

# TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Security Agreement		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Fresh Choice, LLC		12/21/2005	LIMITED LIABILITY COMPANY: DELAWARE
RECEIVING PARTY DATA			
Name:	GE Capital Franchise Finance Corporation		
Street Address:	17207 North Perimeter Drive		
City:	Scottsdale		
State/Country:	ARIZONA		
Postal Code:	85255		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 16			
Property Type	Number	Word Mark	
Registration Number:	1610861	FRESH CHOICE	
Registration Number:	2684186	FRESH CHOICE	
Registration Number:	2451839	FRESH CHOICE EXPRESS	
Registration Number:	2729672	FRESH CHOICE EXPRESS	
Registration Number:	2383575	FRESH CHOICE MASTERS CLUB	
Registration Number:	2643710	FRESH CHOICE NOW THAT'S FRESH!	
Registration Number:	2236391	FRESH RESTAURANT CHOICE	
Registration Number:	2693508	FRESH CHOICE ULTIMATE SALAD SOUP BAKERY PASTA BAR	
Registration Number:	2366469	GREAT TASTE. IT'S OUR BAG!	
Serial Number:	75903304	IS IT FRESH	
Registration Number:	2489232	NOW THAT'S FRESH	
Registration Number:	1601615	SAY HELLO TO FRESHNESS	
Serial Number:	75120442	SAY HELLO TO FRESHNESS	

OP \$415.00 1610861

Registration Number:	1745327	THE ULTIMATE SOUP & SALAD BAR
Registration Number:	1562755	ZOOPA
Registration Number:	2803641	YOUR FRESH CONNECTION FOR LIFE!

# **CORRESPONDENCE DATA**

Fax Number: (402)346-1148  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 402-346-6000  
 Email: pamela.flint@kutakrock.com  
 Correspondent Name: Pamela Flint, Paralegal  
 Address Line 1: 1650 Farnam Street  
 Address Line 2: Kutak Rock LLP  
 Address Line 4: Omaha, NEBRASKA 68102

NAME OF SUBMITTER:	Pamela S. Flint
Signature:	/Pamela S. Flint/
Date:	01/09/2006

**Total Attachments: 12**  
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## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made and entered into as of December 21, 2005 by FRESH CHOICE, LLC, a Delaware limited liability company ("Borrower"), in favor of GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation ("Lender").

### PRELIMINARY STATEMENT:

Lender and Borrower entered into that certain Loan Agreement dated as of the date of this Agreement (the "Loan Agreement") pursuant to which Lender agreed to make a loan to Borrower in the amount of \$5,000,000.000 (the "Loan"). Capitalized terms not defined herein shall have the meanings set forth in the Loan Agreement.

### AGREEMENT:

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

1. ***Security Interest Created; Obligations Secured.*** (a) To secure the payment of the Obligations (as defined below), Borrower hereby grants to Lender a security interest in all of its right, title and interest in the following personal property, whether now owned or hereafter acquired (collectively, the "Collateral"):

(i) All of the following described property, whether now owned or hereafter acquired and wherever located, together with all replacements and substitutions therefore and all cash and non-cash proceeds (including insurance proceeds) and products thereof, and, in the case of tangible Collateral, together with all additions, attachments, accessions, parts, equipment and repairs now or hereafter attached or affixed thereto or used in connection therewith: (i) all equipment, including machinery, furniture, appliances, trade fixtures, tools, and office and record keeping equipment of Borrower; (ii) all inventory (including all goods held for sale, raw materials, work in process and materials or supplies used or consumed in the business of Borrower) of Borrower; (iii) all documents; general intangibles; accounts; contract rights; chattel paper and instruments; money; securities; investment properties; deposit accounts; supporting obligations; letters of credit and letter of credit rights; commercial tort claims; and records, software and information contained in computer media (such as data bases, source and object codes and information therein), together with any equipment and software to utilize, create, maintain or process any such records or data on electronic media of Borrower; and (iv) all goodwill of Borrower; provided, however, that the security interest in any franchise, license or distributorship agreement or other agreement is subject to the provisions of Section 9-408 of the UCC;

(ii) With respect to Borrower and/or Borrower's Business, (i) all patents and patent applications in the United States and all equivalents of the foregoing in any other jurisdiction and all reissues, divisions, continuations and extensions of the foregoing, including, without limitation, any patent and patent applications; (ii) all registered and unregistered trademarks, trade names, service marks, trade dress, logos, slogans and corporate names (including, but not limited to, the names listed on the attached Exhibit A) together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, including, without limitation, any registrations and applications listed in the Security Agreement; (iii) all works of authorship, including, but not limited to, all copyrightable works and all copyrights (including, but not limited to, distinctive menus and manuals) and all applications, registrations and renewals in connection therewith in the United States and all equivalents of the foregoing in any other jurisdiction, including, without limitation, any copyrights listed in the Security Agreement; (iv) all trade secrets and other confidential information (including, but not limited to, recipes, cuisine, culinary style, inventions, ideas, assets under research and development, know-how, methods, techniques, diagnostic tools, technology, specifications, customer and supplier lists, pricing and cost information, and business, technical and marketing plans and proposals); (v) all domain names, web addresses and websites; (vi) all computer software, in source code and object code form, and all related data and documentation; (vii) all other

intellectual property and proprietary rights, whether or not subject to statutory registration; and (viii) all copies and tangible embodiments of all of the foregoing (i) through (vii) in any form or medium (collectively, the "Intellectual Property"); and

(iii) All proceeds of any of the foregoing;

provided, however, the term Collateral shall not include (i) any governmental permit or license to which Borrower is a party to the extent that the collateral assignment thereof or the creation of a security interest therein would constitute a breach of the terms thereof; provided, further that (A) the Collateral shall include any proceeds of any of the foregoing assets and (B) any permit or license excluded in accordance with this clause shall cease to be so excluded to the extent such prohibition is rendered ineffective under Section 9-408 of the UCC of any relevant jurisdiction; and (ii) one or more cash collateral accounts funded by Borrower's Affiliates (and any funds released to third-parties from such account(s) from time to time) that is used to secure one or more letters of credit that support Borrower's workers' compensation obligations in the maximum principal amount of \$1,000,000.00; provided, however, Borrower acknowledges and agrees that the funds for such cash collateral accounts shall be provided by Equity Holders and/or Guarantors and shall be in addition to the \$3,000,000.00 of equity contributed to Borrower on or before the Closing Date as required by Section 2(b)(14) of the Loan Agreement.

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

(i) Payment of indebtedness evidenced by the Note; and

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

Notwithstanding the foregoing or any other provisions of this Agreement to the contrary:

(v) in the event that the Loan becomes the subject of a Securitization, Transfer or Participation, this Agreement shall only secure indebtedness and obligations relating to the Loan and any other loans between Borrower on the one hand and any of the Lender Entities on the other hand which are part of the same Loan Pool as the Loan; and

(w) in the event that any loans between Borrower on the one hand and any of the Lender Entities on the other hand (other than the Loan) become the subject of a Securitization, Transfer or Participation, this Agreement shall not secure any indebtedness and obligations relating to such loans unless the Loan is part of the same Loan Pool as such loans;

(c) Borrower agrees, on request of Lender, to furnish to Lender such further information, to execute and deliver to Lender such documents and instruments (including UCC financing statements) and to do such other acts and things as Lender may at any time reasonably request relating to the perfection or protection of the security interest in the Collateral created by this Agreement or for the purpose of carrying out the intent of this Agreement. Without limiting the foregoing, Borrower shall cooperate and do all acts deemed necessary or advisable by Lender to continue in Lender a perfected first security interest in the Collateral and shall obtain and furnish to Lender any subordinations, releases, landlord, lessor, bailee or mortgagee waivers, control agreements, and similar documents as may be from time to time reasonably requested by, and in form and substance satisfactory to, Lender. Borrower will warrant and defend the Collateral and Lender against all claims by all persons in connection with the Obligations. Borrower authorizes Lender to file financing statements, continuations, and amendments thereto describing the Collateral and containing any other information required by the applicable UCC, in such form and substance as Lender, in its sole discretion, may determine. Borrower also authorizes Lender to file such documents with the United States Patent and Trademark Office as may be necessary or appropriate to give notice of this Agreement and perfect the security interest created hereunder (including, without limitation, filing a copy of this Agreement). Borrower irrevocably grants to Lender the power to sign Borrower's name and generally to act on behalf of

Borrower to execute and file applications for title, transfers of title, financing statements, notices of lien, demands for terminations or other security interests in any of the Collateral and other documents pertaining to any or all of the Collateral, in each case to the extent necessary to effectuate the terms of this Agreement. This power is coupled with an interest and is irrevocable during such time as any of the Obligations are outstanding. Borrower shall, if any certificate of title be required or permitted by law for any of the Collateral, obtain and promptly deliver to Lender such certificate showing the lien of this Agreement with respect to the Collateral, if reasonably requested by Lender to do so. Borrower ratifies its prior authorization for Lender to file financing statements and amendments thereto describing the Collateral and containing any other information required by the UCC, if filed prior to the date hereof.

2. **Events of Default.** Each of the following shall be deemed an event of default by Borrower (each, an "Event of Default"):

(a) If Borrower fail to observe or perform any of the 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 place any rights or property of Lender in immediate jeopardy, and is within the reasonable power of Borrower to promptly cure after receipt of notice thereof, all as determined by Lender in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lender shall have given Borrower written 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 Lender 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 Lender. 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.

(b) 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 Other Agreements.

3. **Remedies for Default.** Upon the occurrence of an Event of Default, Lender shall have all rights and remedies of a secured party in, to and against the Collateral granted by the Uniform Commercial Code in the State of New York (the "Uniform Commercial Code") and otherwise available at law or in equity, including, without limitation:

(a) the right to declare any or all payments due under the Note, the other Loan Documents, the Other Agreements and all other documents evidencing the Obligations immediately due and payable and the right to recover all fees and expenses (including reasonable attorney fees) in connection with the collection or enforcement thereof, which fees and expenses shall constitute additional Obligations of Borrower hereunder;

(b) the right to act as, and Borrower hereby constitutes and appoints Lender, its 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 under this Agreement, and actions taken pursuant to this appointment may be taken either in the name of Borrower or in the name of Lender with the same force and effect as if this appointment had not been made;

(c) 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 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 Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Uniform Commercial Code);

(d) the right to hold, maintain, preserve and prepare the Collateral for sale, until disposed of;

- (e) the right to render the Collateral unusable and dispose of the Collateral;
- (f) the right to require Borrower to assemble and package the Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to the Lender;
- (g) the right to sell, lease, hold or otherwise dispose of all or any part of the Collateral; and
- (h) the right to sue for specific performance of any obligation under the Loan Documents or to recover damages for breach thereof.

The remedies of Lender hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Uniform Commercial Code or other applicable law shall not be construed as a waiver of any of the other remedies of Lender so long as any part of the Obligations secured hereby remains unsatisfied. Lender shall be entitled to receive on demand, as additional Obligations hereunder, interest accruing at the Default Rate on all amounts not paid when due under the Note or this Agreement until the date of actual payment. Lender shall have no duty to mitigate any loss to Borrower occasioned by enforcement of any remedy hereunder and shall have no duty of any kind to any subordinated creditor of Borrower, except as otherwise set forth in the Subordination Agreement.

4. ***Application of Proceeds.*** Should Lender exercise the rights and remedies specified in Section 3 hereof, any proceeds received thereby shall be first applied to pay the costs and expenses, including reasonable attorneys' fees, incurred by Lender as a result of the Event of Default. The remainder of any proceeds, net of Lender's costs and expenses, shall be applied to the satisfaction of the Obligations and any excess paid over to Borrower.

5. ***Use.*** Borrower agrees that the Collateral will be used at the Premises solely in the conduct of Borrower's business as a Permitted Concept and will at all times remain in the possession and control of Borrower at the Premises and will not be removed without Lender's prior written consent, except as otherwise expressly permitted by the Loan Agreement and the provisions of this Section 5. Borrower promises that the Collateral at all times will be used and operated under and in compliance with all Applicable Regulations, except for such noncompliance which has not had, and will not reasonably be expected to have, a Material Adverse Effect. Borrower will not permit any Collateral to be subject to any lien, charge or encumbrance except that of Lender and will keep the Collateral free and clear of any and all liens, charges, encumbrances, and adverse claims, except for Permitted Exceptions. Except as otherwise expressly permitted by the Loan Agreement, Borrower will not sell, lease, rent, or otherwise dispose of any item of Collateral without the prior written consent of Lender except for (i) sales of inventory in the ordinary course of business and (ii) so long as no Event of Default has occurred and is continuing, sales or other dispositions of obsolescent items of equipment consistent with past practices, so long as such items of obsolete equipment are replaced by items of equal or greater value and utility.

6. ***Maintenance and Improvement.*** Borrower shall at all times, at its own expense, keep the Collateral in good working order, condition and repair and well maintained, ordinary wear and tear excepted, and Borrower shall make all inspections or, and repairs to, Collateral required by law, regulation or insurance policy, except to the extent the failure of which to perform would not reasonably be expected to result in a Material Adverse Effect. Borrower shall also make any alterations, improvements or additions to the Collateral that are required by law or regulation. Any alterations, improvements, or additions to the Collateral shall be made at the expense of Borrower, shall constitute accessions to the Collateral and shall be subject to Lender's security interest.

7. ***Loss and Damage.*** Borrower shall bear the risk of damage, loss, theft, or destruction, partial or complete, of the Collateral from whatsoever source arising, whether or not such loss or damage is covered by insurance. Borrower shall promptly notify Lender in writing in the event of any damage, loss, theft, or destruction, partial or complete, of any item of Collateral having a value in excess of \$10,000 in the aggregate. While no Event of Default shall have occurred and be continuing, Lender agrees to promptly forward to Borrower insurance proceeds payable to Lender by reason of any such damage, loss, theft, or destruction, for application by Borrower to (a) repair or restore the Collateral to good condition and working order, or (b) replace the Collateral with similar property in good repair, condition and working order. Upon the occurrence and during the continuance of an Event

of Default, Lender shall have the right to apply the insurance proceeds from any damage, loss, theft or destruction to any item of Collateral toward the Obligations in such order, priority and proportions as Lender shall determine or pay such proceeds in whole or in part to Borrower to be applied toward repair, restoration or replacement of the Collateral as contemplated by the preceding subitems (a) and (b) of this Section 7.

8. **Insurance.** Borrower shall procure and continuously maintain and pay for (a) all risk physical damage insurance covering loss or damage to the tangible property comprising the Collateral for not less than the full replacement value thereof naming Lender as additional insured and loss payee, (b) bodily injury and property damage combined single limit liability insurance in an amount not less than Two Million Dollars (\$2,000,000) for each location at which any of the Collateral is located, and (c) such other insurance as may from time to time be reasonably required by Lender in order to protect its interests with respect to the Collateral, with such insurance companies and pursuant to such contracts or policies and with such deductibles as are satisfactory to Lender. All contracts and policies shall include provisions for the protection of Lender notwithstanding any act or neglect of or breach or default by Borrower, shall provide for payment of property insurance proceeds to Lender, shall provide that they may not be modified, terminated or canceled unless Lender is given at least thirty (30) days' advance written notice thereof, and shall provide that the coverage is "primary coverage" for the protection of Borrower or Lender notwithstanding any other coverage carried by Lender or Borrower protecting against similar risks. Borrower shall promptly notify any appropriate insurer and Lender of each and every occurrence that may become the basis of a claim or cause of action against the insured and provide Lender with all data pertinent to such occurrence. Borrower shall furnish Lender with certificates of such insurance or copies of policies upon request and shall furnish Lender with renewal certificates not less than thirty (30) days prior to the renewal date. Proceeds of all property insurance are payable first to Lender to the extent of its interest.

9. **Taxes.** Borrower agree to pay all taxes, assessments and other governmental charges of whatsoever kind and character by whom payable on or relating to any item of Collateral or the sale, ownership, use, shipment, transportation, delivery or operation thereof or payable in respect to any obligation of Borrower (the "Impositions"). Upon receipt of a request therefore from Lender, Borrower will submit written evidence of payment of the obligations described in this section. Borrower may, at its own expense, contest by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition, provided that (i) Borrower shall provide written notice to Lender of any contest involving more than \$10,000; (ii) Borrower shall demonstrate to Lender's reasonable satisfaction that the proceedings will conclusively operate to prevent the sale of any of the Collateral to satisfy such Imposition prior to final determination of such proceeding; (iii) Borrower shall have deposited with Lender adequate reserves for the payment of the Imposition, together with all interest and penalties thereon, unless, in connection with such proceedings, Borrower shall have paid the Impositions in full under protest or unless Borrower shall have furnished such security or other undertaking as may be required or permitted by law to accomplish a stay of any sale of such Collateral; and (iv) no Event of Default has occurred and is continuing.

10. **Applicable Law.** Borrower acknowledge that this Agreement was substantially negotiated in the State of Arizona, the executed Agreement was delivered in the State of Arizona, all payments under the Note will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. For purposes of any action or proceeding arising out of this Agreement, the parties hereto hereby expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona. Borrower consent that they 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 waive and agree not to assert in any such action, suit or proceeding that they are not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. It is the intent of the parties hereto that all provisions of this Agreement shall be governed by and construed under the laws of the State of New York, without giving effect to its principles of conflicts of law. To the extent that a court of competent jurisdiction finds New York law inapplicable with respect to any provisions hereof, then, as to those provisions only, the laws of the state where the Collateral is located shall be deemed to apply. Nothing in this Section shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the states in which the Collateral is located to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under this Agreement or the other Loan Documents.

11. **Assignment.** Lender may assign in whole or in part its rights under this Agreement, including, without limitation, in connection with any Transfer, Participation and/or Securitization. Upon any unconditional assignment of Lender's entire right and interest hereunder, Lender shall automatically be relieved, from and after the date of such assignment, of liability for the performance of any obligation of Lender contained herein.

12. **Possession.** 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.

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

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

15. **Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Agreement (collectively called "Notices") 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:

Fresh Choice, LLC  
485 Cochrane Circle  
Morgan Hill, CA 95037  
Attention: Chief Financial Officer  
Telephone: (817) 321-1492 or (817) 321-1601  
Telecopy: (817) 321-2002

with a copy to:

Pillsbury Winthrop Shaw Pittman  
2300 N Street, N.W.  
Washington, D.C. 20037  
Attention: Robert B. Robbins, Esq.  
Telephone: (202) 663-8136  
Telecopy: (202) 454-7001

If to Lender:

GE Capital Franchise Finance Corporation  
17207 North Perimeter Drive  
Scottsdale, AZ 85255  
Attention: Collateral Management  
Telephone: (480) 585-4500  
Telecopy: (480) 585-2225

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the person or persons entitled to receive such Notice.



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

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

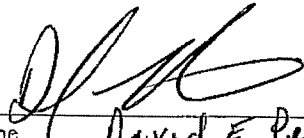
18. *Characterization; Interpretation.* It is the intent of the parties hereto that the business relationship created by the Note, this Agreement and the other Loan Documents is solely that of creditor and debtor and has been entered into by both parties in reliance upon the economic and legal bargains contained in the Loan Documents. None of the agreements contained in the Loan Documents is intended, nor shall the same be deemed or construed, to create a partnership between Lender and Borrower, to make them joint venturers, to make Borrower an agent, legal representative, partner, subsidiary or employee of Lender, nor to make Lender in any way responsible for the debts, obligations or losses of Borrower. Lender and Borrower acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Agreement after being fully advised by said counsel as to its effect and significance. This Agreement shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party.

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

20. *Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.* BORROWER AND LENDER 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 ANY 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 ANY MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHERS 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 ANY PARTY AGAINST THE OTHERS 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 LENDER OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

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

FRESH CHOICE, LLC, a Delaware limited liability company

By   
Printed Name David E Patti  
Its Vice President - CFO

**EXHIBIT A**  
**TRADEMARKS**

4816-1061-2224.5

GEFF Contract No. 29370  
GEFF Property No. 8004-3338 et. al

**TRADEMARK**  
**REEL: 003222 FRAME: 0976**

**COUNTRY** California

TRADEMARK	STATUS	APPLICATION #	APPLICATION DATE	REGISTRATION #	REGISTRATION DATE	CLASS(ES)
FRESH CHOICE	SUBSTATUS Inactive Abandoned				11/23/1988 033938	GOODS/SERVICES Class 42: Restaurant services
SAY HELLO TO FRESHNESS	Registered				1/12/2000 035957	Class 42: Restaurant services

**COUNTRY** Canada

TRADEMARK	STATUS	APPLICATION #	APPLICATION DATE	REGISTRATION #	REGISTRATION DATE	CLASS(ES)
ZOOPA	SUBSTATUS Registered	5/24/1989 632579			9/23/1994 TMA433555	GOODS/SERVICES 42 Class 42: Restaurant services.

**COUNTRY** US

TRADEMARK	STATUS	APPLICATION #	APPLICATION DATE	REGISTRATION #	REGISTRATION DATE	CLASS(ES)
FRESH CHOICE	SUBSTATUS Registered	11/6/1989 73/836743			8/21/1990 1610861	GOODS/SERVICES 42 Class 42: Restaurant services, in Class 42
FRESH CHOICE & DESIGN	Registered	3/28/2000 76/012155			2/4/2003 2684186	42 Class 42: Restaurant services.

Thursday, November 10, 2005

FRESH CHOICE EXPRESS	Registered	5/19/1999 75/709209	5/15/2001 2451839	42 Class 42: Restaurant services.
FRESH CHOICE EXPRESS & DESIGN	Registered	3/28/2000 76/012179	6/24/2003 2729672	42 Class 42: Restaurant services.
FRESH CHOICE MASTERS CLUB	Registered	5/28/1997 75/299086	9/5/2000 2383575	42 Class 42: Restaurant services.
FRESH CHOICE NOW THAT'S FRESH & DESIGN	Registered	3/28/2000 76/012074	10/29/2002 2643710	42 Class 42: Restaurant services.
FRESH CHOICE RESTAURANT LOGO	Inactive Abandoned	1/3/1997 75/221083	4/6/1999 7236391	43 Restaurant and catering services.
FRESH CHOICE ULTIMATE SALAD SOUP BAKERY PASTA BAR & DESIGN	Registered	5/10/2002 78/127964	3/4/2003 2693508	43 Class 43: Restaurant services.
GREAT TASTE. IT'S OUR BAG!	Registered	9/15/1999 75/800835	7/11/2000 2366469	42 Class 42: Restaurant services.
IS IT FRESH	Inactive Abandoned	1/25/2000 75/903304		42 Class 42: Restaurant services.
NOW THAT'S FRESH	Registered	1/25/2000 75/903144	9/11/2001 2489732	42 Class 42: Restaurant services.

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SAY HELLO TO FRESHNESS	Inactive	11/6/1989	6/12/1990	For restaurant services, in Class 42
Abandoned	73/836644	1601615		
SAY HELLO TO FRESHNESS	Inactive	6/11/1996		Food products, namely, fruit salad, garden salad, vegetable salad, soups and fresh fruit, namely, cut and sliced fruits.
Abandoned	75/120442			
SAY HELLO TO FRESHNESS	Not yet filed			Miscellaneous services
	Open			
THE ULTIMATE SOUP & SALAD BAR	Inactive	3/19/1991	1/5/1993	42
	Abandoned	74/149126	1745327	Class 42: Restaurants.
YOUR FRESH CONNECTION FOR LIFE! & DESIGN	Registered	5/20/2002	1/6/2004	43, 44
		78/130041	2803641	Providing on-line information regarding restaurants, eating habits, foods, menus and monthly food features.
				Providing on-line information services regarding health.
ZOOPA	Registered	1/6/1989	10/24/1989	42
		73/773861	1562755	Class 42: Restaurant services.