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

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

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

11-16-04

1. Name of conveying party(ies):

Blue Chalk Café

- Individual(s)
- General Partnership
- Corporation-State
- Other California
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: October 5, 2004

2. Name and address of receiving party(ies)

Name: Retail & Restaurant Growth Capital, L.P.

Internal

Address:

Street Address: 2701 E. Plano Pkwy, Suite 200

City: Dallas State: TX Zip: 75074

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- 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)

B. Trademark Registration No.(s) 2052404

Additional number(s) attached Yes No

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

Name: Julie H. Cooper

Internal Address: c/o Vinson & Elkins L.L.P.

Street Address: 2001 Ross Avenue, Suite 3800

City: Dallas State: TX Zip: 75201

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Julie H. Cooper

Julie H. Cooper

November 15, 2004

Name of Person Signing

Signature

Date

24

11/26/2004 DBYRNE

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

01 FC:8521

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

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SECURITY AGREEMENT, PLEDGE AND ASSIGNMENT

THIS SECURITY AGREEMENT, PLEDGE AND ASSIGNMENT dated as of October 5, 2004 (this "Agreement"), is made by BLUE CHALK CAFÉ, a California corporation (the "Borrower"), in favor of RETAIL & RESTAURANT GROWTH CAPITAL, L.P., a Delaware limited partnership (together with its successors and assigns, the "Lender").

PRELIMINARY STATEMENTS

1. Borrower has entered into a Note Agreement, dated as of October 5, 2004 (as the same may be amended, supplemented or otherwise modified from time to time, the "Note Agreement"), with Lender.
2. Pursuant to the Note Agreement, the Borrower issued a Note to Lender pursuant to the terms and conditions set forth therein.
3. It is a condition to the effectiveness of the transactions contemplated by the Note Agreement that the Borrower shall have entered into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and in order to induce the Lender to enter into the Note Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions. (a) Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note Agreement.

(b) All terms defined in the UCC (as defined below) shall have the respective meanings given those terms in the UCC.

(c) The following terms shall have the following meanings:

"Borrower" shall have the meaning specified in the first paragraph of this Agreement.

"Collateral" shall have the meaning specified in Section 2.

"Lender" shall have the meaning specified in the first paragraph of this Agreement.

"Note Agreement" shall have the meaning specified in the Preliminary Statements to this Agreement.

"Permitted Lien" shall mean any Lien expressly permitted under the terms of the Note Agreement.

"Pledged Securities" shall have the meaning specified in Section 2(i).

“UCC” shall mean shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of Texas; *provided, however,* in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than Texas, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection, or priority and for purposes of definitions related to such provisions.

SECTION 2. Pledge, Assignment and Grant of Security. The Borrower hereby assigns and pledges to the Lender, and hereby grants to the Lender, a security interest in, and Lien on, all of the Borrower’s right, title and interest in and to the following, whether now owned or hereafter acquired (the “Collateral”):

(a) all “equipment” (as defined in the UCC), including without limitation, any and all furniture, furnishings, vehicles and motor vehicles, and any and all additions, substitutions and replacements of any of the foregoing, wherever located, together with all improvements thereon and all attachments, components, parts, equipment and accessories installed thereon or affixed thereto;

(b) all “inventory” (as defined in the UCC), whether raw, in process or finished, all materials usable in processing the same and all documents of title covering any inventory, including without limitation, work in process, materials used or consumed in the Borrower’s business, whether now owned or hereafter acquired or manufactured by the Borrower and held for sale in the ordinary course of its business; all present and future substitutions therefor, parts and accessories thereof and all additions thereto; and all proceeds thereof and products of such inventory in any form whatsoever;

(c) all “accounts” (as defined in the UCC), including, without limitation, all of the Borrower’s rights to payment for goods sold or leased, or services performed, by the Borrower, whether now in existence or arising from time to time hereafter, and all rights to payment of any kind evidenced by or arising under or with respect to an account, contract, security agreement, or other evidence of indebtedness or security, together with (i) all security pledged, assigned, hypothecated or granted to or held by the Borrower to secure the foregoing, (ii) all of the Borrower’s right, title and interest in and to any goods, general intangibles or other Collateral, the sale of which gave rise thereto, (iii) all guarantees, credit support agreements, endorsements and indemnifications on, or of, any of the foregoing, (iv) all powers of attorney for the execution of any evidence of indebtedness or security or other writing in connection therewith, (v) all books, correspondence, credit files, records, ledger cards, invoices, and other papers relating thereto, including, without limitation, all similar information stored on a magnetic medium or other similar storage device and other papers and documents in the possession or under the control of the Borrower or any other Person, (vi) all credit information, reports and memoranda relating thereto, and (vii) all other writings related in any way to the foregoing;

(d) all “general intangibles” (as defined in the UCC) now or hereafter owned by the Borrower, including without limitation, (i) all construction, environmental and other licenses, permits and approvals of any Federal, State, municipal or other governmental department, commission, board, bureau, agency, court or other instrumentality, domestic or

foreign, now or hereafter held by the Borrower or in which the Borrower may have an interest, except that any such license, permit or approval which as a matter of law is not assignable is hereby excluded from such lien and security interest to the extent that and for such time as the same shall not be so assignable and (ii) all trademarks, trademark applications, trademark registrations, tradenames, business names, company names, business identifiers, prints, labels, trade styles and service marks (whether or not registered), including logos and/or designs, copyrights, patents, patent applications, goodwill of the Borrower's business symbolized by any of the foregoing, trade secrets, license rights, license agreements, permits, franchises, and any rights to tax refunds to which the Borrower is now or hereafter may be entitled;

(e) all policies of insurance, now or hereafter held by the Borrower, including, without limitation, casualty and liability, business interruption, and contingent business interruption and including all proceeds therefrom;

(f) all books, correspondence, credit files, records, invoices and other documents, including, without limitation, all tapes, cards, computer programs and other paper or documents now or hereafter in the possession or control of the Borrower or any Person acting for the Borrower;

(g) all balances, credits, deposits, "deposit accounts" (as defined in the UCC), "securities accounts" (as defined in the UCC), or monies whether now existing or hereafter held in the name or on behalf of the Borrower, whether in the possession or control of the Borrower or held by third parties together with all cash, cash equivalents, securities, investments, financial assets, security entitlements, payments, other amounts, and all other items of property from time to time held, maintained or carried in, or credited or deposited to, any deposit account, and all rights, claims and causes of action, if any, that the Borrower may have against any Person in respect of the foregoing;

(h) each and all leases, management agreements or other agreements now existing or hereafter entered into by the Borrower relating to the business and operations conducted by the Borrower, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof and of this Agreement and the Note Agreement (the agreements described in this subsection (h), as so amended, supplemented or modified, being the "Assigned Agreements"), including, without limitation, all rights of the Borrower (i) to receive moneys due and to become due under or pursuant to the Assigned Agreements, to compel performance and otherwise to exercise all remedies thereunder, including, without limitation, all rights to make determinations, to exercise any election or option contained in such agreements (including, but not limited to, termination thereof), to give or receive any notice or consent, to demand and receive any property which is the subject of any of the Assigned Agreements, to file any claims and generally to take any action which (in the opinion of the Lender) may be necessary or advisable in connection with any of the foregoing; (ii) to receive the proceeds of any claim for damages arising out of or for breach of any Assigned Agreement and proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements; and (iii) to any warranties, performance bonds or letters of credit of any manufacturer, contractor or subcontractor or any other Person pursuant to or relating to the Assigned Agreements;

(i) all of the following rights, interests and property: (i) any capital stock, limited partnership interests, limited liability company interests or other equity interests now or hereafter issued or granted to or held by the Borrower (the "Pledged Securities"), (ii) any and all proceeds or other sums arising from or by virtue of, and all dividends and distributions (cash or otherwise) payable and/or distributable with respect to, all or any of the Pledged Securities, (iii) all cash, securities, dividends, and other property at any time and from time to time receivable or otherwise distributed in respect of or in exchange for any or all of Pledged Securities or for any and all other property substituted or exchanged therefor, and (iv) all proceeds and products of the foregoing.

(j) to the extent not included in the foregoing: (i) all "goods" (as defined in the UCC); (ii) all "chattel paper" (as defined in the UCC); (iii) all "letters of credit" (as defined in the UCC); (iv) all "letter of credit rights" (as defined in the UCC); (v) all "instruments" (as defined in the UCC); (vi) all "documents" (as defined in the UCC); (vii) all "investment property" (as defined in the UCC); (viii) all "fixtures" (as defined in the UCC); and (ix) all other personal property of whatever kind or nature whatsoever of the Borrower; and

(k) all accessions and additions to, substitutions for, and all replacements, products and proceeds of any and all of the Collateral (including, without limitation, any proceeds which constitute property of the types described in subsections (a)-(j), above).

SECTION 3. Security for Obligations. This Agreement secures the prompt and complete payment and performance of all the Obligations. Without limiting the generality of the foregoing, this Agreement also secures the payment of all amounts which constitute part of the Obligations and would be owed by the Borrower to the Lender but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Borrower.

SECTION 4. Security Interest Absolute. All rights of the Lender and security interests hereunder, shall be absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of any of the Transaction Documents or any other agreement or instrument relating thereto;
- (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Transaction Documents or any other agreement or instrument relating thereto;
- (iii) any reduction, limitation, impairment or termination of any of the Obligations for any reason other than the written agreement of the Lender to terminate the Obligations in full, including any claim of waiver, release, surrender, alteration or compromise;
- (iv) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure

from any of the terms of the Note Agreement or any other Transaction Document, for all or any of the Obligations;

- (v) the failure of Lender to assert any claim or demand or to enforce any right or remedy against the Borrower or any other Person under the provisions of the Note Agreement or any other Transaction Document or otherwise, or to exercise any right or remedy against any other Person or collateral securing, any of the Obligations; or
- (vi) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Borrower or a third party pledger.

SECTION 5. Borrower Remains Liable. Anything herein to the contrary notwithstanding; (i) the Borrower shall remain liable under the Assigned Agreements and the other contracts and agreements included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed; (ii) the exercise by the Lender of any of the rights hereunder (other than following an acquisition of the Borrower's rights as a consequence of foreclosure, assumption or transfer of the Assigned Agreements or other contracts and agreements included in the Collateral) shall not release the Borrower from any of its duties or obligations under the Assigned Agreements and the other contracts and agreements included in the Collateral; and (iii) until assumed or transferred as aforesaid, the Lender shall have no obligation or liability under the Assigned Agreements and other contracts and agreements included in the Collateral by reason of this Agreement, nor shall the Lender be obligated to perform any of the obligations or duties of the Borrower thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 6. Representations and Warranties. The Borrower represents and warrants as follows:

(a) Except for the security interest granted to the Lender pursuant to this Agreement and the Permitted Liens, the Borrower owns each item of the Collateral free and clear of any and all Liens or claims of others. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed (i) in favor of the Lender pursuant to this Agreement, (ii) relating to Permitted Liens or (iii) in favor of other Persons whose Debt and/or Liens have been extinguished pursuant to the Reorganization Plan.

(b) This Agreement creates a valid and continuing security interest in the Collateral in favor of the Lender enforceable in accordance with the terms hereof subject to (i) bankruptcy, insolvency, moratorium and other similar laws now or hereafter in effect relating to or affecting creditors' rights generally and (ii) general principles of equity (regardless of whether considered in a proceeding at law or in equity).

(c) Upon completion of the filings and other actions specified on SCHEDULE 1 hereto (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Lender in completed and duly executed form), the security interests granted pursuant to this Agreement will constitute a perfected security interest in all of the Collateral in favor of the Lender prior to all other Liens on the Collateral in existence on the date hereof except for Permitted Liens. Any reference in this Agreement or the other Transaction Documents to Permitted Liens is not intended to and should not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created herein or by any of the other Transaction Documents to any Permitted Lien.

(d) Except for the filing of the appropriate financing statements and the other actions specified on SCHEDULE 1 hereto, no consent of any other Person and no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required: (i) for the grant by the Borrower of the pledge, assignment, lien and security interest granted hereby or for the execution, delivery or performance of this Agreement by the Borrower; (ii) for the validity, perfection or maintenance of the pledge, assignment, lien and security interest created hereby (including the first priority nature thereof); or (iii) for the exercise by the Lender of the rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement, except, in the case of the maintenance of perfection, for the filing of continuation statements under the UCC.

(e) "Blue Chalk Café" is the correct legal name of the Borrower. The Borrower's jurisdiction of incorporation is the State of California and its organizational identification number, federal tax identification number and mailing address are specified on SCHEDULE 2 hereto (except as such Schedule may be updated from time to time in accordance with Section 7(a)).

(f) All Pledged Securities in which the Borrower holds any beneficial or record interest are accurately listed and described in Schedule 3 hereto (as such Schedule may be updated from time to time in accordance with Section 7(f) hereof).

(g) SCHEDULE 4 hereto identifies all trademarks, trademark applications and trademark registrations of the Borrower.

SECTION 7. Covenants. Until the irrevocable payment in full of all Obligations, the Borrower hereby covenants and agrees:

(a) The Borrower shall not, except upon sixty (60) days' prior written notice to the Lender and delivery to the Lender of all additional financing statements and other documents reasonably requested by the Lender to maintain the validity, perfection and priority of the security interests provided for herein: (i) change its jurisdiction of incorporation, formation, or organization, as applicable; or (ii) change its name, identity or organizational structure. Each notice delivered pursuant to this Section 7(a) shall specify in reasonable detail any new inventory or equipment location or change in the jurisdiction of incorporation, organization, formation, name, identity or corporate structure as applicable. Upon receipt of such notice, SCHEDULE 2 shall be deemed to be updated to include such new or modified information (and the Lender

may, but shall not be required to, physically replace the existing SCHEDULE 2 with a new Schedule reflecting such additional or modified information).

(b) Except as otherwise provided in this subsection (b), the Borrower shall continue to collect, at its own expense, all amounts due or to become due to the Borrower under the Assigned Agreements. In connection with such collections, the Borrower may take (and during an Event of Default, at the Lender's direction shall take) such action as the Borrower or the Lender may deem necessary or advisable to enforce collection of the amounts due under the Assigned Agreements. The Borrower agrees and confirms that it will notify each party to the Assigned Agreements and each other account debtor or Borrower under the "accounts" (as defined in the UCC) of the grant of the security interest therein and assignment thereof to the Lender and instruct each of them that all payments due or to become due and all amounts payable to the Borrower thereunder shall be made directly to the Lender. In the event that the Borrower shall receive any amounts or payments directly from any party to the Assigned Agreements or from any other account debtor or other Borrower under any "account" (as defined in the UCC), the Borrower shall receive such payments in a constructive trust for the benefit of the Lender, shall segregate such payments from other funds of the Borrower, and shall forthwith transmit and deliver such payments to the Lender in the same form as so received (with any necessary endorsement). The Borrower shall not, except as specifically permitted by the Note Agreement, take any action in connection with any Assigned Agreement which would impair the security interest of the Lender.

(c) The Borrower shall not take or permit to be taken any action in connection with the Collateral which would impair in any material respect the value of the interest or rights of the Borrower therein or which would impair the interests or rights of the Lender therein or with respect thereto.

(d) The Borrower shall not sell, lease assign, pledge transfer or otherwise dispose of any of the Collateral, whether now owned or hereafter acquired, except as expressly permitted by the Note Agreement.

(e) (i) The Borrower shall maintain the security interest created by this Agreement as a first priority perfected security interest and shall defend such security interest against the claims and demands of all Persons whomsoever.

(ii) The Borrower shall furnish to the Lender from time to time, at the Borrower's sole cost and expense, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Lender may request, all in such detail as the Lender may request.

(iii) At any time and from time to time, upon the written request of the Lender, and at the sole expense of the Borrower, the Borrower will promptly and duly execute, deliver and/or have recorded with appropriate agencies such further instruments and documents and take such further actions as the Lender may request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted. Without limiting the generality of the foregoing, the Borrower will: (i) if any Collateral shall be evidenced by a promissory note or other instrument or chattel paper, deliver and pledge to the

Lender hereunder such note or instrument or chattel paper duly endorsed and accompanied by duly executed instruments of transfer of assignment, all in form and substance satisfactory to the Lender; and (ii) execute and file, with a copy thereof to the Lender, such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary, or as the Lender may reasonably request, in order to perfect and preserve the pledge, assignment and security interest granted or purported to be granted hereby.

(iv) Pursuant to the UCC and any other applicable laws, the Borrower authorizes the Lender to file or record financing statements and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Lender reasonably determines appropriate to perfect the security interests of the Lender under this Agreement. The Borrower hereby authorizes the Lender, at any time and from time to time, to file financing statements and amendments that describe the collateral covered by such financing statements as "all assets of the Borrower", "all personal property of the Borrower" or words of similar effect, in such jurisdictions as the Lender may deem necessary or desirable in order to perfect the security interests of the Lender under this Agreement. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

(v) This Section 7(e) and the obligations imposed on the Borrower by this Section 7(e) shall be interpreted as broadly as possible in favor of the Lender in order to effectuate the purpose and intent of this Agreement.

(f) Notify the Lender promptly in writing upon the acquisition by the Borrower of any Pledged Securities, which notice shall set forth all information with respect to such Pledged Securities as is set forth on Schedule 3 hereto with respect to the Pledged Securities owned by the Borrower on the date hereof. Upon receipt of such notice, Schedule 3 shall be deemed to be updated to include such Pledged Securities (and the Lender may, but shall not be required to, replace the existing Schedule 3 with a new Schedule reflecting such Pledged Securities). Nothing contained in this Section 7(f) shall permit the Borrower to invest in or hold any Security to the extent such investment is prohibited pursuant to the Note Agreement.

(g) If the Borrower shall become entitled to receive or shall receive any security certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the securities of any issuer of Pledged Securities, whether in addition to, in substitution of, as a conversion of, or in exchange for, any Pledged Securities, or otherwise in respect thereof, the Borrower shall accept the same as the agent of the Lender, hold the same in trust for the Lender and deliver the same forthwith to the Lender in the exact form received, duly indorsed by the Borrower in blank or accompanied by an undated stock power covering such certificate duly executed in blank by the Borrower and with, if the Lender so requests, signature guaranteed, to be held by the Lender, subject to the terms hereof, as additional Pledged Securities.

(h) Any sums paid upon or in respect of the Pledged Securities including any dividend or distribution or any amount paid upon the liquidation or dissolution of any issuer of any Pledged Securities shall be deposited directly into an account of the Lender to be held by it

hereunder as additional collateral security for the Obligations. In case any distribution of property upon or with respect to the Pledged Securities pursuant to the recapitalization or reclassification of the capital of any issuer of Pledged Securities or pursuant to the reorganization thereof, such non-cash proceeds so distributed shall, unless otherwise subject to a perfected security interest in favor of the Lender, be delivered to the Lender to be held by it hereunder as additional collateral security for the Obligations.

(i) Without the prior written consent of the Lender, the Borrower will not (i) vote to enable, or take any other action to permit, any issuer of Pledged Securities to issue any stock or other equity securities of any nature to any Person other than to the Borrower or to issue any other securities convertible into or granting the right to purchase or exchange for any stock, membership interests, or other equity securities of any nature of any such issuer (except to the extent such equity interests owned by the Borrower are pledged to the Lender hereunder), (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Pledged Securities or proceeds thereof (except pursuant to a transaction expressly permitted by the Note Agreement), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Pledged Securities or proceeds thereof, or any interest therein, except for Permitted Liens, or (iv) enter into any agreement or undertaking restricting the right or ability of the Borrower or the Lender to dispose of any of the Pledged Securities or Proceeds thereof (except, in the case of this clause (iv), in connection with a disposition expressly permitted by the Note Agreement).

SECTION 8. Lender Appointed Attorney-in-Fact. (a) The Borrower hereby irrevocably constitutes and appoints the Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Borrower and in the name of the Borrower or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, the Borrower hereby gives the Lender the power and right, on behalf of the Borrower, without notice to or assent by the Borrower, to do any or all of the following:

- (i) in the name of the Borrower or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Assigned Agreements or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Lender for the purpose of collecting any and all such moneys due under any Assigned Agreement or with respect to any other Collateral whenever payable;
- (ii) pay or discharge taxes and liens levied or placed on or threatened against the Collateral;
- (iii) execute, in connection with any sale provided for in Section 10 hereof, any endorsements, assignments or other instruments or

documents of conveyance or transfer with respect to the Collateral;
and

- (iv) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Lender or as the Lender shall direct; (B) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents (including, without limitation, any negotiable documents) in connection with any of the Collateral; (D) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) defend any suit, action or proceeding brought against the Borrower with respect to any Collateral; (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Lender may deem appropriate; and (G) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner thereof for all purposes, and do, at the Lender's option and the Borrower's expense, at any time, or from time to time, all acts and things which the Lender deems necessary to protect, preserve or realize upon the Collateral and the Lender's security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Borrower might do.

Anything in this Section 8(a) to the contrary notwithstanding, the Lender agrees that it will not exercise any rights under the power of attorney provided for in this Section 8(a) unless an Event of Default shall have occurred and be continuing.

(b) The Lender may (but without any obligation to do so) (i) perform or satisfy any of the Borrower's obligations under or pursuant to this Agreement and the other Transaction Documents which remain unsatisfied (after providing any notice and opportunity to cure to which the Borrower is entitled under any other provision of any Transaction Document, if any), and (ii) take all other actions and pay such amounts and claims as the Lender determines in its sole but reasonable discretion, is necessary or appropriate to protect the rights and interests of the Lender under this Agreement and the other Transaction Documents to preserve and protect the Collateral or any part thereof from loss.

(c) The expenses of the Lender incurred in connection with actions undertaken as provided in this Section 8, together with interest thereon at 18%, from the date of

payment by the Lender to the date reimbursed by the Borrower, shall be payable by the Borrower to the Lender on demand.

(d) The Borrower hereby ratifies all that said attorneys shall lawfully do or cause to be done pursuant to the powers granted in this Section 8. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

SECTION 9. Duty of the Lender. The Lender's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under the UCC or otherwise, shall be to deal with it in the same manner as the Lender deals with similar property for its own account. Neither the Lender, nor any of its respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Borrower or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Lender hereunder are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon the Lender to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to the Borrower for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 10. Right of the Lender to Take Possession and Foreclose. If any Event of Default shall have occurred and be continuing, the Lender shall:

(a) have the right and power to take possession of the Collateral and of any and all books of account and records of the Borrower relating to any of the Collateral;

(b) have the right to place the Lender's representatives upon any premises on which the Collateral or any part thereof or any such books of account or records may be situated with full power to remove the same therefrom;

(c) have the right to enforce all remedies, rights, powers and privileges of the Borrower under any or all of the Assigned Agreements; and/or substitute itself or any nominee or trustee of the Lender in lieu of the Borrower as party to any of the Assigned Agreements and to notify the Borrower of any "account" (as defined in the UCC) that all payments and performance under the relevant agreements and accounts shall be made or rendered to the Lender or such other Person as the Lender may designate;

(d) have the right to exclude the Borrower and all persons claiming under the Borrower from any access to the Collateral or to any part thereof, and the Lender and such representatives are hereby granted the irrevocable license to enter upon such premises for such purpose;

(e) unless an Event of Default shall have occurred and be continuing, the Borrower shall be permitted to receive all cash dividends, payments or other Proceeds paid in respect of the Pledged Securities, and exercise all voting and corporate rights with respect to the Pledged Securities;

(f) if an Event of Default shall occur and be continuing and to the extent permitted by applicable law, upon the written request of the Lender, any or all of the Pledged Securities shall be registered in the name of the Lender or its nominee, and the Lender or its nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Pledged Securities at any meeting of shareholders or members of the relevant issuer or issuers thereof or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Securities as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Pledged Securities upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate structure of any issuer of Pledged Securities, or upon the exercise by the Borrower or the Lender of any right, privilege or option pertaining to such Pledged Securities, and in connection therewith, the right to deposit and deliver any and all of the Pledged Securities with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Lender may determine), all without liability except to account for property actually received by it, but the Lender shall have no duty to the Borrower to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing;

(g) the Borrower hereby authorizes and instructs each issuer of Pledged Securities to (i) comply with any instruction received by such issuer from the Lender in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from the Borrower, and the Borrower agrees that each issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends or other payments with respect to the Pledged Securities directly to the Lender; and

(h) have to the right to exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC to enforce this Agreement and the security interests contained herein.

The Lender may require the Borrower to assemble the Collateral or any part thereof and to make the same (to the extent same is moveable) available to the Lender at a place to be designated by the Lender which is reasonably convenient to the Borrower and the Lender. The Lender may render the Collateral or any part thereof unusable without removing the same from the premises on which it may be situated, and may sell the same on the premises of the Borrower if such Collateral or part thereof is situated thereon. The Lender may make formal application for the transfer of all of the Borrower's permits, licenses, approvals, and the like relating to the Collateral or to the Borrower's business to the Lender or to any assignee of the Lender or to any purchaser of any of the Collateral to, the extent the same are assignable in accordance with their terms and applicable law. The Lender will send the Borrower notification of disposition of any or all of the Collateral at least ten (10) days prior to the earliest time of disposition set forth in such notice (which notice shall for all purposes be deemed commercially reasonable) and such notice shall include the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made.

In addition to exercising the foregoing rights, the Lender may, to the extent permitted by law, arrange for and conduct the sale of the Collateral at a public or private sale, as the Lender may elect, which sale may be conducted by an employee or representative of the Lender, and any such sale shall be considered or deemed to be a sale made in a commercially reasonable manner. The Lender may release temporarily or otherwise to the Borrower any item of Collateral of which the Lender has taken possession pursuant to any right granted to the Lender by this Agreement without waiving any rights granted to the Lender under this Agreement, the Note Agreement, the other Transaction Documents or any other agreement related hereto or thereto.

The Lender may be a purchaser of the Collateral or any part thereof or any right or interest therein at any sale thereof, whether pursuant to foreclosure, power of sale or otherwise hereunder and the Lender may apply the purchase price to the payment of the Obligations secured hereby. Any purchaser of all or any part of the Collateral shall, upon any such purchase, acquire good title to the Collateral so purchased, free of the security interests created by this Agreement.

SECTION 11. Right of the Lender to Use, Operate and Maintain Collateral. (a) Upon the Lender's taking possession of all or any part of the Collateral in accordance with the terms of this Agreement or otherwise, the Lender shall have the right to hold, store, and/or use, operate, manage, and control the same. Upon any such taking of possession, the Lender may (but shall not be obligated to), from time to time, at the expense of the Borrower, make all such repairs, replacements, alterations, additions, and improvements to and of all or any, of the Collateral as the Lender may deem proper. In any such case, the Lender shall have the right to exercise all rights and powers of the Borrower in respect of the Collateral or any part thereof as the Lender shall deem proper, including the right to enter into any and all such agreements with respect to the leasing and/or operation of the Collateral or any part thereof as the Lender may see fit, and the, Lender shall be entitled to collect and receive all rents, issues, profits, fees, revenues, and other income of the wine and every part thereof.

(b) The powers conferred on the Lender hereunder are solely to protect its interest in the Collateral and shall not impose any duty on it to exercise any such powers. Except for the reasonable care and preservation of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Lender shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

SECTION 12. Right of the Lender to Appoint Receiver. Upon the occurrence and during the continuation of any Event of Default, the Lender shall, as a matter of right, and without any requirement of notice, to the extent permitted under applicable law, be entitled to appoint a receiver for all or any part of the Collateral whether such receivership be incidental to a proposed sale of the Collateral or otherwise. All disbursements made by the receiver under this Section 12 and the expenses of receivership shall be added to and be a part of the Obligations, and, whether or not said principal sum, including such disbursements and expenses, exceeds the indebtedness originally intended to be secured hereby, the entire amount of said sums, including such disbursements and expenses, shall be secured by this Agreement and shall be due and payable upon demand therefor and thereafter shall bear interest at 18%.

SECTION 13. Remedies Cumulative: Delay Not Waiver. The rights and remedies of the Lender under the Note Agreement, this Agreement, the other Transaction Documents, or any other related agreement are cumulative and shall in no way affect, or deprive the Lender of, or be deemed to constitute a waiver by the Lender of any other rights or remedies allowed to the Lender at law or in equity. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other notice or demand in similar or other circumstances and the exercise of any one remedy shall not impair the, Lender's right simultaneously or at any time or in any order to exercise any other remedy nor shall the exercise of any remedy in one case impair or otherwise affect the Lender's right or ability to exercise such remedy contemporaneously or again in the same case or in any other case. No failure or delay by the Lender in exercising any right or power, hereunder shall operate as a waiver, thereof, nor shall any single-or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

SECTION 14. Waiver of Rights. To the extent permitted under applicable law, the Borrower waives all rights and remedies of a debtor or Borrower under the UCC or other applicable law, and all formalities prescribed by law relative to the sale or disposition of the Collateral (other than notice of sale) after the occurrence and during the continuation of an Event of Default and all other rights and remedies of the Borrower with respect thereto. In exercising its right to take possession of the Collateral upon the occurrence and during the continuation of an Event of Default hereunder, the Lender, personally or by its agents or attorneys, and subject to the rights of any tenant under any lease or sublease of the Collateral, to the fullest extent permitted by law, may enter upon any land owned or leased by the Borrower without being guilty of trespass or any wrongdoing, and without liability for damages thereby occasioned. In the event the Lender elects to proceed with respect to the Collateral, separately from any real property, the Lender shall give the Borrower at least ten (10) days' prior notice of the intended disposition of the Collateral (which notice shall for all purposes be deemed to be commercially reasonable).

SECTION 15. Application of Proceeds. All cash proceeds received by the Lender in respect of any sale of, collection from, or other realization upon all or any part of the Collateral pursuant to this Agreement shall be held and applied by the Lender pursuant to the Note Agreement. The Borrower shall remain liable for any deficiency. Any surplus of such cash or cash proceeds held by the Lender and remaining after payment in full in cash of all the Obligations shall be paid over to the Borrower or to whomsoever may be lawfully entitled to receive such surplus.

SECTION 16. Indemnity and Expenses. (a) The Borrower agrees to indemnify and hold the Lender and its officers, directors, employees, professional advisors and Affiliates (each an "Indemnified Person") harmless from and against any and all liabilities (including reasonable attorney fees), obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against any Indemnified Person, in any way relating to or arising out of this Agreement, or any investigation, litigation or other proceeding relating to this Agreement (including, without limitation, enforcement of this Agreement), or the performance of its duties as Lender hereunder or any action taken or omitted by the Lender, in its capacity as such, under or in connection with any of the foregoing; provided that the Borrower shall not be liable for the payment of any

portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent that any of the foregoing result from such Indemnified Person's gross negligence or willful misconduct.

(b) The Borrower will, within ten (10) Business Days after receipt of an invoice by the Borrower, upon demand pay to the Lender the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel (and any local counsel) and of any experts and agents, which the Lender may incur in connection with: (i) the administration of this Agreement; (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral; (iii) the exercise or enforcement (whether through negotiations, legal proceedings or otherwise) of any of the rights of the Lender hereunder; or (iv) the failure by the Borrower to perform or observe any of the provisions hereof.

SECTION 17. Amendments; Etc. No amendment or waiver of any provision of this Agreement, and no consent to any departure by the Borrower herefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Lender, and then such waiver or consent shall be effective only in the specific instances and for the specific purpose for which given. No delay on the part of the Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial waiver by the Lender of any right, power or remedy preclude any further exercise thereof, or the exercise of any other right, power or remedy.

SECTION 18. Addresses for Notices. All notices and other communications provided for hereunder shall be in writing and shall be personally delivered or sent by an overnight courier, by facsimile transmission or by United States Mail, certified mail, postage prepaid and return receipt requested, if to the Borrower or to the Lender, at their respective addresses specified in the Note Agreement, or, as to either party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and other communications which are delivered by hand or overnight courier shall be deemed received upon delivery. Notices which are delivered by facsimile shall be deemed delivered when delivery is confirmed by the sending party's facsimile machine on the day sent, if received during normal business hours on a normal business day and followed by hard copy via overnight mail for receipt the next Business Day, and otherwise on the next succeeding Business Day after such receipt. Notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received after three (3) days after the date of mailing.

SECTION 19. Survival. (a) All agreements, statements, representations and warranties made by the Borrower herein or in any certificate or other instrument delivered by the Borrower or on its behalf under this Agreement shall be considered to have been relied upon by the Lender and shall survive the execution and delivery of this Agreement and the other Transaction Documents regardless of any investigation made by the Lender or on its behalf.

(b) The indemnity obligations of the Borrower contained in Section 16 shall continue in full force and effect notwithstanding full payment of the Note under the Note Agreement and all of the other Obligations and notwithstanding the discharge thereof.

SECTION 20. Severability. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of any provision in any other jurisdiction.

SECTION 21. Continuing Security Interest: Release. This Agreement shall create a continuing security interest in the Collateral and shall: (i) remain in full force and effect until the irrevocable payment in full of all Obligations; (ii) be binding upon the Borrower, its successors and assigns, *provided*, that the Borrower may not transfer or assign any or all of its rights or obligations hereunder without the prior written consent of the Lender; and (iii) inure to the benefit of, and be enforceable by, the Lender and its respective successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), the Lender may assign or otherwise transfer all or any portion of its rights in the Obligations to the extent and in the manner provided in the Note Agreement, and such assignee shall thereupon become vested with all the benefits in respect thereof granted to Lender herein or otherwise. Upon the payment in full of the Obligations, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to the Borrower. Upon any such termination, the Lender will, at the Borrower's expense, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

SECTION 22. Reinstatement. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by the Lender in respect of the Obligations is rescinded or must otherwise be restored or returned by the Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or upon the appointment of any intervenor or conservator of, or trustee or similar official for, the Borrower or any substantial part of its assets, or otherwise, all as though such payments had not been made.

SECTION 23. GOVERNING LAW; TERMS. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF TEXAS.

SECTION 24. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. (a) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Courts of the State of Texas and of the United States District Court for the Northern District of Texas, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Texas State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or Apex in the courts of any jurisdiction.

(b) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section 24. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 18 hereof. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(d) BORROWER AND LENDER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

SECTION 25. Incorporation by Reference. Any provisions of the Note Agreement (together with definitions as used therein and the ancillary provisions related thereto) that are incorporated by reference herein shall be incorporated herein, *mutatis mutandis*.

SECTION 26. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.


SECTION 27. Headings. The headings of the various articles, sections and paragraphs of this Agreement are for convenience of reference only, do not constitute a part hereof and shall not affect the meaning or construction of any provision hereof.

SECTION 28. Conflicting Terms. To the extent a term or provision of this Agreement conflicts with the Note Agreement and is not dealt with more specifically herein, the Note Agreement shall control with respect to such term or provision.

[Signature page follows]

IN WITNESS WHEREOF, the Borrower has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

BLUE CHALK CAFÉ

By: 
Name: marc premierg
Title: Pres. owner

SCHEDULE 1

PERFECTION ACTION

1. UCC-1 Financing Statement filed with the Secretary of State of California.
2. A copy of this Agreement filed with the United States Patent and Trademark Office

SCHEDULE 2

ORGANIZATIONL INFORMATION

Name: Blue Chalk Café

Jurisdiction of Incorporation: California

Organizational Identification Number: 1845812

Federal Tax Identification Number: 77-0329698

Mailing Address: Blue Chalk Café Corporation
600 International Parkway, Suite 1000
Plano, Texas 75093
Attention: M. Bromberg

SCHEDULE 3
PLEDGED SECURITIES

None

SCHEDULE 4
TRADEMARKS

Mark: MISCELLANEOUS DESIGN (dancing man pointing to the left)
Registration Date: April 15,1997
International Class: 042
Registration No: 2052404

SCHEDULE 4
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