

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

<b>DICKEY'S BARBECUE PIT, INC. AND DICKEY'S BARBECUE RESTAURANTS, INC., Plaintiffs,</b>	§ § § § § § § § § §	<b>CASE NO. 4:14-cv-484</b>
<b>V.</b>		
<b>JAMES L. NEIGHBORS, Defendant.</b>		<b>JURY DEMANDED</b>
		<b>COMPLAINT</b>

**COMPLAINT**

Dickey's Barbecue Pit, Inc. ("Dickey's Pit") and Dickey's Barbecue Restaurants, Inc. ("Dickey's Restaurants") (collectively "Plaintiffs") bring this complaint for affirmative relief and injunctive relief against James L. Neighbors ("Neighbors"), and would show:

1. This is an action for affirmative relief and for injunctive relief arising out of trademark infringement, trademark dilution, unfair competition, and breach of a franchise agreement.
2. Plaintiffs are duly formed Texas corporations with their principal place of business in Texas. Plaintiffs are Texas citizens.
3. Neighbors is an individual residing in Tennessee. Neighbors is a Tennessee citizen.
4. Neighbors can be served either at 100 Fairhaven Dr., Blountville, TN 37617, or at 1805 W. State of Franklin Road, Suite 200, Johnson City, TN 37604.
5. Jurisdiction in this court is proper pursuant to 28 U.S.C. §1331 because Plaintiffs are alleging violations of the Lanham Act, 15 U.S.C. §1051 *et seq.* and seeking

damages for such violation. Jurisdiction is also permissible under 28. U.S.C. § 1332, because complete diversity exists between plaintiffs and defendant and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

6. Venue is proper in the United States District Court of the Eastern District of Texas pursuant to the Dickey's Barbecue Restaurants, Inc. Franchise Agreement, which contains a forum selection clause at paragraph 27.5, entitled Governing Law and Venue. Paragraph 27.5 provides in part that:

... ANY CONTROVERSIES, DISPUTES [sic], OR CLAIMS ARISING OUT OF SUCH AGREEMENT SHALL BE BROUGHT, MAINTAINED AND CONCLUDED EXCLUSIVELY IN THE DISTRICT COURTS OF COLLIN COUNTY, TEXAS, OR IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION.

A true and correct signed copy of this franchise agreement is attached as Exhibit "A" and incorporated as if set forth in full.

7. Dickey's Pit is the exclusive owner of all trademark rights, and variations thereof, to the following live and valid trademarks:

Reg. Number	Trademark
4249263	Dickey's Barbecue Pit
1202218	Dickey's Barbecue Pit (Design plus words - International)
4249207	Dickey's Barbecue Pit Original Barbecue Rib Rub
4249206	Dickey's Barbecue Pit Original Barbecue Sauce
3205121	Dickey's Barbecue Pit Since 1941 (Design plus words)
1980072	Dickey's Barbecue Pit A Texas Tradition Since 1941 (Design plus words)

8. Dickey's Restaurants is the exclusive owner of the Dickey's "System" a method of doing business and trade dress for franchised barbecue restaurants. The system includes building designs, pit designs, recipes, slogans, logos, symbols, methodology for doing business, menu items, advertising materials, bookkeeping systems,

and operating policies, and standard for food and service quality.

9. Dickey's Pit, with its trademarks, and Dickey's Restaurants with its System, offer for sale barbecue based on recipes and processes dating back to 1941. Dickey's Restaurants' franchisees use trademarked rubs and sauces that Plaintiffs have used for decades. One or more of the trademarks appear on Plaintiffs' products, packaging, franchise stores, and advertising. The Dickey's Pit's trademarks are closely and uniquely associated with the Plaintiffs' brand and have come to symbolize the quality that consumers expect from Dickey's Restaurants' franchises. Plaintiffs enjoy strong consumer loyalty, recognition, and goodwill in their trademarks and System.

10. Plaintiffs' claims emanate from Neighbor's unauthorized production, manufacture, distribution, advertisement, promotion, marketing, offering for sale, and sale of barbecue, sides, rub, and sauce under Plaintiffs' trademarks and System. Upon information and belief, Neighbors has been selling and marketing barbecue, sides, rub, and sauce directly to the consuming public through his franchised store at 1805 W. State of Franklin Road, Suite 200, Johnson City, TN 37604, under the Plaintiffs' trademarks and System. See attached and incorporated photos showing the continued use of Plaintiffs' trademarks and System by Neighbors after termination of Neighbors' franchise.

11. Dickey's Restaurants and Neighbors entered into a Dickey's Barbecue Restaurants, Inc. Franchise Agreement (the "Franchise Agreement"), on or about August 17, 2013. Roland Dickey, Jr. as President of Dickey's Restaurants and Neighbors in his individual capacity executed the Franchise Agreement. See, Exhibit "A."

12. The Franchise Agreement authorized Neighbors to operate a Dickey's Restaurants' franchise in the Bristol, Tennessee area. Exhibit "A," FRANCHISE

AGREEMENT, page 2, Article I FRANCHISE , paragraph 1.1, entitled GRANT.

13. The Franchise Agreement also outlines Neighbors' obligations and responsibilities to Dickey's Restaurants as a Franchisor as well as Dickey's Restaurants' obligations and responsibilities to Neighbors as a Franchisee.

14. Neighbors operated a Dickey's Barbecue Pit Restaurants at 1805 W. State of Franklin Road, Suite 200, Johnson City, Tennessee 37604. Neighbors continues to wrongfully operate the Restaurants in Johnson City, under the Dickey's trademarks.

15. In his application for a franchise and during the franchise development talks, Neighbors failed to disclose to Dickey's Restaurants that he had previously filed for bankruptcy and was a registered sex offender convicted of aggravated sexual assault. Neighbors' failure to disclose his registered sex offender status coupled with his credit history, made it difficult to obtain financing for the franchise finish out. Neighbors complained about the inability to obtain financing and tried to ascribe the duty and inability to find financing upon Dickey's Restaurants. In a letter dated May 22, 2014, Dickey's Restaurants indicated that it had found a lender - although Dickey's Restaurants had no obligation to find financing - but that Neighbors would have to have 90 days of franchise sales history before the lender would consider an application for financing. (Attached incorporated Exhibit "B").

16. The Franchise Agreement also permits inspection of a franchise restaurant "at any time . . ." Exhibit "A," 8.22 entitled "Inspections." Neighbors also agreed that he would " . . . take such steps necessary as may be necessary to correct immediately any deficiencies detected during any such inspection." *Id.*

17. An inspection was conducted of Neighbors' franchise restaurant in May 2014,

by Dickey's Restaurants' representatives. The inspector observed the following conditions at Neighbors' restaurant during this inspection: (a) several menu items were not prepared according to Dickey's Restaurants' "recipe book"; (b) food products were not stored based on Dickey's Restaurants' specific food safety standards; (c) equipment used for the storage of food was in disrepair; (d) core operation forms were not regularly utilized; (e) the restrooms were unsanitary; and (f) the designated Owner-Operator [Neighbors] was not working full time at the store as required by the Franchise Agreement. Exhibit "B," page 2.

18. Plaintiffs subsequently advised Neighbors of the inspection results. Exhibit "B," page 2.

19. In an e-mail response to the inspection results, Neighbors threatened to terminate Dickey's Restaurants' ability to debit weekly royalty and marketing fund contributions due under the Franchise Agreement, to publish additional defamatory statements about Dickey's on the internet, and to initiate litigation. See, Exhibit "B," page 2, entitled **Operational Deficiencies**.

20. Neighbors, pursuant to the Franchise Agreement, had agreed to pay a continuing nonrefundable royalty fee throughout the term of this agreement, equal to five percent (5%) of Net Sales . . . of your Restaurants, which shall be due and payable and shall be electronically drafted on your designated bank account on or before the Wednesday following the calendar week to which such payments relate.

See Exhibit "A," Franchise Agreement, Article 4, paragraph 4.1, entitled **FRANCHISE FEE**.

21. Dickey's Restaurants also advised Neighbors that within the next two months there would be a follow-up inspection of Neighbors' restaurant. Exhibit "B," page 2. Such

inspection is a normal practice and did not suggest that Neighbors was receiving special scrutiny.

22. Dickey's Restaurants received notice that Neighbors had substantial arrearage with his account to US Foods, the primary grocery supplier, and that Neighbors owed the general contractor and subcontractors that finished out Neighbors' restaurant. The contractor and subcontractors advised Dickey's Restaurants that liens would be placed against the furniture, fixtures, and equipment if the funds owed were not promptly paid. Exhibit "B," page 2.

23. Dickey's Restaurants reminded Neighbors that at Neighbors' request Dickey's Restaurants had previously negotiated an installment payout for the finish out monies due the general contractor and subcontractors and that Neighbors had failed to perform on the installment payout. Exhibit "B," page 2. Neighbors also failed to bring the bills owing and due US Foods current.

24. Dickey's Restaurants also advised Neighbors that if the contractors foreclosed a lien on the furniture, fixtures, and equipment at Neighbors' restaurant, the foreclosure would constitute an "event of default" by Neighbors under the terms and conditions of the Franchise Agreement. Exhibit "B," page 3.

25. By letter dated June 19, 2014, Dickey's Restaurants notified Neighbors that it had tried to draft electronically a payment of the franchise royalty fees and marketing fund fees; however, Dickey's Restaurants received notice that the payment had been stopped. A true and correct copy of this letter is attached hereto as Exhibit "C" and incorporated as if set forth in full.

26. In the June letter, Dickey's Restaurants further reminded Neighbors that he

had agreed pursuant to the Franchise Agreement to pay to Dickey's Restaurants a nonrefundable royalty fee based on a percentage of Net Sales as well as to pay a portion of his restaurant's Net Sales for Dickey's Restaurants' Marketing Fund. See Exhibit "A," page 6, Article 4, paragraphs 4.2 and 4.4; Exhibit "C," page 1.

27. By letter dated June 24, 2014, Dickey's Restaurants then advised Neighbors that because he had stopped payment of the electronic draft, Neighbors was in "default" of the Franchise Agreement. A true and correct copy of this letter is attached hereto as Exhibit "D" and incorporated as if set forth in full. At that time Neighbors owed Dickey's Restaurants \$1,088.58, per the Franchise Agreement. Exhibit "D," page 1.

28. Dickey's Restaurants had earlier advised Neighbors that it would make another attempt to debit Neighbors' account for the funds owed [Exhibit "C," page 1], and it confirmed this information in its June 24 letter to Neighbors. Exhibit "D," pp. 1-2.

29. Dickey's Restaurants additionally notified Neighbors that it would commence "formal default and termination procedures" of the franchise arrangement if it was unsuccessful in its subsequent attempt to debit Neighbors' account. Exhibit "D," page 2.

30. Based on the second unsuccessful attempt to debit Neighbors' account, on June 19, 2014, Dickey's Restaurants sent a formal notice of default letter to Neighbors on June 24, 2014. Exhibit "D," paragraph 3, page 2. As of June 24, 2014, Neighbors owed Dickey's \$1,205.58 in royalties and marketing fees. Exhibit "D."

31. In the June 24, 2014 letter, Dickey's Restaurants also advised Neighbors that because he failed to cure this default, it would commence proceedings to terminate the Franchise Agreement. Exhibit "D," pages 1-2. The June 24, 2014 letter further disclosed to Neighbors that he had agreed to pay Dickey's liquidated damages in the sum of

\$675,122.55 for termination. Exhibit “D.”

32. By terminating his franchise, Neighbors would be (a) prohibited from reopening the franchise restaurant; (b) prohibited from opening a barbecue restaurant “within a five (5) mile radius of the Dickey’s Barbecue franchise restaurant; and (c) prohibited and ordered to cease using “any of the confidential methods, procedures, and trade secrets associated with the Dickey’s Restaurants’ System.” Termination also required Neighbors to “immediately and permanently cease use of all signs, advertising materials, displays, furniture, fixtures and equipment, as such was proprietary to Dickey’s.”

33. Neighbors is also obligated to return to Dickey’s Restaurants all materials acknowledged to be Dickey’s property, including but not limited to recipe books, Operations Manuals, records, files, instructions, correspondence, customer lists and other writings or electronic data related to operating the Dickey’s franchise. Exhibit “A,” Section 17.10. Further, Neighbors is prohibited from making copies or records of any of data, except for the Franchise Agreement, correspondence with Dickey’s Restaurants, and documents Neighbors would need to comply with applicable law. Exhibit “A,” Section 17.10.

34. Finally, in a July 16, 2014 letter, Dickey’s Restaurants referenced the prior acts and conduct of Neighbors that resulted in the termination. The Franchise Agreement was terminated by Dickey’s Restaurants effective July 17, 2014, at 12:01 a.m. A true and correct copy of the July 16, 2014 letter is attached as Exhibit “E,” and incorporated as if set forth in full.

35. Neighbors continues to operate this store at 1805 W. State of Franklin Road, Suite 200, Johnson City, TN 37604 as a “Dickey’s store.”



## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **(Trademark Counterfeiting – 15 U.S.C. §1114)**

36. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

37. The registrations embodying the Dickey's Pit's trademarks are in full force and effect, and the Dickey's Pit's trademarks are entitled to protection under both federal law and common law.

38. Neighbors, without authorization from Dickey's Pit, has used and is continuing to use spurious designations that are identical to, or substantially indistinguishable from, the Dickey's Pit's trademarks in interstate commerce.

39. The foregoing acts of Neighbors is intended to cause, have caused, and are likely to continue to cause confusion or mistake, or to deceive consumers, the public, and the trade into believing that Neighbors' store is genuine or authorized by Dickey's Pit.

40. Upon information and belief, Neighbors has acted with knowledge of Dickey's Pit's ownership of the Dickey's Pit's trademarks and with deliberate intention or reckless disregard to unfairly benefit from the incalculable goodwill inherent in the Dickey's Pit's trademarks.

41. Neighbors' acts constitute trademark counterfeiting in violation of Section 32 of the Lanham Act (15 U.S.C. § 1114).

42. Upon information and belief, Neighbors has made and will continue to make substantial profits and gains to which he is not entitled to in law or equity.

43. Upon information and belief, Neighbors will continue his infringing acts, unless restrained by this Court.

44. Neighbors' acts have damaged and will continue to damage Dickey's Pit, and Dickey's Pit has no adequate remedy at law.

45. In light of the foregoing, Dickey's Pit is entitled to and demands injunctive relief prohibiting Neighbors from using the Dickey's Pit's trademarks or any marks identical or confusingly similar thereto for any purpose, and to recover from Neighbors all damages, including attorneys' fees, that Dickey's Pit has sustained and will sustain as a result of such infringing acts, and all gains, profits and advantages obtained by Neighbors as a result thereof, in an amount not yet known, as well as the costs of this action pursuant to 15 U.S.C. §1117(a), attorneys' fees and treble damages pursuant to 15 U.S.C. § 1117(b), or statutory damages pursuant to 15 U.S.C. § 1117(c).

## **SECOND CLAIM FOR RELIEF**

### **(Trademark Infringement – 15 U.S.C. § 1114)**

46. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

47. The Dickey's Pit's trademarks are nationally recognized, including within this judicial district, as being affixed to goods and merchandise of the highest quality and originating with Plaintiffs.

48. The registrations embodying the Dickey's Pit's trademarks are in full force and effect, and the Dickey's Pit's trademarks are entitled to protection under both federal law and common law.

49. Neighbors' unauthorized use of the Dickey's Pit's trademarks in interstate commerce and advertising of the same constitutes false designation of origin and a false representation that the goods and services are manufactured, offered, sponsored, authorized, licensed by or otherwise connected with Dickey's Pit or come from the same source as Dickey's Pit and are of the same quality as goods bearing the Dickey's Pit's trademarks.

50. Neighbors' use of the Dickey's Pit's trademarks is without Dickey's Pit's permission or authority and is in total and willful disregard of Dickey's Pit's rights to control the Dickey's Pit's trademarks.

51. Neighbors' activities are likely to lead to and result in confusion, mistake or deception and are likely to cause the public to believe that Dickey's Pit has produced, sponsored, authorized, licensed or is otherwise connected or affiliated with Neighbors' commercial and business activities, all to the detriment of Dickey's Pit.

52. Upon information and belief, Neighbors' acts are deliberate and intended to confuse the public as to the source of Neighbors' goods or services and to injure Dickey's Pit and reap the benefit of Dickey's Pit's goodwill associated with the Dickey's Pit's trademarks.

53. As a direct and proximate result of Neighbors' willful and unlawful conduct, Dickey's Pit has been damaged and will continue to suffer damage to its business and reputation unless Neighbors is restrained by this Court from infringing the Dickey's Pit's trademarks.

54. Neighbors' acts have damaged and will continue to damage Dickey's Pit, and Dickey's Pit has no adequate remedy at law.

55. In light of the foregoing, Dickey's Pit is entitled to and demands injunctive relief prohibiting Neighbors from using the Dickey's Pit's trademarks or any marks identical or confusingly similar thereto for any purpose, and to recover from Neighbors all damages, including attorneys' fees, that Dickey's Pit has sustained and will continue to sustain as a result of such infringing acts, and all gains, profits, and advantages obtained by Neighbors as a result thereof, in an amount not yet known, as well as the costs of this action pursuant to 15 U.S.C. § 1117(a), attorneys' fees and treble damages pursuant to 15 U.S.C. § 1117(b), or statutory damages pursuant to 15 U.S.C. § 1117(c).

### **THIRD CLAIM FOR RELIEF**

#### **(False Designations of Origin & False Descriptions — 15 U.S.C. § 1125(a))**

56. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

57. The Dickey's Pit's trademarks are nonfunctional, inherently distinctive, and have achieved a high degree of consumer recognition and serve to identify Dickey's Pit as the source of high quality goods to which the Dickey's Pit's trademarks are affixed.

58. Neighbors' promotion, advertising, distribution, sale, and offering for sale of the Dickey's Pit's store products is likely to confuse, mislead, or deceive consumers, the public, and the trade as to the origin, source, sponsorship, or affiliation of said products, and is intended, and is likely, to cause such parties to believe, in error, that the Neighbors' restaurant's has been authorized, sponsored, approved, endorsed or licensed by Dickey's Pit, or that Neighbors is in some way affiliated with Plaintiffs.

59. Neighbors' use of the Dickey's Pit's trademarks is without Dickey's Pit's

permission or authority and is in total and willful disregard of Dickey's Pit's rights to control the Dickey's Pit's trademarks.

60. Neighbors' acts have damaged and will continue to damage Dickey's Pit and Dickey's Pit has no adequate remedy at law.

61. In light of the foregoing, Dickey's Pit is entitled to injunctive relief prohibiting Neighbors from using the Dickey's Pit's trademarks, or any marks confusingly similar thereto, and to recover all damages, including attorneys' fees, that Dickey's Pit has sustained and will sustain, and all gains, profits and advantages obtained by Neighbors as a result of his infringing acts alleged above in an amount not yet known, as well as the costs of this action.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Trademark Dilution – 15 U.S.C. § 1125(c))**

62. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

63. The Dickey's Pit's trademarks are strong and distinctive marks and have achieved enormous and widespread public recognition, and are thus "famous" within the meaning of the Lanham Act.

64. Neighbors has used, in commerce, in connection with the sale of the restaurant's products, unauthorized reproductions of the Dickey's Pit's trademarks, which are likely to cause, and most likely has caused, confusion or mistake as to the affiliation, connection, or association between Neighbors and Dickey's Pit, or as to the origin, sponsorship, or approval of Neighbors' restaurant.

65. Neighbors' acts described above have diluted and continue to dilute the unique and distinctive Dickey's Pit's trademarks. These acts violate the Lanham Act, have injured and, unless immediately restrained, will continue to injure Dickey's Pit, causing damage to Dickey's Pit in an amount to be determined at trial, as well as irreparable injury to the goodwill and reputation associated with the Dickey's Pit's trademarks.

66. Upon information and belief, Neighbors' unlawful actions began after the Dickey's Pit's trademarks became famous.

67. Upon information and belief, Neighbors acted knowingly, deliberately and willfully with the intent to trade on the reputation of Dickey's Pit, and to dilute the Dickey's Pit's trademarks. Neighbors' conduct is willful, wanton, and egregious.

68. Dickey's Pit has no adequate remedy at law to compensate Dickey's Pit fully for the damages that have been caused and which will continue to be caused to Dickey's Pit by Neighbors' unlawful acts unless they are enjoined by this Court.

69. In light of the foregoing, Dickey's Pit is entitled to injunctive relief prohibiting Neighbors from using the Dickey's Pit's trademarks, and to recover all damages, including attorneys' fees, that Dickey's Pit has sustained and will sustain, and all gains, profits and advantages obtained by Neighbors as a result of their infringing acts alleged above in an amount not yet known, as well as the costs of this action.

#### **FIFTH CLAIM FOR RELIEF**

#### **(Injunctive Application)**

70. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

71. If Neighbors is allowed to continue to operate the Dickey's Barbecue Pit restaurant in Johnson City, Tennessee or any other locations in the State of Tennessee, Plaintiffs will suffer irreparable injury and harm to their good will and reputation. Such injury shall be both actual and imminent. Further, Plaintiffs have no adequate remedy at law, and based upon the facts, there is a substantial likelihood that Plaintiffs will prevail on the merits of this case. Attached and incorporated in this complaint are the affidavits with attachments of Christine Johnson and Kim Juda, that support this application for injunctive relief.

72. The injury that Plaintiffs face outweighs any injury that Neighbors may sustain. The balance of hardships as well as the effect on the public interest favors Plaintiffs' application for injunctive relief. Neighbors intentionally breached the Franchise Agreement and made knowing misrepresentations on his application for the Dickey's Restaurant's franchise in the Bristol, Tennessee area. The harm to Plaintiffs is imminent and ongoing.

73. If Neighbors is allowed to continue to operate the restaurant in issue, Plaintiffs will suffer irreparable injury and harm to their goodwill and reputation by Neighbors's use of Plaintiffs' trademarks and Systems. Accordingly, Plaintiffs seek a temporary restraining order and further injunctive relief that would prohibit Neighbors from operating a Dickey's Barbecue Pit denominated restaurant in the Bristol, Tennessee area or any other area of the United States. Plaintiffs further seek a temporary restraining order, preliminary injunction, and permanent injunction from this Court enjoining Neighbors from utilizing any of the Plaintiffs' trademarks and System as well as continuing to operate a barbecue store in the Bristol, Tennessee area that infringes on Plaintiffs' trademark, trade

dress or system.

### **FIFTH CLAIM FOR RELIEF**

#### **(Breach of Contract)**

74. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

75. Neighbors entered the Franchise Agreement with Dickey's Restaurants. The Franchise Agreement is a valid, enforceable contract. Dickey's Restaurants has performed its obligations under the Franchise Agreement. Neighbors has breached the Franchise Agreement. That breach caused injury to Dickey's Restaurants.

76. Dickey's Restaurants seeks recovery of its liquidated damages under the Franchise Agreement for termination and alternatively its actual damages. Dickey's Restaurants has also had to retain legal counsel to prosecute this claim and seeks recovery of attorney's fees for this prosecution through collection under Texas Civil Practices and Remedies Code Chapter 38.

### **SIXTH CLAIM FOR RELIEF**

#### **(Injury to Business Reputation and Trademark Dilution, § 16.29 T.B.C.C.)**

77. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

78. Due to Plaintiffs extensive sales of products bearing the Plaintiffs' trademarks and System accompanied by significant marketing and promotional activities, Plaintiffs' trademarks and System have achieved widespread acceptance and recognition within the consuming public and the trade throughout the United States.



79. Through prominent, long, and continuous use in commerce, including commerce within the State of Texas and Tennessee, the trademarks and System have become and continue to be famous and distinctive.

80. Neighbors' use of the trademarks and System, without Plaintiffs' authorization, dilutes the distinctive quality of the trademarks and System. It has also decreased the capacity of such marks and System to identify and distinguish Plaintiff's products and system and has caused and continues to cause a likelihood of harm to Plaintiffs' business reputation.

81. Based on the foregoing acts, Neighbors has diluted the distinctive quality of Plaintiffs' trademarks and System in violation of Section 16.29 of the Texas Business and Commerce Code.

82. The foregoing acts of Defendants also constitute injury to Plaintiffs' business reputation in violation of Section 16.29 of the Texas Business and Commerce Code.

83. Upon information and belief, Neighbors has made and will continue to make substantial profits and gains to which they are not in law or equity entitled.

84. Upon information and belief, Neighbors intends to continue his infringing acts, unless restrained by this Court.

85. Neighbors' acts have damaged and will continue to damage Plaintiffs, and Plaintiffs have no adequate remedy at law.

## **SEVENTH CLAIM FOR RELIEF**

### **(Common Law Unfair Competition)**

86. Plaintiffs incorporate herein by reference the averments of the preceding

paragraphs as though fully set forth herein.

87. The foregoing acts of Neighbors permit Neighbors to use and benefit from the goodwill and reputation earned by Plaintiffs and to obtain a ready customer acceptance of Neighbors' products, and constitutes unfair competition, palming off, and misappropriation in violation of Texas common law, for which Plaintiffs is entitled to recover any and all remedies provided by such common law.

88. Upon information and belief, Neighbors has made and will continue to make substantial profits and gains to which he is not in law or equity entitled.

89. Upon information and belief, Neighbors intends to continue his infringing acts, unless restrained by this Court.

90. Neighbors' acts have damaged and will continue to damage Plaintiffs, and Plaintiffs have no adequate remedy at law.

### **EIGHTH CLAIM FOR RELIEF**

#### **(Common Law Unjust Enrichment)**

91. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

92. Neighbors has unjustly enriched himself, and continues to do so, in an unknown amount.

93. Plaintiffs are entitled to just compensation under the common law of the State of Texas.

## **NINTH CLAIM FOR RELIEF**

### **(Common Law Trademark Infringement)**

94. Plaintiffs incorporate herein by reference the averments of the preceding paragraphs as though fully set forth herein.

95. Plaintiffs own all rights, title, and interest in and to the Dickey's Pit's Trademarks and Dickey's Restaurants System, including all common law rights in such marks and System.

96. Neighbors, without authorization from Plaintiffs, has used and is continuing to use spurious designations that are identical to, substantially indistinguishable from, or confusingly similar to the Dickey's Pit's trademarks.

97. The foregoing acts of Neighbors are intended to cause, have caused, and are likely to continue to cause confusion, mistake, and deception among consumers, the public, and the trade as to whether Neighbors' barbecue and sides originate from, or is affiliated with, sponsored by, or endorsed by Plaintiffs.

98. Neighbors' acts constitute trademark infringement in violation of the common law of the State of Texas.

99. Upon information and belief, Neighbors has profited from his unlawful actions and has been unjustly enriched to the detriment of Plaintiffs. Neighbors' unlawful actions have caused Plaintiffs damage in an amount presently unknown, but in an amount to be determined at trial.

100. Plaintiffs have been irreparably harmed and will continue to be irreparably harmed as a result of Neighbors' unlawful acts unless Neighbors is permanently enjoined

from his unlawful conduct.

101. Plaintiffs have no adequate remedy at law.

### **DEMAND FOR JURY TRIAL**

Under FRCP 38(b), Plaintiffs hereby demand a trial by jury of all claims in this litigation.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment in its favor and against Neighbors as follows:

A. Neighbors, his agents, servants, employees, officers, associates, attorneys, and all persons acting by, through, or in concert with any of them, are hereby temporarily, preliminarily, and permanently enjoined from using the Dickey's Pit's trademarks or any marks, designs or designations confusingly or substantially similar thereto, including, but not limited to:

(1) manufacturing, importing, advertising, marketing, promoting, supplying, distributing, offering for sale, or selling any products which bear the Dickey's Pit's trademarks or any marks/designs identical thereto, substantially indistinguishable from, substantially similar thereto, or confusingly similar thereto;

(2) engaging in any other activity that will dilute the distinctiveness of the Dickey's Pit's trademarks; and

(3) committing any other act which falsely represents or has the effect of falsely representing that the goods and services of James L. Neighbors ("Neighbors") are licensed by, authorized by, offered by, produced by, sponsored by, endorsed by, or in any

other way associated with Dickey's Barbecue Pit, Inc. or Dickey's Barbecue Restaurants, Inc.;

B. Ordering Neighbors to deliver to Plaintiffs for destruction or other disposition all remaining inventory of the Neighbors' restaurant, or other merchandise bearing the Dickey's Pit's trademarks, Dickey's Restaurants System, or any marks confusingly or substantially similar thereto, including all advertisements, promotional and marketing materials therefore, as well as means of making same including signs;

C. Ordering Neighbors to supply Plaintiffs a list of all downstream purchasers of the product from Neighbors' restaurant and provide all documents, including correspondence, invoices, and receipts, related to Neighbors purchase of the product for Neighbors' restaurant;

D. Ordering Neighbors to file with this Court and serve on Plaintiffs within ten (10) days after entry of the injunction a report in writing, under oath setting forth in detail the manner and form in which Neighbors has complied with the injunction;

E. Ordering an accounting by Neighbors of all gains, profits and advantages derived from their wrongful acts;

F. Awarding Plaintiffs all of Neighbors' profits and all damages sustained by Plaintiffs as a result of Neighbors' wrongful acts, and such other compensatory damages as the Court determines to be fair and appropriate pursuant to 15 U.S.C. § 1117(a) and 17 U.S.C. § 504(b);

G. Awarding treble damages in the amount of Neighbors' profits or Dickey's Pit's damages, whichever is greater, for willful infringement pursuant to 15 U.S.C. § 1117(b);

H. Awarding applicable interest, costs, disbursements and attorneys' fees,

pursuant to 15 U.S.C. § 1117(b) and Tex. Civ. Prac. & Rem. Code chapter 38;

- I. Awarding Dickey's Pit statutory damages pursuant to 15 U.S.C. §1117(c);
- J. Awarding Dickey's Restaurants its actual damages or liquidated damages for breach of the Franchise Agreement, and
- K. Granting such other relief as may be just and proper.

Respectfully submitted,

By: /s/ John Holman Barr

John Holman Barr  
State Bar No. 01798700  
Leonard H. Plog II  
State Bar No. 16073500  
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BARBECUE RESTAURANTS, INC.**

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2012-2013 FRANCHISE AGREEMENT  
FINAL: 09-01-2012  
NRS

**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 DICKEY'S BARBECUE RESTAURANTS, INC., a Texas corporation, hereinafter referred to as "Franchisor" or "Dickey's", and the person or entity 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): August 17, 2013

TERM: Twenty (20) Years from Effective Date

REQUIRED OPENING DATE: One (1) Year from Effective Date

FRANCHISEE: James L. Neighbors

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

FRANCHISEE'S ADDRESS: 100 Fairhaven Dr.

Blountville, TN 37617

FRANCHISEE'S TELEPHONE: 817-223-6201

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

FRANCHISEE'S E-MAIL ADDRESS: james\_neighbors@yahoo.com

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 quick style 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;

**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.** The "Assigned Area" is described as follows:

Bristol, Tennessee  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prior to your designation and Dickey's acceptance of your proposed location, Dickey's may grant to others franchises to open and operate Restaurants within the Assigned Area, so long as the Assigned Area is large enough for you to locate, establish and operate a Restaurant within such Assigned Area. 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. 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. Notwithstanding, Dickey's, and 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 but not limited to catering and delivery services) in the Assigned Area, 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 the Restaurant, under the Proprietary Marks, in the Assigned Area, 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). Except for the foregoing, during the term of this Agreement, 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 Assigned 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.** 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 \$40,000.00;

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. You shall execute Dickey's then-current form of franchise agreement, and your Owner/Operator and Investors shall execute a personal guaranty for the renewal term, which agreement shall supersede this Agreement and any prior franchise agreement relating to your Restaurant in all respects, and the terms of which may differ from the terms of this Agreement and may include, without limitation, a higher royalty fee, Marketing Fund (as defined in Article 3.6) contribution, or minimum advertising expenditure requirement;

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; and

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

### 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 furnish you written site selection guidelines and such site selection counseling and assistance as Dickey's may deem advisable; and

2. Dickey's shall provide such on-site evaluation as Dickey's may deem necessary on its own initiative or in response to your reasonable request for site acceptance; provided, however, that Dickey's shall not provide 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.** Dickey's shall maintain a list of approved architects to which Dickey's has provided a set of prototypical design plans for a Dickey's Barbecue Restaurant. 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 not engage any architect in connection with your Restaurant not listed on Dickey's then-current list of approved architects.



**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 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 franchise manual (the "Franchise 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. Alternatively, Dickey's may, as Dickey's deems appropriate, make the Franchise Manual and such other Manuals available to you through an established on-line website. 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 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 Wednesday 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 statement (the "Monthly Sales Report"), signed 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 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 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, delivery, 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.

## 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 sixty (60) days prior to your scheduled Restaurant opening, 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 opening promotion. Upon your request, a full accounting of the Restaurant Opening Promotion Funds spent by Dickey's in connection with your Restaurant opening promotion 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 opening promotion, 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 Sums from the Marketing Fund will not be applied towards costs and expenses related to your Restaurant opening promotion any remaining sums in the Restaurant Opening Promotion Funds shall not be credited toward any other obligation of yours described in this Agreement.

**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 WEBSITE INTERNET PROMOTIONS.** In order to avoid causing public confusion, you are prohibited from establishing and operating a URL website relating to your Restaurant. 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.

**5.6 PRICING; PARTICIPATION IN PROMOTIONS.** You shall sell your food products and merchandise and offer services in accordance with Dickey's pricing guidance set forth in the Manuals or otherwise in writing. Subject to any applicable legal constraints, you shall participate in and comply with all sales and promotional programs featuring "value deals", kids meal programs, and meal or food item promotions promulgated by Dickey's from time to time.

**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 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.

**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 a corporation, a partnership or a limited liability company, or any other entity, you represent, warrant and covenant to Dickey's, and you will provide Dickey's with all documentation required by Dickey's which evidence, that:

1. You are duly organized and validly existing under the state law of your formation;
2. You are duly qualified to do business 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;
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 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;
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 ownership interests in you;

6. If there should be a change in any ownership interest in you, 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 interest in you 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;

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 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 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 in your corporate, company, partnership or other entity or sole proprietorship 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 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.

**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. 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. 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 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. 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.

**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. 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 and 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 sixty (60) days following the date you sign your lease. 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 shall open your Restaurant and commence business on or before one (1) year 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.** Upon 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. If you are an individual, you shall perform all obligations of the Owner/Operator.
2. 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) 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.

3. 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 Dickey's Barbecue Pit, Inc. 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 food 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. 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;

4. 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

5. 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 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 reinspect 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 preferred vendors. The list of preferred 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"). 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 (and you shall not attempt to modify or regulate) such systems and programs and the data generated thereby.

**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 such as meats, barbecue sauce 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 \$40,000.00 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 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 required or 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 your Restaurant. You agree to comply with all licensing, 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 liquor liability insurance requirements outlined in Article 14 and which Dickey's may subsequently promulgate. YOU WILL INDEMNIFY, DEFEND AND HOLD DICKEY'S HARMLESS FROM AND AGAINST ANY LIABILITY OR CLAIMS BY ANY PERSON, ENTITY OR GOVERNMENT AGENCY RESULTING FROM YOUR SALE OF ALCOHOLIC BEVERAGES OR YOUR BREACH OF YOUR COVENANTS HEREUNDER.

**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 Dickey's Employee Handbook, if any, 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 at any time for the purpose of conducting 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 chose 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 van or other appropriate 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 terminate your hotline referrals and redirect them to other Dickey's restaurants for service if Dickey's determines you do not comply with Dickey's policies and procedures or if your catering service is found to be deficient.

**8.26 DRIVE-THROUGH SERVICES.** If your Restaurant contains drive-through 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 you (if an individual), 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 attended and 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. Training shall be conducted at Dickey's

corporate training center, at a Company-Operated Restaurant or such other location as may be designated by Dickey's. 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 \$500.00 per person (minimum fee of \$1,500.00 for you). 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, 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. 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 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. You shall not use the Proprietary Marks as part of any website or domain name or your e-mail address;

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. DICKEY'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 on loan and 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. Alternatively, Dickey's may, as Dickey's deems appropriate, make any Manuals available to you through an established on-line website.

**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, but not limited to, the Manuals, recipes, 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 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.

**13.2 REPORTING REQUIREMENTS.** You 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.

**13.3 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.

**13.4 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 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.

**13.5 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.** You shall obtain, within thirty (30) days after the execution of this Agreement, and shall maintain in full force and effect at all times during the term of this Agreement, at your expense, an insurance policy or policies protecting you and Dickey's and its subsidiaries, affiliates, successors and assigns and their respective officers, directors, shareholders, partners, employees, servants, independent contractors, representatives and agents, against any demand or claim with respect to personal injury, death or property damage or any loss, liability or expense arising out of or occurring upon or in connection with the condition, operation, use or occupancy of the franchised business.

**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. 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.

B. The commercial general liability policy shall also have a products/completed operations coverage part with 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 as an additional named insured on all coverage parts.

ii. An endorsement making the commercial general 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 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 and Dickey's shall

mutually agree is appropriate. Such policies shall also include, if available, an "alternate employer endorsement" in favor of Dickey's and a waiver of subrogation in favor of Dickey's and its directors, officers, shareholders, partners, employees, servants, representatives, and agents. 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 not less than \$1,000,000.00 combined single limit (which shall include, without limitation, coverage for your delivery and catering operations).

5. Liquor liability insurance:

A. If you sell alcoholic beverages at your 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 as an additional named insured;

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 exceed 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.

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 an each occurrence limit of \$1,000,000.00. The umbrella policy shall be written on an

occurrence reporting basis.

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

i. An endorsement listing Dickey's as an additional named insured.

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 coverage in such form and amounts required by Dickey's and with coverage limits of not less than \$1,000,000.00 including third party and wage and hour coverage.

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

10. 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.** You may, with the prior written consent of Dickey's, elect to have reasonable deductibles in connection with the coverage required under Articles 14.2.1 and 14.2.7.

**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.

**14.6 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.

**14.7 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, however, any 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. 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, 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, each individual shall have the same proportionate ownership interest in the 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 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, at Dickey's option, all rights granted herein shall automatically terminate without notice to you, 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;
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 franchise business is foreclosed upon or if the equipment of the franchise business is levied or executed upon;

**16.2 EVENTS OF DEFAULT SUBJECT TO NOTICE BUT WITHOUT CURE** You shall be in default and 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 ten (10) days;
2. Any transfer in violation of Article 15;
3. You are in default under your lease of your Restaurant premises;
4. You fail to locate a proposed site for your Restaurant within the time stated in, and otherwise comply with, Article 7.2;
5. You fail to acquire a site for your Restaurant within the time stated in and otherwise comply with, Article 7.5;
6. You fail to commence business within the time stated in, and otherwise in accordance with, Article 7.10;
7. You fail to comply with the provisions of Article 8.9; or
8. You fail to comply with any confidentiality or non-compete provisions of this Agreement, including, without limitation, those set forth in Articles 11 and 12.

**16.3 EVENTS OF DEFAULT SUBJECT TO 7-DAY NOTICE AND CURE.** You shall be in default and 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 which have not been approved by Dickey's.

Provided, if you commit or permit any of these breaches two (2) times during any twelve (12) month period, 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, such event of default shall be deemed an event of default under Article 16.1 and not subject to any notice and cure.

**16.4 EVENTS OF DEFAULT SUBJECT TO 30-DAY NOTICE AND CURE.** You shall be in default and 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 you 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.

Provided, if you commit or permit any of these breaches two (2) times during any twelve (12) month period, 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, such event of default shall be deemed an event of default under Article 16.1 and not subject to any 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. You shall immediately cease to operate your Restaurant as a Dickey's Restaurant and shall not thereafter, directly or indirectly, represent to the public or hold yourself out as a present or former franchisee of Dickey's. Unless otherwise indicated in a writing from Dickey's, you shall pay to Dickey's in a single lump-sum payment, as liquidated damages and not as a penalty, royalty fees for the remaining term of the Agreement (or the renewal term, if applicable) calculated based upon the average Net Sales of your Restaurant for the twelve (12) complete calendar months prior to termination. If, for example, your average Net Sales for the twelve (12) preceding calendar months was \$83,333.33 per month, and you have three (3) years remaining on the term of your Agreement, your liquidated damages would be \$150,000.00 ( $\$83,333.33 \times \text{five percent (5\%)} \text{ royalty} \times \text{twelve (12) calendar months in a year} \times \text{three (3) remaining years}$ ). If, at the time of termination, your Restaurant had not yet opened for business or had been operating for less than twelve (12) months, liquidated damages will be calculated based upon the average Net Sales of all Dickey's Restaurants in operation for less than twelve (12) months.

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 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 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. 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, 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.

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, 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.

### 20.4 INDEMNITY.

1. YOU, YOUR OWNER/OPERATOR AND EACH OF YOUR INVESTORS SHALL, AT ALL TIMES, INDEMNIFY 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 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. 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);

B. 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;

C. LIBEL, SLANDER OR ANY OTHER FORM OF DEFAMATION OF DICKEY'S OR THE SYSTEM, BY YOU, YOUR OWNER/OPERATOR OR ANY OF YOUR INVESTORS;

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; AND

E. NEGLIGENT ACTS, ERRORS OR OMISSIONS 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 THE ESTABLISHMENT AND OPERATION OF YOUR RESTAURANT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ANY OF THE FOREGOING IN THE OPERATION OF ANY DELIVERY MOTOR VEHICLE. THE PARTIES ACKNOWLEDGE AND AGREE THAT DICKEY'S CANNOT AND DOES NOT EXERCISE ANY CONTROL OVER THE MANNER OF OPERATION OF ANY DELIVERY MOTOR VEHICLES USED BY OR ON BEHALF OF ANY INDEPENDENT DELIVERY SERVICE PROVIDER REQUIRED UNDER THIS AGREEMENT OR BY OR ON BEHALF OF YOU OR ANY OF YOUR EMPLOYEES, AGENTS OR INDEPENDENT CONTRACTORS (EXCEPT, WITH RESPECT TO DELIVERY SERVICE PROVIDED BY YOU, DICKEY'S MAY REQUIRE THAT YOUR DRIVERS MEET CERTAIN MINIMUM STANDARDS) AND, THEREFORE, THAT THE SAFE OPERATION OF DELIVERY SERVICE IS THE INDEPENDENT OPERATOR'S (OR YOURS, AS APPLICABLE), SOLE RESPONSIBILITY.

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, 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, 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, DICKEY'S 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 DICKEY'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 DICKEY'S 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 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.

6. THE PERSONS INDEMNIFIED PURSUANT TO THIS ARTICLE 20 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. YOU, YOUR OWNER/OPERATOR AND EACH OF YOUR INVESTORS SHALL HOLD HARMLESS AND INDEMNIFY THE PERSONS INDEMNIFIED PURSUANT TO THIS ARTICLE 20 FOR ALL LOSSES AND EXPENSES WHICH MAY ARISE OUT OF ANY NEGLIGENT ACTS, ERRORS OR OMISSIONS BY YOU, YOUR OWNER/OPERATOR, YOUR INVESTORS, YOUR SUBSIDIARIES AND AFFILIATES, YOUR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AGENTS, INDEPENDENT CONTRACTORS, SERVANTS, EMPLOYEES AND REPRESENTATIVES AND THOSE OF YOUR SUBSIDIARIES AND AFFILIATES, AND ANY SUCH THIRD PARTIES WITHOUT LIMITATION AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OF DICKEY'S OR ANY OTHER PARTY OR PARTIES ARISING IN CONNECTION THEREWITH, AND WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. ACCORDINGLY IT IS THE EXPRESS INTENTION THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO MATTERS WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF, OR ARE CLAIMED TO BE CAUSED BY OR ARISE OUT OF, THE NEGLIGENCE OR STRICT LIABILITY OF SUCH INDEMNIFIED PARTY.

7. UNDER NO CIRCUMSTANCES SHALL THE PERSONS INDEMNIFIED PURSUANT TO THIS ARTICLE 20 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 THE PERSONS INDEMNIFIED PURSUANT TO THIS ARTICLE.

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, 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 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/Investor and Investors certify that the table immediately below contains a true, correct and complete listing of: (i) if Franchisee is an individual, Franchisee; and (ii) if Franchisee is an entity, 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 %
1. James L. Neighbors	100 Fairhaven Dr. Blountville, TN 37617 Tel. 817-2236201	Individual	N/A	100%
2.				
3.				
4.				

**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

This Agreement, the documents referred to herein, the attachments hereto, and any addenda 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, no other representations having induced you to execute this Agreement. 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, (i) if you are an individual, your spouse and (ii) if you are an entity, (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, 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 attachments) or the relationship created by this Agreement (collectively, "Disputes") to non-binding mediation prior to filing any action in court with respect to the Dispute. The mediation shall be conducted in Collin County, Texas through either an individual mediator or a mediator appointed by a mediation services organization or body, experienced in the mediation of disputes in the food service business, agreed upon by the parties and, failing such agreement, within a reasonable period of time after either party has notified the other of its desire to seek mediation of any Dispute (not to exceed fifteen (15) days), through the American Arbitration Association ("AAA") 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 which shall not be resolved through mediation in accordance with Article 27.1 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 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. 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.

**27.3 CERTAIN CLAIMS BY DICKEY'S.** Notwithstanding anything herein to the contrary, Dickey's may bring an action (a) for monies owed, (b) for injunctive relief or other extraordinary relief, or (c) involving the possession or disposition of, or other relief relating to real property, in any court having jurisdiction and without first submitting such action to mediation or arbitration.

**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.

**27.5 GOVERNING LAW AND 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. THE PARTIES 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, (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 AS 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. Notwithstanding the foregoing, the parties acknowledge and agree that Dickey's may institute legal action for injunctive relief in any court of competent jurisdiction.

**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.

**27.8 APPLICABLE STATE LAW.** You and Dickey's acknowledge that the parties' agreement regarding applicable state law and forum set forth in Article 27.5 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.

#### ARTICLE 28. ACKNOWLEDGMENTS

**28.1 COMPLETION OF INDEPENDENT INVESTIGATION.** You acknowledge 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. You acknowledge that you have completed and submitted to Dickey's the Franchisee Questionnaire, in the form of Attachment B, and that your responses were truthful and well considered.

**28.2 RECEIPT OF AGREEMENT AND DISCLOSURE DOCUMENT.** You 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.

**28.3 REVIEW OF AGREEMENT.** You acknowledge 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 of your own choosing about the content of the Agreement and the potential benefits and risks of entering into this Agreement.

**28.4 AUTHORIZATION TO CONDUCT INVESTIGATION.** You 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.

**28.5. NO FINANCIAL REPRESENTATIONS.** 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.

## ARTICLE 29. STATE-SPECIFIC PROVISIONS

**29.1 STATE SPECIFIC PROVISIONS CONTROL.** You acknowledge that the Laws of various states may have jurisdiction over you and may modify certain of your rights and obligations hereunder. Accordingly, you acknowledge and agree that the Laws of such states (including those, if any, set forth in Article 29.2) (collectively, "Controlling Law") shall govern and control any contrary or inconsistent provisions of this Agreement (collectively, "Inconsistent Provisions") and such Inconsistent Provisions are hereby modified and amended, where applicable, so that any Inconsistent Provisions of this Agreement comply with Controlling Law; **PROVIDED HOWEVER, THIS AGREEMENT SHALL ONLY BE MODIFIED AND AMENDED ONLY TO THE EXTENT: (A) SUCH CONTROLLING LAW IS BINDING ON THE PARTIES TO THIS AGREEMENT; (B) SUCH CONTROLLING LAW IS NOT PERMITTED UNDER APPLICABLE LAW TO BE WAIVED OR MODIFIED BY THE TERMS OF THIS AGREEMENT; (C) SUCH CONTROLLING LAW IS APPLICABLE TO THE MATTERS SET FORTH IN THIS AGREEMENT; (D) REQUIRED BY SUCH CONTROLLING LAW; AND (E) REQUIRED UNDER APPLICABLE LAW TO RENDER ANY INCONSISTENT PROVISION LEGAL, VALID AND ENFORCEABLE, AND ANY AND ALL PROVISIONS OF THIS AGREEMENT (OR ANY PORTIONS THEREOF) WHICH ARE OTHERWISE LEGAL, VALID AND ENFORCEABLE SHALL NOT BE AFFECTED THEREBY. ALL OTHER TERMS AND CONDITIONS OF THIS AGREEMENT WILL REMAIN THE SAME.** As used herein, (a) "Laws" means any statutes, laws, ordinances, regulations, orders, writs, injunctions, or decrees of the applicable state or Tribunal, and (b) "Tribunal" means any applicable governmental department, commission, board, bureau, agency, or instrumentality of such state.

**29.2 PROVISIONS APPLICABLE UNDER ARKANSAS LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, pursuant to Title 4, Chapter 72, Sections 4-201 through 4-7-210 of the Arkansas Code (the "Arkansas Franchise Practices Act"):

1. Dickey's shall not cancel, terminate or fail to renew the franchise granted under this Agreement, except in accordance with the Arkansas Franchise Practices Act or other applicable law;

2. This Agreement shall not release Dickey's or any other person from any liability under provisions of the Arkansas Franchise Practices Act, except as permitted under the Arkansas Franchise Practices Act or other applicable law;

3. Dickey's shall not prohibit you from freely associating with other Dickey's franchisees for any lawful purposes, except in accordance with the Arkansas Franchise Practices Act or other applicable law;

4. Dickey's shall not prohibit any change in your management except in accordance with the Arkansas Franchise Practices Act or other applicable law;

5. Dickey' shall not restrict the sale of any equity or debenture issue or the transfer of any security of you or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of stock or debentures to your employees, your personnel, or the heirs of your principal owner, except in accordance with the Arkansas Franchise Practices Act or other applicable law; and

6. Any provision of this Agreement which is otherwise prohibited under the Arkansas Franchise Practices Act is void.

**29.2 PROVISIONS APPLICABLE UNDER CALIFORNIA LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, pursuant to Division 5 of the California Corporations Code (the "Franchise Investment Law"), Division 8, Chapter 5.5 of the California Business and Professions Code (the "California Franchise Relations Act") and/or any other applicable California law:

1. Any condition, stipulation or provision in this Agreement which purports to require that you waive compliance with the provisions of the Franchise Investment Law is void. Without limiting the generality of the foregoing:

A. Dickey's shall not restrict or inhibit your right to join a trade association or prohibit you from freely associating with other Dickey's franchisees for any lawful purposes, except in accordance with the Franchise Investment Law or other applicable law;

B. Dickey's shall not modify the terms of this Agreement except in accordance with the applicable provisions of Section 31125 of the Franchise Investment Law and any other applicable provisions of the Franchise Investment Law; and

C. Any provision of this Agreement is otherwise prohibited under the Franchise Investment Law is void.

2. Any condition, stipulation or provision in this Agreement which purports to require that you waive compliance with the provisions of the California Franchise Relations Act is void. Without limiting the generality of the forgoing:

A. Dickey's shall not terminate the franchise granted under this Agreement, except in accordance with the applicable provisions of Article 3 of the California Franchise Relations Act or any other applicable law;

B. Dickey's shall not fail to renew the franchise granted under this Agreement, except in accordance with the California Franchise Relations Act or any other applicable;

C. Pursuant to and subject to the terms and conditions of the California Franchise Relations Act, Dickey's shall not deny the surviving spouse, heirs, or estate of a deceased Owner/Operator or the majority shareholder of the Owner/Operator the opportunity to participate in the franchise granted under this Agreement for a reasonable time after the death of a Owner/Operator or the majority shareholder of the Owner/Operator;

D. All notices of termination and non-renewal shall be provided pursuant to the California Franchise Relations Act; and;

E. This Agreement shall not restrict venue to a forum outside the State of California with respect to any claim arising under or relating to this Agreement, if the franchise business subject to this Agreement is operating in the State of California, except as permitted under the California Franchise Relations Act;

F. Any provision of this Agreement which is otherwise prohibited under the California Franchise Relations Act is void.

3. This Agreement contains provisions for the termination upon bankruptcy. Both you and Dickey's acknowledge and understand that (a) these provisions may or may not be enforceable under applicable federal bankruptcy law, and (b) Article 26.1 shall apply to these provisions to the extent that they are determined by a court or agency having valid jurisdiction to be unenforceable under applicable law;

4. This Agreement contains covenants not to compete which extend beyond the termination of this Agreement. Both you and Dickey's acknowledge and understand that (a) these provisions may or may not be enforceable under applicable California law, and (b) Article 26.1 shall apply to these provisions to the extent that they are determined by a court or agency having valid jurisdiction to be unenforceable under applicable California law; and

5. This Agreement contains a liquidated damages clause. Both you and Dickey's acknowledge and understand that (a) these provisions may or may not be enforceable under applicable California law, and

(b) Article 26.1 shall apply to these provisions to the extent that they are determined by a court or agency having valid jurisdiction to be unenforceable under applicable California law.

**29.2 PROVISIONS APPLICABLE UNDER CONNECTICUT LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, pursuant to Title 42, Chapter 739, Sections 42-133e – 42-133h of the Connecticut General Statutes ("Connecticut Franchise Law"):

1. Any provision in this Agreement which purports to require that you waive your rights under Sections 42-133f or 42-133g of the Connecticut Franchise Law or is otherwise prohibited under such law is void; and

2. Without limiting the generality of the foregoing, Dickey's shall not terminate, cancel or fail to renew the franchise granted under this Agreement, except in accordance with the Connecticut Franchise Law.

**29.2 PROVISIONS APPLICABLE UNDER DELAWARE LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1 pursuant to Title 6, Chapter 25, Sections 2551 through 2556 of the Delaware Code (the "Delaware Security Law"):

1. Dickey's shall not terminate, cancel or fail to renew the franchise granted under this Agreement, except in accordance with the applicable provisions of the Delaware Security Law or other applicable law; and

2. Any provision of this Agreement which is otherwise prohibited under Delaware Security Law is void.

**29.2 PROVISIONS APPLICABLE UNDER FLORIDA LAW.** This Agreement contains covenants not to compete. Both you and Dickey's acknowledge and understand that, subject to Article 29.1, (a) these provisions may or may not be enforceable under applicable Florida law, and (b) if any such provision is determined by a court or agency having valid jurisdiction to be unenforceable under applicable Florida law, Article 26.1 shall apply to such provision and there shall automatically be added to this Agreement a provision as similar in terms to such unenforceable provision as may be possible and legal, valid and enforceable.

**29.2 PROVISIONS APPLICABLE UNDER HAWAII LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, any condition, stipulation or provision of this Agreement is void which purports to require that you assent to any release, assignment, novation or waiver which would relieve Dickey's from liability imposed under and to the extent required by Title 26, Chapter 482E, Section 482E-6 of the Hawaii Revised Statutes ("Hawaii Franchise Law"), or which is otherwise prohibited under such law. Without limiting the generality of the foregoing:

1. Dickey's shall not restrict your right to join an association of franchisees except in accordance with Hawaii Franchise Law or other applicable law;

2. Dickey's shall not require you to purchase or lease goods or services of Dickey's or from designated sources of supply except in accordance with Hawaii Franchise Law or other applicable law;

3. Dickey's shall not terminate or refuse to renew the franchise granted under this Agreement except in accordance with Hawaii Franchise Law or other applicable law; and

4. Dickey's shall not refuse to permit a transfer of ownership of the franchise granted under this Agreement, or a business entity owning such franchise, except in accordance with Hawaii Franchise Law or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER IDAHO LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1 pursuant to Title 29, Chapter 1, Sections 20-110 of the Idaho Code

("Idaho Franchise Law"), any condition, stipulation in this Agreement is void (a) which restricts you from enforcing your rights under this Agreement by the usual proceedings in the ordinary tribunals or which limits the time frame in which you may enforce such rights, and (b) to the extent it purports to waive the venue or jurisdiction of the state of Idaho's court system. Further, any other provision of this Agreement which is prohibited under Idaho Franchise Law is void.

**29.2 PROVISIONS APPLICABLE UNDER ILLINOIS LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1:

1. Any condition, stipulation or provision of this Agreement is void which purports to require that you waive compliance with Chapter 815, Section 705 of the Illinois Compiled Statutes (the "Franchise Disclosure Act of 1987") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing:

A. Any provision in this Agreement which designates jurisdiction or venue in a forum outside of the State of Illinois is void, except as permitted under the Franchise Disclosure Act of 1987 or other applicable law.

B. Dickey's shall not restrict you from joining or participating in a trade association, except in accordance with the Franchise Disclosure Act of 1987 or other applicable law;

C. Dickey's shall not terminate the franchise granted under this Agreement, except in accordance with the applicable provisions of the Franchise Disclosure Act of 1987 or other applicable law; and

D. Dickey's shall not refuse to renew the franchise granted under this Agreement, except in accordance with the applicable provisions of the Franchise Disclosure Act of 1987 or other applicable law.

2. Any applicable provisions of Title 14, Subtitle A, Chapter 11, Part 200, Sections 200.100-901 and Appendices A – F of the Illinois Administrative Code ("Regulations Under the Franchise Disclosure Act of 1987") control any provisions of this Agreement which are inconsistent with such law, and this Agreement is hereby amended accordingly. Without limiting the generality of foregoing:

A. This Agreement shall not require you to litigate any cause of action, except arbitration proceedings, arising under this Agreement or the Franchise Disclosure Act of 1987 outside the State of Illinois, nor shall this Agreement provide for a choice of law provision for any state other than the State of Illinois, except as may be permitted by the Regulations Under the Franchise Disclosure Act of 1987 or other applicable law; and

B. This Agreement shall not require you to waive any right granted under the Franchise Disclosure Act of 1987, except as permitted under such law or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER INDIANA LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, the applicable provisions of Title 23, Article 2, Chapter 2.7 ("Indiana Franchise Law") shall govern and control any provisions in this Agreement which are inconsistent with such law, and this Agreement is hereby amended accordingly. Without limiting the generality of foregoing:

1. Any provision of this Agreement which requires goods, supplies, inventories or services to be purchased exclusively from Dickey's or sources designated by Dickey's where such goods, supplies, inventories or services of comparable quality are available from sources other than those designated by Dickey's is void, except as permitted under Indiana Franchise Law or other applicable law;

2. Any provision of this Agreement which allows Dickey's to establish a Dickey's-owned outlet engaged in substantially the same business as you will under this Agreement within your Assigned Area is void, except as permitted under Indiana Franchise Law or other applicable law;

3. Any provision of this Agreement which requires you to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to relieve Dickey's or any person from liability imposed under Indiana Franchise Law, or which requires any controversy between Dickey's and you to be referred to any person is void, except as permitted under Indiana Franchise Law or other applicable law;

4. Dickey's shall not terminate or fail to renew the franchise granted to you under this Agreement, except in accordance with Indiana Franchise Law or other applicable law;

5. To the extent this Agreement is in conflict with Indiana Franchise Law and except as otherwise permitted under such law or other applicable law, your covenant not to compete set forth in this Agreement shall be modified such that the covenant shall not last for a period in excess of three (3) years and shall be restricted to your Assigned Area;

6. Any provision of this Agreement which limits litigation brought for the breach of this Agreement is void, except as permitted under Indiana Franchise Law or other applicable law;

7. Any provision of this Agreement which requires you to participate in any advertising campaigns or contests, promotional campaigns, promotional materials or display decorations or materials at an expense to you that is indeterminate is void, except as permitted under Indiana Franchise Law or other applicable law; and

8. Any provision of this Agreement which may deny a surviving spouse, heir or estate of a deceased franchisee to participate in the ownership of the franchise granted under this Agreement for a reasonable time after the death of such franchisee is void, except as permitted under Indiana Franchise Law or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER IOWA LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, any condition, stipulation or provision of this Agreement is void which purports to require that you waive compliance with or a right provided by or rule under, or which relieves Dickey's of a duty or liability imposed by, Title XIII, Subtitle 3, Chapter 537A of the Iowa Code ("Iowa Franchise Law") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing:

1. Any provision of this Agreement which restricts jurisdiction to a forum outside the State of Iowa is void with respect to a claim otherwise enforceable under Iowa Franchise Law, except as permitted under Iowa Franchise Law or other applicable law;

2. Dickey's shall not restrict your right to transfer the franchise granted to you under this Agreement or any ownership interest in you, except as permitted under Iowa Franchise Law or other applicable law;

3. Dickey's shall not terminate or refuse to renew the franchise granted to you under this Agreement, except in accordance with Iowa Franchise Law or other applicable law;

4. Dickey's shall not require you to purchase goods, supplies, inventories or services exclusively from Dickey's or from a source or sources of supply specifically designated by Dickey's where such goods, supplies, inventories or services of comparable quality are available from sources other than those designated by Dickey's, except as permitted under Iowa Franchise Law or other applicable law;

5. Dickey's shall not restrict you from associating with other franchisees or from participating in a trade association, except as permitted under Iowa Franchise Law or other applicable law; and



6. Any provision of this Agreement which requires the application of the law of a state other than the State of Iowa is void, except as permitted under Iowa Franchise Law or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER KANSAS LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, the indemnification provisions of this Agreement are hereby amended and modified such that the indemnification provisions of this Agreement shall be fully valid and enforceable to the maximum extent permitted under Chapter 16, Article 1, Section 16-121 of the Kansas Statutes Annotated.

**29.2 PROVISIONS APPLICABLE UNDER LOUISIANA LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, pursuant to Title 23, Chapter 9, Section 921 of the Louisiana Revised Statutes of 1950, the covenants not to compete set forth in this Agreement shall be modified, where appropriate and necessary, so as to render such provisions valid and enforceable under applicable law, including as follows:

1. During the term of this Agreement, you shall refrain from competing with Dickey's or engaging in any other business similar to that which is the subject of this Agreement. For a period not to exceed two (2) years following the severance of the franchise relationship established pursuant to this Agreement, you shall refrain from competing with or soliciting the customers of Dickey's or other franchisees of Dickey's; and

2. If required by Dickey's, during the term of any the employment by you of any employee, the employee shall refrain from engaging in any other business similar to that which is the subject of the franchise granted under this Agreement, and for a period not to exceed two (2) years following the severance of the employment relationship between you and any employee, the employee shall refrain from engaging in any other business similar to that which is the subject of this Agreement and from competing with or soliciting the customers of you or Dickey's franchisees.

**29.2 PROVISIONS APPLICABLE UNDER MARYLAND LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29 pursuant to Title 14, Sections 14-201 – 14-233 of the Annotated Code of Maryland (the "Maryland Franchise Registration and Disclosure Law") and Title 02, Subtitle 02, Chapter 8, Sections 02.02.08.01 – 02.02.08.18 of the Code of Maryland Regulations (the "Maryland Franchise Regulations"):

1. The provisions of this Agreement shall not require you to agree to a release, assignment or novation, waiver, or estoppel that would relieve Dickey's or any other person from liability under Maryland Franchise Registration and Disclosure Law, except as may be permitted under such law or other applicable law;

2. The provisions of this Agreement shall not require you to release Dickey's or any other person from any liability under provisions of the Maryland Franchise Law (as such term is used in the Maryland Franchise Regulations), except as may be permitted under such law or other applicable law;

3. The provisions of this Agreement shall not limit or reduce the period of limitations set forth in Maryland Franchise Law, Business Regulations Article, ' 14-226 for causes of action under that statute, except as may be permitted under such law or other applicable law;

4. The provisions of this Agreement shall not require you to waive your right to file a lawsuit alleging a cause of action arising under Maryland Franchise Law in any court of competent jurisdiction in the State of Maryland, except as may be permitted under such law or other applicable law;

5. The acknowledgments made by Owner/Operator contained in this Agreement and those in the Owner/Operator Questionnaire will not be construed to act as a waiver or a release of Owner/Operator's rights under the Maryland Franchise Law, except as may be permitted under such law or other applicable law; and

6. Any provision of this Agreement which is otherwise prohibited under Maryland Franchise Registration and Disclosure Law or the Maryland Franchise Regulations is void.

**29.2 PROVISIONS APPLICABLE UNDER MICHIGAN LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, any provision of this Agreement is void which requires you to assent to a release, assignment, novation or waiver, or estoppel which would deprive you of any right or protection provided for in Chapter 445, Sections 445.1501 – 445.1545 of the Michigan Compiled Laws ("Franchise Investment Law") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing:

1. This Agreement shall not restrict your rights to join an association of franchisees, except in accordance with the Franchise Investment Law or other applicable law;

2. Dickey's shall not terminate the franchise granted under this Agreement, except in accordance with the Franchise Investment Law or other applicable law;

3. Dickey's shall not refuse to renew the franchise granted under this Agreement, except in accordance with the Franchise Investment Law or other applicable law;

4. This Agreement shall not require arbitration or litigation to be conducted outside the State of Michigan, except as permitted under the Franchise Investment Law or other applicable law;

5. Dickey's shall not refuse to permit you to transfer ownership of the franchise granted under this Agreement, except as permitted under the Franchise Investment Law or other applicable law;

6. Dickey's shall not require you to resell to Dickey's items that are not uniquely identified with Dickey's, except as permitted under the Franchise Investment Law or other applicable law; and

7. Dickey's shall not directly or indirectly convey, assign or otherwise transfer its obligations to fulfill its contractual obligations to you unless it has made provisions for providing the required contractual services as required under the Franchise Investment Law or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER MINNESOTA LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1:

1. Any condition, stipulation or provision (including choice of law provision) in this Agreement is void which purports to bind you (if you are an individual who is a resident of the State of Minnesota, or if you are a partnership or corporation organized or incorporated under the laws of the State of Minnesota, or if you will operate the franchise granted under this Agreement in the State of Minnesota) to waive compliance or which has the effect of waiving compliance with any provision of Chapter 80C, Sections 80C.01 – 80C.22 of the Minnesota Statutes 1996 ("Minnesota Franchise Law") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing:

A. Dickey's shall not terminate or cancel the franchise granted under this Agreement, except in accordance with Minnesota Franchise Law or other applicable law;

B. Dickey's shall not fail to renew the franchise granted under this Agreement, except in accordance with Minnesota Franchise Law or other applicable law; and

C. Dickey's shall not withhold consent to an assignment, transfer or sale of the franchise granted under this Agreement whenever the franchisee to be substituted meets the present qualifications and standards required of Dickey's franchisees, except as permitted under Minnesota Franchise Law or other applicable law.

2. Pursuant to Chapter 2860, Sections 2860.0100 – 2860.9930 of the Minnesota Rules, 1995, Department of Commerce ("Minnesota Franchise Regulations"):

A. Dickey's shall not restrict or inhibit, directly or indirectly, the free association of franchisees for any lawful purpose, except in accordance with Minnesota Franchise Regulations or other applicable law;

B. Dickey's shall not compete with you in your Assigned Area or grant competitive franchises in your Assigned Area, except in accordance with the Minnesota Franchise Regulations or other applicable law;

C. Dickey's shall not require you to assent to a release, assignment, novation, or waiver which would relieve any party from liability imposed by Minnesota Franchise Law, except as permitted under Minnesota Franchise Law, Minnesota Franchise Regulations or other applicable law;

D. Dickey's shall not terminate or cancel the franchise granted under this Agreement, except in accordance with Minnesota Franchise Regulations or other applicable law;

E. Dickey's shall not unreasonably withhold consent to any assignment, transfer, or sale of the franchise to be granted under this Agreement whenever the franchisee to be substituted meets the present qualifications and standards required of Dickey's for franchisees, except in accordance with Minnesota Franchise Regulations or other applicable law;

F. Dickey's shall not enforce any covenant not to compete in this Agreement after the franchise relationship contemplated by this Agreement ceases to exist which is determined by a court of competent jurisdiction to be unreasonable;

G. Dickey's shall not require you to waive your rights to a jury trial or to waive rights to any procedure, forum or remedies provided for by the laws of the jurisdiction, or to consent to liquidated damages, termination penalties, or judgment notes, except as permitted under the Minnesota Franchise Regulations or other applicable law;

H. Dickey's shall not require or prohibit any change in management or personnel of you unless the current or potential management or personnel fails to meet the present qualifications and standards required by Dickey's, except as permitted under Minnesota Franchise Regulations or other applicable law;

I. Dickey's shall not fail to renew the franchise granted under this Agreement, except as permitted under Minnesota Franchise Regulations or other applicable law; and

J. Any provision of this Agreement which is otherwise prohibited under Minnesota Franchise Regulations is void.

**29.2 PROVISIONS APPLICABLE UNDER MISSISSIPPI LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, Dickey's shall not cancel, terminate or fail to renew the franchise granted under this Agreement except in accordance with Title 75, Chapter 24, Section 75-24-53 of the Mississippi Code Annotated or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER MISSOURI LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, Dickey's shall not cancel, terminate or fail to renew the franchise granted under this Agreement except in accordance with Chapter 407, Section 407.405 of the Revised Statutes of Missouri 1986.

**29.2 PROVISIONS APPLICABLE UNDER NEBRASKA LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, any provision of this Agreement is void which purports to require you to assent to a release, assignment, novation or waiver under Chapter 87, Article 4, Sections 87-401 – 8-410 of the Revised Statutes of Nebraska (the "Franchise Practices Act") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing:

1. Dickey's shall not terminate, cancel or fail to renew the franchise granted under this Agreement, except in accordance with the Franchise Practices Act or other applicable law;
2. Dickey's shall not prohibit directly or indirectly the right of free association among franchisees for any lawful purpose, except in accordance with the Franchise Practices Act or other applicable law;
3. Dickey's shall not prohibit or require any change in management of you unless such requirement or prohibition of change shall be for good cause stated in writing by Dickey's, except in accordance with the Franchise Practices Act or other applicable law;
4. Dickey' shall not restrict the sale of any equity or debenture issue or the transfer of any security of you or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of stock or debentures to your employees, your personnel, or the heirs of your principal owner, except in accordance with the Franchise Practices Act or other applicable law; and
5. Dickey's shall not provide any term or condition in any lease or other agreement ancillary or collateral to the franchise offered under this Agreement which term or condition directly or indirectly violates Sections 87-401 to 87-410 of the Franchise Practices Act, except as permitted under this Franchise Practices Act or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER NEW JERSEY LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, any provision of this Agreement is void which purports to require you to assent to a release, assignment, novation or waiver or estoppel which would release Dickey's from any liability under Title 56, Chapter 10, Sections 56:10-1 – 56:10-12 of the New Jersey Revised Statutes (the "Franchise Practices Act") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing:

1. Dickey's shall not terminate, cancel or fail to renew the franchise granted under this Agreement, except in accordance with the Franchise Practices Act or other applicable law;
2. Dickey's shall not prohibit directly or indirectly the right of free association among franchisees for any lawful purpose, except in accordance with the Franchise Practices Act or other applicable law;
3. Dickey's shall not prohibit or require any change in management of you unless such requirement or prohibition of change shall be for good cause stated in writing by Dickey's, except in accordance with the Franchise Practices Act or other applicable law;
4. Dickey' shall not restrict the sale of any equity or debenture issue or the transfer of any security of you or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of equity securities or debentures to your employees, your personnel, or the spouse, child or heirs of your principal owner, except in accordance with the Franchise Practices Act or other applicable law; and
5. Dickey's shall not provide any term or condition in any lease or other agreement ancillary or collateral to the franchise offered under this Agreement which term or condition directly or indirectly violates the Franchise Practices Act, except as permitted under this Franchise Practices Act or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER NEW YORK LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1, any condition, stipulation or provision of this Agreement is void which purports to bind you to waive compliance with any provision or rule promulgated under Article 33, Sections 680 – 695 of the New York General Business Law (the "New York Franchise Law") or which purports to require you to assent to a release, assignment, novation, waiver or estoppel which would relieve Dickey's from any duty or liability imposed by the New York Franchise Law or which is otherwise prohibited under such law.

**29.2 PROVISIONS APPLICABLE UNDER NORTH DAKOTA LAW.** Both you and Dickey's acknowledge and understand that the provisions listed below contained in this Agreement (a) may or may not be enforceable under applicable Law, and (b) subject to Article 29.1, Article 26.1 shall apply to these provisions to the extent that they are or have been determined by a Tribunal having valid jurisdiction (including, the Securities Commissioner of North Dakota) to be unenforceable under applicable Law.

1. Any covenants of this Agreement restricting completion;
2. Any provisions of this Agreement providing that parties must agree to arbitration of disputes at a location that is remote from the site of your business;
3. Any provisions of this Agreement providing that you consent to jurisdiction of courts outside of the State of North Dakota;
4. Any provisions of this Agreement requiring you to consent to any liquidated damages or termination penalties;
5. Any provisions of this Agreement requiring that this Agreement is to be governed by the laws of a state other than the State of North Dakota;
6. Any provisions of this Agreement requiring you to waive trial by jury;
7. Any provisions of this Agreement requiring you to waive exemplary and punitive damages;
8. Any provision of this Agreement which requires you to sign a general release upon the renewal of this Agreement; and
9. Any provision of this Agreement which requires you to pay all costs and expenses incurred by Dickey's in enforcing this Agreement regardless of whether Dickey's is the prevailing party. Any such provisions shall be modified to reflect that the prevailing party in any such enforcement action is entitled to recover all costs and expenses including attorneys' fees.

**29.2 PROVISIONS APPLICABLE UNDER RHODE ISLAND LAW.** Notwithstanding any provisions in this Agreement to the contrary, subject to Article 29.1:

1. Any condition, stipulation or provision of this Agreement is void which purports to require that you waive compliance with or a right provided by or a rule or order under, or which relieves Dickey's of a duty or liability imposed by, Title 19, Chapter 28.1, Sections 19-28.1-1 – 19-28.1-34 of the General Laws of Rhode Island (the "Rhode Island Franchise Investment Act") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing:
  - A. Any provision in this Agreement restricting jurisdiction or venue to a forum outside the State of Rhode Island or requiring the application of the law of another state is void with respect to a claim otherwise enforceable under the Rhode Island Franchise Investment Act, except as permitted under the Rhode Island Franchise Investment Act or other applicable law; and

B. Dickey's shall not restrict you from associating with other franchisees or from participating in a trade association, except in accordance with the Rhode Island Franchise Investment Act or other applicable law.

2. Any provision of this Agreement is void which purports to waive the provisions of Title 6, Chapter 50, Sections 6-50-1 – 6-50-9 of the General Laws of Rhode Island (the "Rhode Island Fair Dealership Act") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing, Dickey's shall not terminate, cancel or fail to renew this Agreement, except in accordance with the Rhode Island Fair Dealership Act or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER SOUTH DAKOTA LAW.** Notwithstanding any provisions of this Agreement to the contrary, subject to Article 29.1, any condition, stipulation or provision of this Agreement is void which purports to require that you waive compliance with or a right under, or relieves Dickey's of any duty or liability imposed by, Title 37, Chapter 37-5B, Sections 37-5B, Sections 37-5B-1 – 37-BB-53 of the South Dakota Codified Laws or which is otherwise prohibited under such law.

**29.2 PROVISIONS APPLICABLE UNDER VIRGINIA LAW.** Notwithstanding any provisions of this Agreement to the contrary, subject to Article 29.1, any condition, stipulation or provision of this Agreement is void which purports to require that you waive compliance with or a right under, or relieves Dickey's of any duty or liability imposed by Title 13.1, Chapter 8, Sections 13.1-557 – 13.1-574 of the Code of Virginia (the "Retail Franchising Act") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing, Dickey's shall not cancel the franchise granted under this Agreement, except in accordance with the Retail Franchising Act or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER WASHINGTON LAW.** Notwithstanding any provision of this Agreement to the contrary, subject to Article 29.1, any condition, stipulation or provision of this Agreement (including any choice of law provision) is void which purports to require you to waive compliance with or any rule under Title 19, Chapter 19.100, Sections 19.100.010 – 19.100.940 of the Revised Code of Washington (the "Franchise Investment Protection Act") or which is otherwise prohibited under such law. Without limiting the generality of the foregoing:

1. Dickey's shall not limit restrict or inhibit your right to join an association of franchises, except in accordance with the Franchise Investment Protection Act or other applicable law;

2. Except in accordance with the Franchise Investment Protection Act or other applicable law, Dickey's shall not require you to purchase or lease goods or services of Dickey's or from approved sources of supply unless and to the extent Dickey's proves that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not affect competition, provided that the foregoing shall not apply to your initial inventory;

3. Dickey's shall not compete with you in your Assigned Area or grant a competitive franchise in your Assigned Area except in accordance with the Franchise Investment Protection Act or other applicable law;

4. Dickey's shall not require you to assent to a release, assignment, novation, or waiver which would relieve it from liability imposed by the Franchise Investment Protection Act, except as otherwise permitted by RCW 19.100.220 or other applicable law;

5. Dickey's shall not impose on you any contract, rule or regulation, whether written or oral, or any standard of conduct unless reasonable and necessary, except in accordance with the Franchise Investment Protection Act or other applicable law; and

6. Dickey's shall not refuse to renew or terminate the franchise granted under this Agreement, except in accordance with the Franchise Investment Protection Act or other applicable law.

**29.2 PROVISIONS APPLICABLE UNDER WISCONSIN LAW.** Notwithstanding any provision of this Agreement to the contrary, subject to Article 29.1:

1. Any condition, stipulation or provision of this Agreement is void which purports to require you to waive compliance with any provision or rule under Chapter 553, Sections 553.01 – 553.78 of the Wisconsin Statutes (the "Wisconsin Franchise Investment Law") or which is otherwise prohibited under such law; and

2. Any provision of this Agreement is void which purports to waive the provisions of Chapter 135, Sections 135.01 – 135.07 of the Wisconsin Statutes (the "Wisconsin Fair Dealership Law"). Without limiting the generality of the foregoing, Dickey's shall not terminate, cancel, fail to renew or substantially change the competitive circumstances of this Agreement, except in accordance with the Wisconsin Fair Dealership Law or other applicable law.

[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:**

By: \_\_\_\_\_  
James L. Neighbors, an individual

**OWNER/OPERATOR:**

By: \_\_\_\_\_  
James L. Neighbors, an individual



**ATTACHMENT A**

**AUTHORIZATION AGREEMENT FOR  
PREAUTHORIZED PAYMENTS  
(ACH DEBITS)**

COMPANY NAME:		TAX ID NO.
<p>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</p>		
DEPOSITORY NAME:		BRANCH:
STATE:	STATE:	ZIP CODE:
TRANSIT/ABA NO.	ACCOUNT NUMBER:	
<p>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.</p>		
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?  
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?  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. Have you received and personally reviewed the Franchise Agreement and each exhibit attached to it?  
Yes \_\_\_\_\_ No \_\_\_\_\_
5. Do you understand your financial and other obligations under the Franchise Agreement?  
Yes \_\_\_\_\_ No \_\_\_\_\_
6. Have you independently discussed the economic and business risks of owning and operating the Franchise with an attorney, accountant or other professional advisor?  
Yes \_\_\_\_\_ No \_\_\_\_\_
7. Do you understand the economic and business risks associated with operating the Franchise?  
Yes \_\_\_\_\_ No \_\_\_\_\_
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?  
Yes \_\_\_\_\_ No \_\_\_\_\_

9. 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 \_\_\_\_\_

10. 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 operating the Franchise?

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 concerning the total revenues the Franchise may generate?

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 regarding the costs involved in operating the Franchise that are contrary to, or different from, the information contained in the Disclosure Document?

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 concerning the actual, average or projected profits or earnings or the likelihood of success that you should or might expect from operating the Franchise?

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, 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?

Yes \_\_\_\_\_ No \_\_\_\_\_

15. 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?

Yes \_\_\_\_\_ No \_\_\_\_\_

16. 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.

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



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:**

By:

\_\_\_\_\_   
James L. Neighbors, an individual

**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 WAIVES, RELEASES AND AGREES TO INDEMNIFY AND HOLD HARMLESS 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, 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 PARTIES SO RELEASED AND INDEMNIFIED. The undersigned further represents that he has independently obtained or is covered by adequate insurance to cover the risk of loss or injury.

August 17, 2013

DATE

By:

\_\_\_\_\_  
James L. Neighbors, an individual

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement on the day and year first above written.

**DICKEY'S:**

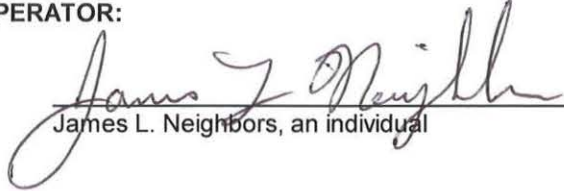
DICKEY'S BARBECUE RESTAURANTS, INC.,  
a Texas corporation

By:   
\_\_\_\_\_  
Roland Dickey, Jr., President

**FRANCHISEE:**

By:   
\_\_\_\_\_  
James L. Neighbors, an individual

**OWNER/OPERATOR:**

By:   
\_\_\_\_\_  
James L. Neighbors, an individual

**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?  
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?  
Yes  \_\_\_\_\_ No \_\_\_\_\_
4. Have you received and personally reviewed the Franchise Agreement and each exhibit attached to it?  
Yes  \_\_\_\_\_ No \_\_\_\_\_
5. Do you understand your financial and other obligations under the Franchise Agreement?  
Yes  \_\_\_\_\_ No \_\_\_\_\_
6. Have you independently discussed the economic and business risks of owning and operating the Franchise with an attorney, accountant or other professional advisor?  
Yes \_\_\_\_\_ No  \_\_\_\_\_
7. Do you understand the economic and business risks associated with operating the Franchise?  
Yes  \_\_\_\_\_ No \_\_\_\_\_
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?  
Yes  \_\_\_\_\_ No \_\_\_\_\_



9. 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

10. 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 operating the Franchise?

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 concerning the total revenues the Franchise may generate?

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 regarding the costs involved in operating the Franchise that are contrary to, or different from, the information contained in the Disclosure Document?

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 concerning the actual, average or projected profits or earnings or the likelihood of success that you should or might expect from operating the Franchise?

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, 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?

Yes  No

15. 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?

Yes  No

16. 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.

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

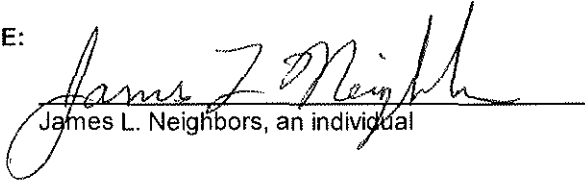
You understand that your answers are important to us and that we will rely on them.

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:**

By:

  
James L. Neighbors, an individual

**ATTACHMENT C**

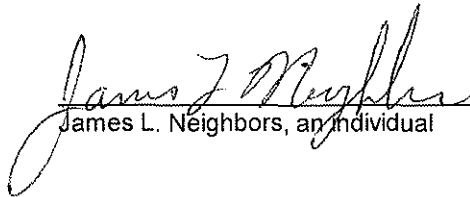
**CONSENT AND RELEASE FOR TRAINING**

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 WAIVES, RELEASES AND AGREES TO INDEMNIFY AND HOLD HARMLESS 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, 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 PARTIES SO RELEASED AND INDEMNIFIED. The undersigned further represents that he has independently obtained or is covered by adequate insurance to cover the risk of loss or injury.

August 17, 2013

DATE

By:

  
James L. Neighbors, an individual



May 22, 2014

Via US Mail and E-Mail: James\_neighbors@yahoo.com; dickeysbbqtn@gmail.com TN-845

James L. Neighbors  
100 Fairhaven Dr.  
Blountville, TN 37617

Via First Class U.S. Mail

James L. Neighbors  
Dickey's Barbecue Pit®  
1805 W. State of Franklin Road, Suite 200  
Johnson City, TN 37604

*Re: Dickey's Barbecue Pit® restaurant located at 1805 W. State of Franklin Road, Suite 200, Johnson City, TN 37604 (the "Restaurant")*

Dear Mr. Neighbors:

Dickey's received numerous email messages from you in which you made a number of allegations about Dickey's development and operations processes. Dickey's formally denies your allegations as we believe that they are wholly without merit, as explained in detail below.

**1. Financing.** Dickey's has expended significant internal efforts assisting you in your attempts to obtain financing to fund your obligation to finish-out the Restaurant. Much of Dickey's efforts proved futile due to your criminal conviction history, specifically, your status as a registered sex offender convicted of aggravated sexual assault. You failed to disclose your status as a registered sex offender to Dickey's development team during early discussions regarding your purchase of a Dickey's Barbecue Pit® franchise, and you further failed to disclose your status as a registered sex offender in the franchise application that you submitted to Dickey's for approval as a Dickey's franchisee.

Many of the lenders with whom Dickey's regularly works refused to consider your loan application due to your status as a registered sex offender. Of those lenders that agreed to review your loan application, several more refused to move forward with underwriting the loan due to their assessment of your character and/or your poor credit history. Dickey's has since identified a lender that is willing to consider your loan application despite your status, but as you are aware, this lender requires at least ninety days of Restaurant sales prior to submitting your application for financing.



James L. Neighbors  
May 22, 2014  
Page | 2

The Franchise Agreement states in great detail all of Dickey's obligations to you. The Franchise Disclosure document likewise lists Dickey's obligations to you. In neither such document does Dickey's undertake to secure for you a lender to fund the finish-out of the Restaurant on your behalf. Your allegations otherwise, much like your allegations that Dickey's has not provided adequate assistance to you during the finance/development process, are unfounded. If there is any other document that you believe is relevant to support your claim, please send it to me as soon as possible.

**2. Operational Deficiencies.** During a recent inspection of your Restaurant, Dickey's personnel observed that several menu items were not prepared according to Dickey's recipe book, food products were not stored in accordance with Dickey's food safety standards, equipment used in the storage of food was in disrepair, core operations forms were not regularly utilized, the restrooms in the Restaurant were unsanitary and in disrepair, and that you, the designated Owner-Operator, were not working in the store full time as required under the Franchise Agreement. You responded to Dickey's notification of such operational deficiencies in your email dated May 14, 2014 with threats of terminating Dickey's ability to debit weekly royalty and marketing fund contributions due under the Franchise Agreement, publishing additional defamatory statements about Dickey's on the Internet, and litigation.

Dickey's wholly denies that you have any basis for litigation against Dickey's for breach of its obligations to you. Further, Dickey's reserves the right to pursue all of its available remedies against you and others who publish any defamatory statements about Dickey's, on the Internet or otherwise.

Dickey's acknowledges that there was a minor inconsistency in the instruction regarding preparation of Dickey's green beans and withdrew the deduction from the inspection report. Notwithstanding the inconsistency, the correct preparation of Dickey's green beans was demonstrated during your Barbecue University course and is included in the proprietary recipe book provided to you during the development of your Restaurant.

Dickey's further acknowledges its receipt on May 22, 2014 of written confirmation from you that all outstanding operational deficiencies have been cured. A follow-up inspection to verify such cured operational deficiencies will be conducted within the next two months. This is our standard practice and you are not being singled out in any way.

**3. Imminent Insolvency.** Dickey's received notice of substantial arrearages on your US Foods, Inc. account and with your general contractor and several sub-contractors, all of whom have expressed that liens will be filed against the furniture, fixtures, and equipment of the balance owed is not paid in the near future. Per your request, Dickey's negotiated with your general contractor for acceptance of the outstanding balance in weekly installment in amounts reduced from your original payment plan. During our telephone conversation on May 6, 2014, you represented that you would make a payment in the amount of \$1,000 on May 9, 2014 and would make an additional payment the following week. To date, you have made no payments to



James L. Neighbors  
May 22, 2014  
Page | 3

the general contractor. Further, our latest information indicates that you remain in arrears with US Foods, Inc.

Please be advised that foreclosure of any lien against the furniture, fixtures, and equipment located in the Restaurant is an event of default under the Franchise Agreement that will cause the Franchise Agreement to be subject to immediate termination.

Please be informed that nothing contained in this letter shall be deemed a waiver of any other default or event of default under the Franchise Agreement, nor a waiver of any rights, remedies, or recourse available to Dickey's, nor an election of remedies resulting from any default under the Franchise Agreement, the Operations Manual or any other document executed in connection therewith.

Best regards,  
DICKEY'S BARBECUE RESTAURANTS, INC.

A handwritten signature in black ink that reads "Sarah A. Walters". The signature is written in a cursive, flowing style.

Sarah A. Walters  
General Counsel



June 19, 2014

Via US Mail and E-Mail: james\_neighbors@yahoo.com; dickeysbbqtn@gmail.com TN-845

James L. Neighbors  
100 Fairhaven Dr.  
Blountville, TN 37617

Via First Class U.S. Mail

James L. Neighbors  
Dickey's Barbecue Pit®  
1805 W. State of Franklin Road, Suite 200  
Johnson City, TN 37604

*Re: Default Warning ("Default Warning") under the Franchise Agreement dated August 17, 2013 (the "Franchise Agreement") by and between Dickey's Barbecue Restaurants, Inc. ("Dickey's") and James L. Neighbors ("Franchisee" or "you") for the Dickey's Barbecue Pit® restaurant located at 1805 W. State of Franklin Road, Suite 200, Johnson City, TN 37604 (the "Restaurant")*

Dear Mr. Neighbors,

On June 19, 2014, Dickey's attempted to electronically draft your bank account for payment of franchise royalty fees and marketing fund fees. Today Dickey's was notified that payment was stopped on the draft.

Under Articles 4.2 and 5.8 of the Franchise Agreement, you agreed to pay a continuing nonrefundable royalty fee calculated as a percentage of the Net Sales<sup>1</sup> of the Restaurant and to contribute a percentage of the Net Sales of the Restaurant to the Marketing Fund. Pursuant to Article 16.3, your failure to timely pay Royalties and Marketing Fund Contributions constitutes an act of default under the Franchise Agreement.

You are hereby notified that you are in default of the terms of the Franchise Agreement because you failed to timely pay your outstanding balance of Royalties and Marketing Fund fees in the amount of \$1,088.58.

Dickey's will make a second attempt to debit the amount owed from your designated account. Therefore, you should take immediate steps to ensure that there are sufficient funds in the account and that the transaction is successful.

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings assigned to them in the Franchise Agreement.



James Neighbors  
June 19, 2014  
Page | 2

Please be advised that if any subsequent attempts by Dickey's to electronically draft on your account are returned NSF or "Payment Stopped," Dickey's may elect to proceed with formal default and termination procedures.

Please be informed that nothing contained in this correspondence shall be deemed a waiver of any other default or event of default existing under the above-referenced Franchise Agreement, nor a waiver of any rights, remedies, or recourse available to Dickey's, nor an election of remedies resulting from any default which may exist, with respect to the Franchise Agreement or any other document executed in connection therewith.

Please contact me with any questions you have regarding this correspondence.

Regards,

DICKEY'S BARBECUE RESTAURANTS, INC.

A handwritten signature in cursive script that reads "Christine Johnson".

Christine S. Johnson  
Assistant General Counsel





June 24, 2014

Via CMRRR #7013 3020 0001 1504 5239

TN-845

And First Class Mail

and E-Mail: james\_neighbors@yahoo.com; dickeysbbqtn@gmail.com

James L. Neighbors  
100 Fairhaven Dr.  
Blountville, TN 37617

Via CMRRR #7013 3020 0001 1504 5246

And First Class Mail

James L. Neighbors  
Dickey's Barbecue Pit®  
1805 W. State of Franklin Road, Suite 200  
Johnson City, TN 37604

*Re: Notice of Default and Imminent Termination ("Notice of Default") under the Franchise Agreement dated August 17, 2013 (the "Franchise Agreement") by and between Dickey's Barbecue Restaurants, Inc. ("Dickey's") and James L. Neighbors ("Franchisee" or "you") for the Dickey's Barbecue Pit® restaurant located at 1805 W. State of Franklin Road, Suite 200, Johnson City, TN 37604 (the "Restaurant")*

### NOTICE OF DEFAULT

Dear Mr. Neighbors,

By executing the Franchise Agreement, you undertook the obligations and liabilities typical of a Dickey's franchisee. Specifically, under Articles 4.2 and 5.8 of the Franchise Agreement, you agreed to pay a continuing nonrefundable royalty fee calculated as a percentage of the Net Sales<sup>1</sup> of the Restaurant and to contribute a percentage of the Net Sales of the Restaurant to the Marketing Fund. Pursuant to Article 16.3, you agreed that failure to timely pay Royalties and Marketing Fund Contributions constitutes an act of default under the Franchise Agreement.

On June 19, 2014, Dickey's notified you that its attempt to electronically draft your bank account for payment of franchise royalty fees and marketing fund fees was unsuccessful because you stopped payment on the draft. We notified you that Dickey's would make a second attempt

<sup>1</sup> Capitalized terms not defined herein shall have the meanings assigned to them in the Franchise Agreement.



James Neighbors  
June 24, 2014  
Page | 2

to debit the funds and any failure to collect payment for the royalties and marketing fund fees would result in a formal notice of default.

**You are hereby notified that you are in default of the terms of the Franchise Agreement because you failed to timely pay your outstanding balance of Royalties and Marketing Fund fees, along with applicable fees, in the amount of \$1,205.58. In addition, your continued operation of the Restaurant under the Dickey's name and registered marks, despite your failure to pay royalties, constitutes a violation of the Lanham Act.**

**If you fail to cure your default by making full payment of the amounts due and owing on or before July 2, 2014, Dickey's will move forward to terminate the Franchise Agreement.**

Pursuant to Article 17.1 of the Franchise Agreement, upon termination you agreed to pay in a single lump sum, as liquidated damages and not as a penalty, royalty fees for the remaining term of the Franchise Agreement. **Under your Franchise Agreement, liquidated damages in the amount of \$675,122.25 will be due and payable to Dickey's upon termination.** Please be advised that Dickey's intends to pursue all of its available claims under the Franchise Agreement, the Lanham Act, and any other applicable law and will seek an award for the full amount of unpaid royalties, liquidated damages, actual damages, attorneys' fees, expenses, and costs.

Please bear in mind that, following termination of the Agreement, you remain subject to the obligations set forth in Articles 17.11, 18 and 20.4 of the Franchise Agreement. This means that: (i) you are prohibited from reopening the Restaurant as a barbecue style restaurant; (ii) you are prohibited from opening a barbecue style restaurant within a five (5) mile radius of the Restaurant; and (iii) you must immediately and permanently cease use of any confidential methods, procedures, and trade secrets associated with Dickey's system. Further, you must immediately and permanently cease use of all signs, advertising materials, displays, furniture, fixtures, and equipment, as such are proprietary to Dickey's.

Additionally, you are required under Section 17.10 of the Franchise Agreement to immediately deliver to Dickey's all of those materials acknowledged to be Dickey's property, including but not limited to recipe books, Operations Manuals, records, files, instructions, correspondence, customer lists, and all other writings or electronic data related to operating the franchised business. You shall retain no copy or record of any of the above, except your copy of your Franchise Agreement and any correspondence between the parties and any other documents which you reasonably need for compliance with any applicable law.

Please be informed that nothing contained in this Notice of Default shall be deemed a waiver of any other default or event of default existing under the above-referenced Franchise Agreement, nor a waiver of any rights, remedies, or recourse available to Dickey's, nor an



James Neighbors  
June 24, 2014  
Page | 3

election of remedies resulting from any default which may exist, with respect to the Franchise Agreement or any other document executed in connection therewith.

Please contact me with any questions you have regarding this correspondence.

Regards,

DICKEY'S BARBECUE RESTAURANTS, INC.

A handwritten signature in cursive script that reads "Christine S. Johnson".

Christine S. Johnson  
Assistant General Counsel



July 16, 2014

Via U.S. Mail, Certified Mail, RRR 7012 1640 0001 9319 9362

TN-845

First Class Mail

and Email: james\_neighbors@yahoo.com; dickeysbbqtn@gmail.com

Mr. James L. Neighbors  
100 Fairhaven Dr.  
Blountville, TN 37617

Re: *Notice of Termination under the Franchise Agreement dated August 17, 2013 (the "Franchise Agreement") by and between Dickey's Barbecue Restaurants, Inc. ("Dickey's") and James L. Neighbors ("Franchisee" or "you") for the Dickey's Barbecue Pit® restaurant located at 1805 W. State of Franklin Road, Suite 200, Johnson City, TN 37604 (the "Restaurant")*

**Notice of Termination**

Dear Mr. Neighbors:

By executing the Franchise Agreement, you undertook the obligations and liabilities typical of a Dickey's franchisee. Specifically, under Articles 4.2 and 5.8 of the Franchise Agreement, you agreed to pay a continuing nonrefundable royalty fee calculated as a percentage of the Net Sales<sup>1</sup> of the Restaurant and to contribute a percentage of the Net Sales of the Restaurant to the Marketing Fund. Pursuant to Article 16.2 you agreed that a default under you lease of your Restaurant premises constitutes an act of default under the Franchise Agreement. Furthermore, under Article 16.3, you agreed that failure to timely pay Royalties and Marketing Fund Contributions constitutes an act of default under the Franchise Agreement.

On June 19, 2014, Dickey's sent correspondence to you ("Default Warning") advising that Dickey's attempt to electronically draft your bank account for payment of franchise royalties and marketing fund fees (collectively "Fees") was unsuccessful because you stopped payment on the draft. We notified you that Dickey's would make a second attempt to debit the funds and any failure to collect payment for the royalties and marketing fund fees would result in a formal notice of default. The second attempt to debit Fees was also unsuccessful due to a stop payment.

On June 24, 2014, Dickey's issued a formal notice of default ("Notice of Default") advising you that your failure to make payment of the Fees due and owing constitutes an act of default under the Franchise Agreement. Dickey's further notified you that your continued operation of the Restaurant under the Dickey's name and registered marks, despite your failure to pay royalties, constitutes a violation of the Lanham Act. By the Notice of Default, Dickey's demanded that payment of the outstanding Fees be paid on or before July 2, 2014.

<sup>1</sup> Capitalized terms not defined herein shall have the meanings assigned to them in the Franchise Agreement.

James Neighbors

July 16, 2014

Page | 2

On June 30, 2014, you sent e-mail correspondence to your Area Director, Kim Juda, stating, "I will start dickeys ach and will not stop it again. I realize it is an agreement. I will do my part." Again, on July 2, 2014, you advised Dickey's employee, David Clay, via e-mail that you would contact your bank and remove any restrictions on the account and authorize debits for the outstanding Fees. On July 8, 2014, Mr. Clay contacted you via e-mail and advised that the "stop payment" order had not been removed and all attempts to debit Fees had been unsuccessful.

Despite Dickey's continued efforts to collect the Fees due and owing, you have failed to make any payments towards the past due Fees in the amount of \$5,463.00.

On July 16, 2014, Dickey's was notified that you are in default of the lease for the Restaurant premises for failure to pay rent.

Based upon the foregoing, in accordance with Article 16 of the Franchise Agreement, Dickey's hereby terminates the Franchise Agreement effective at 12:01 a.m on July 17, 2014.

As a result, pursuant to Section 17.1 of the Franchise Agreement and effective immediately, the Restaurant shall cease to operate as a Dickey's Restaurant and you shall not, directly or indirectly, represent to the public or hold yourself out as a present or former owner and operator of a Dickey's Restaurant. Pursuant to Section 17.2 of the Franchise Agreement, you shall immediately and permanently cease to use, in any manner, Dickey's Proprietary Marks, which include all signs, symbols, logos, or other marks associated with Dickey's and all such Proprietary Marks shall be immediately removed.

Please be advised that Dickey's requires strict compliance with these provisions of Section 17. Should you fail to comply with these requirements, Dickey's shall take all appropriate steps to protect its Proprietary Marks, including seeking damages and other relief, including relief available under the Lanham Act, 15 U.S.C. § 1051.

In addition to your acts of breach under the Franchise Agreement, it has come to Dickey's attention that you have published a number of defamatory statements on public blogging forums. Your statements are false and have caused, and continue to cause, serious damage to the reputation of Dickey's, the brand, and the entire franchise system.

As a result of your actions, Dickey's has suffered, and will continue to suffer, both significant monetary loss and damage to its brand. Dickey's intends to pursue to pursue all rights and remedies provided by law and under the Franchise Agreement, including, but not limited to the recovery of liquidated and other damages.

James Neighbors

July 16, 2014

Page | 3

Please be informed that nothing contained in this notice shall be deemed a waiver of any rights, remedies, or recourse available to Dickey's, nor an election of any remedies, all of which are expressly reserved. We appreciate your complete cooperation with this matter and your immediate attention to these issues.

Sincerely,



Christine Johnson

General Counsel

Dickey's Barbecue Restaurants, Inc.