

FORM PTO-1694  
1-31-92

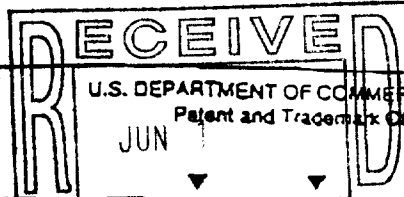
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6.1.99*

06-04-1999



101055375

1 SHEET  
ONLY



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To the Honorable Commissioner

101055375 Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
Steak and Ale Franchising Company,  
L.P.

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State                      Delaware.  
 Other \_\_\_\_\_

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

2. Name and address of receiving party(ies):  
Name: The Provident Bank

Internal Address: \_\_\_\_\_

Street Address: One East Fourth Street

City: Cincinnati State: OH ZIP: 45202

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State Ohio banking  
 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

3. Nature of conveyance:

Assignment                               Merger  
 Security Agreement                       Change of Name  
 Other \_\_\_\_\_

Execution Date: January 7, 1999

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)

Additional numbers attached?  Yes  No

B. Trademark registration No.(s)

See attached sheet

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

Internal Address: 1800 Firststar Tower

Street Address: 425 Walnut Street

City: Cincinnati State: OH ZIP: 45202

6. Total number of applications and registrations involved: 10

7. Total fee (37 CFR 3.41):..... \$ 265.00

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
20-0053 if debit/credit needed.  
 (Attach duplicate copy of this page if paying by deposit account)

06/04/1999 DNGUYEN 00000019 861153

DO NOT USE THIS SPACE

01 FC:461  
02 FC:462

40.00 DP  
225.00 DP

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.  
Linda D. Bayliss, Paralegal  
Taft, Stettinius & Hollister LLP

*Linda D. Bayliss*                      5/27/99  
Signature                      TRADEMARK                      Date

**EXHIBIT "A"**

**STEAK AND ALE**  
**U.S. TRADEMARKS AND SERVICE MARKS**

<b><u>Mark</u></b>	<b><u>Registration Number</u></b>
Steak and Ale (steer design)	861153
Steak and Ale (stylized)	862533
Early Evenings at Steak and Ale	1950405
Early Evenings (and design)	1950408
Steak and Ale (block)	2065016
Steak and Ale Dinnerhouse	2002696
Kensington	956188
Mishmash	1198149
Steer Design	982339
Skillet O'Beef	972960

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Security Agreement") is entered into effective as of the 7th day of January, 1999 by and between STEAK AND ALE FRANCHISING COMPANY, L.P., a Delaware limited partnership having its principal office and place of business at 6500 International Parkway, Plano, Texas 75093 ("Steak and Ale Franchising"), and THE PROVIDENT BANK, an Ohio banking corporation, whose address is One East Fourth Street, Cincinnati, Ohio 45202 ("Provident"), under the following circumstances:

WITNESSETH:

WHEREAS, S & A Restaurant Corp. ("Borrower") and Provident are parties to a certain Loan and Security Agreement dated as of January 7, 1999 (which Loan and Security Agreement, as the same may be renewed, supplemented, amended and/or restated from time to time, is hereinafter referred to as the "Loan Agreement"); and

WHEREAS, Steak and Ale Franchising is an indirect wholly owned subsidiary of Borrower and Steak and Ale Franchising will derive direct and material benefits from the Loans and other financial accommodations provided to Borrower by Lender under the Loan Agreement; and

WHEREAS, the Loan Agreement provides for the grant by Steak and Ale Franchising to Provident of a security interest in and lien against Steak and Ale Franchising's assets, including, without limitation, its intangible assets;

NOW, THEREFORE, in consideration of the promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Steak and Ale Franchising agrees as follows:

Incorporation of Loan Agreement and CNL/Captec Loan Documents. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. For purposes of this Security Agreement, "Obligations" and "CNL/Captec Loan Documents" shall have the same meaning as provided in the Loan Agreement. For purposes of this Security Agreement, satisfaction of the Obligations shall occur when (i) said Obligations have been paid and performed in full without risk of disgorgement and (ii) the Loan Agreement has been terminated. Notwithstanding anything in this Security Agreement to the contrary, the parties acknowledge and agree that the security interests granted in the Trademarks pursuant to this Security Agreement do not extend to, and are subject to, the licensee's rights under licenses to use the Trademarks granted by the Franchisors to the operators of the CNL/CAPTEC Restaurants and the lenders' rights under the security interest in and to such licensee's interest granted to the lenders

under the CNL/CAPTEC Loan Documents. The parties further acknowledge and agree that, notwithstanding anything in this Security Agreement to the contrary, the licenses to use the Trademarks granted to the operators of the CNL/CAPTEC Restaurants shall continue in full force and effect notwithstanding (i) an Event of Default, (ii) the exercise by Provident of its rights hereunder, or (iii) the transfer pursuant to the CNL/CAPTEC Loan Documents of the licensee's rights under the licenses to use the Trademarks granted to the operators of the CNL/CAPTEC Restaurants.

Grant of Security Interest in Trademarks. To secure the complete and timely satisfaction of the Obligations, Steak and Ale Franchising hereby creates and grants to Provident a security interest in (a) all of Steak and Ale Franchising's rights, title and interest in and to all of its now owned, licensed or existing and hereafter created or acquired trademarks, trademark registrations, tradenames and trademark applications, used in the United States and elsewhere, including, without limitation, the trademarks, trademark registrations, tradenames and trademark applications listed on Exhibit A attached hereto and made a part hereof (all of Steak and Ale Franchising's trademarks, trademark registrations, tradenames, licenses to use trademarks and trademark applications sometimes hereinafter individually and/or collectively referred to as "Trademarks"), (b) renewals or extensions thereof, (c) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (d) the right to sue for past, present and future infringements thereof, (e) all rights corresponding thereto throughout the world and (f) the goodwill of Steak and Ale Franchising's business, including, but not by way of limitation, such goodwill connected with and symbolized by the Trademarks. The Trademarks and items described in Clauses (b)-(f) are sometimes hereinafter individually and/or collectively referred to as "Collateral". Provided that this Security Agreement will not take effect with respect to any United States trademark or service mark application based upon intent-to-use until after such time as an Amendment to Allege Use or Statement of Use is filed and accepted by the Patent and Trademark Office and the mark made the subject of such application is actually used in commerce.

Restrictions on Future Assignments, Grants or Conveyances. Except in all events as contemplated or permitted by Paragraph 4 below and except for Permitted Liens (as defined in the Loan Agreement), Steak and Ale Franchising agrees that until the Obligations shall have been fully satisfied and the Loan Agreement shall have been terminated, Steak and Ale Franchising shall not, without Provident's prior written consent, which shall not be unreasonably withheld, assign, by sale, security agreement or other types of conveyance, any of its interest in, or grant any license under or security interest in, the Collateral or enter into any other agreement with respect to the Collateral which is inconsistent with Steak and Ale Franchising's obligations under the other provisions of this Security Agreement, and Steak and Ale Franchising further agrees that it shall not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect materially the validity or enforcement of the security interest granted to Provident under this Security Agreement.

Permitted Activity. Steak and Ale Franchising is permitted to license operators of restaurants to use the Trademarks pursuant to license agreements and franchise agreements now in effect or

hereafter executed in the ordinary course of business and on terms consistent with past practices. Moreover, nothing in this Security Agreement shall restrict Steak and Ale Franchising from performing any obligation under any license or franchise agreement now in effect or hereafter executed in the ordinary course of business. Additionally, nothing in this Security Agreement shall prohibit Steak and Ale Franchising from discontinuing the use of, and abandoning, any Trademark which, in Steak and Ale Franchising's good faith judgment, and in the ordinary course of business, is not material to the proper conduct of Steak and Ale Franchising's business.

New Trademarks. Steak and Ale Franchising represents and warrants that the Trademarks listed on Exhibit A constitute all of the material Trademarks now licensed by Steak and Ale Franchising. If, before the Obligations shall have been fully satisfied, Steak and Ale Franchising shall (i) become aware of any existing Trademarks of which Steak and Ale Franchising has not previously informed Provident; (ii) obtain rights to any new tradenames, trademarks, trademark registrations or trademark applications; (iii) become a party as a licensee to any license agreement with respect to any trademarks; or (iv) become entitled to the benefit of any trademark, trademark application, trademark registration or license renewal, the provisions of this Security Agreement shall automatically apply thereto and Steak and Ale Franchising shall give to Provident prompt written notice of any material Trademark thereof. Steak and Ale Franchising hereby authorizes Provident as its irrevocable attorney-in-fact to modify this Security Agreement by amending Exhibit A to include any future material trademarks, trademark registrations, trademark applications, tradenames, and licenses which are rights owned by Steak and Ale Franchising and which are Trademarks under Section 2 above or under this Section 5; and as to registrations of, or applications to register, trademarks owned by Steak and Ale Franchising Franchising, to file or refile this Security Agreement with the United States Patent and Trademark Office or other appropriate agency.

Representations and Warranties. Steak and Ale Franchising represents and warrants to and agrees with Provident that:

(i) To the knowledge of Steak and Ale Franchising Franchising, the Trademarks listed on Exhibit A are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(ii) To the knowledge of Steak and Ale Franchising, each of the Trademarks listed on Exhibit A is valid and enforceable, and Steak and Ale Franchising's use thereof does not infringe the intellectual property rights of any third person;

(iii) Steak and Ale Franchising is the owner of an unencumbered right, title and interest in and to or, a license to, each of the Trademarks listed on Exhibit A, free and clear of any liens, charges, and encumbrances except for Permitted Liens and except for rights granted to third parties in the ordinary course of business consistent with past practices to use such items in connection with the operation of restaurants, and Steak and Ale Franchising has the power and authority to make, and will continue to have authority to perform, this Security Agreement according to its terms;

(iv) This Security Agreement does not violate and is not in contravention of any other agreement to which Steak and Ale Franchising is a party or any judgment or decree by which Steak and Ale Franchising is bound and does not require any consent under any other agreement to which Steak and Ale Franchising is a party or by which Steak and Ale Franchising is bound;

(v) The Trademarks listed on Exhibit A have been used and are currently being used in connection with Steak and Ale Franchising's business; and

(vi) As of the date hereof, Steak and Ale Franchising has not received written notice of any suits or actions commenced or threatened with reference to the Trademarks, except as noted on Exhibit B.

Term; Rights Upon Default. The term of the Security Agreement and security interest granted herein shall extend until the Obligations have been fully satisfied and the Loan Agreement has been terminated. After the occurrence and during the continuance of any "Event of Default" (as defined in the Loan Agreement), Steak and Ale Franchising hereby authorizes the Commissioner of Patents and Trademarks, United States Patent and Trademark Office (or as appropriate, such equivalent agency in foreign countries), to issue any and all certificates of registration or renewal for all of those Trademarks owned by Steak and Ale Franchising to Provident as assignee of Steak and Ale Franchising's entire interest therein and in the goodwill of Steak and Ale Franchising's business connected therewith and symbolized thereby. After the occurrence and during the continuance of an Event of Default and enforcement of Provident's rights under this Section 7, Provident shall be entitled to use all Trademarks on a worldwide basis and without any liability for royalties or other related charges from Provident to Steak and Ale Franchising.

Use Prior to Default. So long as no Event of Default exists, Steak and Ale Franchising shall have the continued and unencumbered right to exclusively use and license the Trademarks in the ordinary course of its business, to the exclusion of Provident.

Trademark Quality Control. Steak and Ale Franchising agrees to maintain the quality of any and all products and services in connection with which the Trademarks are used, consistent with the quality of said products and services as of the date hereof. After the occurrence and during the continuance of an Event of Default, Steak and Ale Franchising agrees that Provident, or a conservator appointed by Provident, shall have the right to establish such additional product and service quality controls as Provident, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products and services sold or provided by Steak and Ale Franchising under the Trademarks.

Duties of Steak and Ale Franchising. Steak and Ale Franchising shall have the duty (i) as to trademarks owned by Steak and Ale Franchising, to prosecute diligently any trademark registration application pending as of the date hereof or thereafter, and promptly to notify Provident of the ultimate outcome of such application, until the Obligations shall have been fully satisfied; (ii) to use its reasonable best efforts to preserve all of Steak and Ale Franchising's rights in the material Trademarks used by Steak and Ale Franchising in the ordinary course of Steak and Ale Franchising's

business; and (iv) to use its reasonable best efforts to ensure that the material Trademarks used by Steak and Ale Franchising in the ordinary course of Steak and Ale Franchising's business are and remain valid and enforceable, Any expenses incurred in connection with Steak and Ale Franchising's obligations under this paragraph shall be borne by Steak and Ale Franchising.

Documents. At the request of Provident, Steak and Ale Franchising shall pay the costs of filing and/or recording this Security Agreement in all public offices where filing or recording is deemed necessary or desirable by Provident. Steak and Ale Franchising shall execute and deliver to Provident from time to time such supplemental assignments or other instruments, including, but not by way of limitation, additional assignments to be filed with the United States Patent and Trademark Office, as Provident may require for the purpose of confirming Provident's interest in the Trademarks owned by Steak and Ale Franchising Franchising.

Severability. The provisions of this Security Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Security Agreement in any jurisdiction.

Modification. This Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

Cumulative Remedies; Power of Attorney; Effect on Loan Agreement. All of Provident's rights and remedies with respect to the Trademarks, whether established hereby or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. After the occurrence and during the continuance of any Event of Default, Steak and Ale Franchising hereby authorizes Provident to make, constitute and appoint any officer or agent of Provident as Provident may select, in its sole discretion, as Steak and Ale Franchising's true and lawful attorney-in-fact, with power to: (i) endorse Steak and Ale Franchising's name on all applications, documents, papers and instruments necessary or desirable, as is legal and proper, for Provident in the use of the Trademarks; (ii) take any other actions with respect to the Trademarks, as is legal and proper, as Provident deems to be in the best interest of Provident; (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone; and/or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks owned by Steak and Ale Franchising, and the goodwill and business assets associated therewith or symbolized thereby, to anyone. This power of attorney shall be irrevocable until the Obligations shall have been fully satisfied and the Loan Agreement has been terminated. Steak and Ale Franchising acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of Provident under the Loan Agreement and other Loan Documents but rather is intended to facilitate the exercise of such rights and remedies. Provident shall have, in addition to all other rights and remedies given it by the terms of this Security Agreement and the Loan Agreement and other Loan Documents, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located.

Binding Effect; Benefits. This Security Agreement shall be binding upon Steak and Ale Franchising and Provident and their respective successors and assigns, and shall inure to the benefit of Steak and Ale Franchising and Provident and their respective successors and assigns.

Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Steak and Ale Franchising. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Provident in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne by and paid by Steak and Ale Franchising on demand by Provident.

Release of Security Agreement. This Security Agreement is made for collateral purposes only. Upon full satisfaction of the Obligations and termination of the Loan Agreement, Provident shall, at Steak and Ale Franchising's expense, execute and deliver to Steak and Ale Franchising all deeds, assignments and other instruments, and shall take such other actions, as may be reasonably necessary, to release the security interest created by this Security Agreement in the Trademarks, and to re-vest in Steak and Ale Franchising full right, title and interest in and to the Trademarks, subject to any disposition thereof which may have been made by Provident pursuant hereto or pursuant to the Loan Agreement or other Loan Documents. In this regard, upon full satisfaction of the obligations and termination of the Loan Agreement, at Steak and Ale Franchising's request, Provident shall deliver promptly to Steak and Ale Franchising, at Steak and Ale Franchising's cost, a release of the security interest in all of the Trademarks, including those listed on Exhibit A (and as subsequently amended), and in the Collateral, suitable for recording in the United States Patent and Trademark Office and such other places where Provident had recorded this Security Agreement.

Governing Law; Jurisdiction and Venue. The provisions of this Security Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Steak and Ale Franchising and Provident hereby designate all courts of record sitting in Cincinnati, Ohio, both state and federal, as the exclusive forums where any action, suit or proceeding in respect of or arising out of this Security Agreement or the transactions contemplated by this Security Agreement may be prosecuted as to all parties, their successors and assigns, and by the foregoing designation Steak and Ale Franchising and Provident consent to the jurisdiction and venue of such courts.

Waiver of Jury Trial. As a specifically bargained inducement for Provident to extend credit to Borrower, and after having the opportunity to consult counsel, Steak and Ale Franchising hereby expressly waives the right to trial by jury in any lawsuit or proceeding relating to this Security Agreement.



IN WITNESS WHEREOF, Steak and Ale Franchising, by its duly authorized officer, has executed this Security Agreement as of the date first above written.

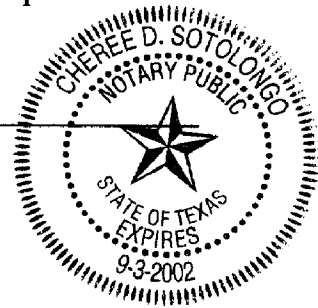
STEAK AND ALE FRANCHISING COMPANY, L.P.

By: Todd M. Watson  
Name: Todd M. Watson  
Title: Vice President

STATE OF TEXAS )  
 ) SS:  
COUNTY OF COLLIN )

The foregoing Trademark Security Agreement was acknowledged before me this 14<sup>th</sup> day of May, 1999, by Todd M. Watson, the Vice President of STEAK AND ALE FRANCHISING COMPANY, L.P., a Delaware limited partnership, on behalf of the partnership.

Cherie D. Sotolongo  
Notary Public



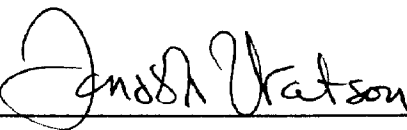
Accepted at Cincinnati, Ohio  
as of May 18, 1999:

THE PROVIDENT BANK

By: Tom B. Schenpenberg  
Name: Tom B. Schenpenberg  
Title: Vice President

We consent to the execution of this document by Steak and Ale Franchising Company, L.P.

S & A RESTAURANT CORP.

By: 

Name: Todd M. Watson

Title: Vice President

#226042 v2

**TAFT, STETTINIUS & HOLLISTER LLP**

1800 FIRSTAR TOWER

425 WALNUT STREET

CINCINNATI, OHIO 45202-3957

513-381-2838

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FAX: 216-241-2837

Bayliss, Linda D.  
(513) 357-9419  
bayliss@taftlaw.com

May 27, 1999

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**  
Commissioner of Patents &  
Trademarks  
Box Assignments  
Washington, D.C. 20231

Re: Filing of Trademark Security Agreement

Dear Sir or Madam:

Enclosed for filing with your office are the following documents:

- 1) Recordation Form Cover Sheet for Trademarks Only between Steak and Ale Franchising Company, L.P., and The Provident Bank, for recording a Trademark Security Agreement executed on January 7, 1999;
- 2) One original Trademark Security Agreement executed by the parties;
- 3) Check in the amount of \$265.00 for filing fees; and
- 4) Self-addressed postcard.

Please acknowledge receipt of the above items by applying your date stamp to the postcard and returning same to me. Please send all correspondence regarding this application, including the certificate of registration, to me at the address shown above.

This firm maintains deposit account number 20-0053 with your office. You are authorized to debit this firm's account for any shortage, or to credit this account for any excess, in the funds submitted in connection with this correspondence.

Should you have any questions, please contact me.

Sincerely,



Linda D. Bayliss  
Paralegal

LDB/trg  
Enclosures

cc: Daniel E. Fausz, Esq.

RECORDED: 06/01/1999

TRADEMARK  
REEL: 001906 FRAME: 0632