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Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): P.F. Chang's China Bistro, Inc. 12-73-02  
 Individual(s)  Association  
 General Partnership  Limited Partnership  
 Corporation-State (Arizona)  
 Other  
Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
Name: Bank of America, N.A., as Agent  
Internal  
Address: NC1-001-08-19  
Street Address: 101 N. Tryon Street  
City: Charlotte State: NC Zip: 28255  
 Individual(s) citizenship  
 Association  
 General Partnership  
 Limited Partnership  
 Corporation-State  
 Other National Banking Association  
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 Collateral Assignment  
Execution Date: DECEMBER 20, 2002

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)  
See EXHIBIT A attached hereto.  
Additional number(s) attached  Yes  No

B. Trademark Registration No.(s)  
See EXHIBIT A attached hereto.  
1847107

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Babette R. Oltmanns, Esq.  
Internal Address:  
Helms Mulliss & Moore, PLLC  
Street Address: 201 N. Tryon Street  
City: Charlotte State: NC Zip: 28202

6. Total number of applications and registrations involved: 4  
7. Total fee (37 CFR 3.41).....\$ 115.00  
 Enclosed  
 Authorized to be charged to deposit account  
8. Deposit account number:  
(Attach duplicate copy of this page if paying by deposit account)

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.  
*Babette Reynolds Oltmanns*  
Name of Person Signing *Babette Reynolds Oltmanns* Signature *Babette Reynolds Oltmanns*  
Date 12/2/02

Total number of pages including cover sheet, attachments, and document: 25

12/26/2002 BYRNE 00000171 1047107

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

01 FC:8521 40.00 00  
02 FC:8522 75.00 00

TRADEMARK REEL: 002723 FRAME: 0710

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

EXHIBIT A

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<b>Trademark or Service Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>	<b>Serial Number</b>	<b>Owner</b>
P.F. Chang's China Bistro	1847107	07-26-94	74410470	P.F. Chang's China Bistro, Inc.
Pei Wei	2598916	07-23-02	76067556	P.F. Chang's China Bistro, Inc.
Bowl Man Design	2541654	02-19-02	76067762	P.F. Chang's China Bistro, Inc.
Pei Wei Asian Diner	2632664	10-08-02	76067761	P.F. Chang's China Bistro, Inc.

## SECURITY AGREEMENT

**THIS SECURITY AGREEMENT** (this "Security Agreement") is made and entered into as of December 20, 2002 by **P.F. CHANG'S CHINA BISTRO, INC.**, a Delaware corporation (the "Borrower" and the "Grantor"), and **BANK OF AMERICA, N. A.**, a national banking association, as Agent (the "Agent") for each of the lenders (the "Lenders" and collectively with the Agent, the "Secured Parties") now or hereafter party to the Credit Agreement (as defined below). All capitalized terms used but not otherwise defined herein or pursuant to Section 1 hereof shall have the respective meanings assigned thereto in the Credit Agreement (as defined below).

### **WITNESSETH:**

**WHEREAS**, the Secured Parties have agreed to provide to the Borrower a certain revolving credit facility with a letter of credit sublimit pursuant to the Credit Agreement dated as of December 20, 2002 by and among the Borrower, the Agent and the Lenders (as from time to time amended, revised, modified, supplemented or amended and restated, the "Credit Agreement"); and

**WHEREAS**, as collateral security for payment and performance of its Obligations, the Borrower is willing to grant to the Agent for the benefit of the Secured Parties a security interest in certain of its personal property and assets pursuant to the terms of this Security Agreement; and

**WHEREAS**, the Secured Parties are unwilling to enter into the Loan Documents unless the Borrower enters into this Security Agreement;

**NOW, THEREFORE**, in order to induce the Secured Parties to enter into the Loan Documents and to make Loans and issue Letters of Credit, and in further consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

1. **Certain Definitions.** Terms used in this Security Agreement, not otherwise expressly defined herein or in the Credit Agreement, and for which meanings are provided in the Uniform Commercial Code of the State of California (the "UCC"), shall have such meanings. The parties agree that with respect to terms that describe items or types of Collateral, the parties intend to and do hereby give effect, upon their respective effective dates, to revisions to the UCC effective after the date hereof to the extent, but only to the extent, such revisions either (i) provide meanings of terms not previously defined as items or types of property or (ii) expand the items of or interests in property that are included within a previously defined term, with the effect that each of such terms describing items or types of property shall at all times be interpreted in its broadest sense.

2 **Grant of Security Interest.** The Grantor hereby grants as collateral security for the payment, performance and satisfaction of all of the Borrower's Obligations (the "Secured Obligations"), to the Agent for the benefit of the Secured Parties a continuing security interest in (subject to Permitted Liens) and to, all of Grantor's right, title and interest in certain of the personal property of Grantor or in which Grantor has or may have or acquire an interest, whether

now owned or existing or hereafter created, acquired or arising and wheresoever located, as described below:

(a) The trademarks listed on Schedule I hereto (the "Trademarks"), together with (i) the registrations of and registration applications therefor, as applicable, (ii) the goodwill of the business symbolized by and associated with the Trademarks and the registrations thereof, and (iii) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Trademarks or the registrations thereof or such associated goodwill

(b) All supporting obligations pertaining to any of the foregoing, including all letter of credit rights (including rights to proceeds of letters of credit), and all guaranties and other Contingent Obligations of any Person (collectively referred to hereinafter as "Supporting Obligations");

(c) All books and records relating to any of the foregoing (including computer programs, printouts, and other computer materials and records (and all media on which such data, files, programs, materials and records are or may be stored)); and

(d) All proceeds, products and replacements of, accessions to, and substitutions for, any of the foregoing, including without limitation proceeds of insurance policies insuring any of the foregoing.

All of the property and interests in property described in subsections (a) through (d) are herein collectively referred to as the "Collateral."

3. **Perfection.** At the time of execution of this Security Agreement, Grantor shall have furnished the Agent with properly executed financing statements in form, number and substance suitable for filing, sufficient under applicable law, and satisfactory to the Agent in order that upon the filing of the same the Agent, for the benefit of the Secured Parties, shall have a duly perfected security interest in all Collateral.

In addition, at the time of execution of this Security Agreement, the Borrower shall have executed in blank and delivered to the Agent an assignment of the Trademarks (the "Trademark Assignment") owned by it in the form of Exhibit A hereto. The Borrower hereby authorizes the Agent to complete as Assignee and record with the United States Patent and Trademark Office the Trademark Assignment upon the occurrence of an Event of Default that is continuing beyond any applicable cure period at the time of filing for the purpose of transfer of ownership of the trademarks in connection with a sale thereof pursuant to this Agreement in partial satisfaction of the Obligations.

All financing statements (including all amendments thereto and continuations thereof), assignments of trademarks, control agreements, certificates, acknowledgments, stock powers and other documents, electronic identification, restrictive legends, and instruments furnished in connection with the creation, enforcement, protection, perfection or priority of the Agent's security interest in Collateral are sometimes referred to herein as "Perfection Documents." The delivery of possession of items of or evidencing Collateral, causing other Persons to execute and

deliver Perfection Documents as appropriate, the filing or recordation of Perfection Documents, and the taking of such other actions as may be necessary or advisable in the determination of the Agent to create, enforce, protect, perfect, or establish or maintain the priority of, the security interest of the Agent for the benefit of the Secured Parties in the Collateral is sometimes referred to herein as "Perfection Action."

**4. Maintenance of Security Interest; Further Assurances.**

(a) Grantor will from time to time at its own expense, deliver specific assignments of Collateral or such other Perfection Documents, and take such other or additional Perfection Action, as may be required by the terms of the Loan Documents or as the Agent may reasonably request in connection with the administration or enforcement of this Security Agreement or related to the Collateral or any part thereof in order to carry out the terms of this Security Agreement, to perfect, protect, maintain the priority of or enforce the Agent's security interest in the Collateral, subject only to Permitted Liens, or otherwise to better assure and confirm unto the Agent its rights, powers and remedies for the benefit of the Secured Parties hereunder. Without limiting the foregoing, Grantor hereby irrevocably authorizes the Agent to file (with, or to the extent permitted by applicable law, without the signature of the Grantor appearing thereon) financing statements or other Perfection Documents (including copies thereof) showing Grantor as "debtor" at such time or times and in all filing offices as the Agent may from time to time determine to be necessary or advisable to perfect or protect the rights of the Agent and the Secured Parties hereunder, or otherwise to give effect to the transactions herein contemplated.

(b) With respect to any and all Collateral, Grantor agrees to do and cause to be done all things necessary requested by any Agent to perfect, maintain the priority of and keep in full force the security interest granted in favor of the Agent for the benefit of the Secured Parties, including, but not limited to, the payment within thirty (30) days of written demand therefor by the Agent of all fees and expenses (including documentary stamp, excise or intangibles taxes) incurred in connection with the preparation, delivery, or filing of any Perfection Document or the taking of any Perfection Action to perfect, protect or enforce a security interest in Collateral in favor of the Agent for the benefit of the Secured Parties, subject only to Permitted Liens. All amounts not so paid when due shall constitute additional Secured Obligations and (in addition to other rights and remedies resulting from such nonpayment) shall bear interest from the date of demand until paid in full at the Default Rate.

(c) Grantor agrees to maintain among its books and records appropriate notations or evidence of, and to make or cause to be made appropriate disclosure upon its financial statements of, the security interest granted hereunder to the Agent for the benefit of the Secured Parties.

**5. Receipt of Payment.** In the event an Event of Default shall occur and be continuing and the Grantor (or any of its affiliates, subsidiaries, stockholders, directors, officers, employees or agents) shall receive any proceeds of Collateral, including without limitation monies, checks, notes, drafts or any other items of payment, Grantor shall hold all such items of payment in trust for the Agent for the benefit of the Secured Parties, and as the property of the Agent for the benefit of the Secured Parties, separate from the funds and other property of Grantor, and no later than the Business Day following the receipt of written demand therefor, at the election of the Agent, Grantor shall cause such Collateral to be forwarded to the Agent for its

custody, possession and disposition on behalf of the Secured Parties in accordance with the terms hereof and of the other Loan Documents.

**6. Preservation and Protection of Collateral.**

(a) The Agent shall be under no duty or liability with respect to the collection, protection or preservation of the Collateral, or otherwise. Grantor shall be responsible for the safekeeping of its Collateral, and in no event shall the Agent have any responsibility for (i) any loss or damage thereto or destruction thereof occurring or arising in any manner or fashion from any cause, (ii) any diminution in the value thereof, or (iii) any act or default of any carrier, warehouseman, bailee or forwarding agency thereof or other Person in any way dealing with or handling such Collateral.

(b) Grantor agrees (i) to pay prior to delinquency all taxes, charges and assessments against the Collateral in which it has any interest, unless being contested in good faith by appropriate proceedings diligently conducted and against which adequate reserves have been established in accordance with GAAP applied on a Consistent Basis and evidenced to the satisfaction of the Agent and provided that all enforcement proceedings in the nature of levy or foreclosure are effectively stayed, and (ii) to cause to be terminated and released all Liens (other than Permitted Liens) on the Collateral. Upon the failure of Grantor to so pay or contest such taxes, charges, or assessments, or cause such Liens to be terminated, and such failure continues for ten (10) days after Grantor's receipt of written notice from the Agent, the Agent at its option may pay or contest any of them or amounts relating thereto (the Agent having the sole right to determine the legality or validity and the amount necessary to discharge such taxes, charges, Liens or assessments) but shall not have any obligation to make any such payment or contest. All sums so disbursed by the Agent, including reasonable Attorney Costs, court costs, expenses and other charges related thereto, shall be payable within ten (10) days after receipt of written demand to the Grantor by the Agent and shall be additional Secured Obligations secured by the Collateral, and any amounts not so paid timely (in addition to other rights and remedies resulting from such nonpayment) shall bear interest from the date of demand until paid in full at the Default Rate.

**7. Status of Grantor and Collateral Generally.** Grantor represents and warrants to, and covenants with, the Agent for the benefit of the Secured Parties, with respect to itself and the Collateral as to which it has or acquires any interest, that:

(a) It is (or as to Collateral acquired after the date hereof will be upon the acquisition of the same) and, except as permitted by the Credit Agreement and subsection (b) of this Section 7, will continue to be, the owner of the Collateral, free and clear of all Liens, other than the security interest hereunder in favor of the Agent for the benefit of the Secured Parties and Permitted Liens, and that it will at its own cost and expense use commercially reasonable efforts to defend such Collateral and any products and proceeds thereof against all claims and demands of all Persons (other than holders of Permitted Liens) at any time claiming the same or any interest therein adverse to the Secured Parties. Upon the failure of Grantor to so defend, and such failure continues for ten (10) days after Grantor's receipt of written notice from the Agent, the Agent may do so at its option but shall not have any obligation to do so. All sums so disbursed by the Agent,

including reasonable Attorney Costs, court costs, expenses and other charges related thereto, shall be payable within ten (10) days after receipt of written demand by the Grantor to the Agent and shall be additional Secured Obligations secured by the Collateral, and any amounts not so paid timely (in addition to other rights and remedies resulting from such nonpayment) shall bear interest from the date of demand until paid in full at the Default Rate.

(b) It shall not (i) sell, assign, transfer, lease, license or otherwise dispose of any of, or grant any option with respect to, the Collateral, except for dispositions permitted under the Credit Agreement, (ii) create or suffer to exist any Lien upon or with respect to any of the Collateral except for the security interests created by this Security Agreement and Permitted Liens, or (iii) take any other action in connection with any of the Collateral that would materially impair the value of the interest or rights of Grantor in the Collateral taken as a whole or that would materially impair the interest or rights of the Agent for the benefit of the Secured Parties.

(c) It has full power, legal right and lawful authority to enter into this Security Agreement and to perform its terms, including the grant of the security interests in the Collateral herein provided for.

(d) No authorization, consent, approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required either (i) for the grant by Grantor of the security interests granted hereby or for the execution, delivery or performance of this Security Agreement by Grantor, or (ii) for the perfection of or the exercise by the Agent, on behalf of the Secured Parties, of its rights and remedies hereunder, except for action required by the Uniform Commercial Code to perfect the security interest conferred hereunder.

(e) No effective financing statement or other Perfection Document similar in effect, nor any other Perfection Action, covering all or any part of the Collateral purported to be granted or taken by or on behalf of Grantor (or by or on behalf of any other Person and which remains effective as against all or any part of the Collateral) has been filed in any recording office, delivered to another Person for filing (whether upon the occurrence of a contingency or otherwise), or otherwise taken, as the case may be, except such as pertain to Permitted Liens and such as may have been filed for the benefit of, delivered to, or taken in favor of, the Agent for the benefit of the Secured Parties in connection with the security interests conferred hereunder.

**8. Inspection.** The Agent (by any of its officers, employees and agents), on behalf of the Secured Parties, shall have the right upon reasonable prior notice to an executive officer of Grantor, and at any reasonable times, other than during the time periods from 11:30 A.M. through 1:30 P.M. and from 5:00 P.M. through 8:00 P.M., during Grantor's usual business hours, to inspect all records related to the Collateral (and to make extracts or copies from such records), to discuss Grantor's affairs and finances with any Person and to verify with any Person the amount, quality, quantity, value and condition of, or any other matter relating to, the Collateral.

9. **Rights and Remedies Upon Event of Default.** Upon and after an Event of Default, the Agent shall have the following rights and remedies on behalf of the Secured Parties in addition to any rights and remedies set forth elsewhere in this Security Agreement or the other Loan Documents, all of which may be exercised with or, if allowed by law, without notice to Grantor:

(a) All of the rights and remedies of a secured party under the UCC or under other applicable law, all of which rights and remedies shall be cumulative, and none of which shall be exclusive, to the extent permitted by law, in addition to any other rights and remedies contained in this Security Agreement or any other Loan Document;

(b) The right to foreclose the Liens and security interests created under this Security Agreement by any available judicial procedure or without judicial process;

(c) The right to sell all or any Collateral in its then existing condition, at such time or times, at commercially reasonable public or private sale or sales, with such notice as may be required by law, in lots or in bulk, for cash or on credit, with or without representations and warranties, all as the Agent, in its sole discretion, may deem advisable. The Agent may, if it deems it reasonable, postpone or adjourn any sale of the Collateral from time to time by giving notice to Grantor and by posting or otherwise announcing the time and place of such postponed or adjourned sale, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Grantor agrees that the Agent has no obligation to preserve rights to the Collateral against prior parties or to marshal any Collateral for the benefit of any Person. The Agent for the benefit of the Secured Parties is hereby granted a license or other right to use, without charge, Grantor's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale and selling any Collateral and Grantor's rights under any license and any franchise agreement shall inure to the Agent's benefit. If any of the Collateral shall require repairs, maintenance, preparation or the like, or is in process or other unfinished state, the Agent shall have the right, but shall not be obligated, to perform such repairs, maintenance, preparation, processing or completion of manufacturing for the purpose of putting the same in such saleable form as the Agent shall deem appropriate, but the Agent shall have the right to sell or dispose of the Collateral without such processing and Grantor shall have no claim against the Agent for the value that may have been added to such Collateral with such processing. In addition, Grantor agrees that in the event notice is necessary under applicable law, written notice mailed to Grantor in the manner specified herein ten (10) days prior to the date of public sale of any of the Collateral or prior to the date after which any private sale or other disposition of the Collateral will be made shall constitute commercially reasonable notice to Grantor. All notice is hereby waived with respect to any of the Collateral which threatens to decline speedily in value or is of a type customarily sold on a recognized market. The Agent may purchase all or any part of the Collateral at public or, if permitted by law, private sale, free from any right of redemption which is hereby expressly waived by Grantor and, in lieu of actual payment of such purchase price, may set off the amount of such price against the Secured Obligations.



The net cash proceeds resulting from the collection, liquidation, sale, or other disposition of the Collateral shall be applied first to the expenses (including all attorneys' fees) of retaking, holding, storing, processing and preparing for sale, selling, collecting, liquidating and the like, and then to the satisfaction of all Secured Obligations in accordance with the terms of Section 11.5 of the Credit Agreement. Grantor shall be liable to the Agent, for the benefit of the Secured Parties, and shall pay to the Agent, for the benefit of the Secured Parties, within thirty (30) days of written notice of any deficiency which may remain after such sale, disposition, collection or liquidation of the Collateral.

**10. Attorney-in-Fact.** Grantor hereby appoints the Agent as Grantor's attorney-in-fact for the purposes of carrying out the provisions of this Security Agreement and taking any action and executing any instrument which the Agent may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest; provided, that the Agent shall have and may exercise rights under this power of attorney only upon the occurrence and during the continuance of an Event of Default. Without limiting the generality of the foregoing, upon the occurrence and during the continuance of an Event of Default, the Agent shall have the right and power

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(b) to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (a) above;

(c) to endorse Grantor's name on any checks, notes, drafts or any other payment relating to or constituting proceeds of the Collateral which comes into the Agent's possession or the Agent's control, and deposit the same to the account of the Agent, for the benefit of the Secured Parties, on account and for payment of the Secured Obligations.

(d) to file any claims or take any action or institute any proceedings that the Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Agent, for the benefit of the Secured Parties, with respect to any of the Collateral; and

(e) to execute, in connection with any sale or other disposition of Collateral provided for herein, any endorsement, assignments, or other instruments of conveyance or transfer with respect thereto.

**11. Reinstatement.** The granting of a security interest in the Collateral and the other provisions hereof shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Secured Obligations is rescinded or must otherwise be returned by any Secured Party, whether upon the insolvency, bankruptcy or reorganization of Grantor or any other Credit Party or otherwise, all as though such payment had not been made. The provisions of this Section 11 shall survive repayment of all of the Secured Obligations and the termination

or expiration of this Security Agreement in any manner, including but not limited to termination upon occurrence of the Facility Termination Date.

**12. Certain Waivers by the Grantor.** Grantor waives to the extent permitted by applicable law (a) any right to require any Secured Party or any other obligee of the Secured Obligations to (x) proceed against any Person or entity, including without limitation any Credit Party, (y) proceed against or exhaust any Collateral or other collateral for the Secured Obligations, or (z) pursue any other remedy in its power; (b) any defense arising by reason of any disability or other defense of any other Person, or by reason of the cessation from any cause whatsoever of the liability of any other Person or entity, (c) prior to indefeasible payment in full of the Secured Parties any right of subrogation, (d) any right to enforce any remedy which any Secured Party or any other obligee of the Secured Obligations now has or may hereafter have against any other Person and any benefit of and any right to participate in any collateral or security whatsoever now or hereafter held by the Agent for the benefit of the Secured Parties. Grantor authorizes each Secured Party and each other obligee of the Secured Obligations without notice (except notice required by applicable law or agreement of the parties) or demand and without affecting its liability hereunder or under the Loan Documents from time to time to: (i) take and hold security, other than the Collateral herein described, for the payment of such Secured Obligations or any part thereof, and exchange, enforce, waive and release the Collateral herein described or any part thereof or any such other security; and (ii) apply such Collateral or other security and direct the order or manner of sale thereof as such Secured Party or obligee in its discretion may determine.

The Agent may at any time deliver (without representation, recourse or warranty) the Collateral or any part thereof to Grantor and the receipt thereof by Grantor shall be a complete and full acquittance for the Collateral so delivered, and the Agent shall thereafter be discharged from any liability or responsibility therefor.

**13. Continued Powers.** Until the Facility Termination Date shall have occurred, the power of sale and other rights, powers and remedies granted to the Agent for the benefit of the Secured Parties hereunder shall continue to exist and may be exercised by the Agent at any time and from time to time irrespective of the fact that any of the Secured Obligations or any part thereof may have become barred by any statute of limitations or that any part of the liability of Grantor may have ceased.

**14. Other Rights.** The rights, powers and remedies given to the Agent for the benefit of the Secured Parties by this Security Agreement shall be in addition to all rights, powers and remedies given to the Agent or any Secured Party under any Loan Documents or by virtue of any statute or rule of law. Any forbearance or failure or delay by the Agent in exercising any right, power or remedy hereunder shall not be deemed to be a waiver of such right, power or remedy, and any single or partial exercise of any right, power or remedy hereunder shall not preclude the further exercise thereof; and every right, power and remedy of the Secured Parties shall continue in full force and effect until such right, power or remedy is specifically waived in accordance with the terms of the Credit Agreement.

**15. Anti-Marshaling Provisions.** The right is hereby given by Grantor to the Agent, for the benefit of the Secured Parties, to make releases (whether in whole or in part) of all or any

part of the Collateral agreeable to the Agent without notice to, or the consent, approval or agreement of other parties and interests, including junior lienors, which releases shall not impair in any manner the validity of or priority of the Liens and security interests in the remaining Collateral conferred hereunder, nor release Grantor from personal liability for the Secured Obligations. Notwithstanding the existence of any other security interest in the Collateral held by the Agent, for the benefit of the Secured Parties, the Agent shall have the right to determine the order in which any or all of the Collateral shall be subjected to the remedies provided in this Security Agreement. Grantor hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein or in any Loan Document.

**16. Entire Agreement.** This Security Agreement, together with the Credit Agreement and other Loan Documents, constitutes and expresses the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, agreements and understandings, inducements, commitments or conditions, express or implied, oral or written, except as contained in the Loan Documents. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. Neither this Security Agreement nor any portion or provision hereof may be changed, altered, modified, supplemented, discharged, canceled, terminated, or amended orally or in any manner other than as provided in the Credit Agreement.

**17. Third Party Reliance.** Grantor hereby consents and agrees that all issuers of or obligors in respect of any Collateral, and all securities intermediaries, warehousemen, bailees, public officials and other Persons having any interest in, possession of, control over or right, privilege, duty or discretion in respect of, any Collateral shall be entitled to accept the provisions hereof as conclusive evidence of the right of the Agent, on behalf of the Secured Parties, to exercise its rights hereunder with respect to the Collateral, notwithstanding any other notice or direction to the contrary heretofore or hereafter given by Grantor or any other Person to any of such Persons.

**18. Binding Agreement; Assignment.** This Security Agreement, and the terms, covenants and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto, and to their respective successors and assigns, except that Grantor shall not be permitted to assign this Security Agreement or any interest herein or, except as expressly permitted herein or in the Credit Agreement, in the Collateral or any part thereof, or otherwise, except as expressly permitted herein or in the Credit Agreement, pledge, encumber or grant any option with respect to the Collateral or any part thereof. Without limiting the generality of the foregoing sentence of this Section 18, any Lender may assign to one or more Persons, or grant to one or more Persons participations in or to, all or any part of its rights and obligations under the Credit Agreement (to the extent permitted by the Credit Agreement); and to the extent of any such assignment or participation such other Person shall, to the fullest extent permitted by law, thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise, subject however, to the provisions of the Credit Agreement, including Article XII thereof (concerning the Agent) and Section 13.1 thereof (concerning assignments and participations). All references herein to the Agent and to the Secured Parties shall include any successor thereof or permitted assignee, and any other obligees from time to time of the Secured Obligations.

19. **Swap Agreements.** All obligations of Grantor under or in respect of Swap Agreements (which are not prohibited under the terms of the Credit Agreement) to which any Lender or any affiliate of any Lender is a party, shall be deemed to be Secured Obligations secured hereby, and each Lender or affiliate of a Lender party to any such Swap Agreement shall be deemed to be a Secured Party hereunder with respect to such Secured Obligations; provided, however, that such obligations shall cease to be Secured Obligations at such time as such Person (or affiliate of such Person) shall cease to be a “Lender” under the Credit Agreement.

20. **Severability.** The provisions of this Security Agreement are independent of and separable from each other. If any provision hereof shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof, but this Security Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

21. **Counterparts.** This Security Agreement may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Security Agreement to produce or account for more than one such counterpart executed by Grantor.

22. **Termination.** Subject to the provisions of Section 11, this Security Agreement and all obligations of the Grantor hereunder (excluding those obligations and liabilities that expressly survive such termination) shall terminate without delivery of any instrument or performance of any act by any party on the Facility Termination Date. Upon such termination of this Security Agreement, the Agent shall, at the request and sole expense of the Grantor, promptly deliver to the Grantor such termination statements and take such further actions as the Grantor may reasonably request to terminate of record, or otherwise to give appropriate notice of the termination of, any Lien conferred hereunder.

23. **Notices.** Any notice required or permitted hereunder shall be given (a) with respect to the Borrower, at the address for the giving of notice then in effect under the Credit Agreement, (b) with respect to Grantor, at the address then in effect for the giving of notices to Grantor under the Facility Guaranty to which it is a party, and (c) with respect to the Agent or a Lender, at the Agent’s address indicated in Section 13.2 of the Credit Agreement. All such addresses may be modified, and all such notices shall be given and shall be effective, as provided in Section 13.2 of the Credit Agreement.

24. **Rules of Interpretation.** The rules of interpretation contained in Sections 1.2(c) through 1.2(l) of the Credit Agreement shall be applicable to this Security Agreement and are hereby incorporated by reference. All representations and warranties contained herein shall survive the delivery of documents and any extension of credit referred to herein or secured hereby.

25. **Indemnification; Limitation of Liability.** (a) Grantor agrees to indemnify and hold harmless the Agent and each Lender and each of their affiliates and their respective officers, directors, employees, agents, and advisors (each, an “Indemnified Party”) from and against any and all claims, damages, losses, liabilities, costs, and expenses (including, without limitation, reasonable attorneys’ fees) that may be incurred by or asserted or awarded against any

Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation, or proceeding or preparation of defense in connection therewith) this Agreement or any other Loan Documents, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loans, except to the extent such claim, damage, loss, liability, cost, or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 25 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Assignor, its directors, shareholders or creditors or an Indemnified Party or any other Person or any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. Grantor agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to it, any of its Subsidiaries, any Guarantor, or any security holders or creditors thereof arising out of, related to or in connection with the transactions contemplated herein, except to the extent that such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have directly resulted from such Indemnified Party's gross negligence or willful misconduct. Grantor agrees not to assert any claim against the Agent, any Lender, any of their affiliates, or any of their respective directors, officers, employees, attorneys, agents, and advisers, on any theory of liability, for special, indirect, consequential, or punitive damages arising out of or otherwise relating to the Loan Documents, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loans.

(b) Without prejudice to the survival of any other agreement of any Assignor hereunder, the agreements and obligations of Grantor contained in this Section 25 shall survive the payment in full of the Loans and all other amounts payable under the Loan Documents.

**26. Governing Law; Waivers.**

**(a) THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE; PROVIDED THAT (i) WITH RESPECT TO THOSE INSTANCES IN WHICH THE APPLICABLE CHOICE OF LAWS RULES OF SUCH STATE, INCLUDING SECTION 9-301 OF THE UCC, REQUIRE THAT THE MANNER OF CREATION OF A SECURITY INTEREST IN SPECIFIC COLLATERAL OR THE MANNER OR EFFECT OF PERFECTION OR NONPERFECTION OR THE RULES GOVERNING PRIORITY OF SECURITY INTERESTS ARE TO BE GOVERNED BY THE LAWS OF ANOTHER JURISDICTION, THEN THE LAWS OF SUCH OTHER JURISDICTION SHALL GOVERN SUCH MATTERS AND (ii) IN THOSE INSTANCES IN WHICH THE LAWS OF THE JURISDICTION IN WHICH COLLATERAL IS LOCATED GOVERN MATTERS PERTAINING TO THE METHODS AND EFFECT OF REALIZING ON COLLATERAL, SUCH LAWS SHALL BE GIVEN EFFECT WITH RESPECT TO SUCH MATTERS.**

**(b) GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY AGREES AND CONSENTS THAT ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREIN MAY BE INSTITUTED IN ANY STATE OR FEDERAL COURT SITTING IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, UNITED STATES OF AMERICA AND, BY THE EXECUTION AND DELIVERY OF THIS SECURITY AGREEMENT, EXPRESSLY WAIVES ANY OBJECTION THAT IT MAY HAVE NOW OR HEREAFTER TO THE LAYING OF THE VENUE OR TO THE JURISDICTION OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND IRREVOCABLY SUBMITS GENERALLY AND UNCONDITIONALLY TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING.**

**(c) GRANTOR AGREES THAT SERVICE OF PROCESS MAY BE MADE BY PERSONAL SERVICE OF A COPY OF THE SUMMONS AND COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING, OR BY REGISTERED OR CERTIFIED MAIL (POSTAGE PREPAID) TO THE ADDRESS OF SUCH PARTY PROVIDED IN SECTION 25 OR BY ANY OTHER METHOD OF SERVICE PROVIDED FOR UNDER THE APPLICABLE LAWS IN EFFECT IN THE STATE OF CALIFORNIA.**

**(d) NOTHING CONTAINED IN SUBSECTIONS (b) OR (c) HEREOF SHALL PRECLUDE GRANTOR FROM BRINGING ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR THE OTHER LOAN DOCUMENTS IN THE COURTS OF ANY PLACE WHERE ANY OTHER PARTY OR ANY OF SUCH PARTY'S PROPERTY OR ASSETS MAY BE FOUND OR LOCATED. TO THE EXTENT PERMITTED BY THE APPLICABLE LAWS OF ANY SUCH JURISDICTION, GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT AND EXPRESSLY WAIVES, IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING, THE JURISDICTION OF ANY OTHER COURT OR COURTS WHICH NOW OR HEREAFTER, BY REASON OF ITS PRESENT OR FUTURE DOMICILE, OR OTHERWISE, MAY BE AVAILABLE UNDER APPLICABLE LAW.**

**(e) EACH PARTY TO THIS SECURITY AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS SECURITY AGREEMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR THAT MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THE FOREGOING, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS SECURITY AGREEMENT MAY**

**FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**

**(f) GRANTOR HEREBY EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE THAT ANY COURT TO WHOSE JURISDICTION IT HAS SUBMITTED PURSUANT TO THE TERMS HEREOF IS AN INCONVENIENT FORUM.**

**[Signature pages follow]**

**IN WITNESS WHEREOF**, the parties have duly executed this Security Agreement on the day and year first written above.

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**GRANTOR:**

**P.F. CHANG'S CHINA BISTRO, INC.**

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

*Kristina Cashman*

Name: Kristina Cashman

Title: Chief Financial Officer

**SECURITY AGREEMENT  
SIGNATURE PAGE 1 OF 2**

**TRADEMARK  
REEL: 002723 FRAME: 0725**



**AGENT:**

**BANK OF AMERICA, N. A., as Agent for the  
Lenders**

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By: Chitt Swamidasan  
Name: Chitt Swamidasan  
Title: Principal

**SECURITY AGREEMENT  
SIGNATURE PAGE 2 OF 2**

**TRADEMARK  
REEL: 002723 FRAME: 0726**

**SCHEDULE I**

**Registrations at  
United States Patent and Trademark Office**

<b>Trademark or Service Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>	<b>Serial Number</b>	<b>Owner</b>
P.F. Chang's China Bistro	1847107	07-26-94	74410470	P.F. Chang's China Bistro, Inc.
Pei Wei	2598916	07-23-02	76067556	P.F. Chang's China Bistro, Inc.
Bowl Man Design	2541654	02-19-02	76067762	P.F. Chang's China Bistro, Inc.
Pei Wei Asian Diner	2632664	10-08-02	76067761	P.F. Chang's China Bistro, Inc.

**Pending Applications at  
United States Patent and Trademark Office**

<b>Trademark or Service Mark</b>	<b>Serial Number</b>	<b>Application Date</b>	<b>Owner</b>

**ASSIGNMENT OF TRADEMARKS**

**THIS ASSIGNMENT OF TRADEMARKS** (this "Agreement") is made and entered into as of \_\_\_\_\_, \_\_\_\_\_ by **P.F. CHANG'S CHINA BISTRO, INC.**, a Delaware corporation (the "Assignor"), and **BANK OF AMERICA, N.A.**, as Agent (in such capacity, the "Agent") for each of the Lenders (the "Lenders" and together with the Agent, the "Secured Parties") now or hereafter party to the Credit Agreement (as defined below). All capitalized terms used but not otherwise defined herein shall have the respective meanings assigned thereto in the Credit Agreement (as defined below).

**WITNESSETH:**

**WHEREAS**, the Lenders have agreed to provide to [the Assignor a certain revolving credit facility with a letter of credit sublimit pursuant to the Credit Agreement dated as of the date hereof by and among the Assignor, the Agent and the Lenders (as from time to time amended, revised, modified, supplemented, amended and restated, replaced or refinanced, the "Credit Agreement"); and

**WHEREAS**, the Assignor has entered into a Security Agreement (the "Security Agreement") dated as of December 20, 2002 pursuant to which the Assignor has granted to the Agent for the benefit of the Secured Parties a security interest in the Trademarks defined below in order to secure the Assignor's Obligations (collectively, the "Secured Obligations"); and

**WHEREAS**, the Assignor has adopted and used and is using the trademarks and service marks (the "Trademarks" or the "Collateral") identified on Annex I hereto, and is the owner of the registrations of and pending registration applications for such Trademarks in the United States Patent and Trademark Office identified on Annex I hereto; and

**WHEREAS**, the Agent for the benefit of the Secured Parties desires to acquire the Trademarks and the registrations thereof and registration applications therefor, as applicable, in connection with the exercise of its remedies after the occurrence of an Event of Default under the Credit Agreement or any uncured default or event of default under any of the Loan Documents (collectively, an "Event of Default");

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, the Assignor does hereby assign, sell and transfer unto the Agent all right, title and interest in and to the Trademarks, together with (i) the registrations of and registration applications therefor, as applicable, (ii) the goodwill of the business symbolized by and associated with the Trademarks and the registrations thereof, and (iii) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Trademarks or the registrations thereof or such associated goodwill.

The Assignor hereby grants to the Agent, for the benefit of the Secured Parties, and notice is hereby given that the Assignor has granted to the Agent, for the benefit of the Secured Parties, a security interest in the Collateral to secure the payment and performance in full of all of the Secured Obligations.

This Assignment is intended to and shall take effect as a sealed instrument at such time as an Event of Default shall have occurred and continue uncured under the Credit Agreement, all obligations thereunder have been declared due and payable and the Agent shall complete this instrument by signing its acceptance of this Assignment below.

[Signature page follows.]

**IN WITNESS WHEREOF**, the parties have duly executed this Assignment of Trademarks on the day and year first written above.

**ASSIGNOR:**

**P.F. CHANG'S CHINA BISTRO, INC.**

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

Name: \_\_\_\_\_

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

The foregoing assignment of the Trademarks and the registrations thereof and registration applications therefor by the Assignee and the Agent is hereby accepted as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BANK OF AMERICA, N.A.,  
as Agent for the Lenders**

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

Name: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared \_\_\_\_\_ to me known personally, and who, being by me duly sworn, deposes and says that he is the \_\_\_\_\_ of \_\_\_\_\_, and that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared \_\_\_\_\_ to me known personally, and who, being by me duly sworn, deposes and says that s/he is the \_\_\_\_\_ of Bank of America, N.A., a national banking association, and that foregoing instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said national banking association.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_



**ANNEX I**

**Registrations at  
United States Patent and Trademark Office**

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