

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS,  
DALLAS DIVISION

DICKEY’S BARBECUE	)	
RESTAURANTS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 3:12-CV-05119-G
	)	
JOSEPH J. MATHIEU	)	
	)	
Defendant.	)	

**STIPULATION RESOLVING  
DEFENDANT’S MOTION TO ENFORCE MEDIATED SETTLEMENT AGREEMENT**

In relation to Defendant’s Motion to Enforce Mediated Settlement Agreement in this case, the parties have stipulated that they have resolved their dispute and have agreed on the language of the attached comprehensive settlement agreement, titled Confidential Settlement Agreement, to be executed by the parties by March 14, 2014, which will also result in submission of a dismissal stipulation within 10 days after execution after of the Agreement.

Dated March 10, 2014.

**Agreed:**

/s/ Robert R. Feuille  
**ROBERT R. FEUILLE**  
State Bar No. 06949100  
**SCOTTHULSE, PC**  
Chase Tower  
201 E. Main, 11th Floor  
P.O. Box 99123  
El Paso, Texas 79999-9123  
(915) 533-2493  
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Defendant’s counsel

–and–

/s/ Bradley E. Chambers

Bradley E. Chambers

Texas Bar No. 24001860

BAKER DONELSON BEARMAN CALDWELL &  
BERKOWITZ, PC

1301 McKinney Street, Suite 3700

Houston, Texas 77010

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*Attorney for Plaintiff Dickey's Barbecue  
Restaurants, Inc.*

## CONFIDENTIAL SETTLEMENT AGREEMENT

This Confidential Settlement Agreement (hereinafter, the "Agreement") is entered into by and among Joseph J. Mathieu (hereinafter, "Operator") and Dickey's Barbecue Restaurants, Inc. (hereinafter, "DBR"), effective November 20, 2013 (the "Effective Date"). The term "Parties" or "Party" as used herein shall refer to the Operator and DBR, or any or each of them, as may be appropriate.

### RECITALS

**WHEREAS**, On or about March 4, 2009, the Operator and DBR entered into a Franchise Agreement to develop and operate a Dickey's Barbecue Pit® restaurant in Las Cruces, New Mexico located at 1660 South Valley Drive, Las Cruces, New Mexico (hereinafter "Unit" or "Restaurant".)

**WHEREAS**, DBR filed a lawsuit against Operator styled *Dickey's Barbeque Restaurant, Inc. v. Joseph J. Mathieu*, United States District Court for the Northern District of Texas, Dallas Division, Civil File Action No. 3:12-cv-5119-G (hereinafter, the "Litigation").

**WHEREAS**, Operator expressly denies each and every claim asserted against him in the Litigation;

**WHEREAS**, the Parties, in order to avoid the uncertainty, delay and expense of time consuming litigation, have agreed to fully and finally settle all differences whatsoever between them that are in existence now or that may arise in the future based upon or arising out of events, acts or omissions, occurring prior to their execution of this Agreement.

**WHEREAS**, the Parties hereby mutually acknowledge, represent and warrant that the terms and conditions in this Agreement are fair, reasonable, adequate and in their mutual best interest; and

**WHEREAS**, the Parties acknowledge that they are waiving significant legal rights or claims by signing this Agreement and voluntarily enter into this Agreement after consultation with legal counsel, with a full and complete understanding of its terms and legal effect, and with the intent to be bound thereby.

**NOW, THEREFORE**, in consideration of the premises and mutual promises herein contained, it is agreed as follows:

#### **1. GENERAL TERMS AND DELIVERIES**

a. Operator will pay to DBR the total sum of \$25,000 in the form of a cashier's check payable to Dickey's Barbecue Restaurants, Inc. on or before December 31, 2013 (the "Payment Deadline"). DBR acknowledges that the said settlement payment was delivered to DBR, by delivery to its counsel, Bradley E. Chambers, counsel for DBR, at 1301 McKinney Street, Suite 3700, Houston, Texas 77010 on or before December 31, 2013.

b. Operator has ceased operation of the Restaurant. Operator shall not resume operation of, operate, or attempt to operate the Restaurant. The Mutual Releases which are set forth in detail below in Section (4), will be considered effective 91 days after the Effective Date and are contingent on no bankruptcy filing by Operator. The Lawsuit will be abated during the said 91-day period has expired. The parties covenant not to prosecute the Litigation and not to initiate litigation with each other during the said 91-day period.

c. Operator will deliver to DBR all books and records, inventory reports, catering lists and customer lists after this Agreement is executed.

d. Each Party is to bear their own attorney's fees and costs incurred in this matter. Operator and DBR will split the cost of the mediator's fees and expenses equally.

e. The Parties acknowledge that the terms of this arrangement are the product of arms' length negotiations in which each side has been represented by counsel.

## **2. DISMISSAL WITHOUT PREJUDICE**

Within seven (7) business days after execution of this Agreement, the Parties shall file a mutual dismissal of the Litigation with prejudice.

## **3. NO ADMISSION**

All Parties hereby acknowledge and agree that each Party hereto has entered into this Agreement solely to buy such Party's respective peace. Each Party hereby acknowledges and agrees that this Agreement: (1) is a compromise of disputed claims; and (2) shall not be deemed to be or construed as an admission of any liability of any kind whatsoever by any Party in favor or against any other Party. No Party shall hereafter assert that this Agreement, the fact of this Agreement, or any provision herein to be an admission by any Party as to any wrongful conduct, liability, or as to the merits or lack of merit of any claim or dispute settled herein, or otherwise. Each Party expressly denies any allegations of unlawful or improper conduct.

## **4. COVENANTS NOT TO SUE**

a. **Covenant Not to Sue by the Operator.** For and in consideration of the covenants, agreements, releases and obligations of the Operator and DBR pursuant to this Settlement Agreement, the Operator, on behalf of himself and his managers, employees, predecessors, agents, insurers, representatives, attorneys, successors, assigns, successors in interest, successors in title, transferees, and any person, corporation or entity who acted on behalf of or on instruction from the Operator does hereby covenant, acknowledge and agree that neither Operator nor any person, organization or other entity acting by or through him or on his behalf, will sue or cause or permit suit against DBR or any of DBR's present and past officers, directors, shareholders, members, managers, employees, predecessors, agents, brokers, insurers, representatives, attorneys, successors, subsidiaries, parents, assigns, affiliates, successors in interest, successors in title, transferees, and any person, corporation or entity who acted on behalf of or on instruction from DBR with respect to any and all claims, demands, actions, obligations,

damages or causes of action of every conceivable kind and nature whatsoever, whether absolute, contingent, known or unknown, accrued or otherwise, arising from any acts, omissions, occurrences or facts which occurred at any time prior to the execution of this Agreement which the Operator or any person, personal representative, organization or other entity acting by or through him or on his behalf, may have or claim to have against DBR. The Operator expressly acknowledges and agrees that the foregoing covenant not to sue applies to, but is not limited to, any and all claims which were or could have been asserted in the Litigation and any and all claims arising prior to payment of the sum specified in Section 1(a) of this Agreement which arise from or are in any way related to the Franchise Disclosure Document, any collateral material, the Franchise Agreement or the Restaurant.

**b. Covenant Not to Sue by DBR.** For and in consideration of the covenants, agreements, releases and obligations of the Operator pursuant to this Settlement Agreement, DBR, on behalf of itself and its present and past officers, directors, shareholders, members, managers, employees, predecessors, agents, insurers, representatives, attorneys, successors, subsidiaries, parents, assigns, affiliates, successors in interest, successors in title, transferees, and any person, corporation or entity who acted on behalf of or on instruction from DBR, does hereby covenant, acknowledge and agree that neither DBR, nor any person, organization or other entity acting by or through it or on its behalf, will sue or cause or permit suit against the Operator or any of his personal representatives, successors, transferees, and assigns, and any person, corporation or entity who acted on behalf of or on instruction from the Operator, with respect to any and all claims, demands, actions, obligations or causes of action of every conceivable kind and nature whatsoever, whether absolute, contingent, known or unknown, accrued or otherwise, arising from any acts, omissions, occurrences or facts which occurred at any time prior to the execution of this Agreement which DBR or any person, organization or other entity acting by or through it or on its behalf, may have or claim to have against the Operator. DBR expressly acknowledges and agrees that the foregoing covenant not to sue applies to, but is not limited to, any and all claims which were or could have been asserted in the Litigation and any and all claims arising prior to the execution of this Agreement which arise from or are in any way related to the Franchise Agreement and Restaurant, except the foregoing does not apply in any manner whatsoever to Operator's obligations of indemnification set forth in Section 20.4 of the Franchise Agreement and enforcement of the covenants described in Section 17.11 and Article 18.

**c.** These Covenants Not to Sue (i.e., Sections 4(a) and 4(b) of this Agreement) shall not prevent a Party from bringing and maintaining an action or lawsuit to enforce the terms of this Agreement.

**d.** These Covenants Not to Sue (i.e., Sections 4(a) and 4(b) of this Agreement) shall be effective for a period of 91 days after the Effective Date.

**e.** On the ninety-first (91<sup>st</sup>) day after the Effective Date, if Operator has not filed or commenced any action seeking relief under Title 11, United States Code, and is not the debtor in an involuntary bankruptcy petition commenced against Operator under such Title 11, United States Code, then the covenants set forth in this Section (4) shall immediately and without further action of the Parties convert to and become mutual and final releases as set forth in the following Sections 4(f) and 4(g) of this Agreement.

**f. Release by the Operator.** Effective as provided in Section 4(e), for and in consideration of the covenants, agreements, releases and obligations of the Operator and DBR pursuant to this Settlement Agreement, the Operator, on behalf of himself and his managers, employees, predecessors, agents, insurers, representatives, attorneys, successors, assigns, successors in interest, successors in title, transferees, and any person, corporation or entity who acted on behalf of or on instruction from the Operator, does hereby release and acquit DBR and DBR's present and past officers, directors, shareholders, members, managers, employees, predecessors, agents, brokers, insurers, representatives, attorneys, successors, subsidiaries, parents, assigns, affiliates, successors in interest, successors in title, transferees, and any person, corporation or entity who acted on behalf of or on instruction from DBR from any and all liabilities, claims, demands, actions, obligations, damages or causes of action of every conceivable kind and nature whatsoever, whether absolute, contingent, known or unknown, accrued or otherwise, arising from or related to any acts, omissions, occurrences or facts which occurred at any time prior to the execution of this Agreement which the Operator or any person, personal representative, organization or other entity acting by or through him or on his behalf, may have or claim to have against DBR. The Operator expressly acknowledges and agrees that the foregoing release applies to, but is not limited to, any and all claims which were or could have been asserted in the Litigation and any and all claims arising prior payment of the sum specified in Section 1(a) of this Agreement which arise from or are in any way related to the Franchise Disclosure Document, any collateral material, the Franchise Agreement or the Restaurant.

**g. Release by DBR.** Effective as provided in Section 4(e), for and in consideration of the covenants, agreements, releases and obligations of the Operator pursuant to this Settlement Agreement, DBR, on behalf of itself and its present and past officers, directors, shareholders, members, managers, employees, predecessors, agents, insurers, representatives, attorneys, successors, subsidiaries, parents, assigns, affiliates, successors in interest, successors in title, transferees, and any person, corporation or entity who acted on behalf of or on instruction from DBR, does hereby release and acquit the Operator and the Operator's present and past managers, employees, representatives, agents, brokers, insurers, personal representatives, successors, transferees, and assigns, and any person, corporation or entity who acted on behalf of or on instruction from the Operator, from any and all liabilities, claims, demands, actions, obligations or causes of action of every conceivable kind and nature whatsoever, whether absolute, contingent, known or unknown, accrued or otherwise, arising from or related to any acts, omissions, occurrences or facts which occurred at any time prior to the execution of this Agreement which DBR or any person, organization or other entity acting by or through it or on its behalf, may have or claim to have against the Operator. DBR expressly acknowledges and agrees that the foregoing covenant not to sue applies to, but is not limited to, any and all claims which were or could have been asserted in the Litigation and any and all claims arising prior to the execution of this Agreement which arise from or are in any way related to the Franchise Agreement and Restaurant.

## **5. CONFIDENTIALITY**

The Parties each agree that they will keep the terms of this Agreement confidential, and that, except as required by law or authorized in writing by the other Parties, no Party will hereafter disclose any information concerning this Agreement to anyone other than their immediate family and professional representatives who will be informed by the Party, and which said Party shall cause such an individual to adhere to, this confidentiality clause. Notwithstanding the foregoing, each Party shall be permitted to:

(1) disclose the fact of settlement and that the terms of settlement are subject to a confidentiality agreement; (2) disclose information sufficient to rebut or refute any false statements made by others on the subject matter hereof; (3) respond in compliance with any compulsory legal process requiring a Party's appearance, testimony, production of documents or disclosure of information; and (4) disclose information about this Agreement to tax advisors as may be necessary to determine the tax treatment of this settlement, upon the condition that such tax advisors shall be permitted to disclose terms of settlement only as necessary to satisfy tax reporting obligations of the Party and inquiries of appropriate taxing authorities. In the event a Party receives notice or service of any process described in clause "(3)" or wishes to disclose information pursuant to clause "(2)," the Party shall promptly notify the other Parties in writing so as to afford the other Parties an opportunity to interpose any objections said Party may have. The Parties agree that Operator's action in filing a motion in the Litigation after mediation to require DBR to execute this agreement is and was not a violation of this agreement.

**6. NON-DISPARAGEMENT**

Operator shall not make any disparaging statements or comments either orally or in writing about DBR, any affiliate of DBR or any of their respective officers, directors or employees or communicate to any party any information harmful or adverse to DBR, any affiliate of DBR or any of their respective officers, directors or employees. Neither DBR nor any affiliate of DBR nor any of their respective officers, directors or employees shall make any disparaging statements or comments, whether oral or written, about the Operator.

**7. SURVIVAL OF OBLIGATIONS**

The Parties recognize that the Franchise Agreement provides that certain obligations survive termination of the Franchise Agreement, as provided in Sections 17.11, 18.2.B, and 20.4 of the Franchise Agreement. The Parties agree that such obligations survive the execution of this Agreement, so that any acts in breach of the said surviving obligations occurring after the execution and delivery of this Agreement are not released and shall remain actionable. Operator shall contact DBR regarding any questions on such surviving obligations. For purposes of this Agreement, "Confidential Materials" means all materials in all forms, including electronically stored information, that contains confidential information as described in the Franchise Agreement. Operator further agrees to turn over any to DBR, within 21 days of the execution and delivery of this Agreement, any Confidential Materials he may still have in his possession.

**8. MISCELLANEOUS**

The Parties hereby represent, warrant and agree as follows:

**a.** Each Party hereby represents that such Party has not heretofore assigned or transferred to any person or entity any of the claims released herein, and that the persons signing this Agreement are duly authorized by the Parties to enter, execute, and deliver this Agreement for such Party and to give the Release set forth herein.

**b.** This Agreement is intended to be, and shall be construed to be an integrated Agreement. Each Party understands, acknowledges and hereby represents and warrants that this Agreement supersedes any and all prior understandings, agreements, representations, promises or inducements, whether oral or written, which are not expressly set forth herein or expressly referred to, reserved or preserved in this Agreement. Each Party understands, acknowledges and hereby represents and warrants that no understanding, agreement, representation, warranty, promise or inducement has been made concerning the subject matter of this Agreement other than as set forth in this Agreement, and that such Party enters into this Agreement and settlement without any reliance whatsoever upon any understanding, agreement, representation, warranty, promise or inducement not set forth herein.

**c.** Each Party acknowledges and represents such Party: (a) has had an adequate opportunity to have this document reviewed by an attorney or representative of their choice acting on their behalf; (b) has been represented by counsel of such Party's choice in the making of this settlement and the negotiation and drafting of this Agreement, including the Release given herein; (c) understands the terms of this Agreement in full; and (d) signs this Agreement freely and voluntarily with the intent to be fully bound thereby. Each Party acknowledges such Party has participated in the negotiation of this Agreement and the negotiation, drafting and preparation of this Agreement, and that no provision of this Agreement shall be interpreted against any Party by reason of the fact that any particular Party or its counsel purportedly drafted or prepared such provision.

**d.** The Parties represent and warrant that they have not been coerced into entering into this Agreement, nor has any person or entity exercised any pressure or undue influence on such Party to enter into this Agreement.

**e.** Each Party agrees that this Agreement shall inure to the benefit of the Parties hereto and their respective officers, directors, partners, former partners, employees, servants, agents, insurers, representatives, attorneys, heirs, administrators, executors, trustees, predecessors, successors and assigns, and each of them and all other persons acting by, through, under or in concert with any of them, and each of them, and to all of their respective heirs, representatives, successors, and assigns.

**f.** Each Party agrees this Agreement is entered into under, and shall be construed under and governed by the procedural and substantive laws of the State of Texas existing as of the date of execution. Further, venue for any litigation arising out of the settlement shall exclusively occur in only the federal courts located in Collin, Texas and the state courts located in Collin County, Texas.

**g.** Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable as a result of any action or proceeding, the validity of the remaining parts, terms, or provisions shall not be affected thereby and any said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

**h.** The titles of the various paragraphs are intended solely for convenience of reference, and are not intended and shall not be deemed for any purpose whatsoever to modify, explain or place any construction upon any of the provisions of this Agreement and shall not affect the meaning or interpretation of this Agreement.



i. This Agreement may be executed in multiple counterparts and each such signed copy shall be deemed an original hereof.

j. No covenant, obligation, agreement or other provision in this Agreement shall be construed to prevent, restrict or interfere with any person's duty or ability to respond truthfully as required by subpoena or other compulsory legal process.

**IN WITNESS WHEREOF**, each of the undersigned Parties has entered into this Agreement effective as of the Effective Date.

DBS:

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

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

Title: \_\_\_\_\_

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

Operator:

\_\_\_\_\_  
**JOSEPH J. MATHIEU**

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