

08-12-2003

ET

Docket No.:

Y

21992.604



Tab settings

To the Honorable Commissioner of Pat

102521116

the attached original documents or copy thereof.

1. Name of conveying party(ies):

HNF Foodservices, Inc.
formerly known as Critelli Olive Oil, Inc.

ARD
8-6-03

2. Name and address of receiving party(ies):

Name: **BFI Business Finance**

Internal Address:

Street Address: **1655 The Alameda**

City: **San Jose**

State: **CA**

ZIP: **95126**

Individual(s) citizenship

Association

General Partnership

Limited Partnership

Corporation-State **California**

Other

If assignee is not domiciled in the United States, a domestic designation is

Yes

No

(Designations must be a separate document from

Yes

No

Additional name(s) & address(es)

OFFICE OF THE
COMMISSIONER OF
PATENTS AND
TRADEMARKS
2003-11-15 11:00 AM
FINANCE SECTION

3. Nature of conveyance:

Assignment

Merger

Security Agreement

Change of Name

Other

Execution Date: **March 21, 2003**

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

A. Trademark Application No.(s)

76/511391
76/511390

76511391

B. Trademark Registration No.(s)

Additional numbers

Yes No

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

Name: **Charlotte C. Carberry, Paralegal**

Internal Address:

Street Address: **c/o Manatt, Phelps & Phillips, LLP**

1001 Page Mill Road, Building 2

City: **Palo Alto**

State: **CA**

ZIP: **94304**

6. Total number of applications and registrations involved:

two

7. Total fee (37 CFR 3.41):.....\$ **\$65.00**

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

50-1847

08/11/2003 ECDOPER 00000041 501847 76511391

DO NOT USE THIS SPACE

01 FC:8521 40.00 BA
02 FC:8522 25.00 BA

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.

Francis X. Ferrer, Esq.

Name of Person Signing

Signature

August 6, 2003

Date

Total number of pages including cover sheet, attachments, and

TRADEMARK

REEL: 002799 FRAME: 0050

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This **Intellectual Property Security Agreement** (this "Agreement") is made as of **March 21, 2003** by and between **HNF Foodservices, Inc. formerly known as Critelli Olive Oil, Inc.**, a California corporation ("Grantor") and **BFI Business Finance** ("Secured Party"), a California corporation.

RECITALS

A. Secured Party has agreed to lend certain funds (the "Loan") to **Fantastic Foods, Inc. and Napa Valley Kitchens** (collectively, **Borrowers**) pursuant to the terms of a **Loan and Security Agreement (Accounts and Inventory)** dated of even date herewith (the "**Loan Agreement**") and related documents (collectively, the "**Loan Documents**"). All capitalized terms used herein without definition shall have the meanings ascribed to them in the **Loan Documents**.

B. In order to induce Secured Party to make the Loan, Grantor has signed or will sign a **General Continuing Guaranty** (the "**Guaranty**") guaranteeing the obligations owing by **Borrowers** to Secured Party.

C. Also in order to induce Secured Party to make the Loan, Grantor has agreed to assign certain intangible property to Secured Party for purposes of securing the obligations of Grantor to Secured Party under the **Guaranty**.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligation and liabilities to Secured Party under the **Guaranty**, Grantor hereby grants a security interest and mortgage to Secured Party, as security, Grantor's entire right, title and interest in, to and under the following (all of which shall collectively be called the "**Collateral**"):

(a) Any and all copyright rights, copyright application, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on **Exhibit A** attached hereto (collectively, the "**Copyrights**");

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, or acquired or held;

(c) Any and all design rights which may be available to Grantor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on **Exhibit B** attached hereto (collectively, the "**Patents**");

(e) Any trademark and service mark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on **Exhibit C** attached hereto (collectively, the "**Trademarks**");



(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use;

(h) All amendments, extensions and renewals of any of the Copyrights, Patents or Trademarks; and

(i) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Authorization and Request. Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this Agreement.

3. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Grantor to its customers in the ordinary course of business and except for liens, encumbrances or security interests described in Exhibit D attached hereto;

(b) Performance of this Agreement does not conflict with or result in a breach of any agreement to which Grantor is party or by which Grantor is bound; ;

(c) During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Grantor, or as set forth in this Agreement;

(d) Each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party;

(e) Grantor shall deliver to Secured Party thirty (30) days prior to the filing thereof, of any applications or registrations that Grantor has made or filed with respect to any Patents, Copyrights or Trademarks and the status of any outstanding applications or registrations.

(f) Grantor shall promptly advise Secured Party of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of Grantor in or to any Trademark, Patent or Copyright not specified in this Agreement;

(g) Grantor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights, (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Secured Party, which shall not be unreasonably withheld, unless Grantor determines that reasonable business practices suggest that abandonment is appropriate;

(h) Grantor shall register or cause to be registered (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those intellectual property rights listed on Exhibits A, B and C hereto within thirty (30) days of the date of this Agreement. Grantor shall register or cause to be registered with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those additional intellectual



property rights developed or acquired by Grantor from time to time in connection with any product prior to the sale or licensing of such product to any third party (including without limitation, revisions or additions to the intellectual property rights listed on such Exhibits A, B and C). Grantor shall, from time to time, execute and file such other instruments, and take such further actions as Secured Party may request from time to time to perfect or continue the perfection of Secured Party's interest in the Collateral;

(i) This Agreement creates, and in the case of after acquired Collateral, this Agreement will create at the time Grantor first has rights in such after acquired Collateral, in favor of Secured Party a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Note upon making the filings referred to in clause (i) below;

(j) Except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights necessary to perfect the security interests created hereunder, and, except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any U.S. governmental authority or U.S. regulatory body is required either (i) for the grant by Grantor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by Grantor in the U.S.; or (ii) for the perfection in the United States or the exercise by Secured Party of its rights and remedies hereunder;

(k) All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Grantor with respect to the Collateral is accurate and complete in all material respects;

(l) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Secured Party's prior written consent. Grantor shall not permit the inclusion in any contract to which it becomes a party of any provisions that could or might in any way impair or prevent the creation of a security interest in Grantor's rights and interests in any property included within the definition of the Collateral acquired under such contracts; and

(m) Upon any officer of Grantor obtaining knowledge thereof, Grantor will promptly notify Secured Party in writing of any event that materially adversely affects the value of any of the Collateral, the ability of Grantor or Secured Party to dispose of any of the Collateral or the rights and remedies of Secured Party in relation thereto, including the levy of any legal process against any of the Collateral.

4. Secured Party's Rights. Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Agreement to take but which Grantor fails to take, after five (5) days' telephonic or written notice to Grantor. Grantor shall reimburse and indemnify Secured Party for all costs and expenses incurred in the reasonable exercise of its rights under this section 4.

5. Inspection Rights. Grantor hereby grants to Secured Party and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable notice to Grantor, and any of Grantor's and its subcontractors' plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold under any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable notice to Grantor and as often as may be reasonably requested; provided, however, nothing herein shall entitle Secured Party to access to Grantor's trade secrets and other proprietary information.

6. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Grantor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses, make, execute, acknowledge and deliver, and file and record in



the proper filing and recording places in the United States, all such instruments, including, appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Secured Party to carry out the intent and purposes of this Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Collateral.

(b) Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, Secured Party or otherwise, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including:

(i) To modify in its sole discretion this Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C thereof, to include reference to any right title or interest in any copyright, patents, or trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title, interest in any copyrights, patents, or trademarks in which Grantor no longer has or claims any right, title or interest;

(ii) To file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law; and

(iii) After the occurrence of an Event of Default, to transfer the Collateral into the name of Secured Party or a third party to the extent permitted under the California Uniform Commercial Code.

7. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement:

(a) An Event of Default occurs under the Loan Agreement or any other agreement;

or

(b) Grantor breaches any warranty or agreement made by Grantor in this Agreement.

8. Remedies. Upon the occurrence of an Event of Default, Secured Party shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require Grantor to assemble the Collateral and to make it available to Secured Party at a place designated by Secured Party. Secured Party shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Secured Party to exercise its rights and remedies upon the occurrence of an Event of default. Grantor will pay any expenses (including attorneys' fees) incurred by Secured Party in connection with the exercise of any of Secured Party's rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Secured Party's rights and remedies with respect to the Collateral shall be cumulative.

9. Indemnity. Grantor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to transactions between Secured Party and Grantor, whether under this Agreement or otherwise (including without limitation attorneys' fees and expenses), except for losses arising from or out of Secured Party's gross negligence or willful misconduct.

10. Reassignment. At such time as Grantor shall completely satisfy all of the obligations secured hereunder, Secured Party shall execute and deliver to Grantor all deeds, assignments and other



instruments as may be necessary or proper to revest in Grantor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Secured Party pursuant hereto.

11. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

12. Attorneys' Fees. If any action relating to this Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

13. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

15. California Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Grantor and Secured Party consent to the non-exclusive jurisdiction of any state or federal court located in Santa Clara County, California. GRANTOR AND SECURED PARTY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN DOCUMENTS, THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

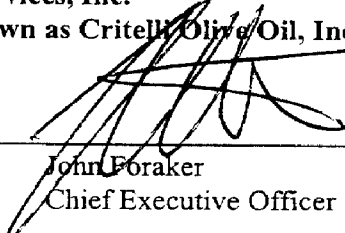
IN WITNESS WHEREOF, the parties hereto have executed this Intellectual Property Security Agreement on the day and year first above written.

Address of Grantor:

580 Gateway Drive
Napa, CA 94558

GRANTOR:

HNF Foodservices, Inc.
formerly known as Critell Olive Oil, Inc.



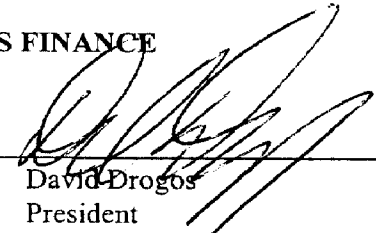
By: John Foraker
Its: Chief Executive Officer

Address of Secured Party:

1655 The Alameda
San Jose, CA 95126

ASSIGNEE:

BFI BUSINESS FINANCE



By: David Drogos
Its: President

Exhibit "A"

Copyrights

All present and future registered and unregistered copyrights.



Exhibit "B"

Patents

All present and future registered and unregistered patents.



Exhibit "C"
HNF Foodservice, Inc.
Trademarks

All present and future registered and unregistered trademarks.

| US. Trademarks | Serial Number | Filing Date |
|---|----------------------|--------------------|
| CRITELLI (WITH DESIGN) In Class 29 | 76511391 | 05/05/2003 |
| CRITELLI In Class 29 | 76511390 | 05/05/2003 |



Exhibit "D"

None



State of California

County of Santa Clara

On March 21st, 2003, before me, Oanh T. Nguyen

Date

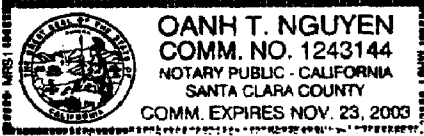
Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared John Foraker and David Drogas

Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ she/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Oanh T. Nguyen
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer - Title(s): _____
- Partner - Limited General
- Attorney in Fact
- Trustee
- Guardian or conservator
- Other: _____

Signer is Representing: _____

