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

**FRANCHISE DISCLOSURE DOCUMENT**



FRANCHISE DISCLOSURE DOCUMENT  
DICKY'S BARBECUE RESTAURANTS, INC.,  
A TEXAS CORPORATION  
4514 COLE AVENUE, SUITE 1100  
DALLAS, TEXAS 75205  
(972) 248-9899  
WWW.DICKEYS.COM

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The franchisee will operate under the name and mark "Dickey's Barbecue Pit" one (1) or more fast casual counter service restaurants specializing in freshly prepared barbecue style meats and other food products. The total investment necessary to begin operation of a Dickey's Barbecue Pit franchise is between \$337,900 and \$459,600 for a 1,500 square foot restaurant. This includes the initial franchise fee that must be paid to the franchisor or affiliate. The amount of the initial franchise fee depends upon whether you acquire the rights to open a single restaurant under a franchise agreement or whether you acquire the rights to develop and operate more than one (1) restaurant unit under a development agreement:

1. If you acquire the right to operate a single restaurant unit under a franchise agreement, the initial franchise fee is \$30,000.
2. If you acquire the right to develop and operate more than (1) restaurant unit under a development agreement, you will be required to pay to Dickey's a development fee of \$30,000 plus \$10,000 for each restaurant after the initial restaurant. You will also be required to pay a franchise fee of \$30,000 for each restaurant, but this \$30,000 fee will be reduced to \$10,000 for each restaurant after the first restaurant if you meet certain development milestones. From the development fee, \$30,000 will be applied to the franchise fee for the initial restaurant, and \$10,000 shall be applied towards the \$10,000 franchise fee (if you meet certain milestones) for each subsequent restaurant.

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

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

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

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

ISSUANCE DATE: \_\_\_\_\_

**STATE COVER PAGE**

**DICKEY'S BARBECUE RESTAURANTS, INC.,  
A TEXAS CORPORATION,  
4514 COLE AVENUE, SUITE 1100  
DALLAS, TEXAS 75205  
(972) 248-9899  
WWW.DICKEYS.COM**

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administration before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. If you learn that anything in this Disclosure Document is untrue, contact the FTC and the appropriate State authority.

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

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

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

1. THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE MOST DISPUTES WITH DICKEY'S BY NONBINDING MEDIATION AND, IF NONBINDING MEDIATION IS UNSUCCESSFUL, BY ARBITRATION IN DALLAS COUNTY, TEXAS. IN SOME CASES, DISPUTES MAY BE SUBMITTED TO LITIGATION IN THE COURTS IN TEXAS. YOU UNDERSTAND THAT OUT OF STATE MEDIATION, ARBITRATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO MEDIATE, ARBITRATE OR LITIGATE WITH DICKEY'S IN TEXAS THAN IN YOUR HOME STATE.
2. THE FRANCHISE AGREEMENT STATES THAT TEXAS LAW GOVERNS THE FRANCHISE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS YOUR LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. THE SUBSTANTIAL MAJORITY OF RESTAURANTS OPERATED BY DICKEY'S FRANCHISEES OR BY AN AFFILIATE ARE LOCATED IN TEXAS. OPERATING RESULTS FOR DICKEY'S RESTAURANTS LOCATED OUTSIDE OF TEXAS ARE GENERALLY LESS ESTABLISHED.
4. DICKEY'S OR ITS AFFILIATES OR OTHER FRANCHISEES MAY PROVIDE CATERING AND DELIVERY SERVICES AND MAY ESTABLISH OTHER CHANNELS OF DISTRIBUTION AND SELL OR DISTRIBUTE ANY PRODUCT OR SERVICE TO THE GENERAL PUBLIC UNDER THE SAME AND/OR A DIFFERENT TRADEMARK, POSSIBLY IN COMPETITION WITH YOUR FRANCHISE.
5. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

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

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

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**ITEM 1**  
**THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES**

To simplify the language in this Disclosure Document, "Dickey's", "franchisor", "we" and "our" means Dickey's Barbecue Restaurants, Inc., a Texas corporation, the franchisor. "You" means the person or entity that buys the franchise and, if such person is a partnership, corporation or other entity, also includes the owners.

Dickey's is a Texas corporation incorporated on March 7, 1994. The company's principal place of business is 4514 Cole Avenue, Suite 1100, Dallas, Texas 75205. Dickey's does not have any parent companies or any affiliates which offer franchises in any line of business or provide products or services to franchisees. There are no predecessors of Dickey's. Dickey's does not do business under any other name. Since its formation, Dickey's has offered Restaurant franchises.

Dickey's sole business is to offer, sell and service franchises for the development and operation of counter service fast casual dining restaurants (the "Restaurants") specializing in freshly prepared food featuring barbecued meats under the service mark (the "Mark") displayed on the cover page of this Disclosure Document. While some of Dickey's existing Restaurant franchises offer a cafeteria-style dining format or operate out of larger facilities, to meet evolving customer demands and tastes, currently Dickey's offers franchises featuring counter service dining in leased facilities of approximately 1,500 square feet. Most of the Restaurants are located within suburban shopping centers or in stand-alone buildings located on busy streets, but several Restaurants are located in "non-traditional" venues such as food courts or convenience stores or within institutional settings such as airports. Dickey's currently does not offer franchises for "non-traditional locations" and only offers franchises for Restaurants in leased locations situated within shopping centers.

Dickey's does not operate any Restaurants of the kind described in this Disclosure Document, but Dickey's Barbecue Pit, Inc. ("DBP"), a Texas corporation affiliated with Dickey's having a principal place of business at 4514 Cole Avenue, Suite 1000, Dallas, Texas 75205, has operated similar Restaurants since 1941, and Restaurant Growth, Inc. ("RGI"), a Texas corporation affiliated with Dickey's having a principal place of business of 7770 Forest Lane, Dallas, Texas 75230, opened a similar Restaurant in 2006. Except as described in this Item 1, Dickey's, DBP and RGI have not and do not engage in any other kinds of business or offered or offer franchises in any other lines of business.

Dickey's agent for service of process in the State of California is the Commissioner of the California Department of Commerce, 71 Stevenson Street, Suite 2100, San Francisco, California 94105-2980, with a copy to Roland Dickey, Jr., 4514 Cole Avenue, Suite 1100, Dallas, Texas 75205.

Dickey's acquired its right to use and sublicense to franchisees the Mark pursuant to a license agreement with DBP, its affiliate. The license agreement is attached as Exhibit D. (See Item 13). DBP has operated pit barbecue Restaurants generally utilizing the cafeteria-style format but offering the same food products as the counter service franchises described in this Disclosure Document since 1941. As of the date of this Disclosure Document, DBP (or RGI) operates five (5) pit barbecue cafeteria-style Restaurants in the Dallas-Fort Worth, Texas metropolitan area and one (1) table service "Smokehouse" Restaurant in Albuquerque, New Mexico. These Restaurants utilize modern barbecue cooking technology and several proprietary concepts and recipes. Food offerings feature slow-smoked meats and vegetables and salads. When reference is made in this Disclosure Document to "company-owned" or "company-operated" Restaurants, this means Restaurants owned and operated by DBP and RGI. DBP and RGI do not franchise, and have not, franchised Restaurants or any other kind of business.

Pursuant to this Disclosure Document, Dickey's is offering qualified individuals, corporations and partnerships the opportunity to develop and operate Restaurants pursuant to a comprehensive and unique system (the "System") that includes rights to use the Mark and various trade names, trademarks and service marks as well as distinctive exterior and interior design, décor, color schemes, furnishings



and equipment for Restaurant premises; confidential recipes, procedures, specifications and formulas for preparing food and beverage products and for operations; inventory and management control methods; initial and ongoing training and seminars and advertising and promotional services and assistance.

Each franchise relationship is offered by Dickey's based on one of two arrangements:

1. The first arrangement is a single franchise agreement ("Franchise Agreement") under which you shall establish one (1) Restaurant at a specified location. The Franchise Agreement that you will be required to execute for this Restaurant is attached to this Disclosure Document as Exhibit B. (See Item 5 regarding initial Franchise Fee).
2. The second arrangement is a development agreement (the "Development Agreement") which requires you to establish more than one (1) Restaurant within a defined geographic area according to a time schedule provided in the Development Agreement. The Development Agreement you will be required to execute is also attached to this Disclosure Document as Exhibit C. You will be required to execute the form of Franchise Agreement Dickey's is then offering to new Dickey's franchisees for each Restaurant established under the Development Agreement. (See Item 5 regarding initial Franchise Fee).

If you are considering a single franchise, you will receive a copy of our Franchise Agreement. If you are considering more than one (1) franchised Restaurant, you will receive copies of both the Franchise Agreement and the Development Agreement. The Franchise Agreement and Development Agreement are each referred to in this Disclosure Document as an "Agreement."

The Restaurants' products and services are marketed to customers of all ages and economic levels. Preferred locations for the Restaurants are in heavily populated suburban areas on or near major streets and highways. While there can be fluctuations in sales of the Restaurants' products and services, sales are not typically seasonal.

The market for restaurant services is well-established but highly competitive. There are many single location, family-operated barbecue restaurants and numerous regional and national restaurant systems currently operating and/or offering franchises for barbecue-style restaurants which feature menu items similar to those offered by Dickey's and the Restaurants. Additionally, the Restaurants will compete for the dining dollar with the full range of other types of food service operations, many of which may be located in close proximity to the Restaurants. There also exists active competition among restaurants for the employment of management and service personnel as well as for the acquisition of attractive lease sites suitable for restaurants.

Dickey's believes its competitive position will be enhanced due to its distinctive offering of barbecue-style food using high quality, fresh ingredients and proprietary recipes served quickly at affordable prices and in a comfortable, friendly setting. Although Dickey's continues to develop or franchise Restaurants in Texas, where its name and reputation are well established, Dickey's is now offering franchises for Restaurants throughout the United States. Dickey's believes that Restaurants in this broader market have the potential for success, and that Restaurants will be able to ultimately achieve consistent patronage in these markets as a result of Dickey's developing name recognition and distinctive food offerings.

The restaurant industry is heavily regulated. Many of the laws, rules and regulations that apply to business generally have particular applicability to restaurants. All Restaurants must comply with federal, state and local laws applicable to the operation and licensing of a restaurant business, including obtaining all applicable health permits and/or inspections and approvals by municipal, county or state health departments that regulate food service operations. Your Restaurant must also meet applicable municipal, county, state and federal building codes and handicap access codes. You should consider these laws and regulations when evaluating your purchase of a franchise.

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

The Federal Clean Air Act and various state laws require certain state and local areas to meet national air quality standards limiting emissions of ozone, carbon monoxide and particulate matters, including caps on emissions from commercial food preparation. Some state and local governments have also adopted, or are considering, proposals that would regulate indoor air quality, including the limitation of smoking tobacco products in public places such as restaurants.

## **ITEM 2 BUSINESS EXPERIENCE**

The following is a list of any directors, trustees, general partners, principal officers and other individuals with management responsibility relating to the sale or operation of the franchise offered by this Disclosure Document, together with all franchise brokers. The principal position and employer of each such individual during the last five (5) years, including each position's starting date, ending date and location, are listed below. Unless otherwise specified below, the location of each position is Dallas, Texas.

### Chairman: T. D. Dickey, Jr.

T. D. Dickey, Jr. serves as Chairman of the Board of Dickey's and has served in that capacity since his employment by Dickey's in March of 1994. Mr. Dickey began working in his family's barbecue business in 1968 and since 1971 has been Chairman of the Board of DBP.

### Chief Executive: Roland R. Dickey

Roland Dickey, brother of T.D. Dickey, Jr., serves as the Chief Executive Officer of Dickey's, and previously had served as President of Dickey's from the date of Mr. Dickey's initial employment by the company in March of 1994 until 2006. Mr. Dickey began working in the family's barbecue business in 1968 and since 1971 has been President of DBP.

### President: Roland Dickey, Jr.

Roland Dickey, Jr., son of Roland R. Dickey, began working at Dickey's in July of 1999, and in 2006, became the President of Dickey's. Prior to becoming President, Mr. Dickey served as Vice President of Dickey's.

### Director of Real Estate: Cullen Dickey

Cullen Dickey began service with Dickey's in February of 2006 as Director of Real Estate. Mr. Dickey, son of Roland R. Dickey, also has worked as an independent commercial real estate agent in the Dallas, Texas area since 2001.

### Director of Franchise Development: Owen Edwards

Owen Edwards began working for DBP in 1974 and has served as a Restaurant Manager for DBP starting in 1989. Mr. Edwards began service at Dickey's in January of 1997.

Vice President of Accounting and Administration: Michelle Frazier

Michelle Frazier joined Dickey's in September of 2003 as an Accounting Manager. From March, 2007 to January, 2008, Ms. Frazier served as Director of Accounting. She is now Vice President of Accounting and Administration.

Vice President of Operations: Corby Cronin

Corby Cronin has been in the restaurant business since 1995. He began his career at Brennan's of Houston in 1995 as a prep cook. After graduating Johnson & Wales University with a degree in Culinary Arts, he worked as the Banquet Chef at the Wyndham Resort Village in Breckenridge, Colorado. He trained under James Mazzio, Food & Wine Magazine's Top Ten Chefs of 1999, at 15 Degrees in Boulder Colorado before opening and operating several restaurants in Denver, Colorado. Mr. Cronin moved to Dallas, Texas in 2003 to start his own contracting company that served residential homebuilders in the Dallas-Fort Worth, Texas metropolitan area. Mr. Cronin sold his business in 2007 and joined Dickey's in September of 2007. Mr. Cronin has a Bachelors Degree from The University of Colorado in Communications and is also certified from CU in Public Relations.

Director of Training: Alicia Scheffler

Alicia Scheffler joined Dickey's as Director of Training in February of 2008. Prior to working at Dickey's, Ms. Scheffler worked for ASI-Modulex, Inc. as Director of Training and Employee Development from 2003 to 2007. From 1998 to 2003, Ms. Scheffler was Senior Director of Training and Development with Safeguard Business Systems.

Director of Marketing: Jeff Gruber

Jeff Gruber began service with Dickey's as a Marketing Coordinator in March of 2008 and was promoted to Director of Marketing in 2009. Prior to working for Dickey's, Mr. Gruber attended Southern Methodist University Dedman School of Law where he graduated in May of 2006. From June of 2005 until November of 2006, Mr. Gruber worked as an attorney for the law firm Byrne Cardenas & Smitherman, L.L.P. From May of 2007 until January of 2008, Mr. Gruber was employed as an attorney by R.R. Donnelley Global Real Estate Services, and from February of 2008 until March of 2008 he worked as an attorney for Goldstein & Scopellite, P.C.

Director of New Unit Development: Tim Sharp

Tim Sharp has extensive experience both opening and operating restaurants. From 1999 to 2005, Mr. Sharp worked as Regional Director of Operations for Chevy's Fresh Mex. From 2005 until 2008, he was employed by Cracker Barrel as District Manager. Mr. Sharp began service with Dickey's as Field Services Manager in July of 2008 and was promoted to Director of New Unit Development in 2009.

Director of Construction: Daniel Sibley

Before joining Dickey's in August of 2008 as Project Manager, Daniel Sibley worked for Lanelogic, LLC from 2006 to 2008 as a Trading Inventory Consultant. From 2004 to 2005, Mr. Sibley worked in Trading Operations with Ameritrade. In 2003, he earned a B.S.S. in Economics from Southern Methodist University. Mr. Sibley was promoted to Director of Construction of Dickey's in 2009.

Franchise Broker: Joe Amodio

Joe Amodio and his company, Fran Sales, Inc., began serving as a Franchise Broker for Dickey's in June, 2005. Previously, Mr. Amodio developed Blimpie franchises beginning in 1997. In addition, as President



of Texwide Development, Inc., Mr. Amodio served as Area Developer for the "Philly Connection" franchise system in Texas from 2002 to June of 2005.

Franchise Broker: Clay Carson

Clay Carson began serving as Franchise Broker for Dickey's upon his employment with Fran Sales, Inc. in August of 2005. Prior to joining Fran Sales, Inc., Mr. Carson formed CJ&J/AdFran, an advertising agency in Houston, Texas, in which he continues to serve as a non-active partner and consultant.

Franchise Broker: Tom Pestka

Tom Pestka began serving as a Dickey's franchise sales broker upon his employment with Fran Sales, Inc. in 2007. Prior to working in franchise sales, Mr. Pestka created and ran several of his own businesses, including American Contamination Control which provided mold remediation and water mitigation services to consumers in the southeast U.S. Mr. Pestka started the business in 2001 and sold it in 2007. More recently, Mr. Pestka worked as an Implementation and Design Consultant for Mobile Media Enterprise in Norcross, Georgia, designing and building event activities for major brands in the U.S. from April, 2005 to October, 2007.

Franchise Broker: Mike Amodio

Mike Amodio graduated from Quinnipiac University in Hamden, Connecticut in 2007 with degree in entrepreneurship and business management. He worked for Enterprise Rent-A-Car as a Management Assistant from 2005 to 2007, and joined Fran Sales, Inc. in February of 2007.

Franchise Broker and Area Developer (St. Louis, Missouri): Doug Gruder

Doug Gruder and his company, Restaurant Brokerage, LLC d/b/a Dickey's St. Louis, began serving as an area developer and a franchise broker for Dickey's in the St. Louis, Missouri area in 2005. Previously, from 1993 to 1995, Mr. Gruder served as an area developer for Quizno's Classic Subs in the St. Louis, Missouri area and, since 1993 Mr. Gruder has owned and operated Restaurant Realty, Inc., a St. Louis-based company specializing in the sale of restaurants.

Franchisee and Area Developer (South-Central Texas): Terry Maxey

Terry Maxey and his company, Max-E-Enterprises, Inc., which was incorporated in 1996, became a Dickey's Franchisee in 2006 and began serving as Franchisee and Area Developer (South-Central Texas) in 2007. He has been involved in various types of retail development since 1985. Currently, in addition to Dickey's, Mr. Maxey and his companies own and operate a chain of restaurants under the Wendy's brand and also a chain of convenience stores under the Exxon brand.

Franchisee and Area Developer (Northern and Coastal Virginia): Stephen Royer

For the past five (5) years Stephen Royer worked for Sanofi-Aventis Pharmaceutical, Inc. of Bridgewater, New Jersey as an Office Based Specialty Sales Representative, District Sales Manager, and most recently as Senior Sales Professional before opening his first Dickey's Barbecue Pit in Lynchburg, Virginia in December, 2007. Mr. Royer has been an Area Developer for Dickey's since May, 2008.

**ITEM 3  
LITIGATION**

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

Dickey's Barbecue Restaurants, Inc. v. Muhammad Afzal and Atlatic Restaurant Group, LLC, 160<sup>th</sup> Judicial District Court of Dallas County, Texas, Cause Number 09-00779, Filed January 22, 2009.

The defendants in this action were Muhammad Afzal, a former franchisee of Dickey's, and Atlatic Restaurant Group, LLC, an entity owned and operated by Mr. Afzal's sister. Dickey's alleged, among other things, that Mr. Afzal breached the terms of his Franchise Agreement by operating a barbecue-style restaurant after the termination of his Restaurant by Dickey's and that Mr. Afzal improperly transferred his Restaurant to Atlatic Restaurant Group, LLC without Dickey's consent. Accordingly, Dickey's requested that the court grant an injunction prohibiting the defendants from operating a barbecue-style restaurant and to compel Mr. Afzal to sell the assets of the restaurant to Dickey's. This lawsuit was subsequently settled on February 23, 2009 upon terms which require Mr. Afzal to comply with the non-compete and non-disclosure provisions of his Franchise Agreement.

Dickey's Barbecue Restaurants, Inc. v. JMB Crossville, L.L.C., Miriam Bernhard and Jerry Bernhard, 298<sup>th</sup> District Court, Dallas, County, Texas, Cause Number 09-02401, Filed March 2, 2009.

The defendants in this action were JMB Crossville, L.L.C. ("JMB"), a former franchisee of Dickey's, and Miriam and Jerry Bernhard, the owners of JMB. Dickey's alleged, among other things, that the defendants breached the terms of the Franchise Agreement by operating a barbecue-style restaurant after the termination of JMB's Restaurant by Dickey's. Accordingly, Dickey's requested that the court grant an injunction prohibiting the defendants from operating a barbecue-style restaurant. This lawsuit was subsequently settled upon terms which require the defendants to comply with the non-compete and non-disclosure provisions of the Franchise Agreement.

#### **ITEM 4 BANKRUPTCY**

No bankruptcy is required to be disclosed in this Disclosure Document.

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## ITEM 5 INITIAL FEES

Single Unit Arrangement. If you acquire the right to operate one (1) Restaurant, an initial franchise fee of \$30,000 (the "Franchise Fee") is payable to Dickey's in a lump sum at the time the Franchise Agreement is signed. Dickey's reserves the right to charge a larger initial Franchise Fee for franchises in non-U.S. locations to defray the higher costs anticipated with respect to such foreign locations.

Development Agreement. If you acquire the right to develop and operate two (2) or more Restaurants under a Development Agreement, you are required to pay Dickey's a development fee of \$30,000 plus a \$10,000 deposit for each Restaurant after the initial Restaurant (the "Development Fee"). You will also be required to pay a franchise fee of \$30,000 for each Restaurant payable to Dickey's at the time a Franchise Agreement is signed for each Restaurant you develop, but this \$30,000 fee will be reduced to \$10,000 for each Restaurant after the first Restaurant if you meet certain development milestones. The Development Fee is payable in a lump sum to Dickey's at the time the Development Agreement is signed. From this Development Fee, \$30,000 shall be applied to the \$30,000 Franchise Fee for the initial Restaurant, and each \$10,000 deposit shall be applied toward the reduced \$10,000 Franchise Fee for each subsequent Restaurant if you timely satisfy the timetable and comply with the other terms of your Development Agreement. Otherwise, if you do not timely develop and open your Restaurant and comply with the other terms of the Development Agreement, the standard Franchise Fee of \$30,000 shall apply to each Restaurant you develop, with the balance of the Franchise Fee to be immediately paid by you in lump sum.

Except as noted above, the initial Franchise Fee and if applicable, the Development Fee, are each uniformly imposed on all franchisees subject to this Disclosure Document. Dickey's reserves the right, but is not obligated, to reduce the initial Franchise Fee (and the Development Fee) for existing Dickey's franchisees who elect to purchase additional Dickey's franchises. The Franchise Fee and Development Fee are each non-refundable.

In addition, at least sixty (60) days prior to the opening of your Restaurant, you shall pay to Dickey's \$10,000, which shall be fully expended by Dickey's on your behalf to defray the costs and expenses of your Restaurant's grand opening and initial local advertising and promotion. You also are required to reimburse Dickey's for the cost and expense of any site inspection in excess of the three (3) site inspection visits provided by Dickey's at no cost. Further, you must pay to Dickey's \$200 per person for training materials and uniforms. These fees, costs and expenses are uniformly imposed on all franchisees subject to this Disclosure Document, payable in lump sum and are non-refundable.

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**ITEM 6  
OTHER FEES**

Type of Fee	Amount	Due Date	Remarks
Royalty	5% of Net Sales	Payable weekly on the Wednesday following the calendar week to which such payments relate	See footnotes (1), (2) and (3).
Marketing Fund	4% of Net Sales	Payable weekly on the Wednesday following the calendar week to which such payments relate	See footnotes (1), (2), (3) and (10).
Insurance	Premiums vary depending on location	As agreed or upon notice from Dickey's if you have failed to pay premiums	Dickey's has the right to obtain insurance and charge you with the cost of the premium if you fail to purchase same. See footnote (4).
Training Materials and Uniforms	\$200 per person	1 week prior to beginning training	See footnotes (1) and (5).
Audit	Cost of audit plus the lesser of 15% interest or maximum rate	30 days after billing	Payable only if audit shows understatement of at least 2% of Net Sales for any month. See footnotes (1), (3), (6) and (7).
Site Evaluation Costs	All of Dickey's reasonable costs and expenses	30 days after billing	Dickey's provides 3 on-site evaluations for your Restaurant at no charge to you. See footnote (1) and (8).
Transfer	Greater of \$10,000 or Dickey's reasonable costs and expenses	5 days prior to confirmation of transfer	Payable to Dickey's when franchise is sold. No charge for franchise transferred to a corporation which you control. See footnote (1) and (6).
Renewal	\$10,000	5 days prior to commitment of 10-year renewal term	Payable to Dickey's if you elect to renew your franchise prior to expiration of initial 20-year term. See footnote (1) and (6).
Management	5% of Net Sales	Payable monthly	Only payable if Dickey's elects to operate the Restaurant after your death or disability. See footnotes (1) and (3).
Interest	15% or maximum rate, whichever is less	Immediately	See footnotes (1) and (6).
Legal	Actual legal fees and expenses	As incurred by Dickey's to enforce your obligations	Incurred only if a court determines you have breached the Franchise Agreement. See footnotes (1) and (9).
Termination	Royalty fees for remaining term of Franchise Agreement	Immediately	See footnotes (1), (3) and (11).

**Footnotes:**

(1) The fee is uniformly imposed and collected by and payable only to Dickey's and is nonrefundable.

(2) You are required to pay to Dickey's a royalty fee equal to five percent (5%) of Net Sales of the Restaurant and a contribution to the Marketing Fund equal to four percent (4%) of Net Sales for each calendar week period (the "Sales Period"). These payments are electronically drafted upon your account by ACH transfer based upon your statement certifying Net Sales for the Sales Period.



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

(4) If you, for any reason, fail to obtain or maintain the insurance required by each Franchise Agreement entered into between Dickey's and you, as these requirements may be revised from time to time by Dickey's in its Operations Manual and such other manuals, written materials and directives as Dickey's shall have developed for use in the Restaurant (the "Manuals") or otherwise in writing, Dickey's has the right and authority (but not the obligation), to immediately obtain such insurance and to charge the same to you, which charges, together with a reasonable fee for Dickey's expenses in so acting, will be payable by you immediately upon notice. Insurance costs are non-refundable. Insurance coverage requirements are uniformly imposed on all franchisees subject to this Disclosure Document; however, the costs of this coverage may not be uniform for all franchisees because premiums may vary in accordance with the insurer, marketplace conditions, the location of the insured's premises, the insurance requirements of applicable law and other factors. These costs will not be collected or imposed in whole or in part on behalf of any third party by Dickey's, and are payable to the applicable insurer or agent.

(5) Dickey's reserves the right to charge a fee for training manuals and materials and to additionally charge for uniforms.

(6) Interest is not charged unless royalty, Marketing Fund contribution, transfer or renewal fee payments, or any other sum due to Dickey's is not paid when due or an audit reveals underpayments based on Net Sales. In addition, Dickey's reserves the right to collect out-of-pocket expenses associated with any of these matters.

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

(8) Although site evaluation costs are uniformly imposed on all franchisees subject to this Disclosure Document for each additional site evaluation in excess of the three (3) site evaluations provided by Dickey's at no cost, the cost of each such additional site evaluation may not be the same for each franchisee. Site evaluation costs will vary depending on factors such as the location of the franchisee, travel expenses and duration of the site visit.

(9) Although legal costs are uniformly imposed on all franchisees subject to this Disclosure Document, the amount of legal costs may not be the same for each franchisee. Legal fees will vary depending on factors such as the nature of the legal matter, law firm utilized, billing arrangements and time spent in connection with the legal matter.

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

(11) Unless otherwise indicated in a writing from Dickey's, and to the extent permitted by applicable law, you must pay to Dickey's in a single lump sum payment, as liquidated damages and not as a penalty, royalty fees for the remaining term of the Franchise Agreement (or the renewal term, if applicable) calculated based upon the average Net Sales of your Restaurant prior to termination. For example, if your average monthly Net Sales for the prior twelve (12) months was \$83,333.33, and you have three (3) years remaining on the term of your Franchise Agreement, your liquidated damages would be \$150,000.00 ( $\$83,333.33 \times \text{five percent (5\%)} \text{ royalty fee} \times \text{twelve (12) calendar months} \times \text{three (3) remaining years}$ ).

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# **ITEM 7** **ESTIMATED INITIAL INVESTMENT**

The following table provides an estimate of your initial investment for one (1) approximately 1,500 square foot Restaurant constructed in accordance with Dickey's current prototype plans and specifications and assumes you will lease the location of your Restaurant. The information is arranged to provide a range of your estimated initial investment.

<b>YOUR ESTIMATED INITIAL INVESTMENT</b>				
<b>Type of Expenditure</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is To Be Made</b>
Franchise Fee <sup>(1), (13)</sup>	\$10,000 - \$30,000	Lump Sum	Execution of Franchise Agreement	Dickey's
Architectural Plans <sup>(2), (14)</sup>	\$12,000 - \$16,000	Lump Sum	30 Days After Execution of Lease or Land Purchase	Architectural Firm
Leasehold Improvements <sup>(3), (14)</sup>	\$105,000 - \$175,000	Negotiable	Negotiable	Landlord
Furniture, Fixtures, Equipment and Signage <sup>(4), (14)</sup>	\$141,000	Lump Sum	As Incurred	Vendors/Contractors
Lease Deposits <sup>(14), (15)</sup>	\$3,000 - \$6,000	Lump Sum	As Incurred	Landlord/Utilities
Permits <sup>(5), (14)</sup>	\$1,000 - \$2,500	Lump Sum	As Incurred	State or Municipal Agencies
Insurance <sup>(6), (14)</sup>	\$5,000	Annual	Annually	Insurance Agents
Training Manual and Uniforms <sup>(16)</sup>	\$600	Lump Sum	Upon Receipt	Dickey's
Opening Inventory and Services <sup>(7), (14)</sup>	\$10,000	Lump Sum	Vendors' Terms/As Incurred	Vendors/Dickey's
Additional Funds – 3 months <sup>(8), (10), (14)</sup>	\$24,000 - \$34,000	Cash	As Needed	Various Payees
Promotional and Pre-Opening Expenses <sup>(9), (13)</sup>	\$10,000	Cash	60 Days Prior to Opening	Dickey's
Professional Fees <sup>(11), (14)</sup>	\$1,000 - \$3,000	As Arranged	As Arranged	Vendors
Sub Total <sup>(17)</sup>	\$322,600 - \$433,100			
Closing Costs – Interim Interest <sup>(12), (14)</sup>	\$4,000 - \$8,000	As Arranged	As Arranged	Lender
Closing Costs – Bank Charges <sup>(12), (14)</sup>	\$4,500	As Arranged	As Arranged	Lender
Closing Costs – SBA Fees <sup>(12), (14)</sup>	\$6,800 - \$14,000	As Arranged	As Arranged	SBA
<b>TOTAL:</b>	<b>\$337,900 - \$459,600</b>			

Footnotes:

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

<sup>(2)</sup> These amounts are estimated costs for acquiring and adapting Dickey's prototype plans for use in connection with your proposed Restaurant.

<sup>(3)</sup> Dickey's requires that you lease the premises for the Restaurant. The amounts provided are based on a Restaurant within a shopping center or free-standing structure with approximately 1,500 square feet. These amounts assume you will engage a construction manager to oversee the project, and the amounts include construction management costs of \$10,000 to \$15,000. Your costs may be lower if the landlord assumes the costs of converting and finishing out the space to Dickey's prototypical standards and specifications. Any such contribution by the landlord will likely, however, be factored into a higher lease rental rate. These amounts are Dickey's best estimate based upon commercial leasing and remodeling/finish-out rates and conditions in the Dallas-Fort Worth, Texas metropolitan area and may vary substantially based upon local commercial leasing conditions, cost of utility deposits, and labor rates and conditions and the availability and prices of materials.

<sup>(4)</sup> These amounts include costs for tables, chairs, track lighting fixtures, cabinets and decor items required for the Restaurant, costs for the Aloha Point-of-Sale system and Profit Management Console, computer hardware and software, refrigeration and other kitchen equipment, hood and fire and ventilation system and stainless steel, a catering van and catering equipment, and a barbecue cooking system. These figures are Dickey's best estimate based on current equipment costs and financing conditions in the Dallas-Fort Worth, Texas metropolitan area. Costs may vary substantially depending on geographic location, creditworthiness and financing arrangements. These amounts also include interior and exterior signage. The cost of signage may vary significantly depending on the location of the Restaurant, landlord and municipal requirements, and market conditions.

<sup>(5)</sup> Permit fees will vary depending on location and on whether any applicable federal, state or municipal laws or regulations require the payment of occupational taxes for restaurants. Permit fees will be greater for any construction for the finish-out or renovation of the Restaurant and will likely take more time to obtain. Permit fees will also likely be higher if your Restaurant is required to serve alcoholic beverages. Any state income or franchise taxes required to be paid for corporate franchisees are not included.

<sup>(6)</sup> The costs of insurance may vary substantially depending on the insurer, the location of the Restaurant, the value of the equipment and improvements and your claims history. The cost does not include any premium for worker's compensation insurance, liquor liability, auto liability, or any non-subscription alternatives, and the amount of such premium will vary widely based upon state insurance markets, number of employees, and other factors.

<sup>(7)</sup> Dickey's estimates that the range given will be sufficient to cover food and paper inventory needs for the first week of operations when training and dry-runs of Restaurant services occur prior to the opening of the Restaurant to the general public. These amounts may vary according to your sales volume during the indicated period and according to local suppliers' terms.



(8) The amounts provided will be used by you to cover costs and expenses such as debt service, wages, rent and other occupancy costs, initial stocking of inventory, food stocks and supplies, and other operating expenses during the initial three (3) months of operations. These amounts may vary depending upon your sales volume, your management skill, how closely you follow Dickey's methods and procedures, local economic conditions and wage rates, competition, your financing costs and upon other circumstances. These amounts are estimates, and Dickey's cannot guaranty that you will not have additional expenses starting the Restaurant.

(9) The amounts shown include costs and expenses of a grand opening promotion/initial marketing package for the Restaurant, for which you are required in the Franchise Agreement to pay to Dickey's \$10,000 to be spent by Dickey's on your behalf in connection with your grand opening promotion. A full accounting of the sums spent by Dickey's in connection with your grand opening will be provided.

(10) This estimate also reflects the cost of your Operating Principal and two (2) Restaurant managers to attend and complete the initial training. These amounts include estimated transportation costs, the cost of lodging and meals, employee wages (but no salary for the Operating Principal), and incidental expenses. Your costs may be greater depending upon your distance from the Dallas-Fort Worth, Texas metropolitan area and the lodging and meals chosen, and your employee wages.

(11) These amounts are Dickey's best estimate of legal and accounting fees associated with the review of this Disclosure Document and other organizational costs and expenses associated with the start-up of the Restaurant. Your actual costs may vary substantially depending on difficulties encountered, the individual professionals utilized and organizational structure chosen.

(12) These amounts only apply if you choose to finance certain costs related to opening the Restaurant (including, without limitation, any finish-out or renovation costs and equipment, inventory and working capital) with a third-party lender. These amounts are not payable to Dickey's and will vary depending on the terms of the financing you negotiate with your lender and the fees, costs and expenses incurred by lender and any other party involved in the financing. All amounts are estimates only based upon Dickey's experience to date.

(13) These amounts are non-refundable.

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

(15) The amounts provided are based on Restaurants with approximately 1,500 square feet located within shopping centers.

(16) The cost of the training manuals and uniforms is \$200 per person. These costs are typically non-refundable.

(17) Dickey's has relied on the experience it has acquired in the barbecue restaurant business since 1941 to compile these estimates. Still, Dickey's cannot assure you that you will experience the same level of costs. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. The Initial Investment estimates relate to a single Restaurant. You may extrapolate from these estimates and from Item 5 the initial investment required for opening more than one (1) Restaurant under the Development Agreement arrangement.

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

You are required to purchase your barbecue sauce (batch and prepackaged), barbecue sauce seasonings, salad dressings, pre-made salads and other ingredients for proprietary recipes from approved suppliers. Currently, neither Dickey's nor any of its affiliates are approved suppliers of any such items, nor does any officer of Dickey's currently own an interest in any such suppliers. It is anticipated that the costs of these food products will be insignificant in relation to all purchases and leases by you in establishing and operating of the Restaurant. Dickey's does not permit franchisees to contract with any alternative suppliers for the products described in this paragraph, nor does it issue specifications for these items.

You must also purchase your food products, paper stocks and other supplies only from approved suppliers under any standards and specifications prescribed in the Manuals. Dickey's has developed a list of approved suppliers for these items. It is anticipated that such purchases may constitute a significant percentage of all purchases made by you in connection with the operation of your Restaurant. You may request that Dickey's approve alternative suppliers. Any charges incurred by Dickey's in connection with the testing and inspection of the proposed supplier's offering must be paid by the franchisee requesting such approval. While Dickey's does not maintain written criteria for alternate suppliers, upon request, Dickey's will evaluate alternative suppliers based upon meat and produce quality and freshness and based upon the supplier's financial position, business reputation, delivery performance, accessibility, credit rating, and other criteria. It is anticipated that the review process will take thirty (30) days. Dickey's reserves the right to revoke its approval if the alternative supplier fails to continue to meet Dickey's then-current criteria. Dickey's does not permit franchisees to contract with any alternative suppliers other than those approved in Dickey's sole judgment and discretion.

Dickey's requires that you purchase and utilize the Aloha Point-of-Sale system, and further requires you to purchase and utilize the Profit Management Console software, and may from time to time additionally require Dickey's franchisees to utilize additional hardware or software programs. Dickey's has developed a list of approved suppliers for the point of sale system and related software and hardware. If so required by Dickey's, you are obligated to use such hardware and software in the operation of your Restaurant. In addition, Dickey's may subsequently from time to time require you to purchase and utilize any upgrades, additions, enhancements or replacements of the hardware or software that are developed by or on behalf of Dickey's, or otherwise required by Dickey's at such cost as Dickey's or its approved vendors make such upgrades, additions, enhancements, and replacements available to franchisees operating under the System (See Item 6). The amount of the cost of these upgrades, enhancements or replacements is anticipated to be insignificant in relation to all purchases and leases by you in establishing and operating of the Restaurant. Dickey's does not permit franchisees to contract with any alternative suppliers of computer hardware and software, nor does it issue specifications for these items.

You must purchase or lease all of your equipment, including barbecue pits, under any specifications prescribed in the Manuals. These specifications include standards for temperature, design and performance, and are based on Dickey's sole judgment and discretion, based on the experience of the company-owned Restaurants and Dickey's experience as a franchisor. You may purchase this equipment from any supplier approved by Dickey's. Dickey's has developed a list of approved equipment suppliers. In addition, Dickey's will approve alternative suppliers based upon technical specifications and based upon the supplier's financial position, business reputation, delivery performance, credit rating, and other criteria. Any charges incurred by Dickey's in connection with the testing and inspection of the proposed supplier's offering must be paid by the franchisee requesting such approval. Suppliers are evaluated, approved or disapproved on a case by case basis. It is anticipated that the review process will take thirty (30) days. Dickey's reserves the right to revoke its approval if the alternative supplier fails to continue to meet Dickey's then-current criteria. Dickey's does not permit franchisees to contract with any alternative suppliers other than those approved in Dickey's sole judgment and discretion.

Dickey's may also provide you with written guidelines governing the minimum standards and specifications of certain products, services and equipment which you procure from unrelated third parties. These standards and specifications may be set forth in the Manuals. Dickey's may from time to time modify these standards and specifications, as well as the other standards and specifications discussed in this Item 8, by providing you with written notification.

It is anticipated that the required purchases and leases from approved suppliers will constitute the substantial majority of all purchases by you in connection with the operation of the Restaurant. Dickey's estimates that up to fifty percent (50%) of your initial investment to establish and open the Restaurant shall be applied to required purchases and leases, and that up to seventy-five percent (75%) of your expenditures to operate the Restaurant shall be applied to required purchases and leases.

Certain approved suppliers currently or may hereafter pay to Dickey's or an affiliate (including to the Marketing Fund) compensation or otherwise credit the account of Dickey's or an affiliate sales incentives or rebates in amounts up to fifteen percent (15%) of the purchases you may make from such suppliers. During the fiscal year ending May 31, 2009, Dickey's and its affiliates realized \$1,430,545 from vendor rebates or credits which represented about 20% of Dickey's total revenues of \$7,288,424. Dickey's and its affiliates apply such sums to defray its costs in discharging its duties and obligations to its franchisees, to partially fund the Marketing Fund, and to generate revenues.

There are currently no required purchases or leases for which Dickey's or its affiliates are the approved supplier, nor does any officer of Dickey's own an interest in any of the approved suppliers. Dickey's reserves the right in the future to designate Dickey's, an affiliate or a supplier in which an officer of Dickey's owns an interest, as an approved supplier for additional items.

Dickey's has negotiated volume discount arrangements with certain designated suppliers for its franchisees (including pricing and payment terms), based upon volume purchases by the System.

You are obligated to purchase approved products only from approved vendors and suppliers, and any failure to do so may put you in default under your Franchise Agreement. There are no purchasing or distribution cooperatives, although Dickey's retains the right to establish them. Dickey's does not provide any benefits (such as additional franchises) to franchisees based upon a franchisee's purchase of particular products or services or use of particular supplies.

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# **ITEM 9** **FRANCHISEE'S OBLIGATIONS**

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

FRANCHISEE'S OBLIGATIONS			
Obligation	Disclosure Document Item	Article in Franchise Agreement	Article in Development Agreement
a. Site selection and acquisition/lease	Item 11	Articles 3 and 7	Article 3
b. Pre-opening purchases/leases	Items 7 and 11	Articles 7 and 8	Article 3
c. Site development and other pre-opening requirements	Item 11	Article 7	Article 3
d. Initial and ongoing training	Item 11	Articles 3, 8, 9 and 15	Articles 5 and 8
e. Opening	Item 11	Articles 3, 5 and 7	Article 3
f. Fees	Items 5 and 6	Articles 4 and 5	Articles 2, 5, 6, 7, 8 and 9
g. Compliance with standards and policies/operating manual	Items 8 and 16	Articles 3, 8 and 11	None
h. Trademarks and proprietary information	Items 13 and 14	Articles 1, 8, 10, 11 and 12	Articles 6, 7 and 8
i. Restrictions on products/services offered	Item 16	Article 8	Articles 5 and 6
j. Warranty and customer service requirements	Item 16	Article 8	Articles 9 and 15
k. Territorial development and sales quotas	Item 12	None	Articles 1, 3, 4 and 6
l. Ongoing product/service purchases	Item 8	Article 8	None
m. Maintenance, appearance and remodeling requirements	Items 16 and 17	Articles 2, 7, 8, 14 and 17	Article 6
n. Insurance	Item 7	Articles 8 and 14	None
o. Advertising	Items 6, 7 and 11	Articles 3, 5 and 8	Article 1
p. Indemnification	Item 11	Articles 9, 10, 15 and 20	Article 9
q. Owner's participation/management/staffing	Item 15	Articles 8 and 9	Articles 5, 8 and 9
r. Records and reports	Item 6	Articles 4, 5 and 13	Article 5
s. Inspections and audits	Items 6 and 11	Articles 3, 7, 8 and 13	None
t. Transfer	Item 17	Article 15	Articles 3, 6, 7, 5 and 9
u. Renewal	Item 17	Article 2	None.
v. Post-termination obligations	Item 17	Articles 17 and 18	Articles 4, 6 and 9
w. Non-competition covenants	Item 17	Article 18	Attachment B
x. Dispute resolution	Item 17	Article 27	Article 14



## **ITEM 10 FINANCING**

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

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

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

### **A. Pre-Opening Obligations**

Before you open your business, Dickey's will:

1. Designate your protected territory. (Franchise Agreement - Article 1).
2. Provide you with its then-current written site selection guidelines and counseling and such assistance as Dickey's deems advisable. (Franchise Agreement - Article 3).
3. Provide on-site evaluation (up to three (3) visits) and assistance as Dickey's may deem necessary on its own initiative or in response to your request for site acceptance. (Franchise Agreement - Article 3).
4. Accept or not accept a site for your Restaurant location. For additional information, see Item 11, Paragraph D, titled "Site Selection". (Franchise Agreement - Articles 1 and 7).
5. Provide you with a list of approved architects to whom Dickey's has supplied a set of prototypical architectural and design plans for a Restaurant. You will be required to independently and at your own expense have the design plans and specifications adapted for the finish-out or renovation of your Restaurant by the Dickey's-approved architect of your choice. Dickey's does not provide any assistance in conforming the premises to local ordinances and building codes or in obtaining any required permits. Dickey's must review and approve all plans and specifications for the finish-out or renovation of your Restaurant. (Franchise Agreement - Articles 3 and 7).
6. Provide you with assistance and advice concerning equipment, signs, fixtures, supplies and opening inventory selection and purchasing in connection with the opening of the Restaurant as Dickey's deems appropriate. See Item 8 regarding equipment, opening inventory and supplies provided by Dickey's or its approved suppliers and any written specifications for those items. Dickey's does not provide any of these items directly and will not deliver or install any such items. (Franchise Agreement - Article 3).
7. Provide an initial training program for two (2) designated managers and your Operating Principal. For additional information, see Item 11, Paragraph E, titled "Training". Dickey's will not provide any assistance in hiring any of your employees; however, all employees must meet Dickey's then-current standards and criteria for the applicable position and any applicable training requirements. (Franchise Agreement - Articles 3, 8 and 9).
8. Provide online access to the Operations Manual (herein so called). A copy of the current table of contents for the Operations Manual is attached hereto as Exhibit E which indicates the subjects covered and number of pages devoted in the Operations Manual to each respective subject. You must strictly comply with the Operations Manual and other Manuals in operating the business.

Dickey's has the right to revise the contents of the Manuals at any time. You must comply with all changes to the Manuals when you receive them. (Franchise Agreement - Articles 3 and 11)

9. Provide you with a list of approved suppliers and preferred vendors, as set forth in the Manuals and other written directives as Dickey's deems appropriate from time to time. (Franchise Agreement - Articles 3 and 8).
10. Approve any advertising and promotional items to be used in connection with your "grand opening" promotion, and provide you, at your expense, with at least one (1) trained representative of Dickey's to provide on-site training, supervision and assistance around the time of your "grand opening". For additional information, see Item 11, Paragraph E, titled "Training". (Franchise Agreement - Articles 5 and 9).

#### **B. Obligations After Opening**

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

1. Notify you of any additions, replacements or other changes regarding the menu items, products and services approved for sale by Dickey's. (Franchise Agreement - Article 8).
2. Provide on-site training, additional initial training programs for successor and replacement managers and Restaurant personnel, and other training programs and seminars as Dickey's deems appropriate from time to time. Dickey's will not provide any assistance in hiring any of your employees; however, all employees must meet Dickey's then-current standards and criteria for the applicable position and any applicable training requirements. For additional information, see Item 11, Paragraph E, titled "Training". (Franchise Agreement - Articles 3 and 9).
3. Provide, as Dickey's deems appropriate, advice and written materials concerning techniques of managing and operating the Restaurant, including new developments and improvements in restaurant equipment, food products, packaging, and preparation. (Franchise Agreement - Article 3).
4. Provide you with guidelines on pricing policies. You have the right to sell your food products and merchandise and offer services at any prices you may determine, so long as you are in compliance with Dickey's general guidelines on pricing policies as set forth in the Manuals or otherwise in writing. Subject to applicable legal constraints, you must participate in and comply with all sales and promotional programs promulgated by Dickey's from time to time. (Franchise Agreement - Article 5).
5. Provide indemnification against and reimbursement for all damages for which you are held liable in any proceeding arising out of your use of any of the Proprietary Marks, if your conduct and your Principals' conduct with respect to such proceeding and use of the Proprietary Marks is in compliance with the terms of the Franchise Agreement. (Franchise Agreement - Article 20).
6. Loan to you, upon your request, subject to the approval of Dickey's and at such cost as Dickey's makes these materials available to other franchisees operating under the System, copies of any then-current training films and instructional videos and audio materials that may be from time to time developed and made available to franchisees by Dickey's. (Franchise Agreement - Article 3).
7. Conduct, in its discretion, meetings, seminars, and other related activities regarding the operation of Restaurants for franchisees generally, which you may attend. Except as approved by Dickey's, any costs incurred by you or Restaurant personnel in attending such events will be your responsibility. (Franchise Agreement - Article 3).
8. Provide ongoing operational assistance from time to time as Dickey's deems necessary, subject to the availability of appropriate Dickey's personnel. (Franchise Agreement - Article 3).

9. Inspect the Restaurant and evaluate the Restaurant's products and services at such times as Dickey's may deem advisable to maintain the high standards of quality, appearance and service of the System. (Franchise Agreement - Article 3).
10. Provide interim management of the Restaurant in the event of the death or permanent disability of any person with a twenty percent (20%) or more interest in the Franchise Agreement, the Restaurant or in you, or any person with a smaller interest if Dickey's determines, in its sole discretion, that this person had substantial control or supervision over the management of the Restaurant. Such interim management is provided by Dickey's at its option and Dickey's will charge a monthly management fee of five percent (5%) of Net Sales plus pass through costs and expenses. In addition, if Dickey's provides one of its employees as manager, you must pay Dickey's the manager's then-current salary for the time of such interim management. (Franchise Agreement - Article 15).
11. Approve or disapprove of any advertising and promotional materials and programs you propose. For additional information, see Item 11, Paragraph C, titled "Advertising". (Franchise Agreement - Articles 3, 5 and 8).
12. Continue to furnish you with a list of approved vendors and/or specifications for certain products and services. (Franchise Agreement - Articles 3, 7 and 8).
13. Provide additional or remedial training. For additional information, see Item 11, Paragraph E, titled "Training". Dickey's will not provide any assistance in hiring any employees; however, all employees must meet Dickey's then-current standards and criteria for the applicable position and any applicable training requirements. (Franchise Agreement - Articles 3, 8 and 9).
14. Establish or modify a promotional gift card acceptance program for so long as Dickey's elects to do so. (Franchise Agreement - Article 5).
15. Assign to you a franchise business manager in Dickey's sole discretion to advise you as to any operational matters regarding your Restaurant as Dickey's may require. (Franchise Agreement - Article 8).

C. Advertising

1. You will be required to build Dickey's brand awareness in your community through word of mouth, community marketing, in-store sampling, the offering of free dinner cards, etc. You are not required to expend any minimum amount on local advertising.
2. All advertising and promotion by you in any medium is required to be conducted in a dignified manner and is required to conform to the standards and requirements of Dickey's as set forth in the Manuals, the marketing catalog or otherwise. You may advertise in any medium other than over the internet, provided that you are required to obtain Dickey's approval of all advertising and promotional plans and materials prior to use if such plans and materials are not included in the Dickey's marketing catalog or have not been prepared by Dickey's or previously approved by Dickey's during the six (6) months prior to their proposed use. You are required to submit such unapproved plans and materials to Dickey's. Dickey's has fifteen (15) days from the date of receipt of these materials to approve or disapprove such plans and materials. You may not use unapproved plans or materials until they have been approved by Dickey's, and are required to promptly discontinue use of any advertising or promotional plans or materials, whether or not previously approved, upon notice from Dickey's. (Franchise Agreement - Article 5).
3. Dickey's has established and intends to maintain a URL website, [www.dickeys.com](http://www.dickeys.com), promoting the System and identifying the location of franchise and company-owned Restaurants. You are required to authorize Dickey's to identify and promote your Restaurant on Dickey's website, and are prohibited from establishing your own URL website to promote your Restaurant. (Franchise Agreement - Article 5).

4. Dickey's or an affiliate administers a marketing fund for the purpose of producing marketing materials for the System on a System-wide basis (the "Marketing Fund"). You are required to make a continuous contribution to the Marketing Fund in an amount equal to four percent (4%) of the Net Sales of your Restaurant. As of the date of this Disclosure Document, all new franchisees under the System are required to contribute the same percentage of their Net Sales towards the Marketing Fund. However, certain franchisees who executed Franchise Agreements prior to the date of this Disclosure Document may be required to contribute a lower percentage of their sales towards the Marketing Fund. The Marketing Fund is maintained and administered by Dickey's or its designee as follows:
- a. The Marketing Fund is intended to maximize general public recognition and acceptance of the Proprietary Marks. Dickey's will direct all marketing and advertising programs and will have sole discretion to approve or disapprove the creative concepts, materials, and media used in such programs and the placement and allocation thereof. DBP will, with respect to company-operated Restaurants, contribute to the Marketing Fund. In administering the Marketing Fund, Dickey's and its designees are not required to make expenditures for you which are equivalent or proportionate to your contribution or to ensure that any particular franchisee benefits directly or pro rata from the placement of advertising.
  - b. The Marketing Fund may be used by Dickey's to satisfy or defray any and all costs of maintaining, administering, directing and preparing marketing campaigns, promotions and advertising, including, without limitation, the cost of preparing and conducting television, radio, 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; and costs of maintaining a national "1-800" customer and/or franchisee service telephone number if Dickey's elects to establish this service. All sums paid by you to the Marketing Fund will be maintained in a separate account by Dickey's or its designees and will not be used to defray any of Dickey's general operating expenses, except for such reasonable administrative costs, salaries and overhead, that Dickey's may incur in activities reasonably related to the administration or direction of the Marketing Fund and development and implementation of marketing programs for franchisees and the System. Any funds not spent in the fiscal year in which they accrue will be carried forward and used in connection with advertising activities conducted during the following fiscal year. The Marketing Fund will not be used by Dickey's for the targeted purpose of promoting franchise sales, but application of the Marketing Fund may indirectly benefit franchise sales. The Marketing Fund and its earnings will not otherwise inure to the benefit of Dickey's and will be operated solely as a conduit for collecting and expending the advertising fees as outlined above.

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- c. A statement of the operations of the Marketing Fund will be prepared annually by Dickey's and will be made available to you upon request, as well as an accounting of Marketing Fund expenditures. The Marketing Fund is audited on an annual basis as part of Dickey's annual audit. For calendar year 2008, monies in the Marketing Fund were expended as follows:

<u>Category</u>	<u>Percentage</u>	<u>Dollar Amount</u>
Administrative	9.27%	\$184,378
Production	12.23%	\$243,239
Media Placement	76.07%	\$1,512,847
Other <sup>1</sup>	2.43%	\$48,393

- d. Although the Marketing Fund is intended to be of perpetual duration, Dickey's may terminate the Marketing Fund in its discretion. The Marketing Fund will not be terminated, however, until all monies in the Marketing Fund have been expended for advertising or promotional purposes or returned to contributing franchised or company-operated Restaurants, without interest, on the basis of their respective contributions. (Franchise Agreement - Article 5).
5. You may be required to participate in a local or regional advertising cooperative organized and approved by Dickey's, and composed of certain other franchisees located in the geographic area in which you are located. Membership in, and the coverage of, each advertising cooperative is defined geographically, typically based upon the metropolitan area in which the Restaurant is located. Not all areas will have a Dickey's-approved advertising cooperative. If you are required to participate in a Dickey's-approved advertising cooperative, a certain percentage of your Marketing Fund contribution may be applied towards advertising, marketing and promotions targeting the local or regional area comprising your advertising cooperative pursuant to the terms of a cooperative advertising agreement. The same percentage of each advertising cooperative member's sales revenue designated for advertising and marketing purposes under a franchise agreement with Dickey's will be applied towards such local or regional advertising, marketing and promotions. Advertising cooperatives are not required to prepare financial statements, but an accounting of the funds utilized by an advertising cooperative will be provided upon request by an advertising cooperative member. Each advertising cooperative is governed by the terms of an advertising cooperative agreement approved by Dickey's. Dickey's standard cooperative advertising agreement is available to you for review upon request. Advertising, marketing and promotional activities are based on a majority vote of the members of the advertising cooperative; however, Dickey's must approve all such activities and reserves the right to initiate any advertising, marketing and promotional activity on account of the advertising cooperative. Additionally, Dickey's administers the application of the funds designated for use by advertising cooperatives. Dickey's may terminate an advertising cooperative pursuant to the terms of each particular cooperative advertising agreement (typically by providing thirty (30) days prior written notice of its intent to terminate the advertising cooperative as of December 31st of the year the notice is given). Dickey's reserves the right to require advertising cooperatives to be formed, changed, dissolved or merged. Company-owned Restaurants are not required to participate in advertising cooperatives but may elect to do so. (Franchise Agreement - Article 5).
6. Dickey's has established the National Franchise Advertising and Advisory Council (the "Council") to advise franchisees on advertising policies. The Council is composed of franchisees and representatives of Dickey's. The initial Council members were appointed by Dickey's. Future Council members will be elected by franchisees in the Council member's region. The Council serves in an advisory capacity only and does not have operational or decision-making power. Dickey's has the power to dissolve or change the Council at any time without notice to you and may form other advisory councils.

<sup>1</sup> The category "Other" consists of public relations fees, food donations, community donations and food reimbursements.

**D. Site Selection**

1. Dickey's requires that you lease the Restaurant site. Typically, Dickey's does not own the Restaurant sites leased to its franchisees. The site for the Restaurant is selected by you, subject to the acceptance of Dickey's. The Restaurant may not be relocated without Dickey's prior written consent. Before you lease the site for the Restaurant, you are required to locate a site that satisfies the site selection guidelines provided to you by Dickey's and submit to Dickey's, in the form specified by Dickey's, a description of the site, including evidence satisfactory to Dickey's demonstrating that the site satisfies Dickey's site selection guidelines, together with other information and materials that Dickey's may require, including a letter of intent or other evidence that confirms your favorable prospects for obtaining the site. You shall submit such information for the proposed site to Dickey's for its acceptance no later than ninety (90) days after the execution of the Franchise Agreement. Dickey's will have thirty (30) days after receipt of this information and materials from you to accept or not accept, in its sole discretion, the proposed site as the location for the Restaurant. You are required to acquire by lease, at your expense, the site for Restaurant within one hundred eighty (180) days after execution of the Franchise Agreement unless Dickey's decides, in its discretion, to extend such period. You must obtain the acceptance from Dickey's of any lease for the Restaurant premises prior to execution by you. If you fail to acquire a site for the Restaurant within the required period, Dickey's may, among other things, terminate the Franchise Agreement upon notice to you and retain the Franchise Fee and any other fees paid you under the Franchise Agreement. (Franchise Agreement - Articles 1, 3 and 7).
2. Dickey's will provide to you such site selection guidelines and such site selection counseling and assistance as Dickey's deems advisable. Dickey's guidelines for site selection require an evaluation of the demographics of the market area for the location (including the population and income level of residents in the market area), size and other physical attributes of the location, proximity to residential neighborhoods and proximity to shopping centers, entertainment facilities, other businesses that attract consumers and generate traffic and other factors deemed relevant by Dickey's. (Franchise Agreement - Articles 1, 3 and 7).
3. Dickey's will also provide on-site evaluation of a proposed site if Dickey's deems this to be necessary or in response to your request for site assistance; Dickey's will not provide on-site evaluation for any proposed site prior to the receipt of the materials required to be submitted to Dickey's as described above. Dickey's will provide up to three (3) on-site evaluations for your Restaurant (and for each Restaurant under a Development Agreement) at no additional charge to you. Thereafter, if additional on-site evaluations are deemed necessary by Dickey's, on its own initiative or at your reasonable request, you must pay a reasonable fee for each additional on-site evaluation and must reimburse Dickey's for all reasonable expenses in connection with such on-site evaluation, including, without limitation, the cost of travel, lodging, meals, and wages. (Franchise Agreement - Articles 1, 3 and 7).
4. Dickey's estimates that the time from execution of the Franchise Agreement to the commencement of operations of the Restaurant will be from six (6) months to one (1) year. The actual time required may vary depending upon the time necessary to locate and then approve a site, financing, the permits and licenses necessary for the finish-out or renovation of the Restaurant and the operation of the Restaurant, the finish-out or renovation of the Restaurant as it may be affected by weather conditions, shortages, delivery schedules and other similar factors, preparation of the interior and exterior of the Restaurant (including decorating, purchasing and installing fixtures, equipment and signs, and landscaping) and complete preparation for the operation of the Restaurant (including purchasing inventory and supplies). You are obligated to open the Restaurant and commence business within one (1) year following the execution of the Franchise Agreement, or in accordance with the development schedule set forth in the Development Agreement, as applicable. (Franchise Agreement - Articles 1, 3 and 7).



#### **E. Training**

1. Not later than twenty (20) days prior to the opening date of the Restaurant, your Operating Principal and two (2) other managers (or, if Dickey's permits, three (3) of your employees other than the Operating Principal) are required to have completed, to Dickey's satisfaction, Dickey's initial training program. Dickey's intends to offer initial training monthly. Training will be conducted at Dickey's corporate training center and/or at a company-operated Restaurant or another location designated by Dickey's. Dickey's current corporate training center is in Cedar Hill, Texas, a suburb of Dallas, Texas. Dickey's will determine, in its sole discretion, whether your employees have satisfactorily completed initial training. Dickey's anticipates that completion of the initial training program will require approximately four (4) weeks. If the training program is not satisfactorily completed by your employees, or if Dickey's, in its reasonable business judgment based upon the performance of your employees, determines that the training program cannot be satisfactorily completed by such person(s), you must immediately designate a replacement employee(s), as applicable, to complete such training. (Franchise Agreement - Articles 3, 8 and 9).
2. If the initial training program is not satisfactorily completed by any replacement employees (or the initial employees, if no replacement is designated) or if Dickey's determines that the training program cannot be satisfactorily completed by such person(s), Dickey's may, in its sole discretion, terminate the Franchise Agreement upon notice to you and retain the Franchise Fee and any other fees paid by you under the Franchise Agreement. (Franchise Agreement - Articles 3, 8 and 9).
3. Dickey's will provide instructors and training materials for the initial training program at no additional charge to you. The training materials currently consist of the Manuals (including the Operations Manual, recipe book, training manual and marketing catalog), checklists, demonstrations and on the job-training. If additional persons attend the initial training program or if any successor employees are required to attend and complete, to Dickey's satisfaction, Dickey's initial training program, Dickey's may impose a training fee for such additional initial training programs. You are responsible for all expenses incurred by your employees in connection with any initial training program including, without limitation, costs of travel, lodging, meals, and wages. (Franchise Agreement - Articles 3, 8 and 9).
4. The Operating Principal and your 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 additional training (including on-site remedial training), will be mandatory for such individuals and other Restaurant personnel as required by Dickey's. For all such training, Dickey's will provide the instructors and training materials; however, Dickey's reserves the right to impose a reasonable fee for such training, including costs of travel, lodging, meals, and wages for Dickey's representatives. You are responsible for any and all expenses incurred by you or your employees in connection with such additional training including, without limitation, the costs of travel, lodging, meals, and wages. (Franchise Agreement - Articles 3, 8 and 9).
5. In connection with the opening of the Restaurant, Dickey's will provide you with an "opening team" consisting of at least one (1) trained representative of Dickey's to provide on-site training, supervision and assistance for a period of time aggregating not less than ten (10) days. The on-site training, supervision and assistance need not be for ten (10) consecutive days and may be provided either before and/or after the opening of the Restaurant. Except as otherwise provided in this Item 11, you will be responsible for training all Restaurant personnel in accordance with the specifications and standards regarding such training described in the Manuals or otherwise in writing by Dickey's. (Franchise Agreement - Article 9).

6. Dickey's training staff is currently composed of two (2) people and is headed by Alicia Scheffler. (See Item 2). Ms. Scheffler's experience is detailed in Item 2. Randy Hubbard is the other in-house member of Dickey's training staff. From March, 1993 to October, 2007, Mr. Hubbard worked for DBP as a restaurant manager and has worked for Dickey's since October, 2007 as a Training Specialist.
7. Below is a summary of the subject matters, hours of classroom training, hours of on-the-job training and the location for Dickey's initial training program.

<b>TRAINING PROGRAM</b>			
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Restaurant Operation	Up to 8	Up to 66	Dickey's corporate training center in Dallas, Texas, or at another Restaurant or location designated by Dickey's
Food Preparation and Service	Up to 8	Up to 40	Dickey's corporate training center in Dallas, Texas, or at another Restaurant or location designated by Dickey's
Station Training	0	Up to 4	Dickey's corporate training center in Dallas, Texas, or at another Restaurant or location designated by Dickey's
Purchasing	Up to 8	Up to 8	Dickey's corporate training center in Dallas, Texas, or at another Restaurant or location designated by Dickey's
Accounting and Controls	Up to 8	Up to 4	Dickey's corporate training center in Dallas, Texas, or at another Restaurant or location designated by Dickey's
Marketing and Advertising	Up to 18	Up to 8	Dickey's corporate training center in Dallas, Texas, or at another Restaurant or location designated by Dickey's
<b>TOTAL</b>	<b>Up to 50</b>	<b>Up to 130</b>	

#### **F. Point of Sale System**

1. Before commencement of the operation of the franchised Restaurant, you must purchase the required computer hardware, software, internet connections and service, required dedicated telephone and power lines and other related accessories, peripherals, consoles and equipment required to operate the Aloha Point of Sale system (including such add-on consoles as Dickey's may require). The proprietary point of sale system is available from Radiant Systems, Inc., the only supplier currently approved by Dickey's. The current cost of the point of sale system is approximately \$10,000 to \$15,000. Dickey's also currently requires that you implement the and use the Profit Management Console reporting system, a product of Transactional Web, Inc., the only supplier currently approved by Dickey's. This reporting system currently costs \$150 per month. You must maintain the point of sale system and related consoles and keep them in good repair. Dickey's may also from time to time require you to purchase and utilize any additions, upgrades, enhancements and replacements of the software and hardware developed by or on behalf of Dickey's, or otherwise required by Dickey's, at such cost as Dickey's or its approved vendors make such upgrades, enhancements and replacements available to franchisees operating under the System. The cost of maintaining, updating, upgrading or replacing your point of sale system cannot be estimated at this time because it will depend on your repair history, local costs of computer maintenance and service in your area and technological advances which cannot predict at this time. (Franchise Agreement - Article 8).



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

#### G. Development Agreement

If you enter into a Development Agreement with Dickey's, Dickey's will provide you the services set forth in this Item 11 for each of the Restaurants you open and operate. In addition, so long as you are in compliance with your obligations under the Development Agreement, Dickey's will not open or authorize any other party to open and operate a Restaurant within your designated Territory.

### **ITEM 12 TERRITORY**

The Franchise Agreement grants to you the right to operate a Restaurant at a single location selected by you and accepted by Dickey's. You will offer the approved products and services of the System only through your Restaurant. You do not have the right to use alternative channels of distribution (e.g., catalog sales, internet sales, etc.) in connection with offering the products and services of the System unless otherwise approved by Dickey's.

The Restaurant will be located within a designated geographic area (the "Assigned Area") as described in the Franchise Agreement.

Once the Restaurant location is established and accepted, the Assigned Area shall automatically and without requirement of further action be modified to encompass and be limited to that geographical area (the "Exclusive Area") within one (1) mile of the Restaurant site. You are required to operate the Restaurant only at this accepted location and may not relocate the Restaurant without Dickey's prior written consent based upon its sole judgment and discretion. You may not establish or operate another Restaurant except pursuant to a separate Franchise Agreement.

Except as provided below, during the term of the Franchise Agreement and subject to your full compliance with the Franchise Agreement, neither Dickey's nor DBP will establish or operate a Restaurant or license any other person or entity to establish or operate a Restaurant within the Exclusive Area.

However, Dickey's, DBP, and any Dickey's franchisee may, at any time, advertise and promote the System and fulfill customer orders (including, but not limited to, by providing catering and delivery services) in the Exclusive Area. Dickey's may also offer and sell (and may authorize others to offer and sell) products and services which may be similar to those offered by the Restaurants, under the Proprietary Marks in the Exclusive Area, if offered and sold other than through a Restaurant (e.g., product and catalog sales, internet sales, grocery store sales, and other channels of distribution), and Dickey's may offer and sell (and may authorize others to offer and sell) products and services in the Exclusive Area which may be similar to those offered by the Restaurants, under names and marks other than the Proprietary Marks. Neither Dickey's nor any of its affiliates currently plan to operate or franchise businesses under a different mark which will offer goods or services similar to those offered under the System. Dickey's is not required to compensate you in any way for offering or selling in your Exclusive Area any of the products or services described in this paragraph.

During the term of the Franchise Agreement, the territorial rights granted to you are not dependent upon the achievement of a certain sales volume, market penetration or other contingency, nor are there any circumstances which permit Dickey's to modify your territorial rights prior to the expiration or termination of the Franchise Agreement. Except as provided in any Development Agreement, you will not be granted any options, rights of first refusal or similar rights to acquire additional franchises.

Under a Development Agreement, you are assigned a geographic area (the "Territory") within which you are required to develop two (2) or more Restaurants in accordance with a prescribed development schedule. The size of the Territory may range from a portion of a city or an unincorporated area to a single or multi-county or single state area and will be described in Article I of the Development Agreement typically by a map, by boundary streets or highways, city limit or county line boundaries, by an area encompassed within a radius of a specific distance (or a range of distances) or of a distance sufficient to encompass a specified population (or range of populations) or by such other method of delineation as Dickey's may prescribe.

Subject to your full compliance with the Development Agreement and the remaining part of this paragraph, neither Dickey's nor DBP will establish, or authorize any other person or entity, other than you, to establish, a Restaurant in the Territory during the term of the Development Agreement. Dickey's, any Dickey's franchisee, and any other authorized person or entity may, at any time, advertise and promote the System, or fulfill customer orders (including, but not limited to providing catering and delivery services) in the Territory. Dickey's may also offer and sell (and may authorize others to offer and sell) products and services which may be similar to those offered by the Restaurants, under the Proprietary Marks in the Territory or elsewhere, if offered and sold other than through a Restaurant (e.g., product and catalog sales, internet sales, grocery stores, and other channels of distribution) and Dickey's may offer and sell (and may authorize others to offer and sell) in the Territory or elsewhere, products and services which may be similar to those offered by the Restaurants, under names and marks other than the Proprietary Marks. Neither Dickey's nor any of its affiliates currently plan to operate or franchise a business under a different mark which will offer goods or services similar to those offered under the System. Dickey's is not required to compensate you in any way for offering or selling in your Territory any of the products or services described in this paragraph.

The territorial rights granted to you under the Development Agreement are not dependent upon the achievement of a certain sales volume, market penetration or other contingency except as stated in the following paragraph. Also, except as stated in the following paragraph, there are no circumstances under which the Territory may be altered prior to the expiration or termination of the Development Agreement.

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

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### ITEM 13 TRADEMARKS

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

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

<u>Description</u>	<u>Federal Registration No.</u>	<u>Date of Registration</u>
Dickey's Barbecue Pit, a Texas Tradition since 1941	1,980,0728	June 11, 1996
Dickey's Barbecue, since 1941 (with encircling oval)	2,878,761	August 31, 2004

All affidavits and renewals required to maintain the federal registration of the above-identified Proprietary Marks have been filed. A notice for the acceptance of the renewal of the "Dickey's Barbecue Pit, a Texas Tradition since 1941" mark was issued on September 16, 2006. No application for the registration of the Proprietary Marks has been filed in any state.

In addition, Dickey's has applied to register the Proprietary Mark displayed on the cover page of this Disclosure Document on the Canadian Trademark Registry. Such application was filed on February 21, 2006 and is identified as Application Number 1291779.

Dickey's acquired from DBP the right to use and license the use of the Proprietary Marks and System pursuant to a perpetual license agreement between Dickey's and DBP, a copy of which is attached as Exhibit D. Under the license agreement, Dickey's is specifically permitted to sublicense the use of the Proprietary Marks to you under the license agreement provided that Dickey's use of the Proprietary Marks is limited to (i) the promotion and operation of Restaurants by Dickey's or its licensees, the promotion, marketing and selling of franchises by Dickey's or its sublicensees, and any other use necessary or incident thereto and (ii) any other use approved in writing by DBP. Any other assignment or transfer of Dickey's rights under the license agreement requires the prior written consent of DBP. The license agreement cannot be modified without the written consent of Dickey's and DBP. Additionally, the license agreement is perpetual in duration, but it may be terminated if either Dickey's or DBP are in default under the license agreement and such default is not cured within thirty (30) days of written notice of the same. A party is in default under the license agreement if (i) it breaches any covenant or agreement set forth in the agreement, (ii) it files or has filed against it a bankruptcy proceeding, (iii) a final non-appealable judgment in excess of \$10,000 is taken against it without being satisfied within thirty (30) days, (iv) it generally fails to pay its debts as they become due, or (v) it is legally dissolved. If the license agreement is terminated (i) Dickey's will no longer be entitled to utilize or license to new franchisees the right to use the Proprietary Marks, (ii) DBP will be entitled to use and license the Proprietary Marks, (iii) Dickey's must assign to DBP, upon DBP's request, Dickey's right, title and interest in and to all Franchise Agreements and (iv) any then-existing franchisee to whom the right to utilize the Proprietary Marks has been licensed may continue to utilize the Proprietary Marks until the expiration of the term of its Franchise Agreement and any renewal or option periods available or afforded to such franchisee at law or by agreement.

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