

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/2005)

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

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

CWN Management, Inc.
(California corp.)

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

Citizenship (see guidelines) _____

Execution Date(s) September 20, 2004

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

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

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: GE Capital Franchise Finance Corporation, as Agent

Address: _____

Street Address: 17207 North Perimeter Drive

City: Scottsdale

State: Arizona

Country: U.S.A. Zip: 85255

- Association Citizenship _____
- General Partnership Citizenship _____
- Limited Partnership Citizenship _____
- Corporation Citizenship Delaware
- Other _____ Citizenship _____

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

SN 76-538090

B. Trademark Registration No.(s) 1,405,341

2,774,955

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

Claim Jumper (Int'l Class: 42), Claim Jumper (Int'l Class: 29, 30)
Prospector (Int'l Class: 16)

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

Name: Pamela S. Flint

Internal Address: Kutak Rock LLP

Street Address: 1650 Farnam Street

City: Omaha

State: Nebraska Zip: 68102

Phone Number: 402-346-6000

Fax Number: 402-346-1148

Email Address: pamela.flint@kutakrock.com

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 90.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature: Pamela S. Flint

Signature

September 23, 2004

Date

Pamela S. Flint

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 57

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

OP \$90.00 76638090

PAGE 2 TO COVER SHEET FORM PTO-1594***Continuation of Item 1 (Additional Conveying Parties)***

(i) SOUTH WEST FOODS, INC.; CLAIM JUMPER - FOUNTAIN VALLEY; CLAIM JUMPER - IRVINE; CLAIM JUMPER - TEMECULA; CLAIM JUMPER RESTAURANTS; CLAIM JUMPER ENTERPRISES, INC.; and CLAIM JUMPER FOODS, INC.; each a California corporation

(ii) CLAIM JUMPER ASSOCIATES, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/SAN BERNARDINO, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/PUENTE HILLS, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/CORONA, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 1, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 9, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 12, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 13, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 14, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 15, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 18, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 19, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 20, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 27, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 29, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 30, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 32, LP, A CALIFORNIA LIMITED PARTNERSHIP; and CLAIM JUMPER FOODS, LTD., A CALIFORNIA LIMITED PARTNERSHIP; each a California limited partnership

(iii) CLAIM JUMPER RESTAURANTS, LLC; and CLAIM JUMPER MANAGEMENT, LLC; each a Delaware limited liability company.

AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

Dated as of September 20, 2004

among

SOUTH WEST FOODS, INC.; CLAIM JUMPER – FOUNTAIN VALLEY; CLAIM JUMPER – IRVINE; CLAIM JUMPER – TEMECULA; CLAIM JUMPER RESTAURANTS; CLAIM JUMPER ENTERPRISES, INC.; CWN MANAGEMENT, INC.; CLAIM JUMPER FOODS, INC., CLAIM JUMPER ASSOCIATES, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/SAN BERNARDINO, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/PUENTE HILLS, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/CORONA, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 1, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 9, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 12, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 13, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 14, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 15, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 18, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 19, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 20, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 27, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 29, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 30, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 32, LP, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER FOODS, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER RESTAURANTS, LLC; and CLAIM JUMPER MANAGEMENT, LLC

as Borrower,

THE LENDERS SIGNATORY HERETO FROM TIME TO TIME,

as Lenders,

and

GE CAPITAL FRANCHISE FINANCE CORPORATION,

as Agent and a Lender

GECC CAPITAL MARKETS GROUP, INC.,

as Lead Arranger and Sole Bookrunner

AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "Agreement") is made as of September 20 2004 (the "Closing Date"), by and among (i) SOUTH WEST FOODS, INC.; CLAIM JUMPER - FOUNTAIN VALLEY; CLAIM JUMPER - IRVINE; CLAIM JUMPER - TEMECULA; CLAIM JUMPER RESTAURANTS; CLAIM JUMPER ENTERPRISES, INC.; CWN MANAGEMENT, INC.; and CLAIM JUMPER FOODS, INC.; all of which are corporations organized and existing under the laws of the State of California, (ii) CLAIM JUMPER ASSOCIATES, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/SAN BERNARDINO, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/PUENTE HILLS, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/CORONA, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 1, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 9, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 12, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 13, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 14, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 15, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 18, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 19, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 20, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 27, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 29, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 30, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 32, LP, A CALIFORNIA LIMITED PARTNERSHIP; and CLAIM JUMPER FOODS, LTD., A CALIFORNIA LIMITED PARTNERSHIP; all of which are limited partnerships organized and existing under the laws of the State of California, and (iii) CLAIM JUMPER RESTAURANTS, LLC; and CLAIM JUMPER MANAGEMENT, LLC; each of which is a limited liability company organized and existing under the laws of the State of Delaware (jointly, severally and collectively, "Borrower"), GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation (in its individual capacity, "GE Capital"), as a Lender and as Agent for Lenders, and the other Lenders signatory hereto from time to time.

The aforesaid twenty-eight (28) borrowers are jointly, severally, individually and collectively referred to herein as "Borrower" and each reference to "Borrower" herein shall mean each such Borrower in its individual capacity and all such Borrowers in their joint, several and collective capacities.

PRELIMINARY STATEMENT:

Unless otherwise expressly provided herein, all defined terms used in this Agreement shall have the meanings set forth in Section 1. GECC and substantially all of the entities comprising the Borrower entered into the Prior Loan and Security Agreement pursuant to which GECC made the Prior Loan to such entities. GECC has assigned its right, title and interest in and to the Prior Loan and the Prior Loan and Security Agreement to Agent for itself, as Lender, and as Agent for Lenders. Borrower has requested from Lenders, and applied for, the Loan for purposes of (i) refinancing the Prior Loan and certain other indebtedness of Borrower, including all of the outstanding BOW Debt, (ii) providing funds for working capital purposes, (iii) paying for legal and professional fees related to the Roll-Up, and (iv) paying the fees and expenses associated with the Closing (collectively, the "Permitted Uses"). The Loan will be evidenced by the Note and guaranteed by the Guarantor pursuant to the Guaranty. Lenders have committed to make the Loan pursuant to the terms and conditions of the Commitment Letter, this Agreement and the other Loan Documents.

AGREEMENT:

In consideration of the mutual covenants and provisions of this Agreement, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings for all purposes of this Agreement:

"Account Debtor" means any Person who may become obligated to any Borrower under, with respect to, or on account of, an Account, Chattel Paper or General Intangibles (including a payment intangible).

"Accounts" means all "accounts," as such term is defined in the Code, now owned or hereafter acquired by any Borrower, including (a) all accounts receivable, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper or Instruments), (including any such obligations that may be characterized as an account or contract right under the Code), (b) all of each Borrower's rights in, to and under all purchase orders or receipts for goods or services, (c) all of each Borrower's rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due to any Borrower for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Borrower or in connection with any other transaction (whether or not yet earned by performance on the part of such Borrower), (e) all healthcare insurance receivables, and (f) all collateral security of any kind, now or hereafter in existence, given by any Account Debtor or other Person with respect to any of the foregoing.

"Affiliate" means any Person which directly or indirectly controls, is under common control with, or is controlled by any other Person. For purposes of this definition, "controls," "under common control with" and "controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or otherwise.

"Agent" means GE Capital in its capacity as Agent for Lenders or its successor appointed pursuant to Section 11(f).

"Anti-Money Laundering Laws" means all applicable laws, regulations and government guidance on the prevention and detection of money laundering, including 18 U.S.C. § § 1956 and 1957, and the BSA.

"Applicable Regulations" means all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of each Governmental Authority having jurisdiction over the Collateral, including, without limitation, all health, building, fire, safety and other codes, ordinances and requirements, and all policies or rules of common law, in each case, as amended, and any judicial or administrative interpretation thereof, including any judicial order, consent, decree or judgment applicable to the Borrower.

"Assignment Agreement" has the meaning set forth in Section 10(a).

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. Sec. 101 *et seq.*, as amended.

"BOW" means Bank of the West, a California banking corporation.

"BOW Debt" means all debts, obligations and liabilities owed by Borrower to BOW under or in connection with that certain Credit Agreement, dated December 12, 2000, between BOW and certain persons comprising Borrower.

"BSA" means the Bank Secrecy Act (31 U.S.C. § § 5311 *et. seq.*), and its implementing regulations, Title 31 Part 103 of the U.S. Code of Federal Regulations.

"Business Day" means any day on which Agent is open for business other than a Saturday, Sunday or a legal holiday, ending at 5:00 P.M. Phoenix, Arizona time.

"Change of Control" means a change in control of any Borrower, including, without limitation, a change in control resulting from direct or indirect transfers of voting stock or partnership, membership or other ownership interests, whether in one or a series of transactions. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Borrower, and a Change of Control will occur if any of the following occur: (i) any merger or consolidation by any Borrower with or into any other entity (other than in connection with the Roll-Up); or (ii) if any "Person" as defined in Section

3(a)(9) of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), and as used in Section 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d) of the Exchange Act, subsequent to the Closing, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), of securities of any Borrower representing 50% or more of the combined voting power of such Borrower's then outstanding securities (other than indirectly as a result of the redemption by any Borrower of its securities). The Roll-Up shall not be deemed to be a Change of Control.

"*Chattel Paper*" means any "chattel paper," as such term is defined in the Code, including electronic chattel paper, now owned or hereafter acquired by any Borrower, wherever located.

"*Closing*" means the disbursement of the Loan as contemplated by this Agreement.

"*Code*" means the Uniform Commercial Code as adopted in the State of Arizona.

"*Collateral*" means all right, title and interest of each Borrower in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Borrower (including under any trade names, styles or derivations thereof) and whether owned or consigned by or to, or leased from or to, such Borrower, and regardless of where located, including: (i) all Accounts, (ii) all Chattel Paper, (iii) all Documents, (iv) all General Intangibles (including payment intangibles and Software), (v) all Goods (including Inventory, Equipment and Fixtures), (vi) all Instruments, (vii) all Investment Property, (viii) all Supporting Obligations, and (ix) to the extent not otherwise included, all Proceeds, tort claims, insurance claims and other rights to payment not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing. Notwithstanding the foregoing, Collateral shall not include (A) any Equipment or Fixtures relating to properties other than the Premises or (B) any deposit accounts or investment accounts, as such terms are defined in the Code, which are maintained with or for the benefit of BOW, or any amounts deposited in or Investment Property credited to such accounts, whether or not constituting proceeds of Collateral.

"*Commitment Letter*" means the commitment letter and summary of terms and conditions between GE Capital and Claim Jumper Associates, Ltd. dated August 17, 2004.

"*Commitment*" or "*Commitments*" means (a) as to any Lender, the commitment of such Lender to make its Pro Rata Share of the Loan as set forth on Exhibit E to this Agreement or in the most recent Assignment Agreement executed by such Lender, and (b) as to all Lenders, the aggregate commitment of all Lenders to make the Loan, which aggregate commitment shall be Twenty-Five Million Dollars (\$25,000,000) on the Closing Date. After advancing the Loan, each reference to a Lender's Commitment shall refer to that Lender's Pro Rata Share of the outstanding Loan.

"*Contracts*" means all "contracts," as such term is defined in the Code, now owned or hereafter acquired by any Borrower, in any event, including the Royalty Agreements and all contracts, undertakings, or agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which any Borrower may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account.

"*Contributing Entities*" means, collectively, SOUTH WEST FOODS, INC.; CLAIM JUMPER - FOUNTAIN VALLEY; CLAIM JUMPER - IRVINE; CLAIM JUMPER - TEMECULA; CLAIM JUMPER RESTAURANTS; CLAIM JUMPER ENTERPRISES, INC.; CWN MANAGEMENT, INC.; and CLAIM JUMPER ASSOCIATES, LTD., A CALIFORNIA LIMITED PARTNERSHIP.

"*Copyright License*" means any and all rights now owned or hereafter acquired by any Borrower under any written agreement granting any right to use any Copyright or Copyright registration.

"*Copyrights*" means all of the following now owned or hereafter adopted or acquired by any Borrower: (i) all copyrights and General Intangibles of like nature (whether registered or unregistered), all registrations and

recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, and (ii) all reissues, extensions or renewals thereof.

"Credit Parties" means, collectively, each Borrower and Guarantor.

"Debt" has the meaning set forth in Section 5.S.

"Default" means any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

"Default Rate" has the meaning set forth in the Note.

"Documents" means any "documents," as such term is defined in the Code, now owned or hereafter acquired by any Borrower, wherever located.

"Entity" means any entity that is not a natural person.

"Equipment" means all "equipment," as such term is defined in the Code, now owned or hereafter acquired by any Borrower, wherever located and, in any event, including all such Borrower's machinery and equipment, including processing equipment, conveyors, machine tools, data processing and computer equipment, including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto. Notwithstanding the foregoing, the term "Equipment" as hereinafter used in this Agreement shall not include any Equipment relating to properties other than the Premises.

"Event of Default" has the meaning set forth in Section 7.

"Existing Royalty Agreement" means the Trademark License Agreement dated as of April __, 1999 between CWN Management, Inc., a Delaware corporation, and American Pie LLC, a Delaware limited liability company.

"Fees" means all amounts required to be paid to Agent on the Closing Date pursuant to the Fee Letter.

"Fee Letter" has the meaning set forth in the Commitment Letter.

"Fixtures" means all "fixtures" as such term is defined in the Code, now owned or hereafter acquired by any Borrower. Notwithstanding the foregoing, the term "Fixtures" as hereinafter used in this Agreement shall not include any Fixtures relating to properties other than the Premises.

"GAAP" means generally accepted accounting principles consistently applied.

"GECC" means General Electric Capital Corporation.

"General Intangibles" means "general intangibles," as such term is defined in the Code, now owned or hereafter acquired by any Borrower, including all right, title and interest that such Borrower may now or hereafter have in or under any Contract, all payment intangibles, customer lists, Licenses, Copyrights, Trademarks, Patents, and all applications therefor and reissues, extensions or renewals thereof, rights in Intellectual Property, interests in

partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark License), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, chooses in action, deposit, checking and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all books and records, correspondence, credit files, invoices and other papers, including without limitation all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Borrower or any computer bureau or service company from time to time acting for such Borrower.

"*Goods*" means any "goods" as defined in the Code, now owned or hereafter acquired by any Borrower, wherever located, including embedded software to the extent included in "goods" as defined in the Code, manufactured homes, standing timber that is cut and removed for sale and unborn young of animals.

"*Governmental Authority*" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority having jurisdiction or supervisory or regulatory authority over the Collateral or Borrower.

"*Guarantor*" means Craig W. Nickoloff.

"*Guaranty*" means the amended and restated unconditional guaranty of payment and performance dated as of the Closing Date executed by Guarantor in favor of Agent, for the benefit of Agent and Lenders, with respect to the Loan, as the same may be amended from time to time.

"*Instruments*" means all "instruments," as such term is defined in the Code, now owned or hereafter acquired by any Borrower, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

"*Intellectual Property*" means any and all Licenses, Patents, Copyrights, Trademarks, and the goodwill associated with such Trademarks.

"*Inventory*" means any "inventory," as such term is defined in the Code, now owned or hereafter acquired by any Borrower, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Borrower for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, supplies or materials of any kind, nature or description used or consumed or to be used or consumed in such Borrower's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

"*Investment Property*" means all "investment property" as such term is defined in the Code now owned or hereafter acquired by any Borrower, wherever located, including (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares; (ii) all securities entitlements of any Borrower, including the rights of such Borrower to any securities account and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities intermediary with respect to that account; (iii) all securities accounts of any Borrower; (iv) all commodity contracts of any Borrower; and (v) all commodity accounts held by any Borrower.

"*Landlord's Agreements Regarding Equipment*" has the meaning set forth in Section 2(b)(v).

"Leases" means, collectively, those leases relating to the Premises and all modifications, amendments and supplements thereto.

"Lenders" means collectively, GE Capital, the other Lenders named on the signature pages of this Agreement, and, if any such Lender shall decide to assign all or any portion of its Pro Rata Share of the Loan, such term shall include any assignee of such Lender; individually, each a "Lender."

"Lessors" means the lessors under the Leases.

"License" means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by any Borrower.

"Loan" means the loan to be made by Lenders to Borrower pursuant to this Agreement in the aggregate principal amount of \$25,000,000, which loan is evidenced by the Note and secured by the Collateral.

"Loan Documents" means, collectively, this Agreement, the Note, the Guaranty, the UCC-1 Financing Statements, the Landlord's Agreements Regarding Equipment and all other documents, instruments and agreements executed in connection therewith or contemplated thereby.

"Material Adverse Effect" means a material adverse effect on (i) the Collateral, including without limitation, the use of the Collateral in the operation of a Permitted Concept, or (ii) Borrower's ability to perform its obligations under the Loan Documents.

"Merging Entities" means, collectively, CLAIM JUMPER/SAN BERNARDINO, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/PUENTE HILLS, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/CORONA, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 1, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 9, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 12, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 13, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 14, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 15, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 18, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 19, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 20, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 27, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 29, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 30, LTD., A CALIFORNIA LIMITED PARTNERSHIP; and CLAIM JUMPER 32, LP, A CALIFORNIA LIMITED PARTNERSHIP.

"Note" means the amended and restated promissory note dated as of the Closing Date in the original principal amount of \$25,000,000 executed by Borrower in favor of Agent, for the benefit of Lenders, evidencing the Loan, as the same may be amended from time to time.

"Obligations" has the meaning set forth in Section 3 hereof.

"OFAC Laws and Regulations" means Executive Order 13224 issued by the President of the United States of America, the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), and the Cuban Assets Control Regulations (Title 31 Part 515 of the U.S. Code of Federal Regulations), and all other present and future federal, state and local laws, ordinances, regulations, policies, lists (including, without limitation, the Specially Designated Nationals and Blocked Persons List) and any other requirements of any Governmental Authority (including, without limitation, the United States Department of the Treasury Office of Foreign Assets Control) addressing, relating to, or attempting to eliminate, terrorist acts and acts of war, each as hereafter supplemented, amended or modified from time to time, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing, or under similar laws, ordinances, regulations, policies or requirements of other states or localities.

"Patent License" means rights under any written agreement now owned or hereafter acquired by any Borrower granting any right with respect to any invention on which a Patent is in existence.

"Patents" means all of the following in which any Borrower now holds or hereafter acquires any interest: (a) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or any other country, and (b) all reissues, continuations, continuations-in-part or extensions thereof.

"Permitted BOW Debt" means all debts, obligations or liabilities of any Borrower to BOW arising out of or related to any applications for letters of credit, the issuance of any letters of credit or any other documents, agreements or instruments related to any letters of credit issued by or caused to be issued by BOW for the account of any Borrower, whether constituting principal, interest, fees or other amounts, whether now existing or hereafter arising, whether voluntary or involuntary, whether or not jointly owed with others, whether direct or indirect, absolute or contingent, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, whether or not from time to time decreased or extinguished and later increased, created or incurred and whether or not extended, modified, rearranged, restructured, refinanced or replaced, including without limitation, modifications to interest rates and other payment terms thereof.

"Permitted Concept" means a Claim Jumper restaurant.

"Permitted Indebtedness" means (i) the Loan, (ii) the mortgage loans to Borrower from Zions Bank and the SBA with respect to Unit #10 located at 29540 Rancho California Road, Temecula, California, having an approximate, aggregate outstanding principal balance of \$1,100,000 as of June 30, 2004, (iii) the mortgage loan to Borrower from General Electric Capital Business Asset Funding Corporation with respect to Unit #14 located at 190 S. State College Boulevard, Brca, California, having an approximate outstanding principal balance of \$1,300,000 as of June 30, 2004, (iv) the \$6,500,000 equipment term facility to be made by GE Capital or an Affiliate of GE Capital to Borrower for the financing of two new restaurants in Tucson, Arizona (scheduled to open in November, 2004) and Lynwood, Washington (scheduled to open in January, 2005), (v) Capital Leases (as defined in Section 5.S) in an aggregate principal amount not to exceed \$14,500,000.00 at any time outstanding, (vi) the Permitted BOW Debt to the extent not in excess of \$5,000,000 in the aggregate principal amount outstanding at any time, and (vii) unsecured trade debt incurred in the ordinary course of business with trade creditors.

"Permitted Liens" means (i) liens in favor of Agent, for the benefit of Agent and Lenders, pursuant to this Agreement, (ii) liens for taxes not yet due or for taxes being contested in good faith and which do not involve, in the judgment of Agent, any risk of the sale, forfeiture or loss of any of the Collateral, and (iii) inchoate materialmen's, mechanic's, repairmen's and similar liens arising by operation of law in the normal course of business for amounts which are not delinquent.

"Permitted New Store Indebtedness" has the meaning set forth in Section 5.Y.

"Permitted Uses" has the meaning set forth in the Preliminary Statement.

"Person" means any individual, corporation, partnership, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

"Premises" means the parcel or parcels of real estate corresponding to the addresses identified on Exhibit A attached hereto, together with all rights, privileges and appurtenances associated therewith and all buildings, fixtures and other improvements now or hereafter located thereon (whether or not affixed to such real estate). As used herein, the term "Premises" shall mean either a singular property or all of the properties collectively, as the context may require.

"Prior Loan" means the \$18,000,000 loan made by GECC on or about September 30, 2002 to substantially all of the entities comprising the Borrower.

"Prior Loan and Security Agreement" means the Master Security Agreement dated as of September 30, 2002 between substantially all of the entities comprising the Borrower and GECC.

"Proceeds" means "proceeds," as such term is defined in the Code, including (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Borrower from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting under color of governmental authority), (iii) any claim of any Borrower against third parties (a) for past, present or future infringement of any Patent or Patent License, or (b) for past, present or future infringement or dilution of any Copyright, Copyright License, Trademark or Trademark License, or for injury to the goodwill associated with any Trademark or Trademark License, (iv) any recoveries by any Borrower against third parties with respect to any litigation or dispute concerning any of the Collateral including claims arising out of the loss or nonconformity of, interference with the use of, defects in, or infringement of rights in, or damage to, Collateral, (v) all amounts collected on, or distributed on account of, other Collateral, including dividends, interest, distributions and Instruments with respect to Investment Property and pledged Stock, and (vi) any and all other amounts, rights to payment or other property acquired upon the sale, lease, license, exchange or other disposition of Collateral and all rights arising out of Collateral.

"Pro Rata Share" means, with respect to any Lender, (1) on or prior to the Closing Date, the percentage obtained by dividing (a) the applicable Commitment of that Lender by (b) the aggregate applicable Commitments of all Lenders, and (ii) thereafter, the percentage obtained by dividing (a) the outstanding principal balance of the portion of the Loan held by that Lender, by (b) the aggregate outstanding principal balance of the Loan.

"Qualified Assignee" means (a) any Lender, any Affiliate of any Lender, and legal successor of any Lender and, with respect to any Lender that is an investment fund that invests in commercial loans, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor, and (b) any commercial bank, savings and loan association or savings bank or any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act) which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which has a rating of BBB or higher from S&P and a rating of Baa2 or higher from Moody's at the date that it becomes a Lender and which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that no Person proposed to become a Lender after the Closing Date and reasonably determined by Agent to be acting in the capacity of a vulture fund or distressed debt purchaser shall be a Qualified Assignee, and no Person or Affiliate of such Person proposed to become a Lender after the Closing Date and that holds Stock issued by any Credit Party shall be a Qualified Assignee.

"Requisite Lenders" means Lenders who collectively hold 66 2/3% or more of the Commitments of all Lenders.

"Royalty Agreements" means all franchise or royalty agreements entered into by any Borrower from time to time with respect to the Claim Jumper concept, including the Existing Royalty Agreement, together with all amendments, modifications and supplements thereto.

"Roll-Up" has the meaning set forth in Section 5.R.

"Software" means all "software" as such term is defined in the Code, now owned or hereafter acquired by any Borrower, other than software embedded in any category of Goods, including all computer programs and all supporting information provided in connection with a transaction related to any program.

"Stock" means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity

security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934).

"*Supporting Obligations*" means all "supporting obligations" as such term is defined in the Code, including letters of credit and guaranties issued in support of Accounts, Chattel Paper, Documents, General Intangibles, Instruments, or Investment Property.

"*Trademark License*" means rights under any written agreement now owned or hereafter acquired by any Borrower granting any right to use any Trademark.

"*Trademarks*" means all of the following now owned or hereafter adopted or acquired by any Borrower: (i) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; (ii) all reissues, extensions or renewals thereof; and (iii) all goodwill associated with or symbolized by any of the foregoing.

"*UCC-1 Financing Statements*" means such UCC-1 Financing Statements as Agent shall file with respect to the transactions contemplated by this Agreement.

"*U.S. Publicly-Traded Entity*" is an Entity whose securities are listed on a national securities exchange or quoted on an automated quotation system in the U.S. or a wholly-owned subsidiary of such an Entity.

2. ***Transaction; Closing Conditions.*** (a) On the terms and subject to the conditions set forth in the Loan Documents, each Lender shall make a loan to Borrower in the original principal amount of its Commitment. Upon the making of such loans, no Lender shall have any further commitment to make any other loans or provide any other financing to any Borrower hereunder. The Loan will be evidenced by the Note and secured by this Agreement, the UCC-1 Financing Statements, the Guaranty and the other Loan Documents. The Loan shall be advanced at the Closing in cash or otherwise immediately available funds subject to any prorations and adjustments permitted by this Agreement, including, without limitation, in the case of BOW, a funding net of repayment of the BOW Debt. BORROWER ACKNOWLEDGES AND AGREES THAT ALL OBLIGATIONS OF THE LENDERS PURSUANT TO THIS AGREEMENT AND THE LOAN DOCUMENTS WILL BE SEVERAL AND NOT JOINT. IN THE EVENT ANY LENDER BREACHES ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, BORROWER MAY ENFORCE ITS RIGHTS ONLY AGAINST THE LENDER OR LENDERS CAUSING SUCH BREACH, AND BORROWER SHALL HAVE NO RIGHTS AGAINST THE AGENT OR ANY OF THE OTHER LENDERS. TO THE EXTENT THAT BORROWER IS ENTITLED TO DAMAGES FROM ANY SUCH BREACHING LENDER OR LENDERS, THE PORTION OF SUCH DAMAGES (IF ANY) REPRESENTING UNEARNED FEES IN CONNECTION WITH THIS AGREEMENT, SHALL ONLY RELATE TO THE PORTION OF SUCH FEES ACTUALLY PAID TO THE BREACHING LENDER OR LENDERS.

Borrower shall repay the outstanding principal amount of the Loan together with interest thereon in the manner and in accordance with the terms and conditions of the Note and the other Loan Documents. All principal payments and prepayments received by Agent with respect to the Loan shall be applied ratably to the portion of the Loan held by each Lender as determined by its Pro Rata Share. Notwithstanding anything to the contrary contained in the Note, this Agreement or any other Loan Documents, each Lender's portion (other than GE Capital's) of any interest payments received by Agent with respect to the Loan shall be determined pursuant to a separate agreement between Agent and such Lender.

(b) The obligation of each Lender to consummate the transaction contemplated by this Agreement is subject to the fulfillment or waiver, by each Lender in writing, of each of the following conditions:

(i) All of the representations and warranties of Borrower set forth in Section 4 of this Agreement shall be true, correct and complete, and Borrower shall be in compliance with each of the covenants set forth in Section 5 of this Agreement. No event shall have occurred or condition shall exist or information shall have been disclosed by Borrower or discovered by such Lender which would constitute a default under this Agreement or has had or would be reasonably likely to have a material adverse effect on the Collateral or the Borrower or such Lender's willingness to consummate the transaction contemplated by this Agreement, as determined by such Lender in its sole and absolute discretion.

(ii) Borrower shall have paid the Fees to Agent and shall have paid all costs of the transaction described in this Agreement, including, without limitation, UCC search and litigation search charges, Eagle 9 UCC insurance charges, the attorneys' fees of Borrower, reasonable attorneys' fees and expenses of each Lender, stamp taxes, mortgage taxes, transfer fees, and escrow, filing and recording fees (including preparation, filing and recording fees for UCC continuation statements).

(iii) Borrower shall have provided Agent with satisfactory corporate approval of the Loan as well as opinions of counsel satisfactory to Agent as to, among other matters, valid corporate existence and authority, legality, validity and binding effect of all Loan Documents, perfection of security interests, the absence of any violation of law or regulation or conflict with any existing contracts.

(iv) Lenders and/or Borrower and Guarantor, as may be appropriate, shall have executed and delivered or shall have caused to be executed and delivered to Agent, or as Agent may otherwise direct, the Loan Documents and such other documents, payments, instruments and certificates, as Agent may require in form acceptable to Agent.

(v) Each of the Leases shall be in full force and effect and Borrower shall be entitled to occupy the Premises corresponding thereto. Borrower shall have delivered to Agent a landlord's agreement regarding equipment from at least 80% of the Lessors, the form and substance of which shall be satisfactory to Agent in its sole discretion (the "Landlord's Agreements Regarding Equipment").

(vi) Agent shall have received an Eagle 9 UCC insurance policy insuring Agent's security interest in certain Collateral.

(vii) Each Lender shall have approved a settlement statement showing the use of the proceeds of the Loan.

Upon fulfillment or waiver of all of the above conditions, this transaction shall close in accordance with the terms and conditions of this Agreement.

3. **Security Interest Created; Obligations Secured.** A. To secure the payment of the Obligations (as defined below), Borrower hereby grants to Agent, for the benefit of Agent and Lenders, a security interest in the Collateral.

B. This Agreement secures the following indebtedness and obligations (the "Obligations"): (1) payment of indebtedness evidenced by the Note, together with all extensions, renewals, amendments and modifications thereof; and (2) payment of all other indebtedness and other sums, including interest at the applicable rate, which may be owed under, and performance of all other obligations and covenants contained in, any other Loan Document, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby.

C. Borrower authorizes Agent to file such documents with the United States Patent and Trademark Office as may be necessary to give notice of this Agreement and perfect the security interest created hereunder (including, without limitation, filing a copy of this Agreement). Borrower authorizes Agent to file financing statements with respect to the security interest of Agent, continuation statements with respect thereto, and any amendments to such financing statements which may be necessitated by reason of any of the changes described in Section 5.C. Borrower

agrees that, notwithstanding any provision in the Code to the contrary, Borrower shall not file a termination statement of any financing statement filed by Agent in connection with any security interest granted under this Agreement if Agent reasonably objects to the filing of such termination statement.

D. Agent shall at all times have a perfected security interest in the Collateral that shall be prior to any other interests therein. Borrower shall do all acts and things, shall execute and file all instruments (including security agreements, UCC financing statements, continuation statements, etc.) requested by Agent to establish, maintain and continue the perfected security interest of Agent in the Collateral, and shall promptly on demand pay all costs and expenses of (1) filing and recording, including the costs of any searches deemed necessary by Agent from time to time to establish and determine the validity and the continuing priority of the security interest of Agent, and (2) all other claims and charges that in the reasonable opinion of Agent might prejudice, imperil or otherwise affect the Collateral or security interest therein of Agent. Borrower agrees that a carbon, photographic or other reproduction of a security agreement or financing statement shall be sufficient as a financing statement. Agent is hereby irrevocably appointed Borrower's attorney-in-fact to take any of the foregoing actions requested of Borrower by Agent if Borrower should fail to take such actions, which appointment shall be deemed coupled with an interest.

4. **Representations and Warranties of Borrower.** The representations and warranties of Borrower contained in this Section are being made by Borrower as of the Closing Date to induce Agent and each Lender to enter into this Agreement and consummate the transactions contemplated herein and shall survive the Closing. Borrower represents and warrants to Agent and each Lender as follows:

A. **Financial Information.** Borrower has delivered to Agent certain financial statements and other information concerning Borrower in connection with the transaction described in this Agreement (collectively, the "Financial Information"). The Financial Information is true, correct and complete in all material respects; there have been no amendments to the Financial Information since the date such Financial Information was prepared or delivered to Agent. Borrower understands that Agent and each Lender is relying upon the Financial Information and Borrower represents that such reliance is reasonable. All financial statements included in the Financial Information were prepared in accordance with GAAP and fairly present as of the date of such financial statements the financial condition of each individual or entity to which they pertain. No change has occurred with respect to the financial condition of Borrower and/or the Collateral as reflected in the Financial Information which has not been disclosed in writing to Agent or has had, or could reasonably be expected to result in, a Material Adverse Effect.

B. **Organization and Authority.** Borrower is duly organized or formed, validly existing and in good standing under the laws of its state of incorporation or formation, Borrower is qualified as a foreign corporation, partnership or limited liability company, as applicable, to do business in the state(s) where the Collateral is located, and Borrower is qualified as a foreign corporation, partnership or limited liability company, as applicable, to do business in any other jurisdiction where the failure to be qualified would reasonably be expected to result in a Material Adverse Effect. All necessary action has been taken to authorize the execution, delivery and performance by Borrower of this Agreement and the other Loan Documents. The person(s) who have executed this Agreement on behalf of Borrower are duly authorized so to do. Borrower is not a "foreign corporation," "foreign partnership," "foreign trust," "foreign estate" or "foreign person" (as those terms are defined by the Internal Revenue Code of 1986, as amended). Borrower's U.S. Federal Tax Identification numbers and Organizational Identification numbers are correctly set forth on Exhibit B to this Agreement. Borrower, and no individual or entity owning directly or indirectly any interest in Borrower, is an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of any of the OFAC Laws and Regulations; provided, however, the representation contained in this sentence shall not apply to any Person to the extent such Person's interest is in or through a U.S. Publicly-Traded Entity.

C. **Enforceability of Documents.** Upon execution by Borrower, this Agreement and the other Loan Documents shall constitute the legal, valid and binding obligations of Borrower, respectively, enforceable against Borrower in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity.

D. *Litigation.* Attached hereto as Exhibit C is a description of all suits, actions, proceedings or investigations pending, or to the best of Borrower's knowledge, threatened against or involving Borrower, any of the Collateral or any of the Premises before any arbitrator or Governmental Authority (the "Company Litigation"). The Company Litigation, individually or in the aggregate, has not had, and could not reasonably be expected to result in, a Material Adverse Effect.

E. *Absence of Breaches or Defaults; Compliance with Laws.* Borrower is not, and the authorization, execution, delivery and performance of this Agreement and the other Loan Documents will not result, in any breach or default under any other document, instrument or agreement to which Borrower is a party or by which Borrower, any of the Premises, any of the Collateral or any of the property of Borrower is subject or bound, except for such breaches or defaults which, individually or in the aggregate, have not had, and could not reasonably be expected to result in, a Material Adverse Effect. The authorization, execution, delivery and performance of this Agreement and the other Loan Documents will not violate any applicable law, statute, regulation, rule, ordinance, code, rule or order. None of the Premises nor the Collateral are subject to any right of first refusal, right of first offer or option to purchase or lease granted to a third party. Borrower and the Collateral are in compliance with all Applicable Regulations, except for such noncompliance which has not had, and could not reasonably be expected to result in, a Material Adverse Effect.

F. *Licenses and Permits.* All required licenses and permits, both governmental and private, to use and operate the Collateral and to use and operate each of the Premises as a Permitted Concept are in full force and effect, except for such licenses and permits the failure of which to obtain has not had, and could not reasonably be expected to result in, a Material Adverse Effect.

G. *Condition of Equipment and Fixtures.* The Equipment and Fixtures are in good condition and repair and well maintained, ordinary wear and tear excepted, and fully operational.

H. *Title to Collateral; First Priority Lien.* Borrower owns the Collateral, free and clear of all liens, encumbrances, charges and security interests of any nature whatsoever other than Permitted Liens. Upon Closing, Agent shall have a first priority lien upon and security interest in the Collateral pursuant to this Agreement and the UCC-1 Financing Statements.

I. *Leases.* Borrower has delivered to Agent a true, correct and complete copy of each of the Leases. The Leases are the only leases or agreements between the Lessors and Borrower with respect to the Premises. The Leases are in full force and effect and constitute the legal, valid and binding obligations of Borrower and the Lessors, enforceable against Borrower and the Lessors in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity. Each of the Leases has a remaining term which is at least equal in duration to the term of the Note. Borrower has not assigned, transferred, mortgaged, hypothecated or otherwise encumbered any of the Leases or any rights thereunder or any interest therein, and Borrower has not received any notice that any of the Lessors have made any assignment, pledge or hypothecation of all or any part of their rights or interests in the Leases. No notice of default from any of the Lessors has been received under any of the Leases which has not been cured and no notice of default to any of the Lessors has been given under any of the Leases which has not been cured. No event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under any of the Leases.

J. *Money Laundering.* (1) Borrower has taken all reasonable measures, in accordance with all applicable Anti-Money Laundering Laws, with respect to each holder of a direct or indirect interest in Borrower, to assure that funds invested by such holders in Borrower are derived from legal sources; provided, however, none of the foregoing shall apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly-Traded Entity.

(2) To Borrower's knowledge after making due inquiry, neither Borrower nor any holder of a direct or indirect interest in Borrower (a) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, any violation of any Anti-Money Laundering Laws, or drug trafficking, terrorist-related activities or

other money laundering predicated crimes or a violation of the BSA, (b) has been assessed civil penalties under these or related laws, or (c) has had any of its funds seized or forfeited in an action under these or related laws; provided, however, none of the foregoing shall apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly-Traded Entity.

(3) Borrower has taken reasonable steps, consistent with industry practice for comparable organizations and in any event as required by law, to ensure that Borrower is and shall be in compliance with all (i) Anti-Money Laundering Laws, and (ii) OFAC Laws and Regulations.

K. *Intellectual Property.* Borrower has no knowledge of, and has received no written notice of, any claims, suits or adversarial proceedings by any Person alleging that the conduct of the Borrower's business has infringed or is infringing the rights of any third party. The Intellectual Property is registered or applications have been filed in the appropriate jurisdictions. All Intellectual Property (including all registrations and applications therefor) are valid, subsisting and enforceable.

L. *Ownership.* Guarantor owns, directly or indirectly, a majority of the outstanding voting capital stock of any Borrower that is a corporation, a majority of the partnership interests of any Borrower that is a limited partnership and a majority of the membership interests of any Borrower that is a limited liability company. Claim Jumper Enterprises, Inc. is the sole manager of Claim Jumper Restaurants, LLC and the sole general partner of each of Claim Jumper Associates, Ltd., Claim Jumper/Puente Hills, Ltd., Claim Jumper/Corona, Ltd., Claim Jumper 1, Ltd., Claim Jumper 9, Ltd., Claim Jumper 12, Ltd., Claim Jumper 13, Ltd., Claim Jumper 14, Ltd., and Claim Jumper 15, Ltd. Claim Jumper Associates, Ltd. is the sole general partner of each of Claim Jumper/San Bernardino, Ltd., Claim Jumper 18, Ltd., Claim Jumper 19, Ltd., Claim Jumper 20, Ltd., Claim Jumper 27, Ltd., Claim Jumper 29, Ltd., Claim Jumper 30, Ltd. and Claim Jumper 32, LP. Claim Jumper Restaurants, LLC is the sole member of Claim Jumper Management, LLC. Claim Jumper Foods, Inc. is the sole general partner of Claim Jumper Foods, Ltd.

M. *Solvency.* After giving effect to this Agreement, the Note and the indebtedness evidenced thereby, Borrower is solvent, has assets that, when fairly valued, exceed its liabilities and is able to pay its obligations as they become due.

N. *Common Enterprise.* Each Borrower does business under the "Claim Jumper" name or otherwise manages, controls or owns entities or business that do business under the "Claim Jumper" name. Each Borrower expects to derive substantial benefits from the transaction described in the Loan Documents both in their separate capacities and as members with the other Borrowers of an interrelated group of companies. Each Borrower has determined that the execution, delivery and performance of this Agreement and the other Loan Documents to which such Borrower is a party is within its corporate or company purpose, will be of direct and indirect benefit to such Borrower and is in its best interest. Each Borrower is an Affiliate of the other, each Borrower is subject to the same control, directly or indirectly, as the other Borrowers, and each Borrower is financially interdependent on each other. As a result of such common control, each Borrower acknowledges and agrees that a common enterprise exists and that each Borrower will receive consideration for its execution and delivery of this Agreement and the other Loan Documents to which it is a party. The successful operation and condition of each Borrower are partially dependent on the continued successful performance of the functions of the Borrowers as a whole and the successful operation of each Borrower is dependent on the successful performance and operation of each other Borrower.

O. *Debt.* Borrower has not incurred any Debt other than the Loan, indebtedness which will be satisfied with the proceeds of the Loan and Permitted Indebtedness.

P. *Sufficiency.* Borrower owns or leases all of the assets used in or necessary for Borrower to conduct its business. Other than Borrower, there are no entities which operate a Permitted Concept at any of the Premises or owns any assets relating to the operation of a Permitted Concept at any of the Premises.

Q. *Existing Royalty Agreement.* Borrower has delivered to Agent a true, correct and complete copy of the Existing Royalty Agreement. The Existing Royalty Agreement is the only Royalty Agreement which is in

effect as of the Closing Date. The Existing Royalty Agreement is in full force and effect and constitutes the legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity. Borrower has not assigned, transferred, mortgaged, hypothecated or otherwise encumbered the Existing Royalty Agreement or any rights thereunder or any interest therein. No notice of default has been given or received under the Existing Royalty Agreement which has not been cured and no event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under the Existing Royalty Agreement.

5. **Covenants.** Borrower covenants to Agent and each Lender from and after the Closing Date and until all of the Obligations are satisfied in full, as follows:

A. **Payment of the Note.** Borrower shall punctually pay, or cause to be paid, the principal, interest and all other sums to become due in respect of the Note and the other Loan Documents in accordance with the Note and the other Loan Documents. Borrower authorizes Agent to establish arrangements whereby all scheduled payments made in respect of the Obligations are transferred by Automated Clearing House Debit initiated by Agent directly from an account at a U.S. bank in the name of Borrower to such account as Agent may designate or as Agent may otherwise designate.

B. **Title; Additional Encumbrances.** Borrower shall own the Collateral (whether acquired prior to or after the date hereof), free and clear of all liens, encumbrances, charges and other exceptions to title other than Permitted Liens, and Borrower shall not execute or permit the filing of any financing statement thereon other than the UCC-1 Financing Statements. Agent shall have a valid first lien upon and security interest in the Collateral pursuant to this Agreement and the UCC-1 Financing Statements. Borrower shall defend the Collateral against all claims and demands of all persons. Borrower shall not permit any action to be taken which would adversely affect the value of the Collateral or which would encumber, cloud or adversely effect in any manner Borrower's title or interest therein.

C. **Organization and Status; Preservation of Existence.** Borrower shall be validly existing and in good standing under the laws of its state of incorporation or formation and qualified as a foreign corporation, partnership or limited liability company to do business in the state(s) where the Collateral is located and any other jurisdiction where the failure to be qualified could reasonably be expected to result in a Material Adverse Effect. Borrower shall preserve its current form of organization and shall not change its legal name, its state of formation, nor, in one transaction or a series of related transactions, merge with or into, or consolidate with, any other entity without providing, in each case, Agent with 30 days' prior written notice and obtaining the Requisite Lenders' prior written consent (to the extent such consent is required under Section 6 of this Agreement); provided that 30 days' prior written notice shall not be required with respect to the Roll-Up. In addition, Borrower shall require, and shall take reasonable measures to comply with the requirement, that no individual or entity owning directly or indirectly any interest in Borrower is an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of any of the OFAC Laws and Regulations; provided, however, the covenant contained in this sentence shall not apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly-Traded Entity.

D. **Licenses and Permits; Compliance With Laws; Changes in Business.** All required licenses and permits, both governmental and private, to use and operate the Collateral and to use and operate each of the Premises as a Permitted Concept shall be maintained in full force and effect. Borrower shall comply with all Applicable Regulations now or hereafter in effect, including, without limitation, the OFAC Laws and Regulations and Anti-Money Laundering Laws. Borrower shall not change its business from the operation of a Permitted Concept.

E. **Financial Statements.** Within 45 days after the end of each fiscal quarter and within 120 days after the end of each fiscal year of Borrower, Borrower shall deliver to each Lender (a) complete financial statements of Borrower (on a combined basis) including a balance sheet, profit and loss statement, statement of cash flows and all other related schedules for the fiscal period then ended; (b) income statements for the business at each

of the Premises (which income statements shall include, without limitation, a same store sales report); and (c) such other financial information as Agent or any Lender may reasonably request. All such financial statements and information shall be prepared in accordance with GAAP from period to period, and shall be certified to be accurate and complete by Borrower (or the Treasurer or other appropriate officer of Borrower). Borrower understands that each Lender is relying upon such financial statements and Borrower represents that such reliance is reasonable. All annual financial statements delivered to the Lenders as set forth above shall be audited by, and delivered with the unqualified opinion of, an independent certified public accountant selected by Borrower and reasonably acceptable to Lenders, which opinion shall state that such financial statements have been prepared in accordance with GAAP and present fairly the results of operations and financial condition of Borrower as of the end of and for the fiscal year of Borrower then ended.

F. *Compliance Certificates.* Concurrently with the delivery of the annual and quarterly financial statements and reports required pursuant to Section 5.E of this Agreement, Borrower shall deliver to each Lender a compliance certificate in the form attached hereto as Exhibit D.

G. *Inspections.* Borrower shall, during normal business hours (or at any time in the event of an emergency), (1) provide Agent and Agent's officers, employees, agents and advisors with access to the Collateral and all files, correspondence and documents relating to the Collateral (including, without limitation, any of the foregoing information stored in any computer files), and (2) allow such persons to make such inspections, tests, copies, and verifications as Agent considers necessary. Representatives of other Lenders may accompany Agent's representatives on any inspections permitted to be made by Agent hereunder. If an Event of Default has occurred and is continuing, Borrower shall provide such access to Agent and each Lender at all times and without requiring advance notice. At Agent's request, Borrower shall promptly notify Agent in writing of the location of any Collateral.

H. *Removal of Equipment or Fixtures.* Except for purposes of replacement with like property of equal or greater value and repair in the ordinary course of business, Borrower shall not remove or allow to be removed from any of the Premises the Equipment or the Fixtures, or any part thereof, without the prior written consent of the Requisite Lenders. Borrower shall promptly give written notice to Agent of any substantial change in the character of the business conducted on any of the Premises and of the cessation of all or any part thereof and of any loss or damage by fire or other casualty to any substantial part of the Equipment or the Fixtures.

I. *Maintenance and Repair.* Borrower shall at all times keep and maintain the Equipment and the Fixtures in good order, repair and condition, ordinary wear and tear excepted, and will promptly replace any part thereof that from time to time may become obsolete, badly worn or in a state of disrepair or, if supplies, be consumed in the normal course of Borrower's business operations. Agent shall have a lien on and security interest in all replacements and all replacements shall be free of any other lien, security interest or encumbrance of any nature, including any purchase money lien or security interest. Borrower shall not transfer or permit any transfer of any part of the Equipment or the Fixtures to be made or any interest therein to be created by way of a sale (except as permitted below), by way of a grant of a security interest, or by way of a levy or other judicial process. Borrower may sell or dispose of only that part of the Equipment and Fixtures that Borrower will replace, and the proceeds from such sale and disposition must be invested in replacement property of like kind and of equal or greater value.

J. *Notices.* Borrower shall promptly notify Agent and each Lender of (i) any levy, distraint or other seizure by legal process or otherwise of any part of the Collateral, (ii) any threatened or filed claims or proceedings that might in any way affect or impair any of the Collateral or that makes a claim for or involves amounts in excess of \$100,000, and (iii) the occurrence of any Default or Event of Default.

K. *Insurance.* Borrower shall at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral and its assets, against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by companies of established reputation engaged in the same or similar businesses and similarly situated. Said policies of insurance shall be satisfactory to Agent as to form, amount and insurer. Borrower shall furnish certificates, policies or endorsements to Agent as Agent shall require as proof of such insurance, and, if Borrower fails to do so, Agent is authorized, but not required, to obtain such

insurance at the expense of Borrower. All policies shall provide for at least thirty (30) days prior written notice to Agent of any cancellation or reduction of coverage and that Agent may act as attorney for Borrower in obtaining, and at any time an Event of Default exists or has occurred and is continuing, adjusting, settling, amending and canceling such insurance. Borrower shall cause Agent to be named as a loss payee and an additional insured (but without any liability for any premiums) under such insurance policies and Borrower shall obtain non-contributory lender's loss payable endorsements to all insurance policies in form and substance satisfactory to Agent. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to Agent, for the ratable benefit of Lenders, as its interests may appear and further specify that Agent shall be paid regardless of any act or omission by Borrower or any of its Affiliates. At its option, Agent may apply any insurance proceeds received by Agent at any time to the cost of repairs or replacement of Collateral and/or to payment of the Obligations, whether or not then due, in any order and in such manner as Agent may determine or hold such proceeds as cash collateral for the Obligations.

L. *Actions by Agent.* Borrower agrees that Agent may, at its option, and without any obligation to do so, pay, perform, and discharge any and all amounts, costs, expenses and liabilities that are the responsibility of Borrower under the Loan Documents if Borrower fails to timely pay, perform or discharge the same, and all amounts expended by Agent in so doing or in respect of or in connection with the Collateral shall become part of the Obligations and shall be immediately due and payable by Borrower to Agent upon demand therefor and shall bear interest at the Default Rate.

M. *Lost Note.* Borrower shall, if the Note is mutilated, destroyed, lost or stolen (a "Lost Note"), promptly deliver to Agent, upon receipt from Agent of an affidavit and indemnity in a form reasonably acceptable to Agent and Borrower stipulating that the Note has been mutilated, destroyed, lost or stolen, in substitution therefor, a new promissory note containing the same terms and conditions as the Lost Note with a notation thereon of the unpaid principal and accrued and unpaid interest. Borrower shall provide fifteen (15) days' prior notice to Agent before making any payments to third parties in connection with a Lost Note.

N. *Affiliate Transactions.* Unless otherwise approved by Requisite Lenders, all transactions between or among the entities comprising the Borrower shall be on terms substantially as advantageous to each such entity as those which could be obtained by such entity in a comparable arm's length transaction with an entity which is not a Borrower.

O. *Charges.* Borrower shall promptly pay (i) all taxes and other governmental charges levied or assessed upon or against the Collateral or upon or against the creation, perfection or continuance of the security interest created under this Agreement, and (ii) all lawful claims for labor, materials, supplies and services or otherwise.

P. *Intellectual Property.* Borrower shall, for each Trademark (i) maintain such Trademark in full force free from any claim of abandonment or invalidity for non-use, (ii) maintain the quality of products and services offered under such Trademark consistent with the past practice of Borrower's business, (iii) display such Trademark with notice of Federal or foreign registration to the extent necessary and sufficient to establish and preserve its maximum rights under applicable law, and (iv) not knowingly use or knowingly permit the use of such Trademark in violation of any third party rights.

Borrower shall notify Agent promptly if it knows or has reason to know that any Intellectual Property material to the conduct of Borrower's business may become abandoned, lost or dedicated to the public, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, United States Copyright Office or any court or similar office of any country) regarding Borrower's ownership of any Intellectual Property, its right to register the same, or to keep and maintain the same.

In no event shall Borrower, either itself or through any agent, employee, licensee or designee, file an application for any Intellectual Property (or for the registration of any Intellectual Property) with the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of

the United States, unless it promptly informs Agent, and, upon request of Agent, executes and delivers any and all agreements, instruments, documents and papers as Agent may request to evidence Agent's security interest in such Intellectual Property, and Borrower hereby appoints Agent as its attorney-in-fact to execute and file such writings for the foregoing purposes, which appointment is coupled with an interest and irrevocable.

Borrower shall take all necessary steps that are consistent with the practice in any proceeding before the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of the United States or in any other country or any political subdivision thereof, to maintain and pursue each application relating to the Intellectual Property (and to obtain the relevant grant or registration) and to maintain any issued or registered Intellectual Property relating to the conduct of Borrower's business, including timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if consistent with good business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

In the event that Borrower has reason to believe that any Intellectual Property relating to the conduct of Borrower's business has been or is about to be infringed, misappropriated or diluted by a third party, Borrower shall promptly notify Agent and shall promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and take such other actions as are appropriate under the circumstances to protect such Intellectual Property.

Q. *Use of Proceeds.* Borrower shall use the proceeds of the Loan only for the Permitted Uses.

R. *Roll-Up.* Notwithstanding anything to the contrary contained herein, within 90 days after the Closing Date (the "Outside Date"), each of the Contributing Entities shall contribute all of the assets owned by them on the Closing Date or acquired by them after the Closing Date to Claim Jumper Restaurants, LLC, a Delaware limited liability company (the "Rolled-Up Entity") in exchange for membership interests in the Rolled-Up Entity, and each of the Merging Entities shall merge with and into the Rolled-Up Entity with the Rolled-Up Entity being the surviving entity (collectively, the "Roll-Up"). On or before the Outside Date:

(i) Borrower shall notify Agent of the consummation of the Roll-Up and shall provide Agent with copies of the documentation evidencing the Roll-Up, including, without limitation, copies of all filed organizational documents related to the Roll-Up;

(ii) The Rolled-Up Entity shall execute a certificate in a form acceptable to Agent certifying as to the consummation of the Roll-Up and ratifying and reaffirming all of its obligations as a Borrower under this Agreement and the other Loan Documents;

(iii) Borrower shall provide Agent with evidence satisfactory to Agent that all necessary consents to the Roll-Up have been obtained (including, without limitation, any necessary landlord consents) and that all legal and professional fees related to the Roll-Up have been timely paid;

(iv) Borrower shall execute and/or deliver any other documents or instruments required by Agent with respect to the Roll-Up; and

(v) Borrower shall pay all costs and expenses incurred by Agent in connection with the Roll-Up, including without limitation, the legal fees of counsel to Agent and UCC filing fees.

Guarantor shall own, directly or indirectly, not less than 65% of the membership interests of the Rolled-Up Entity and shall have the power to direct the management and policies of the Rolled-Up Entity. The consummation of the Roll-Up shall not be deemed to release, discharge, modify or diminish the obligations under the Loan Documents of Guarantor or any entity comprising the Borrower.

Borrower's failure to comply with its obligations under this paragraph shall, unless waived in writing by the Requisite Lenders, constitute an Event of Default.

S. *Corporate Fixed Charge Coverage Ratio.* Borrower shall maintain, on a consolidated basis, a Corporate Fixed Charge Coverage Ratio of at least 1.20:1, determined as of the last day of each fiscal quarter of Borrower. For purposes of this Section, the term "Corporate Fixed Charge Coverage Ratio" shall mean with respect to the twelve month period of time immediately preceding the date of determination, the ratio calculated for such period of time, each as determined in accordance with GAAP, of (a) the sum of Net Income, Depreciation and Amortization, Interest Expense and Operating Lease Expense, plus or minus other non-cash adjustments to net income (if any), less increases in officer or shareholder loans receivable, less dividends or distributions not otherwise expensed on Borrower's income statement, to (b) the sum of Operating Lease Expense, scheduled principal payments of long term Debt, scheduled maturities of all Capital Leases and Interest Expense (excluding non-cash interest expense and amortization of non-cash financing expenses)

For purposes of this Section, the following terms shall be defined as set forth below:

"*Capital Lease*" shall mean all leases of any property, whether real, personal or mixed, by Borrower which lease would, in conformity with GAAP, be required to be accounted for as a capital lease on the balance sheet of Borrower. The term "Capital Lease" shall not include any operating lease.

"*Debt*" shall mean with respect to Borrower and for the period of determination (i) indebtedness for borrowed money, (ii) obligations evidenced by bonds, indentures, notes, letters of credit (whether drawn or undrawn) or similar instruments, (iii) obligations to pay the deferred purchase price of property or services, (iv) obligations under leases which should be, in accordance with GAAP, recorded as Capital Leases, and (v) obligations under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (i) through (iv) above.

"*Depreciation and Amortization*" shall mean the depreciation and amortization accruing during any period of determination with respect to Borrower as determined in accordance with GAAP.

"*Interest Expense*" shall mean for any period of determination, the sum of all interest accrued or which should be accrued in respect of all Debt of Borrower as determined in accordance with GAAP.

"*Net Income*" shall mean with respect to the period of determination, the net income or net loss of Borrower. In determining the amount of Net Income, (i) adjustments shall be made for nonrecurring gains and losses or non-cash items allocable to the period of determination, (ii) deductions shall be made for, among other things, Depreciation and Amortization, Interest Expense, Operating Lease Expense and actual corporate overhead expense allocable to the period of determination, and (iii) no deductions shall be made for income taxes or charges equivalent to income taxes allocable to the period of determination, as determined in accordance with GAAP.

"*Operating Lease Expense*" shall mean the sum of all payments and expenses incurred by Borrower under any operating leases during the period of determination, including, without limitation, the Leases, as determined in accordance with GAAP.

T. *Senior Funded Debt Covenant.* Borrower shall maintain, on a consolidated basis, a Senior Funded Debt to EBITDA ratio not to exceed 3:1, determined as of the last day of each fiscal quarter of Borrower. "*Senior Funded Debt*" shall mean the sum of (i) all non-contingent debts of Borrower for which consideration then has been received (other than any subordinated debt) plus (ii) the principal component of Capital Lease (as defined in Section 5.S) obligations. "*EBITDA*" shall mean with respect to the twelve month period of time immediately preceding the date of determination the sum of Net Income, Interest Expense and Depreciation and Amortization (all as defined in Section 5.S), all of which shall be determined in accordance with GAAP.

U. *Borrower's Total Owner's Equity Covenant.* At the end of each fiscal year of Borrower, Borrower's total owner's equity, on a consolidated basis, shall be at least \$1,000,000 higher than it was at the end of the immediately preceding fiscal year of Borrower.

V. *Leases.* Borrower shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Borrower contained in the Leases; (ii) give prompt notice to Agent of any claim or event of default under any of the Leases given to Borrower by any of the Lessors or given by Borrower to any of the Lessors, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every covenant and condition of the Leases to be performed or observed by any other party to the Leases unless such enforcement is waived in writing by the Requisite Lenders; (iv) appear in and defend any action challenging the validity or enforceability of any of the Leases; and (v) timely exercise any renewal options under the Leases. The Leases shall not be cancelled or surrendered by Borrower without the Requisite Lenders' prior written consent. The Leases shall not be modified or amended without the Requisite Lenders' prior written consent if such modification or amendment would reduce the remaining term of any of the Leases or otherwise affect the Equipment or Fixtures or the security interests of Agent in the Equipment or Fixtures. Borrower shall not assign, transfer, mortgage, pledge or hypothecate any of the Leases or any interest therein without the Requisite Lenders' prior written consent.

IF ANY LEASE REQUIRES BORROWER TO DELIVER A NOTICE TO THE LESSOR EXTENDING THE TERM OF SUCH LEASE, AND BORROWER FAILS TO DELIVER SUCH NOTICE AT LEAST THIRTY DAYS BEFORE THE DATE BY WHICH THE EXTENSION NOTICE MUST BE DELIVERED, OR IF NO SUCH DATE IS SET FORTH IN SUCH LEASE, IF BORROWER FAILS TO DELIVER SUCH NOTICE AT LEAST THIRTY DAYS BEFORE THE EXPIRATION OF THE THEN CURRENT TERM OF SUCH LEASE, AGENT SHALL HAVE, AND IS HEREBY GRANTED, A POWER OF ATTORNEY ON BEHALF OF BORROWER TO EXECUTE AND DELIVER SUCH EXTENSION NOTICE, IT BEING STIPULATED THAT SUCH POWER OF ATTORNEY IS COUPLED WITH AN INTEREST AND IRREVOCABLE. UPON THE REQUEST OF AGENT, BORROWER SHALL EXECUTE ANY DOCUMENTS OR INSTRUMENTS REASONABLY REQUIRED BY AGENT OR LESSORS IN ORDER TO CONFIRM THE EXISTENCE OF THE POWER OF ATTORNEY SET FORTH IN THIS SUBSECTION V, INCLUDING, WITHOUT LIMITATION, A SEPARATE POWER OF ATTORNEY IN RECORDABLE FORM WITH RESPECT TO THE MATTERS COVERED BY THIS SUBSECTION V.

W. *OFAC Laws and Regulations.* Borrower shall immediately notify each Lender in writing if any individual or entity owning directly or indirectly any interest in Borrower or any director, officer, member, manager or partner of any of such holders is an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of any of the OFAC Laws and Regulations, or is under investigation by any governmental entity for, or has been charged with, or convicted of, drug trafficking, terrorist-related activities or any violation of Anti-Money Laundering Laws, has been assessed civil penalties under these or related laws, or has had funds seized or forfeited in an action under these or related laws; provided, however, the covenant contained in this sentence shall not apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly-Traded Entity.

X. *Indebtedness.* Borrower shall not incur any Debt other than Permitted Indebtedness and Permitted New Store Indebtedness. No Permitted Indebtedness (other than the Loan) or Permitted New Store Indebtedness may be secured by the Collateral.

Y. *New Stores.* Borrower shall not be permitted to open any new store after the Closing Date unless each of the following conditions are satisfied with respect to such new store:

(i) Borrower shall have maintained a Current Ratio of not less than 0.5:1 for the twelve month period immediately preceding the opening of such new store. As used herein, the term "*Current Ratio*" means the ratio of (a) Current Assets, to (b) Current Liabilities. "*Current Assets*" shall mean all current assets of Borrower as of any date of determination calculated in accordance with GAAP, but excluding cash, cash equivalents and debts due from Affiliates. "*Current Liabilities*" shall mean all liabilities which should, in accordance with GAAP, be classified as current liabilities, and in any event shall include all indebtedness payable on demand or within one year from any date of determination without any option on the part of the obligor to extend or renew beyond such year, all accruals

for federal or other taxes based on or measured by income and payable within such year, and the current portion of long-term debt required to be paid within one year;

(ii) Borrower shall have maintained the Corporate Fixed Charge Coverage Ratio and Senior Funded Debt to EBITDA ratio required by Sections 5.S and 5.T, respectively, for the twelve month period immediately preceding the opening of such new store;

(iii) no Event of Default shall have occurred and be continuing under the Loan Documents;

(iv) To the extent that Borrower is financing the costs and expenses associated with opening such new store, the principal amount of indebtedness incurred with respect to such new store shall not exceed 85% of the aggregate cost of the furniture, fixtures, equipment and leasehold improvements relating to such new store (any such financing that satisfies the provisions of this clause (iv) being referred to herein as "*Permitted New Store Indebtedness*"); and

(v) Borrower shall have delivered to Agent a certificate from an authorized officer stating that Borrower has satisfied the conditions listed above, together with financial back-up information acceptable to Agent.

To the extent that Borrower desires to open a new store without satisfying the conditions listed above, the Requisite Lenders' prior written consent shall be required, which consent may be given or withheld by the Requisite Lenders' in their sole discretion.

Z. *Mergers, Subsidiaries, Etc.* No Borrower shall directly or indirectly, by operation of law or otherwise, (i) form or acquire any subsidiary, or (ii) merge with, consolidate with, acquire all or substantially all of the assets or Stock of, or otherwise combine with or acquire, any Person; provided that the foregoing shall not be deemed to preclude the consummation of the Roll-Up.

AA. *Sale of Stock and Assets.* No Borrower shall sell, transfer, convey, assign or otherwise dispose of any of its properties or other assets, including the Stock of any of its subsidiaries (whether in a public or a private offering or otherwise) or any of its Accounts, other than (a) the sale of Inventory in the ordinary course of business, and (b) the sale or other disposition of Equipment and Fixtures in accordance with the provisions of Section 5.I.

BB. *Investments.* No Borrower shall make or permit to exist any investment in, or make, accrue or permit to exist loans or advances of money to, any Person, through the direct or indirect lending of money, holding of securities or otherwise, except that: (a) Borrower may hold investments comprised of notes payable, or stock or other securities issued by Account Debtors to Borrower pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices; (b) so long as no Event of Default has occurred and is continuing and any of the investments described in this clause (b) are pledged to BOW or otherwise secure the Permitted BOW Debt, Borrower may make investments, in (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof maturing within one year from the date of acquisition thereof, (ii) commercial paper maturing no more than one year from the date of creation thereof and currently having the highest rating obtainable from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc., (iii) certificates of deposit maturing no more than one year from the date of creation thereof issued by commercial banks incorporated under the laws of the United States of America, each having combined capital, surplus and undivided profits of not less than \$300,000,000 and having a senior unsecured rating of "A" or better by a nationally recognized rating agency (an "A Rated Bank"), (iv) time deposits maturing no more than thirty (30) days from the date of creation thereof with A Rated Banks and (v) mutual funds that invest solely in one or more of the investments described in clauses (i) through (iv) above; and (c) other investments not exceeding \$25,000 in the aggregate at any time outstanding.

CC. *Dividends.* No Borrower shall declare or pay any dividend or distribution or incur any liability to make any other payment or distribution of cash or other property or assets in respect of Stock, other than dividends or payments necessary to cover federal and state income taxes of partners or members which directly correlate to the operation of Borrower.

DD. *Management Fees.* No Borrower shall pay (or receive from any other Borrower) any management fees during the continuance of an Event of Default.

EE. *Existing Royalty Agreement.* Borrower shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Borrower contained in the Existing Royalty Agreement; (ii) give prompt notice to Agent of any claim or event of default under the Existing Royalty Agreement given to or received by Borrower, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every covenant and condition of the Existing Royalty Agreement to be performed or observed by any other party to the Existing Royalty Agreement unless such enforcement is waived in writing by the Requisite Lenders; and (iv) appear in and defend any action challenging the validity or enforceability of the Existing Royalty Agreement. The Existing Royalty Agreement shall not be terminated without the Requisite Lenders' prior written consent. The Existing Royalty Agreement shall not be modified or amended without the Requisite Lenders' prior written consent if such modification or amendment would have a material adverse effect on the rights and remedies of Borrower thereunder. Borrower shall not assign, transfer, mortgage, pledge or hypothecate the Existing Royalty Agreement or any interest therein without the Requisite Lenders' prior written consent.

6. *Prohibition on Change of Control and Pledge; Mandatory Prepayment.* (a) Without limiting the terms and conditions of Section 5, Borrower agrees that, from and after the Closing Date and until all of the Obligations are satisfied in full, without the prior written consent of the Requisite Lenders: (1) no Change of Control shall occur; and (2) no interest in any Borrower shall be pledged, encumbered, hypothecated or assigned as collateral for any obligation of any Borrower (each, a "Pledge"). In addition, no interest in any Borrower, or in any individual or person owning directly or indirectly any interest in any Borrower, shall be transferred, assigned or conveyed to any individual or person whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations and/or who is in violation of any of the OFAC Laws and Regulations, and any such transfer, assignment or conveyance shall not be effective until the transferee has provided written certification to Borrower, Agent and Lenders that (A) the transferee or any person who owns directly or indirectly any interest in transferee, is not an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of the OFAC Laws and Regulations, and (B) the transferee has taken reasonable measures to assure that any individual or entity who owns directly or indirectly any interest in transferee, is not an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of the OFAC Laws and Regulations; provided, however, the covenant contained in this sentence shall not apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly-Traded Entity. The Requisite Lenders' consent to a Change of Control and/or Pledge shall be subject to the satisfaction of such conditions as the Requisite Lenders shall determine in their sole discretion. In addition, any such consent shall be conditioned upon payment by Borrower (x) to Agent, for the ratable benefit of the Lenders, of a fee equal to one percent (1%) of the then outstanding principal balance of the Note and (y) of all out-of-pocket costs and expenses incurred by Lenders in connection with such consent, including, without limitation, reasonable attorneys' fees. Agent shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon a Change of Control or Pledge in violation of this Section. The provisions of this Section shall apply to every Change of Control or Pledge regardless of whether voluntary or not, or whether or not the Requisite Lenders have consented to any previous Change of Control or Pledge. Notwithstanding anything to the contrary contained in this Agreement, the Roll-Up shall not be deemed to be a Change of Control.

(b) Without limiting the generality of Section 6(a) above, in the event of the sale of any interests in any Borrower on a public exchange, the Requisite Lenders shall have the right to require that Borrower prepay the Note in full, but not in part, including all accrued but unpaid interest thereunder, the applicable prepayment premium due thereunder and all sums advanced by Lenders pursuant to the Loan Documents.

(c) Without the prior written consent of the Requisite Lenders, Borrower shall not cease business operations at any of the Premises or sell to an unrelated third party the business or a substantial portion of the assets relating to any of the Premises (each, a "Prohibited Transaction"). The Requisite Lenders' consent to a Prohibited Transaction shall be subject to the satisfaction of such conditions as the Requisite Lenders shall determine in their sole discretion. In addition, any such consent shall be conditioned upon a partial prepayment of the Note by

Borrower in a to-be-determined pro-rata amount. Such pro-rata amount shall be based on then year-to-date sales of the subject restaurant divided by the consolidated year-to-date sales for all restaurants then comprising the Premises. The pro-rata value of any real estate associated with the subject store shall also be used to determine the required partial prepayment amount. The required partial prepayment amount shall be made together with a prepayment premium on the amount prepaid based on the applicable prepayment premium percentage under the Note. In the event of a partial prepayment pursuant to this Section, the Note shall not be re-amortized until the next Payment Reset Date (as defined in the Note).

7. **Default and Remedies; Proceeds.** A. Each of the following shall be deemed an event of default by Borrower (each, an "Event of Default"):

(1) If any representation or warranty of Borrower set forth in any of the Loan Documents is false in any material respect or if Borrower renders any statement or account which is false in any material respect.

(2) If any principal, interest or other monetary sum due under the Note or any other Loan Document is not paid within five days after the date when due; provided, however, notwithstanding the occurrence of such an Event of Default, Agent shall not be entitled to exercise its rights and remedies set forth below unless and until Agent shall have given Borrower notice thereof and a period of five days from the delivery of such notice shall have elapsed without such Event of Default being cured.

(3) If Borrower fails to observe or perform any of the other covenants, conditions, or obligations of this Agreement; provided, however, if any such failure does not involve the payment of any monetary sum, is not willful or intentional, does not involve a breach of Sections 5.E, 5.R, 5.S, 5.T or 5.U or any other financial covenant contained in the Loan Documents, does not place any rights or interest in collateral of Agent in immediate jeopardy, and is within the reasonable power of Borrower to promptly cure after receipt of notice thereof, all as determined by Agent in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Agent shall have given Borrower notice thereof and a period of 30 days shall have elapsed, during which period Borrower may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Agent in its reasonable discretion, and Borrower is diligently pursuing a cure of such failure, then Borrower shall have a reasonable period to cure such failure beyond such 30-day period, which shall not exceed 90 days after receiving notice of the failure from Agent. If Borrower shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(4) If Borrower fails to observe or perform the covenants contained in Sections 5.E, 5.R, 5.S, 5.T or 5.U or any other financial covenant contained in the Loan Documents.

(5) If Borrower becomes insolvent (however defined or evidenced), files or notifies Agent that it intends to file a petition under the Bankruptcy Code, initiates a proceeding under any similar law or statute relating to bankruptcy, insolvency, reorganization, winding up, dissolution, receivership or adjustment of debts (collectively, an "Action"), becomes the subject of either a petition under the Bankruptcy Code or an Action, is not generally paying its debts as the same become due, makes an assignment for the benefit of creditors, makes or sends notices of bulk transfer, calls a meeting of its creditors or principal creditors or admits in writing its inability to pay its debts.

(6) If there is an "Event of Default" or a breach or default, after the passage of all applicable notice and cure or grace periods, under any other Loan Document or any of the Leases or if any Lease terminates or expires prior to the scheduled maturity date of the Note.

(7) If a final, nonappealable judgment is rendered by a court against Borrower which (i) has a material adverse effect on the operation of the Premises as a Permitted Concept, or (ii) is in an amount greater than \$100,000.00 and not covered by insurance, and, in either case, is not discharged or provision made for such discharge within 60 days from the date of entry of such judgment.

(8) If any Borrower defaults under or otherwise fails to perform the terms of that certain letter agreement regarding BOW credit extensions, dated July 8, 2004, between BOW and Borrower.

(9) If any default or event of default shall occur with respect to any of the Permitted Indebtedness described in clauses (ii), (iii), (iv), (v) or (vi) of the definition of Permitted Indebtedness.

B. Upon the occurrence and during the continuance of an Event of Default, subject to the limitations set forth in subsection A, Agent may (and at the written request of the Requisite Lenders shall) exercise any of the following rights and remedies and any other right or remedy of a secured party in, to and against the Collateral granted by the Code and otherwise available at law or in equity: (1) the right to declare any or all payments due under the Note, the other Loan Documents and all other documents evidencing the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind, except as otherwise expressly provided herein, and Borrower hereby waives notice of intent to accelerate the Obligations and notice of acceleration; (2) the right to recover all fees and expenses (including reasonable attorney fees) in connection with the collection or enforcement of the Obligations, which fees and expenses shall constitute additional Obligations of Borrower hereunder; (3) the right to act as, and Borrower hereby constitutes and appoints Agent, Borrower's true, lawful and irrevocable attorney-in-fact (which appointment shall be deemed coupled with an interest) to demand, receive and enforce payments and to give receipts, releases, satisfaction for and to sue for moneys payable to Borrower under or with respect to any of the Collateral, and actions taken pursuant to this appointment may be taken either in the name of Borrower or in the name of Agent with the same force and effect as if this appointment had not been made; (4) the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, with or without judicial process and notice to the Borrower, enter (if this can be done without breach of the peace) upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Equipment is affixed to real estate, such removal shall be subject to the conditions stated in the Code); (5) the right to hold, maintain, preserve and prepare any of the Collateral for sale, until disposed of; (6) the right to render any of the Collateral unusable and dispose of the Collateral; (7) the right to require Borrower to assemble and package the Collateral and make it available to Agent for its possession at a place to be designated by Agent which is reasonably convenient to Agent; (8) the right to sell, lease, hold or otherwise dispose of all or any part of the Collateral; (9) the right to notify any Account Debtor of Borrower or any obligor on any instrument which constitutes part of the Collateral to make payment to Agent; and (10) the right to sue for specific performance of any Obligations or to recover damages for breach thereof. If, upon the occurrence and during the continuance of an Event of Default, Agent proceeds to dispose of the Collateral in accordance with the provisions of the UCC, 10 days' notice by Agent to Borrower shall be deemed to be commercially reasonable notice under any provision of the UCC requiring such notice.

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

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

D. Until an Event of Default shall occur, Borrower may retain possession of the Collateral and may use it in any lawful manner not inconsistent with this Agreement, with the provisions of any policies of insurance thereon or the other Loan Documents; provided that, Agent shall have the right to possess (i) any chattel paper or instrument that constitutes a part of the Collateral, and (ii) any other Collateral in which Agent's security interest may be perfected only by possession or with respect to which priority may be gained by possession.

8. **Indemnity.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each of the Indemnified Parties for, from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, attorneys' fees, court costs and other costs of defense) (collectively, "Losses") (excluding Losses suffered by an Indemnified Party directly arising out of such Indemnified Party's gross negligence or willful misconduct; provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Agent's or any Lender's interest in the Collateral or Agent's or any Lender's failure to act in respect of matters which are or were the obligation of Borrower under the Loan Documents), engineers' fees, governmental inspection fees, and costs of investigation imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Agreement; (b) any past, present or threatened injury to, or destruction of, the Collateral, including but not limited to costs to investigate and assess such injury or destruction; (c) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Collateral; (d) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to this Agreement; or (e) any failure by Borrower to comply with any of the terms and conditions of the Leases, including, without limitation, any costs and expenses incurred by any of the Indemnified Parties to cure any such failure. The term "Indemnified Parties" means Agent, each Lender and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan, as well as the respective directors, officers, shareholders, partners, members, employees, lenders, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to, any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Collateral, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of any Lender's assets and business).

9. **Joint and Several Obligations.** (a) The obligations under the Loan Documents of each of the twenty-eight (28) borrowers listed in the first paragraph of this Agreement are joint and several. Each reference to the term "Borrower" shall be deemed to refer to each of such borrowers; each representation and warranty made by Borrower shall be deemed to have been made by each such party; each covenant and undertaking on the part of Borrower shall be deemed individually applicable with respect to each such party; and each event constituting a default under this Agreement shall be determined with respect to each such party. A separate action or actions may be brought and prosecuted against any such party whether an action is brought against any other party or whether any other party is joined in any such action or actions. Each such party waives any right to require Agent or the Lenders to: (i) proceed against any other party; (ii) proceed against or exhaust any security held from any other party; or (iii) pursue any other remedy in Agent's or the Lenders' power whatsoever. Notices hereunder required to be provided to Borrower shall be effective if provided to any such party. Any consent on the part of Borrower hereunder shall be effective when provided by any such party and Agent shall be entitled to rely upon any notice or consent given by any such party as being notice or consent given by Borrower hereunder.

(b) In the event that any Borrower is deemed to be a surety or any obligation of Borrower under this Agreement is deemed to be an agreement by any individual Borrower to answer for the debt or default of another individual Borrower (including each other) or as a hypothecation of property as security therefore, each Borrower represents and warrants that: (x) no representation has been made to it as to the creditworthiness of any other

obligor, and (y) it has established adequate means of obtaining from each other obligor on a continuing basis, financial or other information pertaining to each other obligor's financial condition. Each Borrower expressly waives diligence, demand, presentment, protest and notice of every kind and nature whatsoever, including but not limited to, notice of non-payment, dishonor, protest, acceptance, default, acceleration or enforcement of rights and remedies, and consents that Lenders and any Borrower may deal with each other in connection with said obligations or otherwise, or alter any contracts now or hereafter existing between them, in any manner whatsoever, including without limitation the renewal, extension, acceleration, changes in time for payment, and increases or decreases in any principal, rate of interest or other amounts owing, all without in any way altering the liability of each Borrower, or affecting any security for such obligations. Should any default be made in the payment of any such obligations or in the terms or conditions of any security held, Agent is hereby expressly given the right, at its option, to proceed in the enforcement of this Agreement or any other of the Loan Documents independently of any other remedy or security it may at any time hold in connection with such obligations secured and it shall not be necessary for Agent to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce its rights against any Borrower. Each Borrower agrees that its obligations under this Agreement and all other Loan Documents shall be primary, absolute, continuing and unconditional, irrespective of and unaffected by any of the following actions or circumstances (regardless of any notice to or consent of the Borrower): (i) the genuineness, validity, regularity and enforceability of the Loan Documents; (ii) any extension, renewal, amendment, change, waiver or other modification of the Loan Documents or any other document; (iii) the absence of, or delay in, any action to enforce the Loan Documents; (iv) Agent's or the Lenders' failure or delay in obtaining any other guaranty of the Obligations; (v) the release of, extension of time for payment or performance by, or any other indulgence granted to Borrower of any other person with respect to the Obligations by operation of law or otherwise; (vi) the existence, value, condition, loss, subordination or release (with or without substitution) of, or failure to have title to or perfect and maintain a security interest in, or the time, place and manner of any sale or other disposition of any Collateral or security given in connection with the Obligations, or any other impairment (whether intentional or negligent, by operation of law or otherwise) of the rights of Borrower; (vii) any Borrower's voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization, or similar proceedings affecting such Borrower or any of its assets; or (viii) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Each Borrower further waives any right of subrogation, reimbursement, exoneration, contribution, indemnification, setoff or other recourse in respect of sums paid to Agent or the Lenders by any Borrower, until all the Obligations has been paid in full. Each Borrower unconditionally and irrevocably (i) waives and agrees not to assert any and all rights, benefits and defenses which might otherwise be available under the provisions of Ariz. Rev. Stat. §§ 12-1641 and §§ 12-1642 *et seq.*, 44-141, 44-142 or 47-3605, Arizona Rules of Civil Procedure Rule 17(f), or any other Arizona statutes or rules (including any statutes or rules amending, supplementing or supplanting same) which might operate, contrary to such Borrower's agreements in the Loan Documents, to limit such Borrower's liability under, or the enforcement of, the Loan Documents; (ii) waives the benefits of any statutory provision limiting the right of Agent or Lenders to recover a deficiency judgement, or to otherwise proceed, against any person or entity obligated for the payment of the Obligations, after any foreclosure or trustee's sale of any collateral securing payment of the Obligations, including without limitation, the benefits, if any, of Ariz. Rev. Stat. §§ 33-814; (iii) covenants that the Loan Documents will not be discharged until all of the Obligations are fully satisfied; (iv) agrees that the Loan Documents shall remain in full effect without regard to, and shall not be affected or impaired by, any invalidity, irregularity or unenforceability in whole or in part of any of the Loan Documents, or any limitation of the liability of any Borrower or Guarantor thereunder, or any limitation on the method or terms of payment thereunder which may now or hereafter be caused or imposed in any manner whatsoever; and (v) waives and relinquishes any right such Borrower now has or may hereafter acquire to revoke the Loan Documents or any provision thereof.

10. **Assignment and Participations.** (a) Subject to the terms of this Section 10, any Lender may make an assignment to a Qualified Assignee of, or sale of participations in, at any time or times, its Pro Rata Share of the Loan Documents or Loan, and any Commitment of such Lender or any portion thereof or interest therein, including such Lender's rights, title, interests, remedies, powers or duties thereunder. Any assignment by a Lender shall: (i) require the consent of Agent (if such assignment is not to a Qualified Assignee), which consent shall not be unreasonably withheld or delayed, and the execution of an assignment agreement (an "Assignment Agreement") in form and substance reasonably satisfactory to, and acknowledged by, Agent; (ii) be conditioned on such assignee Lender representing to the assigning Lender and Agent that it is purchasing the portion of the Loan to be assigned to it for its own account, for investment purposes and not with a view to the distribution thereof; (iii) after giving effect

to any partial assignment, the assignee Lender shall have a Commitment in an amount at least equal to \$1,000,000 and the assigning Lender shall have retained Commitments in an amount at least equal to \$1,000,000; (iv) include a payment to Agent of an assignment fee of \$3,500; and (v) so long as no Default or Event of Default has occurred and is continuing, require the consent of Borrower, which shall not be unreasonably withheld or delayed; provided that no such consent shall be required for an assignment to a Qualified Assignee. In the case of an assignment by a Lender under this Section 10, the assignee shall have, to the extent of such assignment, the same rights, benefits and obligations as all other Lenders hereunder. The assigning Lender shall be relieved of its obligations hereunder with respect to its Commitment or assigned portion thereof from and after the date of such assignment. Borrower hereby acknowledges and agrees that any assignment shall give rise to a direct obligation of Borrower to the assignee and that the assignee shall be considered to be a "Lender". In all instances, each Lender's liability to make its Pro Rata Share of the Loan hereunder shall be several and not joint and shall be limited to such Lender's Pro Rata Share of the Commitments. Notwithstanding the foregoing provisions of this Section 10, any Lender may at any time pledge the Obligations held by it and such Lender's rights under this Agreement and the other Loan Documents to a Federal Reserve Bank, and any lender that is an investment fund may assign the Obligations held by it and such Lender's rights under this Agreement and the other Loan Documents to another investment fund managed by the same investment advisor; provided, that no such pledge to a Federal Reserve Bank shall release such Lender from such Lender's obligations hereunder or under any other Loan Document.

(b) Any participation by a Lender of all or any part of its Commitment shall be made with the understanding that all amounts payable by Borrower hereunder shall be determined as if that Lender had not sold such participation, and that the holder of any such participation shall not be entitled to require such Lender to take or omit to take any action hereunder except actions directly affecting (i) any reduction in the principal amount of, or interest rate or fees payable with respect to, any portion of the Loan in which such holder participates, (ii) any extension of the scheduled amortization of the principal amount of any portion of the Loan in which such holder participates or the final maturity date thereof, and (iii) any release of all or substantially all of the Collateral (other than in accordance with the terms of this Agreement or the other Loan Documents). Solely for purposes of Sections 8 and 11(g), Borrower acknowledges and agrees that a participation shall give rise to a direct obligation of Borrower to the participant and the participant shall be considered to be a "Lender". Except as set forth in the preceding sentence, no Credit Party shall have any obligation or duty to any participant. Neither Agent nor any Lender (other than the Lender selling a participation) shall have any duty to any participant and may continue to deal solely with the Lender selling a participation as if no such sale had occurred.

(c) Except as expressly provided in this Section 10, no Lender shall, as between Borrower and that Lender, or Agent and that Lender, be relieved of any of its obligations hereunder as a result of any sale, assignment, transfer or negotiation of, or granting of participation in, all or any part of the Loan, the Note or other Obligations owed to such Lender.

(c) Borrower shall assist any Lender permitted to sell assignments or participations under this Section 10 as reasonably required to enable the assigning or selling Lender to effect any such assignment or participation, including the execution and delivery of any and all agreements, notes and other documents and instruments as shall be requested and the preparation of informational materials for, and the participation of management in meetings with, potential assignees or participants. Borrower shall certify the correctness, completeness and accuracy of all descriptions of Borrower and their respective affairs contained in any selling materials provided by it and all other information provided by it and included in such materials.

(d) A Lender may furnish any information concerning any Credit Party in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants).

11. **Agency; Intercreditor Provisions; Setoffs.** (a) GE Capital is hereby appointed to act on behalf of all Lenders as Agent under this Agreement and the other Loan Documents. The provisions of this Section 11(a) are solely for the benefit of Agent and Lenders and no Credit Party nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement and the other Loan Documents, Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Credit Party or any

other Person. Agent shall have no duties or responsibilities except for those expressly set forth in this Agreement and the other Loan Documents. The duties of Agent shall be mechanical and administrative in nature and Agent shall not have, or be deemed to have, by reason of this Agreement, any other Loan Document or otherwise a fiduciary relationship in respect of any Lender. Except as expressly set forth in this Agreement and the other Loan Documents, Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to any Credit Party or any of their respective Affiliates or any Account Debtor that is communicated to or obtained by Agent or any of its Affiliates in any capacity. Neither Agent nor any of its Affiliates nor any of their respective officers, directors, employees, agents or representatives shall be liable to any Lender for any action taken or omitted to be taken by it hereunder or under any other Loan Document, or in connection herewith or therewith, except for damages caused by its or their own gross negligence or willful misconduct.

If Agent shall request instructions from Requisite Lenders or all affected Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, then Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from Requisite Lenders, or all affected Lenders, as the case may be, and Agent shall not incur liability to any Person by reason of so refraining. Agent shall be fully justified in failing or refusing to take any action hereunder or under any other Loan Document (i) if such action would, in the opinion of Agent, be contrary to law or the terms of this Agreement or any other Loan Document, or (ii) if Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of Requisite Lenders, or all affected Lenders, in each case as may be required under the terms of the Loan Documents.

(b) Neither Agent nor any of its Affiliates nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or the other Loan Documents, except for damages caused by its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, Agent: (i) may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Credit Party or to inspect the Collateral (including the books and records) of any Credit Party; (iv) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (v) shall incur no liability under or in respect of this Agreement or the other Loan Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopy, telegram, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties.

(c) With respect to its Commitment hereunder, GE Capital shall have the same rights and powers under this Agreement and the other Loan Documents as any other Lender and may exercise the same as though it were not Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include GE Capital in its individual capacity. GE Capital and its Affiliates may lend money to, invest in, and generally engage in any kind of business with, any Credit Party, any of their Affiliates and any Person who may do business with or own securities of any Credit Party or any such Affiliate, all as if GE Capital were not Agent and without any duty to account therefor to Lenders. GE Capital and its Affiliates may accept fees and other consideration from any Credit Party for services in connection with this Agreement (other than those paid to it as Agent for the Lenders) or otherwise without having to account for the same to Lenders. Each Lender acknowledges the potential conflict of interest between GE Capital as a Lender holding a disproportionate interest in the Loan and GE Capital as Agent.

(d) Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender and based on the financial statements referred to in Section 4.A and such other documents and

information as it has deemed appropriate, made its own credit and financial analysis of the Credit Parties and its own decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement. Each Lender acknowledges the potential conflict of interest of each other Lender as a result of Lenders holding disproportionate interests in the Loan, and expressly consents to, and waives any claim based upon, such conflict of interest.

(e) Lenders agree to indemnify Agent (to the extent not reimbursed by Credit Parties and without limiting the obligations of Credit Parties hereunder), ratably according to their respective Pro Rata Shares, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by Agent in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Agent's gross negligence or willful misconduct. Without limiting the foregoing, each Lender agrees to reimburse Agent promptly upon demand for its ratable share of any out-of-pocket expenses (including reasonable counsel fees) incurred by Agent in connection with the administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement and each other Loan Document, the preservation of the Collateral or claims made against Agent in connection with its fulfillment of its duties hereunder, in each case to the extent that Agent is not reimbursed for such expenses by Credit Parties.

(f) Agent may resign at any time by giving not less than thirty (30) days' prior written notice thereof to Lenders and Borrower. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within thirty (30) days after the resigning Agent's giving notice of resignation, then the resigning Agent may, on behalf of Lenders, appoint a successor Agent, which shall be a Lender, if a Lender is willing to accept such appointment, or otherwise shall be a commercial bank or financial institution or a subsidiary of a commercial bank or financial institution if such commercial bank or financial institution is organized under the laws of the United States of America or of any State thereof and has a combined capital and surplus of at least \$300,000,000. If no successor Agent has been appointed pursuant to the foregoing, within thirty (30) days after the date such notice of resignation was given by the resigning Agent, such resignation shall become effective and the Requisite Lenders shall thereafter perform all the duties of Agent hereunder until such time, if any, as the Requisite Lenders appoint a successor Agent as provided above. Any successor Agent appointed by Requisite Lenders hereunder shall be subject to the approval of Borrower, such approval not to be unreasonably withheld or delayed; provided that such approval shall not be required if a Default or Event of Default has occurred and is continuing. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Agent. Upon the earlier of the acceptance of any appointment as Agent hereunder by a successor Agent or the effective date of the resigning Agent's resignation, the resigning Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents, except that any indemnity rights or other rights in favor of such resigning Agent shall continue. After any resigning Agent's resignation hereunder, the provisions of this Section 11 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was acting as Agent under this Agreement and the other Loan Documents.

(g) In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Lender is hereby authorized at any time or from time to time, without prior notice to any Credit Party or to any Person other than Agent, any such notice being hereby expressly waived, to offset and to appropriate and to apply any and all balances held by it at any of its offices for the account of any Credit Party (regardless of whether such balances are then due to such Credit Party) and any other properties or assets at any time held or owing by that Lender or that holder to or for the credit or for the account of any Credit Party against and on account of any of the Obligations that are not paid when due; provided that the Lender exercising such offset rights shall give notice thereof to the affected Credit Party within a reasonable time period after exercising such rights. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase

for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so offset or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares (other than offset rights exercised by any Lender with respect to Section 8). Borrower agrees, to the fullest extent permitted by law, that (i) any Lender may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may sell participations in such amounts so offset to other Lenders and holders and (ii) any Lender so purchasing a participation in the Loan made or other Obligations held by other Lenders or holders may exercise all rights of offset, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Loan and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of offset, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

(h) Agent shall use reasonable efforts to provide Lenders with any notice of Event of Default received by Agent from, or delivered by Agent to, any Credit Party, with notice of any Event of Default of which Agent has actually become aware and with notice of any action taken by Agent following any Event of Default; provided, that Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Agent's gross negligence or willful misconduct. Lenders acknowledge that Borrower is required to provide financial statements to Lenders in accordance with Section 5.E and agree that Agent shall have no duty to provide the same to Lenders. Furthermore, Agent shall have no duty to provide Lenders with copies of notices or other documents required to be delivered directly to Lenders by Borrower under this Agreement.

(i) Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or the Note (other than exercising any rights of setoff as provided herein) without first obtaining the prior written consent of Agent and Requisite Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the Note shall be taken in concert and at the direction or with the consent of Agent or Requisite Lenders.

(j) Each Lender's share of any principal and interest payments made by Borrower to Agent pursuant to Automated Clearing House Debit shall be distributed by Agent to such Lender on the same day on which such payment is due from Borrower. To the extent Borrower makes any permitted or mandatory prepayment by wire transfer, Agent shall distribute to each Lender such Lender's share of such prepayment on the same Business Day if such prepayment is received by Agent prior to Noon Mountain Standard Time or the following Business Day if such prepayment is received by Agent after Noon Mountain Standard Time. All payments to be made by Agent to each Lender shall be made by wire transfer of immediately available funds pursuant to such wire transfer instructions as such Lender may designate for itself by written notice to Agent.

All amounts to be distributed to Lenders shall be made only from payments made by Borrower and are not payable by Agent from its own funds. If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without set-off, counterclaim or deduction of any kind. If Agent determines at any time that any amount received by Agent under this Agreement must be returned to Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to Borrower or such other Person, without set-off, counterclaim or deduction of any kind.

12. *Successors and Assigns.* This Agreement and the other Loan Documents shall be binding on and shall inure to the benefit of each Credit Party, Agent, Lenders and their respective successors and assigns (including, in the case of any Credit Party, a debtor-in-possession on behalf of such Credit Party), except as otherwise provided herein or therein. No Credit Party may assign, transfer, hypothecate or otherwise convey its rights, benefits,

obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of Agent and Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Credit Party without the prior express written consent of Agent and Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Credit Party, Agent and Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

13. *Amendments and Waivers.* (a) Except for actions expressly permitted to be taken by Agent, no amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, or any consent to any departure by any Credit Party therefrom, shall in any event be effective unless the same shall be in writing and signed by Agent and Borrower, and by Requisite Lenders, or all affected Lenders, as applicable. Except as set forth in clause (b) below, all such amendments, modifications, terminations or waivers requiring the consent of any Lenders shall require the written consent of Requisite Lenders.

(b) No amendment, modification, termination or waiver shall, unless in writing and signed by Agent and each Lender directly affected thereby: (i) reduce the principal of, rate of interest on or fees payable with respect to any affected Lender's portion of the Loan; (ii) extend any scheduled payment date (other than payment dates of mandatory prepayments under Sections 6(b) or 6(c) which may be extended upon the consent of the Requisite Lenders) or final maturity date of the principal amount of any affected Lender's portion of the Loan; (iii) waive, forgive, defer, extend or postpone any payment of principal, interest or fees as to any affected Lender; (iv) release any Credit Party from its obligations under the Loan Documents, release the Guaranty or, except as otherwise permitted herein or in the other Loan Documents, release, or permit any Credit Party to sell or otherwise dispose of, any Collateral with a value exceeding \$1,000,000 in the aggregate (which action shall be deemed to directly affect all Lenders); (v) change the aggregate unpaid principal amount of the Loan that shall be required for Lenders or any of them to take any action hereunder; (vi) amend or waive this Section 13 or the definition of the terms "Requisite Lenders", "Pro Rata Share" or "Commitment;" and (vii) increase the amount of the Loan or the Commitments. Furthermore, no amendment, modification, termination or waiver affecting the rights or duties of Agent under this Agreement or any other Loan Document shall be effective unless in writing and signed by Agent, as the case may be, in addition to Lenders required hereinabove to take such action. Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No amendment, modification, termination or waiver shall be required for Agent to take additional Collateral pursuant to any Loan Document. No notice to or demand on any Credit Party in any case shall entitle such Credit Party or any other Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 13 shall be binding upon each existing Lender and each future Lender.

(c) If, in connection with any proposed amendment, modification, waiver or termination requiring the consent of all affected Lenders, the consent of Requisite Lenders is obtained, but the consent of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained being referred to as "Non Consenting Lender") then, so long as Agent is not a Non Consenting Lender, at Borrower's request, Agent, or a Person reasonably acceptable to Agent, shall have the right with Agent's consent and in Agent's sole discretion (but shall have no obligation) to purchase from such Non Consenting Lenders, and such Non Consenting Lenders agree that they shall, upon Agent's request, sell and assign to Agent or such Person, all the Commitments of such Non Consenting Lenders for an amount equal to the principal balance of the portion of the Loan held by the Non Consenting Lenders and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment Agreement.

(d) Upon payment in full in cash and performance of all of the Obligations (other than indemnification Obligations), termination of the Commitments and a release of all claims against Agent and Lenders, and so long as no suits, actions proceedings, or claims are pending or threatened against any Indemnified Party asserting any damages, losses or liabilities that are indemnified Losses under Section 8, Agent shall deliver to Borrower termination statements, mortgage releases and other documents necessary or appropriate to evidence the termination of the liens securing payment of the Obligations.

14. **Fees and Expenses.** Borrower shall reimburse Agent and Lenders for all out-of-pocket expenses incurred in connection with the preparation, negotiation and filing and/or recordation of the Loan Documents (including the reasonable fees and expenses of all of its special loan counsel, advisors, consultants and auditors retained in connection with the Loan Documents and advice in connection therewith). Borrower shall reimburse Agent and Lenders for all fees, costs and expenses, including the reasonable fees, costs and expenses of counsel or other advisors (including environmental and management consultants and appraisers) for advice, assistance, or other representation in connection with:

(a) any amendment, modification or waiver of, or consent with respect to, or termination of, any of the Loan Documents or advice in connection with the syndication and administration of the Loan made pursuant hereto or its rights hereunder or thereunder;

(b) any litigation, contest, dispute, suit, proceeding or action (whether instituted by Agent, any Lender, any Credit Party or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the Loan Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against any or all of the Credit Parties or any other Person that may be obligated to Agent by virtue of the Loan Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Loan during the pendency of one or more Events of Default; provided, that no Person shall be entitled to reimbursement under this clause (b) in respect of any litigation, contest, dispute, suit, proceeding or action to the extent any of the foregoing results from such Person's gross negligence or willful misconduct;

(c) any attempt to enforce any remedies of Agent or any Lender against any or all of the Credit Parties or any other Person that may be obligated to Agent or any Lender by virtue of any of the Loan Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Loan during the pendency of one or more Events of Default; provided, that in the case of reimbursement of counsel for Lenders other than Agent, such reimbursement shall be limited to one counsel for all such Lenders;

(d) any workout or restructuring of the Loan during the pendency of one or more Events of Default; provided, that in the case of reimbursement of counsel for Lenders other than Agent, such reimbursement shall be limited to one counsel for all such Lenders; and

(e) efforts to (i) monitor the Loan or any of the other Obligations, (ii) evaluate, observe or assess any of the Credit Parties or their respective affairs, and (iii) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral;

including, as to each of clauses (a) through (e) above, all reasonable attorneys' and other professional and service providers' fees arising from such services and other advice, assistance or other representation, including those in connection with any appellate proceedings, and all expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this Section 14, all of which shall be payable, on demand, by Borrower to Agent. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, environmental advisors, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram or telecopy charges; secretarial overtime charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services.

Without limiting the foregoing provisions of this Section 14, in the event Borrower makes any request upon Agent or any of the Lenders requiring Agent, such Lender or Agent's or such Lender's attorneys to review and/or prepare (or cause to be reviewed and/or prepared) any documents or other submissions in connection with or arising out of this Agreement or any of the other Loan Documents, Borrower shall also pay Agent and such Lender a reasonable processing and review fee.

15. *Miscellaneous Provisions.*

A. *Notices.* All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Agreement or the other Loan Documents shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) transmission, if delivered by facsimile, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Borrower:	c/o Claim Jumper Associates, Ltd. 16721 Millikan Avenue Irvine, California 92606 Attention: William H. Hustedt Telephone: (949) 756-9001 Telecopy: (949) 756-8733
If to Agent:	GE Capital Franchise Finance Corporation 17207 North Perimeter Drive Scottsdale, AZ 85255 Attention: Collateral Management Telephone: (480) 585-4500 Telecopy: (480) 585-2225
If to Lenders:	To Agent and Bank of the West 4400 MacArthur Blvd., Suite 150 Newport Beach, CA 92660 Attention: Mark Buchanan Telephone: (949) 797-1961 Telecopy: (949) 797-1959 Far East National Bank 105 E. Valley Boulevard Alhambra, CA 91801 Attention: Jade Wu Telephone: (626) 293-3186 Telecopy: (626) 458-9669

B. *Brokerage Commission.* Lenders and Borrower represent and warrant to each other that they have dealt with no broker, agent, finder or other intermediary in connection with the transactions contemplated by this Agreement or the other Loan Documents. Lenders and Borrower shall indemnify and hold each other harmless from and against any costs, claims or expenses, including attorneys' fees, arising out of the breach of their respective representations and warranties contained within this Section.

C. *No Waiver.* Agent's or any Lender's failure, at any time or times, to require strict performance by the Credit Parties of any provision of this Agreement or any other Loan Document shall not waive, affect or diminish any right of Agent or such Lender thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. Subject to the provisions of Section 13, none of the undertakings, agreements, warranties, covenants and representations of any Credit Party contained in this Agreement or any of the other Loan Documents and no Event of Default by any Credit

Party shall be deemed to have been suspended or waived by Agent or any Lender, unless such waiver or suspension is by an instrument in writing signed by an officer of or other authorized employee of Agent and the applicable required Lenders and directed to Borrower specifying such suspension or waiver.

D. *Captions.* Captions are used throughout this Agreement and the other Loan Documents for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

E. *Lenders' Liability.* Notwithstanding anything to the contrary provided in this Agreement or the other Loan Documents, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement and the other Loan Documents by Lenders, that (1) there shall be absolutely no personal liability on the part of any shareholder, director, officer or employee of any of the Lenders, with respect to any of the terms, covenants and conditions of this Agreement or the other Loan Documents, (2) Borrower waives all claims, demands and causes of action against any Lender's officers, directors, employees and agents in the event of any breach by any Lender of any of the terms, covenants and conditions of this Agreement or the other Loan Documents to be performed by such Lender and (3) in the event of any breach by any Lender of any of the terms, covenants and conditions of this Agreement or the other Loan Documents to be performed by such Lender, Borrower shall look solely to the assets of such Lender for the satisfaction of each and every remedy of Borrower, such exculpation of liability to be absolute and without any exception whatsoever.

F. *Severability.* The provisions of this Agreement and the other Loan Documents shall be deemed severable. If any part of this Agreement or the other Loan Documents shall be held invalid, illegal or unenforceable, the remainder shall remain in full force and effect, and such invalid, illegal or unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

G. *Construction Generally.* This Agreement and the other Loan Documents have been entered into by both parties in reliance upon the economic and legal bargains contained therein and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Borrower and Lenders were each represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

H. *Further Assurances.* Borrower will, at its sole cost and expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, documents, conveyances, notes, assignments, security agreements, financing statements and assurances as Agent or Lenders shall from time to time reasonably require or deem advisable to carry into effect the purposes of this Agreement and the other Loan Documents, to perfect any lien or security interest granted in any of the Loan Documents and for the better assuring and confirming of all of Agent's rights, powers and remedies under the Loan Documents.

I. *Entire Agreement.* This Agreement and the other Loan Documents, together with any other certificates, instruments or agreements to be delivered in connection therewith, constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between Borrower and Lenders with respect to the subject matter of this Agreement and other Loan Documents. Notwithstanding anything in this Agreement and the other Loan Documents to the contrary, upon the execution and delivery of this Agreement by Borrower and Lenders, the Commitment Letter (other than those provisions thereof which expressly survive the Closing) shall be deemed null and void and of no further force and effect and the terms and conditions of this Agreement shall control notwithstanding that such terms and conditions may be inconsistent with or vary from those set forth in the Commitment Letter. Notwithstanding the foregoing, the Fec Letter and any market flex provisions contained in the Commitment Letter shall survive the execution and delivery of this Agreement and shall continue to be binding obligations of Borrower and GE Capital.

J. *Forum Selection; Jurisdiction; Venue; Choice of Law.* Borrower acknowledges that this Agreement and the other Loan Documents were substantially negotiated in the State of Arizona, this Agreement and the other Loan Documents were executed by Agent in the State of Arizona and delivered by Borrower in the State of Arizona, all payments under the Note will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. For purposes of any action or

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

K. *Counterparts.* This Agreement and the other Loan Documents may be executed in one or more counterparts, each of which shall be deemed an original.

L. *Survival.* Except for the conditions of Closing set forth in Section 2, which shall be satisfied or waived as of the Closing Date, all representations, warranties, agreements, obligations and indemnities of Borrower and Lenders set forth in this Agreement and the other Loan Documents shall survive the Closing.

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

N. *Estoppel Certificate.* At any time, and from time to time, each party agrees, promptly and in no event later than fifteen (15) days after a request from the other party, to execute, acknowledge and deliver to the other party a certificate in the form supplied by the other party, certifying as to such information reasonably requested by the other party in connection with this Agreement and the other Loan Documents.

O. *Amendment and Restatement.* This Agreement amends and restates the Prior Loan and Security Agreement in its entirety and replaces and supersedes each and every term and condition of the Prior Loan and Security Agreement.

IN WITNESS WHEREOF, Borrower, Agent and Lenders have entered into this Agreement as of the Closing Date.

BORROWER:

South West Foods, Inc.
Claim Jumper - Fountain Valley
Claim Jumper - Irvine
Claim Jumper - Temecula
Claim Jumper Restaurants
Claim Jumper Enterprises, Inc.
CWN Management, Inc.
Claim Jumper Foods, Inc.,
each a California Corporation

By: William H. Husted
Name: William H. Husted
Title: CEO

Claim Jumper Associates, Ltd., a California limited partnership
Claim Jumper/Puente Hills, a California limited partnership
Claim Jumper/Corona, a California limited partnership
Claim Jumper 1, Ltd., a California limited partnership
Claim Jumper 9, Ltd., a California limited partnership
Claim Jumper 12, Ltd., a California limited partnership
Claim Jumper 13, Ltd., a California limited partnership
Claim Jumper 14, Ltd., a California limited partnership
Claim Jumper 15, Ltd., a California limited partnership

By: Claim Jumper Enterprises, Inc., its sole General Partner

By: William H. Husted
Name: William H. Husted
Title: CEO

Claim Jumper/San Bernardino, Ltd., a California limited partnership
 Claim Jumper 18, Ltd., a California limited partnership
 Claim Jumper 19, Ltd., a California limited partnership
 Claim Jumper 20, Ltd., a California limited partnership
 Claim Jumper 27, Ltd., a California limited partnership
 Claim Jumper 29, Ltd., a California limited partnership
 Claim Jumper 30, Ltd., a California limited partnership
 Claim Jumper 32, LP, a California limited partnership

By: Claim Jumper Associates, Ltd., its sole General Partner

By: Claim Jumper Enterprises, Inc., its sole General Partner

By: William H. Nustedt
 Name: William H. Nustedt
 Title: CFO

Claim Jumper Foods, Ltd., a California limited partnership

By: Claim Jumper Foods, Inc., its sole General Partner

By: William H. Nustedt
 Name: William H. Nustedt
 Title: CFO

Claim Jumper Restaurants, LLC, a Delaware limited liability company

By: Claim Jumper Enterprises, Inc., Manager

By: William H. Nustedt
 Name: William H. Nustedt
 Title: CFO

Claim Jumper Management, LLC, a Delaware limited liability company

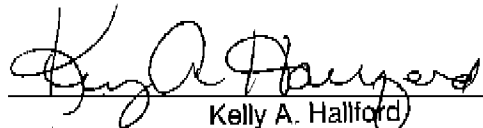
By: Claim Jumper Restaurants, LLC, Member

By: Claim Jumper Enterprises, Inc., Manager

By: William H. Nustedt
 Name: William H. Nustedt
 Title: CFO

LENDERS:

GE Capital Franchise Finance Corporation, as Agent and a Lender

By: 
 Name: Kelly A. Hallford
 Title: Vice President

Bank of the West, as a Lender

By: _____
 Name: _____
 Title: _____

Far East National Bank, as a Lender


By: _____
 Name: _____
 Title: _____

LENDERS:

GE Capital Franchise Finance Corporation, as Agent and a Lender

By: _____
Name: _____
Title: _____

Bank of the West, as a Lender

By: 
Name: **MARK BUCHANAN**
Title: **VICE PRESIDENT**

BANK OF THE WEST
Far East National Bank, as a Lender

By: _____
Name: _____
Title: _____

LENDERS:

GE Capital Franchise Finance Corporation, as Agent and a Lender

By: _____
Name: _____
Title: _____

Bank of the West, as a Lender

By: _____
Name: _____
Title: _____

Far East National Bank, as a Lender

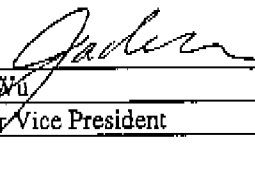
By:  _____
Name: Jade Wu
Title: Senior Vice President

EXHIBIT A

PREMISES

GE No.	Store No.	Street Address	City	State	Zip
8004-0349	1	1905 S Commercenter East	San Bernardino	CA	92408-3407
8004-0350	2	25322 McIntyre St	Laguna Hills	CA	92653-5424
8004-0351	3	18050 Brookhurst St	Fountain Valley	CA	92708-6739
8004-0352	4	2250 E 17th St	Santa Ana	CA	92705-8608
8004-0353	5	18061 Gale Ave	City of Industry	CA	91748-1245
8004-0354	6	7971 Beach Blvd.	Buena Park	CA	90620-1938
8004-0355	7	3935 Alton Pkwy	Irvine	CA	92606-8294
8004-0356	8	380 McKinley St	Corona	CA	92879-1282
8004-0357	9	5958 Avenida Encinas	Carlsbad	CA	92008-4405
8004-0358	10	29540 Rancho California Road	Temecula	CA	92591-5294
8004-0359	11	12384 Carmel MT Road	San Diego	CA	92128-4616
8004-0360	12	5500 Grossmont Center Dr., Ste. 406	La Mesa	CA	91942-3016
8004-0361	13	12499 Foothill Blvd.	Rancho Cucamonga	CA	91739-9321
8004-0362	14	190 S State College Blvd	Brea	CA	92821
8004-0363	15	820 W Huntington Drive	Monrovia	CA	91016-3145
8004-0364	16	7407 E Park Meadows Drive	Lone Tree	CO	80124-2544
8004-0365	17	6501 E Pacific Coast Highway	Long Beach	CA	90803-4202
8004-0366	18	24301 Crenshaw Blvd.	Torrance	CA	90505-5349
8004-0367	19	1981 Diamond Blvd.	Concord	CA	94520-5717
8004-0368	20	25740 The Old Road	Valencia	CA	91381-1709
8004-0369	21	27845 Santa Margarita Pkwy	Mission Viejo	CA	92691-6701
8004-0370	22	7210 164 th Ave. N.E.	Redmond	WA	98052-7822
8004-0371	23	9429 Tampa Ave	Northridge	CA	91324-2700
8004-0372	24	3063 W Agua Fria Freeway	Phoenix	AZ	85027-3926
8004-0373	25	1530 W Baseline Rd	Tempe	AZ	85283-1046
8004-0392	26	5901 S 180 th St	Tukwila	WA	98188-3804
8004-0374	27	250 Harding Blvd	Roseville	CA	95678-2404
8003-8454	28	7000 East Shea Blvd.	Scottsdale	AZ	85254
8004-0376	29	1100 S. Ft Apache Rd	Las Vegas	NV	89117-5459
8004-0377	30	4905 S Virginia St.	Reno	NV	89502-6078
8003-8455	32	601 Green Valley Parkway	Henderson	NV	89074
8003-8456	33	3333 Bristol St # 2078	Costa Mesa	CA	92626

EXHIBIT B**FED ID AND ORG ID NUMBERS**

<u>Name of Entity</u>	<u>Federal Identification Number</u>	<u>Organizational Identification Number</u>
Claim Jumper 1, LTD	33-0649257	199507500029
Claim Jumper 9, LTD	33-0535950	199202900008
Claim Jumper 12, LTD	33-0580505	199321800008
Claim Jumper 13, LTD	33-0613442	199412500019
Claim Jumper 14, LTD	33-0615613	199418800013
Claim Jumper 15, LTD	95-4489291	199425200012
Claim Jumper 18, LTD	33-0668398	199520200006
Claim Jumper 19, LTD	33-0717122	199619300010
Claim Jumper 20, LTD	33-0809321	199721100037
Claim Jumper 27, LTD	94-3347643	199921600014
Claim Jumper 29, LTD	94-3361136	200012200005
Claim Jumper 30, LTD	94-3349227	199934200001
Claim Jumper 32, LP	80-0101572	200401300012
Claim Jumper/Corona	33-0439528	199033900010
Claim Jumper/Fountain Valley	33-5986173	C1738078
Claim Jumper/Irvine	33-0492511	C1804611
Claim Jumper/Puente Hills	33-0262952	198727300012
Claim Jumper/San Bernardino, LTD	33-0884668	1999278000001
Claim Jumper/Temecula	33-0535951	C1712020
Claim Jumper Associates, LTD	84-1279148	199513500036
Claim Jumper Enterprises, Inc	33-0492513	C1804612

Claim Jumper Foods, Inc.	33-0705224	C1779562
Claim Jumper Foods, Ltd.	None	199802200014
Claim Jumper Management, LLC	75-3166481	3767701
Claim Jumper Restaurants	33-0140437	C1348431
Claim Jumper Restaurants, LLC	77-0631053	3754039
CWN Management, Inc.	33-0405403	C1478623
South West Foods, Inc.	95-2687687	C0596027

EXHIBIT C**COMPANY LITIGATION**

1. Three Injury Claims – Cases in early stages. No demand amount yet.
 - A. Case No.: Not assigned
 Court location: Not assigned
 Name of Plaintiff: Thelma Knutson
 Name of Defendant: Not named
 Description of Claim: Slip and fall outside front door
 Status: Case is being defended by insurance carrier (Claim #17002474818)
 - B. Case No.: Not assigned
 Court location: Not assigned
 Name of Plaintiff: Enrique Gonzalez
 Name of Defendant: Not named
 Description of Claim: Slip and fall in restroom
 Status: Case is being defended by insurance carrier (Claim #00504150806)
 - C. Case No.: 04CC03907
 Court location: Santa Ana, CA
 Name of Plaintiff: Rima Nino
 Name of Defendant: Claim Jumper Restaurants, DOES 1-20 Inclusive
 Description of Claim: Wax paper on onion ring
 Status: Case is being defended by insurance carrier (Claim #00403048597)
2. Employer's Liability Claim by J. Daum – Currently being litigated. Employee disputing job classification. Potential liability unknown. Case #02CC10201
3. Workers Compensation Claims (see below) – Currently being litigated. Potential liability unknown. Borrower has over accrued on financial statements for any related loss.

CLAIM NUMBER	DESC. OF LOSS	POL YR.	TOTAL INCURRED	TOTAL PAID
2C062770	CT 06/03/02-08/13/03 usually/customary job duties	2003	8,073	30
2C819571	CT Injury to 10-19-02 to low back radiating down	2002	13,872	784
2C819669	Strained lower back lifting a box/UD	2002	67,704	50,237
2C819671	CT to right wrist, foot, thumb, neck, back	2002	21,436	1,424
2C819761	Strain left wrist	2002	100,685	34,576
2C820342	Strain to right knee when bending down to sit	2002	36,253	31,043
2C821036	Injury to neck and right shoulder area	2002	42,047	20,459
2C821258	Unknown injury to left arm - normal job duties	2002	118,584	81,154
2C821321	Injury to left wrist when carrying a tray	2002	80,409	68,853
2C821831	Stress/UD	2002	35,238	7,076
2C822408	CT - right upper extremities, neck	2002	200	0
2C823735	CT 4-7-02/4-7-03 - neck and bilateral upper	2002	13,850	766
2C824342	Injured neck, bilateral upper extremities	2002	16,999	1,412
2C824484	Employee claims he was touched	2002	7,267	770
2C824595	Reaching for tortillas in freezer - lumbar	2003	160,047	110,201
2C824693	Psyche CT 3/3/02 - 3/3/03	2002	199	30

2C824951	Walking on uneven floor mats and twisted LT	2002	58,108	31,430
2C825242	I/W alleging burns, bilateral upper extremities, neck, back	2003	30,753	18,133
2C825430	Right wrist injury while performing regular job Possible stress related injury - exact cause unknown	2003	10,575	2,287
2C825631	Lifting heavy merchandise (vegetables) - back	2003	17,976	7,974
2C827117	Strain to lower back from unknown cause	2003	35,518	2,624
2C827498	Strain to back when lifting containers	2003	15,871	4,473
2C827754	Strain to back when lifting containers	2003	22,790	10,932
2C827876	Standing at dish station - twisted left knee/ankle	2003	46,865	19,031
2C828045	Strain to thoracic/lumbar lifting Hobart mixer	2003	20,336	8,845
2C828307	Fractured left wrist when EE lost footing	2003	44,769	21,292
2C828374	Strain to lower back when slipped in grease	2003	44,125	21,365
2C828472	Stress - unknown cause	2003	5,299	30
2C829097	Strain to both wrists when lifting plates	2003	32,871	4,810
2C829401	Strain to right knee when slipped on water	2003	20,079	9,994
2C832001	Laceration to right hand Back and LT knee - terminated for cause/atty rep'd	2003	4,632	1,105
2C832531	Strains to bilateral wrist, forearm, hand	2004	6,579	0
2C832742	Low back strain right side possibly lifting bus tub	2003	4,700	414
3J804157	Hit head on oven door	2002	21,132	12,803
3L801918		2003	18,684	10,698

EXHIBIT D**FORM OF COMPLIANCE CERTIFICATE**

[on Borrower's letterhead]

To: GE Capital Franchise Finance Corporation, as Agent
17207 North Perimeter Drive
Scottsdale, Arizona 85255
Attn: Collateral Management

Bank of the West
4400 MacArthur Blvd., Suite 150
Newport Beach, CA 92660
Attention: Mark Buchanan

Far East National Bank
105 E. Valley Boulevard
Alhambra, CA 91801
Attention: Jade Wu

Re: Compliance Certificate dated _____

Ladies and Gentlemen:

Reference is made to that certain AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (the "Loan Agreement") dated as of September ____, 2004, by and among (i) SOUTH WEST FOODS, INC.; CLAIM JUMPER - FOUNTAIN VALLEY; CLAIM JUMPER - IRVINE; CLAIM JUMPER - TEMECULA; CLAIM JUMPER RESTAURANTS; CLAIM JUMPER ENTERPRISES, INC.; CWN MANAGEMENT, INC.; and CLAIM JUMPER FOODS, INC.; all of which are corporations organized and existing under the laws of the State of California, (ii) CLAIM JUMPER ASSOCIATES, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/SAN BERNARDINO, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/PUENTE HILLS, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER/CORONA, A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 1, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 9, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 12, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 13, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 14, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 15, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 18, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 19, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 20, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 27, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 29, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 30, LTD., A CALIFORNIA LIMITED PARTNERSHIP; CLAIM JUMPER 32, LP, A CALIFORNIA LIMITED PARTNERSHIP; all of which are limited partnerships organized and existing under the laws of the State of California, and (iii) CLAIM JUMPER RESTAURANTS, LLC; and CLAIM JUMPER MANAGEMENT, LLC; each of which is a limited liability company organized and existing under the laws of the State of Delaware (jointly, severally and collectively, "Borrower"), GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation, for itself, as Lender, and as Agent for Lenders, and the other Lenders signatory thereto from time to time. Capitalized terms used in this Compliance Certificate have the meanings set forth in the Loan Agreement unless specifically defined herein.

The undersigned hereby certifies as of the date hereof that he/she is the _____ of Borrower, and that, as such, he/she is authorized to execute and deliver this Compliance Certificate to Agent and Lenders on behalf of Borrower, and that:

1. The financial information of Borrower furnished in Schedule 1 attached hereto, has been prepared in accordance with GAAP (except for year-end adjustments and the lack of footnotes), and fairly presents in all material respects the financial condition of Borrower.

2. The undersigned has reviewed the terms of the Loan Agreement and has made, or caused to be made under his/her supervision, a review in reasonable detail of the transactions and condition of Borrower during the accounting period covered by the financial statements delivered pursuant to Section 5.E of the Loan Agreement.

3. Such review has not disclosed the existence on and as of the date hereof, and the undersigned does not have knowledge of the existence as of the date hereof, of any event or condition that constitutes a Default or Event of Default, except for such conditions or events listed on Schedule 2 attached hereto, specifying the nature and period of existence thereof and what action Borrower has taken, is taking, or proposes to take with respect thereto.

4. The representations and warranties of Borrower set forth in the Loan Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof (except to the extent they relate to a specified date), except as set forth on Schedule 3 attached hereto.

5. Borrower is in compliance with the applicable financial covenants contained in Section 5 of the Loan Agreement as demonstrated on Schedule 4 hereof.

IN WITNESS WHEREOF, this Compliance Certificate is executed by the undersigned this _____ day of _____,

BORROWER:

South West Foods, Inc.
Claim Jumper – Fountain Valley
Claim Jumper – Irvine
Claim Jumper – Temecula
Claim Jumper Restaurants
Claim Jumper Enterprises, Inc.
CWN Management, Inc.
Claim Jumper Foods, Inc.,
each a California Corporation

By: _____
Name: _____
Title: _____

Claim Jumper Associates, Ltd., a California limited partnership
Claim Jumper/Puente Hills, a California limited partnership
Claim Jumper/Corona, a California limited partnership
Claim Jumper 1, Ltd., a California limited partnership
Claim Jumper 9, Ltd., a California limited partnership
Claim Jumper 12, Ltd., a California limited partnership
Claim Jumper 13, Ltd., a California limited partnership
Claim Jumper 14, Ltd., a California limited partnership
Claim Jumper 15, Ltd., a California limited partnership

By: Claim Jumper Enterprises, Inc., its sole General Partner

By: _____
Name: _____
Title: _____

Claim Jumper/San Bernardino, Ltd., a California limited partnership
 Claim Jumper 18, Ltd., a California limited partnership
 Claim Jumper 19, Ltd., a California limited partnership
 Claim Jumper 20, Ltd., a California limited partnership
 Claim Jumper 27, Ltd., a California limited partnership
 Claim Jumper 29, Ltd., a California limited partnership
 Claim Jumper 30, Ltd., a California limited partnership
 Claim Jumper 32, LP, a California limited partnership

By: Claim Jumper Associates, Ltd., a California limited partnership,
 its sole General Partner

By: Claim Jumper Enterprises, Inc., its sole
 General Partner

By: _____
 Name: _____
 Title: _____

Claim Jumper Foods, Ltd., a California limited partnership

By: Claim Jumper Foods, Inc., its sole General Partner

By: _____
 Name: _____
 Title: _____

Claim Jumper Restaurants, LLC, a Delaware limited liability
 company

By: Claim Jumper Enterprises, Inc., Manager

By: _____
 Name: _____
 Title: _____

Claim Jumper Management, LLC, a Delaware limited liability
 company

By: Claim Jumper Restaurants, LLC, Member

By: Claim Jumper Enterprises, Inc., Manager

By: _____
 Name: _____
 Title: _____

SCHEDULE 1

Financial Information

SCHEDULE 2

Default or Event of Default

SCHEDULE 3

Representations and Warranties

SCHEDULE 4**Financial Covenants****1. Corporate Fixed Charge Coverage Ratio.**

Borrower's Corporate Fixed Charge Coverage Ratio, determined as of the last day of Borrower's fiscal quarter ending _____, _____ for the twelve month period of time immediately preceding the date of determination, is ___:1.

2. Senior Funded Debt Covenant

Borrower's Senior Funded Debt to EBITDA ratio, determined as of the last day of Borrower's fiscal quarter ending _____, _____ for the twelve month period of time immediately preceding the date of determination, is ___:1.

3. Total Owner's Equity Covenant

[to be included for Compliance Certificate delivered with respect to Borrower's fiscal year end]

Borrower's total owner's equity determined as of the last day of Borrower's fiscal year ending _____, _____ is \$ _____, which is at least \$1,000,000 higher than it was at the end of the immediately preceding fiscal year of Borrower.

EXHIBIT E**LENDERS/COMMITMENTS**

1.	GE Capital Franchise Finance Corporation	\$12,000,000
2.	Bank of the West	\$10,000,000
3.	Far East National Bank	<u>\$ 3,000,000</u>
	TOTAL	\$25,000,000

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted by facsimile to the United States Patent and Trademark Office on the date shown below.

Pamela S. Flint
Signature

Pamela S. Flint
(Printed Name)

9.23.04
(Date)