ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT dated as of October ___, 2005, by and between DRINKS AMERICAS HOLDINGS, LTD, a Delaware corporation ("Buyer"), and RHEINGOLD BREWING COMPANY, INC., a Delaware corporation ("Seller").

WHEREAS, Seller has been engaged in the business of manufacturing, marketing, distributing and selling beer products under the trademark "Rheingold" pursuant to the terms of the Rheingold License (as hereinafter defined); and

WHEREAS, Buyer is engaged through subsidiaries in the production, marketing, advertising, distribution and sale of both spirits and non-alcoholic beverages, and Buyer will be engaged in the business of manufacturing, marketing, distributing and selling beer products; and

WHEREAS, Buyer desires to acquire from Seller, and Seller is willing to sell to Buyer, substantially all of Seller's assets, including, without limitation, all rights presently held by Seller to use the trademark associated with the Intellectual Property (as hereinafter defined) in the production, marketing, advertising, distribution and sale of beer products.

NOW, THEREFORE, the parties hereto, in consideration of the premises hereof and other good and valuable consideration, hereby agree as follows:

I. DEFINITIONS

1.1. Definitions. The following terms used herein shall have the meanings given to such terms below.

"Acquired Assets"[1] means, all assets of Seller, real and personal, tangible and intangible, including, without limitation, goodwill and those assets listed in Section 2.1 hereof.

"Assignment"[2] means the assignment by Seller to Buyer of the licensee's interest in the Rheingold License.

"Assumed Contracts" means all of the executory leases, contracts and licenses listed on Schedule A attached hereto.

---

[1] The definition of “Acquired Assets” is a particularly important definition within this Agreement because the entire purpose of the Agreement is to effectuate the sale and transfer of all Seller’s assets (the Acquired Assets) to Buyer. Ensuring that all of Seller’s assets are included in the definition of Acquired Assets is particularly important to Buyer; therefore, it should be noted that the definition includes “all assets of Seller” and, in addition, the Acquired Assets are “including, without limitation” the assets described in Section 2.1. An interesting feature of this definition is its circular nature – the definition states that it expressly includes “all Seller’s assets,” but then it states that this includes the assets listed in Section 2.1. While this is certainly circular, it appears this is an attempt to expressly provide for a sale of “all assets,” yet at the same time give some indication to a reader of the Asset Purchase Agreement of the actual assets to be acquired, including their type and class. It appears that this objective could have been accomplished by expressly providing for a sale of all assets, with the inclusion of an attachment or schedule noting certain assets that are included within the all-encompassing definition of “all Seller’s assets.”

[2] The “Assignment” is particularly important because it forms the foundation for the value of this transaction for both Buyer and Seller – while Seller is known as the Rheingold Brewing Company, Inc., Seller is actually leasing the rights to the brand name (“Rheingold Beer”) from Pabst, the successor in interest to Stroh, the original licensor of the brand name. The Rheingold brand was initially sold in 1963 to the Pepsi Bottling Company of New Jersey and is now owned by Pabst.

"Assumed Obligations"[3] means (i) the obligations of Seller under the Assumed Contracts requiring performance on or after the Closing Date; and (ii) all obligations of Seller referred to in Schedule B hereof; provided, however, that the Assumed Obligations shall not include (x) any liabilities not specifically listed in said Schedule B, (y) any obligations of Seller to any of its employees, or (z) any taxes (including sales or transfer taxes) now or hereafter owed by Seller, or any affiliate or person related to Seller, regardless whether or not attributable to the Acquired Assets or the Business.

"Assumption"[4] means the instrument pursuant to which Buyer shall assume the Assumed Obligations.

"Bill of Sale" means the bill of sale executed by Seller, transferring title to all the Acquired Assets to Buyer.

"Business" means Seller's business of manufacturing and selling beer products.

"Buyer" means Drinks Americas Holdings, Ltd., a Delaware corporation.

"Closing" means the Closing referred to in Section 5.1 hereof.

"Closing Date" means the date and time of the Closing.

"Common Stock"[5] means shares of the Common Stock, par value $.001 per shares, of Buyer.

"Fixed Assets" means all Seller's fixed assets used in connection with the Business, including the machinery, equipment, spare parts and accessories, tools, dies, furniture, fixtures, office furnishings and other equipment.

"FMV" means fair market value of the Common Stock, determined as provided in Section 3.2 hereof.

---

[3] Both parties, and especially the Buyer, are concerned with which liabilities will be assumed by Buyer and which liabilities will remain with the Seller. The use of an "Assumed Obligations" definition illustrates one of the primary benefits of using an asset purchase agreement as opposed to a merger – with an asset purchase agreement the Buyer can purchase designated assets, or even all of the assets, without incurring the liabilities of the business. Note, however, that state law considerations of successor liability should be carefully considered by all parties to an asset purchase agreement.

[4] While "Assumption" is commonly used in many corporate agreements, it is somewhat strange to see Assumption defined as a noun. In this case, the term describes an instrument whereby the Buyer will positively assume the Assumed Obligations; however, Assumption is more commonly defined as an act by a buyer, not the actual instrument whereby the Buyer assumes certain obligations. Although this is a minor point, defining Assumption as a noun is not common and is generally defined as a verb – an act the Buyer must take as part of the overall agreement.

[5] While "Common Stock" is an ordinary definition in most corporate agreements, it is particularly important in this Agreement because Common Stock of the Buyer serves as the primary consideration in this transaction pursuant to Sections 3.1 and 3.2. As of April 30, 2006, the close of Buyer's fiscal year 2006, Buyer maintained only one class of stock – its Common Stock. While the definition of Common Stock within the agreement appears to be brief, this also masks an underlying volatility regarding Buyer's stock; Buyer's stock is considered a penny stock (because it normally trades under $5.00 per share) and as such is subject to certain restrictions and inherent volatility. Even the Buyer's own Form 10-KSB for fiscal year 2006 notes that a shareholder of Buyer's stock "may have difficulty selling shares in the secondary trading market." *See* Buyer's Form 10-KSB (April 30, 2006), *available at* http://www.drinksamericas.com/downloads/10KSB.doc.

"Intellectual Property"[6] means all Seller's trade names, trade name rights, trademarks, trademark rights, logos, trade dress, licenses, patents, patent applications, patent rights, inventions (whether or not patentable), trade secrets, customer lists, copyrights (including registrations and applications therefor), technology, computer software source codes, know-how, processes, specifications, data and lab test results, formulas, projects in development, service marks, computer software, computer software modifications, enhancements and computer software derivative works, other intellectual property rights and other proprietary information, including all rights to, and intellectual property regarding, the "Miss Rheingold" promotional program.

"Inventory" means all inventory of Seller held for resale in connection with, or used to operate, the Business, including finished goods, raw materials, work-in-process, packaging, supplies and personal property and any prepaid deposits relating thereto on hand on the Closing Date, wherever located.

"Lien" means a lien, encumbrance, claim, security interest, mortgage, pledge, restriction, charge, instrument, license, encroachment, option, rights of recovery, judgment, order or decree of any court or foreign or domestic governmental entity, interest, product, tax (foreign, federal, state or local),in each case of any kind or nature, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or noncontingent, material or nonmaterial, known or unknown and including all claims based on any theory that Buyer is a successor, transferee or continuation of Seller or the Business.

"Net Working Capital"[7] means current assets minus current liabilities of Seller, determined in accordance with generally accepted accounting principles, consistently applied.

"Pabst"[8] means Pabst Brewing Co., successor in interest to Stroh under the Rheingold License.

"Purchase Price" means the Purchase Price referred to in Section 3.1hereof.

---

[6] "Intellectual Property" is particularly important to the Buyer in this transaction because the intrinsic value of this transaction from Buyer's standpoint is not derived from traditional hard assets (i.e. factories, machinery, supplies, etc.), but from the Rheingold brand and its related Intellectual Property. As noted previously, the Assignment is an important part of this transaction because the assignment of the Rheingold License allows Buyer to continue to sell Rheingold Beer. However, in addition to such assignment, all elements of the intellectual property that are related to the brand are also particularly important to the Buyer. For example, the definition of "Intellectual Property" specifically mentions the "Miss Rheingold" promotional program. Buyer wants to ensure it acquires the rights to the "Miss Rheingold" promotional program because of its tremendous success in the 20th century and its nostalgic association with Rheingold Beer. As with its circular definition of Acquired Assets and "all Seller's assets," it appears the contract displays similar redundancy here regarding the "Miss Rheingold" contest and all related intellectual property. While the definition of Intellectual Property includes all of Seller's intellectual property, the definition goes on to expressly include "all rights to an intellectual property regarding, the 'Miss Rheingold' promotional program." This redundancy displays the importance of the "Miss Rheingold" contest and associated intellectual property to the overall value of this transaction for both Buyer and Seller.

[7] "Net Working Capital" is a particularly important concept in this Agreement because, once it is calculated following a post-Closing audit pursuant to Section 7.7, if it is found to be below a certain threshold it will result in an adjustment to the second installment of the Purchase Price (discussed in Section 3.2). The definition refers to GAAP being "consistently applied"; while GAAP, by definition, is supposed to be "consistently applied," it appears this language would give Buyer at least some reason to object to Seller's purported Net Working Capital figures in the event that Seller materially changes its method of calculating Net Working Capital to increase such figure (at least to above $9,000, as provided in Section 8.1(d)) to avoid the breaking of any closing condition or to avoid a reduction in the second installment of the purchase price, as provided in Section 7.7.

[8] "Pabst" is now the licensor of the Rheingold License, which allows Seller to continue to use the "Rheingold Beer" brand name. Pabst is the successor in interest to The Stroh Brewing Company, the original licensor under the Rheingold License.

"Receivables" means all accounts receivable and notes receivable relating to the Business and outstanding at the Closing Date.

"Rheingold License"[9] means the License Agreement dated August 22, 1997, as amended, by and between Stroh, as licensor, and Seller, as licensee, including (i) "Addendum No, 1" to License Agreement," dated August 27, 1997; (ii) "Amendment No. 1" to License Agreement dated January 13, 1998, and (iii) any other addendums, amendments, supplements or other agreement modifying the terms and conditions of the Rheingold License.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Seller" means Rheingold Brewing Company, Inc., a Delaware corporation.

"Stroh"[10] means The Stroh Brewery Company, an Arizona corporation.

"Tax Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

II. PURCHASE AND SALE

2.1. Acquired Assets.[11] Upon the terms and subject to the conditions set forth in this Agreement, at the Closing Seller shall sell, assign, transfer, convey and deliver to Buyer free and clear of all Liens, and Buyer shall purchase, acquire and take assignment and delivery of, all right, title and interest of Seller in and to the Acquired Assets, including the following:

(a) all Fixed Assets;

(b) all Intellectual Property;

(c) subject to Section 2.2 hereof, all inventory;

(d) subject to Section 2.2 hereof, all Receivables;

(e) all of Seller's contract rights with respect to the Acquired Assets and the Assumed Obligations;

(f) all computer software documentation, computer software source codes, computer software modifications and enhancements, computer software derivative works, all books and records, correspondence, customer lists, price lists, supplier lists, sales information, computer software

---

[9] As noted previously, the “Rheingold License” is one of the key assets of Seller because it enables Seller to continue to bottle beer and sell it under the Rheingold Beer name. Without the rights of the Rheingold License, Seller’s assets would be minimal, at least in relation to the desire of Buyer to begin marketing and developing the Rheingold Beer brand.

[10] “Stroh” is the original licensor under the Rheingold License. As noted previously, Seller’s rights under the Rheingold License to use the Rheingold Beer trade name is one of the key assets that is being acquired pursuant to this Agreement.

[11] The clause defining which assets are being acquired and which assets are excluded (if any) is of monumental importance in an asset purchase agreement; in fact, purchasing specifically defined assets is the reason for the transaction. In this case, the assets to be acquired reference the Acquired Assets definition (which, importantly, specifically notes that it refers to all of Seller’s assets, including, without limitation, real and personal, tangible and intangible); however, in addition, Section 2.1 specifically notes that such assets are to be free and clear of all Liens. Moreover, while in no way limiting the assets to be acquired, Section 2.1 goes on to specifically list some of the most important categories of assets that are being acquired.

and programs, if any (subject to the rights of third party licensors), and all advertising, packaging and promotional materials and files relating to the Acquired Assets or the Business[12];

(g) all goodwill, other intangible property and causes of action relating to the Acquired Assets or the Business;

(h) all licenses, certificates, permits and telephone numbers relating to the Business, to the extent the same are transferable;

(i) the Assumed Contracts;

(j) all current assets, including deposits, prepaid expenses and accounts receivable;

(k) all books and records relating to the Business and the Acquired Assets; and

(l) the right to use the name "Rheingold Brewing Co., Inc.," as the name of Buyer (or one of its operating subsidiaries) following the Closing as contemplated in Section 7.4 hereof.[13]

2.2. Assumed Obligations. At the Closing, Buyer shall enter into the Assumption, pursuant to which Buyer shall assume the Assumed Obligations.[14]

2.3. Condition and Quality of Tangible and Intangible Personal Property. Buyer acknowledges that it has fully and sufficiently inspected all items of tangible and intangible personal property which are the subject of this Agreement and agrees and acknowledges that, except for representations and warranties included herein, all such property will be sold by Seller and accepted by Buyer "AS IS, WHERE IS"[15] with no representations or warranties of any nature, express or implied, on the part of Seller regarding the condition, quality or physical characteristics of such assets, including all warranties of merchantability and of fitness for any specific purpose.

---

[12] Section 2.1(f) specifically notes that the Acquired Assets includes computer software, books and records, and, importantly, crucial lists of customers, prices and suppliers. While such assets are almost certainly included in the seemingly endless definition of Acquired Assets, specifically listing crucial information that will enable the Buyer to seamlessly transition and operate the business is helpful and ensures Buyer receives all necessary information.

[13] One interesting thing of note in the list of Acquired Assets includes the right to use “Rheingold Brewing Co., Inc.” as the name of one of Buyer’s entities following the Closing. This clause represents foresight on the part of Buyer’s counsel because, while the definition of Acquired Assets is particularly broad, the right to use the name “Rheingold Brewing Co., Inc.” likely would not have been part of such assets, since at the time of the contract and the Closing it is a registered entity under the laws of the State of Delaware. In addition, in accordance with the Use of Corporate Name Covenant in Section 7.4, Seller has agreed to change its name, promptly following the Closing, to a name that does not include the word “Rheingold.”

[14] From the perspective of the Seller, this is a particularly important clause because the parties have previously negotiated which liabilities will be assumed by the Buyer in connection with the Agreement. Consequently, at the closing, it is expected that the Seller will receive the consideration from the Buyer which, in this case, includes the assumption of certain liabilities that are invariably related to the operation of Seller’s business. It should be noted, however, that the parties, by using an asset purchase agreement, are in effect dividing the assets and liabilities from one another. The Buyer is purchasing assets and, it just so happens, is assuming certain, specifically defined liabilities (known as the Assumed Obligations). All of Seller’s liabilities that do not fall within the definition of Assumed Obligations remain with Seller and are the sole responsibility of Seller. Interestingly, however, there is no mention of any requirement for the Buyer to obtain a novation for Seller on the Assumed Obligations (and also the Assumed Contracts); therefore, even though Buyer is “assuming” such obligations, the Seller, unless a novation is obtained from the third party to such contract, remains liable even on the Assumed Obligations. Unless the Assumption (the instrument whereby the Buyer assumes the Seller’s obligations) includes the promise of a novation, then this appears to be a major oversight by Seller’s counsel or, it is possible, a concession that had to be made by Seller (and its creditors and contracting third parties) in order to get the transaction completed.

[15] For all personal property the parties have agreed to an “as is, where is” clause. This clause, in effect, absolves the Seller from any further responsibility regarding the merchantability or condition of such property. As such, as Section 2.3 notes, the Buyer has previously inspected such property and has agreed to accept such property under this Agreement “as is, where is.”

III. PURCHASE PRICE

3.1. Amount. The Purchase Price shall be the sum of (i) $1,050,000, payable in shares of Common Stock, (ii) $100,000 payable in cash, and (ii) the assumption by Buyer of the Assumed Obligations.[16]

3.2. Payment of Purchase Price.[17] The Purchase Price shall be paid by Buyer to Seller in two installments: (i) the first comprising shares of Common Stock having a FMV of $650,000 and assumption of the Assumed Liabilities, and (ii) the second comprising shares of Common Stock having a FMV of $400,000 and cash in the amount of $100,000, the first such installment to be delivered at the Closing and, subject to the provisions of Section 7.7 hereof, the second such installment to be delivered at the first anniversary thereof. For the purposes hereof, the FMV of the Common Stock shall be determined as follows:

(a) The FMV of shares of Common Stock to be delivered at the Closing shall be the average of the daily closing prices of such shares for each of the trading days during the period beginning on the day which is 60 calendar days prior to the Closing and ending on the trading day preceding the Closing; and

(b) The FMV of shares of Common Stock at the first anniversary of the Closing shall be the average of the daily closing prices of such shares for each of the trading days during the period beginning on the day which is 60 calendar days prior to such anniversary, and ending on the trading day preceding such anniversary; provided, however, that Buyer shall have the right to elect to pay such second installment of the Purchase Price entirely in cash on said anniversary.

The closing price for each day referred to in subsection (a) or (b) above shall be the reported closing price of the Common Stock as reported on the OTC Bulletin Board ("OTCBB") of the National Association of Securities Dealers, Inc. or, in case no such closing price is reported on such day, the average of the closing bid and asked prices regular way for such day reported on the OTCBB or, on such principal national securities exchange on which the shares of the Common Stock shall be listed or admitted to trading, or if they are not listed or admitted to trading on any national securities exchange, but are traded in the over-the-counter market, the closing sale

---

[16] While the definition of Acquired Assets may be the ultimate concern for a Buyer, one of the ultimate concerns of the Seller is almost certainly the consideration to be received for such assets. In this case, the parties have agreed to a purchase price with a value of $1,150,000 and the assumption of the Assumed Obligations. However, the Purchase Price is made up of primarily Common Stock of the Buyer, with $100,000 of the consideration coming in the form of cash. With the primary consideration for the transaction being Common Stock of the Buyer (which represents a continuing interest in the Rheingold Beer product and business), it is not surprising to note that the Buyer foresees certain members of Seller's management continuing their roles with the new entity that will operate Seller's current Business following the Closing (see http://www.marketwire.com/mw/release_html_bl?release_id=89439). It could be argued that this transaction is, in effect, a re-capitalization styles as an asset purchase agreement because of the purported vision of continued involvement by Seller's existing management; however, a review of Buyer's subsequent press releases and website do not make mention of Seller's management continuing to operate the Rheingold Business or to have assumed a role in Buyer's organization.

[17] Section 3.2 provides that the Buyer shall pay the Purchase Price in two installments, one at the Closing and the other one year following the Closing. The clause provides a mechanism for determining the valuation of the Common Stock that is to be paid; in effect, the Agreement contemplates that a calculation shall be made of the average of the daily closing prices for the Common Stock for the 60 calendar days preceding the Closing (as well as the second payment date on the one year anniversary of the Closing). The average closing price of each share of Common Stock of the Buyer will form the basis for determining the number of shares to be transferred so that the agreed upon payment is made in full. Interestingly, Section 3.2 contains a provision whereby the Buyer has the right, but not the obligation, to make the entire second installment of the Purchase Price (with a total value of $500,000) in cash. This provision enables the Buyer to avoid any unwanted dilution of its stock and, importantly, could be used tactically by the Buyer if the Buyer perceives that its stock has been undervalued during the 60 calendar days preceding the Closing or if the Buyer believes the price of its Common Stock will appreciate considerably in the future.

price of the shares of Common Stock or, in case no sale is publicly reported, the average of the representative closing bid and asked quotations for the shares of Common Stock on the National Association of Securities Dealers Automated Quotation ("NASDAQ") system or any comparable system, of if the Common Stock is not listed on the NASDAQ system or a comparable system, the closing sale price of the shares of Common Stock or, incase no sale is publicly reported, the average of the closing bid and asked prices as furnished by the National Quotation Bureau, incorporated, or if such organization is no longer in business, by such other source or sources as the Board of Directors ("Board") of the Company may reasonably select for that purpose.

IV. ASSUMPTION OF CONTRACTS AND LIABILITIES

4.1. Assumption.[18] At the Closing, Buyer shall assume and agree to pay, perform, fulfill and discharge, and shall indemnify and hold Seller harmless from and against, (i) the Assumed Obligations, and (ii) the portions of the Purchase Price described in Section 3.2 hereof

4.2. No Other Liabilities.[19] It is expressly agreed and understood that, except as provided in Sections 4.1 and 4.2 hereof, Buyer is not assuming any liability or obligation of Seller of any kind or nature whatsoever, whether accrued or unaccrued, contingent or noncontingent, material or nonmaterial, or known or unknown as of the Closing Date, including, without limitation, any liability or obligation (i) for taxes (including sales or transfer taxes) now or hereafter owed by Seller, or any affiliate or person related to Seller, or attributable to the Acquired Assets or the Business, and relating to any period, or any portion of any period, ending on or prior to the Closing Date or to the sale of the Acquired Assets to Buyer; (ii) under any contract or agreement other than the Assumed Contracts; (iii) accruing under the Assumed Contracts prior to the Closing Date; (iv) relating to or arising out of any product manufactured or sold, or service rendered, by Seller prior to the Closing Date; (v) relating to or arising out of the relationship between Seller and any employee or independent contractor, including workers compensation claims; (vi) for monies due to any third party; or (vii) relating to or arising out of the conduct or operation of the Business prior to the Closing Date. The transfer of the Acquired Assets pursuant to this Agreement shall be free and clear of all Liens.

V. CLOSING

[18] The Buyer's assumption of liabilities is a heavily investigated and heavily negotiated provision. Most buyers party to asset purchase agreements desire to purchase assets and at the same time seek to minimize assumption and exposure to liabilities. Thus, Section 4.1 is the result of the negotiation process and provides which assets Buyer is agreeing to assume (i.e. the Assumed Obligations and the obligation to pay the Purchase Price). In addition. Seller's counsel has wisely insisted on an indemnification provision that will ensure the Buyer will hold Seller harmless for all such Assumed Obligations. However, it must be noted that it does not appear there has been any novation negotiated whereby Seller will be forever free of its obligations under the Assumed Obligations. Without such a novation, if Buyer defaulted, then Seller would still remain liable under the original contracts making up the Assumed Obligations. There is also no credit support or continuing interest in the Acquired Assets that is securing the indemnity being provided to Seller by Buyer. Unless some form of novation or credit support is provided in the Assumption agreement between Buyer and Seller, it appears Seller (or, at the least, Seller's counsel) failed to obtain certain important protections under this agreement.

[19] In conjunction with Section 4.1, Section 4.2 specifically notes that aside from the Assumed Obligations and the portions of the Purchase Price described in Section 3.2, the Buyer is not assuming any other liabilities. This is one of the key features of asset purchase agreements – certain assets are purchase and, if desired, certain liabilities are assumed; however, if not specifically noted, a buyer will make every effort to avoid liabilities. In addition to noting that no other liabilities are being assumed by Buyer, Section 4.2 also lists specific liabilities that are almost certain to arise (taxes and other liabilities relating to the operation of the Business before the Closing) that Buyer is not assuming.

5.1. Closing.[20] The closing of the sale and purchase of the Acquired Assets (the "Closing") shall be held at the offices of Fredrick Schulman, Esq., 241 Fifth Avenue, Suite 302, New York, New York 10016, and shall occur on or before (i) October 21, 2005, or (ii) such later date on which the parties hereto may agree, provided that all of the other conditions precedent set forth in Article VIII hereof have been satisfied or waived by the applicable party, and further provided that this Agreement has not been terminated pursuant hereto.

5.2. Transactions at Closing.[21] At or before the Closing, each of the following shall occur:

(a) Seller shall deliver the Assignment;

(b) Seller shall duly execute and deliver to Buyer the Bill of Sale and such other certificates of title and other instruments of assignment or transfer with respect to the Acquired Assets, all in such form as is reasonably acceptable to Buyer's counsel, as Buyer may reasonably request and as may be necessary to vest in Buyer all of Seller's right, title and interest in and to the Acquired Assets free and clear of all Liens;

(c) Buyer shall deliver to Seller the shares of Common Stock representing the first installment of the Purchase Price as provided in Section 3.2 hereof;

(d) Buyer and Seller shall allocate all expenses under real estate and equipment leases, to the extent such leases constitute Assumed Contracts, such that Seller shall be responsible for all rental thereunder through the date of closing, and Buyer shall be responsible for all rental thereunder thereafter. Buyer or Seller, as the case may be, shall make an appropriate payment to the other such party at the Closing to implement such allocation; and

(e) Buyer and Seller shall duly execute or deliver such certificates and documents (including officer's and secretary's certificates and certificates of good standing) and third party consents[22] as may be required to effectuate the transactions contemplated by this Agreement or as may be reasonably requested by Buyer or Seller, as the case may be.

VI. REPRESENTATIONS AND WARRANTIES

6.1. Representations of Seller.[23] Seller represents and warrants[24] to Buyer as follows:

---

[20] While it is an obvious provision that needs little explaining, a provision spelling out the details for the Closing is an important provision in any asset purchase agreement. For example, the selection of a specific closing date may be important to one or both of the parties, as it may be necessary to complete the acquisition within a specific time frame. Proving a specific closing date that can only be modified by the parties demonstrates that, absent other circumstances, time is at least somewhat of the essence and all parties should be prepared to close the transaction on a certain date.

[21] While the "Transactions at Closing" are not the equivalent of conditions to closing (discussed in Section 8 of the Agreement), they provide the parties with a list of the key transactions and actions that must be taken at the Closing to effectuate the Agreement.

[22] Third-party consents can be particularly important, especially when certain contracts are being assumed. A buyer will almost certainly want to receive consents for all material contracts, since such contracts may be necessary for continued operation of the business. In fact, in most situations, a buyer will reserve the right not to close the transaction if certain consents are not obtained because the failure to receive such consents could threaten the buyer's plans for the assets and might even threaten the economic purpose and substance of the transaction.

[23] Various commentators have noted that seller's representations serve three overlapping purposes: (1) Seller's representations are a device for obtaining disclosure from and about a seller before the execution of he acquisition agreement; (2) Seller's representations may provide a foundation for the buyer's right to terminate the acquisition before or after the closing; and (3) Seller's representations can affect the buyer's right to indemnification by the Seller if the buyer discovers a breach of any representation following the closing. *See* COMMITTEE ON NEGOTIATED ACQUISITIONS, AMERICAN BAR ASSOCIATION, MODEL ASSET PURCHASE AGREEMENT WITH COMMENTARY 69-70 (2001).

(a) Organization.[25] Seller as of the closing date will be a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite power and authority to own and hold the Acquired Assets owned or held by it, to conduct the Business as currently conducted by Seller, and is duly licensed or qualified to do business in each jurisdiction in which the operation of the Business makes such licensing or qualification necessary;

(b) Authority.[26] (i) Subject to obtaining the approval of stockholders, as required by Section 7.1 hereof, Seller shall have all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (ii) Seller shall have obtained any necessary approvals for the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby; and (iii) this Agreement shall have been duly executed and delivered by Seller and (assuming due authorization, execution and delivery by Buyer) shall constitute Seller's legal, valid and binding obligation, enforceable against it in accordance with its terms;

(c) Non-Contravention.[27] Neither the execution and delivery of this Agreement by Seller nor the consummation by Seller of the transactions contemplated hereby shall constitute a violation of or be in conflict with, constitute or create a default under, or result in the creation or imposition of any Liens upon any property of Seller pursuant to (i) its certificate of incorporation or By-laws; (ii) any agreement or commitment to which Seller is a party or by which Seller or any of its properties are bound, or to which Seller is subject; or (iii) any law or statute or any judgment, decree, order, regulation or rule of any court or governmental or regulatory authority relating to Seller;

(d) Compliance with Laws. Seller has conducted and continues to conduct the Business so as to comply in all material respects with all laws and statutes and rules, regulations, judgments, orders or decrees of any court or governmental or regulatory authority applicable to Seller or any of its properties or assets, including the Acquired Assets and the Business, and Seller is not in violation of any such laws, statutes, rules, regulations, judgments, orders or decrees;

(e) Litigation.[28] Except as set forth on Schedule 6.1(e) hereto, there are no actions, suits, proceedings or investigations pending or threatened, relating to or affecting the Business or the Acquired Assets, or which question the validity of this Agreement or challenge any of the transac-

---

[24] It should be noted that there is a technical difference between representations and warranties. Representations are statements of past or existing facts, while warranties are promises that existing of future facts are or will be true. However, it has been noted that this distinction has proved unimportant in acquisition practice. *See* FREUND, ANATOMY OF A MERGER 153 (1975).

[25] The Organization representation by Seller is important to Buyer because Buyer wants to ensure Seller has been operating its business properly (and with all necessary corporate authority under the laws of Delaware, where the Seller is organized) prior to the Agreement and will continue to do so during the time period between the signing of the Agreement and the Closing.

[26] The Authority representation ensures that the Seller has the required corporate power to conduct its business as it is currently conducted under its by-laws, articles of incorporation and the applicable business corporation laws. Thus, the Seller is, in effect, ensuring that its actions with respect to its Business and the Agreement are not "ultra vires."

[27] The Non-Contravention representation by Seller ensures that, by entering into this Agreement, Seller will not violate (or trigger adverse consequences) under any previous agreements or governing documents, such as Seller's by-laws or articles of incorporation, Seller's other contracts or agreements, or any applicable law.

[28] The Litigation representation by Seller is particularly important to Buyer, since Buyer does not want to "buy a lawsuit" via the Agreement. The representation is designed to ensure that all pending or threatened litigation that could potentially affect the Business or question the propriety or validity of the Agreement has been fully disclosed by Seller. The representation refers to Schedule 6.1(e) which lists all actions, suits, proceedings or investigations pending or threatened against Seller.

tions contemplated hereby or the use of the Acquired Assets or the conduct of the Business after the Closing by Buyer;

(f) Acquired Assets.[29] Seller owns, and has the unrestricted right to transfer and assign to Buyer at the Closing, all right, title and interest in and to the Acquired Assets free and clear of all Liens;

(g) Assumed Contracts.[30] Each of the Assumed Contracts is in full force and effect as of the date hereof. Seller has performed all obligations required to be performed by it and is not in default thereunder, and no event has occurred which, with the lapse of time and/or giving of notice, would constitute a default by Seller thereunder;

(h) Confidentiality. Seller has taken all commercially reasonable steps necessary to preserve the confidential nature of all material confidential information (including any proprietary information) with respect to the Business, Acquired Assets and Assumed Contracts;

(i) Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller;

(j) Fixed Assets. Schedule 6.1(j) hereto sets forth a true and complete list and description of the Fixed Assets, which include all of the manufacturing assets used in the operation of the Business;

(k) Intellectual Property.[31] The Acquired Assets include, and Schedule 6.1(k) hereto sets forth a true and complete list of, all Intellectual Property heretofore or currently used or required to be used in connection with the Business, including, without limitation, all rights to, and intellectual property regarding, the "Miss Rheingold" promotional program. To the best of Seller's knowledge[32], except as otherwise indicated on said Schedule, (i) all such Intellectual Property is owned by Seller and is not subject to any Lien, (ii) no product manufactured or sold, and no manufacturing process or Intellectual Property used by Seller in connection with the Business

---

[29] Paying full price for an asset that is subject to a Lien is a one of a buyer's worst nightmares. The Acquired Assets representation is designed to confirm that the assets to be acquired by Buyer are owned by the Seller and, further, are not subject to any Liens.

[30] The Assumed Contracts representation is designed to ensure that the Seller is not in default of any of the contracts that are to be assumed by the Buyer. In this case, one of the key assets to be acquired by Buyer is Seller's rights under the Rheingold License, a contract that gives Seller the right to use the "Rheingold Beer" brand name. Ensuring that Seller is not in default or breach of such agreement is particularly important in this Agreement. Moreover, Buyer is also interested in ensuring that Seller is not in default or breach of other material contracts that are being assumed by Buyer because assumption of a contract that is currently being breached by Seller could result in unanticipated claims of damages by an adverse party or, in the worst case, a default or termination of the contract by the other party.

[31] The Intellectual Property representation is particularly important to Buyer in this transaction because of the nature of Seller's business – Seller's Business does include some tangible assets; however, much of Seller's value is derived from its history and brand. Consequently, the Intellectual Property representation is important because it provides Buyer with comfort that Seller retains all rights to the "Miss Rheingold" promotional program as well as other intellectual property assets specifically listed on Schedule 6.1(k). Additionally, the representation includes an acknowledgement and affirmation by Seller that it has not been infringing on the intellectual property rights of any other entity and has not received notice of infringement by any other person.

[32] Referring to "the best of Seller's knowledge" is an important qualified regarding the scope of the representation being made by Seller. For example, an unqualified representation would say "except as indicated on Schedule X," all such property is owned by Seller. However, by qualifying the representation with "to the best of Seller's knowledge," the Seller is "not exposed to liability for things unknown and the risk of those facts and events is allocated to the buyer (or lessee, etc.)." *See* George W. Kuney, *To the Best of Whose Knowledge?*, __CEB CAL. BUS. L. PRACT. ___ (publication pending April 2007).

infringes or has infringed upon any intellectual property of others, and (iii) Seller has not received any notification or claim of infringement by Seller of any intellectual property from any person and is not aware of a basis for any such claim;

(l) Pabst Consent.[33] Pabst has, pursuant to its contract rights to negotiate for and consummate the purchase of Seller or an interest therein as provided in Section 11 of the Rheingold License (the "Pabst Rights"), been given adequate, timely, and proper notice of the instant transaction, and has allowed the time frame within which to exercise its Pabst Rights to lapse, therefore permitting the instant transaction to proceed; and

(m) Securities Law Matters.[34] Seller has determined that, except as shown on schedule 6.1(m) hereto, (i) each of its stockholders (the "Stockholders") meets the definition of an "accredited investor" contained in Section 5.03 of Regulation D promulgated by the SEC under the Securities Act, (ii) each of such Stockholders has acknowledged that the shares of Common Stock to be received upon. the dissolution of Seller will be "restricted securities" as defined in Rule 144 as promulgated by the SEC which may be sold only as provided in said Rule unless Buyer is satisfied that another exemption from the Securities Act is available, and

(iii) Seller has provided its Stockholders with materials and information concerning Buyer and the transactions proposed to be carried out pursuant hereto, copies of which have been provided to Buyer, which materials and information do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were mad, not misleading.

6.2. Representations of Buyer. Buyer represents and warrants to Seller as follows:

(a) Binding Effect. This Agreement has been duly executed and delivered by Buyer and (assuming due execution and delivery by Seller) constitutes the legal, valid and binding obligation of Buyer and, enforceable against Buyer in accordance with its terms;

(b) Authorized Shares.[35] Buyer has sufficient authorized but unissued shares of Common Stock available to deliver to Seller and to enable Seller to pay the Purchase Price for the Acquired Assets in accordance with the terms of this Agreement;

(c) Non-Contravention. Neither the execution and delivery of this Agreement by Buyer nor the consummation by Buyer of the transactions contemplated hereby shall constitute a violation of, or be in conflict with, constitute or create a default under, or result in the creation or imposition of any Liens upon any property of Buyer pursuant to (i) any agreement or commitment to which Buyer is a party or by which Buyer or any of its properties are bound, or to which Buyer is

---

[33] As noted previously, one of the key assets to be acquired by Buyer under the Agreement is Seller's rights as licensee under the Rheingold License to use the "Rheingold Beer" trade name. The Pabst Consent representation notes that Pabst, as the successor-licensor under the Rheingold License, has received notice of the Agreement and has not objected to the Agreement.

[34] The Securities Law Matters representation made by Seller ensures that Seller has taken the steps necessary to ensure that Seller's shareholders meet the definition of "accredited investor" under the SEC's Regulation D and that such shareholders have acknowledged that Buyer's Common Stock, which will be received by the Seller and such shareholders, will be "restricted securities" under the SEC's Rule 144. These representations ensure that the transaction contemplated by the Agreement will qualify for the exemption from registration requirements under Section 4(2) of the Securities Act of 1933, which exempts from securities law registration requirements "transactions by an issuer not involving any public offering."

[35] Because the Agreement contemplates that the Purchase Price will consist mainly of Common Stock of the Buyer, the Seller has required a representation that Buyer has sufficient authorize, but unissued shares to fund such Purchase Price. Since a corporation cannot issue more shares than it has authorized under its articles of incorporation, Seller seeks to ensure Buyer will have sufficient shares of Common Stock with which to fund the Purchase Price.

subject; or (ii) any law or statute or any judgment, decree, order, regulation or rule of any court or governmental or regulatory authority relating to Buyer;

(d) Governmental Consents. There are no consents, approvals or authorizations of, or registrations, qualifications or filings with, governmental or regulatory agencies or authorities necessary in connection with the execution and delivery of this Agreement by Buyer or for the consummation by Buyer of the transactions contemplated hereby;

(e) Litigation. There are no actions, suits, proceedings or investigations pending or threatened against either Buyer which question the validity of this Agreement or challenge any of the transactions contemplated hereby; and

(f) Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

(g) Compliance with Laws. Buyer has conducted and continues to conduct its business so as to comply in all material respects with all laws and statutes and rules, regulations, judgments, orders or decrees of any court or governmental or regulatory authority applicable to Buyer or any of its properties or assets, and Buyer is not in violation of any such laws, statutes, rules, regulations, judgments, orders or decrees.

VII. COVENANTS[36]

7.1. Stockholder Approval.[37] Seller shall obtain the approval of its Stockholders to the entering into of this Agreement and performance of all the obligations of Seller contemplated hereby, and shall present to Buyer evidence thereof, not later than five business days following the execution hereof.

7.2. Conduct of Business Prior to Closing.[38] Prior to the Closing, Seller shall continue to operate the Business only in the ordinary and usual course and consistent with Seller's past practices. Without limiting the generality of the foregoing, Seller shall use all commercially reasonable efforts and diligence (i) to preserve the business operations of Seller and the Business intact, (ii) to keep available the services of its current personnel, (iii) to preserve in full force and effect and to perform the contracts, agreements, instruments, leases, and licenses of Seller, and the arrangements and understandings of Seller, (iv) to preserve the goodwill of Seller's suppliers, cus-

---

[36] Most asset purchase and other agreements segregate covenants from representations, warranties and conditions to closing. A covenant is a promise by one party to perform certain actions (or, inversely, to refrain from taking certain actions). A breach of a covenant by any party will result in contract liability by the breaching party to the non-breaching party if the transaction ultimately does not close as planned.

[37] The Shareholder Approval covenant is an obligation of Seller to ensure that its shareholders approve the sale of substantially all of Seller's assets pursuant to the Agreement. This is particularly important because Seller is a Delaware corporation, and, under Delaware law, a sale of substantially all the assets of a Delaware corporation requires the approval of not only the board of directors, but also the approval of the holders of a majority of the outstanding stock of the corporation. *See* DEL. CODE. ANN. tit. 8, §271 (2007).

[38] The Conduct of Business Prior to Closing covenant ensures that the Seller will continue to operate its business consistent with its ordinary practice. This covenant prevents the Seller from taking certain actions that could adversely affect the value of the Acquired Assets or the Seller's Business or that might interfere with Buyer's plans for the Seller's Business. In this Agreement, Seller is specifically covenanting to perform certain actions that will maintain the value of the Seller's Business, such as preserving operations, preserving the goodwill of suppliers, customers, and the community, maintaining insurance policies, and continuing to advertise.

tomers, community and others having relations with Seller, (v) to continue in full force and effect a11 binders and policies of insurance of Seller and (vi) to continue its advertising and promotional activities, if any, and pricing and purchasing policies, in accordance with past practices.

7.3. Access.[39] From the date hereof until the Closing, upon reasonable notice, Seller shall, and shall cause its officers, directors, employees, agents and counsel to (i) afford the officers, employees, and authorized agents, accountants, counsel and financing sources and representatives of Buyer reasonable access, during normal business hours, to the offices, properties, other facilities, books and records of Seller and to those officers, directors, employees, agents, accountants and counsel of Seller who have knowledge relating to the Business, and (ii) furnish to the officers, employees and authorized agents, accountants, counsel, financing sources and representatives of Buyer such additional financial and operating data and other information regarding the Business and the Acquired Assets as Buyer from time to time may reasonably request.

7.4. Use of Corporate Name.[40] Seller agrees that, promptly following the Closing, it shall file a change of name certificate with the Secretary of State of Delaware, changing the corporate name of Seller to one not containing the word "Rheingold," and consents to Buyer, should Buyer so elect in its sole discretion, to establish a subsidiary to be called "Rheingold Brewing Company, Inc." or a variation thereof. Seller hereby appoints Buyer or its designee as Seller's attorney-in-fact, and ratifies and approves all of Buyer's acts as such attorney-in-fact, to file the aforesaid change-of-name certificate on behalf of Seller. This is a power coupled with an interest and as such is irrevocable until the change of name contemplated herein has been satisfied.

7.5. Retention of Records. In order to facilitate the resolution of any claims made by or against or incurred by Buyer, for a period of three years after Closing, Seller shall (i) retain the books and records of Seller which are not transferred to Buyer pursuant to this Agreement relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller, and (ii) upon reasonable notice, afford the officers, employees and authorized agents and representatives of Buyer reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

7.6. Collection of Receivables. In the event any payment for an account receivable is delivered to Seller or any affiliate of Seller after Closing, Seller shall, or shall cause its affiliate to, deliver such payment to Buyer promptly and in any event within ten days of receipt thereof.

---

[39] The Access covenant helps to ensure a smooth transition of the Business from Seller to Buyer. The covenant ensures that the officers, directors and other agents of Seller will be reasonably available to Buyer. Additionally, the covenant provides a mechanism for Buyer to obtain continuous and updated information from Seller regarding the Business and the Acquired Assets that are to be acquired pursuant to the Agreement.

[40] Because much of the value of the transaction is derived from the Rheingold name, Buyer has negotiated for a covenant whereby Seller agrees to, following the Closing, change its corporate name so it will not include the name “Rheingold.” Moreover, Seller consents under the Use of Corporate Name covenant that Buyer may change its name or establish a subsidiary in the name of “Rheingold Brewing Company, Inc.” It appears this covenant is designed to ensure Buyer can take full advantage of its Acquired Assets, including naming rights for the entity that may hold such assets and operate the Rheingold Beer business. It is also interesting to note that the Use of Corporate Name covenant provided for the appointment of Buyer as Seller’s attorney-in-fact for purposes of filing the agreed upon change-of-name certificate with the Secretary of State of Delaware. While this may be a common provision, it is of some debate as to whether it is commonly used. In the usual case, it may be more likely that a seller will file the change-of-name certificate on its own without the intervention of a buyer, simply because seller will be intimately involved in choosing a new name, choosing the appropriate name ending (Inc., Ltd., etc.).

7.7. Post-Closing Audit.[41] In the event that, within six months of the Closing, Buyer conducts a post-Closing accounting review and, as a result thereof, determines that the Company's[42] Net Working Capital was less than the amount thereof required by Section 8.1(d) hereof, Buyer shall be entitled to deduct the aggregate of (i) any shortfall in Net Working Capital between the actual (as determined by such accounting review) and required amount thereof, from required FMV of the second installment of the Purchase Price; provided, however, that in the event that a dispute arises between Buyer and Seller as to any amount or amounts determined in such accounting review, Buyer and Seller shall each designate an accountant to resolve such dispute and such accountants shall endeavor to agree on the amounts in question, failing which such accountants shall agree on a third accountant, which is unaffiliated with either Buyer or any of Seller, who shall determine the amount or amounts in question.

7.8. Covenants regarding Allocation of Purchase Price.[43] Prior to the Closing, the parties shall agree on an allocation of the Purchase Price among the acquired assets in a manner which complies with the requirements of the Tax Code. The parties agree that (i) the respective federal, state, local and foreign tax returns to be filed by each of them shall reflect such allocation, (ii) they shall cooperate in the preparation of such forms, and (iii) neither of them shall take any position contrary to such allocation in any tax return, in any refund claim, in any litigation, or otherwise, unless otherwise required to do so under applicable law.

VIII. CONDITIONS OF CLOSING

8.1. Conditions to Buyer's Obligations.[44] The obligation of Buyer to consummate the Closing shall be subject to the satisfaction at or prior to the Closing of each of the following conditions (to the extent noncompliance is not waived in writing by Buyer in Buyer's sole and absolute discretion), unless the failure of any such condition to 'be satisfied shall be the fault of Buyer:

---

[41] Section 7.7 provides that, in the event of a post-Closing audit by Buyer, if the company's Net Working Capital was less than the required amount under §8.1(d) ($9,000), then any shortfall shall be deducted from the second installment of the Purchase Price, which is to be paid on the first anniversary of the Closing date. This provision also provides a mechanism for resolving any dispute that might arise between the parties pursuant to the post-Closing audit.

[42] It is interesting to note that the term "Company" has not been defined within the Agreement and was used two other times throughout the Agreement (in Sections 3.2 and 7.7). This appears to be an error and the term "Company" should be replaced with the term "Seller."

[43] The purpose of this covenant is to ensure that both the Buyer and Seller will reach agreement as to how the aggregate Purchase Price will be allocated as amongst the various Acquired Assets. Ensuring that the parties agree to the same allocation helps to assure the parties that each is consistent in its reporting of the transaction for tax purposes. In general, in an arm's length agreement, if the parties agree to an allocation of the Purchase Price, then the Internal Revenue Service will respect such agreement and give it effect unless it is "inappropriate." *See* COMMITTEE ON NEGOTIATED ACQUISITIONS, AMERICAN BAR ASSOCIATION, MODEL ASSET PURCHASE AGREEMENT WITH COMMENTARY 52 (2001).

[44] The Conditions to Buyer's Obligations (along with the representations and warranties, which are incorporated by reference into the closing conditions) is likely to be one of the most heavily negotiated provisions in any asset purchase agreement. The importance of such conditions is that they are conditions precedent to the Buyer's obligation to close on the acquisition of the Acquired Assets under the Agreement. If one of the conditions in Section 8.1 is not satisfied, then Buyer may refuse to close on the transaction and may possibly terminate the Agreement pursuant to the terms of Article IX. "A party's right to refuse to consummate the acquisition when a closing condition remains unsatisfied" is typically referred to as a "walk right" or "out." *See* COMMITTEE ON NEGOTIATED ACQUISITIONS, AMERICAN BAR ASSOCIATION, MODEL ASSET PURCHASE AGREEMENT WITH COMMENTARY 177 (2001). Additionally, it should be noted that there is no requirement of an opinion by Seller's counsel regarding the representations and warranties contained within the Agreement. This does not appear "market" for most asset purchase agreements, especially in light of the pervasive presence of legal opinions in most corporate transactions; however, while Buyer is a public entity, it appears to have a very small capitalization and its attorneys may have not insisted or decided to require a legal opinion of Seller's counsel.

(a) Representations.[45] The representations and warranties made by Seller in or pursuant to this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same effect as though such representations and warranties had been made or given at and as of the Closing Date;

(b) Compliance with Agreement. Seller shall have performed and complied in all material respects with all of its covenants and other obligations under this Agreement to be performed or complied with on or prior to the Closing Date;

(c) Compliance with the Law. No litigation shall be pending which purports to restrain or prevent the transactions contemplated by this Agreement, and Seller and Buyer shall have complied with all applicable requirements of statutes and governmental orders, regulations and rules relating to the transactions contemplated by this Agreement and the Closing hereunder;

(d) Net Working Capital.[46] The Net Working Capital of Seller at the Closing Date shall not be less than ($9,000); and

(e) Stockholder Information. Seller shall have advised Buyer of the residences and numbers of shares of capital stock of Seller owned by each Stockholder to enable Buyer to prepare and file a Form D relating to the issuance of Common Stock contemplated hereby and to make such filings as may he required pursuant to the blue sky laws of the jurisdictions in which such Stockholders reside.

8.2. Conditions to Seller's Obligations.[47] The obligation of Seller to consummate the Closing shall be subject to the satisfaction at or prior to the Closing of each of the following conditions (to the extent noncompliance is not waived in writing by Seller in Seller's sole and absolute discretion), unless the failure of any such condition to be satisfied shall be the fault of Seller:

(a) Representations.[48] The representations and warranties made by Buyer in or pursuant to this Agreement shall be true in all material respects at and as of the Closing Date with the same effect as though made or given at and as of the Closing Date;

(b) Compliance with Agreement. Buyer shall have performed and complied in all material respects with all of its covenants and other obligations under this Agreement to be performed or complied with at or prior to the Closing Date; and

---

[45] Including a requirement that the Seller's representations and warranties must be "true and correct in all material respects" in effect incorporates all of Seller's representations and warranties as closing conditions. This is important because it enables the Buyer to satisfy itself up to the moment of Closing that all of Seller's representations and warranties are in fact met or, at the Buyer's option, the Buyer may refuse to consummate the acquisition. This is known as the "bring down" of the Seller's representations and warranties.

[46] It is interesting to note that Buyer has included a closing condition requiring that the Net Working Capital be at least $9,000 yet at the same time a post-Closing remedy is also available if this closing condition proves to not be met (the post-Closing audit adjustment). The inclusion of a closing condition requiring $9,000 of Net Working Capital seems odd, if not trivial; however, it may have been included as an additional "out" or "walk right" for Buyer, or, it is possible, Seller may have had Net Working Capital problems (i.e. short-term liabilities consistently exceeded inventory and the resulting accounts receivable or cash from sales).

[47] Traditionally, the "outs" or "walk rights" given to a Seller are much more limited than those given to the Buyer. This reflects the reality that if the Seller receives its Purchase Price (along with other agreements required to be executed by the Buyer) then it has received the full benefit of its bargain and should not be able to walk away from the Agreement absent special exceptions.

[48] This closing condition incorporates the Representations of Buyer in Section 6.2. As noted previously, the "walk rights" of Seller are generally much narrower than those of the Buyer.

(c) Compliance with the Law. No litigation shall be pending which purports to restrain or prevent the transactions contemplated by this Agreement, and Seller and Buyer shall have complied with all applicable requirements of statutes and governmental orders, regulations and rules relating to the transactions contemplated by this Agreement and the Closing hereunder.

IX. TERMINATION

9.1. Termination.[49] This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date:

(a) by mutual written consent of Buyer and Seller;

(b) by either Buyer or Seller if, without fault of the party seeking termination, the Closing shall not have occurred on or before December 31,2005;

(c) by either Buyer or Seller if, without fault of the party seeking termination, any court of competent jurisdiction in the United States or any other United States governmental authority shall have issued an order, decree or ruling, or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, and such order, decree, ruling or other action shall not have been reversed by a final and nonappealable order; or

(d) by either Buyer or Seller, if the other party hereto shall have materially breached[50] the representations and warranties set forth in Article VI hereof or otherwise failed to perform any of its material covenants and agreements in this Agreement.

9.2. Effect of Termination.[51] In the event of the termination of this Agreement pursuant to Section 8.1[52] hereof, (i) this Agreement shall forthwith become null and void and have no further force and effect, and (ii) neither of the parties hereto nor any of their respective directors, officers, stockholders, members, affiliates, representatives or advisors shall have any further obligation or liability under the provisions hereof.

X. MISCELLANEOUS

---

[49] Section 9.1 explicitly denotes the events and circumstances that can result in a termination of the Agreement.

[50] This termination event recognizes on of the fundamental principles of contract law – "one party has the right to terminate its obligations under an agreement in the event of a material breach by the other party or the nonfulfillment of a condition precedent to the terminating party's obligation to perform." *See* COMMITTEE ON NEGOTIATED ACQUISITIONS, AMERICAN BAR ASSOCIATION, MODEL ASSET PURCHASE AGREEMENT WITH COMMENTARY 197 (2001). However, it is always preferable, if possible and practical, to make clear that any party may terminate the Agreement if there is a material breach of any part of the Agreement. In this case, including as a termination event the material breach of a representation or warranty simply begs the question – how does one "materially breach" a representation or warranty? What is material? In most cases, the "breach" of a representation or warranty results in damages under the contract, not termination. Providing for termination of the Agreement for "materially breached" representations and warranties is ambiguous in this instance and, because of its subjectivity, could serve as a breeding ground for disputes and litigation.

[51] The Effect of Termination provision provides that if the Agreement is terminated for specified reasons, then the Agreement becomes null and void and neither party has any further obligations under the Agreement.

[52] It is interesting to note that the Effect of Termination provision discuss termination of the Agreement "pursuant to Section 8.1 hereof"; in fact, it appears that this is an error and that the provision should read "pursuant to Section 9.1 hereof" because Section 9.1 provides the circumstances under which the Agreement may in fact be terminated.

10.1. Risk of Loss.[53] Seller shall be responsible for any casualty loss to the Acquired Assets prior to the Closing. In the event of any such loss, Seller shall give written notice thereof to Buyer within one business day and, to the extent insurance proceeds are available to remedy such loss, Seller shall proceed to remedy such loss. If the loss is not remedied within 60 days after the occurrence thereof, regardless of the reason therefor, Buyer shall have the right to terminate this Agreement by giving written notice to Seller within five business days after the expiration of such 60-day period. If such notice is not given by Buyer within such five business day period, the Closing shall take place as provided herein, and the Purchase Price shall be appropriately adjusted to reflect such loss.

10.2. Expenses.[54] All expenses of the preparation, execution and consummation of this Agreement and of the transactions contemplated hereby including the fees and disbursements of attorneys, accountants, and outside advisors, shall be borne by the party incurring such expenses. Any taxes in the nature of a sales, use and/or transfer tax imposed or payable in connection with the sale or transfer of the Acquired Assets shall be paid by Seller.

10.3. Non-Agency. Nothing in this Agreement shall be construed to constitute either party the agent of the other or to constitute the parties as members of a joint venture of partners, nor shall any similar relationship be deemed to exist between them.

10.4. Severability.[55] If any provision of this Agreement shall be determined to be invalid or unenforceable by any arbitrators, any court of law or any government agencies, the remaining provisions shall be severable and enforceable in accordance with their terms so long as this Agreement without such invalid or unenforceable provision does not fail of its essential purpose or purposes. The parties shall negotiate in good faith to replace any such invalid or unenforceable provision or provisions with suitable provisions which shall maintain the economic purposes and intentions of this Agreement.

10.5. Notices.[56] Any notice to be given hereunder shall be in writing and shall be deemed duly given (i) upon mailing a confirmation by first class mail, postage prepaid, of a facsimile or

---

[53] The Risk of Loss provision allocates the risk of casualty losses to the Acquired Assets to the Seller if such events occur before Closing. This avoids the transfer of equitable title from occurring upon the signing of the asset purchase agreement. In addition, if a casualty event occurs to the Acquired Assets, the Seller must notify the Buyer and must also use insurance proceeds, if available, to remedy the loss. Finally, the Risk of Loss provision provides that, upon the occurrence of an unremedied casualty loss to the Acquired Assets, the Buyer may choose not to close the transaction, or may choose to waive the requirement of this provision and proceed with a later adjustment of the Purchase Price.

[54] The Expenses provision recognizes that in most acquisition transactions the fees and expenses incurred by each party will be paid by such party. In addition, however, the Expenses provision also includes a recognition by the parties that any sales, use and/or transfer taxes related to the Acquired Assets shall be paid by the Seller.

[55] A Severability provision is an extremely common, yet also extremely important provision. The Severability provision ensures that if one provision or section of the Agreement is found to be invalid, then the rest of the Agreement shall be severable and enforced according to its terms. However, a proviso is provided in this Severability provision noting that clauses of the asset purchase agreement may be severed so long as "the Agreement without such invalid or unenforceable provision does not fail of its essential purpose." This provides additional protection for the parties in the event a provision or group of provisions are deemed unenforceable – an argument could be made that without such clauses the entire Agreement fails its essential purpose or purposes. The provision also requires the parties to negotiate in good faith to replace any provisions that are determined to be invalid. This appears to be a covenant of the parties to negotiate in good faith; however, what is left unsaid is particularly important, including the structure and standards to be used in such negotiation and what the remedy of either party would be should negotiations fail (i.e. Termination, damages, etc.).

[56] The Notices provision provides each party with the address and entities that should receive all official communications regarding the Agreement. While the traditional means of giving notice has been U.S. mail, because of the speed of business and the increased availability of instant communications, e-mail and facsimile notices are becoming more common. In this agreement,

e-mail transmission, (ii) when sent by overnight delivery by courier, or (iii) when mailed by registered or certified mail return receipt requested and postage prepaid:

(a) if to Seller, addressed to: Rheingold Brewing Company, Inc. 130 West 42nd Street New York, NY 10036

Attention: Norm Snyder

With a copy to:

Sanford G. Hausner, Esq.

Buchanan Ingersoll P.C.

1 Chase Manhattan Plaza

New York, NY 10005

(b) if to Buyer, addressed to: Drinks Americas Holdings, Ltd., 372 Danbury Road Wilton, Connecticut 06897

Attention: Mr. Patrick Kenny

With a copy to:

Fredrick Schulman, Esq.

241 Fifth Avenue, Suite 302

New York, New York 10016

or to such other address as either party hereto shall designate in writing to the other party.

10.6. Entire Agreement.[57] This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties hereto, whether written or oral, in connection therewith. No modification of any of the terms and conditions of this Agreement shall be valid unless contained in a written instrument signed by both parties hereto.

10.7. Waiver.[58] A waiver by either party hereto of any particular default or breach by the other party shall not affect or prejudice the rights of the aggrieved party with respect to any other default or breach whether of the same or different nature.

---

the Buyer and the Seller have agreed to add facsimile and e-mail transmission as acceptable notices under the Agreement.

[57] The Entire Agreement provision specifically provides that the Agreement itself represents the entire understanding between Buyer and Seller and that the Agreement supersedes all prior agreements and understandings of the parties. The Entire Agreement provision also includes a clause that requires any modification of the Agreement be in writing. Not only is this practice considered prudent in that it helps to increase the likelihood that a party will consider its actions before executing in writing an amendment to the Agreement, it also reinforces and meets the traditional requirements of the Statute of Frauds (which can and does vary from state to state). *See* COMMITTEE ON NEGOTIATED ACQUISITIONS, AMERICAN BAR ASSOCIATION, MODEL ASSET PURCHASE AGREEMENT WITH COMMENTARY 262 (2001). Additionally, the Entire Agreement provision appears to reinforce the traditional understanding of the parol evidence rule – that is, when an agreement appears complete on its face, such agreement is deemed to represent the entire agreement between the parties and additional evidence regarding previous or unwritten agreements between the parties shall not be admitted in a court of law to change the terms of a later written contract.

[58] A Waiver provision is commonly found in acquisition agreements and solidifies that the rights of the parties are cumulative and, therefore, helps to avoid any contention by a party that one remedy is sufficient. COMMITTEE ON NEGOTIATED ACQUISITIONS, AMERICAN BAR ASSOCIATION, MODEL ASSET PURCHASE AGREEMENT WITH COMMENTARY 261 (2001).

10.8. Governing Law.[59] This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed wholly within such State.

10.9. Jurisdiction and Venue.[60] Each of the parties hereto hereby consents to the exclusive jurisdiction of the state or federal courts located in the Borough of Manhattan, New York, and agrees that any action concerning a dispute arising out of or relating to this Agreement shall be brought in any such court and that process, notice of motion, or other application of the court, or a judge thereof, or any notice in connection with the proceedings provided for herein may be served within or without the State of New York as provided hereinfor the serving of notices hereunder.

10.10. Captions.[61] The captions heading each Article of this Agreement are for convenience only and shall have no effect on the interpretation on meaning of this Agreement.

10.11. Counterparts.[62] This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

10.12. Assigns.[63] This Agreement shall be binding upon and shall inure to the benefit of each of parties hereto and their respective successors and permitted assigns. Neither this Agreement, nor the obligations of any party hereunder, shall be assignable or transferable by any such party without the prior written consent of the other party hereto; provided, however, Buyer shall have the right to assign its rights and obligations hereunder to an affiliate of Buyer without the prior

---

[59] This Agreement specifies that the Governing Law shall be that of the State of New York. In addition to the contacts the historical and current contacts the Seller has with the State of New York, it is also reasonable to assume that the parties stipulated that New York law would govern any dispute arising out of the Agreement because New York has a developed and sophisticated body of corporate and transactional law.

[60] The Jurisdiction and Venue provision allows the parties to prospectively agree upon an appropriate forum to hear any disputes arising out of the Agreement. The provision provides that each party consents to the exclusive jurisdiction of the specifically listed state and federal courts and that any action thus brought under the Agreement must be brought in such courts. While there are some instances where a Jurisdiction and Venue provision may not be given effect, clauses where parties consent to jurisdiction "are usually given effect so long as they have been freely negotiated among sophisticated parties." *See* COMMITTEE ON NEGOTIATED ACQUISITIONS, AMERICAN BAR ASSOCIATION, MODEL ASSET PURCHASE AGREEMENT WITH COMMENTARY 253 (2001). In this instance, it is likely a court would give effect to the Jurisdiction and Venue provision. However, it is interesting to note that the parties, while they named the provision Jurisdiction and Venue, did not specifically provide for selection of a specified venue to hear any dispute arising out of the Agreement; however, it is possible that the parties excluded specific mention of venue because, depending on the jurisdiction, venue provisions may not be generally enforceable.

[61] The Captions provision is common in acquisition and other agreements and is generally thought of as an expression by the parties that the headings, or captions, of sections of the agreement are intended for convenience and should not affect the construction or interpretation of the agreement. While this appears to be mere boilerplate language, it is conceivable that, in today's world of cutting and pasting documents by attorneys and short deadlines, a contract's language may say one thing while a heading could contradict such language. Thus, the Captions provision is an attempt to ensure that the actual language of the Agreement supersedes the previously formatted and included captions and headings of sections and articles.

[62] The Counterparts provision is common in acquisition agreements and is used to facilitate execution of the agreement when the required signatories are unavailable or are located in numerous locations.

[63] The Assigns provision requires that if any party proposes to assign its rights under the Agreement it must first receive the prior, written consent of the other party. This provision is necessary because the modern contract rule is that, absent an express provision to the contrary, contract rights are freely assignable. *See* MURRAY, MURRAY ON CONTRACTS §138 (3d ed. 1990).

written consent of Seller so long as Buyer remains liable hereunder as if no assignment had occurred.

10.13. Surviving Provisions.[64] Upon the expiration or termination of this Agreement, each of Buyer's and Seller's obligations under Section 8 hereof and such other provisions hereof which by their terms are not clearly intended to expire upon such expiration or termination or at a specified time thereafter, shall survive such expiration or termination or lapse of such specified time.

10.14. Specific Performance.[65] The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity without the necessity of demonstration of inadequacy of monetary damages.

IN WITNESS WHEREOF, each of the parties hereto have caused this Agreement to be duly executed and delivered by its respective duly authorized representative as of the date and year set forth above.

Buyer:

DRINKS AMERICAS HOLDINGS, LTD.

By: _____

Seller:

RHEINGOLD BREWING COMPANY, INC.

By: _____

[64] The Surviving Provisions clause indicates that certain of Buyer and Seller's obligations survive the closing. However, this appears to be a hastily and sloppily written provision because of its indefinite and open-ended nature. For example, the Surviving Provisions clause refers to the survival of Buyer and Seller's obligations under Section 8; however, the provision later states that other provisions "which by their terms are not clearly intended to expire upon such expiration or termination or at a specified time" shall survive such expiration and termination or lapse of a specified time. This is quite ambiguous and represents an example of sloppy, non-detail oriented drafting on the part of the drafter of this Agreement.

[65] It is interesting to note that the parties have agreed to a Specific Performance provision that specifically recognizes that irreparable damage would occur if "any provision of this Agreement" was not performed by either party in accordance with the terms of the Agreement. Moreover, the Specific Performance provision unambiguously provides that a party is entitled to specific performance and that, unlike in most situations, it is not necessary to demonstrate that monetary damages would inadequately compensate the non-breaching party. This is a somewhat unusual remedy; however, its inclusion in the Agreement denotes the commitment of the parties to ensure the Agreement is consummated and closed appropriately. It should be noted that, with certain exceptions, "specific performance of a contract duty will be granted in the discretion of the court against a party who has committed or is threatening to commit a breach of the duty." THE RESTATEMENT (SECOND) OF CONTRACTS §357(1). However, under New York law, as stated by the Supreme Court of New York, Fourth Department, in *Hadcock Motors, Inc. v. Metzger*, "[s]pecific performance is a discretionary remedy which is an alternative to the award of damages as a means of enforcing a contract. A party who seeks specific performance must prove that he has substantially performed his contractual obligations or tendered performance within the time specified in the agreement or within a reasonable time thereafter; that he is ready, willing and able to perform those contractual obligations not yet performed and not waived by the defendant; and that, except where the contract is one for the sale of real property, he has no adequate remedy at law. *Hadcock Motors, Inc. v. Metzger*, 92 A.D.2d 1, 5 (N.Y. App. Div. 1983) (citing 55 NY JUR, SPECIFIC PERFORMANCE, §§ 4, 25; 4 POMEROY, EQUITY JURISPRUDENCE [5th ed], §§ 1401, 1402, 1407). Therefore, while the Agreement explicitly provides for specific performance, either party seeking such remedy would need to prove that there is no adequate remedy at law. *Id*.