

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Back Yard Burgers, Inc.		11/02/2010	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	Michael's Enterprises, Inc.		
Street Address:	230 River Commons Circle West		
City:	Memphis		
State/Country:	TENNESSEE		
Postal Code:	38120		
Entity Type:	CORPORATION: MISSISSIPPI		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2024782	MIZ GRAZI'S	
CORRESPONDENCE DATA			
Fax Number:	(615)744-5558		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	615-726-5558		
Email:	jsuwanski@bakerdonelson.com		
Correspondent Name:	Jillian M. Suwanski		
Address Line 1:	211 Commerce Street, Suite 800		
Address Line 2:	Baker Donelson Center		
Address Line 4:	Nashville, TENNESSEE 37201		
NAME OF SUBMITTER:	Jillian M. Suwanski		
Signature:	/Jillian M. Suwanski/		
Date:	11/22/2010		

OP \$40.00 2024782

Total Attachments: 6

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PROMISSORY NOTE AND SECURITY AGREEMENT

Nashville, Tennessee

November 2, 2010

Section 1 Promise to Pay and Payment Terms.

(a) Back Yard Burgers, Inc., a Delaware corporation, whose principal office is located at 500 Church Street, Suite 200, Nashville, Tennessee 37219 ("Borrower") promises to pay to the order of **MICHAEL'S ENTERPRISES, INC.**, a Mississippi corporation ("Seller"), the principal sum of FIFTY TWO THOUSAND ONE HUNDRED FIFTY FOUR AND 82/100 DOLLARS (\$52,154.82), with interest of 3% per annum (totaling \$1,845.18 for the term of the Note), said principal amount representing the balance of the Purchase Price set forth in the Purchase and Sale Agreement between Borrower and Seller executed simultaneously herewith (the "Purchase and Sale Agreement").

(b) Such principal and interest shall be payable as follows until paid in full: Borrower shall pay to Seller the amount of TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) on or before the first (1st) day of each month, beginning on December 1, 2010. Such payment shall be deemed late if delivered after the tenth (10th) of the month.

(c) Borrower shall have the right to prepay the principal sum due under this Promissory Note and Security Agreement (the "Note") at any time, except that any prepayment shall also include a premium in an amount equal to \$1,845.18 less all interest previously paid on the Note as of the date of prepayment.

(d) If any amount due and payable under this Note is not received by Seller within 30 days after it is due, then such amount shall begin to accrue, and Borrower shall pay Seller simple interest on the total amount owed at the rate of one percent (1%) per month until such amount is paid.

(e) All principal payments and installments of interest hereof are payable at the office of Seller at 230 River Commons Circle West, Memphis, Tennessee 38120, or at such other place as Seller may designate in writing, in lawful money of the United States of America, in the form of a check payable to Seller, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

(f) It is the intention of Borrower and Seller to comply strictly with all applicable usury laws; and, accordingly, in no event and upon no contingency shall the holder hereof ever be entitled to receive, collect, or apply as interest any interest, fees, charges, or other payments equivalent to interest, in excess of the maximum rate which Seller may lawfully charge under applicable statutes and laws from time to time in effect; and, in the event that the holder hereof ever receives, collects, or applies as interest, any such excess, such amount which, but for this provision, would be excessive interest, shall be applied to the reduction of the principal amount of the indebtedness evidenced hereby; and, if the principal amount of the indebtedness evidenced hereby, and all lawful interest thereon, is paid in full, any remaining excess shall forthwith be paid to Borrower, or other party lawfully entitled thereto. All interest paid or agreed to be paid by Borrower shall, to the maximum extent permitted by

applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal, so that the interest hereon for such full period shall not exceed the maximum amount permitted by applicable law. Any provision hereof, or of any other agreement between Seller and Borrower, that operates to bind, obligate, or compel Borrower to pay interest in excess of the maximum lawful contract rate shall be construed to require the payment of the maximum rate only. The provisions of this paragraph shall be given precedence over any other provision contained herein or in any other agreement between Seller and Borrower that is in conflict with the provisions of this paragraph.

Section 2 **Definitions.** All terms used in this Note which are defined in the Uniform Commercial Code as adopted by the State of Tennessee (the "Code") and which are not otherwise defined herein or in the Purchase and Sale Agreement shall have the same meanings herein as set forth in the Code.

Section 3 **Grant of Security Interest.** Except for the Permitted Liens (as hereafter defined), as collateral security for all of the Obligations (as defined in Section 3 hereof), Borrower hereby pledges and assigns to Seller, and grants to Seller a continuing security interest in, the following (collectively, the "Collateral"):

(a) the federally registered trademark MIZ GRAZI'S, Reg. No. 2,024,782, for "hot sauces, spices and relishes" (the "Mark");

(b) the recipe used for making the MIZ GRAZI'S seasoned pepper sauce, including, without limitation, the copyright, know-how, trade secrets and all other intellectual property rights associated with the recipe and the preparation of the MIZ GRAZI'S seasoned pepper sauce (the "Recipe").

For purposes of this Note, the term "Permitted Liens" shall mean all liens and security interests encumbering substantially all of the assets of Borrower, held by secured lenders of Borrower and perfected prior to the effective date of this Note, and all renewals, extensions and modifications thereof, applicable to existing and all after acquired property of Borrower, and the proceeds, products and replacements of such property.

Section 4 **Security for Obligations.** The security interest created hereby in the Collateral constitutes continuing collateral security for all of the full and prompt payment when due of the indebtedness evidenced by this Note, and any and all renewals, modifications and extensions thereof, in whole or in part (the "Obligations").

Section 5 **Events of Default and Remedies.**

(a) An "Event of Default" shall occur under this Note if Borrower (i) fails to make any payment of principal or interest hereunder when due and fails to cure such nonpayment within ten (10) days of receipt of written notice of nonpayment from Seller; (ii) admits in writing its inability to pay his debts generally as they become due; (iii) files a petition in bankruptcy or petition to take advantage of any insolvency act; (iv) makes an assignment for the benefit of its creditors; (v) consents to the appointment of a receiver of its business or of the whole or any substantial part of its property; or (vi) has a petition in bankruptcy filed

against it which petition is not removed or discharged within ninety (90) days from the date of filing.

(b) Upon occurrence of an Event of Default, the entire unpaid principal balance of the indebtedness evidenced hereby, together with a premium in an amount equal to \$1,845.18 less all interest previously paid on the Note, shall, at the absolute option of Seller, at once become immediately due and payable, without demand or notice except as otherwise provided herein, the same being expressly waived, time being of the essence of this Note. If this Note is not paid when due, Borrower promises to pay all costs of collection, including, without limitation, reasonable attorney's fees.

(c) In addition, Seller may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all of the rights and remedies of a secured party on default under the Code (whether or not the Code applies to the affected Collateral), including the provisions regarding a public or private sale. Seller also may require Borrower to, and Borrower hereby agrees that it will at its expense and upon request of Seller forthwith, assemble all or part of the Collateral as reasonably directed by Seller and make it available to Seller at a place to be designated by Seller which is reasonably convenient to Seller.

Section 6 **Covenants as to the Collateral.** So long as any of the Obligations shall remain outstanding, unless Seller shall otherwise consent in writing:

(a) **Further Assurances.** Borrower will at Borrower's expense, at any time and from time to time, promptly execute and deliver all further commercially reasonable instruments and documents and take all further action that Borrower or Seller deems necessary or desirable or that Seller may request in order (i) to perfect and protect the security interest created or purported to be created hereby; (ii) to enable Seller to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) to otherwise effect the purposes of this Note, including, without limitation, executing and filing such financing or continuation statements, or amendments thereto, as Seller deems necessary or desirable or that Seller may request in order to perfect and preserve the security interest created or purported to be created hereby.

(b) **Taxes.** Borrower will pay promptly before delinquent all property and other taxes, assessments, and governmental charges or levies imposed upon, and all claims (including claims for labor, materials, and supplies) against, the Collateral, except to the extent the validity thereof is being contested diligently and in good faith by proper proceedings satisfactory to Seller. Borrower shall also pay any and all taxes or assessments imposed upon this Note, except that Borrower shall not pay any income taxes of Seller.

(c) **Transfers and Other Liens.** Without the prior written consent of Seller, such consent not to be unreasonably withheld, conditioned, or delayed, Borrower will not (i) sell, transfer, assign (by operation of law or otherwise), exchange, lease, or otherwise dispose of any of the Collateral or any interest therein outside the ordinary course of business, provided that Borrower may sublicense the Collateral to any manufacturer or supplier for the purpose of commercializing the Collateral; or (ii) create or suffer to exist any lien, security interest or

other charge or encumbrance upon or with respect to any of the Collateral except for (i) the security interest created by this Note and (ii) the Permitted Lien.

(d) Compliance With Laws. Borrower and its use of the Collateral shall comply with all federal, state and local laws, ordinances, regulators, standards, rules, policies and requirements, and any court judgments, applicable to Borrower or to the Collateral.

Section 7 **Additional Provisions Concerning the Collateral.**

(a) Borrower hereby authorizes Seller to file, without the signature of Borrower where permitted by law, one or more financing or continuation statements, and amendments thereto, relating to the Collateral. Seller may attach a copy of the signature page of this Note as Borrower's signature to any financing statement, amendment or termination statement without any additional signature of Borrower being necessary.

(b) So long as any of the Obligations shall remain outstanding, Borrower hereby irrevocably appoints Seller as Borrower's attorney-in-fact and proxy, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise, from time to time in Seller's reasonable discretion, to take any action and to execute any instrument which Seller may deem reasonable and necessary or advisable to accomplish the purposes of this Note.

(c) If Borrower fails to perform any agreement or obligation contained herein, Seller may itself perform, or cause performance of, such agreement or obligation, and the reasonable, actual expenses of Seller incurred in connection therewith shall be payable by Borrower and shall be fully secured hereby.

(d) Notwithstanding anything contained herein to the contrary, under no circumstances will Borrower be liable for indirect, incidental, consequential, special, punitive or exemplary damages of any kind arising from or related to this agreement, including without limitation, damages for loss of business profits, business interruption, loss of business information, and the like, even if such party has been advised of the possibility of such damages. The limitations of this Section shall not apply to either party's ability to obtain injunctive or other equitable relief.

Section 8 **Presentment.** Borrower hereby waives presentation for payment and notice of protest, dishonor, and nonpayment of this Note, and consents that Seller may extend the time of payment or otherwise modify the terms of payment of any part of the debt evidenced by this Note, and such consents shall not alter nor diminish the liability of Borrower.

Section 9 **Consideration.** Borrower gives this Note in consideration of the sale of the Collateral by Seller to Borrower.

Section 10 **Governing Law & Venue.** This Note shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to the conflict of laws rules thereof. The parties agree that any appropriate state court located in Davidson County, Tennessee, or the United States District Court for the Middle District of Tennessee, shall

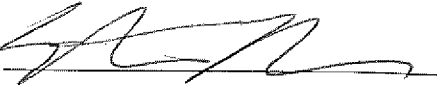
have personal jurisdiction over the parties for any case or controversy arising from or related to this Note and shall be a proper venue and forum in which to adjudicate such case or controversy.

[Signature page follows.]

IN WITNESS WHEREOF, this Note has been duly executed as of the date first above written.

BORROWER:

Back Yard Burgers, Inc., a Delaware corporation

By: 

Title: Chief Financial Officer