

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 3.1 hereof.

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 Business¹²;

(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?release_id=89439). It could be argued that this transaction is, in effect, a recapitalization styled 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, in case 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 purchased 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 consents²² 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 warrants²⁴ 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 the 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 or 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 knowledge³², 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).