

10-11-2002

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

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

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

1. Name of conveying party(ies): 10-7-02 Fink Acquisition Inc.

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

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

- Nature of conveyance: Assignment Merger Security Agreement Change of Name Other Transfer of Obligation under Asset Purchase Agreement

Execution Date: November 17, 2000

2. Name and address of receiving party(ies) Name: New York Baking Co.

Internal Address:

Street Address: 5-35 54th Street Long Island City: State: NY

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

OFFICE OF PATENT & TRADEMARKS FINANCE SECTION 2007 OCT -7 AM 9:06

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1541773; 1626177; 1628521; 0313927; 0620485

Additional number(s) attached Yes No

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

Name: Lisa M. Casey, Esquire

Internal Address:

Blank Rome Comisky & McCauley LLP

Street Address: One Logan Square

City: Philadelphia PA 19103

6. Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41): \$ 140.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number: 02-2555

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Lisa M. Casey, Esquire

Signature: Lisa Casey

Date: 10/07/02

Name of Person Signing

Signature

Date

71

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

10/10/2002 DBYRNE 00000159 022535 1541773

40.00 CH 100.00 CH

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

## ASSIGNMENT OF CONTRACTS

ASSIGNMENT, made as of this 17th day of November, 2000, between FINK ACQUISITION CORP., a New York corporation ("Fink") and NEW YORK BAKING CO., INC., a Delaware corporation ("NYBC").

### RECITALS

1. Fink has entered into a number of contracts, more specifically described on Exhibit "A" hereto, in connection with the acquisition of the assets of Fink Baking Company LLC (collectively, the "Contracts").
2. The parties desire that NYBC have all of the benefits of the Contracts.
3. To effectuate the foregoing, Fink has agreed to assign to NYBC all of its rights and obligations under and pursuant to the Contracts, and NYBC has agreed to assume all of Fink's rights and obligations thereunder, subject to the matters provided in this Agreement.

ACCORDINGLY, the parties, intending to be legally bound, agree as follows:

1. Assignment and Assumption. In consideration of the sum of \$1.00, receipt of which is hereby acknowledged, Fink hereby assigns to NYBC and NYBC hereby assumes from Fink, all of Fink's rights, title and interest in and to, and all of its obligations under and pursuant to, the Contracts.

2. Covenants of NYBC. Without limiting NYBC's obligations under Article I hereof, NYBC hereby covenants and agrees:

(a) to perform and observe all covenants and obligations of NYBC under the Contracts; and

(b) to enforce or secure performance and observance of all of the covenants and obligations of the other parties to the Contracts.

3. Miscellaneous.

3.1 Entire Agreement; Waiver; Remedies. This Assignment (and the Contracts) contains the entire understanding between the parties concerning the subject matter hereof, and may not be changed, modified, or altered, nor any of its provisions waived, except by an agreement in writing signed by the parties. There are merged herein all prior and collateral representations, promises and conditions in connection with the subject matter hereof and all prior

agreements with respect thereto are superseded hereby. A waiver by any party of any of the terms or conditions of this Assignment or of any breach thereof, shall not be deemed a waiver of such term or condition hereof, or of any subsequent breach thereof. All rights and remedies by this Assignment reserved to either party shall be cumulative and shall not be in limitation of any other right or remedy which such party may have at law, in equity or otherwise.

3.2 Captions. Paragraph headings are for convenience only and shall not define, limit or affect this Assignment.

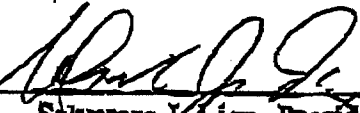
3.3 Governing Law. This Assignment shall be construed in accordance with, and subject to, the laws of the State of New York, applicable to contracts made and to be fully performed therein.

3.4 Further Assurances. Each party agrees hereafter to execute, acknowledge, deliver, and make all such assignments, assurances in law or instruments, and to take such action as may be necessary or desirable to effectuate the intent and purposes of this Assignment.

3.5 Invalid Provisions. If any provision of this Assignment is held to be void or unenforceable, all of the other provisions hereof shall nevertheless continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Assignment on the day and year first above written.

FINK ACQUISITION CORP.

By:   
Salvatore J. Liga, President

NEW YORK BAKING CO., INC.

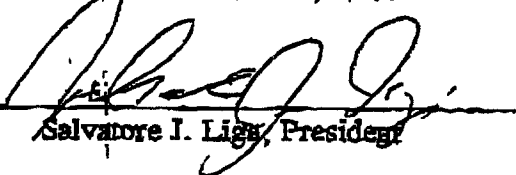
By:   
Salvatore J. Liga, President

EXHIBIT "A"

1. Asset Purchase Agreement, dated as of September 16, 2000, between Fink Acquisition, Inc. and Fink Baking Company LLC.
2. Agreement, dated as of September 16, 2000 between Fink Holdings, Inc., Fink Baking Company, LLC and Fink Acquisition, Inc., attached to which are exhibits as follows (i) Assignment and Assumption Agreement, dated as of September 16, 2000, between Fink Baking Company, LLC and Fink Acquisition, Inc., and (ii) Amendment Agreement, dated as of September 16, 2000, between Fink Holdings, Inc. and Fink Acquisition, Inc.
3. Assignment and Modification Agreement, dated as of September 16, 2000, between Fink Acquisition, Inc. and Fink Holdings, Inc.
4. Amendment Agreement, dated as of September 16, 2000 between Fink Holdings, Inc. and Fink Acquisition, Inc.
5. Management Agreement, dated as of September 16, 2000, between Fink Acquisition, Inc. and Fink Baking Company LLC
6. Consulting Agreement, dated as of September 16, 2000, between Fink Acquisition, Inc. and SJ&J Consulting LLC
7. Employment Agreement, dated as of September 16, 2000, between Fink Acquisition, Inc. and James C. Fink

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ASSET PURCHASE AGREEMENT,

Dated as of September 16, 2000

between

FINK ACQUISITION, INC.

a New York Corporation

BUYER,

and

FINK BAKING COMPANY LLC

SELLER

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cm0238.wpd;7

THIS ASSET PURCHASE AGREEMENT (hereinafter "Agreement"), dated as of September 16, 2000 is between Fink Acquisition, Inc., a New York corporation ("Buyer"), and Fink Baking Company, LLC ("FBC", or "Seller"). Capitalized terms used and not otherwise defined have the meanings ascribed to them in Section 20:

WITNESSETH:

WHEREAS, Seller is about to file a petition (the "Petition") under Chapter 11 of Title 11, U.S.C. (the "Bankruptcy Code") and the rules attendant thereto (the "Bankruptcy Rules") in the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court"); and

WHEREAS, Seller has determined that it is in the best interests of the Seller and its bankruptcy estate to sell to Buyer, and Buyer wishes to purchase from Seller, all of the right, title and interest of the Seller in and to the business and substantially all of the and assets of the Seller ("Business") for consideration herein set forth; and

WHEREAS, the assets and liabilities of the Business will shortly be subject to the supervision and control of the Seller subject and pursuant to the jurisdiction of the Bankruptcy Court; and

WHEREAS, the Seller, in the regular course of its business has agreed to operate under the Management Agreement annexed hereto as Exhibit A immediately upon the filing of the Petition (the "Filing Date"); and

WHEREAS, the Buyer has agreed to make the DIP Loan (defined below) in stages following the Filing Date:

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement and the representations, warranties, covenants and agreements contained herein, Buyer,

on the one hand, and Seller, on the other hand, hereby represent, warrant, covenant and agree as follows:

Section 1. SALE AND PURCHASE. (a) Sale and Purchase of the Business. Subject to the terms and conditions hereinafter set forth, on the Closing Date, Seller will sell, convey, transfer, assign and deliver to Buyer, and Buyer will purchase from Seller as of the Filing Date, the Business and all of its assets excluding the Excluded Assets, free and clear of any and all Encumbrances, real and personal, tangible and intangible, including but not limited to the following (hereinafter collectively, the "Acquired Assets"):

(i) all of Seller's Cash Receipts obtained on or after the Filing Date through and including the Closing Date;

(ii) all of Seller's accounts receivable, notes receivable, refunds, rebates, claims and choses in action and any right of Seller to obtain money or other consideration, outstanding as of the Closing Date, and any guarantees related thereto, except to the extent specifically included in the Excluded Assets;

(iii) all of Seller's right, title and interest in and to (a) the Property Leases of the Business, (b) all security deposits previously paid by the Seller under any of such Property Leases, and (c) all prepaid rent related to such Property Leases (collectively, a, b and c the "Real Property").

(iv) all of Seller's right, title and interest in and to all the fixed assets, including machinery, fixtures and equipment, leasehold improvements, spare parts, supplies, packing materials, computer hardware, motor vehicles, furniture and fixtures, signs, displays, devices, and all other personal property, of every kind and nature whatsoever, owned, leased or used by Seller on the Closing Date ("Personal

Property"), wherever located, including, without limitation, all rights of Seller under franchises, leases of personal property, written contracts, commitments, agreements, licenses, or bids or proposals which would result in any of such (collectively, "Contracts") and assignable Permits (all Personal Property, Contracts and Permits are listed on Schedule 1(a)(iv)), except to the extent any such item is specifically included in the Excluded Assets;

(v) all of Seller's supplies and inventory, including raw materials, work-in-progress and finished products, wherever located as of the Closing Date;

(vi) all of Seller's right, title and interest in and to the Intellectual Properties;

(vii) all of Seller's prepaid expenses, prepaid premiums and deposits that relate to the Business;

(viii) copies of all of Seller's existing financial, purchase, marketing and sales records, customer, and supplier records, lists and other documents, files, manuals and records, correspondence, customer lists, customer data, production records, employment records, and any similar information which has been reduced to writing, wherever located, with respect to, or in connection with, the Business;

(ix) all of Seller's goodwill associated with the Business, including the Fink Baking name and any rights to ownership and licensing rights or right to trade styles, (including but not limited to "Sabrett" and all tradenames as scheduled herein) and telephone numbers, together with any and all variants and derivatives thereof;

(x) all of Seller's rights under express or implied warranties from suppliers and vendors with respect to the Business;



(xi) all other assets of Seller and its bankruptcy estate including the products and proceeds thereof, and the additions thereto, used in connection with the Business, other than the Excluded Assets.

Notwithstanding the foregoing, to the extent that any of the Property Leases, Contracts, Permits or Intellectual Properties, require payments to cure monetary defaults, then such Property Leases, Contracts, Permits or Intellectual properties shall constitute an Acquired Asset only if it is listed on Exhibit 1(c) hereto which listing shall constitute the agreement of Buyer to assume the obligation of curing all such monetary defaults attendant to all Property Leases, Contracts, Permits and Intellectual Properties listed thereon.

(b) Excluded Assets. Buyer shall not acquire any interest in the following assets of the Seller or its bankruptcy estate (the "Excluded Assets"): ✓

- (i) all rights of Seller pursuant to this Agreement;
- (ii) all assets of Seller executive or incentive compensation plans, bonus plans, deferred compensation agreements, profit sharing, savings or retirement plans;
- (iii) all of the rights and claims of Seller for avoidance actions available to Seller under the Bankruptcy Code, of whatever kind or nature, as set forth in Sections 544 through 553, inclusive, and any other applicable provisions of the Bankruptcy Code, and any related claims and actions arising under such sections whether by operation of law or otherwise;
- (iv) generators, boilers, HVAC systems and similar leasehold improvements located at the LIC Premises (defined below);
- (v) a Rejected Asset.

(c) Assumption of Liabilities. On Closing Buyer shall assume and agree to pay, perform and discharge all liabilities and obligations of Seller incurred on or after the Filing Date pursuant to this Agreement and the Management Agreement with respect to (A) Contracts, Permits and Intellectual Properties, included in the Acquired Assets solely to the extent such liabilities and/or obligations arise and/or accrue subsequent to the Filing Date except as provided in the last sentence of Section 1(a) hereof concerning cure payments, (B) all Property Leases transferred to Buyer solely to the extent such liabilities or obligations arise and/or accrue subsequent to the date hereof and (C) Property Leases, Contracts, Permits and Intellectual Properties listed on Exhibit 1(c) hereto to be assumed and assigned and for which Buyer shall cure the monetary defaults attendant thereto incurred prior to the Filing Date (the "Accepted Liabilities"). Except as expressly provided in this Section 1(c), Buyer does not hereby assume and shall not be bound by any existing or future liabilities or obligations of Seller.

(d) Purchase Price; and Payment. The purchase price to be paid by Buyer to Seller on the Closing Date for the Acquired Assets being purchased hereunder shall be \$6.5 million. On the Closing Date, Buyer shall pay the Purchase Price, less the Deposits, the Pension Plan Release Credit Amount, if any, and the Contract Credit Amount, and receive a credit for any reduction in the Summit Bank N.A. claim from the Filing Date, if any, to Seller by wire transfer of immediately available federal funds to an account theretofore designated in writing by Seller to Buyer.

(1) The Seller heretofore failed to make certain pension fund payments as required, pursuant to agreements with the Bakery, Confectionary and Tobacco Workers' Union Local 3, and the Bakery Drivers Local 802 of Teamsters International (collectively, the "Unions" and the "Union Agreements"). As of the date of this Agreement, the

outstanding Union Agreements pension fund payments in arrears (the "Arrears") are approximately as follows:

<u>Pension Fund</u>	<u>Arrears</u>
Bakery Local #802 Pension & Welfare Fund	\$555,000
Wholesale Bread and Cake Industry Local 802 Annuity Fund	\$238,000
Bakery & Confectionary Workers International Union Local #3 Welfare Fund	\$505,801
Bakery & Confectionary Workers International Union Local #3 Pension Fund	\$245,000

In bankruptcy, the Arrears are entitled to a priority in payment over the claims of the Seller's other general unsecured creditors, pursuant to Bankruptcy Code § 507(a)(4) of \$4,300 times the number of employees (*i.e.*, approximately 450 persons) covered by the Union Agreements. Accordingly, the Buyer prior to Closing may seek to enter into an agreement with one or more of the Unions to assume the Union Agreements contemporaneous with the Closing. The Assumption Agreement, if entered into, would either provide for the payment of the Arrears in full at Closing, or over time so as to fully satisfy the Arrears, and thus relieve the Seller and its Affiliates of the obligation, if any, to pay the Arrears. To the extent the Buyer at or prior to Closing makes such arrangements, and obtains written release of the Seller and its Affiliates from the obligation, if any, to make such payment, the Buyers, to the extent of such written release, shall at Closing receive a dollar for dollar credit against the Purchase Price (the "Pension Plan Release Credit Amount") in the value of the releases to the Seller.

(2) To the extent the Buyer, at or prior to Closing, cures a pre-petition monetary default for any of the Property Leases, Contracts, Permits or Intellectual Properties as set

forth on Exhibit B(1), the Buyer, to the extent of such payments, shall at Closing receive a dollar for dollar credit against the Purchase Price (the "Contract Credit Amount"). The Contract Credit Amount shall include all cure amounts including those that are contested or not paid at Closing. To the extent any cure amounts are contested or not paid, said amounts shall be escrowed with Seller's counsel. To the extent any escrowed sums are not ultimately necessary for cure, the remaining balance in the escrow account shall be returned to Seller.

(e) Deposits. Immediately upon the execution of this Agreement, Buyer will deposit in escrow with Angel & Frankel, P.C. (the "Seller's Attorney") the sum of \$100,000 which collectively with the deposit of \$100,000 previously provided to the Seller by the Buyer in connection with the execution of the Letter. Upon the entry of an interim DIP financing order in a form reasonably acceptable to Buyer, said \$200,000 shall be released and utilized in accordance with the interim DIP financing order. Upon the entry of a final DIP financing order, \$450,000 will be made available on an as-needed basis for the operations of the Seller. In the event that the entire \$450,000 is not needed to maintain the operations of the Seller, prior to the morning of the Sale Hearing, Buyer shall deposit with counsel for the Debtor any sums authorized but not utilized under the final DIP financing order. The Deposits shall be promptly refunded to Buyer upon any Event of Default as defined in Section 21.

(f) Leased Property. Seller currently occupy a manufacturing, warehouse and office facility located at 5-35 54th Avenue, Long Island City, New York 11101 ("LIC Premises"), and an office facility located at 75-85 Metro Way, Secaucus, New Jersey 07094 (collectively, the "Property Leases"). The Property Leases shall be assumed by the Buyer and transferred to Buyer without existing default at Closing. Buyer has negotiated with the landlord of the LIC Premises to amend

the Property Lease for that Premises effective on Closing, and to effect such amendment to said lease upon the terms and conditions as agreed to among themselves effective on the Closing. This lease agreement as amended is exclusive to Buyer and it is not otherwise an asset of the Seller.

(g) Debtor in Possession Loan. Following the Petition Date for so long as the Seller remains as a Debtor In Possession, and the management Agreement remains in effect, and no default has occurred with regard to the Deposits which would otherwise mandate the return hereunder of the Deposits, the Buyer will allow the Seller to make use of the Deposits in the ordinary course day to day conduct of the Business in accordance with the Budget as a "Debtor in Possession Loan" as follows:

- (i) \$200,000 upon the entry of the interim DIP financing order; and
- (ii) Up to \$450,000 upon the entry of the final DIP financing order and in accordance with the terms of the Management Agreement.

The Debtor in Possession Loan shall be finalized by the final DIP financing Order and when entered shall enjoy priority lien status pursuant to 11 U.S.C. § 364(c) against all of the Seller's assets subject and subordinate only to valid existing prior (to the "Filing Date") lien of Summit Bank N.A., and the professional claims of Angel & Frankel P.C. in the Chapter 11 proceeding pursuant to an order of the Bankruptcy Court, with such claims of retained professionals in the aggregate not to exceed \$200,000.

(h) Allocation of the Purchase Price. The purchase price for the Business and Acquired Assets shall be allocated to the Business and Acquired Assets transferred to Buyer hereunder in accordance with Schedule 1(h) and all tax returns and reports filed by Seller and Buyer with respect to the transactions contemplated by this Agreement shall be consistent with that allocation.

Section 2. THE CLOSING. The closing of the sale and transfer of the Business, and the Acquired Assets (the "Closing") shall take place at the offices of Angel & Frankel, P.C., 460 Park Avenue, New York, N.Y. 10022-1906, on a date (the "Closing Date") ten (10) days after the entry of the Approval Order, but in no event later than November 30, 2000 at 10:00 a.m. (the "Scheduled Closing Date"), provided, however, that, if, as of such date, the Approval Order has not yet been entered, either party by notice to the other party, delivered by November 27, 2000, may elect to extend the Closing Date by not more than 15 days from the Scheduled Closing Date; provided, further, that, if the Approval Order is stayed pending appeal on the Scheduled Closing Date, the date of the Closing shall be extended to a date which is the earlier of (i) 5 days after the Approval Order becomes final, and the stay has expired, or is vacated, or is favorably resolved, or (ii) 5 days after the Scheduled Closing Date (such later Closing Date as may result from the operation of either of the foregoing provisions being hereinafter referred to as the "Outside Closing Date").

Section 3. EFFECTIVE DATE: BANKRUPTCY COURT APPROVAL.

(a) Effective Date. Subject to Section 3(c) this Agreement shall be effective as of the date hereof, subject to the Approval Order not being subject to further stay or appeal; provided, however, that Buyer may elect to close the transactions contemplated hereby (despite a pending appeal of the Approval Order if no stay thereof is in effect) pursuant to, and in accordance with, the protections afforded under Section 363(m) of the Bankruptcy Code.

(b) Bankruptcy Court Orders. In connection with the transactions contemplated by this Agreement, Seller shall file with the Bankruptcy Court applications for the following orders in a form reasonably acceptable to Buyer, each of which shall have been entered by the Bankruptcy Court prior to the Closing Date:

(i) DIP Financing Orders. The entry of orders approving the interim DIP financing agreement and the final DIP financing agreement as referenced in Section 1(e) herein;

(ii) Scheduling Order. The Scheduling Order is herein defined as an order of the Court fixing the Fee, approving the Management Agreement approving the Debtor in Possession Loan, and setting a date for the submission of bids, and the conduct of an auction at a hearing to consider approval of a winning bid for the Acquired Assets. With regard to the Fee, the Scheduling Order shall provide, among other things, that (a) the next bid is to be not less than \$400,000 above the Purchase Price, with bidding thereafter to be in increments of not less than \$100,000; (b) as a condition to making an offer at the Sale Hearing, each interested party, other than Buyer, must tender to the Seller's attorneys, at least 24 hours before such Sale Hearing, a bank check, teller's check or wire transfer payable to Angel & Frankel, P.C. as attorneys in a sum of not less than \$1 million (the "Bid Deposit") to be held until closing (at which time such payment shall be credited against the agreed upon purchase price if such offer is accepted), or until the conclusion of the Sale Hearing (at which time such payment shall be returned if such offer is rejected); and (c) if (1) a higher or better offer to purchase the Acquired Assets or the Business, or a substantial portion of any of them, is approved by the Bankruptcy Court and (2) a closing occurs thereunder, the Seller shall at said Closing return the Deposits (inclusive of the Debtor in Possession Loan, plus interest) to the Buyer, and upon Closing of such sale it shall pay the Buyer a fee of \$350,000 (the "Fee") plus any Contract Credit Amounts advanced by the Buyer or advances made by the Buyer under this Agreement (collectively, the "Scheduling Provisions").

(iii) Approval Order. The Approval Order is herein defined as one or more orders of the Court pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code and the Bankruptcy Rules (A) authorizing and approving the sale to Buyer pursuant to this Agreement of the Business including the Acquired Assets, and approving the terms of this Agreement, (B) finding that Buyer is acting in good faith and is entitled to the protections of a buyer under Section 363(m) of the Bankruptcy Code and (C) containing such other findings and provisions as may be reasonably requested by Buyer (including a finding that notice of the transactions contemplated by this Agreement has been properly given) to assure that (1) title to the Acquired Assets will be transferred to Buyer free and clear of all Encumbrances, in accordance with the terms of the Agreement and any such Encumbrances shall attach solely to the Purchase Price; (2) Seller will be duly authorized to execute and deliver such instruments as Seller is required to execute and deliver pursuant to the terms of this Agreement; and (3) Seller, upon its assuming and assigning to Buyer each Lease of Real Property, Contracts, Permits and Intellectual Properties included in the Acquired Assets, will have properly assumed and assigned the same; and that upon cure payments being made there will be no defaults thereunder as of the Closing Date, nor will the assignment and transfer of same to Buyer constitute a default thereunder.



(c) Notices and Binding Nature.

(i) Seller shall instruct its counsel to furnish Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court and other courts pertaining to the transactions contemplated by this Agreement.

(ii) Notwithstanding the provisions of Section 3(a) above, immediately upon entry of the Approval Order, Section 11(c) below shall be binding upon and shall inure to the benefit of the parties to this Agreement and their successors and permitted assigns.

Section 4. REPRESENTATIONS AND WARRANTIES OF Seller. Seller hereby represents and warrants to Buyer, which representations and warranties shall be true, correct and complete in all material respects on the date hereof and on the Closing Date that:

(a) Execution and Delivery. This Agreement has been duly executed and delivered by Seller and, subject to entry of the Scheduling Order, and the Approval Order, constitutes the legal, valid and binding obligations of Seller enforceable against Seller in accordance with its terms, subject to the said Orders not being subject to a stay on appeal.

(b) No Other Agreements to Sell the Acquired Assets or the Business. Seller has no legal obligation, whether absolute or contingent, direct or indirect, to any other person or firm to sell or otherwise convey, and have not granted any person or firm any option to purchase the Business and/or the Acquired Assets (other than sales of inventory in the ordinary course of business) or to enter into any agreement with respect thereto.

(c) Litigation. Except as otherwise set forth in Exhibit B(3), and except for collection actions instituted pre-petition by various creditors, there is no litigation, proceeding, labor dispute (other than routine grievance procedures), arbitral action or government investigation pending, or,

so far as known to Seller, threatened against (A) Seller relating in any way to the Business, or (B) current or former personnel employed by Seller in reference to actions taken by it in such capacity, which, in either case, if adversely determined could, in Seller's reasonable judgment, in any one case or in the aggregate, have a material adverse effect on the condition of the Acquired Assets or the Business. There are no decrees, injunctions or orders of any court or governmental department or agency outstanding against Seller with respect to the Business or the Acquired Assets. Except as set forth on Schedule 4(c) or Exhibit B(3), the Seller has not received any notice regarding any actual, potential or alleged material violation of any environmental law, rule or regulation from any Governmental or Regulatory Authority.

(d) Validity of Leases and Contracts. Exhibit B(1) hereto is a schedule of all Property Leases, Contracts, Permits and Intellectual Properties with pre-petition cure amounts, if any, which are to be included in the Acquired Assets. To Seller's knowledge, no party from whom Seller leases or subleases real or personal property and no party to any Contract included in the Acquired Assets is in default under any material provision of any such lease or Contract.

(e) No Brokers. Neither Seller nor any of its affiliates have entered into and will not enter into any agreement, arrangement or understanding with any person or firm which will result in the obligation of Buyer to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

(f) Title to Assets. Good and valid title to all the Acquired Assets free of Encumbrances shall be transferred to the Buyer at Closing, pursuant to the Approval Order.

(g) Limitation on Seller Representations and Warranties. Buyer represents that it has inspected and is fully familiar with the Acquired Assets and hereby covenants and agrees to accept the same "as is" and "where is" on the date hereof and on the Closing Date except as to Material

Adverse Change. Seller has not made, and is not willing to make, any representations or warranties as to the physical condition of the Acquired Assets, their contents, the income or commissions derived or potentially to be derived from the Acquired Assets or the Business, the expenses incurred or potentially to be incurred in connection with the Acquired Assets or the Business. Seller is not, and will not be, liable or bound in any manner by express or implied warranties, guarantees, statements, promises, representations or information pertaining to the Acquired Assets or the Business, made or furnished by any broker agent, employee, servant or other person representing or purporting to represent the Seller, unless such are expressly and specifically set forth herein.

(h) Seller's Organization and Good Standing. Seller is, or will be on the Closing Date, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, and has, or will then have, all requisite corporate power to carry on its business.

(i) Authority; Execution and Delivery. Seller has, or will have on the Closing Date, full power and authority to enter into this Agreement and to sell the Business in accordance with the terms hereof. The execution, delivery and performance of this Agreement by Seller, including the sale contemplated hereby, have, or will have, been duly and effectively authorized by Seller's Managers and Members, no other proceedings on the part of Seller are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligations of Seller enforceable against Seller in accordance with its terms.

(j) Consents, No Conflicts, Etc. Neither the execution and delivery of this Agreement, the consummation by Seller of the transactions contemplated herein nor compliance by Seller with any of the provisions hereof will (with or without the giving of notice or the passage of time)

(i) violate, conflict with, result in a breach of, or constitute a default under, any of the terms, conditions or provisions of the articles of organization or operating agreement of Seller, (ii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or any of its assets or properties, or (iii) require the consent, approval, permission or other authorization of or by or filing or qualification with any court, arbitrator or governmental, administrative, or self-regulatory authority, except for such consents, approvals, etc., the failure of which to obtain prior to the Closing would not adversely affect the ability of Seller to consummate the transactions contemplated by this Agreement. Seller knows of no reasons why Seller should not receive, on or before Closing, all governmental authorizations and Permits necessary for Seller to Sell the Acquired Assets.

(k) Real Property. The buildings, structures and appurtenances located on the leased property (as described in Section 1(f)) are, subject to repairs required in the ordinary course of business and to Seller's knowledge conform to all applicable laws, ordinances and regulations except for such variations as do not prohibit the continued use of such buildings, structures and appurtenances for the purposes for which they are now employed. To the Seller's knowledge, the operations presently carried on at the leased property are to Seller's knowledge in compliance with all applicable zoning and land use restrictions and certificates for occupancy, and are not dependent on exceptions for pre-existing uses. Except as set forth on Schedule 4(k), to the Seller's knowledge, the leased property does not contain any underground tanks for the storage of fuel, oil, gasoline and/or other petroleum products or by-products. The Seller has delivered to the Buyer any and all Phase I and Phase II environmental assessments possessed by Seller with respect to the leased property, which assessments shall be deemed to be Confidential Information subject to the terms of the terms of the Confidentiality Agreement, dated as of May 12, 2000, between Seller and Salvatore J. Liga et al.

(l) Inventory. The supplies and inventory are in all material respects in good and saleable condition, conform in all material respects to all relevant specifications and tolerances, customer certifications and contracts, and are maintained in amounts not materially in excess of the reasonable requirements of the Business and are not in any material respect obsolete or slow-moving.

(m) Intellectual Property. To the extent indicated in Exhibit 1(c), the patents, trademarks, service marks, trade names and copyrights shown on such Schedule have been duly registered in, filed in, or issued by, the offices indicated therein; and except as indicated in such Exhibit, Seller is the sole and exclusive owner of all such trademarks, service marks and copyrights and applications therefor and has the right to use or license the use of the trademarks, service marks and trade names on the products or services on, or in respect of which, they are now being used, and all other Intellectual Property used by Seller in the Business, and Seller has received no notice from any other person challenging Seller's right to use the Intellectual Property listed on such Exhibit or otherwise utilized by Seller. No licenses, sublicenses or agreements to which Seller is a party (whether as licensor or licensee) pertaining to any Intellectual Property are in use or in effect or will be in effect on the Closing Date except as set forth in such Exhibit. Except as set forth on such Exhibit, to the best of its knowledge, Seller has not violated or infringed any intellectual property rights of others in any manner which may affect the Acquired Assets or the Business.

Section 5. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer hereby represents and warrants to Seller as follows:

(a) Buyer's Organization and Good Standing. Buyer is, or will be on the Closing Date, a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has, or will then have, all requisite corporate power to carry on its business.

(b) Authority; Execution and Delivery. Buyer has, or will have on the Closing Date, full corporate power and authority to enter into this Agreement and to purchase the Business in accordance with the terms hereof. The execution, delivery and performance of this Agreement by Buyer, including the purchases contemplated hereby, have, or will have, been duly and effectively authorized by Buyer's board of directors, no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with its terms.

(c) No Brokers. Neither Buyer nor any of its affiliates has entered into and will not enter into any agreement, arrangement or understanding with any person or firm which will result in the obligation of Seller to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

(d) Consents, No Conflicts, Etc. Neither the execution and delivery of this Agreement, the consummation by Buyer of the transactions contemplated herein nor compliance by Buyer with any of the provisions hereof will (with or without the giving of notice or the passage of time) (i) violate, conflict with, result in a breach of, or constitute a default under, any of the terms, conditions or provisions of the certificate of incorporation or by-laws of Buyer, (ii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer or any of its assets or properties, or (iii) Require the consent, approval, permission or other authorization of or by or filing or qualification with any court, arbitrator or governmental, administrative, or self-regulatory authority, except for such consents, approvals, etc., the failure of which to obtain prior to the Closing would not adversely affect the ability of Buyer to consummate the transactions contemplated by this Agreement. Buyer knows of no reasons why Buyer should not receive, on or before Closing, all

governmental authorizations and Permits necessary for Buyer to operate the Business in the manner in which it is currently being operated, and own the Acquired Assets.

(e) Litigation. There is no litigation, proceeding, or government investigation pending or, so far as known to Buyer, threatened, that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated by this Agreement.

Section 6. CERTAIN COVENANTS AND AGREEMENTS.

(a) Further Assurances. After the Closing Date, from time to time, at Buyer's request and without further consideration, Seller will execute and deliver such other instruments as Buyer may reasonably request to more effectively put Buyer in possession and operating control of all or any part of the Acquired Assets. After the Closing Date, to the extent necessary or desirable for the Seller to continue managing the bankruptcy estate of the Seller, Buyer shall provide Seller access to Seller customer and other business records transferred to Buyer pursuant hereto.

(b) Certain Fees and Expenses. Except as otherwise provided herein, each party hereto shall be responsible for and shall pay all fees and expenses incurred by it relating to the transactions contemplated hereby including all fees and expenses of counsel and auditors engaged by it.

(c) Access to Facilities and Information.

(i) From and after the date hereof, Buyer, upon reasonable notice to Seller, shall have full access to all books, records, facilities, personnel, customers, lenders and others having a business relationship with Seller relating to the Business.

(ii) Seller shall furnish or cause to be furnished to Buyer and its representatives all data and information concerning the Business or the Acquired Assets that may reasonably be requested.

(iii) From and after the date hereof until the Closing Date, Seller shall keep Buyer reasonably informed with respect to all material developments relating to the Business to which Seller has actual knowledge, and which Seller believes is likely to have a material adverse effect on Condition of the Business, and shall promptly comply with any reasonable requests for Seller to provide Buyer with information with respect to the Business.

(iv) From and after the date hereof, at Buyer's expense, Seller shall cause Seller's environmental consultants to provide to Buyer all information concerning the leased property possessed by such consultants and to be available to the Buyer in order to discuss the environmental status of the leased property. All of such information so obtained shall be deemed to be Confidential Information under, and subject to, the Confidentiality Agreement, dated as of May 12, 2000, between Seller and Salvatore J. Liga et al.

(d) Conduct of Seller's Business. Subject to orders of the Bankruptcy Court the Management Agreement and applicable obligations and fiduciary responsibilities of the Seller under the Bankruptcy Code, from the date hereof up to and including the Closing Date, the parties will use reasonable good faith efforts to cause the Business to be conducted pursuant to the budget agreed to by Buyer and the Seller attached hereto as Exhibit C (the "Budget"). Consistent with the Budget, the parties will not do, or cause to be done, anything which is represented and warranted not to have been done in this Agreement, and shall not make or institute any unreasonable or novel methods of manufacture, construction, purchase, sale, lease or operation that will vary materially from those methods customarily used by Seller, except as otherwise expressly contemplated hereby and under the Budget. From and after the date hereof up to and including the Closing Date:



(i) Seller shall not sell, lease, transfer or dispose of any Acquired Assets unless specifically agreed to in writing by Buyer, except as necessary to conduct the Business in accordance with the Agreement in the ordinary course;

(ii) Seller shall not voluntarily terminate any contract, agreement, license or other instrument that is included in the Acquired Assets to which Seller is a party, other than in the ordinary course and pursuant to their terms;

(iii) Unless provided for in the Budget, Seller without prior written consent of Buyer shall not make any capital expenditure other than in the ordinary course and pursuant to their terms;

(iv) Unless provided for in the Budget, Seller will not enter into any contract, commitment, or transaction relating solely to the Acquired Assets that is materially inconsistent with the Budget, without the prior written consent of the Buyer.

(e) Liability and Waiver. Seller will not do, or agree to do, any of the following acts:

(i) pay any obligation or liability, fixed or contingent, other than current liabilities and other such liabilities as permitted by specific order of the Bankruptcy Court, or pursuant to the Bankruptcy Code; (ii) waive or compromise any right or claim of the Seller, other than Excluded Assets and the obligations permitted pursuant to the Bankruptcy Code or by order of the Bankruptcy Court; or (iii) cancel, without full payment, any note, loan, or other obligation owing to the Seller.

(f) Consents and Approvals. Seller shall take all measures reasonably necessary or advisable to secure such consents, authorizations and approvals of governmental bodies, including with respect to the transfer of licenses, and of private persons with respect to the transactions contemplated by this Agreement, and to the performance of all other obligations of such parties hereunder, as may be required by any legal requirements or by any agreement to which Seller is a

party or by which Seller is bound. Seller shall cooperate with Buyer in the filing of all forms, notifications, reports and information, if any, required or reasonably deemed advisable pursuant to legal requirements in connection with the transactions contemplated by this Agreement and (ii) use good faith efforts, in cooperation with Buyer, to cause any applicable waiting periods thereunder to expire and any objections to the transactions contemplated hereby to be withdrawn before Closing.

(g) No Other Management. Except upon order of the Bankruptcy Court, on notice with right of the Buyer to be heard from and after the date hereof until the earlier of the Closing Date or the date on which this Agreement is terminated, Seller shall not enter into any agreement, understanding or other arrangement with any third party, other than Buyer, and other than the Management Agreement annexed hereto as Exhibit A, pursuant to which such third party, other than the manager named in the Management Agreement, shall have the ability to manage, operate, consult with, or influence, to any material extent, the management or operation of, the Business or the Acquired Assets and the Seller may consult with the professionals retained by it.

(h) Changes in Representations and Warranties. Between the date of this Agreement and the Closing Date, Seller shall not, subject to one or more orders of the Bankruptcy Court, enter into any transaction, take any action, or by inaction permit any event to occur, which would result in any of the representations and warranties of Seller herein contained not being true and correct in any material respect at and as of: (i) the time immediately following the occurrence of such transaction or event; or (ii) the Closing Date. Seller shall promptly give written notice to Buyer upon obtaining knowledge of (A) any fact which, if known on the date hereof, would have been required to be set forth or disclosed pursuant to this Agreement and (B) any impending or threatened breach in any material respect of any of the representations and warranties contained in this Agreement. No

disclosure by Seller pursuant to this Section 6(h), however, shall be deemed to amend or supplement any schedule or exhibit or to prevent or cure any material misrepresentation or breach of warranty.

(i) Mutual Cooperation. The parties hereto will cooperate with each other, and will use all reasonable efforts to cause the fulfillment of the conditions to the parties' obligations hereunder, including Seller's obligation to remove any Encumbrances relating to the Acquired Assets, to assume and assign all agreements with regard to the Acquired Assets, and to assign all Contracts and Intellectual Properties included in the Acquired Assets, and to obtain as promptly as possible all consents, authorizations, orders or approvals from each and every third party, whether private or governmental, required in connection with the transactions contemplated by this Agreement.

(j) Consents and Permits. Each of Seller and Buyer shall use its reasonable good faith efforts to obtain any material consent, approval, permit, order or authorization of, and to perform any material registration, declaration or filing with, any governmental entity or other third party required for the purchase and sale of the Acquired Assets.

(k) Remittance of Receivable Proceeds. From and after the Closing, Seller shall promptly remit to Buyer all proceeds of any receivables included in the Acquired Assets and Seller hereby acknowledges that all such receivables and the proceeds not remitted shall otherwise be property of the Buyer held in trust by Seller for the benefit of Buyer.

(l) Further Actions. From and after the Closing, Seller shall not use the Seller's tradenames except (i) as may be otherwise required by law, or (ii) as necessary for the conduct or administration of the bankruptcy case of the Seller.

Section 7. CONDITIONS TO EACH PARTY'S OBLIGATIONS. The respective obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver on or prior to the Closing Date of the following conditions precedent:

(a) Bankruptcy Court Approval. The Approval Order in a form reasonably approved by Buyer shall have been entered and shall not have been stayed pending appeal, and no order shall otherwise have been entered restraining or enjoining the effectiveness of the Approval Order. The Approval Order shall become a Final Order, and all holders of liens and claims (including all landlords, mortgagees, creditors and shareholders, to the extent required by the Bankruptcy Code) against the Acquired Assets shall have received notice of the Seller's bankruptcy case and the Bankruptcy Court's entry of the Approval Order approving the transactions contemplated by this Agreement, copies and proof of service of which, together with a certified copy of the Approval Order, shall be delivered to Buyer on or prior to the Closing Date in form as shall be reasonably satisfactory to Buyer and its counsel.

(b) Injunctions. There shall not be outstanding any injunction, decree or order of any court or governmental department or agency prohibiting the consummation of the transactions contemplated by this Agreement.

(c) No Change in Law. There shall not have been any action taken or any statute enacted by any governmental authority which would render the parties unable to consummate the transactions contemplated hereby or make the transactions contemplated hereby illegal or prohibit the consummation of the transactions contemplated hereby.

(d) Governmental Approvals and Consents. Except to the extent not required pursuant to the Bankruptcy Code, and except to the extent not required under this Agreement, Seller and

Buyer shall have obtained and delivered to the other (i) all material approvals and consents from governmental or regulatory bodies or agencies, whether Federal, state, local or foreign without which the transactions contemplated hereby could not legally be consummated and (ii) all material third-party consents and approvals pursuant to statute, leases, mortgages, contracts, agreements, permits or licenses necessary for the performance of its obligations hereunder, without which the Buyer could not continue to conduct the Business as it is currently being conducted.

Section 8. CONDITIONS TO OBLIGATIONS OF BUYER. The obligation of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, or the waiver by Buyer, on or prior to the Closing Date (or by such date otherwise specified herein), of the following conditions:

(a) Representations and Warranties True at the Closing Date. The representations and warranties of Seller contained in this Agreement shall be deemed to have been made on and as of the Closing Date and shall then be true and correct in all material respects, and on the Closing Date Seller shall have delivered to Buyer a certificate to such effect.

(b) Seller Performance. Each of the obligations of Seller to be performed on or before the Closing Date pursuant to the terms of this Agreement shall have been duly performed by the Closing Date, in all material respects, and on the Closing Date Seller shall have delivered to Buyer a certificate to such effect.

(c) Instruments of Conveyance and Transfer; Title. At the Closing, Seller shall have delivered to Buyer such bills of sale, endorsements, assignments, and other good and sufficient instruments of conveyance and transfer (including assignments of any Intellectual Properties in recordable form), in form and substance reasonably satisfactory to Buyer and its counsel, as are effective to vest in Buyer good and marketable title to the Acquired Assets free and clear of any

Encumbrances. Buyer shall be responsible for all costs associated with the generation of any required endorsement, assignment and other good and sufficient instrument of conveyance as contemplated by this Section 8(c).

(d) Scheduling Provisions. Seller agrees that if the Scheduling Order (i) is not entered on or before October ~~5~~, 2000, (ii) or the Court does not schedule the Approval Hearing for a date on or before November 4, 2000, the Buyer's obligations hereunder shall, at its sole option, terminate.

(e) Material Adverse Change. No Material Adverse Change in the condition of the Acquired Assets or the Business shall have occurred after the date hereof, and prior to the Closing Date.

(f) The Seller shall have delivered to Buyer, by the close of business on Monday, September 18, 2000, (i) a schedule, reasonably satisfactory to Buyer, containing a list of all material governmental licenses and permits used in connection with the Business, and (ii) a schedule, reasonably satisfactory to Buyer, containing a list of all material contracts by which the Assets are bound, to which the Seller is a party or by which it is bound and which primarily relate to the Business or the Assets and are material to the Business, and (iii) Schedule 4(k).

(g) As of the date of the Scheduling Order, there shall be no material difference between the personal property listed in the Daley-Hodkin appraisal of the personal property of the Business dated July 2000 (the "Appraisal") and the Acquired Assets.

(h) The Petition shall have been filed by 5:00 p.m. on Monday, September 18, 2000.

(i) The Seller shall have obtained Bankruptcy Court approval of the interim DIP financing agreement for the first \$200,000 of the Deposit by no later than September ~~20~~, 2000 and an order approving the final DIP financing agreement for the entire \$650,000 of the Deposit by ~~September 28~~, <sup>October 5</sup>, 2000 pursuant to Section 364(c) of the Bankruptcy Code, subject to existing valid

liens and carve-out solely for the professional fees of Angel & Frankel, P.C.; provided, however, if the lien of Summit Bank shall exceed \$3.8 million, there shall be no carve-out for professional fees of Angel & Frankel, P.C.

- (j) The Seller is able to convey all rights in the Intellectual Property.
- (k) The Budget shall not be inaccurate in any material respects.
- (l) The Buyer shall have agreed to assume the Union Agreements or shall have entered into new agreements with the Unions by October 4, 2000; provided, however, at the request of Buyer, Seller agrees not to unreasonably withhold its consent to extend such date.

Section 9. CONDITIONS TO OBLIGATIONS OF SELLER. The obligations of Seller to consummate the transactions contemplated hereby shall be subject to the fulfillment, or the waiver by Seller, on or prior to the Closing Date, of the following conditions:

(a) Representations and Warranties True at the Closing Date. The representations and warranties of Buyer contained in this Agreement shall be deemed to have been made at and as of the Closing Date and shall then be true and correct in all material respects, and on the Closing Date Buyer shall have delivered to Seller a certificate to such effect, signed by an officer of Buyer.

(b) Buyer's Performance. Each of the obligations of Buyer to be performed on or before the closing Date under the terms of this Agreement, including payment of the Purchase Price under the terms hereof, shall have been duly performed by the Closing Date in all material respects, and on the Closing Date Buyer shall have delivered to Seller a certificate to such effect.

(c) Material Consents. Seller shall have obtained all material third-party consents and approvals pursuant to statute, leases, mortgages, contracts, agreements, Permits or licenses necessary for the performance of its obligations hereunder.

Section 10. NATURE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES, ETC.

(a) Survival of Representations, Warranties, Etc. All representations and warranties of the parties made in this Agreement or as provided herein shall survive through and including the Closing Date, and shall terminate on the day next succeeding the Closing Date.

(b) No Other Representations. Notwithstanding anything to the contrary contained in this Agreement, it is the explicit intent of each party hereto that Seller is making no representations or warranty whatsoever, express or implied, including any implied representation or warranty as to condition, merchantability or suitability as to any of the Acquired Assets or other properties of the Business, except those representations and warranties contained in Section 4.

Section 11. TERMINATION.

(a) Termination. This Agreement may be terminated by written notice at any time prior to the Closing Date:

(i) By mutual written consent of Buyer and Seller;

(ii) By Buyer or Seller if the other party hereto shall intentionally fail or refuse to consummate the transactions contemplated hereby or to take any other action referred to herein necessary to consummate the transactions contemplated hereby after affording such defaulting party a five (5) day period after notice in which to cure such default;

(iii) By Buyer if the Closing shall not have taken place on or before the Outside Closing Date; provided, that, Buyer shall notify Seller within five (5) days after the Outside Closing Date whether it has elected to terminate this Agreement pursuant to this clause (iii) or whether Buyer has elected to extend the Outside



Closing Date to a date which is not more than thirty 30 days thereafter and if the Closing shall not have occurred by such date both Buyer and Seller shall thereafter have the right to terminate this Agreement; or

(iv) In an Event of Default as specified in Section 21 herein.

(b) Effect of Termination. In the event of the termination of this Agreement as provided in Section 11(a), this Agreement, other than this Section 11(b), Section 11(c) and Section 12, shall forthwith become wholly void and of no further force and effect and, other than with respect to the defaulting party in the event of a termination pursuant to Section 11(a)(ii), there shall be no liability on the part of Seller or Buyer or their respective officers, directors or partners (except as set forth in Sections 11(c) and 12 hereof).

(c) Payment of Damages upon Breach. If the transactions contemplated by this Agreement are not consummated because one party (the "Non-Breaching Party") terminates this Agreement as a result of a material breach of this Agreement by the other party (the "Breaching Party"), the Breaching Party shall upon the occurrence of any such event, reimburse the Non-Breaching Party for its damages not to exceed \$650,000 resulting from such breach. If the Seller is the Non-Breaching Party it shall automatically be entitled to retain all Deposits, (inclusive of the Debtor in Possession Loan), in lieu of damages. The remedy provided by this Section 11(c) shall be the sole and exclusive remedy of the Non-Breaching Party for any breach by the Breaching Party of any of its obligations hereunder. The sale of the Business and the Acquired Assets to a person other than the Buyer after the Scheduling Order has been entered shall entitle the Buyer to payment of the Fee pursuant to Paragraph 19, in lieu of any entitlement to payment pursuant to this paragraph 11(c).

Section 12. PAYMENT OF CERTAIN EXPENSES. Seller will pay all Federal, state, county, local and foreign taxes which may be payable by reason of the purchase and sale pursuant to this Agreement of the Business. Except as otherwise expressly provided in this Agreement, each party will be liable for its own costs and expenses incurred in connection with the negotiation, preparation, execution or performance of this Agreement.

Section 13. WAIVER: CERTAIN CONSENTS.

(a) Any of the terms of conditions of this Agreement may be waived at any time and from time to time in writing by the party entitled to the benefits thereof without affecting any other terms or conditions of this Agreement.

(b) If the consent of a third party which is required in order to assign or transfer any Acquired Asset (or claim, right or benefit arising thereunder or resulting therefrom) is not obtained prior to the closing Date, or if an attempted assignment or transfer would be ineffective or would adversely affect the ability of Seller to convey its interest in question to Buyer, at Buyer's sole expense Seller will cooperate with Buyer and use reasonable efforts in any lawful arrangement to provide that Buyer shall receive Seller's interest in the benefits of such Acquired Asset. If any consent or waiver is not obtained before the Closing Date and the Closing is nevertheless consummated, Seller agrees to continue to use its reasonable efforts to obtain all such consents as have not been obtained prior to such date, at Buyer's sole expense.

Section 14. NOTICES. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered, addressed or telecopied to the address or telecopier number set forth below and shall be deemed to have been made (i) on the date of service if served personally on the party, (ii) on the second business day after delivery to an overnight courier service if first available delivery is indicated and

paid for, (iii) on the third business day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or (iv) on the date of transmission, if sent by telecopier and confirmation of transmittal is received by the transmitting party. Any party may change its address for purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

If to the Seller, to:

Fink Baking Company, LLC  
Attn: Steve Fink  
5-35 54th Avenue  
Long Island City, NY 11101  
Fax: (718) 392-8300  
Tel: (718) 729-1303

- and -

Angel & Frankel, P.C.  
Attn: Joshua J. Angel, Esq.  
460 Park Avenue  
New York, NY 10022-1906  
Fax: (212) 752-8393  
Tel: (212) 752-8000

If to the Buyer, to:

Fink Acquisition, Inc.  
Attn: Salvatore J. Liga, Esq.  
16 Fuller Road  
Ossining, NY 10562. 374  
Fax:  
Tel:

- and -

Jaspan Schlesinger Hoffman LLP  
Attn.: Scott Y. Stuart, Esq. and  
David Paseltiner, Esq.  
300 Garden City Plaza  
Garden City, NY 11530  
Fax: (516) 746-8282  
Tel: (516) 746-8000

Section 15. ENTIRE AGREEMENT; AMENDMENT. This Agreement and the other agreements referred to herein and entered into in connection herewith and the Confidentiality Agreement dated May 12, 2000, set forth the entire agreement and understanding of the parties in respect of the transactions contemplated hereby and supersede all prior agreements, arrangements and understandings relating to the subject matter hereof including all such agreements, arrangements and understandings between the Seller and Buyer. No representation, promise, inducement or statement of intention has been made by Seller or Buyer to any third parties or to each other that is not embodied in this Agreement, or the other agreements referred to herein and entered into in connection herewith, the Schedules or Exhibits hereto, or the written statements, certificates or other documents delivered pursuant hereto, and neither Seller nor Buyer shall be bound by or liable to any third parties or to each other for any alleged representation, promise, inducement or statement of intention not set forth herein. This Agreement may be amended or modified only by a written instrument executed by Buyer and Seller (to the extent such change relates to it) or by their successors and assigns.

Section 16. PRESS RELEASE. Buyer and Seller shall not issue any press release or make any public announcements of any of the transactions contemplated by this Agreement except as may be agreed to in writing by the other party; provided, however, that notwithstanding the foregoing, Seller shall be permitted, upon prior notice to Buyer, to make such disclosures to the public or governmental authorities, including filings with and statements to the Bankruptcy Court, as its

counsel shall deem necessary to maintain compliance with, or to prevent violation of, applicable laws.

Section 17. GENERAL. This Agreement: (i) shall be governed by, construed and enforced in accordance with the laws of the State of New York without regard to the conflict of law principles thereof; (ii) shall inure to the benefit of and binding upon the successors and assigns of Seller and Buyer, nothing in this Agreement, expressed or implied, being intended to confer upon any other person any rights or remedies hereunder, provided, that, except as otherwise provided herein, neither party hereto may assign its rights or obligations hereunder without the prior written consent of the other party hereto, except that (A) Buyer may assign this Agreement to one or more affiliates of Buyer and (B) this Agreement may be assigned to a trustee appointed to succeed to the rights of Seller; provided, however, that no such assignment shall relieve the assignor of its liability hereunder; and (iii) may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The Section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any legal action or proceeding relating to disputes between the parties hereto solely arising under this Agreement shall be brought in the Bankruptcy Court and, by execution and delivery of this Agreement, each party hereto Seller hereby accepts for the Seller and in respect of its bankruptcy estate, and Buyer hereby accepts for itself, generally and unconditionally, the jurisdiction of the aforesaid court. The parties hereto hereby irrevocably waive any objection, including, without limitation, any objection to the laying of venue or based on the grounds of *forum non conveniens*, which any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction.

Section 18. SEVERABILITY. To the extent that any provision of this Agreement shall be invalid or unenforceable, it shall be considered deleted here from and the remainder of such provision and of this Agreement shall be unaffected and shall continue in full force and effect. In furtherance and not in limitation of the foregoing, if the duration or geographic extent of, or business activity covered by, any provision of this Agreement shall be in excess of that which is enforceable under applicable law, then such provision shall be construed to cover only that duration, extent or activities which may be validly and enforceable covered.

Section 19. FEE. Following the entry of the Scheduling Order, if the Bankruptcy Court fails to approve this Agreement, as provided herein, because another offer for the purchase of the Business has been obtained and approved by the Bankruptcy Court, then the Seller shall pay the Fee at the Closing of the sale of the Business (or any substantial portion of the Assets thereof) to a third party. The obligation to pay the Fee shall be an administrative expense payable from the proceeds of such sale and a lien shall be created on the proceeds until the Fee has been paid.

Section 20. DEFINITIONS.

(a) Defined Terms. As used in this Agreement, the following defined terms have the meanings indicated below:

"Acquired Assets" has the meaning ascribed to it in Section 3(b)(ii).

"Accepted Liabilities" has the meaning ascribed to it in Section 1(c).

"Affiliates" has the meaning ascribed in 11 U.S.C. § 101(2).

"Agreement" means this Asset Purchase Price Agreement and the Exhibits and Schedules hereto, as the same shall be amended from time to time.

"Approval Hearing" means a hearing scheduled by the Bankruptcy Court to approve this Agreement.

"Approval Order" has the meaning ascribed to it in Section 3(b)(ii).

"Bankruptcy Code" has the meaning ascribed to it in the recitals hereto.

"Bankruptcy Court" has the meaning ascribed to it in the recitals hereto.

"Bankruptcy Rules" has the meaning ascribed to it in the recitals hereto.

"Bid Deposit" has the meaning ascribed to it in Section 3(b)(i).

"Breaching Party" and "Non-Breaching Party" has the meaning ascribed to it in Section 11(c) of this Agreement.

"Budget" is Exhibit "C" annexed hereto.

"Business" has the meaning ascribed to it in the forepart of this Agreement.

"Business Day" means a day other than Saturday, Sunday or any day on which banks in New York City are authorized or obligated to close.

"Buyer" has the meaning ascribed to it in the forepart of this Agreement.

"Closing" and "Closing Date" each has the meaning ascribed to it in Section 2.

"Condition of the Business" means the business condition (financial or otherwise), results of operations, assets and properties, of the Seller, taken as a whole.

"Contract" has the meaning ascribed to it in Section 1(a)(iv).

"Debtor in Possession Loan" has the meaning ascribed to it in Section 1(g).

"Deposit" and "Deposits" have the meaning ascribed thereto in Section 1(e).

"Encumbrances" means all liens, claims and encumbrances of any kind, except Accepted Liabilities.

"Excluded Assets" has the meaning ascribed to it in Section 1(b).

"Event of Default" has the meaning ascribed to it in Section 21.

"Fee" has the meaning ascribed to it in Section 3(b)(i).

"Filing Date" has the meaning ascribed to it in the forepart of this Agreement.

"Intellectual Properties" means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names (including but not limited to those set forth on Exhibit 1(c)), inventions, processes, formulae, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, methodologies, computer programs (including all source codes) and related documentation, technical information, manufacturing, engineering and technical drawings, know-how, and all pending applications for, and registration of, patents, trademarks, service marks and copyrights.

"Letter" means the letter of intent dated September 5, 2000.

"LIC Premises" has the meaning ascribed to it in Section 1(B).

"Material Adverse Change" means any change, event or effect that is materially adverse to the general affairs, business, operations or assets of a party.

"Management Agreement" means Exhibit A annexed hereto.

"Outside Closing Date" has the meaning ascribed to it in Section 2.

"Pension Plan Release Credit Amount" has the meaning ascribed to it in Section 1(d).

"Permits" means all governmental or regulatory licenses, permits, franchises, approvals and certificates required in connection with the operation of the Business.

"Person" means any natural person, corporation, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

"Personal Property" has the meaning ascribed to it in Section 1(a)(iv).

"Petition" has the meaning ascribed to it in the forepart of this Agreement.



"Property Lease" has the meaning ascribed to it in Section 1(f).

"Purchase Price" has the meaning ascribed to it in Section 1(d).

"Real Property" has the meaning ascribed to it in Section 1(a)(iii).

"Rejected Asset" means an otherwise Acquired Asset to be conveyed by the Seller to the Buyers hereunder which the Buyers on or before the Closing Date designate in writing to be an Excluded Asset.

"Scheduled Closing Date" has the meaning ascribed to it in Section 2.

"Scheduling Order" has the meaning ascribed to it in Section 3(b)(i).

"Scheduling Provisions" has the meaning ascribed to it in Section 3(b)(i).

"Seller" has the meaning ascribed to it in the forepart of this Agreement.

"Seller's Cash Receipts" means all cash receipts obtained hereafter by Seller after the Filing Date less any cash expended by Seller hereafter pursuant to the Budget through and including the Closing.

(b) Construction of Certain Terms and Phrases. Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "Article" or "Section" refer to the specified Article or Section of this Agreement; (v) the terms "include," "includes," "including," and derivative or similar words shall be construed to be followed by the phrase "without limitation"; (vi) the phrase "ordinary course of business" refers to the business of Seller in connection with the Business; and (vii) the word "or" connotes both the disjunctive and conjunctive of the terms affected, unless otherwise expressly stated. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business

Days are specified. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles. Any representation or warranty contained herein as to the enforceability of a Contract shall be subject to the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar law affecting the enforcement of creditors' rights generally and to general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 21. EVENTS OF DEFAULT. In the case of the happening of any of the following events ("Events of Default"), Buyer shall be entitled to the return of the Deposits and all other rights granted Buyer under the interim DIP financing agreement and the final DIP financing agreement:

(a) Any representation or warranty set forth herein or any report or schedule to be provided by the Seller shall prove to have been materially false or misleading as of the time made or furnished; or

(b) As of the date of the Closing, there is a material difference between the Acquired Assets of the Business and those assets identified on the Daley-Hodkin Appraisal; or

(c) Seller shall have failed to obtain appropriate Bankruptcy Court approval of the interim DIP financing agreement by September 20, 2000; or

(d) Seller shall have failed to obtain appropriate Bankruptcy Court approval of the final DIP financing agreement by <sup>October 5,</sup> ~~September 28,~~ 2000; or

(e) Seller is in material breach of the Management Agreement and such breach remains uncured for two (2) business days after receipt of written notice of such breach; or

(f) Seller shall fail to pay any sums due Summit Bank N.A.; or

(g) Summit Bank N.A. shall declare a default and acceleration of the sums due Summit Bank N.A.;

(h) Summit Bank N.A. shall seek relief from the automatic stay of Section 362 of the Bankruptcy Code and said motion is not resolved to the satisfaction of the Buyer; or

(i) Seller is unable to obtain the appropriate cash collateral order in a form reasonably acceptable to Buyer authorizing Buyer to use all receipts generated by the Business upon Seller making the interest payments provided to Summit Bank N.A. in accordance with the Budget; or

(j) Seller fails to make a motion to have the Agreement approved by the Bankruptcy Court by September 22, 2000; or

(k) Seller fails to obtain an order in a form reasonable acceptable to Seller approving the Agreement by November 7, 2000; or

(l) A default by the Seller in the observance or performance of any of the covenants, terms, conditions or agreements contained in interim DIP financing agreement; or

(m) A default by the Seller in the observance or performance of any of the covenants, terms, conditions or agreements contained in final DIP financing agreement; or

(n) Seller shall change the terms of the interim DIP financing agreement without Buyer's approval; or

(o) Seller shall change the terms of the final DIP financing agreement without Buyer's approval; or

(p) Any lienholder possessing a lien on any material asset of the Seller seeks relief from the automatic stay and said motion is not resolved to the satisfaction of Buyer; or

(q) Entry of an order of the Bankruptcy Court

(i) converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code;

(ii) dismissing Seller's Chapter 11 Case; or

(iii) appointing a trustee or examiner pursuant to Section 1104 of the Bankruptcy Code;

(r) If within 30 days from the date hereof, Buyer notifies Seller that it is not reasonably satisfied with the environmental condition of the leased property, which notice will specify in reasonable detail the reasons for Buyer's dissatisfaction, and which reasons must materially impact the Business or the economic structure of the transaction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

FINK ACQUISITION, INC.

A New York Corporation

By: Albert J. Dye

Name:

Title: President

FINK BAKING COMPANY, LLC

By: J. Fink Secy/Treas

Name:

Title:

EXHIBIT A

MANAGEMENT AGREEMENT

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EXHIBIT "A"

MANAGEMENT AGREEMENT

This Management Agreement (the "Management Agreement"), dated as of September 16, 2000, between Fink Baking Company, LLC (the "Seller") and Fink Acquisition, Inc. ("Manager").

RECITALS

WHEREAS, Seller intends to file a bankruptcy petition (the "Bankruptcy Case") on September 18, 2000 (the "Filing Date") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court") on September 18, 2000 and to thereafter operate the business and manage its property pursuant to sections 1107 and 1108 of the Bankruptcy Code; and

WHEREAS, the Seller intends to file and confirm a plan of reorganization, as may be modified or amended from time to time; and

WHEREAS, the Seller has entered into an Asset Purchase Agreement (the "Agreement") with Fink Acquisition, Inc. (the "Buyer") pursuant to which the Seller, subject to the approval of the Bankruptcy Court, will sell its business and substantially all of its assets (the "Business") to the Buyer, and

WHEREAS, this Management Agreement serves as Exhibit A to the Agreement; and

WHEREAS, the Seller as a condition of the Agreement is required to immediately employ a manager to operate the Business until the Closing (defined in the Agreement),

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

**Section 1.** The Seller hereby employs the Manager and shall promptly after the Filing Date seek an order of the Bankruptcy Court ratifying the terms and conditions of this Management Agreement.

**Section 2.** The term of the Management Agreement shall commence immediately and shall continue in force as such until the Closing, or further order of the Bankruptcy Court.

**Section 3.** By its designee, who shall be Salvatore J. Liga, Manager shall immediately provide the Seller with its services and shall serve as the Seller's chief operating officer with title of Manager. The Manager shall be responsible for the conduct of the Seller's day to day operating affairs commencing from the filing of the Chapter 11 petition through the Closing, or such other date as the Court by further order shall fix. As manager the Manager shall report to and be subject to the general supervision of the Seller's Managing Board (i.e. James C. Fink, Jonathan D. Fink and Stephan A. Fink), and the Manager shall otherwise make all day to day operational decisions with regard to the management of the Seller, including, but not limited to, decisions concerning sales and marketing, incurrence and payment of day to day expenses, plant operations, and the implementation of the Budget. The Manager shall at all times operate in a manner commensurate with the Seller's status as a debtor under Chapter 11. Manager shall have no responsibility to deal with pre-petition claims asserted against the Seller, or to devise a plan of reorganization for the Seller. Manager shall not have the ability to bind the Seller contractually, other than in the Seller's ordinary course of business, or to write checks for the Business without the co-signature of one of the Seller's Managing Board. Manager agrees that payroll and employee benefits shall continue to be funded on a current basis. Except in order to fund payroll and employee benefits on a current basis, as aforesaid, the Company shall not make any expenditure or series of related expenditures in excess of \$1,000, however evidenced, without Manager's prior authorization.

Section 4. Manager shall incur no liability hereunder for any obligations of the Seller. Manager shall have no liability to the owners or creditors of the Seller as a result of any management decisions, unless constituting fraud or willful gross negligence.

Section 5. In consideration for supplying its services, the Seller shall pay the Manager a monthly fee (the "Monthly Fee") in the amount of \$50,000 per month, plus the reasonable disbursements and other out-of-pocket expenses incurred in connection therewith. The Monthly Fee shall be payable in weekly installments.

Section 6. All notices or other communications required or permitted hereunder shall be in writing and shall be delivered by facsimile or sent by certified or registered mail, and shall be deemed given when so delivered by facsimile, or if mailed, three (3) days after the date of mailing, as follows:

If to Seller:

Fink Baking Company, LLC  
5-35 54th Avenue  
Long Island City, NY 11101  
Facsimile: (718) 729-1303  
Tel: (718) 392-8300

with a copy to:

Angel & Frankel, P.C.  
Attn: Joshua J. Angel, Esq.  
460 Park Avenue  
New York, NY 10022  
Facsimile: (212) 752-8393  
Tel: (212) 752-8000

-and-  
Modlin Haftel & Nathan LLP  
Attn: Charles Modlin, Esq.  
777 Third Avenue  
New York, NY 10017  
Facsimile: (212) 832-1642  
Tel: (212) 832-1600

If to Buyer or Manager:



Fink Acquisition, Inc.  
Attn: Salvatore J. Liga, Esq.  
16 Fuller Road  
Ossining, NY 10562  
Facsimile:  
Tel:

with a copy to:

Jaspan Schlesinger Hoffman LLP  
Attn.: Scott Stuart, Esq.  
300 Garden City Plaza  
Garden City, NY 11530  
Fax: (516) 746-8282  
Tel: (516) 746-8000

Section 7. The provisions of this Management Agreement may not be modified or amended unless such modification or amendment is agreed to in writing by each of the parties hereto and approved by the Bankruptcy Court. No waiver by any party hereto or any breach by any other party hereto of any condition or provision of this Management Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the time, or at any prior or subsequent time.

Section 8. This writing constitutes the entire agreement of the parties hereto relating to the subject matter hereof and there are no written or oral terms or representations made by any party other than those contained herein.

Section 9. Any provision of this Management Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, but shall be enforced to the maximum extent permitted by law. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10. This Management Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to the choice of law principles thereof.

Section 11. This Management Agreement is subject to and conditioned and shall be effective only upon the filing of the Chapter 11 petition.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

FINK BAKING COMPANY, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_  
MANAGER

EXHIBIT B(1)

LIST OF REAL PROPERTY LEASES, EQUIPMENT LEASES, LICENSE  
AGREEMENTS AND PRE-PETITION CURE AMOUNTS

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Exhibit B(1)

Unexpired Leases (all relating to non-residential real property)

1. Lease, dated June 16, 1995, between Fink Baking Corporation (now known as Fink Holdings, Inc.) and Seller.

Landlord: Fink Holdings  
5-35 54th Avenue  
Long Island City, NY 11101

2. Lease Agreement, dated December 21, 1999, between Port Imperial Ferry Corp. and Seller.

Landlord: Port Imperial Ferry Corp.  
c/o ARCORP Properties  
Pershing Road  
Weehawken, NJ 07087

3. Sublease Agreement, dated as of January 12, 2000, between Paul Arpin Van Lines, Inc. and Seller.

Landlord: Paul Arpin Van Lines, Inc.  
99 James P. Murphy Industrial Highway West  
Warwick, RI 02893

Equipment Leases

Norwest Financial Leasing, Inc.  
Rental Agreement #1072848-1 for Innnowave 240-3 Purification System

Bankers Leasing Association, Inc.  
Lease for Softech Financial Planner System (a/k/a Roadnet)

Pitney Bowes Credit Corporation  
Equipment Lease for Mach/Scale Model No. U570 Meter Model A9L3

Pitney Bowes Credit Corporation  
Equipment Lease for Mach/Scale Model No. E500 Meter Model 65L4

DeLage Landen Financial Services  
Lease for Toshiba Copier Model no. FT6645

Name/Address	Description	Term	Amount
Bankers Leasing P.O. Box 9209 Uniondale, NY 11555	Roadnet	Quarterly	\$7,240.27
Cassone Leasing 1950 Lakeland Ave. Ronkonkoma, NY 11779	Trailer	Monthly	92.0
DeLage Landen Financial Ricoh Leasing P.O. Box 41601 Philadelphia, PA 19101	FT6645 Copier-Lic	Monthly	316.80
Kronos Inc. Leasing Division P.O. Box 11517 Boston, MA 02211	Timeclock	Monthly	2,629.84
Norwest Financial Leasing, Inc. P.O. Box 10336 Des Moines, IA 50306	Innowave Purification	Quarterly	254.40
Pitney Bowes Credit Corp. P.O. Box 856460 Louisville, KY 40285	Mail/Mach Scale NJ	Monthly	435.57
	Mail/Mach Scale LIC	Quarterly	479.20
Xerox Corporation P.O. Box 827598 Philadelphia, PA 19182	Copier - NJ	Monthly	923.81
	Fax Mach - Acctg	Monthly	97.81
	Fax Mach - Cust. Serv.	Monthly	97.81

EXHIBIT B(2)

LIST OF INTELLECTUAL PROPERTIES

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LIST OF INTELLECTUAL PROPERTIES

Tradename/ Trademark	Reg. Owner	Assigned To	Reg. No.
FINK	Fink Baking Corporation	Fink Baking Company, LLC pursuant to Assignment of Trademarks, dated June 16, 1995, between Fink Baking Corporation and Fink Baking Company, LLC	1,541,773
STRAIGHT FROM THE HEARTH	Fink Baking Corporation	Fink Baking Company, LLC pursuant to Assignment of Trademarks, dated June 16, 1995, between Fink Baking Corporation and Fink Baking Company, LLC	1,626,177
FIT & HEARTY	Fink Baking Corporation	Fink Baking Company, LLC pursuant to Assignment of Trademarks, dated June 16, 1995, between Fink Baking Corporation and Fink Baking Company, LLC	1,628,521
FRESH BAKED	(not registered)		
SABRETT		Licensed to Fink Baking Company, LLC pursuant to assignment and Assumption of Licensing Agreement, dated as of June 16, 1995, by and between Papalexis Industries, Inc. and Fink Baking Company, LLC	313,927
SABRETT		Licensed to Fink Baking Company, LLC pursuant to assignment and Assumption of Licensing Agreement, dated as of June 16, 1995, by and between Papalexis Industries, Inc. and Fink Baking Company, LLC	620,485
SABRETT Pushcart Logo		Licensed to Fink Baking Company, LLC pursuant to assignment and Assumption of Licensing Agreement, dated as of June 16, 1995, by and between Papalexis Industries, Inc. and Fink Baking Company, LLC	2567358 (Japan)

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<b>Tradename/ Trademark</b>	<b>Reg. Owner</b>	<b>Assigned To</b>	<b>Reg. No.</b>
SABRETT		Licensed to Fink Baking Company, LLC pursuant to assignment and Assumption of Licensing Agreement, dated as of June 16, 1995, by and between Papalexis Industries, Inc. and Fink Baking Company, LLC	2188337 (Japan)



EXHIBIT B(3)

LITIGATION

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## LITIGATION

- (1) The Brittany Group, Inc. v. Fink Baking Co., Inc., Civil Court of the State of New York, County of Queens, Index No. 44104/99.
- (2) Employers Insurance Company of Wausau, a Mutual Company v. Fink Baking Corporation, Supreme Court of the State of New York, County of Queens, Index No. 27110/99.
- (3) Southern Container Corp. v. Fink Baking Company, LLC, Supreme Court of the State of New York, County of Suffolk, Index No. 00-1831.
- (4) Order on Consent with the New York State Department of Environmental Conservation (DEC File No. R2-19990922-142) dated August 2000.

EXHIBIT B(4)

TRADE NAMES AND TRADEMARKS

SEE EXHIBIT B(2)

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EXHIBIT C

BUDGET

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Estimated Starting Date: Week Ending 9/23/00

## Cash Flow Budget: Funded By Purchaser For Discussion Purposes Only

### Notes and Assumptions

(Footnotes)

- Note: 1 Funding needed for 6 weeks \$1,000,000  
Note: 2 The above includes \$50,000 for security deposits paid over 4 weeks at \$15,000 per week  
Note: 3 A/R balance after holidays: success of collections depends on management  
Note: 4 A/R balance at this stage is assumed at \$4,000,000. The actual balance will be plugged in on the day of filing  
Note: 5 Bank balance opening figure @ 9/1/00 = \$29,500  
Note: 7 New school collections are consistent (31 days less 2%)  
Note: 8 All operating costs exclude payroll and ingredients  
Note: 9 Cash Sales Based On Management A History  
Note: 10 Raw Ingredient and finished product purchases based on averages after analyzing vendors  
Note: 11 Fixed Costs, R & M costs based on actual and averages over the past 3 months  
Note: 12 New School settlement discount 2%  
Note: 13 Collections factor for old A/R 0%  
Note: 14 The Bank Is Not Funding  
Note: 15 The school contract requires certified checks to Bens for product  
Note: 16 School sales are based on management projections  
Note: 17 All expenses are based on actual and averages over the past 3 months  
Note: 18 The finished product purchases can swing \$20,000 either way depending on productivity and breakdowns

SEP. 12. 2000 4:08PM

NO. 428

P. 4



**Draft: For Discussion Purposes**

**Detail Of Weekly Sales And Disbursement Schedule**

	W1	W2	W3	W4	W5	W6	W7	W8	W9	W10	W11	W12	W13	Total
	Week 28	Week 29	Week 30	Week 31	Week 32	Week 33	Week 34	Week 35	Week 36	Week 37	Week 38	Week 39	Week 40	13 Weeks
<b>Weeks info (filing)</b>	1	2	3	4	5	6	7	8	9	10	11	12	13	13 Weeks
<b>(000's omitted)</b>														
<b>School Sales</b>	190	190	190	170	190	190	190	170	190	100	190	100	190	2,340
<b>Cash Sales Based On March 00</b>	230	230	230	220	230	230	230	225	230	200	230	230	230	2,945
<b>New Charge accounts</b>	535	535	535	500	535	535	535	500	535	490	535	535	535	6,840
<b>Total Sales</b>	955	955	955	800	955	955	955	805	955	790	955	955	955	12,125
<b>Payroll (net paid to employees)</b>	325	325	325	315	325	325	325	325	325	310	325	325	325	4,200
<b>Withholding Taxes</b>	33	33	33	33	33	33	33	33	33	33	33	33	33	429
<b>Overriding</b>														
<b>Vacation</b>	57	57	57	57	57	57	57	57	57	57	57	57	57	0
<b>Union Local 3</b>	30	30	30	30	30	30	30	30	30	30	30	30	30	741
<b>Union Local 802</b>	40	40	40	40	40	40	40	40	40	40	40	40	40	300
<b>Payroll: All Departments</b>	485	485	485	475	485	485	485	485	485	470	485	485	485	5,200
	51%	51%	51%	50%	51%	51%	51%	51%	51%	50%	51%	51%	51%	52%

	Week 38	Week 39	Week 40	Week 41	Week 42	Week 43	Week 44	Week 45	Week 46	Week 47	Week 48	Week 49	Week 50	13 Weeks
(000's omitted)	23,810.00	20,850.00	20,150.00	14,010.00	21,010.00	20,010.00	14,010.00	11,010.00	18,010.00	25,010.00	20,010.00	20,010.00	18,010.00	13 Weeks
ADW	1.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	26
Camp: Oil	2.30	7.30	7.30	7.30	7.30	7.30	7.30	7.30	7.30	7.30	7.30	7.30	7.30	95
Camp: Sugar	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	56
Camp: Flour	58.00	59.00	59.00	59.00	59.00	59.00	59.00	59.00	59.00	59.00	59.00	59.00	59.00	707
Codgen	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	18
Drysdale	4.70	4.70	4.70	4.70	4.70	4.70	4.70	4.70	4.70	4.70	4.70	4.70	4.70	81
American Vast	4.80	4.80	4.80	4.80	4.80	4.80	4.80	4.80	4.80	4.80	4.80	4.80	4.80	81
Purden	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	20
Long Company	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	104
Front A 2	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Adjustment For Vacation Day	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Purchases For Inventory	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	85
Raw Ingredients :	84.60	84.60	84.60	84.60	84.60	84.60	84.60	84.60	84.60	84.60	84.60	84.60	84.60	1,281.84
Automatic	10.32%	10.32%	10.32%	10.32%	10.32%	10.32%	10.32%	10.32%	10.32%	10.32%	10.32%	10.32%	10.32%	10.32%
Fund Stockmans	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	195
Neaf's	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	325
Baba Fins	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	520
Philadelphia Baking	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	195
Acme	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	20
Tribeca	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	143
Yoda	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	26
Best Quality	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	65
Deathrow	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0
H.E.B	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	7
Kavanaugh	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	3
Morison	-	-	-	-	-	-	-	-	-	-	-	-	-	78
CPC	-	-	-	-	-	-	-	-	-	-	-	-	-	0
NY Bagels	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0
Polishover	3.30	3.30	3.30	3.30	3.30	3.30	3.30	3.30	3.30	3.30	3.30	3.30	3.30	5
Danisco	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	43
Other - Biscuits/Random Brands	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	17
Fund Bait Purchases	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	65.00	38
Adjustment For Vacation	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	845
Adjust For School Contract	194.20	199.20	190.20	179.20	189.20	199.20	194.20	179.20	189.20	194.20	199.20	194.20	199.20	0
Finished Product Purchases	20.80%	20.80%	20.80%	20.15%	20.80%	20.80%	20.80%	20.07%	20.80%	20.80%	20.80%	20.80%	20.80%	20.80%



(000's omitted)	Week 38	Week 39	Week 40	Week 41	Week 42	Week 43	Week 44	Week 45	Week 46	Week 47	Week 48	Week 49	Week 50	13 Weeks
Southern Container - House	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	104
Prattville Container - House	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	70
Island Container	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	52
West Carbon	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	52
High Tec	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	91
St Johns	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	4.50	50
Boyer - Kraft	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	20
Kraft	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	13
Paline	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Northman	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	17
Hunterman	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Chief / School / Canada	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	78
Ultra Flyer	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	65
Packaging - Note 3	48.30	48.30	48.30	48.30	48.30	48.30	48.30	48.30	48.30	48.30	48.30	48.30	48.30	627.80
	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Scaling Exp: clearing & Trays	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	65
Baling Exp: Sanitation	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	33
Insurance: Workers Comp	11.40	11.40	11.40	11.40	11.40	11.40	11.40	11.40	11.40	11.40	11.40	11.40	11.40	148
Insurance: Loan Workers Comp	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Utility Expense	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	104
OR Contractor	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	104
Tire & Tires	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	13
Restroom & Maintenance	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	18.00	234
Other the rest and below	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Alcoa Refrigeration	-	-	-	-	-	-	-	-	-	-	-	-	-	0
AMF Bakery Systems	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Mid Island Exc	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Choice Distill Flavors	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Empire Baking	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Benfield	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Dacco	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Kapraloy	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Bobber	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Alman Park	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Swiches Unlimited	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Catano	-	-	-	-	-	-	-	-	-	-	-	-	-	0
McWorby	-	-	-	-	-	-	-	-	-	-	-	-	-	0
JLJ	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Galipet	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Rent & Real Estate Taxes, Note 11	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	156
MPR Operating Costs	67	67	67	67	67	67	67	67	67	67	67	67	67	870
	7.01%	7.01%	7.01%	7.01%	7.01%	7.01%	7.01%	7.01%	7.01%	7.01%	7.01%	7.01%	7.01%	7.01%

(000's omitted)	Week 38	Week 39	Week 40	Week 41	Week 42	Week 43	Week 44	Week 45	Week 46	Week 47	Week 48	Week 49	Week 50	13 Weeks
Fuel: Regular	8.00	8.00	9.00	8.00	8.00	9.00	8.00	8.00	8.00	8.00	8.00	9.00	8.00	117
Fuel: Diesel	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Insurance: Auto	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	39
Rent Expenses	2.18	2.18	2.18	2.18	2.18	2.18	2.18	2.18	2.18	2.18	2.18	2.18	2.18	28
Trawl & Tolls	4.19	4.19	4.19	4.19	4.19	4.19	4.19	4.19	4.19	4.19	4.19	4.19	4.19	54
Repairs & Maintenance														0
Brine	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	16
Crustacean Chitin	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	10
DMG	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	9
CDM	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	9
Sard	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	9
Manhattan Ignition	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	8
Oils/ene	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	7
Quality Auto Trans	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	0.40	5
Skiway	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.30	0.30	4
Waco Tire	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	3
All local DMG's	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	3
Springback	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	3
Anchor	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	3
Fleet Wash	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	5
Freight Expenses & Other	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	89
Distribution Expenses Costs	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	430
	2.67%	2.67%	2.67%	2.67%	2.67%	2.67%	2.67%	2.70%	2.67%	2.67%	2.67%	2.67%	2.67%	2.55%
Easy Part	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	13
Rebates	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00	104
Adv & Promotion	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Commissary: Big Apple	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	40
Tooth Repair	1.30	1.30	1.30	1.30	1.30	1.30	1.30	1.30	1.30	1.30	1.30	1.30	1.30	17
Other Selling Expenses	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	3.50	48
Selling Expenses	17	17	17	17	17	17	17	17	17	17	17	17	17	225
	1.81%	1.81%	1.81%	1.81%	1.81%	1.81%	1.81%	1.82%	1.81%	1.81%	1.81%	1.81%	1.81%	1.85%

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	Week 38	Week 39	Week 40	Week 41	Week 42	Week 43	Week 44	Week 45	Week 46	Week 47	Week 48	Week 49	Week 50	13 Weeks
(000's omitted)	7-31-00	8-31-00	9-30-00	10-31-00	11-30-00	12-31-00	1-31-01	2-29-01	3-31-01	4-30-01	5-31-01	6-30-01	7-31-01	
Insurance Expenses - Can Liability	3.36	3.36	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	3.20	42
Professional Fees Consulting	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	11.00	143
Professional Legal	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	78
Telephones	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	56
Stationary & Printing	2.78	2.70	2.70	2.70	2.70	2.70	2.70	2.70	2.70	2.70	2.70	2.70	2.70	35
Postage	8.58	8.58	8.50	8.50	8.50	8.50	8.50	8.50	8.50	8.50	8.50	8.50	8.50	7
Armed Car & Security	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.27	4
Dues & Subscriptions	0.78	0.78	0.78	0.78	0.78	0.78	0.78	0.78	0.78	0.78	0.78	0.78	0.78	10
Extraordinary Costs (Spec. Deposits)	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	60
(Unit)	1.84	1.84	1.84	1.84	1.84	1.84	1.84	1.84	1.84	1.84	1.84	1.84	1.84	21
Licenses & Permits	-	-	-	-	-	-	-	-	-	-	-	-	-	0
General	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	52
Leases Contractual EPC & Steam	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	52
Equipment Leases	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Equipment Maintenance	-	-	-	-	-	-	-	-	-	-	-	-	-	0
401 K Management Contribution	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	28
Management Insurance	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	13
G R A	58	55	55	55	41	41	41	41	41	41	41	41	41	598
	5.90%	5.90%	5.90%	5.90%	4.33%	4.33%	4.33%	4.33%	4.33%	4.33%	4.33%	4.33%	4.33%	4.87%
Principle & Interest Payment	4.07	4.07	4.07	4.07	4.07	4.07	4.07	4.07	4.07	4.07	4.07	4.07	4.07	53
Reserve Interest	6.40	6.40	6.40	6.40	6.40	6.40	6.40	6.40	6.40	6.40	6.40	6.40	6.40	83
Paperwork	3.12	3.12	3.12	3.12	3.12	3.12	3.12	3.12	3.12	3.12	3.12	3.12	3.12	0
Balance Fink Family	16	16	16	16	16	16	16	16	16	16	16	16	16	87
Interest & Debt Service	1.83%	1.83%	1.83%	1.83%	1.83%	1.83%	1.83%	1.83%	1.83%	1.83%	1.83%	1.83%	1.83%	203
Total of All Disbursements	1020	1020	1020	980	1005	1005	1005	1005	1005	935	1005	1005	1005	13070
Real Time Cash w/o Old AR	(85)	(85)	(85)	(100)	(50)	(50)	(50)	(50)	(50)	(145)	(50)	(50)	(50)	(885)

## MANAGEMENT AGREEMENT

This Management Agreement (the "Management Agreement"), dated as of September 16, 2000, between Fink Baking Company, LLC (the "Seller") and Fink Acquisition, Inc. ("Manager").

### RECITALS

WHEREAS, Seller intends to file a bankruptcy petition (the "Bankruptcy Case") on September 18, 2000 (the "Filing Date") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court") on September 18, 2000 and to thereafter operate the business and manage its property pursuant to sections 1107 and 1108 of the Bankruptcy Code; and

WHEREAS, the Seller intends to file and confirm a plan of reorganization, as may be modified or amended from time to time; and

WHEREAS, the Seller has entered into an Asset Purchase Agreement (the "Agreement") with Fink Acquisition, Inc. (the "Buyer") pursuant to which the Seller, subject to the approval of the Bankruptcy Court, will sell its business and substantially all of its assets (the "Business") to the Buyer, and

WHEREAS, this Management Agreement serves as Exhibit A to the Agreement; and

WHEREAS, the Seller as a condition of the Agreement is required to immediately employ a manager to operate the Business until the Closing (defined in the Agreement),

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

**Section 1.** The Seller hereby employs the Manager and shall promptly after the Filing Date seek an order of the Bankruptcy Court ratifying the terms and conditions of this Management Agreement.

**Section 2.** The term of the Management Agreement shall commence immediately and shall continue in force as such until the Closing, or further order of the Bankruptcy Court.

**Section 3.** By its designee, who shall be Salvatore J. Liga, Manager shall immediately provide the Seller with its services and shall serve as the Seller's chief operating officer with title of Manager. The Manager shall be responsible for the conduct of the Seller's day to day operating affairs commencing from the filing of the Chapter 11 petition through the Closing, or such other date as the Court by further order shall fix. As manager the Manager shall report to and be subject to the general supervision of the Seller's Managing Board (i.e. James C. Fink, Jonathan D. Fink and Stephan A. Fink), and the Manager shall otherwise make all day to day operational decisions with regard to the management of the Seller, including, but not limited to, decisions concerning sales and marketing, incurrence and payment of day to day expenses, plant operations, and the implementation of the Budget. The Manager shall at all times operate in a manner commensurate with the Seller's status as a debtor under Chapter 11. Manager shall have no responsibility to deal with pre-petition claims asserted against the Seller, or to devise a plan of reorganization for the Seller. Manager shall not have the ability to bind the Seller contractually, other than in the Seller's ordinary course of business, or to write checks for the Business without the co-signature of one of the Seller's Managing Board. Manager agrees that payroll and employee benefits shall continue to be funded on a current basis. Except in order to fund payroll and employee benefits on a current basis, as aforesaid, the Company shall not make any expenditure or series of related expenditures in excess of \$1,000, however evidenced, without Manager's prior authorization.

Section 10. This Management Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to the choice of law principles thereof.

Section 11. This Management Agreement is subject to and conditioned and shall be effective only upon the filing of the Chapter 11 petition.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

FINK BAKING COMPANY, LLC

By: \_\_\_\_\_

*[Signature]* Secy/Treas

By: \_\_\_\_\_

Fink Acquisition, Inc.  
*[Signature]* Pres.  
MANAGER

**EXHIBIT "C"**

**PROCEDURES ORDER**

**Exhibit "C"**

IMANAGE-40820.4