

01-15-1999

HEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

FORM PTO-1594
(Rev. 8-83)
OMB No. 0551-0011 (exp. 4/94)



100942541

Tab settings

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

MFO 1-7-99

1. Name of conveying party(ies):

Homarus, Inc.
76 Kisco Avenue
Mt. Kisco, NY 10549



01-07-1999

U.S. Patent & TMO Form TM Mail Rcpt 101 #25

- Individuals(s)
- General Partnership
- Corporation-State NY
- Other
- Limited Partnership

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

2. Name and address of receiving party(ies)

Name: Chase Venture Capital Associates, L.P.

Internal Address: c/o Chase Capital Partners

Street Address: 380 Madison Avenue, 12th Floor

City: NY State: NY ZIP: 10017

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

If assignee is not determined in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separated document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

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

Execution Date: _____

4. Application number (s) or patent numbers(s):

A. Trademark Application No.(s) 75/290,058

B. Trademark Registration No.(s) 1,606,546

Additional numbers attached? Yes No

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

Name: Robert Alfaron
Internal Address: O'Sullivan Graev & Karabel, LLP

Street Address 30 Rockefeller Plaza, 24th Floor

City: NY State: NY ZIP: 10112

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41)\$ _____

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: _____

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

DO NOT USE THIS SPACE

01 FC:48 40.00 DP
02 FC:48 25.00 DP

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.

Robert T. Buccarelli
Name of Person Signing

Robert T. Buccarelli
Signature

1/4/99
Date

Total number of pages including cover sheet, attachments, and document: 17

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments

TRADEMARK COLLATERAL SECURITY AGREEMENT

THIS AGREEMENT is made on the 4th day of January, 1999, by and between **HOMARUS, INC.**, a New York corporation having a mailing address at 76 Kisco Avenue, Mt. Kisco, New York 10549 ("Company") and **CHASE VENTURE CAPITAL ASSOCIATES, L.P.** having a mailing address at 380 Madison Avenue, 12th Floor, New York, New York 10017 ("Lender").

BACKGROUND

Company and Marshall Smoked Fish Co., Inc. ("Marshall") have made a 10% Subordinated Promissory Note of even date herewith (as amended, modified, restated or supplemented from time to time, the "Note") in favor of the Lender providing for loans by Lender to Company. As a condition precedent, among other things, for Lender to make any financial accommodations under the Note and as a condition precedent to extending the term of the Guaranty (as amended, modified or supplemented from time to time, the "Guaranty"), dated as of November 13, 1998, issued by the Lender in favor of LaSalle Business Credit, Inc. ("LaSalle"), Company agreed to execute and deliver to Lender this Trademark Collateral Security Agreement (as amended, modified, or supplemented from time to time, the "Trademark Agreement"). This Trademark Agreement, covering Trademarks (as hereinafter defined), is being executed contemporaneously with, inter alia, the Note and the Security Agreements (as hereinafter defined) under which Lender is granted a lien on and security interest in, inter alia, machinery, equipment formulations, manufacturing procedures, quality control procedures and product specifications ("Other Assets") relating to products sold under the Trademarks, whereby Lender shall have the right to foreclose on the Trademarks and the Other Assets in the event of the occurrence of an Event of Default (as such term is defined below).

NOW, THEREFORE, in consideration of the premises, Company and Lender hereby agree as follows:

Section 1. Defined Terms. Unless otherwise defined herein, terms defined in the Note shall have their defined meanings when used herein and the following terms shall have the following meanings, unless the context otherwise requires:

"Accounts" shall mean all of Company's presently existing and hereafter arising accounts, accounts receivable, contract rights, instruments, documents, chattel paper, and all other forms of obligations owing to Company arising out of the sale or lease of goods or the rendition of services by Company, whether or not earned by performance, and any and all credit insurance, guarantees, letters of credit and other security therefor, as well as all merchandise returned to or reclaimed by Company, and all products and proceeds of the foregoing.

"Code" shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York.

"Collateral" shall have the meaning assigned to it in Section 2 of this Trademark Agreement.

"Default" shall have the meaning ascribed thereto in the Note.

"Event of Default" shall have the meaning ascribed thereto in the Note.

"General Intangibles" shall mean all of Company's present and future general intangibles and other personal property, any and all rights of Company to all choses or things in action, tax refund claims, credits, claims against carriers and shippers, guarantee claims, contract rights, security interests, security rights and any rights to indemnification, demands, goodwill, Licenses, franchise agreements, subscription costs, patents, patent applications, trade names, trademarks, trademark applications, copyrights, registrations, rights to royalties, blueprints, drawings, customer lists, purchase orders, computer programs, computer discs, computer tapes, literature, reports, catalogs, methods, sales literature, video tapes, confidential information and trade secrets, consulting agreements, employment agreements, leasehold interests in real and personal property, insurance policies, deposits with insurers relating to worker's compensation liabilities, deposit accounts and tax refunds, other than equipment, inventory and Accounts, as well as Company's books and records relating to any of the foregoing, and all products and proceeds of the foregoing.

"Licenses" shall mean the trademark license agreements of Company designated on Schedule I hereto, as any of the same may from time to time be amended or supplemented.

"Proceeds" shall have the meaning assigned to it under Section 9-306 of the Code, and in any event, shall include, but not be limited to (i) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to Company from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to Company from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental body, authority, bureau or agency (or any person acting under color of governmental authority), and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Security Agreements" shall mean, collectively, the Security Agreement dated as of the date hereof by and between the Company and Lender, and Marshall and Lender, respectively; each as amended, modified or supplemented from time to time.

"Trademark Agreement" shall mean this Trademark Agreement, as the same may from time to time be amended or supplemented.

"Trademarks" shall mean the registered trademarks and pending applications shown in the attached Schedule A, and those trademarks which are hereafter adopted or acquired by Company, and all right, title and interest therein and thereto, and all registrations, applications, and recordings thereof, including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, and any foreign country all whether now owned or hereafter acquired by Company.

Section 2. Grant of Security Interest. As collateral security for the prompt payment of the obligations of Company and Marshall (whether under contract, at law or otherwise) owing or

to be owing to the Lender now or hereafter existing, whether matured or unmatured, contingent or liquidated, under the Note, the Guaranty, or the Related Documents including, in each case, any extensions, modifications, substitutions, amendments and renewals thereof, whether for principal, interest, premium, fees, expenses, indemnification or otherwise (collectively, the "Obligations"), Company hereby grants and conveys to Lender, a security interest in and to (a) the entire right, title and interest of Company in and to the Trademarks, including the registrations and applications appurtenant thereto, listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), and in and to any and all trademarks, and registrations and applications appurtenant thereto, hereafter acquired or filed by Company, including without limitation all renewals thereof, all proceeds of infringement suits, the rights to sue for past, present and future infringements and all rights corresponding thereto in the United States and any foreign country and the goodwill of the business to which each of the Trademarks relates and (b) all of Company's right, title and interest in, to and under the following:

(i) all Licenses;

(ii) all Accounts, contract rights and General Intangibles arising under or relating to each and every License (including, without limitation, (A) all moneys due and to become due under any License, (B) any damages arising out of or for breach or default in respect of any such License, (C) all other amounts from time to time paid or payable under or in connection with any such License, and (D) the right of Company to terminate any such License or to perform and to exercise all remedies thereunder); and,

(iii) to the extent not otherwise included, all Proceeds and products of any or all of the foregoing. All of the property referred to in this paragraph 2 is hereinafter collectively called the "Collateral."

Section 3. Representations and Warranties. Company covenants and warrants that as of the date of this Trademark Agreement:

(a) To the Company's knowledge, the Trademarks are subsisting and have not been adjudged invalid or unenforceable:

(b) To the Company's knowledge, each of the Trademarks is valid and enforceable;

(c) To the Company's knowledge, there is no outstanding claim that the use of any of the Trademarks violates the rights of any third person.

(d) To the Company's knowledge, Company is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances (including without limitation pledges, assignments, licenses, registered user agreements and covenants by Company not to sue third persons), except for the Licenses referred to in Schedule I attached hereto;

(e) Company has the right to enter into this Trademark Agreement and perform its terms;

(f) Company has used, and will continue to use for the duration of this Trademark Agreement, proper statutory notice, where appropriate, in connection with its use of the Trademarks;

(g) Company has used, and will continue to use for the duration of this Trademark Agreement, consistent standards of quality in its manufacture of products sold under the Trademarks; and

(h) Marshall owns no, and has no rights or interests in, any collateral of the type listed in Section 2 hereof.

Section 4. Right of Inspection. Company hereby grants to Lender and its employees and agents the right to visit Company's plants and facilities.

Section 5. New Trademarks. (a) If, before the Obligations shall have been paid in full, Company shall obtain rights to any new trademarks, the provisions of paragraph 2 shall automatically apply thereto and Company shall give Lender prompt written notice thereof. (b) Company grants Lender a power-of-attorney, irrevocable so long as the Obligations are outstanding, to modify this Trademark Agreement by amending Schedule A to include any future trademarks, including trademark registrations or applications appurtenant thereto covered by this Trademark Agreement.

Section 6. Covenants. Company covenants and agrees with Lender that from and after the date of this Trademark Agreement and until the Obligations are fully satisfied:

(a) Further Documentation; Pledge of Instruments. At any time and from time to time, upon the written request of Lender, Company will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lender may reasonably deem desirable in obtaining the full benefits of this Trademark Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Code with respect to the liens and security interests granted hereby. Company also hereby authorizes Lender to file any such financing or continuation statement without the signature of Company to the extent permitted by applicable law. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be immediately pledged to Lender and, duly endorsed in a manner satisfactory to Lender.

(b) Maintenance of Trademarks. Company will not do any act, or omit to do any act, whereby the Trademarks or any registration or application appurtenant thereto, may become abandoned, invalidated, unenforceable, avoided, avoidable, or will otherwise diminish in value, and shall notify Lender immediately if it knows of any reason or has reason to know of any ground under which this result may occur. Company shall take appropriate action at its expense to halt the infringement of the Trademarks and shall properly exercise its duty to control the nature and quality of the goods offered by any licensees in connection with the Licenses set forth in Schedule I.

(c) Indemnification. (A) Company assumes all responsibility and liability arising from the use of the Trademarks, and Company hereby indemnifies and holds Lender harmless

from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of Company's operations of its business from the use of the Trademarks. (B) In any suit, proceeding or action brought by Lender under any License for any sum owing thereunder, or to enforce any provisions of such License, Company will indemnify and keep Lender harmless from and against all expense, loss or damage suffered by reason of any defense, set off, counterclaim, recoupment or reduction or liability whatsoever of the obligee thereunder, arising out of a breach of Company of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from Company, and all such Obligations of Company shall be and remain enforceable against and only against Company and shall not be enforceable against Lender except for gross (not mere) negligence or willful misconduct on the part of Lender.

(d) Limitation of Liens on Collateral. Company will not create, permit or suffer to exist, and will defend the Collateral against and take such other action as is necessary to remove any lien, security interest, encumbrance, claim or right, in or to the Collateral, and will defend the right, title and interest of Lender in and to any of Company's rights under the Licenses and to the Proceeds thereof against the claims and demands of all persons whomever

(e) Limitations on Modifications of Licenses. Company will not (i) amend, modify, terminate or waive any provision of any License in any manner which might materially adversely affect the value of such License or the Trademarks as Collateral, without the written consent of Lender, (ii) fail to exercise promptly and diligently each and every material right which it may have under each License (other than any right of termination), without the prior written consent of Lender, or (iii) fail to deliver to Lender a copy of each material demand, notice or document sent or received by it relating in any way to any License or Trademark.

(f) Notices. Company will advise Lender promptly, in reasonable detail (i) of any lien or claim made or asserted against any of the Collateral, (ii) of any material change in the composition of the Collateral, and (iii) of the occurrence of any other event which would have a material adverse effect on the value of any of the Collateral or on the security interests created hereunder.

(g) Limitation on Further Uses of Trademarks. Company will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license, or otherwise dispose of any of the Collateral, without prior written consent of Lender.

Section 7. Lender's Appointment as Attorney-in-Fact.

(a) Company hereby irrevocably constitutes and appoints Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Company and in the name of Company or in its own name, from time to time in Lender's discretion, for the purposes of carrying out the terms of this Trademark Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Trademark Agreement and, without limiting the generality of the foregoing, hereby gives Lender the power and right, on behalf of Company, to do the following:

(i) Upon the occurrence and continuance of an Event of Default, to ask, demand, collect, receive and give acquittances and receipts for any and all moneys due and to become due under any License and, in the name of Company or its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any License and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Lender for the purpose of collecting any and all such moneys due under any License whenever payable;

(ii) Upon the occurrence and continuance of an Event of Default, to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Trademark Agreement and to pay all or any part of the premiums therefor and the costs thereof; and

(iii) Upon the occurrence and continuance of an Event of Default (A) to direct any party liable for any payment under any of the Licenses to make payment of any and all moneys due and to become due thereunder directly to Lender or as Lender shall direct; (B) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (C) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (D) to defend any suit, action or proceeding brought against Company with respect to any Collateral; (E) to settle, compromise, or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as Lender may deem appropriate; and (F) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and to do, at Lender's option, all acts and things which Lender deems necessary to protect, preserve or realize upon the Collateral and Lender's security interest therein, in order to effect the intent of this Trademark Agreement, all as fully and effectively as Company might do.

This power of attorney is a power coupled with an interest and shall be irrevocable. Notwithstanding the foregoing, Company further agrees to execute any additional documents which Lender may require in order to confirm this power of attorney, or which Lender may deem necessary to enforce any of its rights contained in this Trademark Agreement.

(b) The powers conferred on Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Company for any act or failure to act, except for its own gross negligence or willful misconduct.

(c) Company also authorizes Lender to execute, in connection with the sale provided for in paragraph 10(b) of this Trademark Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

Section 8. Execution of Power of Attorney. Concurrently with the execution and delivery hereof, Company is executing and delivering to Lender, in the form of Schedule II hereto, ten (10) originals of a Power of Attorney for the implementation of the assignment, sale or other disposal of the Trademarks pursuant to paragraph 7 hereof.

Section 9. Performance by Lender of Company's Obligations. If Company fails to perform or comply with any of its agreements contained herein and Lender, as provided for by the terms of this Trademark Agreement, shall itself perform or comply, or otherwise cause performance or compliance with such agreement, the expenses of Lender incurred in connection with such performance or compliance shall be payable by Company to Lender on demand and shall constitute Obligations secured hereby

Section 10. Event of Default.

(a) If an Event of Default shall occur and be continuing:

(i) All payments received by Company under or in connection with any of the Collateral shall be held by Company in trust for Lender, shall be segregated from other funds of Company and shall forthwith upon receipt by Company, be turned over to Lender, in the same form as received by Company (duly indorsed by Company to Lender, if required); and

(ii) Any and all such payments so received by lender (whether from Company or otherwise) may, in the sole discretion of Lender, be held by Lender as collateral security for, and/or then or at any time thereafter applied in whole or in part by Lender against all or any part of the Obligations in such order as Lender shall elect. Any balance of such payments held by Lender and remaining after payment in full of all of the Obligations shall be paid over to Company or to whomsoever may be lawfully entitled to receive the same.

(b) If any Event of Default shall occur and be continuing, Lender may exercise in addition to all other rights and remedies granted to it in this Trademark Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the Uniform Commercial Code. Company shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Lender is entitled. Company shall also be liable for the reasonable fees of any attorneys employed by Lender to collect any such deficiency and also as to any reasonable attorney's fees incurred by Lender with respect to the collection of any of the Obligations and the enforcement of any of Lender's respective rights hereunder.

Section 11. Termination. At such time as Company shall completely satisfy all of the Obligations and, each of the Guaranty and the Note are terminated, this Trademark Agreement shall terminate and Lender shall execute and deliver to Company all such releases, deeds, assignments and other instruments as may be reasonably requested by Company or as may be

necessary or proper to reinvest in Company full title to the Trademarks, subject to any disposition thereof which may have been made by Lender pursuant hereto.

Section 12.Notices. Any notice to Lender or Company under this Trademark Agreement shall be given in the manner and to the parties designated in the Note.

Section 13.No Waiver. No course of dealing between Company and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Note or Guaranty shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 14.Cumulative Remedies. All of Lender's rights and remedies with respect to the Collateral, whether established hereby or by the Note or Guaranty, or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently

Section 15.Severability. The provisions of this Trademark Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Trademark Agreement in any jurisdiction.

Section 16.No Modification Except in Writing. This Trademark Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraphs 5 and 7.

Section 17.Successors and Assigns. The benefits and burdens of this Trademark Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

Section 18.Governing Law. The validity and interpretation of this Trademark Agreement and the rights and Obligations of the parties shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Agreement under seal as of the day and year first above written.

WITNESS:

HOMARUS, INC.

Michael Kraus

By: Raymond D. Benvenuti

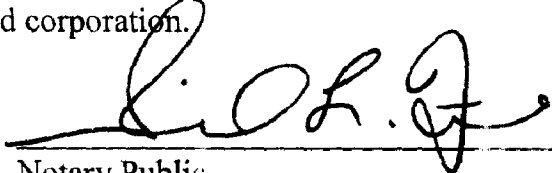
Name: Raymond D. Benvenuti

Title: President

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss:

Before me, the undersigned, on this 4th day of ~~December~~ ^{January}, 1999, personally appeared Raynard D. Benvenuti, to me known personally, and who being by me duly sworn, deposes and says that he is the President of Homarus, Inc., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged said instrument to be the free act and deed of said corporation.



Notary Public

My Commission Expires:

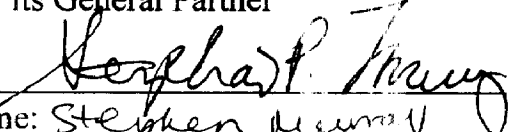
NICOLE L. FENTON
NOTARY PUBLIC, State of New York
No. 02185089334
Qualified in New York County
Commission Expires Dec. 8, 1999

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Agreement under seal as of the day and year first above written.

WITNESS:

**CHASE VENTURE CAPITAL
ASSOCIATES, L.P.**

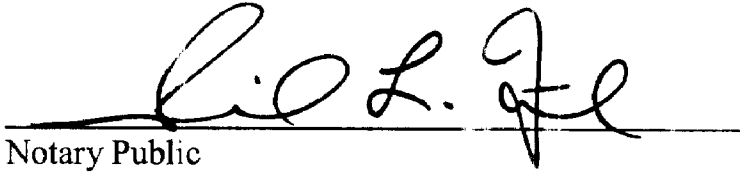
By: **CHASE CAPITAL PARTNERS,**
its General Partner

By: 
Name: Stephen Denny
Title: General Partner



STATE OF NEW YORK)
)
) SS:
COUNTY OF NEW YORK)

Before me, the undersigned, on this 12 day of January 1999, personally appeared Stephen Murray, to me known personally, and who being by me duly sworn, deposes and says that he is the General Partner of Chase Capital Partners, the General Partner of Chase Venture Capital Associates, L.P., and that he was authorized to sign his name thereto on behalf of said Limited Partnership.



Notary Public

My Commission Expires:

NICOLE L. FENTON
NOTARY PUBLIC, State of New York
No. 02FB5089334
Qualified in New York County
Commission Expires Dec. 8, 1999

SCHEDULE A

Schedule A to a Trademark Collateral Security Agreement dated January 4, 1999, by and between **HOMARUS, INC.** and **CHASE VENTURE CAPITAL ASSOCIATES, L.P.**

<u>Reg. No. or Application No.</u>	<u>Reg. or Mark</u>	<u>Filing Date</u>
1,606,546	HOMARUS	07/17/90
75,290,058	Fish/Bagel logo	05/12/97

LICENSES

1. Supply and Trademark License Agreement between Homarus, Inc. and K&P Marketplace, Ltd. Dated April 27, 1998.

2. Supply and Tradename License Agreement between Anthony Morgan Co. (f/k/a Marshall Smoked Fish Co., Inc.) and Marshall Smoked Fish Co., Inc. (f/k/a MSF Acquisition Co.) dated May 21, 1998.