the terms, conditions and restrictions regarding Transfers set forth in Article 7.B and the right of first refusal set forth in Article 7.D. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the estate of the Deceased, then the transfer of such interest to the distributee of such interest shall be subject to the terms, conditions and restrictions regarding Transfers set forth in Article 7.B. If the distributee is not approved by Dickey's, then the distributee shall transfer such interest to a third party approved by Dickey's within twelve (12) months after the death of the Deceased, subject to the terms and conditions set forth in Article 7.B and the right of first refusal set forth in Article 7.D.

2. Upon the permanent disability of any person with a direct or indirect interest in this Agreement or in you, if Dickey's determines Dickey's may, in its sole discretion, require such interest to be transferred to a third party approved by Dickey's within six (6) months after notice to you, subject to the right of first refusal set forth in Article 7.D. "Permanent disability" shall mean any physical, emotional or mental injury, illness or incapacity which would prevent a person from performing the obligations set forth in this Agreement for at least ninety (90) consecutive days

and from which condition recovery within ninety (90) days on the date of determination of disability is unlikely. Permanent disability shall be determined by two (2) licensed practicing physicians. One (1) licensed practicing physician shall be selected by Dickey's, while a second licensed practicing physician shall be selected by you. If these two (2) licensed practicing physicians cannot agree on whether a permanent disability exists, they shall appoint a third licensed practicing physician whose expert opinion shall be controlling. The costs of any examination required by this Article shall be paid by Dickey's.

3. Upon the death or claim of permanent disability of any person with a direct or indirect interest in this Agreement or in you, you must promptly notify Dickey's of such death or claim of permanent disability. Except as otherwise provided in this Article 7.E, any transfer upon death or permanent disability shall be subject to the same terms and conditions described in this Article 7.B.2, except that the requirements of Articles 7.B.2.c, f and g shall not apply. If an interest is not transferred upon death or permanent disability as required in this Article 7.E, you shall be in default under this Agreement.

**F. Non-Waiver of Claims**

Dickey's consent to a transfer of any interest in you or in this Agreement shall not constitute a waiver of any claims it may have against the transferor, nor shall it be deemed a waiver of Dickey's right to demand exact compliance with any of the terms of this Agreement by the transferee.

**G. Offerings by You**

Securities in you may be offered to the public, by private offering or otherwise, only with the prior written consent of Dickey's (whether or not Dickey's consent is required under Article 7.B), which consent shall not be unreasonably withheld. All materials required for such offering by federal or state law shall be submitted to Dickey's for a limited review as discussed below prior to their being filed with any government agency, and any materials to be used in any exempt offering shall be submitted to Dickey's for such review prior to their use. No offering by you shall imply, by use of the Proprietary Marks or otherwise, that Dickey's is participating in an underwriting, issuance or offering of your securities or the securities of any subsidiary or affiliate of you, and Dickey's review of any offering materials shall be limited solely to the subject of the relationship between you and Dickey's and its subsidiaries and affiliates and shall not constitute an endorsement of your offering or a representation or confirmation that your offering complies with applicable federal or state laws. Dickey's may, at its option, require your offering materials to contain a written statement prescribed by Dickey's concerning the limitations described in the preceding sentence. **YOU AND THE OTHER PARTICIPANTS IN THE OFFERING MUST FULLY INDEMNIFY DICKY'S IN CONNECTION WITH THE OFFERING.** For each proposed offering, you shall pay to Dickey's a non-refundable fee of \$2,000.00, or such larger amount as is necessary to reimburse Dickey's for its reasonable costs and expenses associated with reviewing the proposed offering materials, including, without limitation, legal and accounting fees. You shall give Dickey's written notice at least thirty (30) days prior to any offering or other transaction covered by this Article 7.G.

**ARTICLE 8  
COVENANTS**

A. You covenant that during the term of this Agreement, except as otherwise approved in writing by Dickey's, your Owner/Operator shall devote full time best efforts to the management and operation of the development activities contemplated under this Agreement.

B. You and your Investors specifically acknowledge that, pursuant to this Agreement, you and your Investors will receive valuable specialized training trade secrets and confidential information, which are beyond the present skills and experience of you and your Investors and your managers and employees and that you have the right and the obligation, arising from this Agreement, to develop the Territory for the benefit of the System. You and your Investors acknowledge that such specialized training, trade secrets and confidential information provide a competitive advantage and will be valuable

to you in the development of the Franchised Businesses and that access to such specialized training, trade secrets and confidential information is, therefore, a primary reason for entering into this Agreement. In consideration for such specialized training, trade secrets, confidential information and exclusive rights, you and your Investors covenant as follows:

1. With respect to you, during the term of this Agreement, or with respect to each of your Investors, during the term of this Agreement for so long as such individual or entity satisfies the definition of "your Investors" in Article 13.E, except as otherwise approved in writing by Dickey's, neither you nor any of your Investors shall, either directly or indirectly, for themselves, or through, on behalf of or in conjunction with any person(s), partnership or corporation:

a. Divert or attempt to divert any business or customer of any Dickey's Barbecue Pit Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Dickey's Proprietary Marks and the System; or

b. Own, maintain, operate, engage in or have any financial or beneficial interest in (including interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations or joint ventures), advise, assist or make loans to, any person or business which is similar to or competitive with Dickey's Barbecue Pit restaurants, including but not limited to, any restaurant or catering business that offers smoked meats or barbecue-style food, including chopped beef brisket, sliced beef brisket, pulled pork, Virginia style ham, marinated chicken breast, turkey breast, polish sausage, spicy cheddar sausage, or pork ribs as a primary or featured menu item.

2. With respect to you, for a continuous uninterrupted period commencing upon the expiration or termination of, or transfer of all of your interest in, this Agreement, or with respect to each of your Investors, for a continuous uninterrupted period commencing upon the earlier of: (i) the expiration, termination or transfer of all of your interest in this Agreement or (ii) the time such individual or entity ceases to satisfy the definition of "your Investors" in Article 13.E, and for two (2) years thereafter (which two-year period shall be tolled during any period of noncompliance), except as otherwise approved in writing by Dickey's, neither you nor any of your Investors shall, either directly or indirectly, for themselves or through, on behalf of or in conjunction with any person, partnership, corporation or other entity:

a. Divert or attempt to divert any business or customer of any Dickey's Barbecue Pit restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Dickey's Proprietary Marks and the System;

b. Employ or seek to employ any person who is at that time employed by Dickey's or by any other developer or franchisee of Dickey's, or otherwise direct or indirectly induce such person to leave that person's employment; provided, however, that you may employ such person in a managerial position with respect to your operation of a Dickey's Barbecue Pit restaurant pursuant to the terms of the Franchise Agreement applicable to such Dickey's Barbecue Pit restaurant; or

c. Own, maintain, operate, engage in or have any financial or beneficial interest in (including any interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations, joint ventures or other entities), advise, assist or make loans to, any person or entity engaged in any business that is similar to or competitive with Dickey's Barbecue Pit restaurants including but not limited to, any restaurant or catering business that offers smoked meats or barbecue style food, including chopped beef brisket, sliced beef brisket, pulled pork, Virginia style ham, marinated chicken breast, turkey breast, polish sausage, spicy cheddar sausage, or pork ribs as a primary or featured menu item, which business is, or is intended to be, located

in the Territory or within five (5) miles of the boundary of the Territory, or within a five (5) mile radius of any Dickey's Barbecue Pit restaurant in existence or under construction as of date the time period set forth in Article 8.B.2 commences for you or your Investor, as applicable.

C. Article 8.B.1.b and 2.c shall not apply to ownership of less than one percent (1%) beneficial interest in the outstanding equity securities of any publicly-held corporation.

D. Neither you nor your Owner/Operator nor any of your Investors shall publish or communicate in any way (or assist, encourage, or support) to any third party any statement that might reasonably be construed to be disparaging, defamatory, derogatory, negative, or critical of the personal or business reputation, acumen, skill, practices, or conduct of Dickey's, its subsidiaries, or affiliates, including each party's respective officers, directors or employees, in connection with this Agreement or any prior agreement between the parties and the purchase and operation of any Dickey's Barbecue Pit® Restaurant and franchise. **With regard to this provision, the person alleged to have violated this provision agrees to waive his/her rights to prior restraint on speech and consents to the issuance of a temporary restraining order, temporary injunction, or other available injunctive relief designed to prevent any further breach of this provision. Additionally, if you or your Owner/Operator or any of your Investors publish or communicate any statement to a third-party that is disparaging, defamatory, derogatory, negative, or critical of the personal or business reputation, acumen, skill, practices, or conduct of Dickey's, its subsidiaries, or affiliates, including each party's respective officers, directors or employees the other party, you and your Owner/Operator and you Investors agree to assign all copyrights to such publications or communications to Dickey's. You and your Owner/Operator and your Investors agree to take whatever action (including signing assignment or other documents) that Dickey's requests to evidence its ownership or to help Dickey's obtain intellectual property rights in the copyrights to such publications or communications.**

E. The parties agree that each of the above covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Article 8 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Dickey's is a party, you and your Investors expressly agree to be bound by any lesser covenants subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Article.

F. You and your Investors understand and acknowledge that Dickey's shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Article 8.B, or any portion thereon, without your consent, effective immediately upon notice to you; and you and your Investors agree that you shall immediately comply with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Article 14.A.

G. You and your Investors expressly agree that the existence of any claims you may have against Dickey's, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Dickey's of the covenants in this Article 8. You and your Investors agree to pay all costs and expenses (including reasonable legal fees) incurred by Dickey's in connection with the enforcement of this Article.

H. Failure to comply with the requirements of this Article 8 shall constitute an event of default under this Agreement. You and your Investors acknowledge that a violation of this Article would result in irreparable injury to Dickey's for which no adequate remedy at law may be available, and you and your Investors accordingly consent to the issuance of an injunction prohibiting any conduct by you or your Investors in violation of the terms of this Article. This remedy is in addition to any other remedies Dickey's may have hereunder or at law or equity.

I. At Dickey's request, you shall require and obtain the execution of covenants similar to those set forth in this Article 8 from any person or entity that now or hereafter satisfies the definition of

your Investor in Article 13.E and any other person or entity who has received or will receive confidential information or training from Dickey's. Failure by you to obtain the execution of these covenants following Dickey's request shall constitute an event of default under this Agreement.

## **ARTICLE 9 INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

A. The parties acknowledge and agree that this Agreement does not create a fiduciary relationship between them, that you shall be an independent contractor and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, joint employer or servant of the other for any purpose.

B. During the term of this Agreement, you shall hold yourself out to the public as an independent contractor conducting its development operations pursuant to development rights granted by Dickey's. You agree to take such action as shall be necessary to that end, including, without limitation, exhibiting a notice of that fact in a conspicuous place in any office established for the purposes hereunder, the content and form of which Dickey's reserves the right to specify in writing.

C. You understand and agree that nothing in this Agreement authorizes you or any of your Investors to make any conduct, agreement, warranty or representation on Dickey's behalf, or to incur any debt or other obligation in Dickey's name, and that Dickey's shall in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action, or for any act or omission of you or any of your Investors or any claim or judgment arising therefrom.

D. 1. YOU AND EACH OF YOUR INVESTORS SHALL, AT ALL TIMES, DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS TO THE FULLEST EXTENT PERMITTED BY LAW DICKEY'S, ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS AS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, SERVANTS, EMPLOYEES, AGENTS AND REPRESENTATIVES (collectively, the "INDEMNIFIED PARTIES") FROM ALL "LOSSES AND EXPENSES" (AS DEFINED IN ARTICLE 9.D.4.B BELOW) INCURRED IN CONNECTION WITH ANY ACTION, SUIT, PROCEEDING CLAIM, DEMAND, INVESTIGATION OR INQUIRY (FORMAL OR INFORMAL), OR ANY SETTLEMENT THEREOF (WHETHER OR NOT A FORMAL PROCEEDING OR ACTION HAS BEEN INSTITUTED) WHICH ARISES OUT OF OR IS BASED UPON ANY OF THE FOLLOWING:

a. THE INFRINGEMENT, ALLEGED INFRINGEMENT, OR ANY OTHER VIOLATION, OR ALLEGED VIOLATION BY YOU OR ANY OF YOUR INVESTORS OF ANY PATENT, MARK, COPYRIGHT OR OTHER PROPRIETARY RIGHT OWNED OR CONTROLLED BY THIRD PARTIES (EXCEPT AS SUCH MAY OCCUR WITH RESPECT TO ANY RIGHTS IN THE PROPRIETARY MARKS GRANTED TO YOU UNDER A FRANCHISE AGREEMENT), INCLUDING WITHOUT LIMITATION MATTERS CAUSED BY OR ARISING OUT OF, OR CLAIMED TO BE CAUSED BY OR ARISING OUT OF, THE INFRINGEMENT OR VIOLATION OF ANY PATENT, TRADEMARK OR COPYRIGHT BY THE INDEMNIFIED PARTIES;

b. THE VIOLATION, BREACH OR ASSERTED VIOLATION OR BREACH BY YOU OR ANY OF YOUR INVESTORS OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, RULING STANDARD OR DIRECTIVE, OR ANY INDUSTRY STANDARD, INCLUDING WITHOUT LIMITATION MATTERS CAUSED BY OR ARISING OUT OF, OR CLAIMED TO BE CAUSED BY OR ARISING OUT OF, THE BREACH OR VIOLATION OF ANY REGULATION, RULING, STANDARD OR DIRECTIVE OR ANY INDUSTRY STANDARD BY THE INDEMNIFIED PARTIES;

c. LIBEL, SLANDER OR ANY OTHER FORM OF DEFAMATION OF DICKEY'S OR THE SYSTEM, BY YOU OR BY ANY OF YOUR INVESTORS;

d. THE VIOLATION OR BREACH BY YOU OR BY ANY OF YOUR INVESTORS OF ANY WARRANTY, REPRESENTATION, AGREEMENT OR OBLIGATION IN THIS AGREEMENT OR IN ANY FRANCHISE AGREEMENT OR OTHER AGREEMENT BETWEEN YOU AND DICKEY'S OR ITS SUBSIDIARIES OR AFFILIATES; AND

e. NEGLIGENT ACTS, ERRORS OR OMISSIONS, WILFUL MISCONDUCT OR BREACH OF ANY CONTRACT OR WARRANTY BY YOU, ANY OF YOUR SUBSIDIARIES OR AFFILIATES AND ANY OF YOUR INVESTORS AND THE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AGENTS, INDEPENDENT CONTRACTORS, SERVANTS, EMPLOYEES AND REPRESENTATIVES OF YOU AND ITS SUBSIDIARIES AND AFFILIATES IN CONNECTION WITH THE PERFORMANCE OF THE DEVELOPMENT ACTIVITIES CONTEMPLATED UNDER THIS AGREEMENT OR THE ESTABLISHMENT AND OPERATION OF ANY DICKEY'S BARBECUE PIT RESTAURANT PURSUANT TO A FRANCHISE AGREEMENT, INCLUDING BUT NOT LIMITED TO NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ANY OF THE FOREGOING PARTIES IN THE OPERATION OF ANY MOTOR VEHICLE, THIS DEFENSE AND INDEMNITY OBLIGATION INCLUDES, WITHOUT LIMITATION, MATTERS CAUSED BY OR ARISING OUT OF, OR CLAIMED TO BE CAUSED BY OR ARISING OUT OF, ANY INDEMNIFIED PARTY'S OWN NEGLIGENT ACTS, ERRORS OR OMISSIONS, BREACH OF WARRANTY OR BREACH OF CONTRACT. YOUR OBLIGATION TO DEFEND AND INDEMNIFY ANY INDEMNIFIED PARTY FOR ITS OWN NEGLIGENCE APPLIES WHETHER SUCH NEGLIGENCE IS ALLEGED OR PROVEN TO BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE.

2. YOU AND EACH OF YOUR INVESTORS AGREE TO GIVE DICKEY'S IMMEDIATE NOTICE OF ANY SUCH ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY OR INVESTIGATION. AT THE EXPENSE AND RISK OF YOU AND EACH OF YOUR INVESTORS, DICKEY'S MAY ELECT TO CONTROL (BUT UNDER NO CIRCUMSTANCE IS OBLIGATED TO UNDERTAKE), AND ASSOCIATE COUNSEL OF ITS OWN CHOOSING WITH RESPECT TO, THE DEFENSE AND/OR SETTLEMENT OF ANY SUCH ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY OR INVESTIGATION. SUCH AN UNDERTAKING BY DICKEY'S SHALL, IN NO MANNER OR FORM, DIMINISH THE OBLIGATION OF YOU AND EACH OF YOUR INVESTORS TO INDEMNIFY DICKEY'S AND TO HOLD IT HARMLESS.

3. IN ORDER TO PROTECT PERSONS OR PROPERTY OR ITS REPUTATION OR GOODWILL, OR THE REPUTATION OR GOODWILL OF OTHERS, AN INDEMNIFIED PARTY MAY, AT ANY TIME AND WITHOUT NOTICE, AS SUCH INDEMNIFIED PARTY, IN ITS JUDGMENT DEEMS APPROPRIATE, CONSENT OR AGREE TO SETTLEMENTS OR TAKE SUCH OTHER REMEDIAL OR CORRECTIVE ACTION AS SUCH INDEMNIFIED PARTY DEEMS EXPEDIENT WITH RESPOND TO THE ACTION, SUIT, PROCEEDING, CLAIM, DEMAND, INQUIRY OR INVESTIGATION IF, IN SUCH INDEMNIFIED PARTY'S SOLE JUDGMENT, THERE ARE REASONABLE GROUNDS TO BELIEVE THAT:

a. ANY OF THE ACTS OR CIRCUMSTANCES ENUMERATED IN ARTICLE 9.D.1 ABOVE HAS OCCURRED; OR

b. ANY ACT, ERROR OR OMISSION AS DESCRIBED IN ARTICLE 9.D.1.E MAY RESULT DIRECTLY OR INDIRECTLY IN DAMAGE, INJURY OR HARM TO ANY PERSON OR ANY PROPERTY.

4. a. ALL LOSSES AND EXPENSES INCURRED UNDER THIS ARTICLE 9 SHALL BE CHARGEABLE TO AND PAID BY YOU OR ANY OF YOUR INVESTORS PURSUANT TO ITS OBLIGATIONS OF INDEMNITY UNDER THIS ARTICLE, REGARDLESS OF ANY ACTION, ACTIVITY OR DEFENSE UNDERTAKEN BY THE INDEMNIFIED PARTY OR THE SUBSEQUENT SUCCESS OR FAILURE OF SUCH ACTION, ACTIVITY OR DEFENSE.



b. AS USED IN THIS ARTICLE 9, THE PHRASE "LOSSES AND EXPENSES" SHALL INCLUDE, WITHOUT LIMITATION, ALL LOSSES, COMPENSATORY, EXEMPLARY OR PUNITIVE DAMAGES, FINES, CHARGES, COSTS, EXPENSES, LOST PROFITS, LEGAL FEES, COURT COSTS, SETTLEMENT AMOUNTS, JUDGMENTS, COMPENSATION FOR DAMAGES TO DICKEY'S REPUTATION AND GOODWILL, COSTS OF OR RESULTING FROM DELAYS, FINANCING, COSTS OF ADVERTISING MATERIAL AND MEDIA TIME/SPACE AND COSTS OF CHANGING, SUBSTITUTING OR REPLACING THE SAME, AND ANY AND ALL EXPENSES OF RECALL, REFUNDS, COMPENSATION, PUBLIC NOTICES AND OTHER SUCH AMOUNTS INCURRED IN CONNECTION WITH THE MATTERS DESCRIBED.

5. NO INDEMNIFIED PARTY ASSUMES ANY LIABILITY FOR ACTS, ERRORS OR OMISSIONS OF THOSE WITH WHOM YOU, ANY OF YOUR INVESTORS OR YOUR SUBSIDIARIES AND AFFILIATES MAY CONTRACT, REGARDLESS OF THE PURPOSE.

6. UNDER NO CIRCUMSTANCES SHALL ANY INDEMNIFIED PARTY BE REQUIRED OR OBLIGATED TO SEEK RECOVERY FROM THIRD PARTIES OR OTHERS OR MITIGATE THEIR LOSSES TO MAINTAIN A CLAIM AGAINST YOU OR ANY OF YOUR INVESTORS. YOU AND EACH OF YOUR INVESTORS AGREE THAT THE FAILURE TO PURSUE SUCH RECOVERY OR MITIGATE LOSS WILL IN NO WAY REDUCE THE AMOUNTS RECOVERABLE ON YOU OR ANY OF YOUR INVESTORS BY ANY INDEMNIFIED PARTY PURSUANT TO THIS ARTICLE.

7. You and your Investors expressly agree that the terms of this Article 9.D. shall survive the termination, expiration or transfer of this Agreement or any interest herein.

#### **ARTICLE 10 APPROVALS**

A. Whenever this Agreement requires the prior approval or consent of Dickey's, you shall make a timely written request to Dickey's and such approval or consent shall be obtained in writing.

B. Dickey's makes no warranties or guarantees upon which you may rely and assumes no liability or obligation to you or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or suggestion to you in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefor.

#### **ARTICLE 11 NON-WAIVER AND REMEDIES**

A. No delay, waiver, omission or forbearance on the part of Dickey's to exercise any right, option, duty or power arising out of any breach or default by you or your Investors under this Agreement shall constitute a waiver by Dickey's to enforce any such right, option, duty or power against you or your Investors, or as to a subsequent breach or default by you or your Investors. Acceptance by Dickey's of any payments due to it hereunder subsequent to the time at which such payments are due shall not be deemed to be a waiver by Dickey's of any preceding breach by you or your Investors of any terms, provisions, covenants or conditions of this Agreement.

B. All rights and remedies of the parties to this Agreement shall be cumulative and not alternative, in addition to and not exclusive of any other rights or remedies which are provided for herein or which may be available at law or in equity in case of any breach, failure or default or threatened breach, failure or default of any term, provision or condition of this Agreement or any other agreement between you and Dickey's or its subsidiaries and affiliates. The rights and remedies of the parties to this Agreement shall be continuing and shall not be exhausted by any one or more uses thereof and may be exercised at any time or from time to time as often as may be expedient; and any option or election to

enforce any such right or remedy may be exercised or taken at any time and from time to time. The expiration, earlier termination or exercise of Dickey's rights pursuant to Article 6 of this Agreement shall not discharge or release you or any of your Investors from any liability or obligation then accrued, or any liability or obligation continuing beyond, or arising out of, the expiration, the earlier termination or the exercise of such rights under this Agreement.

## ARTICLE 12 NOTICES

A. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or mailed by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by prepaid facsimile (provided that the sender confirms the facsimile by sending an original confirmation copy by certified or registered mail or expedited delivery service within three (3) business days after transmission) to you at the address first set forth above, or to Dickey's at the following address unless and until a different address has been designated by written notice to the other party:

Notices to Dickey's:

Dickey's Barbecue Restaurants, Inc.  
801 E. Plano Parkway, #135  
Plano, Texas 75074  
Attn: Roland Dickey, Jr.  
Telephone: (972) 423-2201; Facsimile: (972) 423-2232

With a copy to:

Dickey's Barbecue Restaurants, Inc.  
4514 Cole Avenue, Suite 1015  
Dallas, Texas 75205  
Attn: Legal Department  
Facsimile: (972) 248-8667

Notice to you shall be sent to the address set forth on page 1 of this Agreement.

B. Any notice shall be deemed to have been given at the time of personal delivery or, in the case of facsimile, telegram or telex, upon transmission (provided confirmation is sent as described above) or, in the case of expedited delivery service or registered or certified mail, three (3) business days after the date and time of mailing. Any change in the above addresses shall be made by giving fifteen (15) calendar days written notice of the change to the other party.

## ARTICLE 13 ENTIRE AGREEMENT, SEVERABILITY AND CONSTRUCTION

A. This Agreement, the documents referred to herein, the attachments hereto, any addenda and any Transfer Agreement, if applicable, constitute the entire, full and complete Agreement between Dickey's, you, your Owner/Operator and your Investors concerning the subject matter hereof and supersede all prior related agreements (both written and oral) between Dickey's, you, your Owner/Operator and your Investors. **You, your Owner/Operator and your Investors hereby acknowledge that they are not relying upon any information, representation or promise by Dickey's in entering this Agreement or in connection with the relationship contemplated hereunder. CUSTOMER FURTHER WAIVES ANY CLAIM OF NEGLIGENT MISREPRESENTATION OR FRAUDULENT INDUCEMENT.** Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require you to waive reliance on any representation made by Dickey's in its most recent franchise disclosure document (including exhibits and amendments) delivered to you or your representative. Except for those permitted to be made unilaterally by Dickey's hereunder, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by Dickey's and you and executed by their authorized officers or agents in writing.

B. Except as expressly provided to the contrary herein, each portion, article, part, term and provision of this Agreement shall be considered severable; and if, for any reason, any portion, article, part, term or provision is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, this shall not impair the operation of, or have any other effect upon, the other portions, articles, parts, terms or provisions of this Agreement that remain otherwise enforceable, and the latter shall continue to be given full force and effect and bind the parties; and the invalid portions, articles, parts, terms or provisions shall be deemed not to be part of this Agreement.

C. Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than you, Dickey's, Dickey's officers, directors and personnel and such of your and Dickey's respective successors and assigns as may be contemplated (and, as to you, authorized by Article 7), any rights or remedies under or as a result of this Agreement.

D. All captions in this Agreement are intended solely for the convenience of the parties and shall not affect the meaning or construction of any provision of this Agreement.

E. All references to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable. Without limiting the obligations individually undertaken by your Investors under this Agreement, all acknowledgments, promises, covenants, agreements and obligations made or undertaken by you in this Agreement shall be deemed jointly and severally undertaken by all of your Investors.

F. Unless otherwise agreed to in writing between the parties, the term "Investor" as used in this Agreement shall include, collectively or individually, (i) if you are an individual, your spouse and (ii) if you are an entity, (a) each person or entity who now or hereafter executes this Agreement as an Investor or executes an agreement in which such person or entity agrees to be bound by this Agreement as an Investor, and (b) each such other person or entity which is required by Dickey's as a condition to a Transfer or otherwise pursuant to this Agreement to execute this Agreement as one of your Investors or an agreement by which such person or entity agrees to be bound by this Agreement as an Investor. For purposes of this Agreement, the term "Investor" shall also refer to your Owner/Operator. The Owner/Operator shall be one of your Investors unless otherwise agreed to between the you and Dickey's, in accordance with certain ownership conditions.

G. This Agreement may be executed in counterparts and each copy so executed shall be deemed an original.

H. This Agreement shall not become effective until signed by a President or more senior officer of Dickey's.

I. Each reference in this Agreement to a corporation, limited liability company or partnership shall be deemed to refer to each and any of the foregoing entities interchangeably and to any other entity or organization. Further, each reference to the organizational documents, equity owners, partners, directors, managers, general partners, and officers of a corporation, limited liability company or partnership shall be deemed to refer to each and any of the foregoing interchangeably and to the functional equivalent of the foregoing for any entity or organization.

#### **ARTICLE 14 APPLICABLE LAW: MEDIATION**

A. **Subject only to Article 14.C, the parties agree to submit all disputes, controversies, claims, causes of action and/or alleged breaches or failures to perform arising out of or relating to this Agreement (and any attachments or addenda to this Agreement or any provision herein) or the relationship created by this Agreement (collectively, "Disputes") to non-binding mediation prior to filing any action in court or any in arbitration with respect to the Dispute. The mediation**

shall be conducted in Collin County, Texas. The parties shall attempt to select a mediator by agreement of the parties so long as the mediator selected is experienced in the mediation of disputes in the franchise and food service businesses. If the parties are unable to agree upon such a mediator within a reasonable period of time (not to exceed fifteen (15) days, then the mediation of any Dispute shall be submitted by either party to the American Arbitration Association ("AAA") for resolution in accordance with its rules governing mediation, at the office of the AAA located nearest to Dickey's corporate headquarters in Plano, Collin County, Texas. The costs and expenses of mediation, including compensation and expenses of the mediator, shall be borne by the parties equally. If the parties are unable to resolve the Dispute within ninety (90) days after the mediator has been appointed, then either party may submit such Dispute to binding arbitration in accordance with Article 14.B below.

B. Subject only to Article 14.A and 14.C, all Disputes that are not resolved through mediation in accordance with Article 14.A, including all disputes relating to the scope, validity, or enforceability of this Arbitration Agreement and any provision in this Section 14.B, shall be submitted for binding arbitration to the office of the AAA located nearest to Dickey's corporate headquarters in Plano, Collin County, Texas, on demand of either party. Such arbitration proceedings shall be conducted by an arbitrator who is experienced in the arbitration of disputes in the franchise and food service businesses, if such an arbitrator is available, and in accordance with the then current commercial arbitration rules of the AAA. The arbitrator(s) shall have the right to award or include in their award any relief which they deem proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the due date), specific performance and injunctive relief. Provided, that, to the fullest extent permitted by law, the parties stipulate and agree that the arbitrators shall not provide for, and no arbitration award shall include, any punitive or exemplary damages, all of which are hereby waived by the parties. The award and decision of the arbitrator(s) shall be conclusive and binding upon all parties and adjustment may be taken on the award notwithstanding the termination or expiration of this Agreement. Dickey's and you agree that arbitration shall be conducted on an individual, not a class-wide basis. Dickey's and you agree that any arbitration between Dickey's and you shall not be consolidated with any other arbitration that may be taking place between Dickey's and other party.

C. Notwithstanding anything herein to the contrary, either party may bring an action in any court having jurisdiction and without first submitting such action to mediation or arbitration (a) for injunctive relief or other extraordinary relief, (b) involving the possession or disposition of, or other relief relating to real property, or (c) in aid of enforcing the parties' obligations to arbitrate under Article 14.B above.

D. You have signed this Agreement and submitted it to Dickey's for acceptance and execution by Dickey's at Dickey's corporate headquarters in Plano, Collin County, Texas. You shall make all payments and perform other obligations arising hereunder at Collin County, Texas, and this Agreement is made and entered into at Collin County, Texas. The provisions of this Article 14.D shall apply to the fullest extent permitted under applicable state law.

E. THIS AGREEMENT IS EXECUTED AND DELIVERED IN CONNECTION WITH A TRANSACTION NEGOTIATED AND CONSUMMATED IN COLLIN COUNTY, TEXAS. ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), OR OTHER FEDERAL LAW, THIS AGREEMENT AND ANY AND ALL CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES (REGARDLESS OF THE FORM OF THE CAUSE OF ACTION ASSERTED) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THE PARTIES AGREE THAT, WITH RESPECT TO ANY SUCH CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PARTIES' RELATIONSHIP CREATED BY THIS AGREEMENT, ANY SUCH CONTROVERSIES, DISPUTES, OR ACTIONS SHALL BE BROUGHT, MAINTAINED, AND CONCLUDED EXCLUSIVELY IN THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN

DISTRICT OF TEXAS, SHERMAN DIVISION. YOU, FOR YOURSELF AND YOUR SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY (A) SUBMIT TO THE JURISDICTION OF THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION, (B) WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT YOU MAY NOW OR IN THE FUTURE HAVE TO THE LAYING OF VENUE OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SET FORTH ABOVE; AND , (C) WAIVE ANY OBJECTION YOU MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. YOU HEREBY IRREVOCABLY AGREE THAT SERVICE OF PROCESS MAY BE MADE UPON YOU IN ANY LEGAL PROCEEDING RELATING TO ANY DISPUTE BY ANY MEANS ALLOWED BY TEXAS LAW. You and Dickey's acknowledge that the parties' agreement regarding applicable state law and forum set forth herein provide each of the parties with the mutual benefit of uniform interpretation of this Agreement and any Dispute covered herein. You and Dickey's further acknowledge the receipt and sufficiency of mutual consideration for such benefit. Notwithstanding the foregoing, the parties acknowledge and agree that either party may institute legal action for injunctive relief in any court of competent jurisdiction as set forth in Section 14.C above.

F. **JURY TRIAL WAIVER.** TO THE EXTENT PERMITTED UNDER APPLICABLE STATE LAW, YOU AND DICKEY'S IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.

G. **WAIVER OF PUNITIVE AND EXEMPLARY DAMAGES.** TO THE EXTENT PERMITTED UNDER APPLICABLE STATE LAW, THE PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF COMPENSATORY DAMAGES SUFFERED BY THE PARTY.

H. You and Dickey's acknowledge that the parties' agreement regarding applicable state law and forum set forth in Article 14.E provide each of the parties with the mutual benefit of uniform interpretation of this Agreement and any Dispute. You and Dickey's further acknowledge the receipt and sufficiency of mutual consideration for such benefit. Notwithstanding the foregoing, the provisions of this Article 14.H shall only apply to the extent permitted under applicable state law.

I. **INDIVIDUAL CAPACITY.** In the event that an action in court is permitted, any legal action commenced by either party shall be brought in an individual capacity, and not on a class-wide basis. **All parties waive their rights to initiate a class-action lawsuit in any court.**

J. **STATUTE OF LIMITATIONS.** Except where not permitted by law, any claim or cause of action asserted by either party arising out of or related to use of this Agreement or the relationship of the parties must be filed within 2 years after such claim or cause of action arose or be forever barred when the applicable statute of limitations is greater than 2 years. This provision does not affect or apply to any claim or cause of action where the applicable statute of limitations is less than 2 years.

## **ARTICLE 15 ACKNOWLEDGMENTS**

A. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that the success of this business venture involves substantial business risks and will largely depend upon the your ability. Dickey's expressly disclaims making and you acknowledge that it has not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits or success of the business venture contemplated by this

Agreement. You acknowledge that you have completed and submitted to Dickey's the Developer Questionnaire, in the form of **Attachment C**, and that your responses were truthful and well considered.

B. You acknowledge that you have received, read and understand this Agreement and the related Attachments and agreements and that Dickey's has accorded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

C. You acknowledge that you received from Dickey's a complete copy of Dickey's Franchise Disclosure Document ("the Disclosure Document"), this Agreement and the related attachments and agreements at least fourteen (14) calendar days prior to the date on which this Agreement was executed and the date on which you first made any payments to Dickey's or an affiliate in connection with any transaction contemplated by this Agreement. You acknowledge that you received a copy of this Agreement and the related attachments and agreements in the form executed by you at least seven (7) calendar days prior to the date on which this Agreement was executed and you paid us the Development Fee.

D. You represent to Dickey's that neither Dickey's nor its agents or representatives have made any representations, and you have not relied on any representations made by Dickey's or its agents or representatives, concerning actual or potential sales or profits of a Dickey's Restaurant.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement on the day and year first above written.

**DICKEY'S:**

DICKEY'S BARBECUE RESTAURANTS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Roland Dickey, Jr., President

**YOU:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **CONSENT OF DEVELOPER'S INVESTORS**

Each of the undersigned acknowledges and agrees as follows:

1. Each has read the terms and conditions of this Agreement and acknowledges that the execution of this guaranty and their undertakings as your Investors under the Agreement are in partial consideration for the granting of the development rights in the Development Agreement, and that Dickey's would not have granted such rights without the execution of this guaranty and these undertakings by each of the undersigned;

2. Each is included in the term "Investors" as described in Article 13.E of the Agreement;

3. Each individually, jointly and severally makes all of the covenants, representations, warranties and agreements of your Investors set forth in the Agreement (including without limitation the covenants set forth in Article 5.B.5 and Article 8) and is obligated to perform thereunder;

4. Each of the undersigned agrees that during the term of the Development Agreement and while the undersigned satisfies the definition of a "Investor" in Article 26.3.3, except as otherwise approved in writing by Dickey's, the undersigned shall not, either directly or indirectly, on behalf of the undersigned or through, on behalf of or in conjunction with any person, partnership, corporation or other entity:

i. Divert or attempt to divert any business or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Dickey's Proprietary Marks and the System;

ii. Employ or seek to employ any person who is at that time employed by Dickey's, by an affiliate of Dickey's, or by any other franchisee or developer of Dickey's, or otherwise directly or indirectly induce such person to leave that person's employment, except as may be permitted under any existing development agreement or franchise agreement between Dickey's and you; or

iii. Own, maintain, operate, engage in or have any financial or beneficial interest in (including interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations, joint ventures or other entities), advise, assist or make loans to, any business that is similar to or competitive with the franchised business including, but not limited to, any restaurant or catering business that offers smoked meats or barbecue-style food, including chopped beef brisket, sliced beef brisket, pulled pork, Virginia style ham, marinated chicken breast, turkey breast, polish sausage, spicy cheddar sausage, or pork ribs as a primary or featured menu item located in the United States or any other jurisdiction in which Dickey's has registered or sought registration of its Proprietary Marks.

5. Each of the undersigned agrees that for a continuous uninterrupted period commencing upon: (a) the expiration or termination of the Franchise Agreement, (2) transfer of the franchisee's interest in the Franchise Agreement, (3) the time such individual or entity ceases to satisfy the definition of a "Investor" in Article 26.3.3 (whichever is earliest to occur), and for two (2) years thereafter (which two-year period shall be tolled during any period of noncompliance), except as otherwise approved in writing by Dickey's, the undersigned shall not, either directly or indirectly, for yourselves or through, on behalf of or in conjunction with any person, partnership, corporation or other entity:

i. Divert or attempt to divert any business or customer of the franchised business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Dickey's Proprietary Marks and the System;

ii. Employ or seek to employ any person who is at that time employed by Dickey's, by an affiliate of Dickey's, or by any other franchisee or developer of Dickey's, or otherwise directly or indirectly induce such person to leave that person's employment, except as may be permitted under any existing development agreement or franchise agreement between Dickey's and you; or

iii. Own, maintain, operate, engage in or have any financial or beneficial interest in (including interest in corporations, limited liability companies, partnerships, trusts, unincorporated associations, joint ventures or other entities), advise, assist or make loans to, any business that is similar to or competitive with the franchised business including, but not limited to, any restaurant or catering business that offers smoked meats or barbecue-style food, including chopped beef brisket, sliced beef brisket, pulled pork, Virginia style ham, marinated chicken breast, turkey breast, polish sausage, spicy cheddar sausage, or pork ribs as a primary or featured menu item, which business is, or is intended to be, located within a thirty (30)-mile radius of the location accepted hereunder or within a five (5)-mile radius of any Restaurant in existence or under construction as of date the time period set forth in Article 18.2.B commences for you or your Investor, as applicable.

6. Each individually, jointly and severally, unconditionally, and irrevocably guarantees to Dickey's that all of your obligations under this Agreement will be punctually paid and performed. Upon default by you or upon notice from Dickey's, each will immediately make each payment and perform each obligation required of you under this Agreement. Without affecting the obligations of any of your Investors under this guaranty, Dickey's may, without notice to your Investors, waive, renew, extend, modify, amend or release any indebtedness or obligation of you or settle, adjust or compromise any claims that Dickey's may have against you. Each of your Investors waives all demands and notices of every kind with respect to the enforcement of this guaranty, including, without limitation, notice of presentment, demand for payment or performance by you, any default by you or any guarantor and any release of any guarantor or other security for this Agreement or your obligations hereunder. Dickey's may pursue its rights against any of your Investors without first exhausting its remedies against you and without joining any other guarantor hereto, and no delay on the part of Dickey's in the exercise of any right or remedy shall operate as a waiver of such right or remedy, and no single or partial exercise by Dickey's of any right or remedy shall preclude the further exercise of such right or remedy. Upon receipt by Dickey's of notice of the death of any of your Investors, the estate of the deceased will be bound by the foregoing guaranty, but only for defaults and obligations under this Agreement existing at the time of death, and in such event, the obligations of the remaining your Investors shall continue in full force and effect.

7. Each represents and warrants that, as of the date of this Agreement, each undersigned person executing this Agreement as an Owner/Operator has been designated as an Owner/Operator, and each such person meets all of the qualifications set forth in this Agreement for an Owner/Operator.

8. Additionally, with respect to the individual designated as Owner/Operator, Owner/Operator acknowledges that the undertakings by Owner/Operator under this Agreement are made and given in partial consideration of, and as a condition to, Dickey's grant of rights to develop Restaurants as described herein. Owner/Operator individually, jointly and severally makes all of the covenants, representations and agreements of you and Owner/Operator set forth in this Agreement and is obligated to perform hereunder.

[SIGNATURE PAGE FOLLOWS]



**OWNER/OPERATOR:**

[Individual]

\_\_\_\_\_  
\_\_\_\_\_, an individual

**INVESTORS:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT A**

**DICKEY'S BARBECUE RESTAURANTS, INC.**

**FRANCHISE AGREEMENT**

[If Not Attached, See Exhibit A to Franchise Disclosure Document]

**ATTACHMENT B**

**STATEMENT OF OWNERSHIP INTERESTS**

<b>Name (Full Legal Name)</b>	<b>Address and Telephone No.</b>	<b>Type of Ownership Interest</b>	<b>Entity in which Ownership Interest is Held</b>	<b>Ownership %</b>
1.				
2.				
3.				
4.				

## **ATTACHMENT C**

### **DEVELOPER QUESTIONNAIRE**

Dickey's Barbecue Restaurants, Inc., a Texas corporation ("Dickey's") and you (the "Developer") are preparing to enter into a Development Agreement for the development of more than one Dickey's® Barbecue Pit restaurant franchise (the "Restaurants"). The purpose of this Questionnaire (herein so called) is to determine whether any statements or promises were made to you that Dickey's has not authorized and that may be untrue, inaccurate or misleading. Please review each of the following questions carefully and provide honest responses to each question.

1. Have you received and personally reviewed Dickey's Franchise Disclosure Document (the "Disclosure Document") provided to you?  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Did you sign a receipt for the Disclosure Document indicating the date you received it?  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. Do you understand the information contained in the Disclosure Document and Development Agreement?  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. Have you received and personally reviewed the Development Agreement and each exhibit attached to it?  
Yes \_\_\_\_\_ No \_\_\_\_\_
5. Do you understand your financial and other obligations under the Development Agreement?  
Yes \_\_\_\_\_ No \_\_\_\_\_
6. Have you independently discussed the economic and business risks of developing, owning and operating the Restaurants with an attorney, accountant or other professional advisor?  
Yes \_\_\_\_\_ No \_\_\_\_\_
7. Do you understand the economic and business risks associated with developing, owning and operating the Restaurant?  
Yes \_\_\_\_\_ No \_\_\_\_\_
8. Do you understand that the success or failure of the Restaurants will depend in large part upon your ability to timely identify and open Restaurant locations in your territory, skills and abilities, the service you provide to your customers, competition, interest rates, the economy, inflation, labor and supply costs, lease terms, real estate and the marketplace?  
Yes \_\_\_\_\_ No \_\_\_\_\_

9. Do you understand and agree that any disputes arising under the Development Agreement are subject to arbitration governed under Texas law, and that you are waiving your right to bring a class-action?
- Yes \_\_\_\_\_ No \_\_\_\_\_
10. Do you understand and agree that no financial performance representation has been made by Dickey's in the Disclosure Document (including with regard to the performance of its franchised outlets or company-owned outlets and the potential performance of your outlet), that Dickey's does not make any such representations, and that Dickey's, its employees and other persons speaking on behalf of Dickey's have not made any such representations?
- Yes \_\_\_\_\_ No \_\_\_\_\_
11. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else regarding the amount of money you may earn in developing and operating the Restaurants?
- Yes \_\_\_\_\_ No \_\_\_\_\_
12. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else concerning the total revenues the Restaurants may generate?
- Yes \_\_\_\_\_ No \_\_\_\_\_
13. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else regarding the costs involved in developing and operating the Restaurants that are contrary to, or different from, the information contained in the Disclosure Document?
- Yes \_\_\_\_\_ No \_\_\_\_\_
14. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else concerning the actual, average or projected profits or earnings or the likelihood of success that you should or might expect from developing and operating the Restaurants?
- Yes \_\_\_\_\_ No \_\_\_\_\_
15. Has any employee or other person speaking on behalf of Dickey's made any statement or promise to you or anyone else, other than those matters addressed in your Development Agreement that is contrary to, or different from, the information contained in the Disclosure Document?
- Yes \_\_\_\_\_ No \_\_\_\_\_
16. Has any employee or other person speaking on behalf of Dickey's made any promises or agreements that is contrary to, different from, or in addition to, the matters set forth in the Development Agreement?
- Yes \_\_\_\_\_ No \_\_\_\_\_
17. If you answered "Yes" to any of the questions 11 through 16, please provide a full explanation of your answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below). If you answered "No" to each of the foregoing questions, please leave the following lines blank.
- \_\_\_\_\_

- 
- 
18. Do you understand that the Development Agreement and attachments to the Development Agreement contain the entire agreement between us and you concerning the franchise for the Development Agreement, meaning any prior oral or written statements not set out in the Development Agreement or the attachments to the Development Agreement will not be binding? When considering this question, please note that nothing in the Development Agreement or the attachments to the Development Agreement will disclaim or require you (the franchisee) to waive reliance on any representation that we made in our most recent franchise disclosure document (including its exhibits and amendments) delivered to you or your representative.

Yes \_\_\_\_\_ No \_\_\_\_\_

You understand that your answers are important to us and that we will rely on them.

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions.

Further, by signing this Questionnaire, you agree that Dickey's has properly provided you with all of the appropriate franchise disclosures and has not made any financial claims or representations to you. You agree to hold harmless and release Dickey's and its affiliates, shareholders, officers, directors, agents, attorneys, successors and assigns from any and all liability in connection with the sale of the franchise to the extent that any statement or representation made herein is determined to be false and misleading and to the extent permitted under applicable law.

**DEVELOPER:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT D**  
**STATE ADDENDA**

**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO THE  
ILLINOIS FRANCHISE DISCLOSURE ACT**

The following provisions supersede and control any conflicting provisions of the Development Agreement:

1. Illinois law applies to this Agreement and supersedes any conflicting provision of the Development Agreement.

2. Subject to the parties' arbitration obligation in Section 14 of the Development Agreement, all litigation by or between you and us, arising directly or indirectly from the franchise relationship, shall be commenced and maintained, at our election, in the state courts of Illinois or the United States District Court for Illinois with the specific venue, in either court system, determined by appropriate jurisdiction and venue requirements.

3. If any of the provisions of the Development Agreement are inconsistent with applicable state law, then the state law shall apply to the extent such law is constitutional and valid as applied.

4. Pursuant to 815 IL 705/41, no release or waiver language set forth in the Development Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the Illinois Franchise Disclosure Act or any other law of the State of Illinois.

5. All other rights, obligations, and provisions of the Development Agreement shall remain in full force and effect. Only the Sections specifically added to or amended by this Addendum shall be affected. This Addendum is incorporated in and made a part of the Development Agreement for the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**DICKEY'S:**

**DICKEY'S BARBECUE RESTAURANTS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)



**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO THE  
MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

1. Any general release required to be executed by you as a condition to renewal, sale, transfer and/or assignment of this Agreement will not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

2. Any acknowledgements or representations of the developer that disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

3. Subject to the parties' arbitration obligation in Section 14 of the Development Agreement, any provision of this Agreement which designates jurisdiction or venue outside of the State of Maryland or requires you to agree to jurisdiction or venue in a forum outside of the State of Maryland is void with respect to any claim arising under the Maryland Franchise Registration and Disclosure Law.

4. Any provision of this Agreement which purports to limit or reduce the time in which you may assert a claim against Dickey's shall not reduce the statute of limitations afforded to you for bringing a claim arising under the Maryland Franchise Registration and Disclosure Law. Any claim arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the franchise. For avoidance of doubt, the arbitrator in any arbitration proceeding brought under Article 14 has the power to decide any claims brought under the Maryland Franchise Registration and Disclosure Law. The parties acknowledge that the Federal Arbitration Act, 9 U.S.C. §1, et. seq., shall be controlling,

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**DICKEY'S:**

**DICKEY'S BARBECUE RESTAURANTS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO  
THE MINNESOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede any conflicting provisions in the Development Agreement:

1. Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the developer to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Development Agreement can abrogate or reduce any of the developer's rights as provided for in Minnesota Statutes, Chapter 80C, or the developer's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.
2. Minnesota law provides developers with certain termination rights and non-renewal rights. Minnesota Statutes, Section 80C.14, Subdivisions 3, 4 and 5 require, except in certain specified cases, that a developer be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the development agreement.
3. No release language set forth in the Development Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the state of Minnesota.
4. Notwithstanding any provisions of the Development Agreement to the contrary, to the extent required under applicable Minnesota law, a court of competent jurisdiction will determine whether Dickey's will be required to post a bond or other security, and the amount of such or other security, in any injunctive proceeding commenced by Dickey's against you, your shareholders/investors or the guarantors of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**DICKEY'S:**

**DICKEY'S BARBECUE RESTAURANTS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**ADDENDUM TO THE DEVELOPMENT AGREEMENT PURSUANT TO THE  
NORTH DAKOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede any conflicting provisions in the Development Agreement:

1. The Development Agreement will be governed and construed under the laws of the State of North Dakota. Any provision in the Development Agreement which designates jurisdiction or venue, or requires the developer to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from any Development Agreement issued in the State of North Dakota.

2. No release language set forth in the Development Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws of the State of North Dakota.

3. Any provisions in the Development Agreement which require the developer to waive the right to a jury trial or to exemplary or punitive damages are deleted from any Development Agreements issued in the State of North Dakota.

4. Any arbitration or mediation authorized in the Development Agreement shall be held at a site agreeable to all parties.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Addendum on the day and year first above written to evidence their agreement to the foregoing provisions, which shall control over any conflicting provisions set forth in the Agreement.

**DICKEY'S:**

**DICKEY'S BARBECUE RESTAURANTS, INC.**, a Texas corporation

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**DEVELOPER:**

\_\_\_\_\_  
(Signature of Authorized Officer, Title)

\_\_\_\_\_  
(Print Name of Authorized Officer)

**EXHIBIT C**  
**GENERAL RELEASE**

Ex. C

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
**GRANT OF FRANCHISOR CONSENT AND FRANCHISEE RELEASE**

**DICKEY'S BARBECUE RESTAURANTS, INC.** (“we,” “us,” “our,” or “Franchisor”) and \_\_\_\_\_ the \_\_\_\_\_ undersigned \_\_\_\_\_ franchisee, \_\_\_\_\_ (“you,” “your,” or “Franchisee”), currently are parties to a certain franchise agreement dated \_\_\_\_\_ (the “Franchise Agreement”). You have asked us to take the following action or to agree to the following request: [insert as appropriate for renewal or transfer situation]\_\_\_\_\_

\_\_\_\_\_. We have the right under the Franchise Agreement to obtain a general release from you (and, if applicable, your owners) as a condition of taking this action or agreeing to this request. Therefore, we are willing to take the action or agree to the request specified above if you (and, if applicable, your owners) give us the release and covenant not to sue provided below in this document. You (and, if applicable, your owners) are willing to give us the release and covenant not to sue provided below as partial consideration for our willingness to take the action or agree to the request described above.

Consistent with the previous introduction, you, on your own behalf and on behalf of your successors, heirs, personal representatives, executors, administrators, personal representatives, agents, contractors, assigns, partners, shareholders, members, directors, officers, members, principals, employees, parents, subsidiaries, and affiliated entities (collectively, the “Releasing Parties”), hereby forever release and discharge us and our affiliates, our and their current and former officers, directors, shareholders, members, principals, employees, agents, representatives, contractors, parents, subsidiaries, affiliated entities, successors, heirs, and assigns (collectively, the “Franchisor Parties”) from any and all claims, damages (known and unknown), demands, causes of action, suits, duties, liabilities, and agreements of any nature and kind (collectively, “Claims”) that you and any of the other Releasing Parties now has, ever had, or, but for this document, hereafter would or could have against any of the Franchisor Parties arising out of or related to (1) the Franchisor Parties’ obligations under the Franchise Agreement, (2) the offer, sale, administration, performance, default, and any termination, if applicable, of the Franchise Agreement, (3) our own negligence, fraud, misrepresentation(s), or deceptive trade practices regarding any and all past, present, or future claims and causes of action that arise from the purchase and operation of your Dickey's Barbecue Restaurant or arising out of the Franchise Agreement, or (4) otherwise arising from or related to your and the other Releasing Parties’ relationship, from the beginning of time to the date of your signature below, with any of the Franchisor Parties. You, on your own behalf and on behalf of the other Releasing Parties, further covenant not to sue any of the Franchisor Parties on any of the Claims released by this paragraph and represent that you have not assigned any of the Claims released by this paragraph to any individual or entity that is not bound by this paragraph.

We also are entitled to a release and covenant not to sue from your owners. By his, her, or their separate signatures below, your transferring owners likewise grant to us the release and covenant not to sue provided above.

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
a Texas corporation

**FRANCHISEE,**  
a/an \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT D

### STATE FRANCHISE REGULATORY AUTHORITIES

The following list contains names, addresses and telephone numbers of state and federal agency personnel having responsibility for franchising disclosure/registration laws and selected business opportunity laws. Entries for the Federal Trade Commission appear at the end of the list.

#### **CALIFORNIA**

Department of Business Oversight

*Los Angeles*

320 West 4<sup>th</sup> St., Suite 750

Los Angeles, CA 90013-2344

(213) 576-7500 (866) 275-2677

*Sacramento*

1515 K. St. Suite 200

Sacramento, CA 95814-4052

(916) 445-7205

*San Diego*

1350 Front St., Room 2034

San Diego, CA 92101-3697

(619) 525-4233

*San Francisco*

71 Stevenson Street, Suite 2100

San Francisco, CA 94105-2980

(415) 972-8559

#### **HAWAII**

Commissioner of Securities

Business Regulation Division

Dept. of Commerce and Consumer Affairs

335 Merchant Street, Rm 205

Honolulu, HI 96813

(808) 586-2722

#### **ILLINOIS**

Franchise Bureau

Office of Attorney General

500 South Second Street

Springfield, IL 62706

(217) 782-4465

#### **INDIANA**

Indiana Securities Division

Franchise Section

Indiana Government Center South

302 West Washington, Room E-111

Indianapolis, IN 46204

(317) 232-6681

#### **MARYLAND**

Office of Attorney General

Securities Division

200 Saint Paul Place

Baltimore, MD 21202-2020

(410) 576-6360

#### **MICHIGAN**

Department of Attorney General

Consumer Protection Division

Antitrust and Franchise Unit

670 Law Building

Lansing, MI 48913

(517) 373-7117

#### **MINNESOTA**

Minnesota Department of Commerce

Registration Division

85 7<sup>th</sup> Place East, Suite 500

St. Paul, MN 55101-21198

(651) 539-1600

#### **NEW YORK**

Office of Attorney General

Franchise Section

120 Broadway, 23<sup>rd</sup> Floor

New York, NY 10271

(212) 416-8222

#### **NORTH DAKOTA**

Securities Department

600 E. Boulevard Ave.

State Capitol - 5<sup>th</sup> Floor

Bismarck, ND 58505-0510

(701) 328-2910

#### **OREGON**

Department of Consumer and Business  
Services

Division of Finance and Corporate Securities

Labor and Industries Building

Salem, OR 97310

(503) 378-4140

**RHODE ISLAND**

Department of Business Regulation  
Securities Division  
John O. Pastore Complex  
1511 Pontiac Avenue, Bldg. 69-1  
Cranston, RI 02910  
(401) 222-3048

**SOUTH DAKOTA**

Department of Labor and Regulation  
Division of Securities  
124 S. Euclid Ave., Suite 104  
Pierre, SD 57501  
(605) 773-5953

**VIRGINIA**

State Corporations Commission  
Division of Securities and Retail Franchising  
P.O. Box 1197  
Richmond, VA 23218  
(804) 371-9051

**WASHINGTON**

Department of Financial Institutions  
Securities Division  
P.O. Box 9033  
Olympia, WA 98507-9033  
(360) 902-8760

**WISCONSIN**

Division of Securities  
Department of Financial Institutions  
P.O. Box 1768  
Madison, WI 53701  
(608) 266-8557



**EXHIBIT E**

**AGENTS FOR SERVICE OF PROCESS**

California:	Commissioner of the Department of Business Oversight, 1515 K St., Sacramento, California 95814
Hawaii:	Commissioner of Securities, Business Registration Division, Department of Commerce and Consumer Affairs, 335 Merchant Street, Room 205, Honolulu, Hawaii 96813
Illinois:	Illinois Attorney General, 500 South Second Street, Springfield, Illinois 62706
Indiana:	Indiana Secretary of State, 201 State House, 200 West Washington Street, Indianapolis, Indiana 46204
Maryland:	Maryland Securities Commissioner at the Office of Attorney General-Securities Division, 200 St. Paul Place, Baltimore, Maryland 21202
Minnesota:	Commissioner of Commerce, 85 7th Place East, Suite 500, St. Paul, Minnesota 55155
New York:	New York Secretary of State, 99 Washington Ave., 6th Floor, Albany, New York 12231
North Dakota:	Securities Commissioner, 600 East Boulevard, Fifth Floor, Bismarck, North Dakota 58505
Rhode Island:	Director of the Rhode Island Department of Business Regulation, Securities Division, 233 Richmond Street, Providence, Rhode Island 02903
South Dakota:	Director of the Division of Securities, 124 S. Euclid Ave., Suite 104, Pierre, SD 57501
Virginia:	Clerk of the State Corporation Commission, 1300 East Main Street, First Floor, Richmond, Virginia 23219
Washington:	Director of Financial Institutions, P. O. Box 9033, Olympia, Washington 98507
Wisconsin:	Commissioner, Division of Securities, 345 West Washington Avenue, 4 <sup>th</sup> Floor, Madison, Wisconsin 53701-1768

**EXHIBIT F**

**STATE ADDENDA TO DISCLOSURE DOCUMENT**

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO CALIFORNIA FRANCHISE  
INVESTMENT LAW**

1. The California franchise investment law requires that a copy of all proposed agreements relating to the sale of the franchise be delivered together with the Disclosure Document.
2. In November, 2013, we entered into a Franchise Agreement with a franchisee in California in an exempt transaction after our annual registration had lapsed, and before our new registration became effective. We did not timely file the post-transaction notice of exempt transaction and pay the related filing fee. We consider this a technical violation of the California Franchise Investment Law. As a condition to our registration in California, we agreed to offer rescission to the franchisee, pay a filing fee to the Department and include this notice in the California Addendum of our FDD.
3. In January 2014, we entered into four Franchise Agreements with franchisees in California in exempt transaction after our annual registration had lapsed, and before our new registration became effective. We did not timely file the post-transaction notice of exempt transaction and pay the related filing fee. We consider this a technical violation of the California Franchise Investment Law. As a condition to our registration in California, we agreed to offer rescission to the franchisee, pay a filing fee to the Department and include this notice in the California Addendum of our FDD.
4. In January 2014, we entered into two Franchise Agreements with two franchisees in California after our annual registration expired and before our new registration became effective. As a condition to our registration in California, we agreed to offer rescission to the franchisees, pay fees to the Department and include this notice in the California Addendum of our FDD.
5. The California Business and Professions Code Sections 20000 through 20043 provide rights to franchisees concerning termination or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.
6. The Franchise Agreement and Development Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.).
7. The Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.
8. The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the Franchise and indemnification for the indemnitied's own negligence, breach of contract, breach of warranty, and strict liability. These provisions may not be enforceable under California law.
9. Neither we nor any officer identified in Item 2 of this Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A 78a et seq., suspending or expelling such persons from membership in such association or exchange.
10. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of the Franchise Agreement restricting venue to a forum outside the State of California.

11. The Franchise Agreement requires the application of the laws of Texas. This provision may not be enforceable under California law.
12. Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.
13. You must sign a general release if you renew or transfer your Franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).
14. Website:

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT [WWW.CORP.CA.GOV](http://WWW.CORP.CA.GOV).

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
THE ILLINOIS FRANCHISE DISCLOSURE ACT**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Illinois:

1. Illinois law applies to this transaction and supersedes any conflicting provisions of the Franchise Agreement and Development Agreement, to the extent the application of such law is constitutional and is valid as applied.
2. The provisions of Section 27.5 of the Franchise Agreement and Section 14 of the Development Agreement which designate jurisdiction or venue in a forum outside of the State of Illinois shall not be effective for Franchise Agreements and Development Agreements entered into in Illinois.
3. Pursuant to 815 IL 705/41, no release or waiver language set forth in the Franchise Agreement or the Development Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the Illinois Franchise Disclosure Act or any other law of the State of Illinois.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
THE INDIANA FRANCHISE DISCLOSURE LAW  
AND THE INDIANA DECEPTIVE FRANCHISE PRACTICES ACT**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Indiana:

1. The laws of the State of Indiana supersede any provisions of this Disclosure Document, the Franchise Agreement, the other agreements or Texas law if such provisions are in conflict with Indiana law.
2. The prohibition by Indiana Code 23-2-2.7-1(7) against unilateral termination of the franchise without good cause or in bad faith, good cause being defined therein as a material breach of the Franchise Agreement, shall supersede the provisions of Section 16 of the Franchise Agreement in the State of Indiana, but only to the extent that may be inconsistent with such prohibition.
3. Notwithstanding the Franchise Agreement, you recognize that in the event of any use of the System not in accord with that Agreement, we shall be entitled to seek injunctive and other relief.
4. No release language set forth in the Disclosure Document, Franchise Agreement, or Development Agreement including but limited to Item 17, Sections 2.2, 9.5, or 15.2 of the Franchise Agreement, or Section 7 of the Development Agreement respectively, shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the State of Indiana.
5. Section 27.5 of the Franchise Agreement and Section 14 of the Development Agreement, is amended to provide that each such agreement (as applicable) will be construed in accordance with the laws of the State of Indiana.
6. Any provision in the Disclosure Document, Franchise Agreement, or Development Agreement which designates jurisdiction or venue, or requires franchisee to agree to jurisdiction or venue, in a forum outside of Indiana, may not be enforceable.
7. Section 27.6 (Jury Trial Waiver) of the Franchise Agreement is deleted from all Agreements entered into in Indiana.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO THE  
MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Maryland.

1. Subject to the parties' arbitration obligation in the Franchise Agreement or the Development Agreement, and except as otherwise pre-empted by Federal Law, a franchisee may bring a lawsuit in Maryland against us for claims arising under the Maryland Franchise Registration and Disclosure Law. Any such lawsuit must be brought within 3 years after the grant of the franchise.
2. Item 17 of the Disclosure Document states that the Franchise Agreement and the Development Agreement will automatically terminate upon the bankruptcy of franchisee. These provisions may not be enforceable under current Federal bankruptcy law (11 U.S.C. Section 101 et seq.)
3. Any general release required as a condition of transfer or relicensing shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.
4. The acknowledgements or representations of the franchisee made in the franchise agreement which disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
THE MINNESOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Minnesota:

1. Minnesota Statutes, Section 80C.21 and Minnesota Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, injunctive relief, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreement(s) can abrogate or reduce any of franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.
2. Minnesota law provides franchisees with certain termination and non-renewal rights. Minnesota Statutes, Section 80C.14, Subdivisions 3, 4 and 5 require, except in certain specified cases, that a franchisee be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the franchise agreement.
3. No release language set forth in the Franchise Agreement shall relieve us or any other person, directly or indirectly, from liability imposed by the laws concerning franchising of the state of Minnesota.
4. Pursuant to Minnesota Statutes, Section 80C.12, Subdivision 1(g), the Franchise Agreement and Item 13 of the Disclosure Document are amended to state that the franchisor will protect the franchisee's right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of franchisor's name.



**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
ARTICLE 33 OF THE NEW YORK GENERAL BUSINESS LAW**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of New York:

1. The following paragraphs are added to the end of the State Cover Page:

THIS OFFERING PROSPECTUS IS PROVIDED FOR YOUR OWN PROTECTION AND CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THIS OFFERING PROSPECTUS AND ALL CONTRACTS OR AGREEMENTS SHOULD BE READ CAREFULLY IN THEIR ENTIRETY FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

ALTHOUGH THESE FRANCHISES HAVE BEEN ACCEPTED FOR FILING, SUCH FILING UNDER GENERAL BUSINESS LAW, ARTICLE 33 OF THE STATE OF NEW YORK DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE NEW YORK STATE DEPARTMENT OF LAW THAT THE INFORMATION PROVIDED HEREIN IS TRUE. THE DEPARTMENT'S REVIEW DID NOT INCLUDE A DETAILED EXAMINATION OF THE MATERIALS SUBMITTED. A FALSE, INCOMPLETE, INACCURATE OR MISLEADING STATEMENT MAY CONSTITUTE A VIOLATION OF BOTH FEDERAL AND STATE LAW, AND SHOULD BE REPORTED TO BOTH THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C., 20580 AND THE NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 120 BROADWAY, NEW YORK, NEW YORK 10271.

GENERAL BUSINESS LAW, ARTICLE 33 OF THE STATE OF NEW YORK MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WHICH IS SUBJECT TO REGISTRATION WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE A COPY OF THE OFFERING PROSPECTUS, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE AT THE EARLIER OF (a) THE FIRST PERSONAL MEETING BETWEEN THE FRANCHISOR OR ITS AGENT AND THE PROSPECTIVE FRANCHISEE, (b) AT LEAST TEN BUSINESS DAYS PRIOR TO THE EXECUTION OF A BINDING FRANCHISE OR OTHER AGREEMENT OR (c) AT LEAST TEN BUSINESS DAYS PRIOR TO THE RECEIPT OF ANY CONSIDERATION IN CONNECTION WITH THE SALE OR PROPOSED SALE OF A FRANCHISE.

THE FRANCHISOR MAY NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THIS PROSPECTUS. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON YOU TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS PROSPECTUS.

2. Item 3 is amended by adding the following language to the beginning of such Item:

To the best of our knowledge, except as otherwise disclosed below, neither we, our predecessor, nor any other person or franchise sales agent identified in Item 2 of this Disclosure Document:

- a) Has pending any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) alleging a violation of any franchise law, securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations;
- b) Has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the date of this Disclosure Document, been convicted of a misdemeanor or pleaded nolo contendere to a misdemeanor charge or been held liable in a civil action by final judgment or been the subject of a material complaint or other legal proceeding if

such misdemeanor conviction or charge or civil action, complaint or other legal proceeding involved violation of any franchise law, securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations; or

- c) Is subject to any injunctive or restrictive order or decree relating to franchises or under any Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency.

3. Item 4 is amended by adding the following language to the beginning of such Item:

To the best of our knowledge, except as otherwise disclosed below, neither we, our affiliates, our predecessor, or our officers, during the ten year period immediately before the date of this Disclosure Document:

- a) Has filed as debtor (or had filed against it) a petition to start an action under the United States Bankruptcy Code;
- b) Has obtained a discharge of its debts under the United States Bankruptcy Code; or
- c) Was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the United States Bankruptcy Code or that obtained a discharge of its debts under the United States Bankruptcy Code during or within one year after the officer or general partner of the franchisor held this position in the company or partnership.

4. Item 5 is amended by adding the following new paragraph at the end of the Item:

The initial franchise fee and the development fee paid under the Development Agreement are not used for any specific purpose.

5. Item 11 is amended by adding the following sentence at the end of the Operations Manual section:

We may modify the Operations Manual. However, no change to the Operations Manual will be made which would impose an unreasonable economic burden on you, unreasonably increase your obligations, or materially alter your status or rights under the Franchise Agreement.

6. Item 17 is amended by adding the following language at the beginning of the Item:

THIS TABLE LISTS CERTAIN IMPORTANT PROVISIONS OF THE FRANCHISE AND RELATED AGREEMENTS PERTAINING TO RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION. YOU SHOULD READ THESE PROVISIONS IN THE AGREEMENTS ATTACHED TO THIS DISCLOSURE DOCUMENT.

7. Row (d) of Item 17 entitled "Termination by you" is amended by adding the following language to the Summary column:

You may terminate the Agreement on any grounds available by law.

8. Row (j) of Item 17 entitled "Assignment of contract by us" is amended by adding the following to the Summary column:

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor is willing and financially able to assume the franchisor's obligations under the Franchise Agreement.

9. Row (w) of Item 17 entitled "Choice of law" is amended by adding the following to the Summary Section:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

10. The following is added immediately preceding Item 23:

We represent that this prospectus does not knowingly omit any material fact or contain any untrue statement of a material fact.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO THE  
NORTH DAKOTA FRANCHISE INVESTMENT LAW**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of North Dakota:

1. The Franchise Agreement and Development Agreement will be governed and construed under the laws of the State of North Dakota. Any provision in the Franchise Agreement or Development Agreement which designates jurisdiction or venue, or requires the franchisee or developer to agree to jurisdiction or venue, in a forum outside of North Dakota, is deleted from any Franchise Agreement or Development Agreement issued in the State of North Dakota.
2. Any non-competition covenants contained in the Franchise Agreement or Development Agreement shall be subject to the North Dakota laws on franchising. Covenants not to compete such as those mentioned in Section 18 of the Franchise Agreement or in the Consent of Developer's Investors may be considered unenforceable in the State of North Dakota.
3. Liquidated damages are prohibited by law in the State of North Dakota. Section 17.1 of the Franchise Agreement and Section 6.D.1 of the Development Agreement are deleted.
4. No release language set forth in the Franchise Agreement or Development Agreement (including but not limited to Sections 2.2, 9.5, or 15.2 of the Franchise Agreement, or Section 7 of the Development Agreement) shall relieve us or any other person, directly or indirectly, from liability imposed by the laws of the State of North Dakota.
5. Any provisions in the Franchise Agreement (including but not limited to Sections 27.6 and 27.7) and any provisions of the Development Agreement (including but not limited to Sections 14.G and 14.H) which require the franchisee or developer to waive the right to a jury trial or to exemplary or punitive damages are deleted from any Agreements issued in the State of North Dakota.
6. Any arbitration or mediation authorized under Sections 27.1 and 27.2 of the Franchise Agreement or Section 14 of the Development Agreement shall be held at a site agreeable to all parties.

To the extent this Addendum is inconsistent with any terms or conditions of the Franchise Agreement or exhibits or attachments thereto, or the Disclosure Document, the terms of this Addendum shall govern.

**ADDENDUM TO THE DISCLOSURE DOCUMENT PURSUANT TO  
THE VIRGINIA RETAIL FRANCHISING ACT**

The following provisions supersede the Disclosure Document and apply to all franchises offered and sold in the State of Virginia:

1. The following is added to Item 17 h:
  - a) Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act (the "Virginia Act"), it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement and/or the Development Agreement do not constitute reasonable cause, as that term may be defined in the Virginia Act or the laws of Virginia, that provision may not be enforceable.
2. The proposed agreements described in Item 22, including all agreements that a franchisee must sign, are accurately presented in this Disclosure Document.

## **ADDENDUM TO DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF WASHINGTON**

In recognition of the requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.180, the Franchise Disclosure Document for Dickey's Barbecue Restaurants, Inc. ("we", "our" or "us") for use in the State of Washington shall be amended as follows:

1. The state of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement in your relationship with us including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with us including the areas of termination and renewal of your franchise.
2. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.
3. A release of waiver of rights executed by a licensee or a transferor shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.
4. Transfer fees are collectable to the extent that they reflect our reasonable estimated or actual costs in effecting a transfer.
5. Each provision of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.180, are met independently without reference to this Addendum to the Disclosure Document.

**EXHIBIT G**

**FORM OF NON-DISCLOSURE AGREEMENT FOR PROSPECTIVE FRANCHISEES**

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this “Agreement”) is between Dickey’s Barbecue Restaurants, Inc. (“Dickey’s”) and \_\_\_\_\_, (the “Prospect”).

The parties desire to explore the offering of a Dickey’s Barbecue Pit® restaurant franchise from Dickey’s to the Prospect (the “Business Purpose”). The parties have disclosed or will disclose Protected Information to the other party to this Agreement.

The parties agree as follows:

1. **PROTECTED INFORMATION.** For purposes of this Agreement, “Protected Information” means all information relating to the business of any party, whether or not written, that is not generally known or available to the public, including, but not limited to, recipes, operating and training methods, marketing strategies, financial models and projections, demographic and other site selection information, and other protected information for operation of a Dickey’s Barbecue Pit franchise, including the fact that the Prospect and Dickey’s are engaged in discussions concerning the Business Purpose. Protected Information does not include: (a) information that is generally known or available to the public, through no act of the receiving party; (b) information that is received by a party in good faith from an independent source that has no duty of nondisclosure with respect to the information; or (c) information that the receiving party can document is already known to the receiving party and not otherwise required to be kept protected, or that is independently developed by the receiving party without reference to Protected Information.
2. **PROTECTION OF PROTECTED INFORMATION.** Except as agreed to by the parties in writing, or as otherwise required by law, each party to this Agreement (a) shall hold in confidence and shall not disclose to any third party any Protected Information of the other party; (b) shall take reasonable security precautions, with respect to the Protected Information, which shall be at least as great as the precautions it takes to protect its own Protected Information; (c) shall not use the Protected Information for any purpose other than the Business Purpose; and (d) shall disclose the Protected Information only to those persons (each is a “Representative”) that need to know the information in connection with discussions regarding the Business Purpose. Each party to this Agreement shall ensure that its Representatives comply with the terms of this Agreement. Each party agrees to be responsible for any breach of this Agreement by that party’s Representative. In the event the employment or engagement of a Representative is terminated, the party that employed or engaged the Representative agrees to use commercially reasonable efforts to recover all Protected Information from the Representative’s custody or control.
3. **TERM.** This term of this Agreement shall commence on the Effective Date and shall continue in effect until (i) any party terminates this Agreement by written notice to the other party to this Agreement, or (ii) the parties’ discussions regarding the Business Purpose terminate. Each party’s obligations under this Agreement with respect to Protected Information it receives prior to the effective date of termination shall survive after termination of this Agreement. In addition, the Non-Solicitation and Non-Compete obligations under Section 6 of this Agreement shall survive after termination of this Agreement pursuant to the time frames set forth in Section 6.
4. **RETURN OR DESTRUCTION.** Upon written request, the receiving party will promptly return to the disclosing party, all tangible items containing or made from the disclosing party’s Protected Information, destroy all electronic or other similar copies, and certify destruction by a duly authorized officer, upon written request of the disclosing party.



5. **NO FURTHER RIGHTS.** Nothing in this Agreement shall confer any rights to the Protected Information or any right to receive additional Protected Information. The disclosure of Protected Information and any discussions held in connection with the Business Purpose shall not obligate either party to this Agreement to (i) continue discussions with the other party, (ii) take or forego any action with respect to the Business Purpose, (iii) enter into any arrangement with respect to the Business Purpose, (iv) forego discussions with any third party regarding any arrangement similar to the Business Purpose, or (v) forego entering into any arrangement with a third party. Each party shall bear its own expenses with respect to the Business Purpose. Neither party makes any representation or warranty express or implied, as to the accuracy or completeness of Protected Information disclosed hereunder. The disclosing party shall have no liability or responsibility for errors or omissions in, or any decisions made by the receiving party in reliance on Protected Information disclosed under this Agreement.

6. **NON-SOLICITATION AND NON-COMPETE.**

6.1. **EMPLOYEES.** During the term of this Agreement and for a period of two (2) years after its expiration or termination, the party, and all entities and persons that have a direct or indirect financial interest in the party, shall not solicit, employ or otherwise engage as an employee, independent contractor, consultant or otherwise, any person that is an employee or contractor of the other party, or in any manner induce or attempt to induce any employee or contractor of the other party to terminate employment with the other party, or interfere with any party's relationship with any employee or contractor.

6.2. **SOURCES OF FINANCING.** During the term of this Agreement and for a period of two (2) years after its expiration or termination, a party, and all entities and persons that have a direct or indirect financial interest in that party, shall not approach or contact any existing sources of financing disclosed by the other party, regardless of geographic location of the source of financing, for the purpose of financing the Business Purpose or any other similar commercial endeavor.

6.3. **NON-COMPETE.** During the Term of this Agreement and for two years (2 years) after its termination, the Prospect will not engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, associated with, or in any manner connected with any business that derives more than 25% of its gross sales from the sale of barbecue, anywhere in the United States; provided, however, that the Prospect may purchase or otherwise acquire up to (but not more than) one percent (1%) of any class of securities of any enterprise (but without otherwise participating in the activities of such enterprise) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Securities Exchange Act of 1934.

7. **REPRESENTATIONS AND REMEDIES.** The Prospect does not have prior experience owning and operating a barbecue restaurant. In connection with exploring the Business Purpose, the Prospect will be shown the Dickey's systems for operating, marketing and other important information for ownership and operation of a barbecue restaurant. The Prospect agrees that Dickey's will be at a substantial competitive disadvantage if the Prospect fails to abide by the terms of this Agreement. The Prospect willingly enters into this Agreement and acknowledges and agrees that the restrictions in this Agreement are reasonable in light of the nature of information being furnished to the Prospect. The Prospect will directly benefit if it enters into a definitive franchising agreement with Dickey's.

The provisions of this Agreement are reasonable and necessary to prevent the improper use or disclosure of Protected Information. This Agreement imposes a reasonable restraint in scope, geographic area, and time limitations on the Prospect, in light of the activities and business of Dickey's. The scope, geographic area, and time limitations contained in this Agreement are necessary for the protection of

Dickey's business interests. The provisions contained in this Agreement will not interfere with or prohibit the Prospect from earning an adequate livelihood.

Each party acknowledges and agrees that any disclosure or use of Protected Information not authorized under this Agreement, or any breach of Section 7, will constitute a material breach of this Agreement and result in irreparable harm to the non-breaching party, for which monetary damages would be an inadequate remedy. Each party acknowledges and agrees that the lack of immediate relief from any material breach of this Agreement also results in irreparable harm to the non-breaching party. In addition to the rights and remedies otherwise available at law, the non-breaching party will be entitled to equitable relief, including injunction without the necessity of posting a bond, in the event of any breach or threatened breach of this Agreement, and to recover its reasonable attorney fees. Each party agrees to be responsible for any breach of this Agreement by any Representative, including the payment of court costs and legal fees.

8. **NOTICES.** Any notice or demand delivered hereunder shall be in writing and shall be deemed given upon personal delivery or, if not personally delivered, when sent by U.S. Mail registered or certified, postage prepaid, return receipt requested, by overnight courier service such as Federal Express or Airborne Express, or by electronic mail with confirmation of receipt by electronic mail from the recipient, and shall be addressed to the recipient party at the address indicated on the signature page of this Agreement, or at any other address a party shall indicate in a notice to the other parties sent in accordance with this Section 8.

9. **LAW.** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings or agreements. Any changes or amendments to this Agreement must be in writing and signed by both parties. This Agreement shall not be assignable by either party without the prior written consent of the other party. Otherwise, this Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties. A waiver by either party of any term or condition of this Agreement shall not be deemed or construed as a waiver of the term or condition in the future, or a waiver of any subsequent breach of the Agreement. This Agreement shall be governed by the laws of the State of Texas. The headings in this Agreement are for convenience only, and shall not affect the construction or enforcement of this Agreement. This Agreement shall be construed according to its fair meaning and not strictly for or against either party. If any part of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect. In the event of any dispute arising under this Agreement, the substantially prevailing party shall be entitled to reasonable attorney's fees and costs. The parties waive all rights to a trial by jury.

Dated: \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date")

**DICKEY'S BARBECUE RESTAURANTS, INC.** \_\_\_\_\_

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

\_\_\_\_\_, \_\_\_\_\_  
801 E. Plano Parkway, #135  
Plano, Texas 75074

v. \_\_\_\_\_ f. \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_  
E-mail: \_\_\_\_\_

**EXHIBIT H**

**MANAGEMENT CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

## **MANAGEMENT CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

The undersigned Dickey's Barbecue Pit® Restaurant on-premises manager ("Manager"), in consideration of the access to training and confidential information he or she has received or will receive from Dickey's Barbecue Restaurants, Inc., a Texas corporation, and/or its affiliates (collectively, the "Company") in connection with Manager's employment with the Company's franchisee named below (the "Franchisee"), hereby covenants and agrees as follows:

1. Confidentiality Agreement. Manager acknowledges that, while employed by the Franchisee, Manager has and will receive certain confidential information and knowledge concerning the Dickey's Barbecue Pit Restaurant business of the Company which the Company wishes to protect, including (without limitation) information, knowledge, know-how, recipes, formulae, materials, equipment, techniques, systems, and other data relating to or comprising the Dickey's Barbecue Pit Restaurant franchise system. Confidential information includes the Operations Manual and other materials and information supplied by Company to the Franchisee that is identified as confidential at the time of disclosure or before. Manager shall not reveal that confidential information to any other party, except the Company's or the Franchisee's independent public accountants, Manager's legal counsel (if that counsel also agrees to maintain the confidentiality of the confidential information), or as otherwise required by law. Manager shall not use or disclose the confidential information at any time for the purpose of competition with the Company, its successors and assigns, or Franchisee. When Manager's employment with Franchisee terminates for any reason, the Manager promptly shall surrender to Franchisee all papers, documents, writings and other property produced by Manager or coming into Manager's possession by or through Manager's employment with the Franchisee containing confidential information or related in any way to confidential information. All of the foregoing materials shall remain the property of the Company, its successors, or its assigns.

2. Covenant Not to Compete. During the term of Manager's employment with the Franchisee and for a period of 24 months after the termination of Manager's employment with the Franchisee for any reason, Manager shall not engage in, directly or indirectly as a principal, agent, trustee, employee, consultant, independent contractor or through any corporation, partnership, association, or other entity, any business or be employed in a restaurant or prepared food retailer that is the same or similar to a Dickey's Barbecue Pit Restaurant at any location within a 10-mile radius of any Dickey's Barbecue Pit Restaurant location at which Manager worked or within a 10-mile radius of any then-existing Dickey's Barbecue Pit Restaurant location.

3. Indemnification and Injunctive Relief. Manager shall indemnify and hold the Company and the Franchisee harmless against any losses, damages, costs, expenses, claims or actions, including attorneys' fees and costs, proximately caused by any breach of this Agreement by Manager. Manager shall pay to the Company any compensation, profits or economic benefits realized by the Manager resulting from any breach of this Agreement. The Company shall have the right to injunctive and other equitable relief prohibiting the Manager from any violation or threatened violation of this Agreement, without posting any bond or security.

4. Governing Law. The laws of Texas shall govern this Agreement.

5. Entire Agreement. This Agreement constitutes the entire agreement of the parties with regard to the subject matter of this Agreement and replaces and supersedes all other written and oral agreements and statements of the parties relating to the subject matter of this Agreement.

6. Limitations. This is not a contract of employment and this creates no employment relationship between Manager and the Company. Manager is not a third party beneficiary of any contract between the Company and the Franchisee. Franchisee remains the sole employer of Manager and is solely responsible for the recruitment, selection, training, supervision, compensation, benefits, insurance, worker's compensation, discipline and termination of Manager. During any period of on the job training of Manager by the Company, Franchisee shall remain the sole employer of Manager and shall be responsible for controlling all aspects of Manager's employment.

Executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Manager:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

**Franchisee:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT I**

**FINANCIAL STATEMENTS**

**This exhibit includes our audited financial statements for the fiscal years ended May 31, 2013, 2014 and 2015.**

**DICKEY'S BARBECUE RESTAURANTS, INC.  
CONSOLIDATED FINANCIAL STATEMENTS &  
INDEPENDENT AUDITORS' REPORT  
AS OF AND FOR THE YEARS ENDED  
MAY 31, 2015, 2014 AND 2013**

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## **INDEPENDENT AUDITORS' REPORT**

To the Board of Directors and  
Stockholders of Dickey's Barbecue Restaurants, Inc.

We have audited the accompanying consolidated financial statements of Dickey's Barbecue Restaurants, Inc. (a Texas corporation) (the Company) and subsidiaries, which comprise the consolidated balance sheets as of May 31, 2015, 2014, and 2013, and the related consolidated statements of income, stockholders' equity, and cash flows for the years then ended, and the related notes to the financial statements.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Dickey's Barbecue Restaurants, Inc. and its subsidiaries as of May 31, 2015, 2014 and 2013, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

*Auerbach Albert & Gold, L.C.*

Auerbach Albert & Gold, L.C.

Dallas, Texas

July 21, 2015

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**MAY 31, 2015, 2014, AND 2013**

	<b>ASSETS</b>		
	<u>2015</u>	<u>2014</u>	<u>2013</u>
<b>CURRENT ASSETS</b>			
Cash and cash equivalents	\$ 5,177,957	\$ 3,783,315	\$ 1,556,184
Cash - restricted	845,211	253,286	-
Accounts receivable, net of allowance for doubtful accounts of \$0 at May 31, 2015	3,020,262	2,283,649	1,656,990
Prepaid expenses and other current assets	317,639	962,522	1,308,712
Deferred tax asset	54,959	63,162	56,452
Investment securities	1,697	1,697	1,697
	<u>9,417,725</u>	<u>7,347,631</u>	<u>4,580,035</u>
<b>TOTAL CURRENT ASSETS</b>			
<b>NONCURRENT ASSETS</b>			
Due from related parties, net of allowance for doubtful accounts of \$0	209,877	380,468	166,994
Property and equipment, net of accumulated depreciation of \$405,371 at May 31, 2015	2,376,692	1,116,690	982,113
Deposit	93,725	75,000	75,000
<b>TOTAL NONCURRENT ASSETS</b>	<u>2,680,294</u>	<u>1,572,158</u>	<u>1,224,107</u>
<b>TOTAL ASSETS</b>	<u>\$ 12,098,019</u>	<u>\$ 8,919,789</u>	<u>\$ 5,804,142</u>

**LIABILITIES AND STOCKHOLDERS' EQUITY**

	<u>2015</u>	<u>2014</u>	<u>2013</u>
<b>CURRENT LIABILITIES</b>			
Accounts payable	\$ 2,250,718	\$ 1,279,664	\$ 1,550,949
Accrued expenses and other current liabilities	6,030,325	4,481,535	1,225,915
Current portion of notes payable	282,513	31,942	39,324
Income taxes payable	-	-	372,498
	<u>8,563,556</u>	<u>5,793,141</u>	<u>3,188,686</u>
<b>TOTAL CURRENT LIABILITIES</b>			

See auditor's report and accompanying notes to financial statements.

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**MAY 31, 2015, 2014, AND 2013**

	2015	2014	2013
<b>LONG-TERM LIABILITIES</b>			
Notes payable, net of current portion	962,313	521,715	519,661
Due to related party	-	85,628	-
Deferred incentive income	353,666	534,366	510,644
Deferred tax liability	28,727	244,440	183,613
	<u>1,344,706</u>	<u>1,386,149</u>	<u>1,213,918</u>
<b>TOTAL LONG-TERM LIABILITIES</b>			
	<u>1,344,706</u>	<u>1,386,149</u>	<u>1,213,918</u>
<b>TOTAL LIABILITIES</b>	<u>9,908,262</u>	<u>7,179,290</u>	<u>4,402,604</u>
<b>STOCKHOLDERS' EQUITY</b>			
Common stock, \$.01 par value, authorized 200,000 shares, issued and outstanding 100,000	1,000	1,000	1,000
Additional paid in capital	63,500	63,500	63,500
Retained earnings	2,125,257	1,675,999	1,337,038
	<u>2,189,757</u>	<u>1,740,499</u>	<u>1,401,538</u>
<b>TOTAL STOCKHOLDERS' EQUITY</b>			
	<u>2,189,757</u>	<u>1,740,499</u>	<u>1,401,538</u>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<u><u>\$ 12,098,019</u></u>	<u><u>\$ 8,919,789</u></u>	<u><u>\$ 5,804,142</u></u>

See auditor's report and accompanying notes to financial statements.

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**  
**FOR THE YEARS ENDED MAY 31, 2015, 2014, AND 2013**

	<u>2015</u>	<u>2014</u>	<u>2013</u>
<b>REVENUE</b>			
Operating income	\$ 25,390,857	\$ 18,493,943	\$ 13,386,119
Franchise fees	2,540,310	3,546,042	2,529,222
Advertising income	12,310,206	8,504,874	5,690,517
Total Revenue	<u>40,241,373</u>	<u>30,544,859</u>	<u>21,605,858</u>
<b>COST OF SALES</b>			
Franchise setup costs	2,099,616	2,344,700	1,597,590
Franchise maintenance costs	5,552,608	3,156,760	1,543,273
Total cost of sales	<u>7,652,224</u>	<u>5,501,460</u>	<u>3,140,863</u>
<b>GROSS PROFIT</b>	32,589,149	25,043,399	18,464,995
<b>SELLING AND ADMINISTRATIVE EXPENSES</b>	<u>31,649,080</u>	<u>24,310,465</u>	<u>16,952,552</u>
<b>INCOME FROM OPERATIONS</b>	<u>940,069</u>	<u>732,934</u>	<u>1,512,443</u>
<b>OTHER INCOME (EXPENSE)</b>			
Interest income	7,118	2,970	1,655
Interest expense	(43,384)	(30,350)	(11,668)
Loss on sale of property and equipment	(204,228)	-	-
Other	201	1,131	(1,975)
Total other income (expense)	<u>(240,293)</u>	<u>(26,249)</u>	<u>(11,988)</u>
<b>NET INCOME (LOSS) BEFORE INCOME TAXES</b>	699,776	706,685	1,500,455
<b>PROVISION FOR INCOME TAXES</b>	<u>250,518</u>	<u>367,724</u>	<u>654,684</u>
<b>NET INCOME</b>	<u><u>\$ 449,258</u></u>	<u><u>\$ 338,961</u></u>	<u><u>\$ 845,771</u></u>

See auditor's report and accompanying notes to financial statements.

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**FOR THE YEARS ENDED MAY 31, 2015, 2014, AND 2013**

	Common Stock			Additional Paid-In Capital	Retained Earnings	Total
	Shares	Amount	Amount			
<b>Beginning Balance, June 1, 2012</b>	100,000	\$ 1,000	\$ 63,500	\$ 501,267	\$ 565,767	
Net income	-	-	-	845,771	845,771	
Dividends	-	-	-	(10,000)	(10,000)	
<b>Ending Balance, May 31, 2013</b>	100,000	1,000	63,500	1,337,038	1,401,538	
Net income	-	-	-	338,961	338,961	
<b>Ending Balance, May 31, 2014</b>	100,000	1,000	63,500	1,675,999	1,740,499	
Net income	-	-	-	449,258	449,258	
<b>Ending Balance, May 31, 2015</b>	<u>100,000</u>	<u>\$ 1,000</u>	<u>\$ 63,500</u>	<u>\$ 2,125,257</u>	<u>\$ 2,189,757</u>	

See auditor's report and accompanying notes to financial statements.

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FOR THE YEARS ENDED MAY 31, 2015, 2014, AND 2013**

	2015	2014	2013
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Net income	\$ 449,258	\$ 338,961	\$ 845,771
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation expense	64,335	92,499	91,870
Loss on sale of property and equipment	204,228		
(Increase) decrease in assets:			
Accounts receivable	(736,613)	(626,659)	(705,228)
Prepaid expenses and other assets	626,158	346,190	(1,230,400)
Deferred tax asset	8,203	(6,710)	(25,167)
Increase (decrease) in liabilities:			
Accounts payable	971,054	(271,285)	984,261
Accrued expenses and other liabilities	1,548,790	3,255,620	908,885
Income tax payable	-	(372,498)	185,892
Deferred incentive income	(180,700)	23,722	323,144
Deferred tax liability	(215,713)	60,827	150,606
<b>CASH PROVIDED BY OPERATING ACTIVITIES</b>	<u>2,739,000</u>	<u>2,840,667</u>	<u>1,529,634</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Restricted funds	(591,925)	(253,286)	187,210
Purchase of property and equipment	(2,170,334)	(227,077)	(941,576)
Proceeds from sale of property and equipment	641,768	-	-
Decrease (increase) in due from related parties	170,591	(213,474)	(106,994)
<b>CASH USED BY INVESTING ACTIVITIES</b>	<u>(1,949,900)</u>	<u>(693,837)</u>	<u>(861,360)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Issuance of notes payable	1,349,975	54,699	534,000
Increase (decrease) in due to related parties	(85,628)	85,628	-
Dividends	-	-	(10,000)
Payments on notes payable	(658,805)	(60,026)	(37,648)
<b>CASH PROVIDED BY FINANCING ACTIVITIES</b>	<u>605,542</u>	<u>80,301</u>	<u>486,352</u>
<b>NET INCREASE (DECREASE) IN CASH</b>	1,394,642	2,227,131	1,154,626
<b>CASH AT BEGINNING OF YEAR</b>	<u>3,783,315</u>	<u>1,556,184</u>	<u>401,558</u>
<b>CASH AT END OF YEAR</b>	<u><u>\$ 5,177,957</u></u>	<u><u>\$ 3,783,315</u></u>	<u><u>\$ 1,556,184</u></u>
<b>CASH PAID DURING THE YEAR FOR:</b>			
<b>INTEREST</b>	<u><u>\$ 43,384</u></u>	<u><u>\$ 30,350</u></u>	<u><u>\$ 1,153</u></u>
<b>INCOME TAXES</b>	<u><u>\$ 230,000</u></u>	<u><u>\$ 714,438</u></u>	<u><u>\$ 289,711</u></u>

See auditor's report and accompanying notes to financial statements.

**DICKEY'S BARBECUE RESTAURANTS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**FOR THE YEARS ENDED MAY 31, 2015, 2014 AND 2013**

**Note 1: Organization**

Dickey's Barbecue Restaurants, Inc. (the "Company") was incorporated in 1994 under the laws of the State of Texas. The Company was formed for the purpose of franchising barbecue restaurants. At May 31, 2015 Dickey's Barbecue Restaurants, Inc. had 499 operating franchises (not including 9 stores owned by related parties). There are 136 of the operating franchises are located in Texas, with the remainder operating in other states. The Company's management team has successfully operated barbecue restaurants at various locations in Texas since 1941.

**Note 2: Summary of Significant Accounting Policies**

***Basis of presentation*** - The accompanying financial statements are presented in accordance with the accrual basis of accounting.

***Consolidation*** - The accompanying consolidated financial statements include the accounts of Dickey's Barbecue Restaurants, Inc. and its wholly-owned subsidiaries, Central Menu Providers, Inc. ("CMP") and Spark Intelligence, Inc. ("Spark"). All significant intercompany transactions and accounts have been eliminated.

***Income Taxes*** - Deferred income taxes are determined utilizing the asset and liability approach, whereby deferred tax assets are recognized for deductible temporary differences and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion of the deferred tax assets will not be realized. No valuation allowance was established as of May 31, 2015, as full realization of the future deductions is anticipated. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Management has determined that the Company does not have any uncertain tax positions and associated unrecognized benefits that materially impact the financial statements or related disclosures. Since tax matters are subject to some degree of uncertainty, there can be no assurance that the Company's tax returns will not be challenged by the taxing authorities and that the Company will not be subject to additional tax, penalties, and interest as a result of such challenge. As of May 31, 2015, the Company's tax returns for fiscal years ended May 31, 2012 and thereafter remained subject to federal income tax examination.



**DICKEY'S BARBECUE RESTAURANTS, INC**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**FOR THE YEARS ENDED MAY 31, 2015, 2014 AND 2013**  
**(CONTINUED)**

**Note 2: Summary of Significant Accounting Policies** (continued)

***Revenue and Expenses*** – Operating income consists of contractual franchise royalties based on a percentage of monthly sales which are recognized as revenue in the month earned as well as revenue from other contractual agreements.

Initial franchise fees are recognized as revenue once substantially all of the initial services of the Company required by the franchise agreement have been performed and no other material conditions or obligations related to the determination of substantial performance exist. For the year ended May 31, 2015, there were \$1,933,100 in initial franchise fees.

Franchise owners receive assistance in such areas as real estate site selection, construction consulting, purchasing and marketing from Company personnel. The costs of providing such assistance, whether in pre or post opening phases, are expensed as incurred.

In some instances where contractual agreements exist, commissions for new franchises are paid to third parties. These commissions are generally recognized as an expense when the related franchise fee revenue is earned.

***Cash and Cash Equivalents*** – The Company considers all liquid investments, with an original maturity of three months or less when purchased, to be cash equivalents.

The Company maintains its cash and cash equivalents in bank deposit accounts in which the deposits are insured by the Federal Deposit Insurance Corporation up to \$250,000. At May 31, 2015, the Company had \$5,848,480 in uninsured cash balances. This risk is managed by maintaining deposits with high quality financial institutions. In addition, management does not believe that the Company is exposed to any significant risk related to financial institutions holding the Company's cash and cash equivalents.

Cash balances related to the Marketing Fund are considered restricted cash.

***Property and equipment*** – Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets as follows: transportation equipment – 25 years; vehicles – 5 years; furniture and equipment – 5 to 7 years; and computer equipment – 3 to 5 years. Depreciation expense for the years ended May 31, 2015, 2014 and 2013 was \$64,335, \$92,499, and \$91,870, respectively.

**DICKEY'S BARBECUE RESTAURANTS, INC**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**FOR THE YEARS ENDED MAY 31, MAY 31, 2015, 2014 AND 2013**  
**(CONTINUED)**

**Note 2: Summary of Significant Accounting Policies** (continued)

*Accounts Receivable* – Trade accounts receivable are reported at the amount management expects to collect from outstanding balances. Differences between the amount due and the amount management expects to collect are reported in the results of operations of the year in which those differences are determined, with an offsetting entry to a valuation allowance for trade accounts receivable. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to trade accounts receivable.

*Compensated Absences* – Compensated absences for vacation pay, sick pay, and personal time off have been accrued since they can be reasonably estimated.

*Advertising and Marketing* – The Company maintains a Marketing Fund, which includes contractual advertising and marketing fees paid monthly by franchisees. Production costs of advertising, TV or radio commercials, programming and other marketing activities are paid out of the Marketing Fund and charged to operations as incurred. The total of such expenses for the years ended May 31, 2015, 2014 and 2013 were \$14,642,535, \$10,231,865 and \$5,703,681, respectively.

The franchise agreements generally require a predetermined percentage of the franchisee's gross monthly revenue to be paid to the Marketing Fund for related advertising and marketing. The predetermined percentage of the franchisee's gross monthly revenue varies by contract and ranges up to 4%. Funds collected for advertising and marketing under the franchise agreements that are restricted for that purpose are recorded as deferred revenue and are recognized as revenue once the related advertising costs are expensed. A receivable from franchises is recognized in cases where the advertising expenses exceed marketing fee collections in a given period. In either case no profit is recognized from advertising and marketing fees collected in accordance with the franchise agreement.

*Estimates* - Management uses estimates and assumptions in preparing financial statements. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosures of contingent assets and liabilities, and the reported revenues and expenses. Actual results could differ from these estimates.

*Date of management's review* - Subsequent events have been evaluated through July 21, 2015, which is the date the financial statements were available to be issued.

**DICKEY'S BARBECUE RESTAURANTS, INC**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**FOR THE YEARS ENDED MAY 31, 2015, 2014 AND 2013**  
(Continued)

**Note 3: Property and equipment**

Property and equipment was comprised of the following as of May 31,

	<u>2015</u>	<u>2014</u>	<u>2013</u>
Transportation equipment and vehicles	\$ 286,222	\$ 1,166,397	\$ 1,159,138
Equipment	1,553,558	184,535	108,535
Software	821,585	117,792	-
Furniture and fixtures	83,896	47,950	47,950
Leasehold improvements	36,802	16,849	16,849
	<u>2,782,063</u>	<u>1,533,523</u>	<u>1,332,472</u>
Accumulated depreciation	(405,371)	(416,833)	(350,359)
	<u>\$ 2,376,692</u>	<u>\$ 1,116,690</u>	<u>\$ 982,113</u>

**Note 4: Related Party Transactions**

Related party transactions with companies directly or indirectly owned and/or controlled by the Company's officers included consulting fees, other payments, and expenses paid or incurred net of reimbursements and totaled \$925,547, \$1,297,491, and \$1,928,428 for the fiscal years ending May 31, 2015, 2014, and 2013, respectively.

**Note 5: Income Taxes**

As of May 31, the deferred tax asset and liability recognized consists of the following components:

	<u>5/31/2015</u>	<u>5/31/2014</u>	<u>5/31/2013</u>
Deferred Income Tax Asset			
Accrued vacation and allowance for doubtful accounts	\$ 54,959	\$ 63,162	\$ 56,452
Deferred Income Tax Liability			
Depreciation timing differences	<u>28,727</u>	<u>244,440</u>	<u>183,613</u>
Net deferred asset (liability)	<u>\$ 26,232</u>	<u>\$ (181,278)</u>	<u>\$ (127,161)</u>

**DICKEY'S BARBECUE RESTAURANTS, INC**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**FOR THE YEARS ENDED MAY 31, 2015, 2014 AND 2013**  
**(CONTINUED)**

**Note 5: Income Taxes –(continued)**

The provision for income taxes for the years ended May 31 consists of the following:

	<u><b>2015</b></u>	<u><b>2014</b></u>	<u><b>2013</b></u>
Current Federal Tax Expense	\$ 340,446	\$ 264,595	\$ 377,978
Current States' Tax Expense	117,581	49,013	151,267
Deferred Tax Expense (Benefit)	<u>(207,509)</u>	<u>54,116</u>	<u>125,439</u>
Total Tax Provision	<u><u>\$ 250,518</u></u>	<u><u>\$ 367,724</u></u>	<u><u>\$ 654,684</u></u>

Reconciliation of federal income tax expense from applying statutory rates to net income before income taxes to federal tax expense for the year ended May 31,

	<u><b>2015</b></u>	<u><b>2014</b></u>	<u><b>2013</b></u>
Federal statutory tax rates applied to net income before income taxes	\$ 265,305	\$ 240,273	\$ 359,240
Benefit of franchise tax expense deduction	(39,686)	(16,664)	(51,431)
Items not deductible from taxable income	51,381	45,485	33,860
Book tax differences for property and equipment	15,812	-	-
Temporary differences and other	<u>47,634</u>	<u>(4,499)</u>	<u>36,309</u>
Current Federal Tax Expense	<u><u>\$ 340,446</u></u>	<u><u>\$ 264,595</u></u>	<u><u>\$ 377,978</u></u>

**DICKEY'S BARBECUE RESTAURANTS, INC**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**FOR THE YEARS ENDED MAY 31, 2015, 2014 AND 2013**  
(CONTINUED)

**Note 6: Leases**

The Company leases office space, office equipment and certain vehicles under lease agreements classified as operating leases. The following is a schedule by year of future minimum lease payments required under operating leases that have initial or remaining non-cancelable lease term in excess of one year as of May 31, 2015:

Year ending May 31, 2016	\$ 526,517
Year ending May 31, 2017	218,244
Year ending May 31, 2018	18,447
Year ending May 31, 2019	18,447
Year ending May 31, 2020	<u>9,992</u>
	<u>\$ 791,647</u>

Related rent expense for the years ended May 31, 2015, 2014 and 2013 was \$426,675, \$330,771 and \$311,193, respectively.

**Note 7: Notes Payable**

In June of 2014, the Company entered into a \$1,349,975 capital lease agreement requiring monthly payments of \$26,345 beginning November 1, 2014 and ending July 1, 2019. The note bears interest of 4.19% and is collateralized by the financed computer hardware.

In May 2012, the Company entered into a \$534,000 note agreement requiring monthly payments of \$3,521 beginning June 1, 2012 and ending June 1, 2032. The note bears interest of 4.99% and is collateralized by the transportation equipment. This was paid in full in June 2014.

The Company purchases certain vehicles used in operations through retail installment loan agreements generally payable over 60 - 72 months with interest rates ranging from 4.35 - 5.9% and secured by the underlying assets.

**DICKEY'S BARBECUE RESTAURANTS, INC**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**FOR THE YEARS ENDED MAY 31, 2015, 2014 AND 2013**  
**(CONTINUED)**

**Note 7: Notes Payable (continued)**

The following is a schedule by year of future aggregate installments on notes payable as of May 31, 2015:

2016	\$ 282,513
2017	294,608
2018	307,220
2019	308,071
2020	52,414
	<hr/> 1,244,826
Less current portion	(282,513)
	<hr/> <u>\$ 962,313</u>

**Note 8: Retirement Plan**

The Company maintains a 401k plan for all eligible employees. In addition to the employee's elective deferral, the Company matches an amount not exceeding 3% of employee's gross compensation. Contributions made for the years ended May 31, 2015, 2014 and 2013 were \$92,945, \$80,115 and \$68,967, respectively.

**Note 9: Contingencies**

Currently, there are unresolved claims against the Company, arising in the normal course of business. In the opinion of management, the ultimate outcome of the claims and litigation will not have a material adverse effect on the Company's financial position.

**EXHIBIT J**

**NON-TRADITIONAL VENUE ADDENDUM**

**NON-TRADITIONAL VENUE ADDENDUM  
TO FRANCHISE AGREEMENT**

Dickey's Barbecue Restaurants, Inc., a Texas corporation ("Dickey's") and \_\_\_\_\_ ("Franchisee" or "you") agree to this Addendum (the "Addendum") to that certain Franchise Agreement (the "Franchise Agreement") dated \_\_\_\_\_, 20\_\_\_\_ between Dickey's and Franchisee for the development and operation of a non-traditional Dickey's Barbecue Pit® restaurant (the "Restaurant"), as follows. All capitalized terms not defined in this Addendum shall have the meanings assigned to them in the Franchise Agreement.

**AGREEMENTS**

A. Franchisee acknowledges that this Addendum allows Franchisee to operate outside Dickey's normal operational policies and procedures, as set forth herein.

B. Franchisee acknowledges that this Addendum allows Dickey's to impose additional obligations on Franchisee, as set forth herein. Franchisee also acknowledges that such additional obligations may deviate from the requirements set forth in Dickey's normal operational policies and procedures.

C. Franchisee is not required to maintain a speaker system at the Restaurant. However, if Franchisee elects to maintain a speaker system, Franchisee must play music at the Restaurant in accordance with Dickey's published operational policies and procedures.

D. Franchisee is not required to serve soft serve ice cream at the Restaurant. However, if Franchisee elects to serve soft serve ice cream at the Restaurant, Franchisee must do so in compliance with Dickey's published operational policies and procedures.

E. Franchisee is not required to furnish the Restaurant with chairs and tables. However, if Franchisee elects to furnish the Restaurant with chairs and tables, Franchisee must do so in compliance with and pursuant to plans and specifications approved by Dickey's.

F. Franchisee acknowledges that Dickey's may require Franchisee to open the Restaurant to the public for hours in addition to the hours of operation set forth in Dickey's published operational policies and procedures.

G. Franchisee acknowledges that Dickey's may require Franchisee to serve additional menu items not set forth in Dickey's published operational policies and procedures, including, but not limited to, breakfast items.

H. Franchisee acknowledges that Dickey's may elect to impose signage requirements for the Restaurant that deviate from the requirements set forth in Dickey's published operational policies and procedures.



I. Franchisee acknowledges that Dickey's may, in its sole discretion, elect to impose equipment, equipment installation requirements, and/or variations on design plans and specifications for the Restaurant that deviate from the requirements set forth in Dickey's published operational policies and procedures.

## **AMENDMENTS**

J. Amended Provisions of Franchise Agreement. Articles 2.1, 4.1, 5.2, 5.8, and 8.25 of the Franchise Agreement are modified as follows:

### **ARTICLE 2. TERM AND RENEWAL**

**2.1 INITIAL TERM.** Except as otherwise provided herein, the initial term of this Agreement shall expire ten (10) years from the Effective Date of this Agreement.

### **ARTICLE 4. FRANCHISE AND ROYALTY FEES**

**4.1 FRANCHISE FEE.** You shall pay Dickey's an initial franchise fee ("Franchise Fee") in an amount equal to Ten Thousand Dollars (\$10,000.00) upon execution of the Agreement. **Such initial Franchise Fee shall be nonrefundable.** If a Development Agreement has been executed, the initial Franchise Fee will be payable according to its terms.

### **ARTICLE 5. ADVERTISING AND RELATED FEES**

**5.2 RESTAURANT OPENING.** You shall carry out a Restaurant opening promotion relating to the opening of your Restaurant in accordance with the Manuals or as otherwise required by Dickey's. Any advertising and promotional campaigns used by you in connection with such Restaurant opening promotion must be approved by Dickey's prior to use. You shall comply with the direct and local advertising and promotional campaign for restaurant openings devised by Dickey's and adapted for your Assigned Area. When required, but not later than on or before the initial "orientation call" with us, you shall pay to Dickey's Five Thousand Dollars (\$5,000.00) (the "Restaurant Opening Promotion Funds") to be spent by Dickey's on your behalf in connection with such Restaurant opening promotion. The Restaurant Opening Promotion Funds will be used by Dickey's, in its discretion, to fund marketing materials, local advertising and promotional support related to the Restaurant pre-opening and grand opening campaigns, and in some cases post-opening campaigns. Upon your request, a full accounting of the Restaurant Opening Promotion Funds spent by Dickey's in connection with your Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns will be provided. While Dickey's will exercise best efforts to spend the full amount of the Restaurant Opening Promotion Funds in connection with your Restaurant pre-opening and grand opening campaigns, and, if applicable, post-opening campaigns, any remaining balance after the first six (6) months of the operation of your Restaurant will be deposited into the Marketing Fund and applied by Dickey's in accordance with the procedures described herein for the utilization of the proceeds of the Marketing Fund.

**5.8 MARKETING FUND.** Dickey's has established a Marketing Fund for the purpose of promoting the System. The Marketing Fund may be operated by an affiliate of Dickey's. You agree to contribute to the Marketing Fund two percent (2%) of your Net

Sales of your Restaurant as determined by Dickey's. Such fee shall be paid weekly at the time and in the manner for which royalty fees are paid as set forth in Article 4.

You agree that the Marketing Fund shall be maintained and administered by Dickey's or its designee, in its sole discretion, as follows:

1. Dickey's or its designee shall direct all advertising programs and shall have sole discretion to approve or disapprove the creative concepts, materials and media used in such programs and the placement and allocation thereof. Dickey's will own the copyright in the design, content and materials created using Fund monies. You agree and acknowledge that the Marketing Fund is intended to maximize general public recognition and acceptance of the Proprietary Marks and enhance the collective success of all Restaurants operating under the System. In administering the Marketing Fund, Dickey's and its designee undertake no obligation to make expenditures for you which are equivalent or proportionate to your contributions or to ensure that any particular franchisee benefits directly or pro rata from the placement of advertising.

2. You agree that the Marketing Fund may be used by Dickey's or its designee, in its sole discretion, to satisfy any and all costs of maintaining, administering, directing and preparing advertising (including, without limitation, the cost of preparing and conducting television, radio, internet/web-based, magazine and newspaper advertising campaigns, direct mail and outdoor billboard advertising, public relations activities, employing advertising agencies to assist therein, costs of Dickey's personnel and other departmental costs for advertising that is internally administered or prepared by Dickey's, costs of providing other advertising materials to Restaurants operated under the System, and the costs of maintaining Dickey's Website, and the costs of a national "1-800" customer and/or franchisee service telephone number if such service is implemented by Dickey's). All sums paid by you to the Marketing Fund shall be maintained in a separate account by Dickey's or its designee and shall not be used to defray any of Dickey's general operating expenses, except for such reasonable administrative costs and overhead, if any, as Dickey's or its designee may incur in activities reasonably related to the administration or direction of the Marketing Fund and advertising programs for franchisees and the System. The Marketing Fund and its earnings shall not otherwise inure to the benefit of Dickey's. The Marketing Fund is operated solely as a conduit for collecting and expending the marketing and advertising fees as outlined above and may also be used to establish a catering hotline.

3. A statement of the operations of the Marketing Fund shall be prepared annually by Dickey's and shall be made available to you upon request.

4. Although the Marketing Fund is intended to be of perpetual duration, Dickey's may terminate the Marketing Fund at any time. The Marketing Fund shall not be terminated, however, until all monies in the Marketing Fund have been expended for advertising or promotional purposes or returned to contributing franchised or Company-Operated Restaurants, without interest, on the basis of their respective contributions.

## **ARTICLE 8. RESTAURANT OPERATIONS**

**8.25 CATERING.** You shall at all times offer catering services in accordance with Dickey's policies and procedures. You shall be required to maintain at least one vehicle bearing the Dickey's logo and other identifying trade dress and promotional information as required by Dickey's in order to perform such services. You shall participate in

Dickey's catering hotline centralizing catering orders and requests and comply with Dickey's policies and procedures regarding the hotline. You acknowledge that Dickey's reserves the right to suspend or terminate your hotline and any other catering lead referrals and redirect them to other Dickey's restaurants for service if Dickey's determines that you (i) do not comply with Dickey's policies and procedures, (ii) are not using suppliers approved by Dickey's for all items you are required to obtain from approved suppliers, or (iii) provide catering service that is deficient or is the subject of customer complaints Dickey's deems to be unacceptable. You also acknowledge that Dickey's reserves the right to direct any general catering request received through Dickey's catering hotline to any Dickey's franchisee based on such franchisee's experience, efficiency, relationship with or proximity to the customer placing the order.

K. **RELEASE:** Franchisee hereby releases and forever discharges Dickey's, any parent, subsidiary, related entity, shareholder, and affiliate of Dickey's, its respective officers, directors, members, employees, agents, contractors and its respective successors, assigns, heirs and personal representatives (the "Released Parties") from any and all claims, demands, rights and causes of action of any kind that Franchisee now has or will have in the future, whether known or unknown, arising out of the offer, sale, administration, performance, default, and/or termination of the Franchise Agreement, including any claims or causes of action arising out of alleged misrepresentations, fraud, breaches of contract (based upon implied, express, estoppel, waiver, or alternative theories of contractual obligation), negligence, or breach of any alleged special, trust, agency or fiduciary relationship (if any), whether asserted or proposed to be asserted by way of claim, setoff, affirmative defense, counterclaim, cross-claim or third party claim. **THIS RELEASE EXPRESSLY INCLUDES, BUT IS NOT LIMITED TO, ANY ACT OR OMISSION OF NEGLIGENCE, FRAUD, MISREPRESENTATIONS, BREACH OF FIDUCIARY DUTIES, BREACH OF WARRANTIES, BREACH OF CONTRACT, AND ANY EXTRA-CONTRACTUAL CLAIMS COMMITTED OR ALLEGEDLY COMMITTED BY THE RELEASED PARTIES, PROVIDED, HOWEVER, THAT NOTHING CONTAINED IN THIS RELEASE IS INTENDED TO DISCLAIM OR REQUIRE FRANCHISEE TO WAIVE RELIANCE ON ANY REPRESENTATION THAT DICKEY'S MADE IN THE FRANCHISE DISCLOSURE DOCUMENT THAT DICKEY'S PROVIDED TO FRANCHISEE.** This Release shall survive termination of the Franchise Agreement, as modified by this Addendum, and is in addition to any other release or similar agreement in the Franchise Agreement or other agreement between Dickey's and Franchisee. With regard to any acts or omissions covered under this Release, Franchisee agrees not to commence any action, lawsuit, or legal proceeding, or file any charge or complaint with any federal, state, or local agency, against the Released Parties.

L. This Addendum does not modify the terms of the Franchise Agreement except as specifically stated herein. The parties acknowledge and agree that the Franchise Agreement, as modified by this Addendum, is ratified and shall continue in full force and effect.

M. The terms and conditions of this Addendum shall be confidential. Except as provided above or required by law or court order or the enforcement of the provisions hereof, the parties shall maintain in strict confidence and shall not disclose the existence of or any substance or contents of this Addendum to any third party without prior written consent of the other party or parties herein. This confidentiality provision shall survive the termination of the Franchise Agreement and/or this Addendum and is in addition to any other confidentiality obligations or similar restrictions on Franchisee in the Franchise Agreement or other agreement between Dickey's and Franchisee.

Date:

**DICKEY'S:**

DICKEY'S BARBECUE RESTAURANTS, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Name: Roland Dickey, Jr.  
Title: President

**FRANCHISEE:**

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

**EXHIBIT K**

**SMOKESTACK CUSTOMER AGREEMENT**

## **SMOKESTACK CUSTOMER AGREEMENT**

The Smokestack System (“Smokestack”), proprietary to Spark Intelligence, Inc. (“Spark”), is provided to Customer under the terms of this agreement and any Spark operating rules or policies (collectively, the “Agreement”). Throughout this agreement, both Spark and Customer will be jointly referred to as the “Parties.”

### **CUSTOMER’S RIGHTS TO USE SMOKESTACK**

1.1 License & Customer’s Ownership of Data - In exchange for Customer’s payment, Customer is granted access to use Smokestack for its business or profession subject to all terms and conditions in this Agreement. Title and ownership of Smokestack remains Spark’s sole and exclusive property. Title and ownership of the data captured, entered into, uploaded, or otherwise acquired by Smokestack remain the sole and exclusive property of Customer. Customer grants Smokestack the right to use Customer’s data for any purpose, and to provide such data to Dickey’s Barbecue Restaurants, Inc. (including its subsidiaries, affiliates, and related entities).

1.2 Acceptable Use of Smokestack – Neither Customer, nor anyone acting on Customer’s behalf, will: (a) modify, copy or otherwise reproduce Smokestack in whole or in a part; (b) reverse engineer, recompile, disassemble, or otherwise attempt to derive the source code form or structure of the software used in Smokestack; (c) distribute, sublicense, assign, share, timeshare, sell, rent, or lease Smokestack; (d) remove any proprietary notices or labels displayed on the Smokestack website; or (e) use Smokestack for any unlawful purpose. Spark reserves all rights not expressly granted to Customer.

1.3 Submitted Information - Customer is solely responsible for the content of and information submitted and uploaded to Smokestack. Customer warrants that any information submitted to Smokestack will not contain content that violates any third party’s personal, proprietary or intellectual property rights.

### **FEES AND PAYMENTS**

2.1 Spark Fees - Customer agrees to pay Spark in accordance with the fee schedule attached as Exhibit A. Spark reserves the right to change fees and to institute new fees. Any changes and new fees shall become effective upon 30 days’ notice.

2.2 Third-party Fees and Costs – Smokestack is available on the Internet. Customer is responsible for all expenses, equipment, and charges associated with accessing the Internet in order to connect to Smokestack.

2.3 Billings & Payments – Beginning on July 1, 2015, on the first day of each month, Spark will debit the total amount due from the Customer’s bank account via ACH debit, including any fees, applicable taxes, transaction charges, or other fees for the prior billing period. For purpose of identification and billing, Customer agrees to provide Spark with and maintain accurate Customer’s information, including Customer’s current bank account number, legal name, address, telephone number(s), and email address. In the event that Customer’s bank account is no longer

valid or bank account contains insufficient funds at that time, Spark reserves the right to terminate use of the Smokestack.

## **CUSTOMER'S USAGE**

3.1 **Third-Party Service Provider & Release** – Customer acknowledges that Spark relies upon third-party service providers for certain functions and features in Smokestack. **CUSTOMER RELEASES SPARK FROM ANY AND ALL LOSSES, CLAIMS, CAUSES OF ACTION, ARISING OUT OF ANY ACT OR OMISSION OF ANY THIRD-PARTY SERVICE PROVIDERS USED BY SPARK, EVEN IF SUCH LOSSES OR CLAIMS ARE CAUSED IN PART BY THE NEGLIGENCE, BREACH OF WARRANTY, OR BREACH OF CONTRACT OF SPARK.**

3.2 Security – Spark uses encryption and firewalls relating to the security of Customer's information. Customer shall notify Spark immediately if Customer suspects that the security of the Customer's account has been compromised. However, Customer is not relying upon any promise or guarantee of security by Spark, and Spark does not warrant the security of Smokestack.

3.3 Password - As part of the registration process, Customer must select a password, and may not share the password with anyone else. Customer is responsible for maintaining the confidentiality of the password, and agrees that Spark has no obligations with regard to the use of such password by third parties. Customer agrees to notify Spark immediately if Customer has any reason to believe that the security of Customer's account has been compromised. Customer is responsible for any and all activities in the Customer's account with the use of Customer's password.

## **SMOKESTACK'S AVAILABILITY**

4.1 **Availability & Release** - Regarding the functions and services provided by Spark, and not the functions and services provided to Spark's by its third-party service providers, Spark shall use commercially reasonable efforts to maintain availability of Smokestack twenty-four (24) hours per day, seven (7) days per week. Customer acknowledges that scheduled and unscheduled interruptions of Smokestack may occur, and **RELEASES SPARK FROM ANY LIABILITY, LOSSES OR CAUSES OF ACTION RELATING TO SCHEDULED OR UNSCHEDULED INTERRUPTIONS.** Customer agrees to cooperate with Spark during all scheduled and unscheduled interruptions.

4.2 Unscheduled Interruptions - In the event that an unscheduled interruption occurs in Smokestack that is caused by Spark, and not caused by Spark's third-party service providers, Spark will use commercially reasonable internal and external resources to resolve the problem and return Smokestack to availability as soon as possible.

4.3 Reliability – Spark uses commercially reasonable practices, including redundancy, fail-over and backup practices, to provide the Smokestack with no unplanned interruptions of service and no loss of data. However, in the event that data is lost, Spark shall use commercially reasonable efforts to assist Customer with obtaining the most recent backup of the data or to otherwise recover the data.

4.4 During the term of this Agreement, Spark shall use reasonable efforts to provide technical support of the Spark Service according to its support policies. Technical support shall be available by email communication and shall be available from 8:30 a.m. to 5:30 p.m. (Central Standard Time) Monday – Friday.

## **TERM AND TERMINATION**

5.1 Initial License Period - Customer agrees to an initial license period of 12 months commencing with the date of execution of the Agreement pursuant to ¶ 6.12. Spark agrees to provide its services during the initial license period according to the monthly license fee schedule in effect on the date this Agreement is executed.

5.2 Renewal Period & Customer's Right Of Cancellation - The Agreement shall extend and renew for one (1) year periods (each a "Renewal Term") under the same terms and conditions without further notice unless Customer gives written notice of its intention to terminate not less than ninety (90) days before the end of the then current term. The termination shall become effective at the end of the then-current term.

5.3 Spark's Right Of Termination – Spark may terminate this Agreement for any reason. If Spark exercises this right to terminate based on a reason other than Customer's breach, it will provide Customer 30 days' notice of such intent to terminate. Spark reserves the right to restrict, suspend or terminate Customer access to the Smokestack in whole or part and without liability in the event of a Customer breach, or threatened breach, of this Agreement. In the event of a termination based on Customer's breach, Customer shall pay to Spark in a single lump-sum payment, as liquidated damages and not as a penalty, all sums owed for the remaining term of the Agreement.

## **MISCELLANEOUS PROVISIONS INCLUDING RELEASES, WAIVERS, & DISCLAIMERS**

6.1 DISCLAIMER OF WARRANTY - SMOKESTACK AND ITS SERVICES ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND (EXPRESS OR IMPLIED). CUSTOMER AGREES THAT ANY AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION, TITLE, SECURITY, ACCURACY, NON-INFRINGEMENT, AVAILABILITY, ACCURACY OR UNINTERRUPTED ACCESS. THIS DISCLAIMER OF LIABILITY APPLIES TO ANY EXPENSES, DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR OR OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, STRICT LIABILITY, TORTIOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION.

6.2 LIMITATION OF LIABILITY - SPARK'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DATA LOSS, DELAYS, ERRORS OR DEFECTS IN SMOKESTACK SHALL IN NO EVENT EXCEED THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE,



OMISSION, INTERRUPTION, DATA LOSS DELAY, ERROR OR DEFECT IN THE SERVICES OCCURRED. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO SPARK, INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS), INCIDENTAL DAMAGES, PUNITIVE & EXEMPLARY DAMAGES, AND EXTRA-CONTRACTUAL DAMAGES (INCLUDING DECEPTIVE TRADE PRACTICES).

**6.3 Arbitration** – Except for claims brought by Dickey’s to collect payments owed by Customer, all disputes arising out of this Agreement shall be submitted for binding arbitration to the office of the AAA located in Plano, Texas, on demand of either party. The arbitration proceedings shall be conducted in accordance with the then current commercial arbitration rules of the area. The arbitrator(s) shall have the right to award or include in their award any relief which they deem proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the due date), specific performance and injunctive relief. However, the arbitrator may not consolidate more than one Customer’s or person’s claims, and may not otherwise preside over any form of a representative or class proceeding. Additionally, the Parties stipulate and agree that the arbitrators shall not provide for, and no arbitration award shall include, any consequential, punitive or exemplary damages, all of which are hereby waived by the Parties. The award and decision of the arbitrator(s) shall be conclusive and binding upon all Parties. Spark and Customer agree that arbitration shall be conducted on an individual, and not on a class-wide basis.

**6.4 No Reliance** - Customer and Spark hereby acknowledge that they are not relying upon any information, representation or promise of the other, if any, except as may be expressly set forth in this Agreement. CUSTOMER FURTHER WAIVES ANY CLAIM OF NEGLIGENT MISREPRESENTATION OR FRAUDULENT INDUCEMENT. This Agreement constitutes the entire agreement between the parties with respect to the Services provided under this Agreement, and supersedes any other agreement, proposal, representation, statement or understanding, whether written or oral, concerning the Services.

**6.5 GOVERNING LAW & VENUE** - THIS AGREEMENT IS EXECUTED AND DELIVERED IN CONNECTION WITH A TRANSACTION NEGOTIATED AND CONSUMMATED IN COLLIN COUNTY, TEXAS, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. CUSTOMER AND SPARK AGREE THAT, WITH RESPECT TO ANY CONTROVERSIES, DISPUTES, OR CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PARTIES’ RELATIONSHIP CREATED BY THIS AGREEMENT, ANY ACTION SHALL BE BROUGHT, MAINTAINED, AND CONCLUDED EXCLUSIVELY IN THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION. YOU, FOR YOURSELF AND YOUR SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY (A) SUBMIT TO THE JURISDICTION OF THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, AND

**THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION, AND (B) WAIVE ANY VENUE-BASED OBJECTION.**

6.6 Statute of Limitations - The Parties agree that regardless of any statute or law to the contrary, any claim or cause of action asserted by either party arising out of or related to use of Smokestack or the relationship of the Parties must be filed within 2 years after such claim or cause of action arose or be forever barred.

6.7 Force Majeure - Spark shall not be liable for damages to the extent its performance is delayed or prevented by revolution or other civil disorders; wars; acts of enemies; strikes; lack of available resources from persons other than parties to this Agreement; labor disputes; electrical equipment or availability failure; fires; floods; acts of God; or federal, state or municipal action, statute, ordinance or regulation.

6.8 Waiver of Attorney's Fees – Except for any collection action brought by Dickey's for unpaid amounts, both Parties waive any rights to recover attorney's fees in any action arising out of this Agreement, including any statutory rights under Section 38.001 of the Texas Civil and Remedies Code or other similar statute.

6.9 Jury Trial Waiver – Both Parties waive a trial by jury of any or all issues arising in any action or proceeding in connection with this Agreement.

6.10 Individual Capacity - Any legal action commenced by Customer shall be brought in an individual capacity, and not on a class-wide basis. Both Parties waive their rights to initiate a class-action lawsuit in any venue of forum.

6.11 No Assignment or Transfer– Except with the prior written consent of Spark, Customer shall not transfer or assign any rights, remedies, or obligations arising out of this Agreement. Any purported transfer or assignment in violation of this Section will be void. This Section shall not apply to Spark and prevent Spark from transferring or assigning any rights under this Agreement.

**6.12 RELATED ENTITIES' RIGHTS - SECTIONS 3.1, 4.1, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10 AND 6.11 SET FORTH IN THIS AGREEMENT SHALL APPLY TO SPARK'S PARENT CORPORATIONS, SUBSIDIARIES, AFFILIATES, RELATED ENTITIES, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, SUBCONTRACTORS, AND SUPPLIERS.**

6.13 Headings - Headings in this Agreement are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

6.14 Severability - If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect. Payment obligations, and the rights and obligations of the Parties under Articles 6 shall survive the expiration or termination of this Agreement for any reason.

6.15 Counterparts - This Agreement may be executed in counterparts, and each copy so executed shall be deemed an original.

6.16 Effective Date - This Agreement shall not become effective until signed by Spark.

**Agreed to by:**

**CUSTOMER**

**Dickey's Store #:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

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

**SPARK INTELLIGENCE, INC.**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

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

## **EXHIBIT A – PRICING SCHEDULE**

**Store Pricing** (all sums in USD, and do *not* include applicable sales or use tax):

- First Store: **\$58.00**
- Any additional Store: **\$40 per Store**
- Optional Manager access: **\$40 per Manager**

\* For example, the applicable charges for services for two stores and two managers would be a total of \$178 plus applicable sales tax (\$58 [first store] + \$40 [first store manager] + \$40 [second store] + \$40 [second store manager]).

\*\*Customer is responsible for the payment of any sales or use taxes.

Please indicate the number of stores and managers you desire:

\_\_\_\_\_ Number of Stores

\_\_\_\_\_ Number of managers

### **Required Fees**

- Infrastructure Support – required **\$100 annual fee per store** (prorated and billed monthly at \$8.33 per store) to support data infrastructure related to data store, data transfers, POS integration and BOSS integration.

### **Optional Support Pricing**

- Data Interpretation & Trend Analysis - **\$50** for a 30 minute of phone support to provide guidance regarding the interpretation of store level or district level data.
- Broadcast Email Management Fee - **\$10** each time an email broadcast is created or modified.

### **Discounts**

- **10% discount** for each user if the entire amount is paid in full for 12 months. Payments made subject to this discount are non-refundable and non-transferable.

## RECEIPT OF FRANCHISE DISCLOSURE DOCUMENT

This Disclosure Document summarizes certain provisions of the Franchise Agreement, Development Agreement and other information in plain English. Read this Disclosure Document and all agreements carefully.

If Dickey's Barbecue Restaurants, Inc. (Dickey's) offers you a franchise, we must provide this Disclosure Document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York, Iowa and Rhode Island require that we give you this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that we give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Dickey's does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal law and state law may have occurred and you should report it to the Federal Trade Commission, Washington, D.C. 20580, and the applicable state agency listed on **Exhibit D** to this Franchise Disclosure Document.

Dickey's is located at 801 E. Plano Parkway, #135, Plano, Texas 75074. Its telephone number is 972.423.2201. The franchise sellers for this offering are Anthony Fedele, Vice President of Franchise Sales, at 4514 Cole Avenue, Suite 1015, Dallas, Texas 75202, 972.248.9899; and \_\_\_\_\_.

Dickey's has authorized the persons listed on **Exhibit E** to this Disclosure Document to receive service of process for us in Texas and states where our franchise is registered.

Issuance date: August 28, 2015

I have received Dickey's Disclosure Document, dated August 28, 2015 (or the later date set forth for each applicable state on the state cover page to this Franchise Disclosure Document), which includes the following exhibits:

- EXHIBIT A – Franchise Agreement including ACH Authorization, Franchisee Questionnaire, Consent and Release for Training, State Addenda and Lease Rider
- EXHIBIT B – Development Agreement and State Addenda
- EXHIBIT C – General Release
- EXHIBIT D- State Franchise Regulatory Authorities
- EXHIBIT E- Agents for Service of Process
- EXHIBIT F - State Addenda to Disclosure Document
- EXHIBIT G - Form of Non-Disclosure Agreement for Prospective Franchisees
- EXHIBIT H - Management Confidentiality and Non-Competition Agreement
- EXHIBIT I - Financial Statements
- EXHIBIT J - Non-Traditional Venue Addendum
- EXHIBIT K - Smokestack Customer Agreement

\_\_\_\_\_  
Date of Signature  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee  
Print Name: \_\_\_\_\_

(for the prospective franchisee and any corporation, partnership or other business entity having or proposed to have an interest in the franchise or any proposed franchised location)

You may return the signed receipt either by signing, dating, and mailing it to Dickey's Barbecue Restaurants, Inc. at 801 E. Plano Parkway, #135, Plano, Texas 75074 or by faxing a copy of the signed and dated receipt to Dickey's at 972-248-8667.

## RECEIPT OF FRANCHISE DISCLOSURE DOCUMENT

This Disclosure Document summarizes certain provisions of the Franchise Agreement, Development Agreement and other information in plain English. Read this Disclosure Document and all agreements carefully.

If Dickey's Barbecue Restaurants, Inc. (Dickey's) offers you a franchise, we must provide this Disclosure Document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York, Iowa and Rhode Island require that we give you this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that we give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Dickey's does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal law and state law may have occurred and you should report it to the Federal Trade Commission, Washington, D.C. 20580, and the applicable state agency listed on **Exhibit D** to this Franchise Disclosure Document.

Dickey's is located at 801 E. Plano Parkway, #135, Plano, Texas 75074. Its telephone number is 972.423.2201. The franchise sellers for this offering are Anthony Fedele, Vice President of Franchise Sales, at 4514 Cole Avenue, Suite 1015, Dallas, Texas 75202, 972.248.9899; and \_\_\_\_\_.

Dickey's has authorized the persons listed on **Exhibit E** to this Disclosure Document to receive service of process for us in Texas and states where our franchise is registered.

Issuance date: August 28, 2015

I have received Dickey's Disclosure Document, dated August 28, 2015 (or the later date set forth for each applicable state on the state cover page to this Franchise Disclosure Document), which includes the following exhibits:

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\_\_\_\_\_  
Date of Signature  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

Print Name: \_\_\_\_\_

(for the prospective franchisee and any corporation, partnership or other business entity having or proposed to have an interest in the franchise or any proposed franchised location)

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