

SECURITIES AND EXCHANGE COMMISSION

FORM 10-K

Annual report pursuant to section 13 and 15(d)

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FILER

FRESH CHOICE INC

CIK: **893741** | IRS No.: **770130849** | State of Incorpor.: **DE** | Fiscal Year End: **1229**
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SIC: **5812** Eating places

Mailing Address	Business Address
2901 TASMAN DRIVE SUITE 109 SANTA CLARA CA 95054-1169	2901 TASMAN DR STE 109 SANTA CLARA CA 95054 4089868661

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 27, 1998

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM _____ TO _____.

COMMISSION FILE NUMBER 0-20792

FRESH CHOICE, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE
(STATE OR OTHER JURISDICTION OF
INCORPORATION OR ORGANIZATION)

77-0130849
(I.R.S. EMPLOYER
IDENTIFICATION NO.)

2901 TASMAN DRIVE - SUITE 109, SANTA CLARA, CA
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

95054-1169
(ZIP CODE)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: (408) 986-8661

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT: NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:
COMMON STOCK, \$0.001 PAR VALUE
(TITLE OF CLASS)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definite proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K

Approximate aggregate market value of the registrant's Common Stock held by nonaffiliates of the registrant (based on the closing sales price of such stock as reported in the Nasdaq National Market) on February 26, 1999 was \$5,945,000. Excludes shares of Common Stock held by directors, officers and each person who holds 5% or more of the outstanding Common Stock at February 26, 1999 because such persons may be deemed to be affiliates. This exclusion is not a conclusive determination of such status for other purposes.

Number of shares of Common Stock, \$0.001 par value, outstanding as of February 26, 1999 was 5,718,847.

DOCUMENTS INCORPORATED BY REFERENCE

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Documents

Form 10-K Reference

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(1) Proxy Statement for the Annual Meeting
of Stockholders scheduled for May 20, 1999

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Part III

FRESH CHOICE, INC.

ANNUAL REPORT ON FORM 10-K

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PART I

Certain statements set forth in or incorporated by reference into this Annual Report on Form 10-K, including anticipated store openings, planned capital expenditures, settlement of lease obligations and trends in or expectations regarding the Company's operations, constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are based on currently available operating, financial and competitive information and are subject to various risks and uncertainties. Actual future results and trends may differ materially depending on a variety of factors as set forth under the heading "Business - Business Risks". In particular, the Company's plans to open new restaurants could be affected by the Company's ability to locate suitable restaurant sites, construct new restaurants in a timely manner and obtain additional financing.

ITEM 1. BUSINESS.

As of February 26, 1999, the Company operated 51 restaurants in California (40), the state of Washington (4) and Texas (7) under the names "Fresh Choice" and "Zoopa." Fresh Choice and Zoopa restaurants feature an extensive selection of healthy, high-quality, freshly-made specialty and traditional salads, hot pasta, pizza, hot baked potatoes, soups, fresh breads and muffins, frozen yogurt and other desserts, offered in a limited-service format. The Company's goal is to create a distinctive dining experience that combines the selection, quality and ambiance of full-service, casual restaurants with the convenience and value appeal of traditional buffet restaurants.

The restaurants use only fresh produce and high-quality ingredients in its menu offerings. Fresh produce is delivered a minimum of four days per week to each restaurant, and all menu items are prepared on-site. To reinforce the Company's commitment to freshness, many of the Company's food offerings are prepared in exhibition-style cooking areas throughout the day. Guests make their selections at various arcades including a salad arcade, a soup, baked potato, hot pasta and pizza arcade, a muffin, breads and bakery goods arcade, and a fresh fruit, frozen yogurt and specialty dessert arcade.

The Company believes that it provides its guests an excellent price/value relationship by offering unlimited servings for a current fixed price of \$6.29 at weekday lunch, \$6.99 for Saturday and Sunday lunch and \$7.79 at dinner, in most locations, plus the cost of a beverage. The Company's wide variety of high-quality food and attractive prices are designed to appeal to a broad range of guests, including families, business professionals, students and senior citizens. In addition, the Company believes the concept appeals to health-conscious diners who are focused on the nutritional content of their meals.

The Company views its commitment to its employees or crewmembers as critical to its long-term success. The Company depends on a high rate of repeat business, and views the quality of its crewmember interaction with guests as an important element of its strategy. By providing extensive training and competitive compensation, the Company seeks to foster a strong corporate culture and encourage a sense of personal commitment from crewmembers at all levels. The Company believes that its strong culture helps it attract and retain highly-motivated crewmembers who provide its guests with a level of service superior to that traditionally associated with limited-service restaurants.

The Company acquired the Zoopa trade name and three Zoopa restaurants in fiscal 1997 and opened an additional three new Zoopa restaurants during fiscal 1997 and 1998. In addition the Company opened one new Fresh Choice restaurant in fiscal 1998. The Company has generally attempted to cluster its restaurants in each market area to benefit from operating and advertising efficiencies, enhance brand-name recognition, and discourage competition.

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In December 1992, the Company completed an underwritten initial public offering of 1,112,500 shares of its Common Stock, with net offering proceeds of \$12,719,000. Stockholders of the Company sold 612,500 shares in this offering.

In July 1993, the Company sold 850,000 shares of its Common Stock in an underwritten public offering, with net proceeds to the Company of \$19,609,000. Stockholders of the Company sold 525,000 shares in the same offering.

In December 1995, after an analysis of the sales potential and operating economics of every restaurant in the chain, the Company announced a \$23.9 million restructuring plan. The plan called for closing as many as ten of the Company's restaurants and for a partial write-down of assets to estimated fair value in other restaurants. The Company closed or sold 11 restaurants under this plan, including three restaurants in 1995 and an additional eight in 1996. As of December 27, 1998, the Company had completed this restructuring plan.

In December 1998, the Company recorded a \$3.7 million restructuring charge for the closure of four previously impaired underperforming restaurants and for the closure of two additional restaurants where it does not intend to renew the leases. The charge also included the impairment of two additional restaurants in accordance with SFAS No. 121, "Accounting for the Impairment of Long-lived Assets to be Disposed Of."

In September, 1996 the Company sold 1,187,906 shares of its Series B Non-Voting Convertible Preferred Stock to Crescent Real Estate Equities Limited Partnership ("Crescent") for \$4.63 per share receiving net proceeds of approximately \$5,175,000 in a private offering. Crescent and/or its assignees also has an option to purchase up to 593,953 shares of Series C Non-Voting Convertible Preferred Stock at a price of \$6.00 per share during a period of three years.

The Company was incorporated in California on October 20, 1986 under the name Gourmet California, Inc. In August 1988, the Company was recapitalized as a result of a merger with Moffett Partners, Inc., and the survivor of the merger was re-named Fresh Choice, Inc. Effective December 4, 1992, the Company was reincorporated in Delaware. Unless the context otherwise requires, all references to the "Company" or "Fresh Choice" mean Fresh Choice, Inc. and its predecessors.

STRATEGY

The Company's objective is to create a distinctive dining experience that combines the selection, quality and ambiance of full-service, casual dining restaurants with the convenience and value appeal of traditional buffet restaurants. Each element of the Company's strategy is designed to exceed guests' expectations, encourage repeat business, and establish a significant presence in each of its targeted markets. The key elements of the Company's strategy include the following:

Fresh, Healthy, High-Quality Food. The Company is committed to using only fresh produce and high-quality ingredients in its menu offerings. Fresh produce is delivered a minimum of four days per week to each restaurant, and all menu items are prepared on-site daily. To reinforce the Company's commitment to freshness, many of the Company's food offerings are prepared in separate exhibition-style cooking areas throughout the day. The Company maintains stringent quality standards in identifying, purchasing and preparing fresh food and ingredients.

Extensive Food Selection. The restaurant's broad selection of food offerings is designed to appeal to a wide range of guests. Each restaurant features a selection of specialty salads daily, prepared from recipes developed by the Company, as well as salad ingredients and a variety of dressings that allow guests to create their own salads. Each restaurant also offers a selection of freshly-prepared soups,

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hot Sizzlin' Pan pasta dishes, pizza, hot breads, muffins and other bakery goods, baked potatoes, fruits, frozen yogurt and other desserts.

Excellent Price/Value Relationship. The Company believes its pricing strategy for unlimited servings offers an excellent price/value alternative to other casual dining restaurants. Discounts are provided for young children and senior citizens through the Company's Master Club(TM).

Commitment to Guest Service. The Company is committed to providing its guests with a level of service superior to that traditionally associated with limited-service restaurants. The Company devotes substantial attention and resources to maintaining the cleanliness and consistent high-quality presentation of the salad bar and other exhibition cooking areas in order to enhance the visual appeal of the Company's offerings. Fresh Choice depends upon a high rate of repeat business, and views the quality of its crewmember interaction with guests as critical to its long-term success. By providing extensive training and competitive compensation, the Company believes it fosters a strong corporate culture and encourages a sense of personal commitment from crewmembers at all levels.

Distinctive Design and Decor and Casual Atmosphere. The Company devotes significant resources to the design and decor of its restaurants. The restaurants have a flexible design which can accommodate a variety of available sites. The Company's new restaurant design and decor incorporated into its new restaurants and the current Fresh Choice restaurants remodel plan, uses an interior design that is in the style of an open-air international marketplace, like a farmer's market. The food is displayed in colorful arcades with fun and distinctive signage segregating each arcade section.

Restaurant Locations. The Company's site selection strategy is generally to cluster its restaurants in each of its target markets in order to realize operating and marketing efficiencies, enhance brand-name recognition, and discourage competition.

RESTAURANT ECONOMICS

For the 52 weeks ended December 27, 1998, the 49 restaurants open throughout the entire period generated average net sales of approximately \$1,438,000 and average cash flow, after occupancy expenses, of approximately \$163,000 or 11.4% of net sales. During fiscal 1998, the Company opened two new restaurants in Texas at an average cash cost of \$1,140,000, not including pre-opening expenses.

CONCEPT AND MENU

Each Fresh Choice and Zoopa restaurant features a salad bar offering signature specialty tossed and prepared salads with an extensive choice of salad ingredients and dressings. All specialty tossed salads and specialty prepared salads are clearly marked, and low-fat and fat-free items are prominently

identified. Throughout the day several crewmembers maintain the salad bar and replenish individual salads and ingredients from the opposite side of the salad bar, minimizing interference with guests. Separate exhibition-style arcades offer fresh soups, hot pasta dishes, pizza, baked potatoes, hot breads, muffins and other bakery goods, fresh fruits, frozen yogurt and other desserts. During peak hours, each guest is escorted to his or her table. Each guest may obtain unlimited refills of all food dishes, soft drinks, lemonade, coffee and tea. The Company is also actively improving the aesthetic appeal of its restaurants by enhancing the merchandising of many of the fresh products used daily in the arcades to create a more inviting, warm, and visually abundant atmosphere.

The Company has developed proprietary recipes for a broad assortment of specialty salads, soups, pasta sauces, and muffins. In each product category, the restaurants offer several standard dishes daily, and rotates additional offerings to provide variety for the Company's many repeat guests. Each category also contains daily offerings that are particularly low in fat. Because the restaurants utilize a broad

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variety of produce and other ingredients in its dishes and is not overly dependent on any individual recipe, it is able to substitute dishes and ingredients in the event that weather conditions or supply factors lead to high prices or shortages of particular produce items or other ingredients. The Company believes that the flexibility of its menu allows it to accommodate regional tastes.

Salads. The restaurants offer signature specialty tossed salads and specialty prepared salads, each of which is made from recipes created by the Company, and salads made by the guest from a broad assortment of salad ingredients. The salad bar in each restaurant features specialty tossed salads that are prepared exhibition-style and are rotated frequently.

Each day the salad bar features a selection of specialty prepared salads from among the Company's more than 50 recipes. The Company's salad bar also offers more than 40 salad ingredients and toppings, allowing guests to create their own salad. The ingredients include various types of lettuce and a broad assortment of vegetables, cheeses, and other toppings. The Company offers 10 dressings and a selection of gourmet oils and vinegars.

Soups. The restaurants offer a variety of soups selected daily from among its more than 30 soup recipes. All soups are prepared on-site utilizing fresh produce and other high-quality ingredients, and include low-fat and non-fat selections.

Pasta. The restaurants offer Sizzlin' Pan Pasta, a line of pan-sauteed pasta recipes prepared for guests continually throughout the day. Recipes feature high-quality pastas, sauteed in olive oil, garlic, and white wine with fresh herbs, vegetables, and meats. Individual pastas and sauces are still offered on a daily basis, in addition to Sizzlin' Pan Pasta dishes.

Pizza. The restaurants offer tasty three-cheese pizza fresh from the oven all day long. In addition vegetable or other topped pizzas may be offered.

Muffins and Breads. The restaurants offer a variety of muffins daily, including a low-fat muffin, selected from among its more than 30 muffin recipes. All muffins are baked in the exhibition bakery area and are replenished frequently to ensure warmth and freshness. The restaurants also offer a variety of freshly-baked breads, including sourdough french bread, harvest bread and herbed bread sticks.

Desserts. The restaurants offer an assortment of desserts, including fresh fruits, bread pudding, tapioca, chocolate pudding, frozen yogurt, fruit cobblers, and a triple chocolate decadence brownie.

Beverages. The restaurants offer an assortment of fruit juices, fresh lemonades and flavored iced teas. Fresh Choice also offers sodas and sparkling waters, and in most restaurants, beer and wine. Refills of juices, lemonade, soft drinks, coffee and tea are provided at no extra cost.

GUEST SERVICE

The Company is committed to providing a superior level of service in order to distinguish itself from traditional limited-service restaurants. During peak hours, guests are escorted from the salad bar to a table. Crewmembers are in the dining area during meal hours to provide follow-on beverage service, to clean and bus tables, and to attend to other guest needs.

The Company devotes substantial attention and resources to maintaining the cleanliness and consistent high-quality presentation of the salad bar and other exhibition cooking areas in order to enhance the visual appeal of the Company's food offerings. The restaurant's crewmembers are present behind the salad bar and in the exhibition cooking areas to replenish and replace food offerings, to answer guest questions, and to assist guests in serving themselves. All crewmembers in each restaurant are required to maintain a high standard of dress and grooming.

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The Company actively solicits guest input through the use of comment cards prominently displayed in several areas in each restaurant, and attempts to respond in writing to all guest complaints and suggestions.

RESTAURANT DESIGN

The Company's restaurants utilize a 60-foot salad bar, with the cash registers placed at the end of the salad bar in most of the restaurants before the guest has access to the other food service areas. A few of the Company's restaurants, including its new restaurants, have been designed so that the cash registers are positioned toward the front of the restaurant to provide guests with direct access to the various food service areas. The Company opened two new restaurants in Texas in 1998. These restaurants incorporate an open, colorful, fun, brighter, more inviting decor package and a more efficient layout. The new decor has been incorporated into the Company's ongoing remodel plans.

The Company's restaurants typically range from 5,500 to 7,400 square feet, seating from 160 to 250 guests. Many of the Company's restaurants provide limited outdoor seating. The flexible design of the restaurants enables the Company to take advantage of a broad range of available sites.

REMODELING

Remodeling is an integral part of the Company's strategic plan. Restaurants typically require remodeling every five to seven years. The Company has incorporated many of the design elements of its new Zoopa restaurants into its remodeling plans. Eight restaurants were remodeled in 1998 at a total cost of approximately \$1,500,000. Ten to fifteen restaurants are scheduled to be remodeled in 1999 at an expected total cost of approximately \$1,100,000 to \$1,700,000. Future remodel plans will be developed based upon an evaluation of the results of these remodels.

SITE SELECTION

To date, the Company has located its restaurants in regional malls, strip centers and freestanding locations. The Company considers the location of each restaurant to be critical to its long-term success, and management devotes significant effort to the investigation and evaluation of potential sites. The site selection process focuses on market area demographics including targets for population, household income and education, as well as site specific characteristics including daytime traffic volumes and patterns, visibility, accessibility and availability of adequate parking. The Company also reviews potential competition and guest activity at other restaurants operating in the area. The Company believes that its flexibility in utilizing its different restaurant layouts gives it a competitive advantage in selecting sites. The Company requires approximately six to twelve months after identifying a site to complete negotiation of a lease and construct and open a new restaurant. While the Company currently leases most of its restaurant sites and expects to lease virtually all of its sites in the future, it may purchase one or more sites for construction of new restaurants if available on acceptable financial terms. Currently, the Company owns land and buildings at two of its restaurant sites and owns buildings on leased land at seven others.

EXPANSION STRATEGY

The Company opened two new restaurants in 1998 in Houston and Fort Worth, Texas and has put further plans for restaurant expansion on hold until financial performance improves. However, the Company plans to test a new Fresh Choice Express unit designed for office buildings and other high

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traffic captive locations utilizing our local restaurants for much of the prep work, thus keeping capital and operating costs down. Further expansion of the Fresh Choice Express concept will be based upon an evaluation of the results of this test. In addition, the Company frequently reviews the operating performance and profitability of its restaurants, and, to the extent they do not meet expectations for operating performance, restaurants will be evaluated for possible closure.

By clustering restaurants, the Company seeks to benefit from advertising and operating efficiencies. In addition, clustering allows the Company to capture more of the available guest base and to discourage competition. To the extent that the Company continues to open new restaurants in clusters outside of its existing Northern California markets, the Company expects that these restaurants may benefit from certain volume purchasing discounts and operating efficiencies generally applicable to its Northern California restaurants.

The Company currently operates all of its existing restaurants, and has no plans to offer franchises or to begin purchasing rather than leasing its restaurant sites on a regular basis.

There can be no assurance that the restaurants will be successful outside the Company's existing Northern California markets, in locations where the Company has limited operating experience, where the weather is more seasonal, or where regional tastes and restaurant preferences may be different. In addition, the Company's ability to resume an expansion strategy will depend upon a variety of factors, including the selection and availability of suitable restaurant locations, the construction of new restaurants in a timely manner, the availability of capital to finance expansion, equipment costs and other factors, many of which are beyond the Company's control. When the Company resumes expansion, there can be no assurance that the Company will be successful in opening the number of restaurants anticipated, that those restaurants will be opened in a timely manner, or that, if opened, those restaurants will be operated profitably.

MARKETING AND PROMOTION

The Company's marketing strategy in its existing markets is to increase unaided brand awareness toward building top-of-mind recall of the Fresh Choice or Zoopa brand resulting in increased usage among targeted consumers.

The Company intends to maximize exposure within its target market with high impact, broad reaching mediums such as free standing inserts and radio. In addition, the Company intends to continue to use targeted direct mail throughout the year in selected markets. These tactics are designed to leverage both the high level of aided awareness that has been achieved by the brand and build an identifiable perception of Fresh Choice or Zoopa in the mind of the consumer. Additionally, by consistently providing a positive dining experience, the Company believes it benefits from significant word-of-mouth advertising.

In new markets, the marketing strategy is to build brand name awareness where no or very low awareness exists. The Company intends to accomplish this through the use of appropriate local advertising mediums and creative messages. Prior to opening each new restaurant, the Company typically sponsors fund-raisers and pre-opening parties in the restaurant with local charities or schools to build community relationships and attract customers to the restaurant.

RESTAURANT OPERATIONS AND MANAGEMENT

Management and Crewmembers. The Company has endeavored to establish a strong corporate identity and culture and to maintain quality and consistency in its restaurants through the careful training of personnel and the establishment of rigorous standards relating to food purchasing and preparation and

maintenance of the serving areas and facilities. Responsibility for managing the Company's restaurant operations is currently shared by seven regional managers, who report to the Vice President of Operations who reports to the President and CEO. Regional managers are generally responsible for four to ten restaurants.

The management staff of a typical Fresh Choice restaurant consists of one general manager, two or three restaurant managers and one to two shift supervisors. The Company externally recruits most of its restaurant managers, virtually all of whom have prior restaurant management experience. Most of the Company's current general managers have been promoted from restaurant managers.

All newly-hired assistant managers participate in the Company's training course. Each restaurant also employs approximately 40 hourly crewmembers, many of whom work part-time. The general manager of each restaurant is responsible for the day-to-day operation and profitability of the restaurant. To enhance quality, service, cleanliness, maintenance and safety, the Company has developed detailed systems, procedures and controls with respect to labor and food cost standards, food preparation, planning and scheduling. The Company's culture emphasizes a sense of ownership and entrepreneurship. The Company maintains a variety of programs to reward excellent service and performance by each crewmember at the restaurant level. In addition to a competitive base salary, the Company has an incentive plan that rewards restaurant managers based upon achieving sales and profit targets, controlling costs and quality of operations.

Food Purchasing. The Company has designed systems for determining order quantities and has developed preparation methods that together ensure freshness, maximize usage and minimize waste. Most food items are purchased on a centralized basis to ensure uniform quality and adequate supplies, and to obtain competitive prices. To the extent possible, the Company purchases food items pursuant to fixed-price, long-term contracts that are not subject to minimum quantity requirements. All produce is purchased from sources that have been pre-qualified to meet the Company's specifications. Produce is delivered directly to individual restaurants. At each restaurant, the management team is responsible for assuring that all deliveries meet the Company's guidelines regarding freshness and quality. The Company believes alternate sources are available for all products.

Recipe Development. The Company's food development efforts focus on introducing compelling and innovative new recipes, as well as upgrading the flavor profiles and presentation standards of existing recipe favorites.

The Company works with outside consultants on food and beverage market research and consumer trends. Seasonal and upscale produce items are rotated into the salad bar product mix to continue to have "the best salad bar in the business".

Training and Support. The Company believes that its training programs have been successful in developing commitment to the Company, a consistent level of execution, and high-quality guest service. Upon joining Fresh Choice, each restaurant manager participates in an eight-week training course that covers all aspects of restaurant operations and develops management skills. All crewmembers are instructed through a combination of written materials and hands-on training prior to their performance being validated by a certified trainer and restaurant management. In addition, the Company creates and facilitates management and hourly crewmember workshops that apply to and support the Company's current goals and objectives.

Information Systems. Each restaurant is equipped with a computer containing programs to perform crewmember timekeeping and daily cash and sales reporting. The automation of these important administrative responsibilities reduces the time spent by restaurant managers preparing daily reports of cash, deposits, sales, sales mix and guest counts, labor costs, and food waste. The computer systems at each restaurant are polled nightly by the corporate computer system for this information, which is then processed by the centralized cash and sales database. Reports are run and distributed automatically to regional managers each morning as well as compiled for executive management review.

Payroll information is processed every two weeks at the restaurants and transmitted electronically to the corporate office, where the information is interfaced with the Company's outside payroll service.

Financial controls are maintained centrally through a computerized accounting system at the Company's corporate office. Sales are posted electronically to the general ledger from the central cash and sales database. Profit and loss statements are compiled every four weeks by the accounting department and provided to the general managers and regional managers for analysis and comparison to the Company's budgets.

Hours of Restaurant Operation. Most of the Company's restaurants are open seven days a week, typically from 11:00 a.m. to 9:00 p.m. Sunday through Thursday, and from 11:00 a.m. to 10:00 p.m. on Fridays and Saturdays.

COMPETITION

The Company's restaurants compete with the rapidly growing mid-price, full-service casual dining segment; with traditional limited-service buffet, soup, and salad restaurants; and, increasingly, with quick-service outlets. The Company's competitors include national and regional chains, as well as local

owner-operated restaurants. Key competitive factors in the industry are the quality and value of the food products offered, quality and speed of service, price, dining experience, restaurant location and the ambiance of facilities. The Company believes that it competes favorably with respect to these factors, although many of the Company's competitors have been in existence longer than the Company, have a more established market presence, and have substantially greater financial, marketing and other resources than the Company, which may give them certain competitive advantages. The Company believes that its ability to compete effectively will continue to depend in large measure upon its ability to offer a diverse selection of high-quality, fresh food products with an attractive price/value relationship.

GOVERNMENT REGULATION

Each of the Company's restaurants is subject to various federal, state and local laws, regulations and administrative practices affecting its business, and must comply with provisions regulating health and sanitation standards, equal employment, minimum wages and licensing for the sale of food and alcoholic beverages. Difficulties or failures in obtaining or maintaining required beer and wine licenses or other required licenses or approvals could delay or prevent the opening of new restaurants or adversely affect the operations of existing restaurants. The Company has no reason to believe that any of such future license applications would not be approved.

TRADEMARKS AND SERVICE MARKS

"Fresh Choice," "Zoopa" and "The Ultimate Soup & Salad Bar" are registered marks of the Company and the "Fresh Choice Masters Club" is pending with the United States Patent and Trademark Office. The Company is also pursuing federal registration of its logo. The Company's policy is to strenuously police the use of its marks and to oppose infringement of its marks.

EMPLOYEES

As of February 26, 1999, the Company had approximately 2060 crewmembers. These included approximately 1855 hourly restaurant crewmembers, of whom approximately 1485 were part-time crewmembers, approximately 164 full-time restaurant managers and trainees and approximately 41 full-time corporate management and staff. None of the Company's crewmembers is represented by a labor union. The Company believes that its employee relations are excellent.

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EXECUTIVE OFFICERS OF THE REGISTRANT

The executive officers of the Company as of February 26 , 1999 are as follows:

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NAME	AGE	POSITION
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<S>	<C>	<C>
Everett F. Jefferson	60	President, Chief Executive Officer and Director
David E. Pertl	46	Senior Vice President and Chief Financial Officer
Tim G. O'Shea	51	Senior Vice President, Marketing
Joan M. Miller	47	Senior Vice President, Human Resources
Tina E. Freedman	38	Senior Vice President, Product Development and Purchasing

</TABLE>

Mr. Jefferson was elected President and Chief Executive Officer and as a director of the Company in February 1997. Mr. Jefferson has an extensive background in restaurant operations. From June 1996 to February 1997 Mr. Jefferson was an independent consultant. From June 1993 to June 1996 Mr. Jefferson was President and Chief Executive Officer of Cucina Holding, Inc., the operator of Java City coffee and bakery. From March 1990 to June 1993 he was an independent consultant and independent restaurant operator. From May 1987 to March 1990 he was President and Chief Executive Officer of Skipper's, Inc.. From May 1986 to April 1987 he was President of Kings Table, Inc. Earlier in his

career Mr. Jefferson was Senior Vice President of operations for Pizza Hut, Inc. for five years and Regional Director of the Southeast and Caribbean for Saga Corporation for ten years.

Mr. Pertl joined Fresh Choice in January 1997 as Vice President and Chief Financial Officer and was named a Senior Vice President in December 1998. Mr. Pertl was Vice President and Chief Financial Officer of Summit Family Restaurants, Inc., a publicly-held family style restaurant company from September 1989 until July 1996, when Summit was acquired. From September 1977 to September 1989 he held various financial positions with Ponderosa, Inc., including Senior Vice President and Chief Financial Officer from January 1987 to September 1989.

Mr. O'Shea joined Fresh Choice in March 1996 as Vice President, Marketing and was named a Senior Vice President in December 1998. From July 1991 to March 1996 he was Vice President, Marketing for retail and foodservice products for W.R. Grace and Co., a food processor. Mr. O'Shea has over 25 years of experience in restaurant management and marketing including positions as Vice President of Foodservice Marketing for Culinary Brands, Inc. from January 1987 to June 1991 and Vice President and General Manager of the hotel foodservices division of Saga Corporation from October 1975 to January 1987.

Ms. Miller joined Fresh Choice in June, 1995 as Vice President, Human Resources and was named a Senior Vice President in December 1998. From March 1992 to March 1995 she was Vice President, Human Resources for Medallion Mortgage Co., a mortgage banking company. From March 1990 to March 1992 she was an attorney with Littler Mendelson Fastiff Tichy & Mathiason, specializing in labor law.

Ms. Freedman joined Fresh Choice in May 1992 as a restaurant manager and was named Vice President, Product Development and Purchasing in August 1996, was elected as an executive officer in March 1997 and was named a Senior Vice President in December 1998. Ms. Freedman has held various positions at Fresh Choice, including Director of Product Development from April 1995 to August 1996, Director of Training from December 1994 to April 1995, Regional Manager from October 1993 to

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December 1994, and General Manager from September 1992 to October 1993. From September 1982 to May 1992 she was Director of Food Services for Macy's, California, a retail/restaurant company.

BUSINESS RISKS

Certain characteristics and dynamics of the Company's business and of financial markets in general create risks to the Company's long-term success and to predictable financial results. These risks include:

Recent Operating Losses and Declines in Comparable Store Sales. The Company's profitability began to decline in the second half of 1994. In the fourth quarter of 1994, the Company reported its first operating loss, and reported operating losses in both 1995 and 1996. The Company reported a modest profit in 1997 but again incurred an operating loss in 1998.

Beginning late in the third quarter of fiscal 1994, the Company began reporting comparable store sales declines. Comparable store sales have continued to decline in each quarter through the end of 1998. The Company reported comparable store sales declines of 4.6%, 15.3%, 5.9%, 2.7% and 4.8% for fiscal years 1994, 1995, 1996, 1997 and 1998 respectively. There can be no assurance that comparable store sales will improve or that the Company will return to long-term profitability.

Expansion. The Company experienced substantial growth prior to mid-1995, having opened 14 restaurants in 1993, 15 restaurants in 1994, and seven in 1995. In 1995, the Company suspended its expansion plans after opening seven restaurants, reviewed the operating performance of all of its restaurants, and identified certain restaurants which did not meet its expectations for operating performance. As a result, in December 1995 the Company announced a restructuring plan to close as many as ten restaurants. The Company closed or sold eleven restaurants under this program, including three at the end of 1995, and eight in 1996. In September 1998, the Company announced a plan to close four additional previously impaired underperforming restaurants and for the closure of two additional restaurants where it does not intend to renew the leases. To date three of these restaurants have been closed. The Company opened one Fresh Choice restaurant in 1996 and in 1997, acquired the Zoopa trade name and three Zoopa restaurants and opened an additional two new Zoopa restaurants. In 1998 two additional restaurants were opened. The Company believes its growth depends to a

significant degree on its ability to open new restaurants and to operate such restaurants profitably. The Company has currently stopped its expansion plans and while the Company intends to resume its expansion, assuming its financial performance improves, there can be no assurance that the Company will be able to continue expansion. The Company's ability to implement successfully an expansion strategy will depend on a variety of factors, including the selection and availability of affordable sites, the selection and availability of capital to finance restaurant expansion and equipment costs, the ability to hire and train qualified management and personnel, the ability to control food and other operating costs, and other factors, many of which are beyond the Company's control.

While on a long-term basis, the Company intends to expand its operations in markets outside of California, assuming its financial performance improves, there can be no assurance as to when or whether the Company will resume its expansion. The Company's expansion plans may include entering new geographic regions in which the Company has no previous operating experience. There can be no assurance that the concept will be successful in regions outside of California, where tastes and restaurant preferences may be different. As of February 26, 1999, the Company had opened or purchased nine restaurants in Texas, six restaurants in the state of Washington and three restaurants in the Washington, D.C. metropolitan area. Of the fifteen restaurants closed or sold, two were in Texas, two were in the state of Washington, eight were in California, and three were in the Washington, D.C. metropolitan area (where the Company no longer operates).

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Geographic Concentration. As of February 26, 1999, 40 of the Company's 51 restaurants are located in California, primarily in Northern California. Accordingly, the Company is susceptible to fluctuations in its business caused by adverse economic conditions in this region. In addition, net sales at certain of the Company's restaurants have been adversely affected when a new Company restaurant has been opened in relatively close geographic proximity, and such pressure may continue to depress annual comparable store sales. There can be no assurance that expansion within existing or future geographic markets will not adversely affect the individual financial performance of Company restaurants in such markets or the Company's overall results of operations. In addition, given the Company's present geographic concentration in Northern California, adverse weather conditions in the region or negative publicity relating to an individual Company restaurant could have a more pronounced adverse effect on net sales than if the Company's restaurants were more broadly dispersed.

Volatility of Stock Price. The market price of the Company's Common Stock has fluctuated substantially since the initial public offering of the Common Stock in December 1992. Changes in general conditions in the economy, the financial markets or the restaurant industry, natural disasters or other developments affecting the Company or its competitors could cause the market price of the Company's Common Stock to fluctuate substantially. In addition, in recent years the stock market has experienced extreme price and volume fluctuations. This volatility has had significant effect on the market prices of securities issued by many companies, including the Company, for reasons sometimes unrelated to the operating performance of these companies. Any shortfall in the Company's net sales or earnings from levels expected by securities analysts could have an immediate and significant adverse effect on the trading price of the Company's Common Stock in any given period. Additionally, such shortfalls may not become apparent until late in the fiscal quarter, which could result in an even more immediate and significant adverse effect on the trading price of the Company's Common Stock.

Seasonality and Quarterly Fluctuations. The Company's restaurants have typically experienced seasonal fluctuations, as a disproportionate amount of net sales and net income are generally realized in the second and third fiscal quarters. In addition, the Company's quarterly results of operations have been, and may continue to be, materially impacted by the timing of new restaurant openings and restaurant closings. The fourth quarter normally includes 16 weeks of operations as compared with 12 weeks for each of the three prior quarters. As a result of these factors, net sales and net income in the fourth quarter are not comparable to results in each of the first three fiscal quarters, and net sales and net income can be expected to decline in the first quarter of each fiscal year in comparison to the fourth quarter of the prior fiscal year. Comparable store sales, which have been negative for four consecutive years, may continue to be negative.

Dependence on Key Personnel. The success of the Company depends on the efforts of key management personnel. The Company's success will depend on its ability to motivate and retain its key crewmembers and to attract qualified personnel, particularly general managers, for its restaurants. The Company faces significant competition in the recruitment of qualified crewmembers.

Restaurant Industry. The restaurant industry is affected by changes in consumer tastes, as well as national, regional and local economic conditions and demographic trends. The performance of individual restaurants, including the Company's restaurants, may be affected by factors such as traffic patterns, demographic considerations, and the type, number and location of competing restaurants. In addition, factors such as inflation, increased food, labor and crewmember benefit costs, and the availability of experienced management and hourly crewmembers may also adversely affect the restaurant industry in general and the Company's restaurants in particular. Restaurant operating costs are affected by increases in the minimum hourly wage, unemployment tax rates, and various federal, state and local governmental regulations, including those relating to the sale of food and alcoholic beverages. There can be no assurance that the restaurant industry in general, and the Company in particular, will be successful.

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Competition. The Company's restaurants compete with the rapidly growing mid-price, full-service casual dining segment; with traditional limited-service buffet, soup, and salad restaurants; and, increasingly, with quick-service outlets. The Company's competitors include national and regional chains, as well as local owner-operated restaurants. Key competitive factors in the industry are the quality and value of the food products offered, quality and speed of service, price, dining experience, restaurant location and the ambiance of facilities. Many of the Company's competitors have been in existence longer than the Company, have a more established market presence, and have substantially greater financial, marketing and other resources than the Company, which may give them certain competitive advantages. The Company believes that its ability to compete effectively will continue to depend in large measure upon its ability to offer a diverse selection of high-quality, fresh food products with an attractive price/value relationship.

Ability to Obtain Additional Financing. The Company intends to resume restaurant expansion, assuming its financial performance improves. The Company's ability to implement an expansion strategy will depend upon a variety of factors, including the success of its restructuring plan in restoring profitability and its ability to obtain funds. The Company believes its near-term capital requirements can be met through its existing cash balances, cash provided by operations and its available line of credit. However, the Company may seek additional financing to provide greater flexibility toward improving its operating performance. There can be no assurance that the Company will be able to obtain additional financing when needed on acceptable terms or at all.

Control by Major Shareholder. Crescent Real Estate Equities Limited Partnership holds 1,187,906 shares of Series B non-voting convertible preferred stock, which is convertible into Series A voting convertible preferred stock at any time at the option of the holder. Upon conversion, holders of Series A preferred stock would be entitled to vote with common stockholders and would have a separate right to approve certain corporate actions, such as amending the Company's Certificate of Incorporation or Bylaws, effecting a merger or sale of the Company, or making a fundamental change in the Company's business activity. In addition because the Company did not achieve an earnings target (before interest, taxes, depreciation and amortization) of \$5,500,000 in 1998, the holders of Series A preferred stock would have the right to elect a majority of the Company's Board of Directors. These factors could have the effect of delaying, deferring or preventing a change in control of the Company and, as a result, could discourage acquisition bids for the Company and limit the price that investors are willing to pay for shares of common stock.

ITEM 2. PROPERTIES.

The Company currently owns both the land and buildings at two of its restaurant locations, and owns restaurant buildings on leased land at seven other locations. The Company leases all of its other restaurant locations, but may purchase future restaurant locations where it believes it is cost-effective to do so. The Company's restaurants are located in regional malls, strip centers, and freestanding locations.

The Company's restaurants range from 5,500 to 7,400 square feet seating from 160 to 250 guests. Many of the Company's restaurants provide limited outdoor seating.

Restaurant locations leased by the Company are typically leased under "triple net" leases that require the Company to pay real estate taxes, maintenance costs and insurance premiums and, in many cases, to pay contingent rentals based on sales in excess of specified amounts. Generally, the leases have initial terms of ten to twenty years, with options to renew for additional

periods which range from five to fifteen years. All of the Company's current leases have remaining terms or renewal options extending more than five years following the date of this report.

The Company currently leases a separate facility for its executive headquarters pursuant to a lease which expires December 31, 2000. The Company believes that such facility is adequate for its office

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space requirements through fiscal 1999. If additional space is required in the future, the Company further believes that suitable facilities can be leased on commercially reasonable terms.

ITEM 3. LEGAL PROCEEDINGS.

From time to time, the Company may be involved in litigation relating to claims arising out of its operations. As of the date of this Annual Report on Form 10-K, the Company is not engaged in any legal proceedings that are expected, individually or in the aggregate, to have a material adverse effect on the Company's business, financial condition or results of operations.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

None.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

Stock Information. Fresh Choice, Inc.'s common stock trades on The Nasdaq Stock Market(R) under the Symbol: SALD. At February 26, 1999, 5,718,847 shares were owned by 361 stockholders of record. The following are the Company's common stock high and low closing sales prices for the fiscal years 1997 and 1998:

<TABLE>

<CAPTION>

	1997	High	Low
	----	----	---
<S>		<C>	<C>
First Quarter		4 1/2	3 3/8
Second Quarter		4 1/8	2 15/16
Third Quarter		3 5/8	3 1/16
Fourth Quarter		5 3/4	3 1/4
	1998	High	Low
	----	----	---
First Quarter		3 5/8	2 3/4
Second Quarter		4	2 13/16
Third Quarter		3 9/16	2
Fourth Quarter		2 1/8	1 1/8

</TABLE>

Fresh Choice, Inc. had its initial public offering on December 9, 1992 at a price of \$13.00. Fresh Choice, Inc. had a follow-on public offering on July 15, 1993 at a price of \$25.00.

The Company has not paid cash dividends on its common stock, and presently intends to continue this policy in order to retain its earnings for the development of the Company's business. In addition, the Company's current line of credit prohibits the payment of dividends.

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On September 13, 1996, the Company sold to Crescent Real Estate Equities Ltd. ("Crescent") 1,187,906 shares of Series B Non-Voting Convertible Participating Preferred Stock ("Series B Preferred Stock"), and granted Crescent an option to purchase 593,953 shares of Series C Non-Voting Convertible Participating Preferred Stock ("Series C Preferred Stock") (collectively, the "Stock") for an aggregate purchase price of approximately \$5.5 million, or \$4.63 per share of Series B Preferred Stock pursuant to a Preferred Stock Purchase Agreement dated April 26, 1996. The Series B Preferred Stock is convertible into Series A Voting Convertible Participating Preferred Stock ("Series A Preferred Stock") at any time at the option of the holder, and the Series A, Series B and Series C Preferred Stock is convertible into Common Stock at any time at the option of the holder. The Company offered and sold the Stock to Crescent, a sophisticated investor who purchased such shares for investment purposes, as transactions not involving a public offering pursuant to the exemption from registration provisions of Section 4(2) of the Securities Act of 1933, as amended.

ITEM 6. SELECTED FINANCIAL DATA.

A five-year summary of selected financial data follows:

<TABLE> <CAPTION> (Dollars in thousands)	December 27, 1998	December 28, 1997	December 29, 1996	December 31, 1995	December 25, 1994
<S>	<C>	<C>	<C>	<C>	<C>
Net sales	\$ 73,887	\$ 72,978	\$ 76,691	\$ 84,280	\$ 76,969
Operating income (loss)	(6,199)	219	(1,818)	(30,321)	4,666
Net income (loss)	(6,443)	333	(2,001)	(27,796)	3,198
Basic net income (loss) per share	(1.13)	0.06	(0.36)	(5.05)	0.59
Diluted net income (loss) per share	(1.13)	0.05	(0.36)	(5.05)	0.58
Total assets	33,205	35,608	37,166	37,306	58,528
Working capital (deficiency)	(7,201)	(3,830)	(2,726)	(8,912)	2,997
Long-term debt and capital lease obligations, including current portion	1,647	118	208	615	879
Stockholders' equity	\$ 19,946	\$ 26,318	\$ 25,916	\$ 22,291	\$ 49,336
Number of restaurants open at end of year	51	53	48	55	51

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

CAUTIONARY STATEMENT PURSUANT TO THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

Certain statements set forth in this discussion and analysis of financial condition and results of operations including anticipated store openings, planned capital expenditures and trends in or expectations regarding the Company's operations, specifically including the effect of problems associated with the Year 2000 constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are based on currently available operating, financial and competitive information and are subject to various risks and uncertainties. Actual future results and trends may differ materially depending on a variety of factors as set forth under the heading "Business - Business Risks."

RESULTS OF OPERATIONS

Fresh Choice, Inc. operates limited-service restaurants offering specialty and traditional salads, hot pasta, hot baked potatoes, soups, breads, pizza, muffins, frozen yogurt and other deserts. The Company operated 51 restaurants at December 27, 1998, 53 restaurants at December 28, 1997, and 48 restaurants at December 29, 1996. The Company's fiscal year ends on the last Sunday in December. Fiscal years 1998, 1997 and 1996 each contained 52 weeks.

As of December 27, 1998, the Company had completed a restructuring plan previously announced at the end of 1995. In connection with its 1995 restructuring plan, the Company closed or sold eleven restaurants, three in 1995 and eight in 1996, and curtailed restaurant expansion. The Company returned to profitability in 1997, reporting net income of \$333,000, after incurring operating losses of \$2,001,000 in 1996 and \$2,796,000 in 1995 (including a

\$23,932,000 restructuring and asset impairment charge). The Company also resumed restaurant expansion in 1997, purchasing three restaurants in Washington and building two restaurants in Texas. The Company reported an operating loss of \$6,443,000, including a \$3,710,000 restructuring and asset impairment charge, in 1998 and discontinued its restaurant expansion to focus on its core restaurant operations after opening two additional restaurants in Texas.

After opening its first restaurant in 1986, Fresh Choice expanded steadily, its early growth driven by the strong unit economics of its restaurants. The Company operated 22 restaurants at the time of its initial public offering in December 1992. With \$12,719,000 in net proceeds from its initial offering and an additional \$19,609,000 in net proceeds from a secondary offering in July 1993, the Company accelerated its growth, opening 14 new restaurants in 1993 (including its first two restaurants outside of California), 15 new restaurants in 1994 (including seven restaurants outside of California), seven restaurants in 1995 (of which two are located outside of California) and one restaurant in 1996. The Company opened a number of locations which have not reached anticipated sales levels and opened a greater percentage of restaurants in freestanding buildings. The increase in freestanding units and other refinements and the expansion of the Company's restaurant configuration and decor resulted in an increase in the Company's initial cash investment in new units. At the same time, the Company experienced unanticipated declines in sales at its restaurants, resulting in part from increased competition in the casual/family dining sector and greater than expected cannibalization of its existing restaurants. The Company's profitability began to decline in the second half of 1994, and the Company reported its first operating loss in the fourth quarter of 1994. The Company reported additional operating losses for each quarter of 1995. In 1995, after an analysis of the sales potential and operating economics of every Fresh Choice restaurant, the Company finalized and announced a restructuring plan to help restore profitability. The plan included closing as many as ten of the Company's restaurants, of which seven restaurants were included in a reserve for closures, and a partial write-down of assets to estimated fair value for thirteen other restaurants. The Company recorded a \$23.9 million restructuring charge in 1995 in connection with the plan. At year end 1995, the Company closed three restaurants.

The Company continued to incur an operating loss for 1996. As of year end 1996, the Company had closed or sold eleven restaurants, including the sale of two restaurants and the closure of a third restaurant in the Washington, D.C. market.

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During 1997, the Company successfully introduced a number of cost control programs which resulted in the Company reporting a modest profit of \$333,000 in 1997. The Company closed no additional restaurants in 1997 but identified one restaurant for closure at the end of its lease term in 1998. The restaurant closed in 1998 with no material financial impact.

In the fourth quarter of 1998, the Company announced a plan which provided for the closure of four previously-impaired restaurants, the closure of two additional restaurants at the end of their lease terms in 1999, and a write-down of restaurant assets to fair market value for two other restaurants. The Company recorded a \$3,710,000 restructuring and asset impairment charge in connection with the plan which was implemented in response to the continued poor operating performance of the four previously-impaired restaurants, the cannibalization of sales resulting from over-building in the Company's core Northern California market and lower-than-anticipated sales at certain new restaurants. In the fourth quarter, the Company closed three of the restaurants identified for closure.

The following table presents the components of average operating income on a per restaurant basis, based on the average number of restaurants open during the year:

<TABLE>
<CAPTION>
(Dollars in thousands)

	1998		1997		1996	
<S>	<C>	<C>	<C>	<C>	<C>	<C>
NET SALES	\$ 1,393	100.0 %	\$ 1,456	100.0 %	\$ 1,451	100.0 %
COSTS AND EXPENSES:						
Cost of sales	364	26.2 %	389	26.7 %	399	27.5 %
Restaurant operating expenses:						
Labor	459	32.9 %	450	30.9 %	470	32.4 %
Occupancy and other	443	31.8 %	440	30.2 %	436	30.0 %

Depreciation and amortization	71	5.1 %	62	4.2 %	63	4.3 %
General and administrative expenses	103	7.4 %	112	7.7 %	134	9.4 %
Gain on sale of restaurants	--	- %	--	- %	(8)	(0.6) %
Restructuring and asset impairment expenses	70	5.0 %	--	- %	(9)	(0.6) %
	-----		-----		-----	
Total costs and expenses	1,510	108.4 %	1,452	99.7 %	1,485	102.4 %
	-----		-----		-----	
OPERATING INCOME (LOSS)	\$ (117)	(8.4) %	\$ 4	0.3 %	\$ (34)	(2.4) %
	=====		=====		=====	
Average restaurants open	53.0		50.1		52.8	
	-----		-----		-----	

</TABLE>

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The following table sets forth items in the Company's statements of operations as a percentage of sales:

<TABLE>							
<CAPTION>							
(Dollars in thousands)							
		1998		1997		1996	
		-----		-----		-----	
<S>	<C>	<C>		<C>	<C>	<C>	<C>
NET SALES	\$ 73,887	100.0 %		\$ 72,978	100.0 %	\$ 76,691	100.0 %
	-----			-----		-----	
COSTS AND EXPENSES:							
Cost of sales	19,322	26.2 %		19,480	26.7 %	21,107	27.5 %
Restaurant operating expenses:							
Labor	24,345	32.9 %		22,566	30.9 %	24,853	32.4 %
Occupancy and other	23,503	31.8 %		22,041	30.2 %	23,021	30.0 %
Depreciation and amortization	3,739	5.1 %		3,082	4.2 %	3,336	4.3 %
General and administrative expenses	5,467	7.4 %		5,590	7.7 %	7,089	9.4 %
Gain on sale of restaurants	--	- %		--	- %	(446)	(0.6) %
Restructuring and asset impairment expenses	3,710	5.0 %		--	- %	(451)	(0.6) %
	-----			-----		-----	
Total costs and expenses	80,086	108.4 %		72,759	99.7 %	78,509	102.4 %
	-----			-----		-----	
OPERATING INCOME (LOSS)	(6,199)	(8.4) %		219	0.3 %	(1,818)	(2.4) %
Interest income	12	-- %		166	0.2 %	77	0.1 %
Interest expense	(256)	(0.3) %		(52)	- %	(260)	(0.3) %
	-----			-----		-----	
Interest income (expense), net	(244)	(0.3) %		114	0.2 %	(183)	(0.2) %
	-----			-----		-----	
INCOME (LOSS) BEFORE INCOME TAXES	(6,443)	(8.7) %		333	0.5 %	(2,001)	(2.6) %
Provision for (benefit from) income taxes	--	-- %		--	-- %	--	-- %
	-----			-----		-----	
NET INCOME (LOSS)	\$ (6,443)	(8.7) %		\$ 333	0.5 %	\$ (2,001)	(2.6) %
	=====			=====		=====	

</TABLE>

Net sales. In 1998, net sales increased \$0.9 million, or 1.2%, to \$73.9 million. Two restaurants opened in 1998 and five restaurants acquired or opened in 1997 contributed \$4.9 million to sales offset by a \$3.2 million sales decline in the Company's 44 comparable restaurants. Four restaurants closed in 1998 accounted for a \$0.8 million decline in sales.

In 1997, net sales declined \$3.7 million, or 4.8%, to \$73.0 million. Eight restaurants closed or sold in 1996 accounted for a \$5.9 million decline in sales and sales at the Company's 47 comparable restaurants accounted for an additional \$2.1 million decline. Five new restaurants acquired or opened in 1997 and one restaurant opened in 1996 contributed incremental sales of \$4.3 million.

The Company utilizes an 18-month basis for reporting comparable store sales which management believes represents a more realistic indication of the base business trends. On this basis, comparable store sales decreased 4.8% in 1998, 2.7% in 1997, and 5.9% in 1996. Comparable store guest counts declined 6.1% in 1998, 6.8% in 1997, and 10.8% in 1996.

The comparable store average check increased 1.4% and 4.0% in 1998 and 1997, respectively, reflecting price increases in response to federal and state-mandated increases in the minimum wage and other cost increases.

Cost of sales. Cost of sales (food and beverage costs) were 26.2%, 26.7% and 27.5% of net sales in 1998, 1997 and 1996, respectively. Food cost per guest remained approximately the same each year

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as the Company continued to successfully manage food costs at the restaurants through product rotation. The Company's product rotation program is designed to maintain a quality product offering to the guest while enabling the Company to react to changing costs. Food and beverage costs declined as a percentage of sales each year due to the combined effect of controlling food costs per guest and increases in the average check.

Restaurant Operating Expenses. Restaurant operating expenses (labor, occupancy and other) were 64.7%, 61.1% and 62.4% of net sales in 1998, 1997 and 1996, respectively. In 1998, the fixed cost portion of labor became higher as a percentage of sales as comparable store sales declined and the average wage increased due to minimum wage increases and a highly competitive labor market. As a result, labor costs were 2.0% of sales higher than in 1997. In addition, occupancy and other costs were 1.6% of sales higher primarily due to the impact of the comparable store sales decline on these mostly fixed costs and to CPI-related rent increases offset by lower advertising costs. The Company invested 3.0% of sales in advertising compared to 3.6% of sales in 1997. In 1997, restaurant operating expenses were 1.3% of sales lower than in 1996 primarily as a result of improved labor costs. A higher average check, reduced restaurant level bonus payouts from the Company's bonus plans, which tied bonus payouts to achieving planned profits, and improved labor controls, which included the introduction of a revised hourly labor matrix, accounted for the improvement.

Depreciation and Amortization. Depreciation and amortization expenses were 5.1%, 4.2% and 4.3% of sales in 1998, 1997 and 1996, respectively. The 1998 increase is primarily the result of lower average sales per restaurant, the Company's investment in new and remodeled restaurants and increased amortization of start-up costs related to four new restaurants. In 1997, a decline in start-up cost amortization related to fewer new restaurant openings and a reduction in depreciation from assets write-offs at eleven closed or sold restaurants and impairment of assets at other restaurants contributed to a decline in depreciation and amortization expenses.

General and Administrative Expenses. General and administrative expenses were 7.4%, 7.7% and 9.4% of sales in 1998, 1997 and 1996, respectively. Continued controls over spending and staffing contributed to a \$123,000 decline in general and administrative expenses in 1998. In addition, the absence of costs incurred in 1996 related to strategic consulting and other corporate matters contributed to the \$1,499,000 decline in general and administrative expenses in 1997.

Gain on Sale of Restaurants. In 1996, the Company sold two of its three restaurants in the Washington, D.C. market and closed the third restaurant which was previously identified for closure under the 1995 restructuring plan. The Company received \$750,000 for the sale of the two restaurants and recorded a gain of \$446,000. In addition, the Company entered into an agreement not to compete in the Washington, D.C. and Baltimore markets for a period of four years. The Company had previously recorded an impairment reserve at each of the restaurants in connection with the Company's 1995 restructuring plan. The Company assumed contingent liabilities in connection with assignment agreements on the two sold restaurants and paid cash to settle the lease obligation with the landlord of the closed restaurant.

Restructuring and Asset Impairment Expenses. In the fourth quarter of 1998, the Company recorded a restructuring and asset impairment charge for the closure of four restaurants, the closure of two additional restaurants at the end of their lease terms in 1999, and a write-down of restaurant assets to fair market value for two other restaurants. In 1998, the Company also completed a restructuring plan previously announced at the end of 1995. The plan called for closing as many as ten of the Company's restaurants, of which seven restaurants were included in a reserve for closures, and a write-down of

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assets to estimated fair market value for thirteen other restaurants. Management developed the 1995 restructuring plan to help restore profitability after an analysis of the sales potential and operating economies of every Fresh Choice restaurant. The Company had reported its first operating loss in the fourth quarter of 1994 and additional operating losses for each quarter of 1995. The Company based its reserve analysis on SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets to be Disposed Of," which establishes standards to identify and measure impairment of long-lived assets.

In 1995, the Company recorded a \$23,932,000 restructuring and asset impairment charge in connection with the restructuring plan which consisted of (1) an \$18,671,000 non-cash impairment charge of which \$8,318,000 related to the write-down of assets to fair market value at the seven restaurants identified for closure and \$10,353,000 related to a write-down to fair market value at the thirteen other restaurants, (2) a \$4,655,000 charge for estimated cash costs associated with the restaurant closures and settlement of the related lease obligations, and (3) a \$606,000 charge for other costs, both cash and non-cash, primarily for consulting and other professional services rendered in connection with the Company's restructuring. Fair value for the write-down of assets at restaurants was estimated based on the present value of expected future cash flows.

The Company closed six of the seven restaurants identified for closure: three restaurants were closed at the end of 1995 and three were closed in 1996. The Company decided not to close the seventh restaurant based on its improved operating performance and reversed \$451,000 in 1996 of the previously-recorded restructuring expense related primarily to anticipated cash payments to close the restaurant and settle the lease obligation. The Company negotiated cash payments to landlords to settle the lease obligations for five of the closed restaurants and assumed a contingent liability in connection with a sublease agreement for the sixth closed restaurant. The Company settled the lease obligations at five of the six closed restaurants in 1996 and reversed an additional \$1,618,000 of the previously-recorded restructuring expense due primarily to lower-than-estimated cash payments to settle the lease obligations. During 1997, the Company reversed an additional \$732,000 of the previously-recorded restructuring expense based on updated estimates of the costs to resolve the final lease obligation. The final lease obligation was settled in 1998, and the Company reversed approximately \$32,000 of excess reserve to other restaurant operating expenses. The Company attributed the lower-than-estimated cash payments to settle the six lease obligations to better-than-expected real estate markets which enabled landlords to locate new tenants for the closed locations.

During 1996, the Company identified and closed or sold five additional restaurants for a total of eleven closed restaurants. The Company recorded a \$1,618,000 restructuring charge for two of the restaurants which consisted of a (1) \$650,000 non-cash charge for the write-down of assets to fair market value at one restaurant that was not previously impaired and (2) a \$968,000 charge for estimated cash costs associated with restaurant closures and settlement of lease obligations for both restaurants. The Company closed both restaurants during 1996 and reached a settlement with the landlord for the lease obligation for one restaurant in 1996 and for the other restaurant in 1997. In 1997, the Company reversed \$282,000 of the previously-recorded restructuring expense due primarily to lower-than-estimated cash payments to close the restaurant and settle the lease obligations. The Company closed a third restaurant in 1996 which did not require a settlement with the landlord for the lease obligation. The Company had partially impaired the restaurant's assets in connection with its 1995 restructuring charge and charged its remaining net assets to operations at the time the restaurant closed. In addition, the Company sold two restaurants in 1996 in the Washington, D.C. market for \$750,000 and recorded a gain of \$446,000. The Company had previously recorded a partial write-down of assets for both of the restaurants in connection with its restructuring reserve recorded at the end of 1995. The Company is contingently liable under the assigned lease agreements on the two restaurants.

The Company closed no restaurants in 1997, but identified one other restaurant, which was previously impaired in connection with the Company's restructuring plan, for closure in 1998 at the expiration of its lease term. The restaurant closed in 1998 with no material impact on the Company's financial position, results of operations or cash flows. In 1997, the Company recorded a \$1,014,000 impairment charge for the write-down of assets to fair market value at one other restaurant in accordance with SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets to be Disposed Of." The Company estimated fair value for the restaurant's assets based on the present value of expected future cash flows at the restaurant.

In the fourth quarter of 1998, the Company recorded a restructuring and asset impairment charge for the closure of four restaurants, the closure of two additional restaurants at the end of their lease terms in 1999, and a write-down of restaurant assets to fair market value for two other restaurants. In 1998, the Company recorded a \$3,710,000 restructuring and asset impairment charge which consisted of (1) a \$2,415,000 non-cash charge for the write-down of restaurant assets to fair market value of which \$725,000 related to the six restaurants identified for closure and \$1,690,000 related to the write-down of restaurant assets to fair market value for two other restaurants and (2) a \$1,295,000 charge for the estimated cash costs associated with restaurant closures and settlement of lease obligations. Fair value for the write-down of assets at restaurants was estimated based on the present value of expected future cash flows.

In 1998, the Company closed three of the four restaurants identified for closure and negotiated cash payments to settle the lease obligation for one restaurant. Subsequent to December 27, 1998, the Company negotiated cash payments to settle the lease obligations at the other two restaurants. The lease obligations for all three restaurants were settled for substantially the amounts provided in the restructuring reserve. The reserve balance of \$1,257,000 at December 27, 1998 consists of the estimated cash costs to close and settle the lease obligations at the six restaurants identified for closure.

The Company reviews the cash flow of each restaurant throughout any given reporting period, and performs an impairment review of its investment in property and equipment at any given restaurant during a reporting period if deemed necessary based on the restaurant's cash flow performance. At least annually, the Company conducts an impairment review of its investment in property and equipment for all of its restaurants.

Of the fifteen restaurants closed by the Company, seven restaurants were outside the Company's core California market. Three closed restaurants, including the two restaurant which were sold, were in the Washington, D.C. market. Two closed restaurants were in Dallas, Texas and two closed restaurants were in the greater Seattle, Washington market area. The Company had opened three of the closed restaurants in 1995, eight in 1994, one in 1993, two in 1992 and one in 1988.

Interest Income. Interest income was \$12,000 in 1998, \$166,000 in 1997, and \$77,000 in 1996. In 1997 and 1996, the Company invested the excess proceeds from its September 1996 sale of series B preferred stock to Crescent Real Estate Equities Limited Partnership in money market funds. The Company invested the excess proceeds pending their designated use to build or purchase new restaurants, remodel existing restaurants, upgrade information systems or increase working capital. The proceeds were subsequently used in late 1997 and in 1998 to construct or purchase new restaurants and remodel existing restaurants which accounted for the decline in interest income in 1998.

Interest Expense. Interest expense was \$256,000 in 1998, \$52,000 in 1997, and \$260,000 in 1996. Interest expense consisted primarily of fees and interest related to the Company's short-term line

of credit facility and capital lease obligations for equipment leases. Interest expense increased in 1998 due primarily to short-term borrowings in the current year versus no borrowings in 1997 and to equipment leases at the Company's four new restaurants. Interest expense decreased in 1997 as the Company paid down its then remaining capital lease obligations. In 1996, the Company financed the construction of one restaurant through line of credit borrowings. The Company's only long-term debt during the three year period consisted of a site construction note, which is included in other long-term liabilities, and capital lease obligations.

Provision for Income Taxes. The Company recorded no tax provision for its operating income in 1997 due to the availability of net operating loss carryforwards to offset taxable income. The Company recorded no tax benefit from its operating losses in 1998 and 1996 due to valuation allowances against its net deferred tax assets.

QUARTERLY INFORMATION

The following table sets forth certain quarterly results of operations for 1998 and 1997:

<TABLE>
<CAPTION>

Year Ended December 27, 1998

Year Ended December 28, 1997

(In thousands, except per share data)	First 12 Weeks	Second 12 Weeks	Third 12 Weeks	Last 16 Weeks	First 12 Weeks	Second 12 Weeks	Third 12 Weeks	Last 16 Weeks
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Net sales	\$ 16,192	\$ 17,366	\$ 18,644	\$ 21,685	\$ 16,106	\$ 17,379	\$ 18,334	\$ 21,159
Operating income (loss)	(618)	(424)	88	(5,245)	(696)	200	1,030	(315)
Net income (loss)	(647)	(467)	29	(5,358)	(649)	233	1,065	(316)
Basic net income (loss) per share(*)	\$ (0.11)	\$ (0.08)	\$ 0.01	\$ (0.94)	\$ (0.11)	\$ 0.04	\$ 0.19	\$ (0.06)
Shares used in computing basic per share amounts	5,682	5,686	5,695	5,701	5,661	5,663	5,669	5,672
Diluted net income (loss) per share(*)	\$ (0.11)	\$ (0.08)	\$ 0.00	\$ (0.94)	\$ (0.11)	\$ 0.03	\$ 0.16	\$ (0.06)
Shares used in computing diluted per share amounts	5,682	5,686	6,885	5,701	5,661	6,854	6,860	5,672
Number of restaurants open at end of quarter	53	53	53	51	48	51	51	53

</TABLE>

(*)The sum of the quarterly net income (loss) per share amounts will not necessarily equal the net income (loss) per share for the total fiscal year

The Company's restaurants experience seasonal fluctuations, as a disproportionate amount of net sales and restaurant operating income are generally realized in the second and third fiscal quarters. In addition, the Company's quarterly results of operations have been, and may continue to be, materially impacted by the timing of new restaurant openings and by restaurant closings. The fourth quarter normally includes 16 weeks of operations as compared with 12 weeks for each of the three prior quarters. As a result of these factors, net sales and net income in the fourth quarter are not comparable to results in each of the first three fiscal quarters, and net sales and income can be expected to decline in the first quarter of each fiscal year in comparison to the fourth quarter of the prior fiscal year. Because of recent operating losses, restaurant closures, the seasonality of the Company's business and the impact of new restaurant openings, results for any quarter cannot be relied upon as indicative of the results that may be achieved for a full fiscal year.

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LIQUIDITY AND CAPITAL RESOURCES

The Company's primary capital requirements have been for the expansion and remodeling of its restaurant operations which the Company has traditionally financed with funds from equity offerings, cash flow from operations, landlord allowances, equipment leases and short-term bank debt. The Company does not have significant receivables or inventory and receives trade credit based upon negotiated terms in purchasing food and supplies.

As of December 27, 1998, the Company had incurred cash costs of approximately \$3.4 million in connection with restaurant closures and the related settlements of lease obligations under its restructuring plan announced at the end of 1995 of which \$0.7 million was incurred in 1998. At December 27, 1998, the Company had settled all obligations and had no reserve balances related to the plan.

At December 27, 1998, the Company had a \$1.3 million reserve balance which consisted of the estimated cash costs to close and settle the lease obligations at an additional six restaurants which were identified for closure in the fourth quarter. In 1998, the Company closed three of the restaurants identified for closure and negotiated cash settlement terms for the lease obligation for one restaurant. Subsequent to December 27, 1998, the Company negotiated cash settlement terms for the lease obligations at the other two restaurants. The Company expects to close the three remaining restaurants identified for closure during 1999.

At December 27, 1998, the Company had \$1,155,000 borrowed under a bank line of credit agreement. Because the Company failed to achieve certain minimum earnings for the third quarter of 1998 as specified in the bank line of credit agreement, the bank amended the agreement and reduced the maximum amount

available under the line from \$2,850,000 to the \$1,283,500 borrowed at the time of default, increased the interest rate from prime (7.75% at December 27, 1998) plus 1.25% to prime plus 4.0%, and specified a mandatory repayment schedule through March 26, 1999. The Company met the required scheduled payments and paid off the remaining balance on December 30, 1998 when it obtained new financing. Borrowings under the line were secured by the Company's personal property and by deeds of trust on certain Company-owned real estate. The amended agreement required the Company to maintain compliance with the Company's preferred stock agreement.

On December 29, 1998, the Company entered into a \$4,000,000 loan and security agreement (the "Agreement") with a finance company. The Agreement expires on December 29, 2001 and provides for one-year renewals thereafter. Under the terms of the Agreement, the Company may borrow up to \$2,330,000 against the value of certain Company-owned real estate secured by deeds of trust and up to \$1,670,000 against the value of any of the Company's restaurant equipment in which the lender has established a first priority perfected security interest, subject to a maximum available borrowing against each restaurant.

Borrowings under the Agreement initially bear interest at the prime rate plus 1.25% and, once repaid, can be re-borrowed unless converted to a term loan. Outstanding borrowings, if any, on the first and second anniversaries of the Agreement convert into term loans which bear interest at the prime rate plus 1.75% and become payable monthly based on a five-year amortization schedule. All borrowings, including any term loans, are fully payable on December 30, 2001. Aggregate borrowings in excess of \$2,500,000 bear an additional 0.5% interest. The Agreement also provides for a monthly collateral monitoring fee and a 0.5% unused line fee.

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The Agreement requires the Company to maintain a minimum net worth and debt service coverage ratio and to not exceed maximum interest and debt to cash flow ratios and limits its aggregate indebtedness. The Agreement also requires approval before paying dividends and limits the Company's fixed asset acquisitions based on its operating cash flows. On December 30, 1998, the Company borrowed \$2,075,000 of available funds and used \$1,155,000 of the amount borrowed to pay off its bank line of credit. As of February 26, 1999, the Company had a maximum of \$2,623,000 available under the Agreement of which it had borrowed \$2,075,000.

Long-term debt at December 27, 1998 consisted of a \$117,000 note for site construction costs, which is included in other long-term liabilities on the balance sheet, and capital lease obligations. During 1998, the Company entered into equipment leases for four restaurants which provided \$1,770,000 in financing under capital lease arrangements that expire in 2002.

For the year ended December 27, 1998, the Company invested \$4.7 million in property and equipment which was funded through existing cash balances, internally generated cash, line of credit borrowings and capital lease obligations. Capital expenditures of approximately \$2.6 million related to new restaurants and \$1.5 million related to the remodeling of eight restaurants. The Company plans to remodel between ten and fifteen restaurants in 1999 at a cost of \$1.1 million to \$1.7 million and has no new restaurant development planned.

During 1998, the Company paid the remaining liability of \$0.6 million related to its purchase in May 1997 of the Zoopa trade name and three Zoopa restaurants in Washington. The Company paid \$1.3 million upon closing of the purchase in May 1997 and the additional \$0.6 million one year later based on restaurant sales.

During the year ended December 27, 1998 operating activities provided \$1.4 million, which was net of the \$0.6 million cash payment to settle the remaining liability for the three purchased Zoopa restaurants and a \$0.7 million cash payment to settle the final lease obligation under the Company's 1995 restructuring plan. Operating activities included a \$1.1 million increase in accounts payable that resulted primarily from extended payment terms negotiated with a major purveyor in the fourth quarter.

The Company's outstanding Series B non-voting convertible preferred stock is currently held by one entity and is convertible, at the holders' option, into Series A voting convertible preferred stock on a one-for-one basis. Although no Series A preferred stock is currently outstanding, holders of Series A preferred stock would be entitled to vote with common stockholders on all matters submitted to a vote of stockholders. When and if issued, the holders of a majority of the outstanding Series A preferred stock will have a separate right to approve certain corporate actions. The Company did not achieve an earnings target (before interest, taxes, depreciation and amortization) of

\$5,500,000 in 1998 which constituted an event of default under the terms of the preferred stock agreement and triggered the right of the Series A preferred stockholders to elect a majority of the Company's Board of Directors. The holder of the Series B preferred stock has not initiated any action to convert such shares into shares of Series A preferred stock nor has it exercised its right to elect a majority of the Board of Directors. Such holder has notified the Company that it has no present intention of exercising such right; however, it has not waived any of its rights under the agreement.

Upon achievement of certain per-share market price tests, the Company may force a mandatory conversion of the Series A preferred stock to common stock. No shares of Series C preferred stock are currently outstanding but an option to purchase such shares is outstanding. The Series A, Series B and

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Series C preferred stock are senior to the Company's common stock with respect to dividends and with respect to distributions on liquidation.

The Company's continued growth depends to a significant degree on its ability to open new restaurants and to operate such restaurants profitably. The Company intends to resume its restaurant expansion, assuming its financial performance improves. The Company's ability to implement an expansion strategy will depend upon a variety of factors, including the continued success of efforts to restore profitability and the Company's ability to obtain funds. See "Business - Business Risks - Expansion." The Company believes its operating cash requirements and fiscal 1999 capital requirements can be met through existing cash balances, cash provided by operations, equipment leases and its loan and security agreement. The Company may continue to seek additional debt or equity financing to provide greater flexibility toward improving its operating performance and continuing expansion.

INFLATION

Many of the Company's employees are paid hourly rates related to the federal and state minimum wage laws. Accordingly, increases in the minimum wage could materially increase the Company's labor costs. The Federal minimum wage increased effective September 1, 1997, the State of California minimum wage increased effective March 1, 1998, and the State of Washington minimum wage increased effective January 1, 1999. The Company raised prices in responses to these increases. No further minimum wage increases are scheduled. In addition, the cost of food commodities utilized by the Company are subject to market supply and demand pressures. Shifts in these costs may have a significant impact on the Company's food costs. The Company anticipates that increases in these costs can be offset through pricing and other cost control efforts; however, there is no assurance that the Company would be able to pass such costs on to its guests or that even if it were able to do so, it could do so in a short period of time.

YEAR 2000 SOFTWARE REQUIREMENTS

The Company has completed a review of all its restaurant and corporate computer systems for compliance with the year 2000. The Company has determined that certain of its existing computer systems use only two digits to identify a year in the date field and, as a result, may improperly identify the year 2000 in calculating and processing information. The Company recognizes this system design could cause certain systems to potentially fail or create erroneous results by or at the year 2000 but believes its current strategic information plan is addressing the problem.

The Company is currently in the process of migrating its critical processing and information requirements to outsourced processing companies whose software is represented to be year 2000 compliant. The Company expects to complete this system migration, begun in 1997, during 1999 with no significant incremental costs. In accordance with its strategic information plan, the Company is already replacing certain restaurant systems, primarily its restaurant point of sale system, used for capturing and transmitting data to the outsourced systems, with year 2000 compliant systems. The Company expects to have the critical restaurant systems in place by approximately the middle of 1999 at an estimated equipment cost of \$500,000 which is to be capitalized in accordance with normal policy and which will be funded either through operating cash flow, equipment lease financing, or borrowings under the Company's loan and security agreement.

The Company has also contacted outside entities with which it interacts electronically and requested information regarding whether or not their systems are or will be year 2000 compliant. The

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Company is monitoring the progress of outside entities that are in the process of developing year 2000 compliance, but it does not believe there is a material risk to the Company that these entities will not achieve compliance or if these entities do not achieve compliance. However, there can be no assurance that the systems of other entities will be converted timely, or that a failure to convert by another entity will not have a material adverse effect on the Company. As part of its continuous monitoring process, the Company will implement contingency plans as necessary. These plans could include, but are not limited to, alternate product suppliers, manual recording and accumulation of restaurant transactions, and restriction of the tender types accepted at the restaurants.

The Company believes it has an effective plan in place to anticipate and resolve any potential Year 2000 issues in a timely manner. In the event, however, that the Company does not properly identify Year 2000 issues and remediation and testing is not conducted on a timely basis with respect to the Year 2000 issues that are identified, there can be no assurance that Year 2000 issues will not materially and adversely affect the Company. In addition, disruptions in the economy generally resulting from Year 2000 issues also could materially and adversely affect the Company.

RECENTLY ISSUED ACCOUNTING STANDARDS

In June 1998, the FASB issued Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities." This statement requires companies to record derivatives on the balance sheet as assets or liabilities measured at fair value. The Company will adopt this statement for its fiscal year beginning December 27, 1999. The Company does not expect that adoption of this statement will impact the Company's consolidated financial position, results of operations or cash flows.

In April 1998, the American Institute of Certified Public Accountants issued Statement of Position 98-5 ("SOP 98-5"), "Reporting on the Cost of Start-Up Activities," which requires companies to expense the costs of start-up activities and organization costs as incurred. The Company will adopt SOP 98-5 effective for its fiscal year beginning December 28, 1998 and expense \$70,000 of unamortized pre-opening costs at the time of adoption.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

The Company is exposed to interest rate risk primarily through its borrowing activities. The Company has not used derivative financial instruments to hedge such risks. There is inherent roll-over risk for borrowings as they mature and are renewed at current market rates. The extent of this risk is not quantifiable or predictable because of the variability of future interest rates and business financing requirements. If market rates were to increase immediately by 10 percent from levels at December 27, 1998, the fair value of the Company's borrowings would not be materially affected as borrowings are primarily subject to variable interest rates.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

The Company's financial statements as of December 27, 1998 and December 28, 1997 and for each of the three fiscal years in the period ended December 27, 1998, and the Independent Auditors' Report, are included in the report as listed on Page 29 of this Report, Item 14(a).

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ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

Not applicable.

PART III

Certain information required by Part III is omitted from this Report. The Company plans to file its Proxy Statement (the "Proxy Statement") pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Report, and certain information included therein is incorporated herein by reference.

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.

There is incorporated by reference the information relating to the directors of the Company set forth under the caption "Election of Directors" in the Proxy Statement. Information relating to the executive officers of the Company is set forth in Part I of this Report under the caption "Executive Officers of the Registrant."

ITEM 11. EXECUTIVE COMPENSATION.

There is incorporated by reference the information relating to executive compensation set forth under the caption "Executive Compensation and Other Matters" in the Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

There is incorporated by reference the information relating to ownership of equity securities of the Company by certain beneficial owners and management set forth under the caption "General Information -- Stock Ownership of Certain Beneficial Owners and Management" in the Proxy Statement.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

There is incorporated by reference the information relating to certain relationships and related transactions set forth under the caption "Compensation Committee Interlocks and Insider Participation" in the Proxy Statement.

LOAN MODIFICATION AND FORBEARANCE AGREEMENT

This Loan Modification and Forbearance Agreement (this "Agreement") is entered into as of October 28, 1998, by and between Fresh Choice, Inc. ("Borrower") and Silicon Valley Bank ("Bank").

1. DESCRIPTION OF EXISTING INDEBTEDNESS: Among other indebtedness which may be owing by Borrower to Bank, Borrower is indebted to Bank pursuant to, among other documents, a Loan and Security Agreement, dated December 20, 1995, as may be amended from time to time, (the "Loan Agreement"). The Loan Agreement provided for, among other things, a Committed Line in the original principal amount of Five Million Dollars (\$5,000,000.00), (the "Revolving Facility"). The Loan Agreement has been modified pursuant to, among other documents, an Amendment to Loan and Security Agreement dated May 27, 1998, pursuant to which, among other things, the Committed Line was decreased to Three Million Eight Hundred Fifty Thousand Dollars (\$3,850,000.00) subject to a Cap Amount. Defined terms used but not otherwise defined herein shall have the same meanings as in the Loan Agreement.

Hereinafter, all indebtedness owing by Borrower to Bank shall be referred to as the "Indebtedness".

2. DESCRIPTION OF COLLATERAL Repayment of the Indebtedness is secured by Collateral as described in the Loan Agreement and a Third Party Security Agreement dated December 20, 1995 (the "Security Agreement"), executed by Moffett Design Corporation ("Pledgor"). Additionally, repayment of the Indebtedness is secured by a Leasehold Deed of Trust and Assignment of Leases and Rents, dated January 25, 1996, recorded as Document Number 199602260709 in the Official Records of Sacramento County, California, a Leasehold Deed of Trust and Assignment of Leases and Rents, dated January 25, 1996, recorded as Document Number 199602260710 in the Official Records of Sacramento County, California, a Leasehold Deed of Trust and Assignment of Leases and Rents, dated January 25, 1996, recorded as Document Number 199600158091 in the Official Records of Sonoma County, California, a Leasehold Deed of Trust and Assignment of Leases and Rents, dated January 25, 1996, recorded as Document Number 13210795, on Page 0410 of Book P226 in the Official Records of Santa Clara County, California, and two (2) Deeds of Trust (with Security Agreement and Assignment of Rents and Leases), each dated December 20, 1995.

Hereinafter, the above-described security documents and guaranties, together with all other documents securing repayment of the Indebtedness shall be referred to as the "Security Documents". Hereinafter, the Security Documents, together with all other documents evidencing or securing the Indebtedness shall be referred to as the "Existing Loan Documents".

3. FORBEARANCE. Bank agrees to forebear from exercising its remedies under the Existing Loan Documents through the Maturity Date so long as Borrower is in compliance with the provisions of this Agreement, notwithstanding Borrower's existing default under the Loan Agreement as a result of Borrower's failure to

comply with Profitability covenant as of the period ended September 6, 1998 (the "Existing Defaults").

By signing below, Borrower acknowledges that they are currently in default and as a result of such default, Bank is entitled to exercise its remedies as provided in the Existing Loan Documents and as provided under applicable law, Nothing in this Agreement in any way shall constitute Bank's waiver of Borrower's Existing Defaults.

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A breach by Borrower of any of the terms set forth in this Agreement or the occurrence of any default (other than the Existing Defaults) under the Existing Loan Documents shall result in immediate termination of Bank's forbearance, whereupon Bank, at its option, without any notice to Borrower, may immediately cease making any Advances and may immediately exercise any remedies available to Bank under the Existing Loan Documents, this Agreement, and under applicable law.

Borrower hereby renounces and waives all rights that are waivable under Article 9 of the Code of any jurisdiction in which any Collateral may now or hereafter be located. Without limiting the generality of the foregoing, Borrower hereby (i) renounces any right to receive notice of any disposition by Bank of the Collateral pursuant to Section 9-504(3) of the Code upon termination of the forbearance, whether such disposition is by public or private sale under the Code or otherwise, and (ii) waives any rights relating to compulsory disposition of the Collateral pursuant to Sections 9-504 and 9-505 of the Code.

Borrower hereby agrees that if it shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under the Bankruptcy Code, (ii) file or be the subject of any petition seeking any liquidation, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iii) seek, consent to, or acquiesce in the appointment of any trustee, receiver, conservator or liquidation, or (iv) be the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against Borrower for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Bank shall thereupon be entitled to relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or from any other stay or suspension of remedies imposed in any other manner with respect to the exercise of the rights and remedies otherwise available to Bank under the Loan Agreement.

Bank's agreement to forbear from enforcing its remedies under the Existing Loan Documents notwithstanding Borrower's Existing Defaults (a) in no way shall be deemed an agreement by Bank to waive Borrower's compliance with all other terms of the Existing Loan Documents, as modified by this Agreement and (b) shall not limit or impair Bank's right to demand strict performance of all other terms and covenants as of any date.

4. DESCRIPTION OF CHANGE IN TERMS.

A. Modification(s) to Loan Agreement.

1. The following definitions under Section 1.1 are hereby amended to read as follows:

2. "Maturity Date" is March 26, 1999.

3. "Committed Line" is One Million Six Hundred Thirty Three Thousand Five Hundred Dollars (\$1,633,500); provided, however, Advances are limited to One Million Two Hundred Eighty Three Thousand Five Hundred Dollars (\$1,283,500) (the "Cap Amount"). Notwithstanding the foregoing, the Committed Line shall proportionately decrease on a monthly basis in accordance with the principal payments made in accordance with Section 2.3 (e).

4. The first sentence of Section 2.1 entitled "Revolving Advances" is hereby amended to read, in its entirety, as follows:

Subject to and upon the terms and conditions of this Agreement, Bank agrees to make Advances to Borrower in an aggregate amount not to exceed Committed Line.

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5. Section 2.3 (a) entitled "Interest Rates, Payments and Calculations" is hereby amended to read, in its entirety, as follows:

Except as set forth in Section 2.3 (b), an Advances shall bear interest, on an average Daily Balance, at a rate equal to Four (4.00) percentage points above the Prime Rate, effective as of the date hereof.

6. Sub-Section (b) of Section 6.3 entitled "Financial Statements, Reports, Certificates" is hereby amended in part as follows:

(b) as soon as available, but no later than 100 days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Bank.

7. Section 6.9 entitled "Tangible Net Worth" is hereby amended to read, in its entirety, as follows:

6.9 Tangible Net Worth. Borrower shall maintain, as of the last day of each monthly period, a minimum Tangible Net Worth of \$23,500,000, reducing to \$20,000,000 for the month ending December 28, 1998 and thereafter.

8. Section 6.15 entitled "Profitability" is hereby amended to read, in its entirety, as follows:

6.15 Profitability. Borrower shall achieve profitability on a quarterly basis, except that Borrower may incur losses for its fiscal year ending 1998 not to exceed \$6,000,000 and for the quarter ending March 18, 1999, not to exceed \$175,000.

9. Section 6.13 entitled "EBITDA" is hereby deleted in its entirety.

10. Section 6.16 entitled "Clean Up Period" is hereby deleted in its entirety.

11. Section 2.1.2 entitled "Cash Management Services Sublimit" is hereby deleted in its entirety.

12. The definition "Borrowing Base" as provided in Section 1.1 is hereby deleted in its entirety.

13. The following paragraph is hereby incorporated into Section 2.3 entitled "Interest Rates, Payments, and Calculations":

(e) In addition to the monthly interest payments, Borrower shall pay principal payments to Bank as follows: \$53,500 due on October 31, 1998; \$75,000 due on November 30, 1998; \$150,000 due on December 31, 1998; \$335,000 due on January 31, 1999; \$335,000 due on February 28, 1999; and \$335,000 due on March 26, 1999 at which time all unpaid interest and principal will be due and payable in full.

5. PAYMENT OF LOAN FEE. Borrower shall pay to Bank a fee in the amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) (the "Loan Fee") plus all out-of-pocket expenses associated with this Agreement.

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6. CONSISTENT CHANGES. The Existing Loan Documents are hereby amended wherever necessary to reflect the changes described above.

7. NO DEFENSES OF BORROWER. Borrower (and each guarantor signing below) agrees that, as of this date, it has no defenses against the obligations to pay any amounts under the Indebtedness.

8. CONTINUING VALIDITY. Borrower (and each guarantor signing below) understands and agrees that in modifying the existing Indebtedness, Bank is relying upon Borrower's representations, warranties, and agreements, as set forth in the Existing Loan Documents. Except as expressly modified pursuant to this Agreement, the terms of the Existing Loan Documents remain unchanged and in full force and effect. Bank's agreement to modifications to the existing Indebtedness pursuant to this Agreement in no way shall obligate Bank to make any future modifications to the Indebtedness. Nothing in this Agreement shall constitute a satisfaction of the Indebtedness. It is the intention of Bank and Borrower to retain as liable parties all makers and endorsers of Existing Loan Documents, unless the party is expressly released by Bank in writing. No maker,

endorser, or guarantor will be released by virtue of this Agreement. The terms of this Paragraph apply not only to this Agreement, but also to all subsequent loan modification agreements.

9. GENERAL WAIVER. In consideration of Bank agreeing to forbear from exercising remedies and entering into this Agreement, Borrower, releases and forever discharges Bank from any claim, liability, obligation, action and cause of action, whether known or unknown which any of them, or any predecessor of them, now owns or holds by reason of any matter done, omitted or suffered to be done, prior to the date of this Agreement. This release runs in favor of Bank, its parent, affiliate and subsidiary corporations, participant banks (if any) its present and former officers, employees, agents, affiliates, and successors in interest. In furtherance of the release contained in this section, Borrower waives such rights as might otherwise exist pursuant to California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Borrower further warrants, represents and agrees: (i) that it has executed this Agreement and release with full knowledge of any rights it may have with respect to Bank and the other parties released; (ii) that Borrower has received independent legal advice with respect to the matters set forth above and the rights and assertive rights arising out of said matters; and (iii) that Borrower has not relied upon any statement of fact or omission to state a fact by Bank, or by any one acting on behalf of Bank, with respect to the matters covered by this Agreement and release, and underlying disputes between the parties, except for those acts represented by Bank as set forth in this Agreement.

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10. INTEGRATION. . This Agreement, together with the Existing Loan Documents, constitutes the entire agreement and understanding among the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous proposals, negotiations, agreements, and understandings relating to the subject matter. In entering into this Agreement, Borrower acknowledges that it is relying on no statement, representation, warranty, covenant, or agreement of any kind made by the Bank or any employee or agent of Bank, except for the agreements of Bank set forth herein. No modification, rescission, waiver, release, or amendment of any provision of this Agreement shall be made, except by a written agreement signed by Bank and Borrower.

11. CONDITIONS. The effectiveness of this Agreement is conditioned upon receipt of Loan Fee.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the first date above written.

<TABLE>

<S>

BORROWER:

FRESH CHOICE, INC.

By: /S/ David E. Pertl

Name: David E. Pertl

Title: Vice President - CFO

</TABLE>

<C>

BANK:

SILICON VALLEY BANK

By: /s/ Fred Kreppel

Name: Fred Kreppel

Title: Vice President

The undersigned hereby consents to the modifications to the Indebtedness pursuant to this Agreement, hereby ratifies all the provisions of the Security Agreement and confirms that all provisions of that document are in full force and effect.

PLEDGOR:

MOFFETT DESIGN CORPORATION

Date: 10/30/98

By: /S/ David E. Pertl

Name: David E. Pertl

Title: Vice President, Chief Financial Officer and Treasurer

[FINOVA FINANCIAL INNOVATORS LOGO]

LOAN AND SECURITY AGREEMENT

FRESH CHOICE, INC.

2901 TASMAN DRIVE, SUITE 109
SANTA CLARA, CALIFORNIA 95054

77-0130849

FED ID TAX NO.

\$4,000,000

CREDIT LIMIT

DECEMBER 29, 1998

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CORPORATE FINANCE
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THIS LOAN AND SECURITY AGREEMENT (collectively with the Schedule to Loan Agreement (the "SCHEDULE") attached hereto, the "AGREEMENT") dated the date set forth on the cover page, is entered into by and between the borrower named on the cover page (the "Borrower"), whose address is set forth on the cover page and FINOVA CAPITAL CORPORATION ("FINOVA"), whose address is 355 South Grand Avenue, Los Angeles, California 90071.

1. DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following terms have the definitions set forth below:

"ADA" has the meaning set forth in Section 4.1(aa) hereof.

"Additional Sums" has the meaning set forth in Section 2.9(a) hereof.

"Adjusted Interest" means the sum of (a) the product of the blended interest rate applicable hereunder to the Loans (which blended interest rate shall be calculated based on the ratio of the Term Loans to the Capital Expenditure Loans then outstanding) multiplied by one-half of the difference between (i) twice the value of the Obligations less (2) Adjusted Principal Payments, plus (b) interest payments that are required to be made by Borrower during the subsequent twelve months on Permitted Indebtedness other than the Obligations.

"Adjusted Operating Cash Flow" means the difference between (i) Operating Cash Flow/Actual measured on a twelve month rolling basis less (ii) the sum of (x) Pro Forma Taxes payable over the subsequent twelve months plus (y) aggregate Capital Expenditures not financed by Permitted Indebtedness measured on a twelve month rolling basis.

"Adjusted Principal Payments" means the sum of (i) one-fifth of the principal balance of the Loans as of the last day of the immediately preceding month plus (ii) the contractual principal amortization for Permitted Indebtedness (other than the Obligations) payable during the subsequent twelve months.

"Adjusted Senior Contractual Debt Service" means the sum of (i) Adjusted Principal Payments as of the last day of the immediately preceding month plus (ii) Adjusted Interest.

"Affiliate" means any Person controlling, controlled by or under common control with Borrower. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of any Person, whether through ownership of common or preferred stock or other equity interests, by contract or otherwise. Without limiting the generality of the foregoing, each of the following shall be an Affiliate: any officer, director, employee or other agent of Borrower, any shareholder, member or subsidiary of Borrower, and any other Person with whom or which Borrower has common shareholders, officers or directors.

"Agreement" has the meaning set forth in the preamble.

"Applicable Usury Law" has the meaning set forth in Section 2.9(b) hereof.

"Blocked Account" has the meaning set forth in Section 2.10(c) hereof.

"Borrower Properties" has the meaning set forth in the Schedule.

"Business Day" means any day on which commercial banks in both Los Angeles, California and Phoenix, Arizona are open for business.

"Capital Expenditures" means all expenditures made and liabilities incurred for the acquisition of any fixed asset or improvement, replacement, substitution or addition thereto which has a useful life of more than one year and including, without limitation, those arising in connection with Capital Leases.

"Capital Lease" means any lease of property by Borrower that, in accordance with GAAP, should be capitalized for financial reporting purposes and reflected as a liability on the balance sheet of Borrower.

"Closing Fee" has the meaning set forth in the Schedule.

"Closing Date" means the date of the initial advance made by FINOVA pursuant to this Agreement.

"Code" means the Uniform Commercial Code as adopted and in effect in the State of Arizona from time to time.

"Collateral" has the meaning set forth in Section 3.1 hereof.

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FINOVA

LOAN AND SECURITY AGREEMENT

"Collateral Monitoring Fee" has the meaning set forth in the Schedule.

"Deposit Accounts" has the meaning set forth in Section 9105 of the Code.

"Dominion Account" has the meaning set forth in Section 2.10(c) hereof.

"Earnings Before Interest, Taxes, Depreciation and Amortization" for any fiscal period of Borrower means the net income of Borrower for such fiscal period, plus interest expense, depreciation and amortization and provision for income taxes for such fiscal period, and minus non-recurring miscellaneous income and expenses, all calculated in accordance with GAAP.

"Equipment" means all of Borrower's present and hereafter acquired machinery, molds, machine tools, motors, furniture, equipment, furnishings, fixtures, trade fixtures, motor vehicles, tools, parts, dyes, jigs, goods and other tangible personal property (other than Inventory) of every kind and description used in Borrower's operations or owned by Borrower and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions or improvements to any of the foregoing, wherever located.

"ERISA" means the Employment Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"ERISA Affiliate" means each trade or business (whether or not incorporated and whether or not foreign) which is or may hereafter become a member of a group of which Borrower is a member and which is treated as a single employer under ERISA Section 4001(b)(1), or IRC Section 414.

"Event of Default" means any of the events set forth in Section 7.1 of this Agreement.

"Examination Fee" has the meaning set forth in the Schedule.

"Excess Availability" means, as of the date of determination thereof, the amount by which the average daily total principal balance of the Capital Expenditure Loans facility which Borrower would be permitted to have outstanding over the prior 30 days, based on the formulas and reserves set forth in the Schedule, exceeds the sum of the Capital Expenditure Loans then actually outstanding, such excess then being reduced by an amount necessary to provide

for the payment of all accounts payable of Borrower which are more than 30 days past due date and all book overdrafts.

"Excess Cash Flow" means Operating Cash Flow/Permitted less Total Contractual Debt Service.

"FINOVA Affiliate" has the meaning set forth in Section 9.22 hereof.

"Foster City Store" has the meaning set forth in Section 3.8 hereof.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Boards which are applicable to the circumstances as of the date of determination consistently applied, except that, for the financial covenants set forth in this Agreement, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the audited financial statements delivered to Lender prior to the date hereof.

"General Intangibles" means all general intangibles of Borrower, whether now owned or hereafter created or acquired by Borrower, including, without limitation, all choses in action, causes of action, corporate or other business records, Deposit Accounts, inventions, designs, drawings, blueprints, Trademarks, Licenses and Patents, names, trade secrets, goodwill, copyrights, registrations, licenses, franchises, customer lists, security and other deposits, rights in all litigation presently or hereafter pending for any cause or claim (whether in contract, tort or otherwise), and all judgments now or hereafter arising therefrom, all claims of Borrower against FINOVA, rights to purchase or sell real or personal property, rights as a licensor or licensee of any kind, royalties, telephone numbers, proprietary information, purchase orders, and all insurance policies and claims (including without limitation credit, liability, property and other insurance) tax refunds and claims, computer programs, discs, tapes and tape files, claims under guaranties, security interests or other security held by or granted to Borrower to secure payment of any of the Receivables by an account debtor, all rights to indemnification and all other intangible property of every kind and nature (other than Receivables).

"Indebtedness" means all of Borrower's present and future obligations, liabilities, debts, claims and indebtedness, contingent, fixed or otherwise, however

evidenced, created, incurred, acquired, owing or arising, whether under written or oral agreement, operation of law or otherwise, and includes, without limiting the foregoing (i) the Obligations, (ii) obligations and liabilities of any Person secured by a lien, claim, encumbrance or security interest upon property owned by Borrower, even though Borrower has not assumed or become liable therefor, (iii) obligations and liabilities created or arising under any lease (including Capital Leases) or conditional sales contract or other title retention agreement with respect to property used or acquired by Borrower, even though the rights and remedies of the lessor, seller or lender are limited to repossession, (iv) all unfunded pension fund obligations and liabilities and (v)

deferred taxes.

"Initial Term" has the meaning set forth on the Schedule.

"Inventory" means all of Borrower's now owned and hereafter acquired goods, merchandise or other personal property, wherever located, to be furnished under any contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in Borrower's business or used in connection with the manufacture, packing, shipping, advertising, selling or finishing of such goods, merchandise or other personal property, and all documents of title or other documents representing them.

"IRC" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

"Loans" has the meaning set forth in Section 2.2 hereof.

"Loan Documents" means, collectively, this Agreement, any note or notes executed by Borrower and payable to FINOVA, and any other present or future agreement entered into in connection with this Agreement, together with all alterations, amendments, changes, extensions, modifications, refinancings, refundings, renewals, replacements, restatements, or supplements, of or to any of the foregoing.

"Loan Party" means Borrower and each other party (other than FINOVA) to any Loan Document.

"Loan Reserves" means, as of any date of determination, such amounts as FINOVA may from time to time establish and revise in good faith reducing the amount of Capital Expenditure Loans which would otherwise be available to Borrower under the lending formula(s) provided in the Schedule: (a) to reflect events, conditions, contingencies or risks which, as determined by FINOVA in good faith, do or may affect either (i) the Collateral or any other property which is security for the Obligations or its value, (ii) the assets, business or prospects of Borrower or any guarantor of the Obligations or (iii) the security interests and other rights of FINOVA in the Collateral (including the enforceability, perfection and priority thereof) or (b) to reflect FINOVA's good faith belief that any collateral report or financial information furnished by or on behalf of Borrower or any guarantor to FINOVA is or may have been incomplete, inaccurate or misleading in any material respect or (c) in respect of any state of facts which FINOVA determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default."

"Loan Year" means each twelve month period commencing on the Closing Date.

"Maximum Interest Rate" has the meaning set forth in Section 2.9(c) hereof.

"Multiemployer Plan" means a "multiemployer plan" as defined in ERISA Sections 3(37) or 4001(a)(3) or IRC Section 414(f) which covers employees of Borrower or any ERISA Affiliate.

"Net Worth" at any date means the Borrower's net worth as determined in accordance with GAAP.

"Obligations" means all present and future loans, advances, debts, liabilities, obligations, covenants, duties and indebtedness at any time owing by Borrower to FINOVA, whether evidenced by this Agreement, any note or other instrument or document, whether arising from an extension of credit, opening of

a letter of credit, banker's acceptance, loan, guaranty, indemnification or otherwise, whether direct or indirect (including, without limitation, those acquired by assignment and any participation by FINOVA in Borrower's debts owing to others), absolute or contingent, due or to become due, including, without limitation, all interest, charges, expenses, fees, attorney's fees, expert witness fees, Examination Fee, Collateral Monitoring Fee, Closing Fee, Facility Fee, Termination Fee, and any other sums chargeable to Borrower hereunder or under any other agreement with FINOVA.

"Operating Cash Flow/Actual" means, for any period, Borrower's net income or loss (excluding the effect of any extraordinary gains or losses), determined in accordance with GAAP, plus or minus each of the following items, to the extent deducted from or added to the revenues of Borrower in the calculation of net income or loss: (i) depreciation; (ii) amortization and other non-

cash charges; (iii) interest expense paid or accrued; and (iv) total federal and state income tax expense determined as the accrued liability of Borrower in respect of such period, regardless of what portion of such expense has actually been paid by Borrower during such period.

"Operating Cash Flow/Permitted" means, for any period, Borrower's net income or loss (excluding the effect of any extraordinary gains or losses), determined in accordance with GAAP, plus or minus each of the following items, to the extent deducted from or added to the revenues of Borrower in the calculation of net income or loss: (i) depreciation; (ii) amortization and other non- cash charges; (iii) interest expense paid or accrued; (iv) total federal and state income tax expense determined as the accrued liability of Borrower in respect of such period, regardless of what portion of such expense has actually been paid by Borrower during such period; and (v) fees paid to subordinating creditors, if any, to the extent permitted hereunder, and after deduction for each of (a) federal and state income taxes, to the extent actually paid during such period; (b) any non-cash income; and (c) all permitted Capital Expenditures (without regard to any waiver given by FINOVA with respect to any limitation on such Capital Expenditures) actually made during such period and not financed.

"Overadvance" has the meaning set forth in Section 2.3.

"Overline" has the meaning set forth in Section 2.3.

"PBGC" means the Pension Benefit Guarantee Corporation.

"Permitted Discretion" means FINOVA's judgment exercised in good faith based upon its consideration of any factor which FINOVA believes in good faith: (i) will or could materially adversely affect the value of any Collateral, the enforceability or priority of FINOVA's liens thereon or the amount which FINOVA would be likely to receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation of such Collateral; (ii) suggests that any collateral report or financial information delivered to FINOVA by any Person on behalf of the Borrower is incomplete, inaccurate or misleading in any material respect; (iii) materially increases the likelihood of a bankruptcy, reorganization or other insolvency proceeding involving the Borrower, any Loan Party or any of the Collateral, or (iv) creates or reasonably could be expected to create an Event of Default. In exercising such judgment, FINOVA may consider any of the following factors: (i) the financial and business climate of the

Borrower's industry, (ii) general macroeconomic conditions, and (iii) any other factors that materially and adversely change the credit risk of lending to the Borrower on the security of the Collateral. The burden of establishing lack of good faith hereunder shall be on the Borrower.

"Permitted Encumbrance" means each of the liens, mortgages and other security interests set forth on the Schedule.

"Permitted Indebtedness" has the meaning set forth in the Schedule.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, government, or any agency or political division thereof, or any other entity.

"Plan" means any plan described in ERISA Section 3(2) maintained for employees of Borrower or any ERISA Affiliate, other than a Multiemployer Plan.

"Prepared Financials" means the balance sheets of Borrower as of the date set forth in the Schedule in the section entitled 'Reporting Requirements', and as of each subsequent date on which audited balance sheets are delivered to FINOVA from time to time hereunder, and the related statements of operations, changes in stockholder's equity and changes in cash flow for the periods ended on such dates.

"Prime Rate" has the meaning set forth in the Schedule.

"Pro Forma Taxes" means Borrower's anticipated income tax payments that will be due and payable during the subsequent twelve months calculated in accordance with IRC.

"Prohibited Transaction" means any transaction described in Section 406 of ERISA which is not exempt by reason of Section 408 of ERISA, and any transaction described in Section 4975(c) of the IRC which is not exempt by reason of Section 4975(c)(2) of the IRC.

"Receivables" means all of Borrower's now owned and hereafter acquired accounts (whether or not earned by performance), proceeds of any letters of credit naming Borrower as beneficiary, contract rights, chattel paper, instruments, documents and all other forms of obligations at any time owing to Borrower, all guaranties and other security therefor, whether secured or unsecured, all merchandise returned to or repossessed by Borrower,

and all rights of stoppage in transit and all other rights or remedies of an unpaid vendor, lienor or secured party.

"Renewal Term" has the meaning set forth on the Schedule.

"Reportable Event" means a reportable event described in Section 4043 of ERISA or the regulations thereunder, a withdrawal from a Plan described in Section 4063 of ERISA, or a cessation of operations described in Section 4068(f) of ERISA.

"Schedule" has the meaning set forth in the preamble.

"Senior Contractual Debt Service" means, for any period, the sum of payments made or required to be made by Borrower during such period for (i) interest and scheduled principal payments due on the Term Loans (excluding voluntary prepayment), and (ii) interest only payments due on the Capital Expenditure Loans facility plus the Collateral Monitoring Fee, the Facility Fee and the Unused Line Fee.

"Start Date" has the meaning set forth in the Schedule.

"Subordinated Debt" means liabilities of Borrower the repayment of which is subordinated, to the payment and performance of the Obligations, pursuant to a subordination agreement acceptable to FINOVA in its sole discretion.

"Targeted Stores" has the meaning set forth in Section 3.8 hereof.

"Term Loans" has the meaning set forth in the Schedule.

"Termination Fee" has the meaning set forth in Section 9.2(d) hereof.

"Total Contractual Debt Service" means, for any period, the sum of payments made (or, as to clause (i) of this sentence, required to be made) by Borrower during such period for (i) Senior Contractual Debt Service and (ii) interest and scheduled principal payments due on any and all other Indebtedness of Borrower.

"Total Debt Service Coverage Ratio" means as of the last day of each fiscal quarter ended March, June, September or December, the ratio of Borrower's Operating Cash Flow/Actual for the consecutive 12-month period ending as of such last day to the amount necessary to meet Borrower's Total Contractual Debt Service for such 12-month period, provided that such calculations shall be made on a consolidated basis.

"Total Facility" has the meaning set forth in Section 2.1 hereof.

"Trademarks, Copyrights, Licenses and Patents" means all of Borrower's right, title and interest in and to, whether now owned or hereafter acquired: (i) trademarks, trademark registrations, trade names, trade name registrations, and trademark or trade name applications, including without limitation such as are listed on the Schedule attached hereto and made a part hereof, as the same may be amended from time to time, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, (d) all rights corresponding thereto throughout the world, and (e) the goodwill of the business operated by Borrower connected with and symbolized by any trademarks or trade names; (ii) copyrights, copyright registrations and copyright applications, including without limitation such as are listed on the Schedule attached hereto and made a part hereof, as the same may be amended from time to time, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world; (iii) license agreements, including without limitation such as are listed on the Schedule attached hereto and made a part hereof, and the right to prepare for sale, sell and advertise for sale any Inventory now or hereafter owned by Borrower and now or hereafter covered by such licenses; and (iv) patents and patent applications, registered or pending, including without limitation such as are listed on the Schedule attached hereto, together with all income, royalties,

shop rights, damages and payments thereto, the right to sue for infringements thereof, and all rights thereto throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof.

"Unused Line Fee" has the meaning set forth in the Schedule.

1.2 Other Terms. All accounting terms used in this Agreement, unless otherwise indicated, shall have the meanings given to such terms in accordance with GAAP. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings

provided by the Code, to the extent such terms are defined therein.

2. LOANS; INTEREST RATE AND OTHER CHARGES.

2.1 Total Facility. Upon the terms and conditions set forth herein and provided that no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, shall have occurred and be continuing, FINOVA shall, upon Borrower's request, make advances to Borrower from time to time in an aggregate outstanding principal amount not to exceed the Total Facility amount (the "TOTAL FACILITY") set forth on the Schedule hereto, subject to deduction of reserves for accrued interest and such other reserves as FINOVA deems proper from time to time in its Permitted Discretion, and less amounts FINOVA may be obligated to pay in the future on behalf of Borrower. The Schedule is an integral part of this Agreement and all references to "herein", "herewith" and words of similar import shall for all purposes be deemed to include the Schedule.

2.2 Loans. Advances under the Total Facility ("LOANS" and individually, a "LOAN") shall be comprised of the amounts shown on the Schedule.

2.3 Overlines; Overadvances. If at any time or for any reason the outstanding amount of advances extended or issued pursuant hereto exceeds any of the dollar limitations ("OVERLINE") or percentage limitations ("OVERADVANCE") in the Schedule, then Borrower shall, upon FINOVA's demand, immediately pay to FINOVA, in cash, the full amount of such Overline or Overadvance which, at FINOVA's option, may be applied to reduce the outstanding principal balance of the Loans. Without limiting Borrower's obligation to repay to FINOVA on demand the amount of any Overline or Overadvance, Borrower agrees to pay FINOVA interest on the outstanding principal amount of any Overline or Overadvance, on demand, at the rate set forth on the Schedule and applicable to the Capital Expenditure Loans.

2.4 Intentionally Deleted.

2.5 Loan Account. All advances made hereunder shall be added to and deemed part of the Obligations when made. FINOVA may from time to time charge all Obligations of Borrower to Borrower's loan account with FINOVA.

2.6 Interest; Fees. Borrower shall pay FINOVA interest on the daily outstanding balance of the Obligations at the per annum rate set forth on the Schedule. Borrower shall also pay FINOVA the fees set forth on the Schedule.

2.7 Default Interest Rate. Upon the occurrence and during the continuation of an Event of Default, Borrower shall pay FINOVA interest on the daily outstanding balance of the Obligations at a rate per annum which is two percent (2%) in excess of the rate which would otherwise be applicable thereto pursuant to the Schedule.

2.8 Examination Fee. Borrower agrees to pay to FINOVA the Examination Fee in the amount set forth on the Schedule in connection with each audit or examination of Borrower performed by FINOVA prior to or after the date hereof. Without limiting the generality of the foregoing, Borrower shall pay to FINOVA an initial Examination Fee in an amount equal to the amount set forth on the Schedule. Such initial Examination Fee shall be deemed fully earned at the time of payment and due and payable upon the closing of this transaction, and shall be deducted from any good faith deposit paid by Borrower to FINOVA prior to the date of this Agreement.

2.9 Excess Interest.

(a) The contracted for rate of interest of the loan contemplated hereby, without limitation, shall consist of the following: (i) the interest rate set forth on the Schedule, calculated and applied to the principal balance of the Obligations in accordance with the provisions of this Agreement; (ii) interest after an Event of Default, calculated and applied to the amount of the Obligations in accordance with the provisions hereof; and (iii) all Additional Sums (as herein defined), if any. Borrower agrees to pay an effective contracted for rate of interest which is the sum of the above-referenced elements. The Examination Fee, attorneys fees, expert witness fees, collateral monitoring fees, closing fees, facility fees, Termination Fees, other charges, goods, things in action or any other sums or things of value paid or payable by Borrower (collectively, the "ADDITIONAL SUMS"), whether pursuant to this Agreement or any other documents or instruments in any way pertaining to this lending transaction, or otherwise with respect to this lending transaction, that under any applicable law may be deemed to be interest with respect to this lending transaction, for the purpose of any applicable law that may limit the maximum amount of interest to be charged with respect to this lending transaction, shall be payable by Borrower as, and shall be deemed to be, additional interest and for such purposes only, the agreed upon and "contracted for rate of interest" of this lending transaction

shall be deemed to be increased by the rate of interest resulting from the inclusion of the Additional Sums.

(b) It is the intent of the parties to comply with the usury laws of the State of Arizona (the "APPLICABLE USURY LAW"). Accordingly, it is agreed that notwithstanding any provisions to the contrary in this Agreement, or in any of the documents securing payment hereof or otherwise relating hereto, in no event shall this Agreement or such documents require the payment or permit the collection of interest in excess of the maximum contract rate permitted by the Applicable Usury Law (the "MAXIMUM INTEREST RATE"). In the event (a) any such excess of interest otherwise would be contracted for, charged or received from Borrower or otherwise in connection with the loan evidenced hereby, or (b) the maturity of the Obligations is accelerated in whole or in part, or (c) all or part of the Obligations shall be prepaid, so that under any of such circumstances the amount of interest contracted for, shared or received in

connection with the loan evidenced hereby, would exceed the Maximum Interest Rate, then in any such event (1) the provisions of this paragraph shall govern and control, (2) neither Borrower nor any other Person now or hereafter liable for the payment of the Obligations shall be obligated to pay the amount of such interest to the extent that it is in excess of the Maximum Interest Rate, (3) any such excess which may have been collected shall be either applied as a credit against the then unpaid principal amount of the Obligations or refunded to Borrower, at FINOVA's option, and (4) the effective rate of interest shall be automatically reduced to the Maximum Interest Rate. It is further agreed, without limiting the generality of the foregoing, that to the extent permitted by the Applicable Usury Law; (x) all calculations of interest which are made for the purpose of determining whether such rate would exceed the Maximum Interest Rate shall be made by amortizing, prorating, allocating and spreading during the period of the full stated term of the loan evidenced hereby, all interest at any time contracted for, charged or received from Borrower or otherwise in connection with such loan; and (y) in the event that the effective rate of interest on the loan should at any time exceed the Maximum Interest Rate, such excess interest that would otherwise have been collected had there been no ceiling imposed by the Applicable Usury Law shall be paid to FINOVA from time to time, if and when the effective interest rate on the loan otherwise falls below the Maximum Interest Rate, to the extent that interest paid to the date of calculation does not exceed the Maximum Interest Rate, until the entire amount of interest which would otherwise have been collected had there been no ceiling imposed by the Applicable Usury Law has been paid in full. Borrower further agrees that should the Maximum Interest Rate be increased at any time hereafter because of a change in the Applicable Usury Law, then to the extent not prohibited by the Applicable Usury Law, such increases shall apply to all indebtedness evidenced hereby regardless of when incurred; but, again to the extent not prohibited by the Applicable Usury Law, should the Maximum Interest Rate be decreased because of a change in the Applicable Usury Law, such decreases shall not apply to the indebtedness evidenced hereby regardless of when incurred.

2.10 Principal Payments; Proceeds of Collateral. Notwithstanding anything to the contrary contained in this Agreement, those provisions of subsections 2.10(b) and (c) requiring Borrower to cause the establishment of and make payments to a Blocked Account shall be applicable only at FINOVA's election upon the occurrence of an Event of Default. Prior to an Event of Default, Borrower may collect and retain the collections of Receivables.

(a) Principal Payments. Except where evidenced by notes or other instruments issued or made by Borrower to FINOVA specifically containing payment provisions which are in conflict with this Section 2.10 (in which event the conflicting provisions of said notes or other instruments shall govern and control), that portion of the Obligations consisting of principal payable on account of Loans shall be payable by Borrower to FINOVA immediately upon the earliest of (i) except with respect to proceeds of the sale of the Foster City Store and the Targeted Stores as set forth in Section 3.8 hereof, the receipt by FINOVA or Borrower of any proceeds of any of the Collateral, to the extent of said proceeds, (ii) the occurrence of an Event of Default in consequence of which FINOVA elects to accelerate the maturity and payment of such loans, or (iii) any termination of this Agreement pursuant to Section 9.2 hereof; provided, however, that any Overadvance or Overline shall be payable on demand pursuant to the provisions of Section 2.3 hereof.

(b) Collections. Except with respect to proceeds of the sale of the Foster City Store and the Targeted Stores as set forth in Section 3.8 hereof, until FINOVA notifies Borrower to the contrary, consistent with the first paragraph of this Section 2.10, Borrower may make collection of all Receivables for FINOVA and shall receive all such payments or sums as trustee of FINOVA and immediately deliver all such payments or sums to FINOVA in their original form, duly

endorsed in blank or cause the same to be deposited into a Blocked Account or Dominion Account. Borrower agrees that, in computing the charges under this Agreement, all items of payment shall be deemed applied by FINOVA on account of the Obligations two (2) Business Days after receipt by

FINOVA of good funds which have been finally credited to FINOVA's account, whether such funds are received directly from Borrower or from the Blocked Account bank or the Dominion Account bank, pursuant to Section 2.10(c) hereof, and this provision shall apply regardless of the amount of the Obligations outstanding or whether any Obligations are outstanding; provided, that if any such good funds are received after 12:00 p.m. noon (Los Angeles time) on any Business Day or at any time on any day not constituting a Business Day, such funds shall be deemed received on the immediately following Business Day. FINOVA is not, however, required to credit Borrower's account for the amount of any item of payment which is unsatisfactory to FINOVA in its Permitted Discretion and FINOVA may charge Borrower's loan account for the amount of any item of payment which is returned to FINOVA unpaid.

(c) Establishment of a Lockbox Account or Dominion Account. Unless otherwise provided herein or Borrower shall be otherwise directed by FINOVA in writing, Borrower shall cause all proceeds of Collateral to be deposited into a lockbox account, or such other "blocked account" as FINOVA may require (each, a "BLOCKED ACCOUNT") pursuant to an arrangement with such bank as may be selected by Borrower and be acceptable to FINOVA which proceeds, unless otherwise provided herein, shall be applied in payment of the Obligations in such order as FINOVA determines in its sole discretion. Borrower shall issue to any such bank an irrevocable letter of instruction directing said bank to transfer such funds so deposited to FINOVA, either to any account maintained by FINOVA at said bank or by wire transfer to appropriate account(s) of FINOVA. All funds deposited in a Blocked Account shall immediately become the sole property of FINOVA and Borrower shall obtain the agreement by such bank to waive any offset rights against the funds so deposited. FINOVA assumes no responsibility for any Blocked Account arrangement, including without limitation, any claim of accord and satisfaction or release with respect to deposits accepted by any bank thereunder. Alternatively, FINOVA may establish depository accounts in the name of FINOVA at a bank or banks for the deposit of such funds (each, a "DOMINION ACCOUNT") and Borrower shall deposit all proceeds of Receivables and all cash proceeds of any sale of Inventory or, to the extent permitted herein, Equipment or cause same to be deposited, in kind, in such Dominion Accounts of FINOVA in lieu of depositing same to Blocked Accounts, and, unless otherwise provided herein, all such funds shall be applied by FINOVA to the Obligations in such order as FINOVA determines in its sole discretion.

(d) Payments Without Deductions. Borrower shall pay principal, interest, and all other amounts payable hereunder, or under any other Loan Document, without any deduction whatsoever, including, but not limited to, any deduction for any setoff or counterclaim.

(e) Collection Days Upon Repayment. In the event Borrower repays the Obligations in full at any time hereafter, such payment in full shall be credited (conditioned upon final collection) to Borrower's loan account three (3) Business Days after FINOVA's receipt thereof.

(f) Monthly Accountings. FINOVA shall provide Borrower monthly with an

account of advances, charges, expenses and payments made pursuant to this Agreement. Such account shall be deemed correct, accurate and binding on Borrower and an account stated (except for reverses and reapplications of payments made and corrections of errors discovered by FINOVA), unless Borrower notifies FINOVA in writing to the contrary within thirty (30) days after each account is rendered, describing the nature of any alleged errors or admissions.

2.11 Application of Collateral. Except as otherwise provided herein, FINOVA shall have the continuing and exclusive right to apply or reverse and re-apply any and all payments to any portion of the Obligations in such order and manner as FINOVA shall determine in its sole discretion. To the extent that Borrower makes a payment or FINOVA receives any payment or proceeds of the Collateral for Borrower's benefit which is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or any other party under any bankruptcy law, common law or equitable cause, or otherwise, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by FINOVA.

2.12 Application of Payments. The amount of all payments or amounts received by FINOVA with respect to the Loan shall be applied to the extent applicable under this Agreement: (i) first, to accrued interest through the date of such payment, including any Default Interest; (ii) then, to any late fees, overdue risk assessments, Examination Fee and expenses, collection fees and expenses and any other fees and expenses due to FINOVA hereunder; and (iii) last, the remaining balance, if any, to the unpaid principal balance of the Loan; provided however, while an Event of Default exists under this Agreement, or under any other Loan Document, each payment hereunder shall be (x) held as cash collateral to

secure Obligations relating to any Letters of Credit or other contingent obligations arising under the Loan Documents and/or (y) applied to amounts owed to FINOVA by Borrower as FINOVA in its sole discretion may determine. In calculating interest and applying payments as set forth above: (a) interest shall be calculated and collected through the date a payment is actually applied by FINOVA under the terms of this Agreement; (b) interest on the outstanding balance shall be charged during any grace period permitted hereunder; (c) at the end of each month, all accrued and unpaid interest and other charges provided for hereunder shall be added to the principal balance of the Loan; and (d) to the extent that Borrower makes a payment or FINOVA receives any payment or proceeds of the Collateral for Borrower's benefit that is subsequently invalidated, set aside or required to be repaid to any other Person, then, to such extent, the Obligations intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by FINOVA and FINOVA may adjust the Loan balances as FINOVA, in its sole discretion, deems appropriate under the circumstances.

2.13 Notification of Closing. Borrower shall provide FINOVA with at least forty-eight (48) hours prior written notice of the Closing Date, to enable FINOVA to arrange for the availability of funds. In the event the closing does not take place on the date specified in Borrower's notice to FINOVA, other than through the fault of FINOVA, Borrower agrees to reimburse FINOVA for FINOVA's costs to maintain the necessary funds available for the closing at the Capital Expenditure Interest Rate with respect to an amount equal to the initial advance

under the Capital Expenditure Loans facility which is to be made on the Closing Date, for the number of days which elapse between the date specified in Borrower's notice and the date upon which the closing actually occurs (which number of days shall not include the date specified in Borrower's notice, but shall include the Closing Date).

3. SECURITY.

3.1 Security Interest in the Collateral. To secure the payment and performance of the Obligations when due, Borrower hereby grants to FINOVA a first priority security interest (subject only to Permitted Encumbrances) in all of Borrower's now owned or hereafter acquired or arising Inventory, Equipment, Receivables, life insurance policies and the proceeds thereof, Trademarks, Copyrights, Licenses and Patents, Investment Property (as defined in Section 9-115 of the Code) and General Intangibles, including, without limitation, all of Borrower's Deposit Accounts, money, any and all property now or at any time hereafter in FINOVA's possession (including claims and credit balances), and all proceeds (including proceeds of any insurance policies, proceeds of proceeds and claims against third parties), all products and all books and records and computer data related to any of the foregoing (all of the foregoing, together with all other property in which FINOVA may be granted a lien or security interest, is referred to herein, collectively, as the "COLLATERAL"). Notwithstanding anything contained in this Agreement, the Collateral shall not include any dishwashers, Alliant Food Service, Inc. computer equipment, or Pepsi Co. equipment not owned by Borrower or any Equipment leased from any third Person if the lease agreement specifically prohibits Borrower from granting a lien in the leased Equipment, provided that (x) if Borrower obtains title to the Equipment or the lease agreement is amended, replaced or terminated such that the prohibition against granting a lien is no longer in effect, then the Collateral shall automatically thereafter include such Equipment and (y) nothing herein shall be deemed to exclude the proceeds of any Equipment from the Collateral to the extent permitted by law.

3.2 Perfection and Protection of Security Interest. Borrower shall, at its expense, take all actions requested by FINOVA at any time to perfect, maintain, protect and enforce FINOVA's first priority security interest and other rights in the Collateral and the priority thereof from time to time, including, without limitation, (i) executing and filing financing or continuation statements and amendments thereof and executing and delivering such documents and titles in connection with motor vehicles as FINOVA shall require, all in form and substance satisfactory to FINOVA, (ii) maintaining a perpetual inventory and complete and accurate stock records, (iii) delivering to FINOVA warehouse receipts covering any portion of the Collateral located in warehouses and for which warehouse receipts are issued, and transferring Inventory to warehouses designated by FINOVA, (iv) placing notations on Borrower's books of account to disclose FINOVA's security interest therein and (v) delivering to FINOVA all letters of credit on which Borrower is named beneficiary. FINOVA may file, without Borrower's signature, one or more financing statements disclosing FINOVA's security interest under this Agreement. Borrower agrees that a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement. If any Collateral is at any time in the possession or control of any warehouseman, bailee or any of Borrower's agents or processors, Borrower shall notify such Person of FINOVA's security interest in such Collateral and, upon FINOVA's request, instruct them to hold all such Collateral for FINOVA's account subject to FINOVA's instructions. From time to time, Borrower

shall, upon FINOVA's request, execute and deliver confirmatory written instruments pledging the Collateral to FINOVA, but Borrower's failure to do so shall not affect or limit FINOVA's security interest or other rights in and to the Collateral. Until the Obligations have been fully satisfied and FINOVA's obligation to make further advances hereunder has terminated, FINOVA's security interest in the Collateral shall continue in full force and effect.

3.3 Preservation of Collateral. FINOVA may, in its Permitted Discretion and upon notice to Borrower, at any time discharge any lien or encumbrance on the Collateral or bond the same, pay any insurance, maintain guards, pay any service bureau, obtain any record or take any other action to preserve the Collateral and charge the cost thereof to Borrower's loan account as an Obligation.

3.4 Insurance. Borrower will maintain and deliver evidence to FINOVA of such insurance as is required by FINOVA, written by insurers, in amounts, and with lender's loss payee, additional insured, and other endorsements, satisfactory to FINOVA. All premiums with respect to such insurance shall be paid by Borrower as and when due. Accurate and certified copies of the policies shall be delivered by Borrower to FINOVA. If Borrower fails to comply with this Section, FINOVA may (but shall not be required to) procure, upon notice to Borrower, such insurance and endorsements at Borrower's expense and charge the cost thereof to Borrower's loan account as an Obligation.

3.5 Intentionally Deleted.

3.6 Intentionally Deleted.

3.7 Equipment. Borrower shall keep and maintain the Equipment in good operating condition and repair and make all necessary replacements thereto to maintain and preserve the value and operating efficiency thereof at all times consistent with Borrower's past practice, ordinary wear and tear excepted. Borrower shall not permit any item of Equipment to become a fixture (other than a trade fixture) to real estate or an accession to other property.

3.8 Other Liens; No Disposition of Collateral. Borrower represents, warrants and covenants that except for FINOVA's security interest, Permitted Encumbrances, and such other liens, claims and encumbrances as may be permitted by FINOVA in its sole discretion from time to time in writing, (a) all Collateral is and shall continue to be owned by it free and clear of all liens, claims and encumbrances whatsoever and (b) Borrower shall not, without FINOVA's prior written approval, sell, encumber or dispose of or permit the sale, encumbrance or disposal of any Collateral or all or any substantial part of any of its other assets (or any interest of Borrower therein), except for (x) the sale of Inventory and the replacement of used Equipment with Equipment of equal or greater value in the ordinary course of Borrower's business and (y) provided that no Event of Default shall result therefrom, the sale of or closure of Borrower's restaurants located in Bellevue, Washington, Los Gatos, California, Clovis, California, San Leandro, California, Milpitas, California, 1600 Saratoga Avenue, San Jose, California (collectively, the "Targeted Stores") and Foster City, California (the "Foster City Store"). In the event FINOVA gives any such prior written approval with respect to any such sale of Collateral, the same may be conditioned on the sale price being equal to, or greater than, an amount acceptable to FINOVA. The proceeds of any such sales of Collateral other than the sale of the Foster City Store and the Targeted Stores shall be remitted to FINOVA pursuant to this Agreement for application to the Obligations, provided that the proceeds of the sale of any of the Targeted Stores shall be remitted to

FINOVA to the extent of any Overadvance that would result from such sale. Upon the written request of Borrower to FINOVA, FINOVA agrees to release its security interest in the Targeted Stores and the Foster City Store upon the sale or any disposition of the Collateral at such stores.

3.9 Collateral Security. The Obligations shall constitute one loan secured by the Collateral. FINOVA may, in its sole discretion, (i) exchange, enforce, waive or release any of the Collateral, (ii) apply Collateral and direct the order or manner of sale thereof as it may determine, and (iii) settle, compromise, collect or otherwise liquidate any Collateral in any manner without affecting its right to take any other action with respect to any other Collateral.

4. CONDITIONS OF CLOSING.

4.1 Initial Advance. The obligation of FINOVA to make the initial advance hereunder is subject to the fulfillment, to the satisfaction of FINOVA and its counsel, of each of the following conditions on or prior to the date set forth on the Schedule:

(a) Loan Documents. FINOVA shall have received each of the following Loan Documents: (i) the Agreement fully and properly executed by Borrower; (ii) promissory notes in such amounts and on such terms and conditions as FINOVA shall specify, executed by Borrower; (iii) such security agreements, intellectual property assignments, pledge agreements, mortgages and

deeds of trust as FINOVA may require with respect to this Agreement, executed by each of the parties thereto and, if applicable, duly acknowledged for recording or filing in the appropriate governmental offices; (iv) Subordination Agreements in form and substance acceptable to FINOVA, together with copies of all instruments subject thereto showing a legend indicating such subordination; and (vi) such other documents, instruments and agreements in connection herewith as FINOVA shall require, executed, certified and/or acknowledged by such parties as FINOVA shall designate;

(b) Minimum Excess Availability. Borrower shall have Excess Availability under the Capital Expenditure Loans facility of not less than the amount specified in the Schedule, after giving effect to the initial advance hereunder.

(c) Terminations by Existing Lender. Borrower's existing lender(s) shall have executed and delivered UCC termination statements and other documentation evidencing the termination of its liens and security interests in the assets of Borrower or a subordination agreement in form and substance satisfactory to FINOVA in its sole discretion;

(d) Charter Documents. FINOVA shall have received copies of Borrower's By-laws and Articles or Certificate of Incorporation, as amended, modified, or supplemented to the Closing Date, certified by the Secretary of Borrower;

(e) Good Standing. FINOVA shall have received a certificate of corporate status with respect to Borrower, dated within ten (10) days of the Closing Date, by the Secretary of State of the state of incorporation of Borrower, which certificate shall indicate that Borrower is in good standing in such state;

(f) Foreign Qualification. FINOVA shall have received certificates of corporate status with respect to Borrower and each other Loan Party, each dated within ten (10) days of the Closing Date, issued by the Secretary of State of each state in which such party's failure to be duly qualified or licensed would have a material adverse effect on its financial condition or assets, indicating that such party is in good standing;

(g) Authorizing Resolutions and Incumbency. FINOVA shall have received a certificate from the Secretary of Borrower attesting to (i) the adoption of resolutions of Borrower's Board of Directors, and shareholders or members if necessary, authorizing the borrowing of money from FINOVA and execution and delivery of this Agreement and the other Loan Documents to which Borrower is a party, and authorizing specific officers of Borrower to execute same, and (ii) the authenticity of original specimen signatures of such officers;

(h) Insurance. FINOVA shall have received the insurance certificates and certified copies of policies required by Section 3.4 hereof, in form and substance satisfactory to FINOVA and its counsel, together with an additional insured endorsement in favor of FINOVA with respect to all liability policies and a lender's loss payable endorsement in favor of FINOVA with respect to all casualty and business interruption policies, each in form and substance acceptable to FINOVA and its counsel;

(i) Title Insurance. FINOVA shall have received binding commitments to issue such title insurance with respect to Collateral which is comprised of real property as it shall determine;

(j) Searches; Certificates of Title. FINOVA shall have received searches reflecting the filing of its financing statements and fixture filings in such jurisdictions as it shall determine, and shall have received certificates of title with respect to the Collateral which shall have been duly executed in a manner sufficient to perfect all of the security interests granted to FINOVA;

(k) Intentionally Deleted.

(l) Fees. Borrower shall have paid all fees payable by it on the Closing Date pursuant to this Agreement;

(m) Opinion of Counsel. FINOVA shall have received an opinion of Borrower's counsel covering such matters as FINOVA shall determine in its sole discretion;

(n) Officer Certificate. FINOVA shall have received a certificate of the President and the Chief Financial Officer or similar official of Borrower, attesting to the accuracy of each of the representations and warranties of Borrower set forth in this Agreement and the fulfillment of all conditions precedent to the initial advance hereunder;

(o) Solvency Certificate. If requested, FINOVA shall have received a signed certificate of the Borrower's duly elected Chief Financial Officer concerning the solvency and financial condition of Borrower, on FINOVA's standard form;

(p) Intentionally Deleted.

(q) Intentionally Deleted.

(r) Environmental Certificate. FINOVA shall have received Environmental Certificates from Borrower, in form and substance satisfactory to FINOVA in its discretion, with respect to all locations of Collateral;

(s) Search and References. FINOVA shall have received and approved the results of UCC, tax lien, litigation, judgment, and bankruptcy searches regarding Borrower and shall have received satisfactory customer, vendor and credit reference checks on Borrower.

(t) Intentionally Deleted.

(u) Intentionally Deleted.

(v) No Material Adverse Changes. Prior to the Closing Date, there shall have occurred no material adverse change in the financial condition of Borrower, or in the condition of the assets of Borrower, from that shown on the draft financial statements for Borrower dated on the date set forth in the Schedule. At the closing, Borrower shall deliver to FINOVA an officer's certification confirming that Borrower is unaware of the existence of any such material adverse change in Borrower's financial condition.

(w) Material Agreements. FINOVA shall have received, reviewed and approved all material agreements to which Borrower is a party.

(x) Projections. Borrower shall submit cash flow projections and pro forma balance sheet with adjusting entries (i) showing that the proposed financing will provide sufficient funds for the Borrower's projected working capital needs, and (ii) showing: (1) that the Borrower will have reasonably sufficient capital for the conduct of its business following the initial funding, and (2) that the Borrower will not incur debts beyond its ability to pay such debts as they mature.

(y) Opinions. To the extent any Person other than Borrower shall be parties to the Loan Documents, FINOVA reserves the right to require satisfactory opinions of counsel for each such Person concerning the proper organization of such Person and the due authorization, execution, delivery, enforceability, validity and binding effect of the Loan Documents to which such Person is a party. Each such opinion of counsel shall confirm, to the satisfaction of FINOVA, that the opinion is being delivered to FINOVA at the instruction of the party represented by such counsel, that FINOVA is entitled to rely on such opinion and that for purposes of such reliance, FINOVA is deemed to be in privity with the opining counsel.

(z) ADA Compliance. If necessary, as of the Closing Date, Borrower shall be in compliance with the Americans with Disabilities Act of 1990 ("ADA"), or, if any renovations of Borrower's facilities or modifications of Borrower's employment practices shall be required to bring them into compliance with the ADA, review and approval by FINOVA of Borrower's proposed plan to come into such compliance. Borrower shall deliver representations and warranties to FINOVA concerning Borrower's compliance with the ADA, and no evidence shall have come to the attention of FINOVA indicating that Borrower is not in compliance with the ADA (except to the extent that FINOVA has reviewed and approved Borrower's plan to come into compliance).

(aa) Subordination and Intercreditor Agreements. FINOVA and each creditor of Borrower designated by FINOVA shall have entered into a subordination agreement in form and substance satisfactory to FINOVA.

(bb) Intentionally Deleted.

(cc) Intentionally Deleted.

(dd) Intentionally Deleted.

(ee) Intentionally Deleted.

(ff) Intentionally Deleted.

(gg) Schedule Conditions. Borrower shall have complied with all additional conditions precedent as set forth in the Schedule attached hereto.

(hh) Other Matters. All other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed and recorded and shall be in form and substance satisfactory to FINOVA and its counsel.

4.2 Subsequent Advances. The obligation of FINOVA to make any advance hereunder shall be subject to the further conditions precedent that, on and as of the date of such advance: (a) the representations and warranties of Borrower set forth in this Agreement shall be accurate, before and after giving effect to such advance or issuance and to the application of any proceeds thereof; (b) no Event of Default and no event which, with notice or passage of time or both, would constitute an Event of Default has occurred and is

continuing, or would result from such advance or issuance or from the application of any proceeds thereof; (c) no material adverse change has occurred in the Borrower's business, operations, financial condition, in the condition of the Collateral or other assets of Borrower or in the prospect of repayment of the Obligations; and (d) FINOVA shall have received such other approvals, opinions or documents as FINOVA shall reasonably request.

5. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants that:

5.1 Due Organization. It is a corporation duly organized, validly existing and in good standing under the laws of the State set forth on the Schedule, is qualified and authorized to do business and is in good standing in all states in which such qualification and good standing are necessary in order for it to conduct its business and own its property, and has all requisite power and authority to conduct its business as presently conducted, to own its property and to execute and deliver each of the Loan Documents to which it is a party and perform all of its Obligations thereunder, and has not taken any steps to wind-up, dissolve or otherwise liquidate its assets;

5.2 Other Names. Borrower has not, during the preceding five (5) years, been known by or used any other corporate or fictitious name except as set forth on the Schedule, nor has Borrower been the surviving corporation of a merger or consolidation or acquired all or substantially all of the assets of any Person during such time;

5.3 Due Authorization. The execution, delivery and performance by Borrower

of the Loan Documents to which it is a party have been authorized by all necessary corporate action and do not and shall not constitute a violation of any applicable law or of Borrower's Articles or Certificate of Incorporation or By-Laws or any other document, agreement or instrument to which Borrower is a party or by which Borrower or its assets are bound;

5.4 Binding Obligation. Each of the Loan Documents to which Borrower is a party is the legal, valid and binding obligation of Borrower enforceable against Borrower in accordance with its terms;

5.5 Intangible Property. Borrower possesses adequate assets, licenses, patents, patent applications, copyrights, trademarks, trademark applications and trade names for the present and planned future conduct of its business without any known conflict with the rights of others, and each is valid and has been duly registered or filed with the appropriate governmental authorities; each of Borrower's patents, patent applications, copyrights, trademarks and trademark applications which have been registered or filed with any governmental authority (including the U.S. Patent and Trademark Office and the Library of Congress) are identified on the Schedule;

5.6 Capital. Borrower has capital sufficient to conduct its business, is able to pay its debts as they mature, and owns property having a fair salable value greater than the amount required to pay all of its debts (including contingent debts);

5.7 Material Litigation. Borrower has no pending or overtly threatened litigation, actions or proceedings which would materially and adversely affect its business, assets, operations, prospects or condition, financial or otherwise, or the Collateral or any of FINOVA's interests therein;

5.8 Title; Security Interests of FINOVA. Borrower has good, indefeasible and merchantable title to the Collateral and, upon the execution and delivery of the Loan Documents, the filing of UCC-1 Financing Statements, delivery of the certificate(s) evidencing any pledged securities, the filing of any collateral assignments or security agreements regarding Borrower, Trademarks, Copyrights, Licenses and/or Patents, if any, with the appropriate governmental offices and the recording of any mortgages or deeds of trust with respect to real property, in each case in the appropriate offices, this Agreement and such documents shall create valid and perfected first priority liens in the Collateral, subject only to Permitted Encumbrances;

5.9 Restrictive Agreements; Labor Contracts. Borrower is not a party or subject to any contract or subject to any charge, corporate restriction, judgment, decree or order materially and adversely affecting its business, assets, operations, prospects or condition, financial or otherwise, or which restricts its right or ability to incur Indebtedness, and it is not party to any labor dispute. In addition, no labor contract is scheduled to expire during the Initial Term of this Agreement, except as disclosed to FINOVA in writing prior to the date hereof;

5.10 Laws. Borrower is not in violation of any applicable statute, regulation, ordinance or any order of any court, tribunal or governmental agency, in any respect materially and adversely affecting the Collateral

or its business, assets, operations, prospects or condition, financial or otherwise;

5.11 Consents. Borrower has obtained or caused to be obtained or issued any required consent of a governmental agency or other Person in connection with the financing contemplated hereby;

5.12 Defaults. Except as set forth on the Exhibit A attached hereto, Borrower is not in default with respect to any note, indenture, loan agreement, mortgage, lease, deed or other agreement to which it is a party or by which it or its assets are bound, nor has any event occurred which, with the giving of notice or the lapse of time, or both, would cause such a default;

5.13 Financial Condition. The Prepared Financials fairly present Borrower's financial condition and results of operations and those of such other Persons described therein as of the date thereof in accordance with GAAP; there are no material omissions from the Prepared Financials or other facts or circumstances not reflected in the Prepared Financials; and there has been no material and adverse change in such financial condition or operations since the date of the initial Prepared Financials delivered to FINOVA hereunder;

5.14 ERISA. None of Borrower, any ERISA Affiliate, or any Plan is or has been in violation of any of the provisions of ERISA, any of the qualification requirements of IRC Section 401(a) or any of the published interpretations thereunder, nor has Borrower or any ERISA Affiliate received any notice to such effect. No notice of intent to terminate a Plan has been filed under Section 4041 of ERISA, nor has any Plan been terminated under ERISA. The PBGC has not instituted proceedings to terminate, or appointed a trustee to administer, a Plan. No lien upon the assets of Borrower has arisen with respect to a Plan. No prohibited transaction or Reportable Event has occurred with respect to a Plan. Neither Borrower nor any ERISA Affiliate has incurred any withdrawal liability with respect to any Multiemployer Plan. Borrower and each ERISA Affiliate have made all contributions required to be made by them to any Plan or Multiemployer Plan when due. There is no accumulated funding deficiency in any Plan, whether or not waived;

5.15 Taxes. Borrower has filed all tax returns and such other reports as it is required by law to file and has paid or made adequate provision for the payment on or prior to the date when due of all taxes, assessments and similar charges that are due and payable;

5.16 Locations; Federal Tax ID No. Borrower's chief executive office and the offices and locations where it keeps the Collateral (except for Inventory in transit) are at the locations set forth on the Schedule, except to the extent that such locations may have been changed after notice to FINOVA in accordance with Section 6.4 hereof; Borrower's federal tax identification number is as shown on the Schedule;

5.17 Business Relationships. There exists no actual or threatened termination, cancellation or limitation of, or any modification or change in, the business relationship between Borrower and any customer or any group of customers whose purchases individually or in the aggregate are material to the business of Borrower, or with any material supplier, and there exists no present condition or state of facts or circumstances which would materially and adversely affect Borrower or prevent Borrower from conducting such business after the consummation of the transactions contemplated by this Agreement in substantially the same manner in which it has heretofore been conducted; and

5.18 Reaffirmations. Each request for a loan made by Borrower pursuant to this Agreement shall constitute (i) an automatic representation and warranty by Borrower to FINOVA that there does not then exist any Event of Default and (ii)

a reaffirmation as of the date of said request of all of the representations and warranties of Borrower contained in this Agreement and the other Loan Documents.

5.19 Year 2000 Representations & Warranties. Borrower has taken all action necessary to assure that there will be no material adverse change to Borrower's business by reason of the advent of the year 2000, including without limitation that all computer-based systems, embedded microchips and other processing capabilities effectively recognize and process dates after April 1, 1999.

6. COVENANTS.

6.1 AFFIRMATIVE COVENANTS. Borrower covenants that, so long as any Obligation remains outstanding and this Agreement is in effect, it shall:

6.1.1 Taxes. File all tax returns and pay or make adequate provision for the payment of all taxes, assessments and other charges on or prior to the date when due;

6.1.2 Notice of Litigation. Promptly notify FINOVA in writing of any litigation, suit or administrative proceeding which may materially and

adversely affect the Collateral or Borrower's business, assets, operations, prospects or condition, financial or otherwise, whether or not the claim is covered by insurance;

6.1.3 ERISA. Notify FINOVA in writing (i) promptly upon the occurrence of any event described in Paragraph 4043 of ERISA, other than a termination, partial termination or merger of a Plan or a transfer of a Plan's assets and (ii) prior to any termination, partial termination or merger of a Plan or a transfer of a Plan's assets;

6.1.4 Change in Location. Notify FINOVA in writing forty-five (45) days prior to any change in the location of Borrower's chief executive office or the location of any Collateral, or Borrower's opening or closing of any other place of business;

6.1.5 Corporate Existence. Maintain its corporate existence and its qualification to do business and good standing in all states necessary for the conduct of its business and the ownership of its property and maintain adequate assets, licenses, patents, copyrights, trademarks and trade names for the conduct of its business;

6.1.6 Labor Disputes. Promptly notify FINOVA in writing of any labor dispute to which Borrower is or may become subject and the expiration of any labor contract to which Borrower is a party or bound;

6.1.7 Violations of Law. Promptly notify FINOVA in writing of any violation of any law, statute, regulation or ordinance of any governmental entity, or of any agency thereof, applicable to Borrower which may materially and adversely affect the Collateral or Borrower's business, assets, prospects, operations or condition, financial or otherwise;

6.1.8 Defaults. Notify FINOVA in writing within five (5) Business Days of Borrower's default under any note, indenture, loan agreement, mortgage, lease

or other agreement to which Borrower is a party or by which Borrower is bound, or of any other default under any Indebtedness of Borrower;

6.1.9 Capital Expenditures. Promptly notify FINOVA in writing of the making of any Capital Expenditure materially affecting Borrower's business, assets, prospects, operations or condition, financial or otherwise, except to the extent permitted in the Schedule;

6.1.10 Books and Records. Keep adequate records and books of account with respect to its business activities in which proper entries are made in accordance with GAAP, reflecting all of its financial transactions;

6.1.11 Leases; Warehouse Agreements. Provide FINOVA with (i) copies of all agreements between Borrower and any landlord, warehouseman or bailee which owns any premises at which any Collateral may, from time to time, be located (whether for processing, storage or otherwise), and (ii) without limiting the landlord, bailee and/or mortgagee waivers to be provided pursuant to the Schedule, use its best efforts to provide FINOVA with additional landlord, bailee and/or mortgagee waivers in form acceptable to FINOVA with respect to all locations where any Collateral is hereafter located;

6.1.12 Additional Documents. At FINOVA's request, promptly execute or cause to be executed and delivered to FINOVA any and all documents, instruments or agreements deemed necessary by FINOVA to facilitate the collection of the Obligations or the Collateral or otherwise to give effect to or carry out the terms or intent of this Agreement or any of the other Loan Documents; and

6.1.13 Financial Covenants. Comply with the financial covenants set forth on the Schedule.

6.1.14 Year 2000 Covenants. Borrower shall take all action necessary to assure that there will be no material adverse change to Borrower's business by reason of the advent of the year 2000, including without limitation that all computer-based systems, embedded microchips and other processing capabilities effectively recognize and process dates after April 1, 1999. At FINOVA's request, Borrower shall provide to FINOVA assurance reasonably acceptable to FINOVA that Borrower's computer-based systems, embedded microchips and other processing capabilities are year 2000 compatible.

6.2 Negative Covenants. Without FINOVA's prior written consent, which consent FINOVA may withhold in its sole discretion, so long as any Obligation remains outstanding and this Agreement is in effect, Borrower shall not:

6.2.1 Mergers. Merge or consolidate with or acquire any other Person, or make any other material change in its capital structure or in its business or operations which might adversely affect the repayment of the Obligations;

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6.2.2 Loans. Make advances, loans or extensions of credit to, or invest in, any Person, except for loans or cash advances to employees which are permitted in the Schedule;

6.2.3 Dividends. Declare or pay cash dividends upon any of its stock or distribute any of its property or redeem, retire, purchase or acquire directly or indirectly any of its stock;

6.2.4 Adverse Transactions. Enter into any transaction which materially and adversely affects the Collateral or its ability to repay the Obligations in full as and when due;

6.2.5 Indebtedness of Others. Guarantee or become directly or contingently liable for the Indebtedness of any Person, except by endorsement of instruments for deposit and except for the existing guarantees made by Borrower prior to the date hereof, if any, which are set forth in the Schedule;

6.2.6 Repurchase. Make a sale to any customer on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment, or any other repurchase or return basis;

6.2.7 Name. Use any corporate or fictitious name other than its corporate name as set forth in its Articles or Certificate of Incorporation on the date hereof or as set forth on the Schedule;

6.2.8 Prepayment. Prepay any Indebtedness other than trade payables and other than the Obligations;

6.2.9 Capital Expenditure. Make or incur any Capital Expenditure if, after giving effect thereto, the aggregate amount of all Capital Expenditures by Borrower in any fiscal year would exceed the amount set forth on the Schedule;

6.2.10 Compensation. Pay total compensation, including salaries, withdrawals, fees, bonuses, commissions, drawing accounts and other payments, whether directly or indirectly, in money or otherwise, during any fiscal year to all of Borrower's executives, officers and directors (or any relative thereof) in an amount in excess of the amount set forth on the Schedule;

6.2.11 Indebtedness. Create, incur, assume or permit to exist any Indebtedness (including Indebtedness in connection with Capital Leases) in excess of the amount set forth on the Schedule, other than (i) the Obligations, (ii) trade payables and other contractual obligations to suppliers and customers incurred in the ordinary course of business, and (iii) other Indebtedness existing on the date of this Agreement and reflected in the Prepared Financials (except Indebtedness paid on the date of this Agreement from proceeds of the initial advances hereunder), and (iv) Subordinated Debt;

6.2.12 Affiliate Transactions. Except as set forth below, sell, transfer, distribute or pay any money or property to any Affiliate, or invest in (by capital contribution or otherwise) or purchase or repurchase any stock or Indebtedness, or any property, of any Affiliate, or become liable on any guaranty of the indebtedness, dividends or other obligations of any Affiliate. Notwithstanding the foregoing, Borrower may pay compensation permitted by Section 6.23 to employees who are Affiliates and, if no Event of Default has occurred, Borrower may (i) engage in transactions with Affiliates in the normal course of business, in amounts and upon terms which are fully disclosed to FINOVA and which are no less favorable to Borrower than would be obtainable in a comparable arm's length transaction with a Person who is not an Affiliate, and (ii) make payments to a subordinating creditor that is an Affiliate, subject to and only to the extent expressly permitted in the Subordination Agreement between such subordinating creditor and FINOVA;

6.2.13 Nature of Business. Enter into any new business or make any material change in any of Borrower's business objectives, purposes or operations;

6.2.14 FINOVA's Name. Use the name of FINOVA in connection with any of Borrower's business or activities, except in connection with internal business

matters or as required in dealings with governmental agencies and financial institutions or with trade creditors of Borrower, solely for credit reference purposes; or

6.2.15 Margin Security. Borrower will not (and has not in the past) engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation G or Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Loan or other advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock, or in any manner which might cause such Loan or other advance or the application of such proceeds to violate (or require any regulatory filing under) Regulation G, Regulation T, Regulation U, Regulation X or any other regulation of the

Board of Governors of the Federal Reserve System, in each case as in effect on the date or dates of such Loan or other advance and such use of proceeds. Further, no proceeds of any Loan or other advance will be used to acquire any security of a class which is registered pursuant to Section 12 of the Securities Exchange Act of 1934.

6.2.16 Real Property. Purchase or acquire any fee simple interest in real property without FINOVA's prior written consent, a condition of which consent shall include delivery of appropriate environmental reports and analysis, in form and substance satisfactory to FINOVA and its counsel.

7. DEFAULT AND REMEDIES.

7.1 Events of Default. Any one or more of the following events shall constitute an Event of Default under this Agreement:

(a) Borrower fails to pay when due and payable any portion of the Obligations at stated maturity, upon acceleration or otherwise;

(b) Borrower or any other Loan Party fails or neglects to perform, keep, or observe any Obligation including, but not limited to, any term, provision, condition, covenant or agreement contained in any Loan Document to which Borrower or such other Loan Party is a party;

(c) Any material adverse change occurs in Borrower's business, assets, operations, prospects or condition, financial or otherwise;

(d) The prospect of repayment of any portion of the Obligations or the value or priority of FINOVA's security interest in the Collateral is materially impaired;

(e) Any portion of Borrower's assets is seized, attached, subjected to a writ or distress warrant, is levied upon or comes into the possession of any judicial officer;

(f) Borrower shall generally not pay its debts as they become due or shall enter into any agreement (whether written or oral), or offer to enter into any agreement, with all or a significant number of its creditors regarding any moratorium or other indulgence with respect to its debts or the participation of

such creditors or their representatives in the supervision, management or control of the business of Borrower;

(g) Any bankruptcy or other insolvency proceeding is commenced by Borrower, or any such proceeding is commenced against Borrower and remains undischarged or unstayed for forty-five (45) days;

(h) Other than the lien identified as item 4 on Exhibit A hereto, any notice of lien, levy or assessment is filed of record and not discharged or fully bonded within fifteen (15) days with respect to any of Borrower's assets with a fair market value in excess of \$50,000 as determined by FINOVA in its sole discretion reasonably exercised;

(i) Any judgments are entered against Borrower in an aggregate amount exceeding \$100,000 in any fiscal year;

(j) Except for any default arising out of Borrower's failure to pay rent under the lease agreement for Borrower's location in Bellevue, Washington or to continue the operation of such restaurant, any default (after the applicable cure period, if any, has expired) shall occur under (i) any material agreement between Borrower and any third party including, without limitation, any default which would result in a right by such third party to accelerate the maturity of any Indebtedness of Borrower to such third party, or (ii) any Subordinated Debt;

(k) Any representation or warranty made or deemed to be made by Borrower, any Affiliate or any other Loan Party in any Loan Document or any other statement, document or report made or delivered to FINOVA in connection therewith shall prove to have been misleading in any material respect;

(l) Intentionally Deleted.

(m) Any Prohibited Transaction or Reportable Event shall occur with respect to a Plan which could have a material adverse effect on the financial condition of Borrower; any lien upon the assets of Borrower in connection with any Plan shall arise; Borrower or any of its ERISA Affiliates shall fail to make full payment when due of all amounts which Borrower or any of its ERISA Affiliates may be required to pay to any Plan or any Multiemployer Plan as one or more contributions thereto; Borrower or any of its ERISA Affiliates creates or permits the creation of any accumulated funding deficiency, whether or not waived; or

(n) Intentionally Deleted.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, FINOVA RESERVES THE RIGHT TO CEASE MAKING ANY LOANS DURING ANY CURE PERIOD STATED ABOVE, AND THEREAFTER IF AN EVENT OF DEFAULT HAS OCCURRED AND IS CONTINUING.

7.2 Remedies. Upon the occurrence of an Event of Default, FINOVA may, at its option and in its sole discretion and in addition to all of its other rights under the Loan Documents, cease making Loans, terminate this Agreement and/or declare all of the Obligations to be immediately payable in full. Borrower agrees that FINOVA shall also have all of its rights and remedies under applicable law, including, without limitation, the default rights and remedies of a secured party under the Code, and upon the occurrence of an Event of

Default Borrower hereby consents to the appointment of a receiver by FINOVA in any action initiated by FINOVA pursuant to this Agreement and to the jurisdiction and venue set forth in Section 9.25 hereof, and Borrower waives notice and posting of a bond in connection therewith. Further, FINOVA may, at any time, take possession of the Collateral and keep it on Borrower's premises, at no cost to FINOVA, or remove any part of it to such other place(s) as FINOVA may desire, or Borrower shall, upon FINOVA's demand, at Borrower's sole cost, assemble the Collateral and make it available to FINOVA at a place reasonably convenient to FINOVA. FINOVA may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as FINOVA deems advisable, at FINOVA's discretion, and may, if FINOVA deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Borrower agrees that FINOVA has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. Upon the occurrence and continuation of an Event of Default, FINOVA is hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, name, trade secrets, trade names, trademarks and advertising matter, or any similar property, in completing production, advertising or selling any Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to FINOVA's benefit. Any requirement of reasonable notice shall be met if such notice is mailed postage prepaid to Borrower at its address set forth in the heading to this Agreement at least five (5) days before sale or other disposition. The proceeds of sale shall be applied, first, to all attorneys fees and other expenses of sale, and second, to the Obligations in such order as FINOVA shall elect, in its sole discretion. FINOVA shall return any excess to Borrower and Borrower shall remain liable for any deficiency to the fullest extent permitted by law.

7.3 Standards for Determining Commercial Reasonableness. Borrower and FINOVA agree that the following conduct by FINOVA with respect to any disposition of Collateral shall conclusively be deemed commercially reasonable (but other conduct by FINOVA, including, but not limited to, FINOVA's use in its sole discretion of other or different times, places and manners of noticing and conducting any disposition of Collateral shall not be deemed unreasonable): Any public or private disposition: (i) as to which on no later than the fifth calendar day prior thereto written notice thereof is mailed or personally delivered to Borrower and, with respect to any public disposition, on no later than the fifth calendar day prior thereto notice thereof describing in general non-specific terms, the Collateral to be disposed of is published once in a newspaper of general circulation in the county where the sale is to be conducted (provided that no notice of any public or private disposition need be given to the Borrower or published if the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market); (ii) which is conducted at any place designated by FINOVA, with or without the Collateral being present; and (iii) which commences at any time between 8:00 a.m. and 5:00 p.m. Without limiting the generality of the foregoing, Borrower expressly agrees that, with respect to any disposition of accounts, instruments and general intangibles, it shall be commercially reasonable for FINOVA to direct any prospective purchaser thereof to ascertain directly from Borrower any and all information concerning the same, including, but not limited to, the terms of payment, aging and delinquency, if any, the financial condition of any obligor or account debtor thereon or guarantor thereof, and any collateral therefor.

8. EXPENSES AND INDEMNITIES

8.1 Expenses. Borrower covenants that, so long as any Obligation remains outstanding and this Agreement remains in effect, it shall promptly reimburse FINOVA for all costs, fees and expenses incurred by FINOVA in connection with the negotiation, preparation, execution, delivery, administration and

enforcement of each of the Loan Documents, including, but not limited to, the attorneys' and paralegals' fees of in-house and outside counsel, expert witness fees, lien, title search and insurance fees, appraisal fees, all charges and expenses incurred in connection with any and all environmental reports and environmental remediation activities, and all other costs, expenses, taxes and filing or recording fees payable in connection with the transactions contemplated by this Agreement, including without limitation all such

costs, fees and expenses as FINOVA shall incur or for which FINOVA shall become obligated in connection with (i) any inspection or verification of the Collateral, (ii) any proceeding relating to the Loan Documents or the Collateral, (iii) actions taken with respect to the Collateral and FINOVA's security interest therein, including, without limitation, the defense or prosecution of any action involving FINOVA and Borrower or any third party, (iv) enforcement of any of FINOVA's rights and remedies with respect to the Obligations or Collateral and (v) consultation with FINOVA's attorneys and participation in any workout, bankruptcy or other insolvency or other proceeding involving any Loan Party or any Affiliate, whether or not suit is filed or the issues are peculiar to federal bankruptcy or state insolvency laws. Borrower shall also pay all FINOVA charges in connection with bank wire transfers, forwarding of loan proceeds, deposits of checks and other items of payment, returned checks, and all other bank and administrative matters, in accordance with FINOVA's schedule of bank and administrative fees and charges in effect from time to time.

8.2 Environmental Matters.

The Environmental Certificates dated on or about the date of this Agreement are incorporated herein for all purposes as if fully stated in this Agreement.

9. MISCELLANEOUS.

9.1 Examination of Records; Financial Reporting.

(a) Examinations. FINOVA shall at all reasonable times have full access to and the right to examine, audit, make abstracts and copies from and inspect Borrower's records, files, books of account and all other documents, instruments and agreements relating to the Collateral and the right to check, test and appraise the Collateral. Borrower shall deliver to FINOVA any instrument necessary for FINOVA to obtain records from any service bureau maintaining records for Borrower. All instruments and certificates prepared by Borrower showing the value of any of the Collateral shall be accompanied, upon FINOVA's request, by copies of related purchase orders and invoices. FINOVA may, at any time after the occurrence of an Event of Default, remove from Borrower's premises Borrower's books and records (or copies thereof) or require Borrower to deliver such books and records or copies to FINOVA. FINOVA may, without expense to FINOVA, use such of Borrower's personnel, supplies and premises as may be reasonably necessary for maintaining or enforcing FINOVA's security interest.

(b) Reporting Requirements. Borrower shall furnish FINOVA, upon request, such information and statements as FINOVA shall reasonably request from time to time regarding Borrower's business affairs, financial condition and the results of its operations. Without limiting the generality of the foregoing, Borrower shall provide FINOVA with: (i) compliance certificates and unaudited financial

statements with respect to the prior month prepared on a basis consistent with such statements prepared in prior months and otherwise in accordance with GAAP; (ii) audited annual consolidated and consolidating financial statements, prepared in accordance with GAAP applied on a basis consistent with the most recent Prepared Financials provided to FINOVA by Borrower, including balance sheets, income and cash flow statements, accompanied by the unqualified report thereon of independent certified public accountants acceptable to FINOVA, as soon as available, and in any event, within one hundred twenty (120) days after the end of each of Borrower's fiscal years; and (iii) such certificates relating to the foregoing as FINOVA may request, including, without limitation, a monthly certificate from the president or the chief financial officer of Borrower showing Borrower's compliance with each of the financial covenants set forth in this Agreement, and stating whether any Event of Default has occurred or event which, with giving of notice or the passage of time, or both, would constitute an Event of Default, and if so, the steps being taken to prevent or cure such Event of Default. All reports or financial statements submitted by Borrower shall be in reasonable detail and shall be certified by the principal financial officer of Borrower as being complete and correct.

(c) Intentionally Deleted.

9.2 Term; Termination.

(a) Term. The Initial Term of the Capital Expenditure Loans facility and the obligation of FINOVA to make advances with respect thereto in accordance with this Agreement shall be as set forth on the Schedule, and the Capital Expenditure Loans facility and this Agreement shall be automatically renewed for one or more Renewal Term(s) as set forth in the Schedule, unless earlier terminated as provided herein.

(b) Prior Notice. Each party shall have the right to terminate this Agreement effective at the end of the Initial Term or at the end of any Renewal Term, without any termination fee being applicable thereto, by giving the other party written notice not less than sixty (60) days prior to the effective date of such termination, by registered or certified mail.

(c) Payment in Full. Upon the effective date of termination, the Obligations shall become immediately due and payable in full in cash.

(d) Early Termination; Termination Fee. In addition to the procedure set forth in Section 9.2(b), Borrower may terminate this Agreement at any time but only upon sixty (60) days' prior written notice and prepayment of the Obligations. Upon any such early termination by Borrower or any termination of this Agreement by FINOVA upon the occurrence of an Event of Default, then, and in any such event, Borrower shall pay to FINOVA upon the effective date of such termination a fee (the "TERMINATION FEE") in an amount equal to the amount shown on the Schedule.

9.3 Recourse to Security; Certain Waivers. All Obligations shall be payable by Borrower as provided for herein and, in full, at the termination of this Agreement; recourse to security shall not be required at any time. Borrower waives presentment and protest of any instrument and notice thereof, notice of default and, to the extent permitted by applicable law, all other notices to which Borrower might otherwise be entitled.

9.4 No Waiver by FINOVA. Neither FINOVA's failure to exercise any right, remedy or option under this Agreement, any supplement, the Loan Documents or other agreement between FINOVA and Borrower nor any delay by FINOVA in exercising the same shall operate as a waiver. No waiver by FINOVA shall be effective unless in writing and then only to the extent stated. No waiver by FINOVA shall affect its right to require strict performance of this Agreement. FINOVA's rights and remedies shall be cumulative and not exclusive.

9.5 Binding on Successor and Assigns. All terms, conditions, promises, covenants, provisions and warranties shall inure to the benefit of and bind FINOVA's and Borrower's respective representatives, successors and assigns.

9.6 Severability. If any provision of this Agreement shall be prohibited or invalid under applicable law, it shall be ineffective only to such extent, without invalidating the remainder of this Agreement.

9.7 Amendments; Assignments. This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Borrower and FINOVA. Borrower may not sell, assign or transfer any interest in this Agreement or any other Loan Document, or any portion thereof, including, without limitation, any of Borrower's rights, title, interests, remedies, powers and duties hereunder or thereunder. Only if incidental to a sale, assignment, transfer or other disposition of all or substantially all of FINOVA's Los Angeles loan portfolio, Borrower hereby consents to FINOVA's sale, assignment, transfer or other disposition of this Agreement and any of the other Loan Documents, or of any portion hereof or thereof, including, without limitation, FINOVA's rights, title, interests, remedies, powers and duties hereunder or thereunder. In connection therewith, FINOVA may disclose all documents and information which FINOVA now or hereafter may have relating to Borrower or Borrower's business. To the extent that FINOVA assigns its rights and obligations hereunder to a third party in accordance with this Section 9.7, FINOVA shall thereafter be released from such assigned obligations to Borrower and such assignment shall effect a novation between Borrower and such third party, provided that the assignee fully assumes all of FINOVA's obligations hereunder.

9.8 Integration. This Agreement, together with the Schedule (which is a part hereof) and the other Loan Documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby.

9.9 Survival. All of the representations and warranties of Borrower contained in this Agreement shall survive the execution, delivery and acceptance of this Agreement by the parties. No termination of this Agreement shall affect or impair the powers, obligations, duties, rights, representations, warranties or liabilities of the parties hereto and all shall survive such termination.

9.10 Evidence of Obligations. Each Obligation may, in FINOVA's discretion, be evidenced by notes or other instruments issued or made by Borrower to FINOVA. If not so evidenced, such Obligation shall be evidenced solely by entries upon FINOVA's books and records.

9.11 Loan Requests. Each oral or written request for a loan by any Person who purports to be any employee, officer or authorized agent of Borrower shall be made to FINOVA on or prior to 11:00 a.m., Pacific time, on the Business Day on which the proceeds thereof are requested to be paid to Borrower and shall be conclusively presumed to be made by a Person authorized by Borrower to do so and the crediting of a loan to Borrower's operating account shall conclusively establish Borrower's obligation to repay such loan. Unless and until Borrower otherwise directs FINOVA in writing, all loans shall be wired to Borrower's operating account set forth on the Schedule.

9.12 Notices. Any notice required hereunder shall be in writing and addressed to the Borrower and FINOVA at their addresses set forth at the beginning of this Agreement. Notices hereunder shall be deemed received on the earlier of receipt, whether by mail, personal delivery, facsimile, or otherwise, or upon deposit in the United States mail, postage prepaid.

9.13 Brokerage Fees. Borrower represents and warrants to FINOVA that, with respect to the financing transaction herein contemplated, no Person is entitled to any brokerage fee or other commission and Borrower agrees to indemnify and hold FINOVA harmless against any and all such claims.

9.14 Disclosure. No representation or warranty made by Borrower in this Agreement, or in any financial statement, report, certificate or any other document furnished in connection herewith contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to Borrower or which reasonably should be known to Borrower which Borrower has not disclosed to FINOVA in writing with respect to the transactions contemplated by this Agreement which materially and adversely affects the business, assets, operations, prospects or condition (financial or otherwise), of Borrower.

9.15 Publicity. FINOVA is hereby authorized to issue, after prior written approval thereof by Borrower, which consent shall not be unreasonably withheld, appropriate press releases and to cause a tombstone to be published announcing the consummation of this transaction and the aggregate amount thereof.

9.16 Captions. The Section titles contained in this Agreement are without substantive meaning and are not part of this Agreement.

9.17 Injunctive Relief. Borrower recognizes that, in the event Borrower fails to perform, observe or discharge any of its Obligations under this Agreement, any remedy at law may prove to be inadequate relief to FINOVA. Therefore, FINOVA, if it so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

9.18 Counterparts; Facsimile Execution. This Agreement may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument, admissible into evidence. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile shall also deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

9.19 Construction. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

9.20 Time of Essence. Time is of the essence for the performance by Borrower of the Obligations set forth in this Agreement.

9.21 Limitation of Actions. Borrower agrees that any claim or cause of action by Borrower against FINOVA, or any of FINOVA's directors, officers, employees, agents, accountants or attorneys, based upon, arising from, or relating to this Agreement, or any other present or future agreement, or any other transaction contemplated hereby or thereby or relating hereto or thereto, or any other matter, cause or thing whatsoever, whether or not relating hereto or thereto, occurred, done, omitted or suffered to be done by FINOVA, or by FINOVA's directors, officers, employees, agents, accountants or attorneys, whether sounding in contract or in tort or otherwise, shall be barred unless asserted by Borrower by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within one year after the first act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based and service of a summons and complaint on an officer of FINOVA or any other Person authorized to accept service of process on behalf of FINOVA, within 30 days thereafter. Borrower agrees that such one-year period of time is a reasonable and sufficient time for Borrower to investigate and act upon any such claim or cause of action. The one-year period provided herein shall not be waived, tolled, or extended except by a specific written agreement of FINOVA. This provision shall survive any termination of this Loan Agreement or any other agreement.

9.22 Liability. Neither FINOVA nor any FINOVA Affiliate shall be liable for any indirect, special, incidental or consequential damages in connection with any breach of contract, tort or other wrong relating to this Agreement or the Obligations or the establishment, administration or collection thereof (including without limitation damages for loss of profits, business

interruption, or the like), whether such damages are foreseeable or unforeseeable, even if FINOVA has been advised of the possibility of such damages. Neither FINOVA, nor any FINOVA Affiliate shall be liable for any claims, demands, losses or damages, of any kind whatsoever, made, claimed, incurred or suffered by the Borrower through the ordinary negligence of FINOVA, or any FINOVA Affiliate. "FINOVA Affiliate" shall mean FINOVA's directors, officers, employees, agents, attorneys or any other Person or entity affiliated with or representing FINOVA.

9.23 Notice of Breach by FINOVA. Borrower agrees to give FINOVA written notice of (i) any action or inaction by FINOVA or any attorney of FINOVA in connection with any Loan Documents that may be actionable against FINOVA or any attorney of FINOVA or (ii) any defense to the payment of the Obligations for any reason, including, but not limited to, commission of a tort or violation of any contractual duty or duty implied by law. Borrower agrees that unless such notice is fully given as promptly as possible (and in any event within thirty (30) days) after Borrower has knowledge, or with the exercise of reasonable diligence should have had knowledge, of any such action, inaction or defense, Borrower shall not assert, and Borrower shall be deemed to have waived, any claim or defense arising therefrom.

9.24 Application of Insurance Proceeds. The net proceeds of any casualty insurance insuring the Collateral, after deducting all costs and expenses (including attorneys' fees) of collection, shall be applied, at FINOVA's option, either toward replacing or restoring the Collateral, in a manner and on terms satisfactory to FINOVA, or toward payment of the Obligations. Any proceeds

applied to the payment of Obligations shall be applied in such manner as FINOVA may elect. Notwithstanding the foregoing or anything contained in the deeds of trust for the Borrower Properties, so long as no Event of Default has occurred and is continuing, FINOVA will allow insurance proceeds to be applied to replacing or restoring a loss to the extent that such losses do not exceed \$250,000 per year in the aggregate. Insurance proceeds for losses above \$250,000 per year in the aggregate shall be applied as set forth in the first two sentences of this Section 9.24. In no event shall such application relieve Borrower from payment in full of all installments of principal and interest which thereafter become due in the order of maturity thereof.

9.25 Power of Attorney. Borrower appoints FINOVA and its designees as Borrower's attorney, with the power to endorse Borrower's name on any checks, notes, acceptances, money orders or other forms of payment or security that come into FINOVA's possession; to sign Borrower's name on any invoice or bill of lading relating to any Receivable, on drafts against customers, on assignments of Receivables, on notices of assignment, financing statements and other public records, on verifications of accounts and on notices to customers or account debtors; to send requests for verification of Receivables to customers or account debtors; after the occurrence of any Event of Default, to notify the post office authorities to change the address for delivery of Borrower's mail to an address designated by FINOVA and to open and dispose of all mail addressed to Borrower; and to do all other things FINOVA deems necessary or desirable to carry out the terms of this Agreement. Borrower hereby ratifies and approves all acts of such attorney. Neither FINOVA nor any of its designees shall be liable for any acts or omissions nor for any error of judgment or mistake of fact or law while acting as Borrower's attorney. This power, being coupled with an interest, is irrevocable until the Obligations have been fully satisfied and FINOVA's obligation to provide loans hereunder shall have terminated

9.26 GOVERNING LAW; WAIVERS. THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ENFORCEMENT OF THE OBLIGATIONS, SHALL BE INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAWS RULES) OF THE STATE OF ARIZONA GOVERNING CONTRACTS TO BE PERFORMED ENTIRELY WITHIN SUCH STATE. BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF MARICOPA IN THE STATE OF ARIZONA OR, AT THE SOLE OPTION OF FINOVA, IN ANY OTHER COURT IN WHICH FINOVA SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. BORROWER WAIVES ANY OBJECTION OF FORUM NON CONVENIENS AND VENUE. BORROWER FURTHER WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT, AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE IN THE MANNER SET FORTH IN SECTION 9.12 HEREOF FOR THE GIVING OF NOTICE. BORROWER FURTHER WAIVES ANY RIGHT IT MAY OTHERWISE HAVE TO COLLATERALLY ATTACK ANY JUDGMENT ENTERED AGAINST IT.

9.27 MUTUAL WAIVER OF RIGHT TO JURY TRIAL. FINOVA AND BORROWER EACH HEREBY WAIVES THE

RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO: (I) THIS AGREEMENT; (II) ANY OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN FINOVA AND BORROWER; OR (III) ANY CONDUCT, ACTS OR OMISSIONS OF FINOVA OR BORROWER OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH FINOVA OR BORROWER; IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.

BORROWER:
FRESH CHOICE, INC.
FED. TAX ID #77-0130849

BY /S/ DAVID E. PERTL

TITLE SENIOR VICE PRESIDENT AND CFO

FINOVA:
FINOVA CAPITAL CORPORATION

BY /S/ CARLETON S. BREED

TITLE VICE PRESIDENT

SCHEDULE TO
LOAN AND SECURITY AGREEMENT

BORROWER: FRESH CHOICE, INC.
ADDRESS: 2901 TASMAN DRIVE, SUITE 109
SANTA CLARA, CALIFORNIA 95054
DATE: DECEMBER 17, 1998

This Schedule forms an integral part of the Loan and Security Agreement between the above Borrower and FINOVA Capital Corporation dated the above date, and all references herein and therein to "this Agreement" shall be deemed to refer to said Agreement and to this Schedule.

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TOTAL FACILITY (SECTION 2.1):
\$4,000,000

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LOANS (SECTION 2.2):

CAPITAL EXPENDITURE LOANS: one or more loans against the value of Borrower's machinery, equipment and/or real estate ("CAPITAL EXPENDITURE LOANS") in an aggregate outstanding principal amount not to exceed the lesser of (a) or (b) below:

(a) Four Million Dollars (\$4,000,000), less the aggregate original principal amount of the Term Loans, or

(b) the total of

(i) up to 70.25% of the Orderly Liquidation Value of Borrower's equipment, as determined by an appraisal

conducted at Borrower's expense by an appraiser and otherwise in form and substance acceptable to FINOVA in its discretion, provided, that equipment shall be eligible for borrowing under this Agreement if and only if FINOVA has received a landlord waiver in form and substance satisfactory to it in its sole discretion and UCC-1 fixture filings and financing statements sufficient to create a first priority perfected security interest in such equipment, including, without limitation, a legal description of the real property for each location at which

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such equipment is located, provided further, that, without limiting the requirements set forth in the first proviso to this subparagraph, if Borrower also delivers to FINOVA such documents and agreements, including, without limitation, a consent of landlord to leasehold mortgage and leasehold mortgage, in form and substance satisfactory to FINOVA in its sole discretion sufficient to create a first priority, insured (but FINOVA shall not require a survey to be conducted in connection with any such insurance) leasehold mortgage in favor of FINOVA on Borrower's interest in the real property at any three (3) of the Borrower's restaurants located at 255 E. Basse Road, Suite 200, San Antonio, Texas, 1501 The Courtyard, Fairfield, California, 124 Vintage Way, Novato, California, 2540 West El Camino Real, Mountain View, California, 1001 Helen Power Drive, Vacaville, California, or 3449 East Main Street, Ventura, California, then the borrowing availability for equipment provided for in this subparagraph shall be increased up to \$71,250 for each single line, one-buffet restaurant and \$82,500 for each double line, two-buffet restaurant, not to exceed 70.25% of the Orderly Liquidation Value of all of Borrower's equipment that is not leased or encumbered by any Person other than FINOVA; plus

(ii) up to \$2,330,000, being 75.4% of the Fair Market Value of Borrower's interest in real property located at 4080 Belt Line Road, Addison, Texas and 601 West 15th Street, Plano, Texas (collectively, the "BORROWER PROPERTIES"); less

(iii) the sum of

(x) \$71,250 for each single line, one-buffet restaurant and \$82,500 for each double line, two-buffet restaurant that is sold by Borrower in accordance with this Agreement, provided that such amounts shall be \$33,370 and \$38,640, respectively, if either the advance rate applied to Borrower's equipment for which FINOVA is fully secured has never exceeded 70.25% or, in the event that FINOVA has obtained at least three first priority leasehold mortgages as set forth above, the sum of (1) the product of the number of single line, one-buffet restaurants for which FINOVA is fully secured multiplied by \$71,250 plus (2) the product of the number of double line, two-buffet restaurants for which FINOVA is fully secured multiplied

by \$82,500 equals or exceeds \$1,670,000 after giving effect to such sale; plus

(y) the aggregate original principal amount of the Term Loans; plus

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(z) any Loan Reserves.

Notwithstanding the foregoing, FINOVA shall not advance any Capital Expenditure Loans to Borrower unless Borrower satisfactorily demonstrates to FINOVA in its discretion that Borrower's Total Debt Service Coverage Ratio will equal or exceed 1.0:1.0 after giving effect to such Capital Expenditure Loan. Other than the initial Loan against the value of Borrower's Properties, FINOVA will have no obligation to advance any other Loans until that certain Notice and Statement of Lien allegedly filed by the State of Washington against Borrower in the face amount of \$351,432.96 has been released or subordinated in form satisfactory to FINOVA.

Monthly payments on the Capital Expenditure Loans shall be interest-only, provided that all outstanding principal and interest on any Capital Expenditure Loans shall be fully due and payable three (3) years from the date hereof; and provided further, that the Capital Expenditure Loans shall be in such amounts and on such terms as are set forth on one or more separate promissory notes of Borrower from time to time, each in form and substance satisfactory to FINOVA in its sole discretion.

All Capital Expenditure Loans advanced to Borrower in the period from and including the Closing Date through and including the day immediately preceding the first anniversary of the Closing Date that remain outstanding on the first anniversary of the Closing Date shall be automatically converted to a Term Loan on the first anniversary of the Closing Date ("Term Loan A"), and all Capital Expenditure Loans advanced to Borrower in the period from and including the first anniversary of the Closing Date through and including the day immediately preceding the second anniversary of the Closing Date that remain outstanding on the second anniversary of the Closing Date shall be automatically converted to a Term Loan on the second anniversary of the Closing Date ("Term Loan B").

Any Capital Expenditure Loan, once repaid, can be reborrowed.

TERM LOANS: repayment of Term Loan A and Term Loan B (collectively, the "TERM LOANS") shall be based on a five (5) year amortization schedule, provided that the entire amount of the Term Loans, including interest thereon, shall be fully due and payable three (3) years from the date hereof, and provided further, that the Terms Loans

set forth on separate promissory notes of Borrower from time to time, each in form and substance satisfactory to FINOVA in its sole discretion.

Any Term Loan, once repaid, cannot be reborrowed.

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INTEREST AND FEES (SECTION 2.6):

Capital Expenditure Interest Rate. Borrower shall pay FINOVA interest on the daily outstanding balance of Borrower's Capital Expenditure Loans at a per annum rate of 1.25% in excess of the rate of interest announced publicly by Citibank, N.A., (or any successor thereto), from time to time as its "prime rate" (the "PRIME RATE") which may not be such institution's lowest rate. The interest rate chargeable hereunder in respect of the Capital Expenditure Loans (herein, the "CAPITAL EXPENDITURE INTEREST RATE") shall be increased or decreased, as the case may be, without notice or demand of any kind, upon the announcement of any change in the Prime Rate. Each change in the Prime Rate shall be effective hereunder on the first day following the announcement of such change. Interest charges and all other fees and charges herein shall be computed on the basis of a year of 360 days and actual days elapsed and shall be payable to FINOVA in arrears on the first day of each month.

Term Interest Rate. Borrower shall pay FINOVA interest on the daily outstanding balance of the Term Loans at a per annum rate of 1.75% in excess of the Prime Rate. The interest rate chargeable hereunder in respect of the Term Loans (herein, the "TERM INTEREST RATE") shall be increased or decreased, as the case may be, without notice or demand of any kind, upon the announcement of any change in the Prime Rate. Each change in the Prime Rate shall be effective hereunder on the first day following the announcement of such change. Interest charges and all other fees and charges herein shall be computed on the basis of a year of 360 days and actual days elapsed and shall be payable to FINOVA in arrears on the first day of each month.

In addition to all other fees and interest on the Loans, Borrower shall pay an interest premium of one-half of one percent (0.5%) on the daily outstanding balance of Borrower's Capital Expenditure Loans and Term Loans to the extent the aggregate of all such Loans exceeds \$2,500,000.

Collateral Monitoring Fee. At the closing of this transaction and on the first day of each calendar month thereafter, Borrower shall pay FINOVA a collateral monitoring fee of \$1,500 ("COLLATERAL MONITORING Fee"); provided however, that Borrower agrees and acknowledges that each Loan Year a full year's fee shall be deemed earned at the beginning of the respective Loan Year.

Closing Fee. At the closing of this transaction, Borrower shall pay to FINOVA a closing fee in an amount equal to one percent (1%) of the Total Facility ("CLOSING FEE"), which shall be deemed fully earned on the date such payment is due.

Unused Line Fee. With respect to each fiscal quarter, or portion thereof during the term of this Agreement, Borrower shall unconditionally pay to FINOVA a fee equal to one-half of one percent (0.50%) per annum of the difference between the Total Facility and the average daily outstanding balance of the Loans during such quarter, or portion thereof ("UNUSED LINE FEE"), which fee shall be calculated and payable quarterly, in arrears, and shall be due and payable, commencing on the first Business Day of the Borrower's first fiscal quarter following the Closing Date and continuing on the first Business Day of each fiscal quarter thereafter.

Examination Fee. Borrower agrees to pay to FINOVA an examination fee in the amount of \$600 per person per day in connection with each audit or examination of Borrower performed by FINOVA prior to or after the date hereof, plus all costs and expenses incurred in connection therewith (the "EXAMINATION FEE"). Without limiting the generality of the foregoing, Borrower shall pay to FINOVA an initial Examination Fee in an amount equal to \$600 per person per day, plus all costs and expenses incurred in connection therewith. Such initial Examination Fee shall be deemed fully earned at the time of payment and due and payable upon the closing of this transaction, and shall be deducted from any good faith deposit paid by Borrower to FINOVA prior to the date of this Agreement. FINOVA will perform audits and examinations of Borrower no more frequently than on a quarterly basis, provided that if FINOVA believes in its sole discretion that an Event of Default has or may have occurred and be continuing, FINOVA may perform audits and examinations of Borrower more frequently than quarterly.

CONDITIONS OF CLOSING (SECTION 4.1):

The obligation of FINOVA to make the initial advance

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FINANCIAL COVENANTS (SECTION 6.1.13):

Borrower shall comply with all of the following covenants. Compliance shall be determined as of the end of each month or quarter (as determined by FINOVA in its sole discretion reasonably exercised), except as otherwise specifically provided below:

Total Interest to Cash Flow Ratio As of the last day of each four week period of Borrower, Borrower's aggregate interest paid or accrued for money borrowed for the consecutive 12-month period ending as of such last day must be no more than 1.3 times Borrower's Operating Cash Flow/Permitted provided however, that, with respect to the calculations set forth herein for the period from the Closing Date through December 31, 1999, Borrower's Total Interest to Cash Flow Ratio shall be determined beginning as of December 28, 1998 (the "START DATE") and be tested (i) at the end of the fiscal quarter ending March, 1999 for such fiscal quarter and (ii) at the end of each subsequent four week period of Borrower for the period from the Start Date through the end of such period; and, provided further, that all such determinations shall be made on a consolidated basis.

Total Debt to Cash Flow Ratio As of the last day of each four week period of Borrower commencing with such period ending March 1999, Borrower's aggregate outstanding principal indebtedness for money borrowed (including under any capital leases) for the consecutive 12-month period ending as of such last day must be no more than 5 times the Borrower's Operating Cash Flow/Permitted provided, that

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all such determinations shall be made on a consolidated basis.

Senior Debt Service Coverage Ratio As of the last day of each four week period of Borrower, Borrower's Operating Cash Flow/Actual for the consecutive 12-month period ending as of such last day must be at least 1.3 times the amount necessary to meet Borrower's Senior Contractual Debt Service for such 12-month period; provided however, that, with respect to the calculations set forth herein for the period from the Closing Date through the fiscal year ending

December, 1999, Borrower's Senior Debt Service Coverage Ratio shall be determined beginning as of December 28, 1998 (the "START DATE") and be tested (i) at the end of the fiscal quarter ending March, 1999 for such fiscal quarter and (ii) at the end of each subsequent four week period of Borrower for the period from the Start Date through the end of such period; and, provided further, that all such determinations shall be made on a consolidated basis.

Total Debt Service Coverage Ratio As of the last day of each four week period of Borrower, Borrower's Operating Cash Flow/Actual for the consecutive 12-month period ending as of such last day must be at least 1.2 times the amount necessary to meet Borrower's Total Contractual Debt Service for such 12-month period; provided however, that, with respect to the calculations set forth herein for the period from the Closing Date through the fiscal year ending December, 1999, Borrower's Total Debt Service Coverage Ratio shall be determined beginning as of December 28, 1998 (the "START DATE") and (i) shall be tested (x) at the end of the fiscal quarter ending March, 1999 for such fiscal quarter and (y) at the end of each subsequent four week period of Borrower for the period from the Start Date through the end of such period, and (ii) Borrower's Total Debt Service Coverage Ratio for, respectively, January through March of 1999 and April through June of 1999 shall be at least 1.1 and 1.15, and, provided further, that all such determinations shall be made on a consolidated basis.

Net Worth. Borrower shall maintain Net Worth of not less than Nineteen Million Dollars (\$19,000,000).

NEGATIVE COVENANTS (SECTION 6.2):

Employee Advances: Loans or advances in the ordinary course of business and consistent with past practices of Borrower, provided that FINOVA shall establish reserves against Borrower's availability under this Agreement to the extent that the aggregate of any such loans or advances to employees outstanding at any one time exceeds \$50,000, and provided further that Borrower shall provide FINOVA with prior written notice of any such loan or advance that would cause the aggregate of such loans or advances to exceed \$50,000.

Existing Guaranties: None.

Capital Expenditures: Borrower shall not make or incur any Capital Expenditure that is not financed by the Permitted Indebtedness if, after giving effect thereto, the aggregate amount of all Capital Expenditures by Borrower in any fiscal year (beginning with the 1999 fiscal year) would exceed \$750,000, provided that (x) any proceeds of the sale of the Foster City Store that are used to make a Capital Expenditure shall not be included in determining compliance with such limitation and (y) Borrower may make or incur a Capital Expenditure resulting in a fiscal year aggregate in excess of \$750,000 if the ratio of Borrower's Adjusted Operating Cash Flow to Adjusted Senior Contractual Debt Service, measured on a consolidated basis, equals or exceeds 1.5:1 after giving effect (without duplication) to such Capital Expenditure. In no event shall any monies retained by FINOVA and credited against Borrower's loan account or any monies advanced by FINOVA to a third party to pay an Indebtedness of Borrower be considered a Capital Expenditure.

Compensation: So long as Borrower is a publicly traded corporation listed on NASDAQ or a comparable national stock exchange, Borrower may pay compensation to its executives, officers, and directors (or any relative thereof) in any amount determined by Borrower's Board of Directors or the compensation committee thereof in accordance with Borrower's articles of incorporation and by-laws. In all other cases, Borrower shall not pay total compensation, including salaries, withdrawals, fees,

bonuses, commissions, drawing accounts and other payments, whether directly or indirectly, in money or otherwise, during any fiscal year to all of Borrower's executives, officers and directors (or any relative thereof) in an amount in excess of 115% of such total compensation paid in the immediately preceding fiscal year.

Indebtedness: Borrower shall not create, incur, assume or permit to exist any Indebtedness (including Indebtedness in connection with Capital Leases) in excess of \$100,000 other than the following (collectively, the "Permitted Indebtedness"): (i) the Obligations, (ii) current and future capital lease obligations of Borrower in an aggregate amount not to exceed \$2,500,000, provided that Borrower's Total Debt Service Coverage Ratio will equal or exceed 1:1, as determined by FINOVA in its sole discretion reasonably exercised, after giving effect to

such capital lease obligations and other secured debt, and provided further that FINOVA may approve in its sole discretion any capital leases or other secured debt proposed by Borrower on or after the date hereof which, after giving effect thereto, would cause the aggregate of such obligations to exceed \$2,500,000, (iii) trade payables and other contractual obligations to suppliers and customers incurred in the ordinary course of business, (iv) operating leases, and (v) other Indebtedness existing on the date of this Agreement and reflected in Exhibit D attached hereto (other than Indebtedness paid on the date of this Agreement from proceeds of the initial advances hereunder).

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REPORTING REQUIREMENTS (SECTION 9.1):

1. Borrower shall provide FINOVA with monthly outstanding or held check registers within ten (10) days after the end of each month.
2. Borrower shall provide FINOVA with monthly unaudited financial statements, statements of cash flow, and a trial balance within thirty (30) days after the end of each month.
3. Borrower shall provide FINOVA with audited consolidated and consolidating fiscal financial statements within one hundred

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twenty (120) days after the end of each fiscal year, as more specifically described in Section 9.1(b) hereof, and with an opinion issued by a Certified Public Accountant which is acceptable to FINOVA.

4. Borrower shall provide FINOVA with annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the upcoming fiscal year of Borrower within fifteen (15) days after approval thereof by Borrower's Board of Directors, but in no event later than thirty (30) days after the commencement of each fiscal year of Borrower.
5. Borrower shall provide FINOVA with monthly same-store-sales and profitability analyses for each restaurant operated by Borrower, in form and substance satisfactory to FINOVA in the exercise of its reasonable discretion within thirty (30) days after the end of each month.
6. Borrower's balance sheets for purposes of the definition of Prepared Financials shall be as of November 1, 1998.

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TERM (SECTION 9.2):

The initial term of this Agreement shall be three (3) years from the date hereof (the "INITIAL TERM") and shall be automatically renewed for successive periods of one (1) year each (each, a "RENEWAL TERM"), unless earlier terminated as provided in Section 7 or 9.2 above or elsewhere in this Agreement.

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TERMINATION FEE (SECTION 9.2):

Credit Facility. The Termination Fee applicable to the Loans provided for in Section 9.2(d) shall be an amount equal to the following percentage of the Total Facility:

- (i) Three percent (3%) of the Total Facility, if such early termination occurs on or prior to the first anniversary of the date of this Agreement;
- (ii) Two percent (2%) of the Total Facility, if such early termination occurs after the first anniversary of the date of this Agreement but on or prior to the second anniversary of the date of this Agreement; and

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- (iii) One percent (1%) of the Total Facility, if such early termination occurs after the second anniversary of the date of this Agreement.

Notwithstanding the foregoing, if Borrower refinances all of the Obligations through Wells Fargo Bank or any successor thereof not sooner than eighteen months from the date hereof, there shall be no Termination Fee.

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DISBURSEMENT (SECTION 9.11):

Unless and until Borrower otherwise directs FINOVA in writing, all loans shall be wired to Borrower's following operating account: Wells Fargo Bank, Account Number 4038-832325.

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ADDITIONAL PROVISIONS:

1. Within 45 days after the Closing Date, Borrower shall use its best efforts to provide FINOVA with waivers executed by the applicable warehouseman for each warehouse where Borrower stores Inventory in form and substance acceptable to FINOVA in its sole discretion.

2. Borrower may request a Capital Expenditure Loan advance no more often than once per week by providing FINOVA with a disbursement letter in form and substance satisfactory to FINOVA in its sole discretion no later than 11:00 am Pacific Standard Time on the Business Day prior to the requested advance, provided that FINOVA may permit in its sole discretion more than one Capital Expenditure Loan advance in a single week.

3. Prior to the establishment of a Blocked Account pursuant to the provisions of this Agreement, any payments that Borrower delivers to FINOVA shall be made by wire transfer to a bank account designated by FINOVA and shall be accompanied by contemporaneous written notice to FINOVA from Borrower.

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BORROWER:

FINOVA:

FRESH CHOICE, INC.

FINOVA CAPITAL CORPORATION

BY /S/ David E. Pertl

BY /S/ Carleton S. Breed

TITLE Sr Vice President - CFO

TITLE Vice President

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FORM OF SEVERANCE AGREEMENT
AMENDED 3/11/99

This Severance Agreement, effective _____, is made by and between FRESH CHOICE, INC. ("Fresh Choice") and _____ ("Employee").

1. Employee is currently an employee of Fresh Choice in a key management position. Fresh Choice recognizes that the possibility of a Transfer of Control(1) exists. Fresh Choice also recognizes that economic events beyond its control may affect its business and operations. Fresh Choice realizes that Employee possesses an intimate knowledge of the Company and its Board of Directors (the "Board") believes that it is necessary to be able to retain Employee as well as call on Employee for advice upon the occurrence of a Transfer of Control. The Board also believes that the existence of this Agreement will enhance the Company's ability to call on and rely upon Employee. In consideration of Employee's continued employment with Fresh Choice, Fresh Choice agrees to the following:

a) Severance Pay. In the event Employee's employment with Fresh Choice is terminated due to either (i) a layoff, approved by the President and/or Chairman, of the Employee; (ii) an involuntary separation as a result of a "Transfer of Control"; or (iii) a termination without "cause" as defined below, Fresh Choice shall pay "Severance Pay" to the Employee beginning as of Employee's actual last day of work (the "Separation Date") in the amount of nine months continuation of current/final base salary payable in equal bi-weekly installments, less applicable state and federal taxes, through payroll (hereinafter, the "Severance Period"). If the Employee's Separation Date does not coincide with the end of a payroll period, then the first and last installment may be prorated to reflect the partial pay period.

For purposes of this Severance Plan, termination for "cause" shall be defined as termination for any of the following reasons: (i) any act of theft or dishonesty; (ii) conviction of any crime of moral turpitude; (iii) failure to follow Fresh Choice policies and procedures; or (iv) consistent poor performance as determined in the sole discretion of the company.

b) Medical and Dental Insurance Benefits. Insurance benefits will end the last day of the month in which the Separation Date occurs. Should Employee be eligible for and elect COBRA coverage for medical and/or dental benefits, Fresh Choice will pay

(1) Transfer of Control shall mean an Ownership Change in which

the shareholders of the Control Company before such Ownership Change do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Control Company.

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the cost of the COBRA premiums, less the amount Employee paid as an active employee, for the applicable Severance Period. Thereafter, the Employee is responsible for the timely payment of full cost of the COBRA premium for the remainder of the applicable COBRA period.

It is intended by the parties hereto that the provisions of this Agreement shall become effective as of the date of approval by the Board's Compensation Committee and shall terminate on the sixth month anniversary of the Transfer of Control Event.

2. Employee acknowledges that the events which shall result in Severance Pay for the Employee pursuant to this Agreement are limited to either a (i) layoff, approved by the President and/or Chairman, of the Employee; (ii) an involuntary separation as a result of a "Transfer of Control"; or (iii) a termination without "cause" as defined above. The Employee shall not be eligible for Severance Pay for all other separations of employment, including but not necessarily limited to voluntary resignations, mutually agreeable separations, or separations for performance issues or any other separation for cause.

3. During the Severance Period, it is understood by Fresh Choice and Employee that Employee shall not be considered an employee of Fresh Choice and, therefore, shall not be eligible for any other employer-provided benefits including but not limited to vacation accrual, sick days, disability benefits, or any other benefit program in which active employees of Fresh Choice may participate.

4. The execution of this Severance Agreement does not constitute an employment contract between Fresh Choice and Employee or an agreement by Fresh Choice to continue to employ Employee. By signing this Severance Agreement, Employee acknowledges that his employment with Fresh Choice is and continues to be "at-will", and that such employment may be terminated at any time with or without cause.

5. Subject to Paragraph 1 above, Employee shall be entitled to no further compensation for any damage or injury arising out of the termination of Employee's employment by the Company in the event of a layoff or Transfer of Control.

6. In the event of any dispute, claim or controversy arising out of or in any way related to this Agreement, the interpretation of this Agreement or the alleged breach thereof, such dispute, claim or controversy shall be submitted by the parties to binding arbitration provided by the American Arbitration Association in Santa Clara County, California.

7. This Agreement constitutes the entire agreement of Fresh Choice and Employee regarding Severance Pay upon separation of employment, as defined herein, and supersedes all agreements prior to the effective date of this Agreement, whether written or oral. Fresh Choice reserves the right to amend or terminate this Agreement in whole or in part upon written notification to the Employee.

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8. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed herein.

IN WITNESS WHEREOF, Fresh Choice and Employee have executed this Agreement on (date) to be effective as of the day and year first above written.

"FRESH CHOICE":

"EMPLOYEE"

FRESH CHOICE, INC.,
a Delaware Corporation

by: _____

FRESH CHOICE, INC.
OFFICER INCENTIVE PLAN

PURPOSE: To reward Officers of Fresh Choice, Inc. (Vice Presidents and above) for accomplishments resulting in a year-end profit for the Company.

ELIGIBILITY: Officers of the Company which include Vice Presidents and above who are actively employed by Fresh Choice, Inc. on December 26, 1999. Excluded from this group is the Vice President of Operations who participates in a separate incentive program.

PLAN YEAR: The plan begins on December 28, 1998 and ends on December 26, 1999.

INCENTIVE PAY AVAILABLE: The incentive pay pool is equal to 25% of before tax earnings above plan. The pool is allocated among the designated officers based on a predetermined percentage amount.

INCENTIVE PAY ELIGIBILITY: PARTICIPANTS ARE ONLY ELIGIBLE TO RECEIVE INCENTIVE PAY IF THE COMPANY MAKES A BEFORE-TAX PROFIT IN 1999. THERE IS NO PAYOUT AT PLAN.

DISTRIBUTION OF INCENTIVE PAY: Incentive pay will be paid as soon as practical after year end financials are audited and provided that the Company makes a before-tax profit in 1999.

PLAN INTENT: Fresh Choice intends to maintain the plan under the terms listed above. However, Fresh Choice reserves the right to terminate or reduce the plan at any time.

SUBSIDIARY OF FRESH CHOICE, INC.

Fresh Choice, Inc. has one wholly-owned subsidiary, Moffett Design Corporation, a California corporation, which was incorporated on September 24, 1993.

EXHIBIT 23.1

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in Registration Statements No. 33-59118, 33-59228, 33-81336, 333-46789 and 333-65745 of Fresh Choice, Inc. on Form S-8 of our report dated February 12, 1999 appearing in the Annual Report on Form 10-K of Fresh Choice, Inc. for the year ended December 27, 1998.

/s/ Deloitte & Touche LLP

DELOITTE & TOUCHE LLP

San Jose, California
March 26, 1999

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THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM FRESH CHOICE, INC.'S REPORT ON FORM 10-K FOR THE YEAR ENDED DECEMBER 27, 1998 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH REPORT ON FORM 10-K.

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