

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
Barbeque Integrated, Inc.		06/04/2013	CORPORATION: DELAWARE

RECEIVING PARTY DATA

Name:	SunTrust Bank
Street Address:	200 S. Orange Avenue
Internal Address:	MC FL-ORL-2052
City:	Orlando
State/Country:	FLORIDA
Postal Code:	32801
Entity Type:	CORPORATION: GEORGIA

PROPERTY NUMBERS Total: 7

Property Type	Number	Word Mark
Registration Number:	3816730	THE BONES CLUB
Registration Number:	3591080	
Registration Number:	3591082	
Registration Number:	3653653	SMOKEY BONES BAR & FIRE GRILL
Registration Number:	3653654	SMOKEY BONES BAR & FIRE GRILL
Registration Number:	3653655	SMOKEY BONES BAR & FIRE GRILL
Registration Number:	2445137	SMOKEY BONES

CORRESPONDENCE DATA

Fax Number: 4072544269
Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.
 Phone: 407-419-8569
 Email: susan.barch@akerman.com
 Correspondent Name: Charles T. Brumback

CH \$190.00 3816730

Address Line 1: 420 S. Orange Avenue
Address Line 2: 12th Floor
Address Line 4: Orlando, FLORIDA 32801

ATTORNEY DOCKET NUMBER: 22106/272687

NAME OF SUBMITTER: Charles T. Brumback

Signature: /Charles T. Brumback/

Date: 06/05/2013

Total Attachments: 8

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**INTELLECTUAL PROPERTY COLLATERAL ASSIGNMENT
AND SECURITY AGREEMENT**

THIS INTELLECTUAL PROPERTY COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT (as amended, modified, substituted, extended or restated, from time to time, this "*Agreement*"), dated as of June 4, 2013, between **BARBEQUE INTEGRATED, INC. D/B/A SMOKEY BONES**, a Delaware corporation (the "*Assignor*"), and **SUNTRUST BANK**, a Georgia corporation (the "*Secured Party*").

WITNESSETH:

WHEREAS, the Assignor is the owner of the Intellectual Property (as defined below) including those listed on **Schedule A** hereto; and

WHEREAS, the Assignor, as borrower, and the Secured Party, as lender, are parties to that certain Loan Agreement dated of even date herewith and parties to that certain Security Agreement (as the same may be hereafter amended, modified, substituted, extended or restated, from time to time, collectively, the "*Credit Agreement*") pursuant to which the Bank extended certain loans (the "*Loans*") to the Assignor; and

WHEREAS, in order to secure the payment and performance of the Loans and the other Obligations (as defined in the Credit Agreement) of the Assignor to the Secured Party, the Assignor executed and delivered to the Secured Party the Credit Agreement granting to the Secured Party a security interest of the Assignor's personal property assets, including, without limitation, the Intellectual Property listed on **Schedule A**; and

WHEREAS, it is a condition to the Secured Party entering into the Credit Agreement and continuing to make any loans thereunder or otherwise extending credit to the Assignor in connection therewith that the Assignor execute and deliver to Secured Party this Agreement in order to supplement the provisions contained in the Credit Agreement relating to the security interest of the Secured Party in the Intellectual Property and in order to fully perfect such security interest by filing with the PTO (as defined below).

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** Capitalized terms used herein (including in the preamble and recitals above) and not otherwise defined herein shall have the respective meanings provided therefor in the Security Agreement. In addition, the following terms shall have the meanings set forth in this Section 1:

"Collateral" – All of the Assignor's right, title and interest in and to all of the Intellectual Property, including those listed on **Schedule A** attached hereto, and the Proceeds thereof.

"Excluded Collateral" shall mean (i) any license, contract, intellectual property right or agreement (or Debtor's interests thereunder) if and to the extent that the grant of the security interest therein shall, after giving effect to Sections 9-104, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any interests thereunder) if and to the extent that the grant of the security interest therein shall, after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) be prohibited under any applicable law or constitute or result in (A) the

abandonment, invalidation or unenforceability of any right, title or interest of Debtor therein, or any legally effective option to purchase or similar right of a third party thereunder, under any license, contract, or agreement giving rise thereto, or (B) a breach or termination pursuant to the terms of, or a default under, or a violation of any legally enforceable provision requiring consent (which has not been obtained) of another party to any such license, contract, intellectual property right or agreement; (ii) any intent-to-use Trademark applications for which no statement of use has been filed; and (iii) any other assets, if any, that the Secured Party has confirmed in writing to Debtor, on or following the date hereof, to be "Excluded Collateral" as a result of Secured Party's determination, in its commercially reasonable judgment, that a grant of security interest therein would result in costs or other adverse effects that are disproportionate to the benefits received from such grant.

"Intellectual Property" – The Patents, Patent Licenses, Trademarks, Trademark Licenses, and Trademark Rights.

"Patent License" – Any written agreement now or hereafter in existence granting to Assignor any right to use any invention on which a Patent is in existence, including, without limitation, the agreements identified on **Schedule A**, if any.

"Patents" – Any and all of the following: (a) all patents, patent applications, and patentable inventions, including, without limitation, those identified on **Schedule A** attached hereto, and all of the inventions and improvements described and claimed therein; (b) all continuations, divisions, renewals, extensions, modifications, substitutions, continuations-in-part, or reissues of any of the foregoing; (c) all income, royalties, profits, damages, awards, and payments relating to or payable under any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all other rights in and relating to any of the foregoing throughout the world; in each case, whether now owned or hereafter acquired by the Assignor.

"Proceeds" – Any consideration received from the sale, exchange, license, lease or other disposition or transfer of any right, interest, asset or property which constitutes all or any part of the Collateral, any value received as a consequence of the ownership, possession, use or practice of any Collateral, and any payment received from any insurer or other person or entity as a result of the destruction or the loss, theft or other involuntary conversion of whatever nature of any right, interest, asset or property which constitutes all or any part of the Collateral.

"PTO" – The United States Patent and Trademark Office, or any successor thereto.

"Trademark License" – Any written agreement now or hereafter in existence granting to an Assignor any right to use any Trademark, including, without limitation, the agreements identified on **Schedule A**, if any.

"Trademark Rights" – Any and all past, present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law, or otherwise, including but not limited to the following: (i) the right (but not the obligation) to register claims under any federal, state or foreign trademark law or regulation, (ii) the right (but not the obligation) to sue or bring opposition or bring cancellation proceedings in the name of the Assignor or the Secured Party for any and all past, present and future infringements of or any other damages or injury to the Trademarks, (iii) the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, damage or injury, (iv) the right (but not the obligation) to license rights to the Trademarks, including those listed on **Schedule A**, to third parties, and (v) the right (but not the obligation) to make and prosecute applications or renewals for the Trademarks, including those listed on **Schedule A**.

"Trademarks" – All of the of the following: (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing appear, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, registrations, recordings, and applications in the PTO or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, including, without limitation, those identified in **Schedule A**, if any; (b) all reissues, extensions, and renewals thereof; (c) all income, royalties, damages, and payments now or hereafter relating to or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements of any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; (e) all rights corresponding to any of the foregoing throughout the world; and (f) all goodwill associated with and symbolized by any of the foregoing; in each case, whether now owned or hereafter acquired by the Assignor.

2. **Grant of Security Interest.** To secure the prompt payment and performance in full of all of the Obligations, the Assignor hereby grants and collaterally assigns (except to the extent such assignment would void the Debtor's rights to any "intent-to-use" Trademark) to the Secured Party, A CONTINUING SECURITY INTEREST IN ALL OF THE COLLATERAL EXCEPT FOR THE EXCLUDED COLLATERAL. THE SECURED PARTY ASSUMES NO LIABILITY ARISING IN ANY WAY BY REASON OF HOLDING SUCH COLLATERAL SECURITY AND ASSUMES NO OBLIGATIONS UNDER ANY AGREEMENT TO WHICH ASSIGNOR IS A PARTY RELATING TO THE COLLATERAL.

3. **Acknowledgement of Security Agreement.** This Agreement has been executed and delivered by the Assignor for the purpose of recording the grant of security interest herein with the PTO and any and all appropriate foreign Governmental Authorities. The security interest granted hereby has been granted to the Secured Party in connection with the Security Agreement and is expressly subject to the terms and conditions thereof. The Security Agreement (and all rights and remedies of the Secured Party thereunder) shall remain in full force and effect in accordance with its terms. The Assignor does hereby further acknowledge and affirm that the rights and remedies of the Secured Party with respect to the security interest in the Collateral granted hereby are more fully set forth in the Credit Agreement, the terms and provisions of which (including the remedies provided for therein), are incorporated by reference herein as if fully set forth herein, including, without limitation, (i) the irrevocable power of attorney granted in the Credit Agreement (after the occurrence and during the continuance of an event of default) and (ii) the obligation and covenant of the Assignor to provide prompt written notice to the Secured Party of obtaining any additional Intellectual Property and to execute and deliver to the Secured Party an additional intellectual property security agreement, in form and substance satisfactory to the Secured Party, with respect thereto for filing with the PTO. In the event of any conflict between the terms of this Agreement and the terms of the Credit Agreement, the terms of the Credit Agreement shall govern.

4. **Secured Party's Use of Collateral.** Assignor agrees that the Secured Party's use of the Collateral, including without limitation, the Intellectual Property listed on **Schedule A**, as authorized hereunder and in the Credit Agreement, in connection with the Secured Party's exercise of its rights and remedies shall be coextensive with Assignor's rights thereunder and Secured Party shall have no liability for royalties and other related charges upon exercise of such rights and remedies.

5. **Filing With PTO; Financing Statements.** Assignor hereby specifically consents to the filing of this Agreement, or a duplicate original thereof with the PTO, from time to time, and the filing of a duplicate of this Agreement and/or one or more financing statement(s) describing the Collateral, or amendments or continuations thereof, in any other jurisdictions and locations deemed advisable or necessary in Secured Party's sole discretion to protect and perfect and put the public on notice of the

Secured Party's security interest and rights in the Collateral. Assignor shall pay all costs of any such filings to perfect or maintain the security interest granted hereunder and hereby agrees to indemnify and hold Secured Party harmless from and against the same.

6. **Termination.** When all of the Obligations (other than inchoate obligations including indemnity obligations) shall have been paid and performed in full and all obligations of Secured Party to make Advances (as defined in the Credit Agreement) under the Credit Agreement shall have been expired or terminated, this Agreement shall terminate and the Secured Party shall, upon the written request and at the expense of the Assignor, execute and deliver to the Assignor all deeds, assignments, releases and other instruments as may be necessary or proper to reassign and reconvey to and re-vest in the Assignor the entire right, title and interest to the Collateral previously granted, assigned, transferred and conveyed to the Secured Party by the Assignor pursuant to this Agreement, as fully as if this Agreement had not been made, subject to any disposition of all or any part thereof which may have been made by the Secured Party in accordance with the Credit Agreement.

7. **Counterparts; Effectiveness.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one in the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or email transmission shall be effective as a delivery of a manually executed counterpart of this Agreement.

8. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

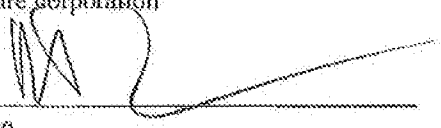
[Signatures on next page]

SIGNATURE PAGE TO INTELLECTUAL PROPERTY
COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

IN WITNESS WHEREOF, this Intellectual Property Collateral Assignment and Security Agreement has been executed as of the day and year first above written.

ASSIGNOR:

BARBEQUE INTEGRATED, INC. D/B/A SMOKEY
BONES, a Delaware corporation

By: 
Name: Peter Y. Lee
Title: Vice President

SECURED PARTY:

SUNTRUST BANK

By: _____
Andrew Lee, Senior Vice President

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**BARBEQUE INTEGRATED, INC. D/B/A SMOKEY
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By: _____
Name: Peter Y. Lee
Title: Vice President

SECURED PARTY:




SUNTRUST BANK


By: Andrew J. Lee
Andrew Lee, Senior Vice President

SCHEDULE A

INTELLECTUAL PROPERTY

1. TRADEMARK REGISTRATIONS AND APPLICATIONS

Mark	Jurisdiction	Serial No.	Filing Date	Reg. No.	Reg. Date	Class	Status	Current Owner	Comments
THE BONES CLUB	U.S.	77/776183	7/8/2009	3816730	7/13/2010	35	Registered	Barbeque Integrated, Inc.	
Flame Design (Color) 	U.S.	77/546037	8/13/2008	3591080	3/17/2009	43	Registered	Barbeque Integrated, Inc.	
Flame Design (Black & White) 	U.S.	77/546051	8/13/2008	3591082	3/17/2009	43	Registered	Barbeque Integrated, Inc.	
SMOKEY BONES BAR & FIRE GRILL	U.S.	77/545859	8/13/2008	3653653	7/14/2009	43	Registered	Barbeque Integrated, Inc.	
SMOKEY BONES BAR & FIRE GRILL and Design (Color) 	U.S.	77/545904	8/13/2008	3653654	7/14/2009	43	Registered	Barbeque Integrated, Inc.	

Mark	Jurisdiction	Serial No.	Filing Date	Reg. No.	Reg. Date	Class	Status	Current Owner	Comments
SMOKEY BONES BAR & FIRE GRILL and Design (Black & White) 	U.S.	77/545984	8/13/2008	3653655	7/14/2009	43	Registered	Barbeque Integrated, Inc.	
SMOKEY BONES	U.S.	75/737834	6/15/1999	2445137	4/17/2001	42	Registered	Barbeque Integrated, Inc.	Unreleased security interest: Barbeque Integrated, Inc. to Spirit Finance Acquisitions, LLC, dated 12/31/2007 (3688/0001)

2. PATENTS AND PATENT APPLICATIONS

None

{26375898;2}