

11-12-2003

Form PTO-1594

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

RE

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

Tab settings ⇨⇨⇨ ▼

102598450

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

1. Name of conveying party(ies):

Brazos Restaurant Acquisition Corp.

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

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

3. Nature of conveyance:

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

Execution Date: November 3, 2003

2. Name and address of receiving party(ies)

Name: GE Capital Franchise Finance
Corporation

Internal

Address: _____

Street Address: 17207 North Perimeter DriveCity: Scottsdale State: AZ Zip: 85255☐ Individual(s) citizenship _____☐ Association _____☐ General Partnership _____☐ Limited Partnership _____☒ Corporation-State Delaware☐ Other _____If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No

(Designations must be a separate document from assignment)

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

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

A. Trademark Application No.(s)

See Exhibit A attached

B. Trademark Registration No.(s)

See Exhibit A attached

Additional number(s) attached ☒ Yes ☐ No

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

Name: Andrew G. KentInternal Address: GE Capital Franchise
Finance CorporationStreet Address: 17207 North Perimeter DriveCity: Scottsdale State: AZ Zip: 85255

6. Total number of applications and registrations involved: _____

2

7. Total fee (37 CFR 3.41).....\$ 80.00☒ 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.*Mitchell S. Padover

Name of Person Signing

Signature

November 3, 2003

Date

Total number of pages including cover sheet, attachments, and document: 9Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

11/10/2003 EDCOPER 00000100 1343555

01 FC:0521

02 FC:0522

40.00 DP

25.00 DP

TRADEMARK

REEL: 002861 FRAME: 0568

Refund Ref: 11/10/2003 EDCOPER 0000132109

CHECK Refund Total: \$15.00

EXHIBIT A
TRADEMARKS

Mark	Registration Number	Registration Date
CHEDDAR'S	1,343,555	June 18, 1985
FISHDADDY'S SEAFOOD GRILL	2,720,689	June 3, 2003

INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement") is made and entered into as of November 3, 2003 (the "Effective Date") by BRAZOS RESTAURANT ACQUISITION CORP., a Delaware corporation ("Borrower"), whose principal place of business is 616 Six Flags Drive, Suite 116, Arlington, Texas 76011, in favor of GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation ("Lender"), whose address is 17207 North Perimeter Drive, Scottsdale, Arizona 85255.

PRELIMINARY STATEMENT:

Lender and Borrower are parties to a Loan Agreement dated as of even date herewith (the "Loan Agreement") and a Development Loan Agreement. The capitalized terms used in this Agreement, if not elsewhere defined herein, are defined as indicated in the Loan Agreement.

One of the conditions to Lender entering into the Loan Agreement and the Development Loan Agreement is that Borrower enter into this Agreement to grant a lien on the Intellectual Property (as defined below).

AGREEMENT:

In consideration of the mutual covenants and promises hereinafter set forth, Lender and Borrower agree as follows:

1. ***Security Interest Created; Obligations Secured.*** (a) To secure the payment of the Obligations (as defined below), Borrower hereby grants to Lender a security interest in the Intellectual Property, and all income therefrom and all proceeds thereof (collectively, the "Collateral"). As used herein, the term "Intellectual Property" shall mean, with respect to Borrower and/or Borrower's Business, (i) all patents and patent applications in the United States and all equivalents of the foregoing in any other jurisdiction and all reissues, divisions, continuations and extensions of the foregoing, including, without limitation, any patent and patent applications listed on Exhibit A attached hereto; (ii) all registered and unregistered trademarks, trade names, service marks, trade dress, logos, slogans and corporate names (including, but not limited to, the names "Cheddar's" and "Fish Daddy's"), together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, including, without limitation, any registrations and applications listed on Exhibit A attached hereto; (iii) all works of authorship, including, but not limited to, all copyrightable works and all copyrights (including, but not limited to, distinctive menus and manuals) and all applications, registrations and renewals in connection therewith in the United States and all equivalents of the foregoing in any other jurisdiction, including, without limitation, any copyrights listed on Exhibit A attached hereto, and all moral rights; (iv) all trade secrets and other confidential information (including, but not limited to, recipes, cuisine, culinary style, inventions, ideas, assets under research and development, know-how, methods, techniques, diagnostic tools, technology, specifications, customer and supplier lists, pricing and cost information, and business, technical and marketing plans and proposals); (v) all domain names, web addresses and websites; (vi) all computer software, in source code and object code form, and all related data and documentation; (vii) all other intellectual property and proprietary rights, whether or not subject to statutory registration; and (viii) all copies and tangible embodiments of all of the foregoing (i) through (vii) in any form or medium. Notwithstanding the foregoing, in no event shall the "Collateral" include, and Borrower shall not be deemed to have granted a security interest in, any contract, lease, license or other agreement (or any property subject thereto) which by its terms prohibits the granting of a security interest therein (except to the extent such prohibition is unenforceable pursuant to the provisions of Article 9 of the applicable UCC (as hereinafter defined) or other applicable law, and only for so long as such prohibition otherwise continues); provided that notwithstanding the foregoing, the term "Collateral" shall include any and all proceeds arising from such excluded property to the extent that the assignment or encumbering of such proceeds is not subject to the same or similar prohibitions or restrictions.

(b) This Agreement secures the following indebtedness and obligations (the "Obligations"):

(i) Payment of indebtedness evidenced by the Note and the Development Note together with all extensions, renewals, amendments and modifications of any thereof (collectively, the "Notes"); and

(ii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in, any Loan Document (other than the Environmental Indemnity Agreement) or Development Loan Document, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby.

(c) Borrower authorizes Lender to file such documents with the United States Patent and Trademark Office as may be necessary to give notice of this Agreement and perfect the security interest created hereunder (including, without limitation, filing a copy of this Agreement). Borrower also authorizes Lender to file financing statements with respect to the security interest of Lender, continuation statements with respect thereto, and any amendments to such financing statements which may be necessitated by reason of any of the changes described in Section 6.C of the Loan Agreement.

(d) Lender shall at all times have a perfected security interest in the Collateral that shall be prior to any other interests therein, but subject to Permitted Liens. Borrower shall do all acts and things, shall execute and file all instruments (including security agreements, UCC financing statements, continuation statements, etc.) reasonably requested by Lender to establish, maintain and continue the perfected security interest of Lender in the Collateral, and shall promptly on demand pay all costs and expenses of (1) filing and recording, including the costs of any searches deemed reasonably necessary by Lender from time to time to establish and determine the validity and the continuing priority of the security interest of Lender, and (2) all other claims and charges that in the reasonable opinion of Lender might prejudice, imperil or otherwise affect the Collateral (except to the extent that Borrower is contesting such claims or charges by appropriate proceedings conducted in good faith and with due diligence and neither the Collateral nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings and Borrower is maintaining adequate reserves in respect of such claims or charges on its books in accordance with GAAP) or otherwise adversely affect the security interest therein of Lender. Borrower agrees that a carbon, photographic or other reproduction of a security agreement or financing statement shall be sufficient as a financing statement. Lender is hereby irrevocably appointed Borrower's attorney-in-fact to take any of the foregoing actions if Borrower should fail to take such actions within a reasonable period of time after the same are requested by Lender or in the event of an emergency, which appointment shall be deemed coupled with an interest.

(e) Borrower shall promptly pay all taxes and other governmental charges levied or assessed upon or against the Collateral or upon or against the creation, perfection or continuance of the security interest created under this Agreement.

2. **Remedies for Default.** (a) Upon the occurrence and during the continuance of an Event of Default, Lender shall have all rights and remedies of a secured party in, to and against the Collateral granted by the Uniform Commercial Code in the State of Arizona (the "UCC") and otherwise available at law or in equity, including, without limitation: (1) the right to declare any or all payments due under the Notes and the other Loan Documents and Development Loan Documents immediately due and payable without any presentment, demand, protest or notice of any kind, except as otherwise expressly provided herein and therein, and Borrower hereby waives notice of intent to accelerate the Obligations and notice of acceleration; (2) the right to recover all fees and expenses (including reasonable attorney fees) in connection with the collection or enforcement of the Obligations, which fees and expenses shall constitute additional Obligations of Borrower hereunder; (3) the right to act as, and Borrower hereby constitutes and appoints Lender, Borrower's true, lawful and irrevocable attorney-in-fact (which appointment shall be deemed coupled with an interest) to demand, receive and enforce payments and to give receipts, releases, satisfaction for and to sue for moneys payable to Borrower under or with respect to any of the Collateral, and actions taken pursuant to this appointment may be taken either in the name of Borrower or in the name of Lender with the same force and effect as if this appointment had not been made; (4) the right to sell, lease, hold or otherwise dispose of all or any part of the Collateral; and (5) the right to sue for specific performance of any Obligations or to recover damages for breach thereof. If, upon the occurrence and during the continuance of an Event of Default, Lender proceeds to dispose of the Collateral in accordance with the provisions of the UCC,

10 days' notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the UCC requiring such notice.

(b) Lender shall be entitled to receive on demand, as additional Obligations hereunder, interest accruing at the Default Rate on all amounts not paid when due under this Agreement until the date of actual payment. Except to the extent required by applicable law, Lender shall have no duty to mitigate any loss to Borrower occasioned by enforcement of any remedy hereunder and shall have no duty of any kind to any subordinated creditor of Borrower. Neither the acceptance of this Agreement nor its enforcement shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Agreement and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents or Development Loan Documents to Lender, or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender.

(c) Should Lender exercise the rights and remedies specified in subsection (a) above, any proceeds received thereby shall be first applied to pay the costs and expenses, including reasonable attorneys' fees, incurred by Lender as a result of the Event of Default. The remainder of any proceeds, net of Lender's costs and expenses, shall be applied to the satisfaction of the Obligations and any excess paid over to Borrower.

(d) As long as no Event of Default has occurred and is continuing, Borrower may retain possession and use of the Collateral, subject to complying with the Loan Documents and Development Loan Documents.

3. **Applicable Law.** Borrower acknowledges that this Agreement was substantially negotiated in the State of Arizona, the Agreement was delivered in the State of Arizona, all payments under the Note will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. For purposes of any action or proceeding arising out of this Agreement, the parties hereto hereby expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona. Borrower consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Borrower waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. It is the intent of the parties hereto that all provisions of this Agreement shall be governed by and construed under the laws of the State of Arizona, without giving effect to its principles of conflicts of law. To the extent that a court of competent jurisdiction finds Arizona law inapplicable with respect to any provisions hereof, then, as to those provisions only, the laws of the state where the Collateral is located shall be deemed to apply. Nothing in this Section shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the state in which the Collateral is located to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under this Agreement, the other Loan Documents or the Development Loan Documents.

4. **Assignment.** Lender may assign in whole or in part its rights under this Agreement, subject to Lender retaining servicing rights with respect to the Loan and the Development Loan and, in the case of a Participation or a partial Transfer, Lender retaining a majority voting interest in the Loan and the Development Loan. Upon any unconditional assignment of Lender's entire right, obligations and interest hereunder, and the unconditional assumption by any transferee of all of such rights, obligations and interest, Lender shall automatically be relieved, from and after the date of such assignment, of liability for the performance of any obligation of Lender contained herein, subject to Lender retaining servicing rights with respect to the Loan and the Development Loan and, in the case of a Participation or a partial Transfer, Lender retaining a majority voting interest in the Loan and the Development Loan.

5. **Waiver.** No Event of Default hereunder by Borrower shall be deemed to have been waived by Lender except by a writing to that effect signed by Lender and no waiver of any Event of Default shall operate as a waiver of any other Event of Default on a future occasion. No modification, rescission, waiver, release or

amendment of any provision of this Agreement shall be made except by a written agreement signed by Borrower and Lender.

6. **Severability.** In case any one or more of the provisions contained herein or in the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such provision had never been contained herein or therein.

7. **Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Agreement shall be in writing and given in accordance with the notice provisions in the Loan Agreement.

8. **Counterparts.** This Agreement may be executed in any number of counterparts and each thereof shall be deemed to be an original, and all such counterparts shall constitute but one and the same instrument.

9. **Headings.** The headings appearing in this Agreement have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Agreement.

10. **Characterization; Interpretation.** It is the intent of the parties hereto that the business relationship created by the Notes, this Agreement, the other Loan Documents and the Development Loan Documents is solely that of creditor and debtor and has been entered into by both parties in reliance upon the economic and legal bargains contained in the Loan Documents and Development Loan Documents. None of the agreements contained in the Loan Documents or Development Loan Documents is intended, nor shall the same be deemed or construed, to create a partnership between Lender and Borrower, to make them joint venturers, to make Borrower an agent, legal representative, partner, subsidiary or employee of Lender, nor to make Lender in any way responsible for the debts, obligations or losses of Borrower.

Lender and Borrower acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Agreement after being fully advised by said counsel as to its effect and significance. This Agreement shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party.

11. **Time of the Essence.** Time is of the essence in the performance of each and every obligation under this Agreement.

12. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** LENDER, BY ACCEPTING THIS AGREEMENT, AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE RELATIONSHIP OF LENDER AND BORROWER, BORROWER'S USE OF THE COLLATERAL, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, BORROWER AND LENDER, BY ACCEPTING THIS AGREEMENT, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY BORROWER AND LENDER OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND

INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

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IN WITNESS WHEREOF, Borrower has executed this Agreement effective as of the day and year first above written.

BORROWER:

BRAZOS RESTAURANT ACQUISITION CORP., a
Delaware corporation

By Randall Fojtasek
Randall Fojtasek
Its President

U.S. Federal Tax Identification Number:

13-4259635

Organization Identification Number:

Delaware -- 3648895

Principal Place of Business:

Dallas, Texas

STATE OF TEXAS)
) SS.
COUNTY OF DALLAS)

The foregoing instrument was acknowledged before me on October 31, 2003 by Randall Fojtasek, President of Brazos Restaurant Acquisition Corp., a Delaware corporation, on behalf of the corporation.



Janice D. Thompson
Notary Public

My Commission Expires:

EXHIBIT A

PATENTS, TRADEMARKS AND COPYRIGHTS

Patents

None.

Trademarks

Mark	Registration Number	Registration Date
CHEDDAR'S	1,343,555	June 18, 1985
FISHDADDY'S SEAFOOD GRILL	2,720,689	June 3, 2003

Copyrights

None.