

08-07-1998

EET

Docket No.:

-Y



100787328

the attached original documents or copy thereof.

MIRD 8-3-98

Tab settings → → → ▼
To the Honorable Commissioner of P.

1. Name of conveying party(ies):
A1A Ale House, Inc., a Florida corporation

Ragtime Taverns, Inc., a Florida corporation

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

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

3. Nature of conveyance:

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

Execution Date: January 23, 1998

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

Name: Big River Breweries, Inc.

Internal Address: 100 East 10th Street

Street Address: Suite 600

City: Chattanooga

State: TN ZIP: 37402

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

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

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s)

75/385,597

75/161,882

B. Trademark Registration No.(s)

Additional numbers attached? Yes No

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

Name: Micheline Kelly Johnson

Internal Address: Baker, Donelson, Bearman & Caldwell

Street Address: 1800 Republic Centre

633 Chestnut Street

City: Chattanooga State: TN ZIP: 37450

6. Total number of applications and registrations involved:.....

2

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

- Enclosed
- Excess or deficiency authorized to be charged to deposit account

8. Deposit account number:

08-1629

08/05/1998 SMITH 00000061 75385597

DO NOT USE THIS SPACE

01 FC:481 40.00 OP
02 FC:482 25.00 OP

9. Statement and signature.

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

Micheline Kelly Johnson

Name of Person Signing

Signature

7/27/98

Date

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

31

TRADEMARK

REF: 1764 FRAM 0631

ASSET PURCHASE AGREEMENT

This Agreement is entered into this 23rd day of January, 1998 by and among **BIG RIVER BREWERIES, INC.**, a Tennessee corporation (the "Purchaser"), and **AIA ALE HOUSE, INC.**, a Florida corporation and **RAGTIME TAVERN, INC.**, a Florida corporation (collectively the "Sellers"), and **THOMAS MORTON AND WILLIAM MORTON** (the "Owners") under the following circumstances:

The Sellers own and operate two restaurant/brew pubs in Jacksonville/Atlantic Beach and St. Augustine, Florida (the "Business"). The Purchaser desires to purchase from each Seller all of its right, title and interest in and to its respective properties and assets of every kind used in connection with or relating to the Business, including, without limitation, its business as a going concern, accounts receivable, escrows, insurance policies, intellectual property, including the names "AIA Ale House" and "Ragtime Tavern," recipes, formulas, good will, inventory, franchises, licenses, business permits, prepayments, furniture, fixtures, equipment and contract rights described on Exhibit A attached hereto (the "Assets"). The Sellers also desire to sell the Assets to the Purchaser.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the parties agree as follows:

ARTICLE I

PURCHASE AND SALE

1.01 Transfer of Assets and Property. At the Closing, which shall occur on the Closing Date (as both terms are defined in Section 7.01 hereof) and in accordance with the terms of this Agreement, the Sellers will transfer the Assets to the Purchaser.

1.02 Purchase Price. The purchase price for the Assets is up to \$3,300,000, subject to adjustment as herein provided, and shall be paid and allocated as follows:

- (a) \$2,700,000 in cash, less Debt, as herein defined, payable at Closing;
- (b) \$250,000 represented by a promissory note, in the form attached hereto as Exhibit B, (the "Promissory Note") payable to the order of Sellers;
- (c) The Owners, as the shareholders of the Sellers, will enter into consulting and noncompete agreements (the "Consulting and Non-Competition Agreements"), in the forms attached hereto as Exhibits C1 and C2.

1.03 Adjustments to Purchase Price.

(a) For purposes of this Agreement, "Debt" shall mean, as of the Closing Date, all (i) wages, benefits, utilities, taxes and all other current liabilities due or accrued at the Closing Date, including trade accounts payable; (ii) all debts, obligations and liabilities of the Business other than current liabilities regardless of whether due at or as of the Closing Date, (iii) all rents, service fees and other items relating to the Assets; and (iv) all property taxes and assessments imposed by any taxing authority against the Assets or the Business.

(b) All cash on the Business premises or in any bank accounts of Sellers including credit card receipts dated prior to the Closing Date shall remain the property of the Sellers.

(c) If the collective gross sales of the Purchaser, as derived from the Business of the Sellers, equal (with a variance of five percent) or exceed, \$7,900,000 for the one year period following the Closing Date (the "Hurdle"), the principal amount of the Promissory Note will increase by \$254,000 to \$504,000. The parties agree that if during such one year period, an act of nature or God should cause a material disruption in the Business, the period during which the Hurdle is to be achieved will be suspended until regular Business operations are resumed.

(d) Any worker's compensation insurance payment rebates for 1997 which are received by the Purchaser after the Closing will be paid to the Sellers. Any property and casualty insurance premiums paid by Sellers for 1998 will be reimbursed, pro rata, by Purchaser if it continues such insurance coverage or rebated, pro rata, to Sellers if such coverage is terminated.

1.04 Allocation of Purchase Price. The foregoing purchase price shall be apportioned as set forth on Schedule 1.04 which will be attached to this Agreement at or prior to Closing and the Purchaser and the Sellers agree to be bound by the provisions of this Section 1.04 for income tax reporting purposes.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

The Sellers and the Owners, individually, jointly and severally represent and warrant to the Purchaser as follows:

2.01 Organization: Good Standing: Power: Etc. Each Seller: (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida; (ii) is not required to be authorized or licensed to do business as a foreign corporation in any other jurisdiction (within or without the United States) by reason of the nature of the business conducted by it or the properties owned or leased or operated by it; and (iii) has the requisite power and authority to own, lease and operate its properties and to carry on its business as currently conducted. Each Owner and

each Seller has all requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly authorized, executed and delivered by each Owner and each Seller and constitutes the valid and binding obligation of each Shareholder and each Seller fully enforceable in accordance with its terms.

2.02 Title to Leasehold. The leases and other agreements or instruments under which any of the Sellers hold, lease or is entitled to the use of any real property or personal property, are set forth in Schedule 2.02, and are in full force and effect, and all rentals, royalties or other payments payable thereunder prior to the date hereof have been duly paid. All "buy-out" prices under operating or capital leases are shown on Schedule 2.02 if such payout price is in excess of \$1,000 under any one lease, regardless as to whether the lessee has any obligation to purchase such property. True and correct copies of such leases and agreements, together with all amendments, are attached to this Agreement as part of Schedule 2.02. No material default or event of default exists, and no event which, with notice or lapse of time or both, would constitute a default, has occurred and is continuing, under the terms or provisions, express or implied, of any of such lease, agreement or other instrument or under the terms or provisions of any agreement to which any of such properties is subject, nor has any Seller received notice of any claim of such default (whether material or not), nor, has any Seller failed to comply in any respect with any provision or condition of any such lease, agreement or other instrument. Neither Seller has received a notice of violation of any applicable law, ordinance, regulation, order or requirement relating to its operations or its owned or leased properties.

2.03 Title to Assets. The Seller has good, marketable and insurable title to the Assets, none of which are subject to any mortgage, pledge, lien, security interest or other encumbrance, except for those to be removed at the Closing. The Sellers are the owners of the Assets and have full authority to convey the Assets hereunder. The Assets include all property of the Sellers required for operation of the Business as it is currently conducted.

2.04 Absence of Violation or Conflicts. The consummation of the transactions contemplated by this Agreement will not result in or constitute any of the following: (a) a violation of any provisions of any applicable law or regulation or of any decree of any court or government instrumentality; (b) a default or an event which with notice or lapse of time or both, would be a default, breach, or violation of any lease, license, note, contract, commitment, franchise or any other agreement or instrument to which the Sellers or either of them is a party or by which either of the Sellers or any of their respective properties is bound; (c) an event that would permit any party to terminate any agreement or to accelerate the maturity of any indebtedness of either of the Sellers (except for indebtedness of the Sellers which is to be satisfied in full at the Closing); or (d) the creation or imposition of any lien, charge or encumbrance on the Assets.

2.05 Financial Matters.

(a) Financial Statements. The Seller has previously furnished to Purchaser a compilation financial statement for the year ended December 31, 1996 and internally prepared financial statements for the periods ended July 31, 1996 and July 31, 1997 (the "Financial Statements"). These financial statements are in accordance with the books and records of the Business, have been prepared in accordance with generally accepted accounting principles and present fairly the financial condition of the Business as of their respective dates.

(b) Liabilities. Except for the liabilities reflected on the Financial Statements, the Business has, and on the Closing Date will have, no other liabilities of any nature, whether accrued, absolute, contingent, or otherwise and whether due or to become due, or arising out of transactions entered into, or any state of facts existing, prior to the Closing Date. There has been no material adverse change in the financial condition, results of operations, assets, liabilities, business or prospects of the Business since July 31, 1997.

(c) Inventories. The inventories of the Business included in the Assets consist of items which are good and merchantable and of a quality and quantity presently usable or salable in the ordinary course of business; no such inventory is held pursuant to any conditional sale agreement or other title retention agreement; and at the Closing Date, inventories shall not be less, in quantity, quality or value, than the normal operating levels of the Business.

2.06 Absence of Certain Changes. There has not been since July 31, 1997 (i) any amendment, termination or revocation, or threatened termination, revocation or modification of any license, permit or franchise required for the continued operation of the Business as conducted at July 31, 1997; (ii) any sale or transfer of the Assets; (iii) any pledge or subjection to lien, charge or encumbrance of any kind, of, on or affecting any of the Assets; (iv) any damage, destruction or loss of or to the Assets, whether or not covered by insurance; or (v) any material adverse change in, or the occurrence of any event or circumstance which might materially and adversely affect, the Assets, the Business or the ability of the Purchaser to operate the Business.

2.07 Labor Relations. Sellers have been and are, to the best of Sellers' knowledge, in compliance in all material respects with all federal and state laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and has not engaged in, and is not engaging in, any unfair labor practice. There is no collective bargaining agreement which is binding on either of the Sellers, and the Sellers have not experienced, and are not experiencing, any material labor stoppage, concerted activity or other labor difficulty; and the Sellers have no employment or consulting agreements which are not terminable at will.

2.08 Litigation: Compliance with Laws. Except as set forth on Schedule 2.08, the Sellers are not engaged in or threatened with, any claim, controversy, legal action, arbitration, non-insured workmen's compensation claim, governmental investigation or other proceeding whether or not

before any court or administrative agency, any adverse determination of which might materially affect the Business as presently conducted and to the best of Sellers' knowledge, are not in violation of any laws, judgment, order, decree, regulation or rule of any court or governmental authority applicable to either of them; and the business operations of the Sellers are in compliance with all applicable building codes, environmental, zoning and land use laws, and other local, state and federal licensing and permitting requirements, including, but not limited to, those required for the sale and distribution of beer and alcoholic beverages.

2.09 Condition of Facilities. The structures and equipment comprising the Business and owned, operated or leased by either of the Sellers are presently adequate for the operations for which they are being used by the Sellers; such facilities, structures and equipment are structurally sound and in good repair and operating condition, normal wear and tear excepted; and to the best of Sellers' knowledge, neither of the Sellers is not in violation of any applicable building, zoning, antipollution, environmental, health, safety, alcoholic beverage, brewing, manufacturing or other laws, ordinance or regulation in respect of such facilities, structures or equipment, and neither Seller has received any notice alleging such a violation. The Sellers have not received notice nor has any knowledge of nor has reason to know of, any pending or contemplated eminent domain proceeding affecting such facilities, structures or equipment or any part thereof. The Sellers have not received notice of any pending or contemplated proceedings or public improvements which could or might result in the levy of any special tax or assessment against facilities, structures or equipment. There are no outstanding requirements or recommendations by fire underwriters, rating boards or insurance companies requiring or recommending any repairs or work to be done with reference to such facilities, structures or equipment. The Purchaser acknowledges that it has the right to inspect the premises and facilities of the Sellers prior to Closing.

2.10 Environmental Matters. During the period of time that the Sellers or any entity controlled or affiliated with the Sellers have owned or controlled the Business, the properties on which the Business is conducted has not been used prior to the Closing for the disposal of any toxic or hazardous waste, material or substance as the terms "hazardous waste", "hazardous substance", hazardous material" or "toxic substance" are defined in the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any applicable state law or any other applicable environmental law or rules and regulations promulgated thereunder nor has any "release" of such substances occurred on or about the Business premises in violation of, or requiring "remedial action" under such laws, rules and regulations, as those terms are defined therein.

2.11 Taxes and Assessments. The Sellers and the Owners, as applicable, have filed all federal, state and local tax returns and reports as required by law and have or will have paid all taxes and other assessments due or accrued with respect to all periods through the Closing Date. The Sellers are currently taxed pursuant to Subchapter S of the Internal Revenue Code of 1986, as amended. Neither the Sellers nor the Owners are subject to any tax audit by or, penalty or assessment by or from any tax authority.

2.12 Insurance. The Sellers have maintained and now maintain insurance on the Assets of a type customary for such assets, covering property damage and loss of income by fire or other liabilities, claims, and risks against which it is customary to insure. All such policies are in full force and the premiums due thereon have been timely paid. Such insurance coverage will be maintained in full force and effect through the Closing Date.

2.13 No Subsidiaries. Neither Seller owns any interest, directly or indirectly, in any other corporation, company, limited liability company, business, trust, partnership, limited partnership, joint venture, or other entity or association.

2.14 Government and Other Consents. No consent, authorization or approval of, or exemption by, or filing with any governmental, public or self-regulating body or authority (including, but not limited to, any licensing authority with jurisdiction over the manufacturing, storing, serving, transporting or distributing, of beer, wine, or liquor) is required by either Owner or either Seller for consummation of this Agreement or any of the instruments or agreements herein referred to, or the taking of any action herein contemplated.

2.15 Intangible Property. Except as described on Schedule 2.15, Sellers own all of the rights in and to all trademarks, service marks, trade names, menus, logos, recipes, formulae, processes, systems, inventions, writings, or methods, whether or not patentable or copyrightable, which are set forth on Schedule 2.15, free of any obligations to any third parties, free from any security interest or other lien or encumbrance, and free of the rightful claims of any third party by way of infringement. Neither the Sellers nor the Owners have any knowledge of any facts which negatively impacts the ability of Purchaser from obtaining copyrights or trademarks on all otherwise copyrightable material or the ability of Purchaser to obtain worldwide trademark rights in its products. The conduct of the businesses of the Sellers as now conducted does not and will not conflict with patents, patent rights, licenses, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights, copyrights or trade dress of others in any way likely to affect materially adversely the business, assets or condition, financial or otherwise of the Seller. Except as described on Schedule 2.15, to the best knowledge of the Owners, no other person or entity has heretofore used or now uses any trademark, trade name or other intangible property owned by or licensed to the Sellers, except as duly licensed by the Sellers under an agreement disclosed in Schedule 2.15. No material infringement of any proprietary right owned by or licensed by or to either the Seller is known to either Owner.

2.16 Special Liquor Licensing Issues; Health Issues. Any and all disclosures made to any beer, wine or liquor licensing authority or any state or federal department of alcohol and tobacco (or similar agency) empowered to control the manufacture, storage, sale, transportation or distribution of beer, wine or liquor (an "Authority") are true and accurate as of the date of such disclosure and all required disclosures with respect thereto have been made. Neither Owner is aware of any fact concerning either Owner, either Seller or any officer or director of a Seller, which would or may cause any Authority at any time, now or in the future to deny Purchaser any license, permit, waiver,

order or authority or to reduce or otherwise limit the privileges or scope of any such license, permit, waiver, order or authority, or which could give rise to an investigation, suspension or revocation with respect to such license, permit, waiver, order or authority. Neither of the Owners nor the Sellers have been denied a license, permit, waiver, order or authority applied for, nor has any license, permit, waiver, order or authority once issued, been revoked. Neither the Owners nor the Sellers is aware of any pending or threatened investigation by, or any sanction or citation imposed by, any local or state health department or bureau against or relating to the Sellers.

2.17 **Benefit Plans.** The Sellers do not maintain or contribute to any benefit, retirement or savings plans of any type.

2.18 **Other.** No representation or warranty by the owners and Sellers in this Agreement or in any schedule, statement, certificate or document furnished or to be furnished to the Purchaser pursuant to this Agreement contains or will contain as of the date made any untrue statement of a material fact, or omit or will omit to state a material fact, necessary to make the statements therein not misleading.

ARTICLE III

PURCHASER'S REPRESENTATIONS AND WARRANTIES

The Purchaser hereby represents and warrants to the Sellers and the Owners as follows:

3.01 **Organization.** As of the Closing Date, the Purchaser will have the power and authority to own the Assets and to carry on the Business as contemplated by this Agreement.

3.02 **Authority.** The Purchaser has full power and authority to enter into this Agreement and to consummate the transactions provided for herein, and the execution and delivery of this Agreement, and the other instruments specified herein, and the consummation of the transactions provided for herein by Purchaser have been duly and validly authorized by all necessary action on the part of Purchaser and are in compliance with applicable law. This Agreement constitutes the valid and binding agreement of the Purchaser, enforceable against it in accordance with its terms.

3.03 **Absence of Violations or Conflicts.** The execution and delivery of this Agreement and the consummation by the Purchaser of the transactions contemplated herein and therein (a) will not constitute a violation of, be in conflict with, constitute a default under or result in the creation or imposition of any security interest, lien or other encumbrance or adverse claim upon any of the Purchaser's assets under (i) any contract, agreement, commitment or understanding to which the Purchaser is a party, to which it is subject or by which it is bound, (ii) any judgment, decree or order of any court or governmental agency or (iii) any statute, law, rule, regulation, release or other official pronouncement and (b) will not create, or cause the acceleration of the maturity of, any debt, obligation or liability of the Purchaser.

3.04 Other. No representation or warranty by the Purchaser in this Agreement or any exhibit, statement, certificate or document furnished to the Sellers pursuant to this Agreement contains, or will contain as of the date made, any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements herein or therein not misleading.

ARTICLE IV

SURVIVAL OF REPRESENTATIONS AND WARRANTIES

INDEMNIFICATION

4.01 Survival. The parties agree that the representations and warranties contained in this Agreement shall survive the Closing and continue to be binding, regardless of any investigation made at any time by the parties, for a period of four years, except that the representations and warranties set forth in Sections 2.01, 2.02, 2.03 and 2.10 shall survive the Closing without time limitation.

4.02 Indemnification by Seller. The Sellers and the Owners, individually, jointly and severally, shall indemnify, hold harmless and defend Purchaser after the Closing Date against and in respect of any of:

(i) any and all damages, losses, expenses or deficiencies resulting from any breach of the warranties, representations and covenants of the Sellers or the Owners or any of them contained herein or in any schedule hereto, or from any misrepresentation in or omission from any certificate or other instrument furnished by or on behalf of the Sellers or the Owners or any of them.

(ii) any and all liability, damage, loss or expense incurred or paid by the Purchaser as a result of the nonpayment or assessment of taxes of any kind with respect to the Assets, the Sellers or the Owners attributable to the period before the Closing Date;

(iii) any and all liability, damage or loss or expenses incurred or paid by the Purchaser as a result of claims arising out of the Sellers' conduct of the Business prior to the Closing Date;

(iv) All demands, assessments, judgments, costs (including legal and other expenses, both at the trial and appellate level) arising from or in connection with any action, suit, proceeding or claim incident to any of the foregoing.

In the event the Purchaser is entitled to indemnification pursuant to this Section 4.02, then the Purchaser shall have the right, in addition to any other rights it may have at law or in equity, to offset to the extent of such indemnification against amounts owing to the Sellers and the Owners under the terms of the Promissory Note and Consulting and Non-Competition Agreements. The extent of the recovery by Purchaser pursuant to this Section 4.02 is limited to amounts owing but unpaid under the Promissory Note and any remaining payments under the terms of the Consulting and Non-Competition Agreements. The Purchaser may elect to exercise the offset right by either withholding periodic payments under the Promissory Note or Consulting and Non-Competition Agreements or reducing the sums due thereunder.

4.03 Indemnification by Purchaser. The Purchaser shall indemnify, hold harmless and defend the Sellers and the Owners after the Closing Date against and in respect of:

(i) any and all damages, losses, expenses or deficiencies resulting from any breach of the warranties, representations and covenants to the Purchaser contained herein or in any schedule hereto, or from any misrepresentation in or omission from any certificate or other instrument furnished by or on behalf of the Purchaser;

(ii) any and all liability, damage, loss or expenses incurred or paid by the Sellers or the Owners as a result of the nonpayment or assessment of taxes of any kind with respect to the Assets attributable to the period after the Closing Date;

(iii) any and all liability, damage, loss or expenses incurred or paid by the Sellers or the Owners as a result of claims arising out of the Purchaser's conduct of business after the Closing Date including, but not limited to, any liability to the Owners arising out of a default by the Purchaser under the real property leases for the Business premises; and

(iv) all demands, assessments, judgments, costs (including legal and other expenses, both at the trial and appellate level) arising from or in connection with any action, suit, proceeding or claim incident to any of the foregoing.

ARTICLE V

OTHER AGREEMENTS

5.01 Continuing Operation of Business. The Sellers hereby agree, and the Owners agree that they will cause the Sellers, on and after the date of this Agreement and until the Closing

hereunder (except upon the prior written consent of Purchaser and except as otherwise contemplated in this Agreement or the exhibits or schedules hereto):

(a) To operate the business in the ordinary and regular course and not to engage in any transaction or activity or enter into any agreement or make any commitment except in the ordinary and regular course of business;

(b) To operate the Business in the same manner as heretofore conducted, and not to institute any new methods of processing, purchase, sale, lease, management, accounting or operation;

(c) Not to collect any account receivable or note receivable in advance of the normal terms of payment, and to use its best efforts to preserve the business organization of the Business and to preserve its relationship with suppliers, customers and other having business relations with it;

(d) Not to make any sale or distribution of, or grant any other interest in, the Assets, except for the sale of inventory in the ordinary course of business;

(e) Not to grant any increase in the compensation of the employees of the Sellers, whether now or hereafter payable; provided that no provision of this Agreement should be construed to mean that the Purchaser has agreed to assume any of the Sellers' obligations, contractual or otherwise, with respect to any of the Sellers' employees except as otherwise herein provided;

(f) Not to make any capital expenditure in excess of \$2,000 not previously committed and not to make any new commitment for additions to property, plant or equipment included in the Assets of the Sellers except as a result of routine maintenance and repair, or as a result of regulatory compliance requirements;

(g) Not to make any public disclosure of the existence of or the terms of this Agreement.

5.02 **Inspection.** The Sellers shall allow the Purchaser and its authorized representatives or designees full access with reasonable prior notification during the normal business hours after the date hereof to the Assets, (in such a manner that will not disrupt the orderly conduct of business and prior to the Closing Date) to the Business and to all of the books and records of the Sellers.

5.03 **Employees.** The Purchaser shall assume no liability for any agreement, arrangements, commitments, policies or understandings of any kind relating to compensation or benefits for present or former employees; provided, however, that Purchaser will not terminate the employment of any member of the management staff (exclusive of brewery employees) of the Sellers listed on Schedule 5.03 for a period of one year after the Closing Date without the prior consent of one of the Owners.

5.04 Expenses. Each party to this Agreement will pay its own expenses and costs incurred in connection with the negotiation and consummation of this Agreement and the transactions contemplated hereby.

5.05 Brokers. Each of the parties represents and warrants that it has dealt with no broker or finder in connection with any of the transactions contemplated by this Agreement, and insofar as it knows, no broker or other person is entitled to any commission or finder's fee in connection with any of these transactions. The Sellers, the Owners and the Purchaser each agree to indemnify and hold harmless one another against any loss, liability, damage, cost, claim, or expense, incurred by reason of any brokerage, commission, or finder's fee alleged to be payable because of any act, omission, or statement of the indemnifying party.

5.06 Bulk Sales. The Sellers agree to comply with the provisions of the Bulk Sales Act of the State of Florida to the extent applicable or, in the absence of such compliance, the Sellers and Owners, individually, jointly and severally agree to indemnify, hold harmless, protect and defend the Purchaser against all damages, loss, costs or expenses, including reasonable attorney's fees incurred by the Purchaser as a result of or arising from the Seller's failure to comply with such law.

5.07 Loss. If, before the Closing Date, the Business is destroyed, or if there has been damage to the Business which would cost in excess of \$25,000 to repair, and such repair shall not have been completed by the Closing Date to Purchaser's reasonable satisfaction, then the Purchaser or the Sellers may cancel this Agreement. In the event that neither the Purchaser nor the Sellers cancel this Agreement, all insurance money payable as a result of the damage or destruction shall be paid to the Purchaser for the purpose of making the required repairs. Any fire or other casualty of less than \$25,000 shall be repaired by the Sellers prior to the Closing Date.

5.08 Dining Privileges. The Purchaser agrees to provide to the Owners and their spouses and children dining privileges at the Sellers' premises for a period of thirty (30) months after the Closing Date. Each Owner will have a \$200 per month allowance. These privileges may be suspended or terminated at any time in the sole discretion of the Purchaser if there has been a breach of this Agreement by either Seller or Owner, or of the Consulting and Non-Competition Agreements by either Owner.

5.09 Health Benefits. The Purchaser agrees to include the Owners and their immediate families in its group health coverage for a period of thirty (30) months after the Closing Date, and to pay the insurance premium for such coverage; provided, however, that the Purchaser may refuse at any time to include any Owner or family member in its group health coverage who has or is deemed to have a pre-existing health condition or problem. The Owners represent and warrant that no proposed insured has any pre-existing health condition or problem. This premium payment may be suspended or terminated at any time in the sole discretion of the Purchaser if there has been a breach of this Agreement by either Seller or Owner, or of the Consulting and Non-Competition Agreements by either Owner.

5.10 License of Marks. The Purchaser agrees that, upon request of the Owners, it will license to Owners the use of the trade names "Red Brick Ale," "A. Strange Stout," and "AIA Honey Ale," for the purpose of bottling, marketing and selling beer for off premises consumption. The license will be nonexclusive and perpetual and no fee will be paid to the Purchaser for the licensed use.

5.11 Lease Amendments. Sellers agree that they will cause the real property leases for the Business premises in Jacksonville, Florida and St. Augustine, Florida to be amended on or prior to the Closing Date in accordance with the forms of lease amendments attached hereto as Exhibits D1 and D2.

ARTICLE VI

TERMINATION AND ABANDONMENT

6.01 Termination and Abandonment. This Agreement may be terminated and the purchase and sale of the Assets abandoned at any time prior to the Closing:

- (a) by mutual agreement of the Sellers and the Purchaser;
- (b) by the Purchaser, if the conditions set forth in Section 7.02 and the deliveries required by Section 7.04 shall not have been complied with and performed in any material respect and such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date);
- (c) by the Sellers, if the conditions set forth in Section 7.03 and the deliveries required by Section 7.05 have not been complied with and performed in any material respect and such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date.

6.02 Rights and Obligations on Termination. If this Agreement is terminated and abandoned as provided in this Article (except for a termination or abandonment pursuant to the mutual agreement of the parties), the continuing liability of the parties to this Agreement with respect to any breach of any representation, warranty, covenant or agreement contained in this Agreement shall not be affected by such termination or abandonment.

ARTICLE VII

THE CLOSING

7.01 Time, Date and Place of Closing. Subject to the provisions hereof, the deliveries contemplated by this Agreement to be made at the Closing shall be made at the offices of David H. Peek, Esq., 1301 Riverplace Boulevard, Suite 1609, Jacksonville, Florida, at 10:00 a.m., local time, on January 31, 1998, or such earlier date and location as may be mutually agreeable; provided, however, that if either the Sellers or the Purchaser cannot, after the exercise of reasonable diligence, close by January 31, 1998, the date for the Closing shall automatically be extended for thirty days without the payment of consideration. The date on which the last of such deliveries occurs is hereinafter referred to as the "Closing Date", and the events comprising such deliveries are hereinafter referred to as the "Closing".

7.02 Conditions to Obligations of Purchaser. All of the obligations of the Purchaser under this Agreement are subject to the fulfillment prior to or at the Closing Date of each of the following conditions, any one or more of which may be waived by the Purchaser:

(a) The representations and warranties of the Sellers and the Owners contained herein or otherwise delivered pursuant hereto shall be true in all material respects as of the date when made, shall be deemed to be made again at and as of the Closing Date and shall be true at and as of the Closing Date.

(b) The Sellers shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing Date.

(c) No material adverse change in the financial condition, results of operations, assets, liabilities, business or prospects (including any change resulting from governmental regulations or the loss of any permits, licenses or franchises) of the Business shall have occurred between the date hereof and the Closing Date.

(d) No federal, state or local governmental unit, agency, body or authority with competent jurisdiction over the subject matter shall have given official written notice of its intention to institute proceedings to prohibit the transactions contemplated by this Agreement.

(e) The Purchaser shall have obtained all federal, city, county and state approvals, licenses and permits required for the operation of the facilities by the Purchaser; no such approval shall have been conditioned upon any structural changes being made to the Business or shall have required the expenditure of more than \$1,000.

(f) The Sellers shall have executed and delivered to Purchaser any and all necessary documents transferring all intellectual property of the Sellers to Purchaser including, without limitation, all trade names, trade marks, logos and copyrighted materials by Purchaser.

7.03 Conditions to Obligations of Sellers. All of the obligations of the Sellers under this Agreement are subject to the fulfillment prior to or at the Closing Date of each of the following conditions, any one or more of which may be waived by the Sellers:

(a) The representations and warranties of the Purchaser contained herein or otherwise delivered pursuant thereto shall be true as of the date when made, shall be deemed to be made again at and as of the Closing Date and shall be true at and as of the Closing Date.

(b) The Purchaser shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with prior to or at the Closing Date.

(c) No federal, state or local governmental unit, agency, body or authority with competent jurisdiction over the subject matter shall have given official written notice of its intention to institute proceedings to prohibit the transactions contemplated by this Agreement.

7.04 Deliveries by Sellers at the Closing. Delivery by the Sellers of the following at the Closing shall be a condition to the obligation of the Purchaser under this Agreement:

(a) A certificate dated the Closing Date and executed by the Sellers and the Owners to the effect that so far as they or any of them knows or has reason to know after due inquiry, the representations and warranties contained in this Agreement or otherwise delivered to Purchaser pursuant hereto are true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date.

(b) The Sellers' Bill of Sale, in the form of Exhibit E, conveying the Assets.

(c) The Consulting and Non-Competition Agreements.

(d) Any leasehold assignment documents requested by Purchaser and the Lease Amendments.

(e) Any intellectual property transfer documents requested by Purchaser.

(f) Schedule 1.04.

7.05 Deliveries by Purchaser at the Closing. Delivery by Purchaser of the following at the Closing shall be a condition to the obligation of the Seller under this Agreement:

- (a) A certified or cashier's check in the amount of \$2,700,000, as adjusted in accordance with Section 1.02.
- (b) The Promissory Note.
- (c) The Consulting and Non-Competition Agreements.
- (d) Schedule 1.04.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.01 Good Faith; Further Assurances; Further Cooperation. The parties to this Agreement shall in good faith undertake to perform their obligations under this Agreement, to satisfy all conditions and to cause the transactions contemplated by this Agreement to be carried out promptly in accordance with the terms of this Agreement. Upon the execution of this agreement and thereafter, each party shall do such things as may be reasonably requested by the party hereto in order more effectively consummate or document the transaction contemplated by this Agreement.

8.02 Notices. All notices, communications and deliveries under this Agreement shall be made in writing, signed by the party making the same, shall specify the Section of this Agreement pursuant to which it is given, and shall be deemed given on the date delivered if delivered in person or on the third business day after mailed if mailed certified mail (with postage prepaid), return receipt requested, as follows:

To the Purchaser: H. Allen Corey
President
Big River Breweries, Inc.
100 East Tenth Street
Chattanooga, Tennessee 37402

With a copy to: J. Porter Durham, Jr., Esq.
Baker, Donelson, Bearman & Caldwell, P.C.
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800

To the Sellers: Ragtime Tavern, Inc.
AIA Ale House, Inc.
c/o 2 Viejo Street
St. Augustine, FL 32084

With a copy to: David H. Peek, Esq,
1301 Riverplace Boulevard
Suite 1609
Jacksonville, Florida 32207

To the Owners: Mr. Thomas Morton
Mr. William Morton
2 Viejo Street
St. Augustine, FL 32084

With a copy to: David H. Peek, Esq,
1301 Riverplace Boulevard
Suite 1609
Jacksonville, Florida 32207

or to such other representative or to such other address as the parties hereto may furnish to the other parties in writing. If notice is given pursuant to this section of a permitted successor or assign of a party of this Agreement, then notice shall be given as set forth above to such successor or assign of such party.

8.03 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective legal representatives, heirs, successors and permitted assigns. The Purchaser shall have the absolute right to assign its rights and obligations hereunder to an entity owned or controlled by Purchaser without the prior consent of the Sellers or the Owners.

8.04 Captions; Definitions. The titles or caption of articles, sections and subsections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. The parties agree to all definitions in this Agreement and in the other introductory language to this Agreement.

8.05 Controlling Law; Jurisdiction; Amendment; Waiver; Remedies Cumulative; Attorneys' Fees.

(a) This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee, without regard to its conflicts of laws rules. This Agreement may not be altered or amended except in writing signed by the Purchaser, the Sellers and the Owners. The failure of any party hereto at any time to require performance of any provisions hereof shall in no

manner affect the right to enforce the same. No waiver by any party hereto of any condition, or of the breach of any term, provision, warranty, representation, agreement or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other terms, provision, warranty, representation, agreement or covenant herein contained.

(b) Any action or proceeding against any party hereto relating in any way to this Agreement or the obligations of any party arising from the transactions contemplated herein or other documents delivered pursuant hereto shall be brought and enforced only in the courts of the State of Tennessee or of the United States for the Eastern District of Tennessee, Southern Division, and the parties irrevocably submit to the jurisdiction of each such court in respect to any such action or proceeding.

(c) The parties hereto each irrevocably waive, to the fullest extent permitted by applicable law, any objection that any of them may now or hereafter have to the laying of venue of any such action or proceeding in the court of the State of Tennessee, or the United States District court for the Eastern District of Tennessee, Southern Division, and any claim that such action or proceeding brought in any such court has been brought in an inconvenient forum.

(d) If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

8.06 Representations and Warranties. The respective representations and warranties of each party hereto shall not be deemed to be waived or otherwise affected by any investigation made by any other parties hereto.

8.07 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the transactions contemplated and supersedes all prior agreements, understandings, letter of intent and negotiations, both written and oral, among the parties with respect thereto.

8.08 Counterparts. This Agreement may be executed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of enough of such copies to reflect the signatures of all of the parties of this Agreement. This Agreement shall become effective when one or more counterparts have been signed by each of the parties to this Agreement and delivered to each of the other parties to this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms of this Agreement to produce or account for more than one of such counterparts.

Duly executed by the parties as of the date first written above.

ATTEST:

AIA ALE HOUSE, INC.

Mark K. At
Secretary

By: *Mark K At*
Title: SECRETARY

ATTEST:

RAGTIME TAVERN, INC.

William Morton
Secretary

By: *William Morton*
Title: SECRETARY

Thomas Morton
Witness

Thomas Morton
Thomas Morton

William Morton
Witness

William Morton
William Morton

ATTEST:

BIG RIVER BREWERIES, INC.

H. Allen Corey
Secretary

By: *H. Allen Corey*
H. Allen Corey, President