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01-15-2002



Form PTO-1594  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)  
Tab settings

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TRADEMARK

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.

<p>1. Name of conveying party(ies):</p> <p><u>Milo's Franchise Company, Inc.</u></p> <p><input type="checkbox"/> Individual(s)      <input type="checkbox"/> Association  <input type="checkbox"/> General Partnership      <input type="checkbox"/> Limited Partnership  <input checked="" type="checkbox"/> Corporation-State (AL)  <input type="checkbox"/> Other _____</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies)</p> <p>Name: <u>First Commercial Bank</u>  Internal <u>c/o Fred Elliott</u>  Address: _____</p> <p>Street Address: <u>800 Shades Creek Parkway</u>  City: <u>Birmingham</u> State: <u>AL</u> Zip: <u>35202</u></p> <p><input type="checkbox"/> Individual(s) citizenship _____  <input type="checkbox"/> Association _____  <input type="checkbox"/> General Partnership _____  <input type="checkbox"/> Limited Partnership _____  <input checked="" type="checkbox"/> Corporation-State <u>Alabama</u>  <input type="checkbox"/> Other _____</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No  (Designations must be a separate document from assignment)  Additional name(s) &amp; address(es) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment      <input type="checkbox"/> Merger  <input checked="" type="checkbox"/> Security Agreement      <input type="checkbox"/> Change of Name  <input type="checkbox"/> Other _____</p> <p>Execution Date: _____</p>	

<p>4. Application number(s) or registration number(s):</p> <p>A. Trademark Application No.(s) <u>732 72 882</u></p>	<p>B. Trademark Registration No.(s) <u>1178661</u></p> <p>Additional number(s) attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
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<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Dawn Helms Sharff</u></p> <p>Internal Address: <u>c/o Walston, Wells, Anderson &amp; Baird</u>  <u>505 20th Street N., Suite 500</u></p> <p>Street Address: _____</p> <p>City: <u>Birmingham</u> State: <u>AL</u> Zip: <u>35203</u></p>	<p>6. Total number of applications and registrations involved: ..... <input type="checkbox"/></p> <p>7. Total fee (37 CFR 3.41)..... <u>\$40.00</u></p> <p><input checked="" type="checkbox"/> Enclosed  <input type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number: _____</p> <p>(Attach duplicate copy of this page if paying by deposit account)</p>
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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.*

Dawn Helms Sharff, Esq.      [Signature]      1/8/02  
Name of Person Signing      Signature      Date

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

01/14/2002 DBYRNE 00000673 73272882 40.00 OP

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

TRADEMARK  
REEL: 002422 FRAME: 0759

## TRADEMARK AND COPYRIGHT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS TRADEMARK AND COPYRIGHT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT (this "Agreement") dated as of January 2, 2002, is executed and delivered by **Milo's Franchise Company, Inc.**, an Alabama corporation (the "Debtor"), in favor of **First Commercial Bank**, a state banking corporation (the "Secured Party").

### Recitals

A. Dean E. Chitwood (the "Borrower") has applied to the Secured Party for a loan in the principal amount of \$5,000,000, to finance a loan from the Borrower to the Debtor to facilitate the acquisition by the Debtor of all franchise rights, trademarks, royalties and certain other assets of the Milo's Hamburgers franchise (the "Loan"). The terms governing the Loan are set forth in that certain Loan Agreement dated of even date herewith, executed by and between the Borrower and the Secured Party (the "Loan Agreement").

B. The Secured Party's agreement to make the Loan has been conditioned on the Debtor's agreement to execute this Agreement as security for the Liabilities.

### Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree as follows:

Section 1. Security Interest in Trademarks. To secure the prompt and complete payment, observance and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the Liabilities, the Debtor hereby collaterally assigns to the Secured Party and grants to the Secured Party a security interest in, with power of sale to the extent permitted by applicable law, all of the Debtor's right, title and interest in, to and under all of the following, whether now owned or existing or hereafter acquired or arising (collectively, the "Trademark Collateral"): (a) all trademarks, trademark applications, service marks, and service mark applications, including without limitation, the registered trademarks, trademark applications, service marks and service mark applications listed on Schedule 1 attached hereto and made a part hereof, and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) all of the Debtor's rights corresponding thereto throughout the world, all of the foregoing described in this clause (a) collectively, the "Trademarks"; (b) the goodwill of the Debtor's business connected with and symbolized by the Trademarks; and (c) Related Assets (as defined in Section 24 below) and all products and proceeds relating to any of the foregoing.

Section 2. Security Interest in Copyrights. To secure the prompt and complete payment, observance and performance when due (whether at stated maturity, by acceleration or otherwise) of

all of the Liabilities, the Debtor hereby collaterally assigns to the Secured Party and grants to the Secured Party a security interest in, with power of sale to the extent permitted by applicable law, all of the Debtor's right, title and interest in, to and under all of the following, whether now owned or existing or hereafter acquired or arising (collectively, the "Copyright Collateral", and together with the Trademark Collateral, the "Collateral"): (a) all copyrights and copyright applications, including without limitation, the registered copyrights and copyright applications listed on Schedule 2 attached hereto and made a part hereof, and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) all of the Debtor's rights corresponding thereto throughout the world; and (b) all books and records relating to any of the foregoing and all products and proceeds relating to any of the foregoing.

**Section 3. Restrictions on Future Agreements.** So long as no Event of Default has occurred and is continuing, the Secured Party hereby grants to the Debtor the exclusive right and license to use the Collateral. The Debtor shall not enter into any agreement, including without limitation, any license or royalty agreement, which purports to transfer or assign any interest in any of the Collateral (including, without limitation, the license granted herein) to any Person, except that so long as no Event of Default has occurred and is continuing, the Debtor may enter into license or royalty agreements with respect to the Collateral so long as such agreements are collaterally assigned to the Secured Party pursuant to the terms hereof. The Debtor will not take any action or fail to take any action, and the Debtor will use its best efforts to prevent any action by any Person, which would adversely affect the validity or enforceability of the rights in the Collateral transferred by the Debtor to the Secured Party under this Agreement or the rights associated with any of the Collateral.

**Section 4. New Collateral.** The Debtor represents and warrants that Schedules 1 and 2 are true, correct and complete listings of all of the applications and registrations for trademarks, service marks and copyrights of the Debtor. If, prior to the termination of this Agreement, the Debtor shall obtain rights to any other trademarks, trademark applications, service marks, service mark applications, copyrights, copyright applications or other property which constitutes or would constitute Collateral, or the Debtor shall register any Trademark Collateral with the United States Patent and Trademark Office ("USPTO") which Trademark Collateral is not so registered as of the date hereof, or the Debtor shall register any Copyright Collateral with the United States Copyright Office ("USCO") which Copyright Collateral is not so registered as of the date hereof, the Debtor shall promptly so notify the Secured Party in writing. Upon such occurrence, the Debtor shall, at the request of the Secured Party and at the Debtor's sole cost and expense, execute and deliver any and all agreements, instruments, documents, and papers as the Secured Party may reasonably request to subject such other trademarks, trademark applications, service marks, service mark applications, copyrights, or copyright applications or other property to the conditional assignment and security interest effected hereby and/or to perfect such conditional assignment and security interest.

**Section 5. Representations.** The Debtor represents and warrants to the Secured Party that:

(a) All of the Trademark Collateral is subsisting and no Trademark Collateral has been adjudged invalid or unenforceable in whole or in part;

(b) The Trademark Collateral (other than any trademark or service mark application) is (and, to the knowledge of the Debtor, any trademark or service mark application of the Debtor is) valid and enforceable and no claim has been made that the use of any of the Trademark Collateral infringes upon the rights of any Person;

(c) The Debtor (i) is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to all Trademark Collateral (other than any trademark or service mark application), free and clear of any liens, and (ii) to the knowledge of the Debtor, is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to the Collateral consisting of any trademark or service mark application, free and clear of any liens;

(d) All of the Copyright Collateral is subsisting and no Copyright Collateral has been adjudged invalid or unenforceable in whole or in part;

(e) The Copyright Collateral (other than any copyright application) is (and, to the knowledge of the Debtor, any copyright application of the Debtor is) valid and enforceable and no claim has been made that the use of any of the Copyright Collateral infringes upon the rights of any Person;

(f) The Debtor (i) is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to all Copyright Collateral (other than any copyright application), free and clear of any liens, and (ii) to the knowledge of the Debtor, is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to the Collateral consisting of any copyright application, free and clear of any liens;

(g) Schedule 5 hereof sets forth all material license and royalty agreements or other arrangements regarding or in any way relating to any Collateral (the "License Agreements") and no item set forth on Schedule 5 hereof prohibits or limits the Debtor in any way from granting to the Secured Party the collateral assignment and security interest effected by this Agreement;

(h) The Debtor has used, and will continue to use, proper statutory and other appropriate proprietary notices in connection with its use of the Collateral; and

(i) The Debtor has used, and will continue to use for the duration of this Agreement, consistent standards of quality in manufacture and provision of products and services sold or provided under the trademarks included in the Collateral.

Section 6. Royalties, No Liability. The Secured Party's interest in the Collateral as granted and authorized by the Debtor hereunder shall be coextensive with the Debtor's interest in the Collateral and shall not create any liability for the payment of royalties or other charges from the Secured Party to the Debtor. Notwithstanding any other provision of this Agreement to the contrary, the Debtor expressly acknowledges and agrees that it shall continue to observe and perform all of

the conditions and obligations contained in any License Agreements to be observed and performed by the Debtor, and that neither this Agreement, nor any action taken pursuant hereto, shall cause the Secured Party to be under any obligation or liability in any respect whatsoever to any party to any License Agreement or to any other Person for the observance or performance of any of the representations, warranties, conditions, covenants, agreements or terms therein contained.

Section 7. Right to Inspect. The Secured Party shall have the right from time to time, upon reasonable notice and during normal business hours, to enter upon the Debtor's premises and to examine the Debtor's books, records and operations relating to the Collateral. After the occurrence and during the continuance of an Event of Default, the Debtor agrees that the Secured Party shall have the right to take any and all actions to preserve the Collateral and prosecute any and all infringements thereon.

Section 8. Termination of Collateral Assignment and Security Interest. This Agreement is made for collateral security purposes only. Upon the indefeasible payment in full of all of the Liabilities, this Agreement shall terminate and the Secured Party shall execute and deliver to the Debtor, at the Debtor's sole cost and expense, all termination statements, releases, reassignments and other instruments as the Debtor may reasonably request to terminate the Secured Party's security interest in, and collateral assignment of, the Collateral. Any affidavit, certificate or other written statement of any officer of the Secured Party stating that any part of the Liabilities remains unpaid or unperformed, shall be and constitute conclusive evidence of the continuing effectiveness of this Agreement and any Person receiving any such affidavit, certificate or statement, may, and is hereby authorized to, rely thereon.

Section 9. Additional Obligations of the Debtor.

(a) The Debtor shall take all reasonable and necessary action to preserve and maintain all of the Debtor's rights in (i) the Collateral and, (ii) trademarks and servicemarks registered after the date hereof, including without limitation, making timely filings with the USPTO and the USCO for renewals and extensions and diligently monitoring unauthorized use of the Collateral. Any expenses incurred in connection with the foregoing shall be borne by the Debtor.

(b) The Debtor shall notify the Secured Party promptly if the Debtor knows that any application or registration relating to any Collateral may become abandoned or knows of any material adverse determination or development (including without limitation, the institution of, or any such determination or development in, any proceeding in the USPTO, USCO or any court) regarding the Debtor's ownership of or the Secured Party's interest in, any Collateral, their right to register the same, or their right to keep and maintain the same.

(c) The Debtor will, at the Debtor's sole cost and expense, take or cause to be taken all reasonable and necessary steps and actions, including without limitation, in any proceeding before the USPTO, USCO or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to use its best efforts to obtain the relevant registration) and to maintain the Collateral, including without limitation, filing of applications for renewal and payment of maintenance fees. In the event Debtor fails to take such necessary steps

or actions in a manner to insure deadlines for such filings are met, the Secured Party may, in its sole discretion and at Debtor's expense, take such necessary steps and actions in the name of the Debtor in order to preserve the Collateral.

(d) If any of the Collateral is infringed by any Person, the Debtor shall notify the Secured Party promptly after either Borrower learns thereof. At the Secured Party's request, and at the Debtor's sole cost and expense, the Debtor shall promptly take such actions, which may include bringing any claim for infringement and for recovery of any and all damages for such infringement (with counsel reasonably acceptable to the Secured Party, if counsel is necessary) as shall be appropriate under the circumstances to protect such Collateral.

Section 10. Right to Sue. If an Event of Default has occurred and is continuing, the Secured Party shall have the right, but not the obligation, to bring suit in its own name or in the name of the Debtor to enforce any rights pertaining to the Collateral and, if the Secured Party shall commence any such suit. The Debtor shall, at the request of the Secured Party and at the sole cost and expense of the Debtor, cooperate fully to the extent requested by the Secured Party in aid of such enforcement. The Debtor shall, upon demand, promptly reimburse the Secured Party for all reasonable costs and expenses incurred by the Secured Party in the exercise of such enforcement (including without limitation, the reasonable fees and expenses of attorneys, paralegals, accountants, and other experts).

Section 11. Exercise of Rights and Remedies upon an Event of Default. In addition to any right or remedy that the Secured Party may have under the Loan Documents or otherwise under applicable law, if an Event of Default shall have occurred, the Secured Party may exercise any and all the rights and remedies of a secured party under the Uniform Commercial Code as in effect in any applicable jurisdiction (the "Code") and may otherwise sell, assign, transfer, endorse and deliver the whole or, from time to time, any part of the Collateral at a public or private sale, for cash, upon credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Secured Party shall deem appropriate. Each purchaser at any sale of Collateral shall take and hold the property sold absolutely free from any claim or right on the part of the Debtor, and the Debtor hereby waives (to the fullest extent permitted by applicable law) all rights of redemption, stay and/or appraisal which the Debtor now has or may at any time in the future have under any applicable law now existing or hereafter enacted. The Debtor agrees that, to the extent notice of sale shall be required by applicable law, at least five (5) days' prior written notice to the Debtor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification, but notice given in any other reasonable manner or at any other reasonable time shall constitute reasonable notification. Such notice, in case of public sale, shall state the time and place for such sale, and, in the case of sale on a securities exchange, shall state the exchange on which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such exchange. Any such public sale shall be held at such time or times and at such place or places as the Secured Party may fix and shall state in the notice or publication (if any) of such sale. At any such sale, the Collateral, or portion thereof to be sold, may be sold in one lot as an entirety or in separate parcels, as the Secured Party may determine in its sole and absolute discretion. The Secured Party shall not be obligated to make any sale of the Collateral if it shall determine not to do so regardless of the fact that notice of sale of the Collateral may have

been given. The Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case the sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Secured Party until the sale price is paid by the purchaser or purchasers thereof, but the Secured Party shall not incur any liability to the Debtor in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public sale made pursuant to this Agreement, the Secured Party, to the extent permitted by applicable law, may bid for or purchase, free from any right of redemption, stay and/or appraisal on the part of the Debtor (all said rights being also hereby waived and released to the extent permitted by applicable law), any part of or all the Collateral offered for sale and may make payment on account thereof by using any claim then due and payable to the Secured Party from the Debtor as a credit against the purchase price, and the Secured Party may, upon compliance with the terms of sale and to the extent permitted by applicable law, hold, retain and dispose of such property without further accountability to the Debtor therefor. For purposes hereof, a written agreement to purchase all or any part of the Collateral shall be treated as a sale thereof, the Secured Party shall be free to carry out such sale pursuant to such agreement and the Debtor shall not be entitled to the return of any Collateral subject thereto, notwithstanding the fact that after the Secured Party shall have entered into such an agreement all Events of Default may have been remedied or the Liabilities may have been paid in full as herein provided.

Section 12. Application of Proceeds. All proceeds from each sale of, or other realization upon, all or any part of the Collateral following an Event of Default shall be applied by the Secured Party in the order deemed appropriate by the Secured Party.

Section 13. Secured Party Appointed Attorney-in-Fact. The Debtor hereby irrevocably appoints the Secured Party as the Debtor's attorney-in-fact, with full authority in the place and stead of the Debtor and in the name of the Debtor or otherwise, from time to time, upon the occurrence and during the continuance of an Event of Default, in the Secured Party's discretion, to take any action and to execute any instrument which the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement and to exercise any rights and remedies the Secured Party may have under this Agreement or applicable law, including, without limitation, (a) to obtain and adjust insurance required to be maintained pursuant to the Loan Documents; (b) 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; (c) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) or (b) above; and (d) to file any claims or take any action or institute any proceedings which the Secured Party may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Secured Party with respect to any of the Collateral. The power-of-attorney granted hereby shall be irrevocable and coupled with an interest.

Section 14. The Secured Party's Duties. The powers conferred on the Secured Party hereunder are solely to protect the interest of the Secured Party in the Collateral and shall not impose any duty upon the Secured Party to exercise any such powers. Except for reasonable care in the

custody and preservation of any Collateral in the possession of the Secured Party and the accounting for moneys actually received by it hereunder, the Secured Party shall have no duty to the Debtor as to any Collateral in the absence of willful misconduct or gross negligence. With respect to the Debtor, the Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Secured Party accords its own property; it being understood that the Secured Party shall be under no obligation to take any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral, but may do so at its option, and all reasonable expenses incurred in connection therewith shall be for the sole account of the Debtor.

Section 15. Binding Effect; Benefits. This Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until indefeasible payment in full of the Liabilities, (b) be binding upon the Debtor, and its successors and assigns and (c) inure to the benefit of the Secured Party, and its respective successors and permitted assigns. The Debtor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession thereof or therefor, and the Secured Party's successors and assigns shall include all permitted assignees and participants of any of the Liabilities; provided, however, that the Debtor shall not be permitted to assign any of its rights, powers, duties or obligations under this Agreement or any interest herein or in the Collateral, or any part thereof, or otherwise pledge, encumber or grant any option with respect to the Collateral, or any part thereof, or any cash or property held by the Secured Party as Collateral under this Agreement, except as permitted herein or without the prior written consent of the Secured Party.

Section 16. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, nor consent to any departure by the Debtor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Debtor and the Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 17. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

Section 18. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 19. WAIVER OF BOND, NOTICE, OTHER LAWS. THE DEBTOR WAIVES (a) ANY NOTICE PRIOR TO THE TAKING POSSESSION OR CONTROL OF THE COLLATERAL OR ANY POSTING OF ANY BOND OR SECURITY WHICH MIGHT BE REQUIRED BY ANY COURT PRIOR TO ALLOWING THE SECURED PARTY TO EXERCISE ANY OF THE



**SECURED PARTY'S REMEDIES SET FORTH HEREIN AND (b) THE BENEFIT OF ALL VALUATION, APPRAISEMENT AND EXEMPTION LAWS.**

Section 20. Notices. All notices and other communications required or permitted under this Agreement shall be given, and shall be deemed effective, in accordance with the applicable provision of the Loan Agreement.

Section 21. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which, taken together, shall constitute but one and the same instrument.

Section 22. Security Interest Absolute. All rights of the Secured Party hereunder, the grant of a security interest in the Collateral and all obligations of the Debtor hereunder, shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of any Loan Document, or any other agreement or instrument relating thereto, (b) any change in the time, manner or place of the payment of, or in any other term of, all or any of the Liabilities, or any other amendment or waiver of or any consent to any departure from the terms of any Loan Document, (c) any exchange, release or nonperfection of any other collateral securing all or any part of any of the Liabilities, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Debtor in respect of the Liabilities or in respect of this Agreement.

Section 23. Indemnification. The Debtor agrees to indemnify and hold the Secured Party, and any corporation controlling, controlled by, or under common control with, the Secured Party, and any officer, attorney, director, shareholder, agent or employee of the Secured Party or any such corporation (each an "Indemnified Person"), harmless from and against any claim, loss, damage, action, cause of action, liability, cost and expense or suit of any kind or nature whatsoever (collectively, "Losses"), brought against or incurred by an Indemnified Person, in any manner arising out of or, directly or indirectly, related to or connected with this Agreement, including without limitation, the exercise by the Secured Party of any of its rights and remedies under this Agreement or any other action taken by the Secured Party pursuant to the terms of this Agreement; provided, however, the Debtor shall not be liable to an Indemnified Person for any losses to the extent found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnified Person. The Debtor's obligations under this section shall survive the termination of this Agreement and the payment in full of the Liabilities.

Section 24. Definitions. For purposes of this Agreement:

(a) "Related Assets" means (a) all trade secrets, confidential information, formulae, methods or processes, compounds, recipes, know-how, methods and operating systems, drawings, descriptions, formulations, manufacturing and production and delivery procedures, quality control procedures, product and service specifications, catalogs, price lists, and advertising materials, relating to the manufacture, production, delivery, provision and sale of goods or services under or in association with any of the Trademarks; and (b) the following documents and things in the possession or under the control of the Debtor, or subject to their demand for possession or control, related to the production, delivery, provision and sale by the Debtor, or any affiliate, franchisee,

licensee or contractor, of products or services sold by or under the authority of the Debtor in connection with the Trademarks and the goodwill evidenced thereby, whether prior to, on or subsequent to the date hereof: (i) all lists, contracts, ancillary documents and other information that identify, describe or provide information with respect to any customers, dealers or distributors of the Debtor, their affiliates or franchisees or licensees or contractors, for products or services sold under or in connection with the Trademarks, including all lists and documents containing information regarding each customer's, dealer's or distributor's name and address, credit, payment, discount, delivery and other sale terms, and history, pattern and total of purchases by brand, product, style, size and quantity; (ii) all agreements (including franchise agreements), product and service specification documents and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision and sale of products or services under or in connection with the Trademarks; (iii) all documents and agreements relating to the identity and locations of all sources of supply, all terms of purchase and delivery, for all materials, components, raw materials and other supplies and services used in the manufacture, production, provision, delivery and sale of products or services under or in connection with the Trademarks; and (iv) all agreements and documents constituting or concerning the present or future, current or proposed advertising and promotion by the Debtor (or any of its affiliates, franchisees, licensees or contractors) of products or services sold under or in connection with the Trademarks.

(b) "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of Alabama or, where the context herein requires, the Uniform Commercial Code of the jurisdiction that governs the creation and perfection of a security interest in any Collateral or that governs the rights, remedies and obligations of the Secured Party in connection with the repossession or foreclosure of any Collateral.

(c) Capitalized terms not otherwise defined herein are used herein with the respective meanings given them in the Loan Agreement.

(d) References in this Agreement to any document, instrument or agreement (i) shall include all exhibits, schedules and other attachments thereto, (ii) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) shall mean such document, instrument or agreement or replacement, as amended, modified or supplemented from time to time.

IN WITNESS WHEREOF, the Debtor has caused this Agreement to be executed by its duly authorized representative as of the date and year first written above.

**MILO'S FRANCHISE COMPANY, INC.**

By Dean Chitwood  
Its President

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Dean E. Chitwood, whose name as President of Milo's Franchise Company, Inc., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 31 day of December, 2001.

Dean H. Shuff  
Notary Public

AFFIX SEAL

My commission expires: 1-2-02

SCHEDULE 1

[Trademark Collateral]

<u>Trademark/Service Mark</u>	<u>Registration or Application Number</u>	<u>Registration or Filing Date</u>	<u>Jurisdiction of Registration</u>
Milo's	1,178,661	November 17, 1981	U.S.

SCHEDULE 2

[Copyright Collateral]

Title of Work

Registration Number

NONE

SCHEDULE 5

[License Agreements]

License Agreement between Milo's Franchise Company, Inc. and Milo's Restaurant Services, Inc., Ronald D. Carlton and Sheila W. Carlton dated as of January 2, 2002, relating to the trademark Milo's (registration no. 1,643,771)