

FOR TO-1584

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01-10-2001

HEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

OMB N 0551-0011 (exp. 4/94)

Tab settings

7/31/00



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shd original documents or copy thereof.

To the Honorable Commissioner of Patents

1. Name of conveying party(ies):

TIMBER LODGE STEAKHOUSE, INC.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State MN
☐ Other

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other

Execution Date: 6/15/1995

2. Name and address of receiving party(ies)

Name: Q. CUMBERS, INC.

Internal Address:

Street Address: 7465 FRANCE AVE S.

City: EDINA State: MN ZIP: 55435

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☒ Corporation-State
☐ Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? ☐ Yes ☐ No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,821,909

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: MICHAEL J. MCCABE

Internal Address:

Street Address: 7465 FRANCE AVE S.

City: EDINA State: MN ZIP: 55435

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41).....\$ 40.00

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

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DO NOT USE THIS SPACE

9. Statement and signature:

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

MICHAEL J. MCCABE

Name of Person Signing

Signature

7/24/00

Date

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to:
 Commissioner of Patents & Trademarks, Box Assignments
 Washington, D.C. 20231

TRADEMARK
 REEL: 002209 FRAME: 0773

ASSET PURCHASE AGREEMENT

AGREEMENT, entered into this 15 day of May, 1995, by and between Q. Steaks, Inc., hereinafter referred to as "Seller" and Michael J. McCabe, or his assigns, hereinafter referred to as "Buyer".

WHEREAS, Seller is engaged in the restaurant business known as Q Cumbers ("Business");

WHEREAS, Seller operates the business out of the premises commonly referred to as 7465 France Avenue south, Edina, MN 55435, which premises are leased by Seller ("Premises Lease").

WHEREAS, Seller is the sole owner of all of the assets to be sold to Buyer hereunder as of the date hereof.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter contained, and intending to be legally bound thereby, the parties do hereby represent, warrant and agree as follows:

1. **SALE OF ASSETS**. Seller shall sell to Buyer, subject to the terms and conditions herein, all of the assets hereinafter described (the "Sold Assets") used in connection with the Business. The Sold Assets are as follows:

- a. All assets described on the attached Exhibit A.
- b. The good will of Seller.
- c. All of Seller's rights in and to the name Q Cumbers.
- d. The Premises Lease and any and all other leases regarding the business operation of Seller.

The assets described in Exhibit A are being sold 'AS IS' with the Buyer having relied on his physical inspection of such assets. SELLER MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO THE ASSETS FOUND IN EXHIBIT A OTHER THAN WARRANTIES REGARDING TITLE. SELLER HEREBY DISCLAIMS ANY IMPLIED WARRANTIES OF FITNESS FOR PARTICULAR USE AND IMPLIED WARRANTIES OF MERCHANTABILITY WITH RESPECT TO THE ASSETS DESCRIBED IN EXHIBIT A.

2. **PURCHASE PRICE**. The purchase price for the Sold Assets shall be \$531,000.00. The purchase price shall be allocable as follows:

Fixture and Equipment \$ _____

Good Will \$ _____

TOTAL \$531,000.00

3. PAYMENT OF PURCHASE PRICE. Subject to the terms, conditions, representations and warranties set forth herein, the purchase price of \$531,000.00 shall be payable as follows:

a. \$125,000.00, payable at the Closing by cashier's or certified check or bank draft and payable to Seller.

b. \$406,000.00, the balance thereof, shall be payable to Seller pursuant to the terms of a Promissory Note substantially in the form attached hereto as Exhibit B. It is contemplated that Buyer will, prior to Closing, assign this Purchase Agreement to a corporation in which he will hold a majority interest. In this event, Buyer shall personally guarantee the Promissory Note.

4. PURCHASER OF INVENTORY. Buyer shall purchase the inventory of the Business at cost at the date of closing. Buyer shall pay Seller the cost value of the inventory within 60 days of the date of closing.

5. TAXES. Buyer shall not be liable for any tax of any kind assessed by or owing to any federal, state or local taxing authority with respect to the operations of the Sold Assets or other transactions involving Seller, including the transactions contemplated by this Agreement.

6. LIABILITIES OF SELLER AND EXPENSES OF OPERATION. Buyer has not assumed any liabilities or obligations of Seller or in connection with the Sold Assets except the obligations set forth in Exhibit C hereof and Buyer does hereby agree to save Seller harmless from such obligations. As of the Closing Date Seller shall have paid all expenses of operating the Business and all other of its liabilities, whether absolute or contingent, incurred as of the Closing Date in connection with Business.

7. BULK SALE REQUIREMENTS. Attached hereto as Exhibit D and incorporated herein by reference is a list of all of Seller's Business creditors, which list has been signed and sworn to by the President of Seller and which list contains the names and business addresses of all Business creditors of the Seller, with the amounts owed to them, and also the names and addresses of all persons who are known to the Seller to assert claims against Seller even though such claims are disputed.

Seller acknowledges that Buyer is obligated under the Minnesota Uniform Commercial Code - Bulk Transfer Law (Minn. Stat. 336.6-101, et seq.) to give notice to all of Seller's creditors of the proposed transfer of the Sold Assets and that Buyer is obligated to assure that the purchase price to be paid to Seller for the Sold Assets is applied so far as necessary to pay those debts of Seller which are either shown on said list of creditors or filed in writing in the place stated in the notice to creditors within 30 days after mailing of the notice. In the interests of expediency, the parties have agreed to not comply with the Bulk Transfer Law. (Seller warrants and represents that all creditors identified on Exhibit D will be paid in full on or before the Closing Date.)

8. UCC SEARCH. At least 5 days prior to the Closing Date Seller shall deliver to Buyer Uniform Commercial Code searches covering the name of Seller, Q Cumbers, and any other name referenced in paragraph 8.c hereof, which searches shall relate to UCC records on file at the State of Minnesota.

9. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller hereby represents and warrants to Buyer as follows:

a. Ownership and Encumbrances. Seller is the sole owner of the Sold Assets free from all encumbrances.

b. Pending Legal Proceedings. There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened against or affecting Seller, at law or in equity or before or by any Federal, State, Municipal or other governmental department, commission, board, agency or instrumentality, domestic or foreign.

c. Other Names. Seller has not used any other business name or address during the last 3 years.

d. Absence of Restrictions. Seller has full legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated herein and neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated herein conflicts with or results or will result in a breach of the terms, conditions or provisions of, or constitutes or will upon the consummation of the sale constitute, a default under any charter, articles of incorporation, bylaw, mortgage, lien, lease, agreement, franchise, license, permit, instrument or other undertaking to which Seller is a part or by which it, or any of its assets and properties may be bound or affected, or result in a violation of any law, statute, ordinance, rule, regulation, order, writ, injunction, decree or award of any court or governmental authority or body having jurisdiction over it or any of its assets and operations. No consent, approval, authorization or order of any court or governmental or other agency

or body is required by Seller to consummate the transactions contemplated herein. None of the Sold Assets to be transferred to Buyer are subject to any restrictions or limitation prohibiting, restricting or requiring any consent to such transfer.

e. Organization, Standing and Authorization.

Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota and has full power and authority to own and lease its properties and to operate its business in all places where it does business. The execution and delivery of this Agreement has been duly authorized by the Board of Directors of Seller, all requisite corporate action has been taken by Seller to carry out the terms of this Agreement, and this Agreement constitutes the valid and binding obligation of Seller, enforceable in accordance with the terms herein contained. Seller shall deliver to Buyer at the Closing, director and shareholder minutes in form and content satisfactory to Buyer evidencing the approval of this Agreement and the transactions contemplated herein.

f. Conduct of Business and Compliance with Law.

To the best of Seller's knowledge, the conduct of Seller's business will be, at the Closing, and has been in compliance with all Federal, State and local laws, statutes, ordinances, rules and regulations, and with all orders, writs, injunctions, decrees, awards or other requirements of any Court or other governmental authority applicable thereto or to the Sold Assets.

g. Contracts. Seller has entered into no contract or agreement relating to the customer accounts or the Sold Assets except to the extent copies are attached hereto as Exhibit E which is incorporated herein by reference.

h. Judgments. No judgments, liens or security interests will be outstanding on the Closing Date against any of the Sold Assets.

i. No Knowledge of Violations. Seller warrants that it has received no notice of any violation of any laws, rules, regulations or orders pertaining to the Sold Assets. Seller agrees to maintain all of the Sold Assets in customary repair and condition up to the closing Date, reasonable wear and tear excepted.

j. Agreements, Commitments and Other Undertakings. Copies of all contracts or agreements covering or pertaining to the Sold Assets, are fully enumerated in Exhibits to this Agreement.

k. Disclosure. To the best of Seller's knowledge, no representations of warrant made by Seller in this Agreement, in any Exhibit hereto, or furnished under, pursuant to, or in connection with this Agreement or its implementation by Seller to

Buyer or any of his representatives is or will be false or misleading or omits or will omit facts necessary to make it not false or misleading. All documents delivered by Seller to Buyer in connection with this Agreement including Exhibits hereto are complete and accurate.

l. No Covenants Not to Compete. Neither Seller nor any shareholder thereof is a party to any contract containing a covenant not to compete in any line of business or with any person or entity and no such covenant is in force with respect to the Business.

m. Tax Returns. Seller has and shall file all requisite federal, state and other tax returns due for all fiscal periods ended on or before the Closing Date hereof. There shall be no claims against Seller for federal, state or other taxes for any period or periods to and including Closing Date.

10. CONDUCT OF BUSINESS PENDING THE CLOSING. Prior to the Closing with respect to the Business, except as otherwise consented to or approved by Buyer in writing, Seller will:

a. So conduct the affairs of the Business that all warranties and representations herein will be true and correct at the Closing as if made as of that time and not take any action or course of action inconsistent with the consummation of the transactions contemplated herein.

b. Not engage in any activity or transaction other than in the ordinary course of business and Seller shall conduct the Business to the Closing Date in the customary and usual manner and shall take no action or permit the taking of any action which would prejudice the rights of Buyer hereunder or otherwise reduce the value of the Sold Assets to be transferred to Buyer hereunder.

c. Maintain proper business and accounting records.

d. Use its best efforts to preserve the Business intact and to preserve for Buyer the good will of its suppliers, customers and others having business relations with Seller.

e. Not sell or otherwise dispose of any of the Sold Assets.

11. CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER. The obligations of Buyer under this Agreement and to consummate the transactions contemplated herein are subject, in the sole discretion of Buyer, to the satisfaction or fulfillment, prior to or at Closing, of each of the following conditions:

a. Accuracy of Representations and Warranties.

The representations and warranties of Seller contained in this Agreement shall be true on the closing Date as is made on and as of that time.

b. Performance of Agreements.

Seller shall have performed or caused to be performed all obligations and agreements and complied or caused to be complied with all covenants and conditions contained herein to be performed or complied with by Seller at or prior to the Closing Date.

c. Liens, Etc.

With respect to the Sold Assets, there are no liens or other rights of third parties as of the Closing Date.

d. Document Approval.

All instruments and documents required hereunder shall have been in a form reasonably approved by Buyer's attorney.

e. Assignment of Lease.

Acceptance by Landlord of Assignment of Premises Lease to Buyer.

f. Investors.

Buyer shall obtain the sum of \$125,000.00 through private investors or commercial financing by May 1, 1995.

12. RISK OF LOSS. Seller assumes all risk of loss due to fire or other casualty up to the time of Closing. In the event any such loss occurs prior to the Closing Date or in the event the Business is closed or interrupted by reason of any event not in the ordinary course of business, Buyer shall have the right to terminate this Agreement on written notice to Seller and upon such termination there shall be no further liability on the part of Seller or Buyer hereunder and any earnest money paid shall be promptly returned to the Buyer.

13. INDEMNIFICATION OF BUYER.

Seller shall indemnify and hold Buyer harmless from and against any and all loss, liabilities or expenses, including reasonable attorney's fees, which Buyer may suffer or become liable for as a result of or in connection with any breach of a representation, warranty or covenant contained in this Agreement or any assertion against Buyer of a claim or liability of Seller not assumed hereunder by Buyer. Seller shall further indemnify and save harmless Buyer from any claim relating to the Sold Assets wherein the facts giving rise to such claim occurred prior to the Closing Date, including costs, interest, penalties and attorney fees in connection therewith. The Buyer shall give Seller prior written notice of any claim, suit or demand which the Buyer believes will give rise to indemnification by Seller under this paragraph, and the Seller shall have the right to defend and to direct the defense against any such claim, suit or demand, in its name or in the name of the Buyer, as the case may

be, at the Seller's expense and with counsel of the Seller's own choosing, which counsel shall be reasonably satisfactory to Buyer. The Buyer, at the Seller's expense shall cooperate in the defense of any such claim, suit or demand. If Seller admits being obligated under such claim, suit or demand, Seller shall promptly pay the same. If Seller desires to contest the claim, suit or demand, it may do so at its own expense, indemnifying Buyer from any expense or liability arising out of such claim. In the event Seller fails to undertake the defense or fails to make payment of such claim, suit or demand within 10 days after receiving written notice thereof from Buyer, then Buyer shall be entitled to pay said claim, suit or demand and thereafter make claim against Seller. In the event Seller fails to immediately pay to the Buyer all sums to which Buyer may be entitled under the terms of this paragraph 13, then, in addition to all other rights, Buyer shall be entitled to withhold from payments owing from time to time to Seller on the Promissory Note sums sufficient to reimburse Buyer and/or its assign for such damages. No right or remedy conferred in this paragraph is intended to be exclusive of any other right or remedy available, now or hereafter, at law or in equity or otherwise, to the parties hereto.

14. BROKERS. Seller and Buyer each represent and warrant to the other that there is no obligation to pay any commission, finder's fee or similar charge in connection with the transaction provided for herein. Seller and Buyer represent and warrant that each will indemnify and hold the other harmless from and against any loss, liability and damage, fee or charge, so far as any thereof arises by reason of services alleged to have been rendered to, at the instance of, or agreed to by such party.

15. CLOSING AND POSSESSION. The Closing of this transaction shall take place at Orlins Law Office, 604 Richfield Bank Building, 6625 Lyndale Avenue South, Richfield, MN 55423 on or before June 1, 1995, or at such other place and earlier date as is mutually agreed upon by the parties ("the Closing Date").

At the closing, the Seller shall execute and deliver to the Buyer all documents of sale, assignment and conveyance necessary to vest good and marketable title to the Sold Assets in the Buyer. In addition, a Bill of Sale shall be executed by Seller to Buyer transferring to Buyer all of Seller's interest in and to the remaining items constituting the Sold Assets with the understanding that no warranties are being made as to good and marketable title to the remaining items constituting the Sold Assets.

Possession of the Sold Assets shall be transferred from Seller to Buyer at the Closing.

After the Closing each party agrees to execute and deliver to the other upon request such other and further documents

and to take all such other action as may be reasonable and necessary to perfect Buyer's title and Seller's security interest in and to the Sold Assets and to effectively accomplish the purposes of this Agreement and the fulfillment of the terms and provisions herein contained.

16. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS. Each party hereto covenants and agrees that their representations, warranties and covenants contained in this Agreement and in any document delivered or to be delivered pursuant to this Agreement shall survive the Closing regardless of notice or of any investigation, verification or approval made prior to or after the Closing by or on behalf of any party hereto.

17. NOTICES. All notices and other documents of similar legal import from either of the parties hereto to the other shall be in writing and shall be considered to have been duly given on the date personally served or on the date placed in the U.S. mail if sent by first class certified or registered mail, return receipt requested, postage prepaid, to the party at his address set forth below, or to such other address as such party may hereafter designate by written notice to the other party:

a. If to Buyer, to Michael J. McCabe at 9715 Upton Avenue South, Bloomington, MN 55431, with a copy to Orlins Law Office, 604 Richfield Bank Building, 6625 Lyndale Avenue South, Richfield, MN 55423;

b. If to Seller, to Q. Steaks, Inc., 4021 Vernon South, St. Louis Park, MN 55416, with a copy to _____, at _____.

18. ENTIRE AGREEMENT. This Agreement, including the Exhibits, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and no modification or amendment of this Agreement shall be binding on any party unless in writing and duly executed by the party to be bound by such modification or amendment.

19. EFFECTIVENESS OF AGREEMENT. This Agreement shall become effective when duly executed and delivered by the parties hereto.

20. BINDING EFFECT AND BENEFITS. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

21. PARAGRAPHS AND OTHER HEADINGS. The paragraphs and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

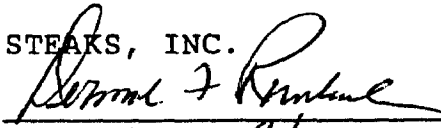
22. SINGULAR AND PLURAL; GENDER; PRONOUNS. As used herein the singular shall include the plural and the male gender shall include the female gender to the extent that the context so requires. The pronouns "he" and "his" include the neuter pronouns "it" and "its".

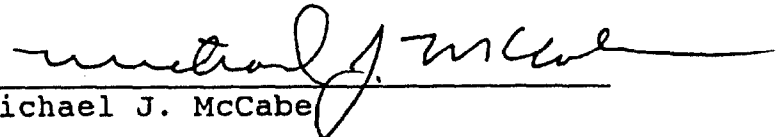
23. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

23. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be as original and all of which together shall be deemed to be one and the same instrument.

Q. STEAKS, INC.

By


~~President~~ Chairman & CEO


Michael J. McCabe

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