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Conveyance Type

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- License
- Security Agreement
- Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year
- Merger
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date  
Month Day Year

Formerly

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- General Partnership
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Other

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**Number of Properties** Enter the total number of properties involved. #

**Fee Amount** Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)  
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Lisa Perusse  
Name of Person Signing

Lisa Perusse  
Signature

11-16-00  
Date Signed

ASSET ACQUISITION AGREEMENT

BY AND AMONG

THE BREW HOUSE, L.L.C.

THE BREW HOUSE, LIMITED PARTNERSHIP,

DARTMOUTH BREWERIES, INC.,

1776 BREWERIES, INC.,

THE DARTMOUTH INVESTORS

AND

THE 1776 INVESTORS

As of December 15, 1994.

TABLE OF CONTENTS

1.	PURCHASE AND SALE OF ASSETS . . . . .	1
1.1.	The Dartmouth Assets . . . . .	1
1.2.	The 1776 Assets . . . . .	3
1.3.	Excluded Assets . . . . .	4
1.4.	Purchase Price . . . . .	4
1.5.	Assumption of Certain Liabilities of Dartmouth . . . . .	4
1.6.	Assumption of Certain Liabilities of 1776 . . . . .	5
1.7.	Allocation of Purchase Price . . . . .	5
1.8.	Transfer Taxes and Prorations . . . . .	5
2.	CLOSING . . . . .	6
2.1.	The Dartmouth Closing . . . . .	6
2.2.	The 1776 Closing . . . . .	6
3.	REPRESENTATIONS AND WARRANTIES OF SELLERS AND THE ORIGINAL INVESTORS . . . . .	6
3.1.	Due Organization . . . . .	6
3.2.	Capitalization . . . . .	7
3.3.	No Conflicts; Approvals . . . . .	7
3.4.	Business; Assets . . . . .	8
3.5.	Title to Assets; Absence of Liens; Sufficiency of Assets . . . . .	8
3.6.	Financial Statements . . . . .	8
3.7.	Undisclosed Liabilities or Obligations . . . . .	8
3.9.	Permits and Intellectual Property . . . . .	9
3.10.	Real and Personal Property . . . . .	10
3.11.	Contracts and Commitments . . . . .	10
3.12.	Labor Matters . . . . .	11
3.13.	Insurance . . . . .	11
3.14.	Compensation . . . . .	11
3.15.	Employee Benefit Plans . . . . .	11
3.16.	Litigation . . . . .	12
3.17.	Conformity with Law . . . . .	12
3.18.	Taxes . . . . .	12
3.19.	Absence of Changes . . . . .	13
3.20.	Distributions . . . . .	14
3.21.	Environmental Matters . . . . .	14
3.22.	Brokers and Finders . . . . .	15
3.23.	Relations with Government and Customers . . . . .	15
3.24.	Disclosure . . . . .	15
4.	REPRESENTATIONS OF THE BUYERS . . . . .	15
4.1.	Due Organization . . . . .	15
4.2.	Authorization . . . . .	15
4.3.	No Conflicts; Approvals . . . . .	16
4.4.	Brokers and Finders . . . . .	16

5.	COVENANTS PRIOR TO DARTMOUTH CLOSING. . . . .	16
5.1.	Transfer of Liquor Licenses . . . . .	16
5.2.	Access and Cooperation. . . . .	17
5.3.	Conduct of Acquired Business Pending Dartmouth Closing. . . . .	17
5.4.	Prohibited Activities . . . . .	18
5.5.	License of 1776 Trademarks and 1776 Trade Secrets	18
6.	CONDITIONS PRECEDENT TO DARTMOUTH CLOSING . . . . .	18
6.1.	Conditions to Obligations of Dartmouth . . . . .	18
6.1.1.	Representations and Warranties; Performance of Obligations . . . . .	19
6.1.2.	Proceedings Satisfactory . . . . .	19
6.1.3.	No Litigation . . . . .	19
6.1.4.	Opinion of Counsel . . . . .	19
6.1.5.	Consents and Approvals . . . . .	19
6.1.6.	Employment Agreements . . . . .	19
6.1.7.	Assignment and Assumption Agreement . . . . .	19
6.2.	Conditions to Obligations of the Partnership . . . . .	20
6.2.1.	Representations and Warranties; Performance of Obligations . . . . .	20
6.2.2.	Proceedings Satisfactory . . . . .	20
6.2.3.	No Litigation . . . . .	20
6.2.4.	No Material Adverse Change . . . . .	20
6.2.5.	Instruments of Conveyance . . . . .	21
6.2.6.	Employment Agreements . . . . .	21
6.2.7.	Opinion of Counsel . . . . .	21
6.2.8.	Consents and Approvals . . . . .	21
7.	CONDITIONS PRECEDENT TO 1776 CLOSING . . . . .	21
7.1.	Conditions to Obligations of 1776 . . . . .	21
7.1.1.	Representations and Warranties; Performance of Obligations . . . . .	22
7.1.2.	Proceedings Satisfactory . . . . .	22
7.1.3.	No Litigation . . . . .	22
7.1.4.	Opinion of Counsel . . . . .	22
7.1.5.	Consents and Approvals . . . . .	22
7.1.6.	Employment Agreements . . . . .	22
7.1.7.	Assignment and Assumption Agreement . . . . .	22
7.2.1.	Representations and Warranties; Performance of Obligations . . . . .	23
7.2.2.	Proceedings Satisfactory . . . . .	23
7.2.3.	No Litigation . . . . .	23
7.2.4.	No Material Adverse Change . . . . .	23
7.2.5.	Instruments of Conveyance . . . . .	23
7.2.6.	Employment Agreements . . . . .	24
7.2.7.	Opinion of Counsel . . . . .	24
7.2.8.	Consents and Approvals . . . . .	24
8.	INDEMNIFICATION . . . . .	24
8.1.	Indemnification by the Sellers and the Original Investors . . . . .	24

8.2.	Indemnification by the Buyers . . . . .	24
8.3.	Notice of Claims . . . . .	25
8.4.	Third Party Claims . . . . .	25
8.5.	Method of Settlement . . . . .	26
9.	TERMINATION OF AGREEMENT . . . . .	27
9.1.	Optional Termination . . . . .	27
9.2.	Automatic Termination . . . . .	27
9.3.	Liabilities in Event of Termination . . . . .	28
10.	GENERAL . . . . .	28
10.1.	Cooperation . . . . .	28
10.2.	Successors and Assigns . . . . .	28
10.3.	Entire Agreement . . . . .	28
10.4.	Effectiveness . . . . .	29
10.5.	Counterparts . . . . .	29
10.6.	Notices . . . . .	29
10.7.	Governing Law . . . . .	30
10.8.	Survival of Representations and Warranties . . . . .	30
10.9.	Exercise of Rights and Remedies . . . . .	30
10.10.	Reformation and Severability . . . . .	30

## ASSET ACQUISITION AGREEMENT

ASSET ACQUISITION AGREEMENT (the "Agreement") made as of December 15, 1994, among The Brew House, Limited Partnership, a Massachusetts limited partnership, (the "Partnership"), The Brew House, L.L.C., a Delaware limited liability company (the "LLC; the Partnership and the LLC being the "Buyers"), Dartmouth Breweries, Inc., a Delaware corporation ("Dartmouth"), 1776 Breweries, Inc, a Delaware corporation ("1776"; 1776 and Dartmouth being, the "Sellers"), the stockholders of Dartmouth who have from time to time executed and delivered to the Buyers and Sellers counterparts of the signature page hereto (the "Dartmouth Investors") and the stockholders of 1776 who have from time to time executed and delivered to the Buyers and Sellers counterparts of the signature page hereto (the "1776 Investors"; the Dartmouth Investors and the 1776 Investors being the "Original Investors").

### RECITALS

WHEREAS the Buyers desire to purchase from the Sellers, and the Sellers desire to sell to the Buyers, all of the assets (other than assets disposed of since August 31, 1994 in the ordinary course of business consistent with past practice, as more fully set forth in this Agreement) relating to the business of the Sellers in owning and operating the restaurant and on-site brewery located in Harvard Square, Cambridge, Massachusetts known as John Harvard's Brew House, (the "Acquired Business"), subject only to the liabilities specifically assumed hereunder;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, representations, warranties, provisions and covenants herein contained, the parties hereto hereby agree as follows:

#### 1. PURCHASE AND SALE OF ASSETS

1.1. The Dartmouth Assets. At the Dartmouth Closing, Dartmouth hereby agrees to sell to the Partnership, and the Partnership hereby agrees to purchase from Dartmouth (provided that at the Dartmouth Closing, the Partnership may designate that title to certain of the Dartmouth Assets shall be taken and paid for by the LLC), on the terms, conditions, and provisions herein contained, the following described property and assets of Dartmouth relating to the Acquired Business, each as in existence at the time of the Dartmouth Closing (collectively, the "Dartmouth Assets"):

1.1.1. All equipment, computers, machinery, tools, ranges, ovens, dishwashers, furniture, flat-ware, glassware, table-ware, fixtures, personal property, and other physical assets of any nature or kind whatsoever owned by Dartmouth and used by or in the Acquired Business (the "Equipment"), substantially all of which equipment and other property is listed on Schedule 1.1(a) hereto.

1.1.2. All rights of Dartmouth under the lease relating to the real property used in the Acquired Business (the "Real Property Lease"), which lease is listed on Schedule 1.1(b) hereto.

1.1.3. All rights of Dartmouth under any leases relating to Equipment (the "Equipment Leases"), which leases are listed on Schedule 1.1(c) hereto.

1.1.4. All rights of Dartmouth under all licenses, permits, authorizations, approvals, consents and franchises used by Dartmouth in connection with the operation of the Acquired Business (the "Licenses"), including those listed on Schedule 1.1(d) hereto.

1.1.5. All raw materials, food, liquor, supplies and other materials held for use in connection with the Acquired Business (the "Inventory"), wherever located.

1.1.6. All patents, patent rights, inventions, processes, designs and applications for patents of Dartmouth used or useful in the operation of the Acquired Business (the "Dartmouth Patents"), and all trademarks, trademark applications, service marks, service mark applications, copyrights, copyright applications, tradenames, registered designs and unregistered design rights of Dartmouth used or useful in the operation of the Acquired Business (the "Dartmouth Trademarks"), including the patents and trademarks listed on Schedule 1.1(f) hereto.

1.1.7. All trade secrets, processes, know-how, procedures, recipes, formulae and confidential information of Dartmouth used or useful in the operation of the Acquired Business (the "Dartmouth Trade Secrets").

1.1.8. All rights of Dartmouth under any licenses for Intellectual Property (as defined in Section 3.9) used or useful in the operation of the Acquired Business (the "IP Licenses").

1.1.9. All books and records of Dartmouth (including without limitation computerized records, computer software, and computer programs) used or useful in the operation of the Acquired Business.



1.1.10. All rights of Dartmouth under any contracts relating to the Acquired Business (the "Dartmouth Contracts"), including without limitation those described in Schedule 1.1(j) hereto.

1.1.11. All cash, bank accounts, securities, and financial assets of Dartmouth.

1.1.12. All other assets (if any) held or owned by Dartmouth and primarily used by it in connection with the Acquired Business, but specifically excluding the Excluded Assets described in Section 1.3 hereof.

1.2. The 1776 Assets. At the 1776 Closing, 1776 hereby agrees to sell to the LLC, and the LLC hereby agrees to purchase from 1776, on the terms, conditions, and provisions herein contained, the following described property and assets of 1776 relating to the Acquired Business, each as in existence at the time of the 1776 Closing (collectively, the "1776 Assets"; the Dartmouth Assets and the 1776 Assets being the "Assets"):

1.2.1. All patents, patent rights, inventions, processes, designs and applications for patents of 1776 used or useful in the operation of the Acquired Business (the "1776 Patents"; the Dartmouth Patents and the 1776 Patents being the "Patents"), and all trademarks, trademark applications, service marks, service mark applications, copyrights, copyright applications, tradenames, registered designs and unregistered design rights of 1776 used or useful in the operation of the Acquired Business (the "1776 Trademarks"; the Dartmouth Trademarks and the 1776 Trademarks being the "Trademarks"), including the patents and trademarks listed on Schedule 1.2(a) hereto.

1.2.2. All trade secrets, processes, know-how, procedures, recipes, formulae and confidential information of 1776 used or useful in the operation of the Acquired Business (the "1776 Trade Secrets"; the Dartmouth Trade Secrets and the 1776 Trade Secrets being the "Trade Secrets").

1.2.3. All books and records of 1776 (including without limitation computerized records, computer software, and computer programs) used or useful in the operation of the Acquired Business.

1.2.4. All rights of 1776 under any contracts relating to the Acquired Business (the "1776 Contracts"; the Dartmouth Contracts and the 1776 Contracts being the "Contracts"), including without limitation those described in Schedule 1.2(d) hereto.

1.2.5. All other assets (if any) held or owned by 1776 and primarily used by it in connection with the Acquired Business, but specifically excluding the Excluded Assets described in Section 1.3 hereof.

1.3. Excluded Assets. Notwithstanding the provisions of Sections 1.1 and 1.2, the following assets (the "Excluded Assets") shall not be included in the Assets being sold by the Sellers to the Buyers.

(a) Stock books, minute books and other corporate records of the Sellers.

(b) All books and records of the Sellers relating to taxes paid or payable by the Sellers.

1.4. Purchase Price. The total purchase price which the Partnership shall pay to Dartmouth for the Dartmouth Assets is \$            in cash (the "Dartmouth Purchase Price"). The total purchase price which the LLC shall pay to 1776 for the 1776 Assets is \$            payable by means of a promissory note of the LLC in substantially the form of Exhibit 1.4 hereto (the "1776 Purchase Price").

1.5. Assumption of Certain Liabilities of Dartmouth. In addition to the Dartmouth Purchase Price specified in Section 1.4 hereof, the Partnership shall assume (as of the time of the Dartmouth Closing), and thereafter indemnify and hold Dartmouth harmless from, the following specified obligations and liabilities of Dartmouth relating to the Dartmouth Assets (the "Dartmouth Assumed Liabilities"), but no others:

(a) All obligations and liabilities of Dartmouth under the Real Property Lease, the Equipment Leases, the Dartmouth Contracts and Licenses to the extent that Dartmouth's rights thereunder are actually (with consent where required) assigned to the Partnership, provided, however, that the Partnership is not assuming any obligations or liabilities for any breach or default under any of the foregoing outstanding at the time of the Dartmouth Closing or resulting from any event occurring before the time of the Dartmouth Closing which with the giving of notice or the passage of time or both would result in a breach or default; and

(b) All liabilities of Dartmouth listed on Schedule 1.5 attached hereto.

The Partnership is not assuming, and shall not be deemed to have assumed any obligations or liabilities of Dartmouth other than the Dartmouth Assumed Liabilities specifically described above. No assumption by the Partnership of any of the Dartmouth Assumed Liabilities shall relieve or be deemed to relieve Dartmouth from any obligation or liability under this Agreement with respect to any representations or warranties by Dartmouth to the Partnership.

1.6. Assumption of Certain Liabilities of 1776. In addition to the 1776 Purchase Price specified in Section 1.4 hereof, the LLC shall assume (as of the time of the 1776 Closing), and thereafter indemnify and hold 1776 harmless from, the following specified obligations and liabilities of 1776 relating to the 1776 Assets (the "1776 Assumed Liabilities"), but no others:

(a) All obligations and liabilities of 1776 under the 1776 Contracts and Licenses to the extent that 1776's rights thereunder are actually (with consent where required) assigned to the LLC, provided, however, that the LLC is not assuming any obligations or liabilities for any breach or default under any of the foregoing outstanding at the time of the 1776 Closing or resulting from any event occurring before the time of the 1776 Closing which with the giving of notice or the passage of time or both would result in a breach or default; and

(b) All liabilities of 1776 listed on Schedule 1.6 attached hereto.

The LLC is not assuming, and shall not be deemed to have assumed any obligations or liabilities of 1776 other than the 1776 Assumed Liabilities specifically described above. No assumption by the LLC of any of the 1776 Assumed Liabilities shall relieve or be deemed to relieve 1776 from any obligation or liability under this Agreement with respect to any representations or warranties by 1776 to the LLC.

1.7. Allocation of Purchase Price. The consideration for the Assets shall be allocated among the Assets as agreed to in good faith by the Buyers and the Sellers and the parties shall file their respective tax returns (including an IRS Form 8594 to which the Sellers and the Buyers have agreed) in accordance with such allocation and shall not take any position or action inconsistent with such allocation.

1.8. Transfer Taxes and Prorations. The Buyers shall pay or cause to be paid any sales, transfer or excise tax or similar

tax or fee levied or imposed on the transfer of the Assets under this Agreement.

## 2. CLOSINGS

2.1. The Dartmouth Closing. The closing of the transactions contemplated by Section 1.1 (the "Dartmouth Closing") shall take place at the offices of Ropes & Gray in Boston, Massachusetts or at such other place as may be agreed to by the Partnership and Dartmouth, on such date not later than five business days after the transfer of the Liquor Licenses to the Partnership has been approved as contemplated by Section 5.1 hereof as may be agreed to by the Partnership and Dartmouth (the "Dartmouth Closing Date"). The transfer of the Dartmouth Assets and assumption of the Dartmouth Assumed Liabilities shall be deemed to have taken place at 12:01 a.m. on the Dartmouth Closing Date.

2.2. The 1776 Closing. The closing of the transactions contemplated by Section 1.2 (the "1776 Closing") shall take place at the offices of Ropes & Gray in Boston, Massachusetts or at such other place as may be agreed to by the LLC and 1776, on such date not later than five business days after the Effective Date (the "1776 Closing Date") as Dartmouth, 1776, the Partnership and the LLC shall agree. The transfer of the 1776 Assets and assumption of the 1776 Assumed Liabilities shall be deemed to have taken place at 12:01 a.m. on the 1776 Closing Date.

## 3. REPRESENTATIONS AND WARRANTIES OF SELLERS AND THE ORIGINAL INVESTORS

Dartmouth and the Dartmouth Investors jointly and severally make the following representations and warranties to the Partnership solely with respect to Dartmouth and the Dartmouth Assets and 1776 and the 1776 Investors jointly and severally make the following representations and warranties to the LLC solely with respect to 1776 and the 1776 Assets (notwithstanding the fact that the representations and warranties set forth in this Section 3 speak as to each of the Sellers):

3.1. Due Organization; Authorization. Each of the Sellers is a duly organized and validly existing corporation in good standing under the laws of the jurisdiction of its incorporation, and is duly authorized, qualified and licensed under all applicable laws, regulations, ordinances and orders of public authorities to carry on the Acquired Business in the places and in the manner now conducted. Each of the Sellers has all corporate power and authority, and each of the Original Investors has all power and authority, to enter into and perform this Agreement and the other documents and instruments to be delivered pursuant to this Agreement and to consummate the sale of the

Assets and the other transactions contemplated hereby. The execution and delivery by each of the Sellers of this Agreement and the consummation by each of the Sellers of the sale of the Assets and the other transactions contemplated by this Agreement have been duly and validly authorized by all necessary corporate action on the part of each of the Sellers. This Agreement has been duly and validly executed and delivered by each of the Sellers and each of the Original Investors, constitutes the legal, valid and binding obligation of each of the Sellers and each of the Original Investors and is enforceable against each of the Sellers and each of the Original Investors in accordance with its terms.

3.2. Capitalization. Schedule 3.2 lists each existing Original Investor and the number of shares of capital stock of the Sellers held. Except as set forth on Schedule 3.2, there are no outstanding shares of any class of capital stock of either of the Sellers nor are there any outstanding options or other rights to acquire capital stock or any other securities of the Sellers.

3.3. No Conflicts; Approvals.

(a) The execution, delivery and performance of this Agreement by each of the Sellers and the consummation of the sale of the Assets and the other transactions contemplated hereby will not (i) conflict with or result in a breach of any provision of the articles of incorporation or by-laws of either of the Sellers, (ii) except as indicated on Schedule 3.3 hereto, result in any conflict with, breach of, or default (or give rise to any right to termination, cancellation or acceleration or loss of any right or benefit), under or require any consent or approval with respect to, any of the terms, conditions or provisions of any contract, license (including, without limitation, any liquor license or restaurant license) or agreement to which either of the Sellers is a party or by which either of the Sellers or any of the Assets may be bound or (iii) violate any order, law, rule or regulation applicable to either of the Sellers or the Assets.

(b) Except as indicated on Schedule 3.3 hereto, no action, consent or approval by, or filing by either of the Sellers with, any federal, state, municipal, foreign or other court or governmental body or agency, or any other regulatory body, including, without limitation, any applicable liquor, entertainment or restaurant licensing authorities, is required in connection with the execution, delivery or performance by either of the Sellers of this Agreement or the consummation of the sale of the Assets and the other transactions contemplated hereby.

3.4. Business; Assets. The business conducted by the Sellers with the Assets is a restaurant and bar which sells beer and ale which is brewed on the premises in a so-called micro brewery operated by the Sellers. The Licenses included in Schedule 1.1(d) are sufficient to permit the production and sale of beer and ale which is brewed on-premises. The brewing equipment included in the Assets is in good working order and condition, has not failed to function for any continuous period of more than 48 hours during the past year, and is sufficient in all respects to permit the Buyers to buy and sell beer and ale which is brewed on the premises included with the Assets.

3.5. Title to Assets; Absence of Liens; Sufficiency of Assets. Each of the Sellers has good and marketable title to, or a valid leasehold interest in, the properties and assets used by it in the Acquired Business, located on its premises or shown on the August 31, 1994 balance sheet, free and clear of all mortgages, pledges, liens, charges, claims, options, security interests, or other encumbrances of any kind whatsoever, except as set forth on Schedule 3.5. The Assets are sufficient to enable the Buyers to operate and conduct the Acquired Business after the Closing in substantially the same manner as the Acquired Business has heretofore been conducted by the Sellers.

3.6. Financial Statements. The Sellers have previously furnished the Buyers with copies of the following financial statements of the Buyers (collectively the "Financial Statements"):

- (i) Monthly statements of income (loss) and balance sheets for each of Dartmouth and 1776 for each of the months ended September, 1992 through August, 1994, in the form customarily prepared by management of the Sellers for internal use.
- (ii) Balance sheets of Dartmouth and 1776 as of August 31, 1994, reviewed by Freedberg & Garlick, P.C.

Except as set forth in the notes to the Financial Statements, the Financial Statements, together with the notes thereto, (a) are complete and correct in all material respects, (b) have been prepared in accordance with the books and records regularly maintained with respect to the Sellers and (c) present fairly the financial position of the Sellers as of the date and the results of their operations for the period indicated in accordance with generally accepted accounting principles consistently applied (subject only in the case of the financials referred to in clause (i) above to the absence of footnotes and to normal year end adjustments).

3.7. Undisclosed Liabilities or Obligations. Except as reflected in the Financial Statements, as of the date of this

Agreement, the Sellers do not have any liabilities, whether absolute, contingent, accrued or otherwise, in respect of (i) taxes or (ii) any other liabilities which, in the aggregate, exceed \$50,000.

3.8. Inventory. Schedule 3.8 sets forth a complete and accurate list of all inventories, including, without limitation, food, liquor, supplies, and raw materials of the Acquired Business as of August 31, 1994. Since August 31, 1994, there has been no change in such inventories, except changes resulting from purchases and sales in the ordinary course of business. Such inventories consist of items of a quality and quantity usable or saleable in the ordinary course of business, and all items included in the inventories are the property of Dartmouth except for subsequent valid sales made in the ordinary course of business since August 31, 1994, for which sales the purchaser thereof has made full payment. Except as shown on Schedule 3.8, no items included in the inventories have been pledged as collateral or held by either of the Sellers on consignment from another. All inventories are valued at the lower of cost or market.

3.9. Permits and Intellectual Property. Schedules 1.1(d) and 1.1(f) set forth an accurate list and summary description of all certificates of need, permits, titles (including motor vehicle titles and current registrations), fuel permits, licenses, including, without limitation, liquor licenses and restaurant licenses, franchises and certificates owned, held, licensed or otherwise used by either of the Sellers and which are material to the operation or conduct of the Acquired Business (collectively, the "Permits") and all trademarks, trade names, service marks, patents, patent applications and copyrights owned or held by either of the Sellers and which are material to the operation or conduct of the Acquired Business (collectively, "Intellectual Property"). Such Permits and Intellectual Property are to the best of each of the Sellers's knowledge valid, in good standing and in full force and effect and constitute all such permits which are necessary for the operation of the Acquired Business as presently conducted and as previously conducted by the Sellers. There are no claims or proceedings pending, or to the best of each of the Sellers's knowledge threatened, against either of the Sellers asserting the infringement by either of the Sellers of, and neither of the Sellers has to the best of such Sellers's knowledge infringed on, any trademark, service mark, copyright, patent, patent right or any other proprietary right of any other person. Neither the execution and delivery of this Agreement nor the consummation of the sale of the Assets or the other transactions contemplated hereby, will cause a default under or alter or impair any rights or give rise to any rights of termination, cancellation or acceleration or loss of any right or benefit, or, except as set forth on Schedules 1.1(d) and 1.1(f) require any consent or approval under, or with respect to, any

3.10. Real and Personal Property; Leases.

3.10.1. Schedule 1.1(b) sets forth a complete and correct list and a substantially complete description of all the real property leased by either of the Sellers and used in the Acquired Business.

3.10.2. Schedules 1.1(a) and 1.1(c) set forth a complete and correct list of all Equipment owned or leased by either of the Sellers and used in the Acquired Business.

3.10.3. All the Equipment used in the Acquired Business, whether owned or leased, is in good working order and condition, subject to ordinary wear and tear.

3.10.4. The Real Property Lease and the Equipment Leases constitute all leases for real or personal property used in the Acquired Business. Neither of the Sellers owns any real property. Neither of the Sellers is in default under the Real Property Lease or any Equipment Lease and neither Seller has received or given any notice of default thereunder, and to the best knowledge of each of the Sellers, no other party to any such lease is in default thereunder. The Sellers have delivered to the Buyers complete and correct copies of the Real Property Lease and all Equipment Leases providing for aggregate annual payments in excess of \$25,000. Each such lease is the legal, valid and binding obligation of the Seller party thereto and, to the best knowledge of each of the Sellers, the other parties thereto. Each such lease is in full force and effect and will continue in full force and effect following the consummation of the transactions contemplated hereby.

3.11. Contracts and Commitments.

3.11.1. The Contracts listed in Schedules 1.1(j) and 1.2(d) constitute all material contracts, commitments and similar agreements or arrangements, whether written or oral, relating to the Acquired Business to which either of the Sellers is a party or by which either of the Sellers or any of its properties are bound (including, but not limited to, employment agreements, joint venture or partnership agreements, contracts with any labor organizations, loan agreements, indemnity or guaranty agreements, bonds, mortgages, options to purchase land, liens, pledges or other security agreements).

3.11.2. The Sellers have delivered to the Buyers true and complete copies of the Contracts that are in writing and an accurate and complete description of all oral Contracts.



3.11.3. Each of the Sellers has complied with all material commitments and obligations under the Contracts to which it is a party and neither of the Sellers is in material default under any Contract or has received or given any notice of default thereunder and, to the best of each of the Sellers's knowledge, no other party to a Contract is in material default thereunder.

3.11.4. Each Contract is the legal, valid and binding obligation of the Seller which is a party thereto and, to the best of each of the Sellers's knowledge, the other parties thereto.

3.12. Labor Matters. Neither of the Sellers is, and none of the Assets is, bound by or subject to any arrangement with any labor union. No employees of either of the Sellers are represented by any labor union or covered by any collective bargaining agreement and, to the best of each of the Sellers's knowledge, there is no organization or campaign to establish such representation in progress. There is no pending nor, to the best of each of the Sellers's knowledge threatened, labor dispute involving either of the Sellers and any group of its employees, nor has Dartmouth experienced any labor interruptions over the past three years.

3.13. Insurance. The Sellers have delivered to the Buyers (a) an accurate list of all insurance policies carried by the Sellers relating to the Acquired Business and (b) all insurance loss runs or workmen's compensation claims received by the Sellers relating to the Acquired Business. Copies of all policies currently in effect have previously been delivered to the Buyers and are complete and correct. The insurance carried by the Sellers with respect to its properties, assets and businesses is with financially sound and reputable insurers and is, to the best knowledge of each of the Sellers, in amounts sufficient for the prudent protection of the Acquired Business. Such insurance policies are currently in full force and effect and will remain in full force and effect through the Dartmouth Closing Date.

3.14. Compensation. Schedule 3.14 sets forth an accurate list of all officers, directors and employees of each of the Sellers employed in the Acquired Business who earn more than \$50,000 annually, the rate of compensation (and the portions thereof attributable to salary, bonus and other compensation, respectively) of each such person as of August 31, 1994 and any increase therein since August 31, 1994.

3.15. Employee Benefit Plans. Schedule 3.15 sets forth an accurate schedule listing all employee benefit or welfare plans of either of the Sellers, including without limitation any pension, profit-sharing, bonus, stock option, incentive, deferred

compensation, hospitalization, medical, insurance or other plan or arrangement, and any employment or other agreement containing "golden parachute" provisions, and a description of such plans and arrangements, together with copies of such plans, agreements and any trusts related thereto, and classifications of employees covered thereby. All employee benefit plans listed on Schedule 3.15 are in substantial compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the regulations issued thereunder, as well as with all other applicable federal, state and local statutes, ordinances and regulations and no liability will attach to the Buyers as a result of any non-compliance. None of the plans listed on Schedule 3.15 are intended to be "Qualified Plans" under Section 401(a) of the Internal Revenue Code of 1986, as amended.

3.16. Litigation. Except as shown on Schedule 3.16, there are no claims, actions, suits or proceedings, pending or threatened, against or affecting either of the Sellers that relate to the Acquired Business at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality having jurisdiction over it and no notice of any claim, action, suit or proceeding, whether pending or threatened, has been received.

3.17. Conformity with Law. Except as shown on Schedule 3.17, each of the Sellers has conducted, and is conducting, the Acquired Business in full compliance with the requirements, standards, criteria and conditions set forth in applicable federal, state and local statutes, ordinances, permits, licenses, orders, approvals, variances, rules and regulations, including, without limitation, those relating to wage and hour restrictions, payment of minimum wages, minimum age of employees, liquor, entertainment and restaurant licensing, zoning and property use, noise and nuisance, prohibitions on the sale of liquor to certain persons, and neither of the Sellers is in violation of any of the foregoing. There are no pending, nor to the best of each of the Sellers's knowledge threatened, claims for sexual or other harassment of employees.

3.18. Taxes. Each of the Sellers has filed all requisite tax and information returns required to be filed by it and has paid, or has made adequate provision for the payment of, all taxes which may have or become due during the periods covered by such returns. To the best of each of the Sellers's knowledge, there is no additional assessment or any basis therefor. There are no examinations in progress or claims against either of the Sellers for federal or other taxes (including penalties and interest) for any period and no notice of any claim, whether pending or threatened, for taxes has been received. The amounts shown as accruals for taxes on the financial statements of the

Sellers as of the August 31, 1994 delivered to the Buyers are sufficient for the payment of all taxes of the kinds indicated (including penalties and interest) for all fiscal periods ended on or before that date. Copies of (i) any tax examinations, (ii) extensions of statutory limitations and (iii) the federal, state and local income tax returns and franchise tax returns of each of the Sellers for the fiscal year ended December 31, 1993 have been previously provided to the Buyers.

3.19. Absence of Changes. Since August 31, 1994 there has not been:

(i) any material adverse change in the financial condition, assets, liabilities (contingent or otherwise), revenues, income or prospects of the Acquired Business;

(ii) any damage, destruction or loss (whether or not covered by insurance) materially adversely affecting the Assets;

(iii) any increase in the compensation, bonus, sales commissions or fee arrangement payable or to become payable by either of the Sellers to its officers, directors, stockholders, employees, consultants or agents except as expressly contemplated by the Employment Agreements referred to in Section 6.1.6 hereof;

(iv) any work interruptions, labor grievances or claims filed, proposed law or regulation or any event or condition of any character, materially adversely affecting the Acquired Business or future prospects of the Acquired Business;

(v) any sale or transfer, or any agreement to sell or transfer, any material assets, property or rights of either of the Sellers relating to the Acquired Business to any person, including, without limitation, affiliates of either of the Sellers;

(vi) any cancellation, or agreement to cancel, any indebtedness or other obligation relating to the Acquired Business owing to either of the Sellers;

(vii) any purchase or acquisition, or agreement, plan or arrangement to purchase or acquire, any property, rights or assets;

(viii) any waiver of any material rights or claims under any Contract;

(ix) any breach, amendment or termination of any Contract or Permit; or

(x) except as specifically contemplated by this Agreement, any transaction by either of the Sellers relating to the Acquired Business outside the ordinary course of business.

3.20. Distributions. Since August 31, 1994, neither Seller has paid any dividends or made any other distributions to its stockholders in respect of their capital stock and except for the payment of wages at the rates listed in Schedule 3.15 neither of the Sellers has made any payment of any type whatsoever to its stockholders whether in respect of their capital stock or otherwise.

3.21. Environmental Matters. Neither of the Sellers has ever disposed of, or contracted for the disposal of, in violation of applicable law, hazardous wastes, hazardous substances, infectious or medical waste, radioactive waste or sewage sludge as those terms are defined by the Resource Conservation and Recovery Act of 1976, as amended (the "RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Atomic Energy Act of 1954, as amended, or any comparable state laws, rules or regulations, and no such wastes, substances, or sludge generated by either of the Sellers have finally come to be located on any site which is or has been (including as a potential or suspect site) included in any published federal, state, or local "superfund" or other list of hazardous or toxic waste sites. Except as disclosed on Schedule 3.21, there has been no storage or treatment of hazardous wastes (as defined in RCRA) by either of the Sellers or, to the best of each of the Sellers' knowledge, any predecessor in interest engaged in the Acquired Business (at any site or other facility owned or operated by either of the Sellers in violation of any applicable law, rule, regulation, order, judgment or permit or that would require any material remedial action under any applicable law). Except as disclosed on Schedule 3.22, neither of the Sellers has received any notice of any violation with respect to asbestos or other toxic or dangerous materials at any of its sites, and there has been no spill, discharge, leak, emission, injection, escape, dumping or release of any kind onto any property owned or leased by either of the Sellers, or into the environment surrounding any such property of any toxic or hazardous substances as defined under, and in violation of, any local, state or Federal regulations or laws. Neither of the Sellers has ever owned, operated and/or leased a waste transfer, recycling, treatment, storage or disposal facility. No employee of either of the Sellers has, in the course and scope of employment in the Acquired Business, been exposed in violation of any law or regulation to hazardous, infectious, radioactive or toxic wastes or substances. In addition, to the best of each of the Sellers' knowledge, there has been no assertion by any governmental agency or other regulatory authority of any environmental lien or action. Attached on Schedule 3.22 is a

complete list of all disposal sites utilized by either of the Sellers or, to the best of each of the Sellers' knowledge, any of their predecessors engaged in the Acquired Business.

3.22. Brokers and Finders. Neither of the Sellers nor any of their officers, directors or employees nor any Original Investor has employed any broker, agent or finder or incurred any liability for any brokerage fees, commissions or finders' fees for the sale of the Assets or any other transactions contemplated by the Agreement or otherwise.

3.23. Relations with Government and Customers. Neither of the Sellers nor anyone acting on their behalf or in their name nor any Original Investor, has made, offered or agreed to offer anything of value to any governmental official, political party or candidate for government office or to any officer, director or employee of any customer, nor has any of them otherwise taken any action, that would cause either of the Sellers to be in violation of any applicable federal, state or local law.

3.24. Disclosure. This Agreement and the schedules hereto and all other documents and information furnished to the Buyers and its representatives pursuant hereto do not and will not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading.

#### 4. REPRESENTATIONS OF THE BUYERS

The Buyers make the following representations and warranties to, and covenant with, each of the Sellers:

4.1. Due Organization. The Partnership is a limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. The LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

4.2. Authorization. Each of the Buyers has all requisite power and authority to execute and deliver this Agreement and the other documents and instruments to be delivered pursuant to this Agreement and to consummate the purchase of the Assets to be purchased by it and the assumption of the Assumed Liabilities to be assumed by it and the other transactions contemplated hereby. The execution and delivery by the Buyers of this Agreement, the consummation of the purchase of the Assets and the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated hereby by the Buyers have been duly and validly authorized by all necessary action on the part of the Buyers. This Agreement has been duly and validly executed and delivered by the Buyers and constitutes the valid and binding

obligations of the Buyers and is enforceable against the Buyers in accordance with its terms.

#### 4.3. No Conflicts; Approvals.

(a) Neither the execution, delivery and performance of this Agreement, the consummation of the purchase of the Assets and assumption of the Assumed Liabilities nor the consummation of the other transactions contemplated hereby by the Buyers will (i) conflict with or result in a breach of any provision of the limited partnership agreement of the Partnership or the limited liability company agreement of the LLC, (ii) result in any conflict with, breach of, or default (or give rise to any right to termination, cancellation or acceleration or loss of any right or benefit) under or require any consent or approval which has not been obtained with respect to any of the terms, conditions or provisions of any indenture, contract, agreement or instrument to which the Buyers are a party or by which any of its properties may be bound provided that the Sellers have obtained all consents necessary in connection with the sale of the Assets and the other transactions contemplated hereby, or (iii) violate any order, law, rule or regulation applicable to the Buyers or by which any of their properties are bound.

(b) No action, consent or approval by, or filing by the Buyers with, any Federal, state, municipal, foreign or other court or governmental body or agency, or any other regulatory body, is required in connection with the execution and delivery by the Buyers of this Agreement or the consummation by the Buyers of the purchase of the Assets and the assumption of the Assumed Liabilities and the consummation of the other transactions contemplate hereby, other than such as shall have been made or obtained prior to the Closing.

4.4. Brokers and Finders. Neither Buyers nor any of their officers, directors or employees have employed any broker, agent or finder or incurred any liability for any brokerage fees, commissions or finders' fees for the purchase of the Assets or any other transactions contemplated by the Agreement or otherwise.

### 5. COVENANTS PRIOR TO DARTMOUTH CLOSING.

5.1. Transfer of Liquor Licenses. Reference is made to each of (i) the All-Alcoholic Seven (7) Day Beverage License, (ii) the Basic Permit from the Bureau of Alcohol, Tobacco and Firearms and (iii) the Farmer-Brewery License No. F-B10 from the Commonwealth of Massachusetts Alcoholic Beverages Control Commission (collectively, the licenses listed in the foregoing

clauses (i), (ii) and (iii) being the "Liquor Licenses") now held by Dartmouth which permit Dartmouth to serve wines and malt beverages on the premises of the Acquired Business. Dartmouth and the Partnership agree to promptly commence the process required to effect transfer of the Liquor Licenses to the Partnership at the Dartmouth Closing. Each of Dartmouth and the Partnership further agrees to execute such documents including, without limitation, applications to permit transfer of the Liquor Licenses, and to cooperate fully with the Partnership, all at the Partnership's expense, in all efforts that may be reasonably necessary to effect a transfer of the Liquor Licenses to the Partnership.

5.2. Access and Cooperation. During the period from the date hereof through the Dartmouth Closing, each of the Sellers will afford to the officers and authorized representatives of the Buyers access to such Sellers' books and records, and the Sellers will furnish the Buyers with such additional readily available financial and operating data and other information as to the Acquired Business as is reasonably necessary to effectuate the transition of the Acquired Business and as the Buyers may from time to time reasonably request. Each of the Sellers will cooperate with the Buyers, its representatives, auditors and counsel in the preparation of any documents or other material which may be required in connection with any documents or materials required by any governmental agency.

5.3. Conduct of Acquired Business Pending Dartmouth Closing. Unless the Sellers obtain the Buyers' prior written consent to the contrary, during the period from the date hereof through the Dartmouth Closing, the Sellers shall:

5.3.1. carry on the Acquired Business in substantially the same manner as it has heretofore and not introduce any material new method of management, operation or accounting;

5.3.2. not declare, set aside or pay any dividend or make any distribution with respect to its capital stock or redeem, purchase or otherwise acquire any of its capital stock;

5.3.3. pay the Base Salary to each of Byford and Gut under the Employment Agreements and not pay any amount to any affiliate of the Sellers other than pursuant to the Employment Agreements;

5.3.4. keep in full force and effect present insurance policies or other comparable insurance coverage with comparable insurers;

5.3.5. use their reasonable efforts to maintain and preserve the Acquired Business intact, retain its present

employees and maintain its relationships with suppliers, customers and others having business relations with either of the Sellers;

5.3.6. use its reasonable efforts to maintain compliance with all permits, laws, rules and regulations, consent orders, and similar requirements, including, without limitation, the Liquor Licenses;

5.3.7. maintain present debt and lease instruments and not enter into new or amended debt or lease instruments; and

5.3.8. maintain present salary levels for all officers, directors, employees and agents.

5.4. Prohibited Activities. Neither of the Sellers will take any action that, if taken between August 31, 1994, and the Dartmouth Closing, would have required disclosure pursuant to Section 3.19 of this Agreement. In addition, neither of the Sellers will, without the prior written consent of the Buyers:

5.4.1. enter into any contract or commitment or incur or agree to incur any liability relating to the Acquired Business except in the ordinary course of business or make in the aggregate capital expenditures in excess of \$5,000; or

5.4.2. create, assume or permit to exist any mortgage, pledge or other lien or encumbrance upon any Assets whether now owned or hereafter acquired, except as set forth in Schedule 3.5.

5.5. License of 1776 Trademarks and 1776 Trade Secrets. From and after the date of the 1776 Closing, the LLC hereby grants to Dartmouth a perpetual, non-exclusive, royalty-free license to continue to use any of the 1776 Trademarks and the 1776 Trade Secrets which were being used by Dartmouth on the date of the 1776 Closing; provided, however, that such license may only be used by Dartmouth in the operation of the restaurant being operated by Dartmouth on the date of the 1776 Closing.

## 6. CONDITIONS PRECEDENT TO DARTMOUTH CLOSING

6.1. Conditions to Obligations of Dartmouth. The obligations of Dartmouth to consummate the sale of the Dartmouth Assets are subject to the fulfillment, on or prior to the Dartmouth Closing Date, of each of the following conditions, any of which may be waived by Dartmouth:



6.1.1. Representations and Warranties; Performance of Obligations. The representations and warranties of the Partnership contained in Section 4 shall be true and correct on and as of the Dartmouth Closing Date with the same force and effect as though made on and as of such date; all of the terms, covenants and conditions of this Agreement to be complied with, performed and satisfied by the Partnership on or before the Dartmouth Closing Date shall have been complied with, performed and satisfied; and a certificate to the foregoing effect dated the Dartmouth Closing Date and signed by a duly authorized officer of the Partnership shall have been delivered to Dartmouth.

6.1.2. Proceedings Satisfactory. All actions, proceedings, instruments and documents required to carry out this Agreement or incidental hereto and all other related legal matters shall be reasonably satisfactory to Dartmouth and its counsel.

6.1.3. No Litigation. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the purchase by the Partnership of the Dartmouth Assets or the consummation of the other transactions contemplated hereby, and no governmental agency or body shall have taken any other action or made any request of Dartmouth as a result of which the management of Dartmouth deems it inadvisable to proceed with the transactions hereunder.

6.1.4. Opinion of Counsel. Dartmouth shall have received an opinion from counsel for the Partnership, dated the Closing Date, in form and substance satisfactory to it.

6.1.5. Consents and Approvals. All necessary consents of, and filings with, any governmental authority or agency relating to the consummation of the transactions contemplated hereby shall have been obtained and made.

6.1.6. Employment Agreements. The LLC shall have entered into employment agreements with each of Grenville Byford and Gary Gut in substantially the forms of Exhibit 6.1.6A and 6.1.6B hereto, respectively, (the "Employment Agreements") and shall have appointed Byford and Gut to the offices specified in said Employment Agreements.

6.1.7. Assignment and Assumption Agreement. The Partnership shall have executed, acknowledged and delivered to Dartmouth an Assignment and Assumption Agreement in substantially to form of Exhibit II(A) hereto.

6.2. Conditions to Obligations of the Partnership. The obligations of the Partnership to consummate the purchase of the Dartmouth Assets and the assumption of the Dartmouth Assumed Liabilities are subject to the fulfillment, on or prior to the Dartmouth Closing Date, of each of the following conditions, any of which may be waived by the Partnership:

6.2.1. Representations and Warranties; Performance of Obligations. The representations and warranties of Dartmouth contained in Section 3 shall be true and correct on and as of the Dartmouth Closing Date with the same force and effect as though made on and as of such date; all of the terms, covenants and conditions of this Agreement to be complied with, performed and satisfied by Dartmouth on or before the Dartmouth Closing Date shall have been complied with, performed and satisfied; and a certificate to the foregoing effect dated the Dartmouth Closing Date and signed by Dartmouth shall have been delivered to the Partnership.

6.2.2. Proceedings Satisfactory. All actions, proceedings, instruments and documents required to carry out this Agreement or incidental hereto and all other related legal matters shall be reasonably satisfactory to the Partnership and its counsel.

6.2.3. No Litigation. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the acquisition of the Dartmouth Assets or the other transactions contemplated by this Agreement and no governmental agency or body shall have taken any other action or made any request of the Partnership as a result of which the management of the Partnership deems it inadvisable to proceed with the transactions hereunder.

6.2.4. No Material Adverse Change. No material adverse change in the results of operations, the financial condition or the prospects of the Acquired Business shall have occurred, and the Acquired Business shall not have suffered any material loss or damages to any of its properties or assets, whether or not covered by insurance, since August 31, 1994. The Partnership shall have received a certificate signed by Dartmouth dated the Closing Date to such effect.

6.2.5. Instruments of Conveyance. Dartmouth shall have executed, acknowledged and delivered to the Partnership (i) a Bill of Sale, substantially in the form of Exhibit I(A) attached hereto, pursuant to which Dartmouth transfers to the Partnership the Dartmouth Assets to be transferred to the Partnership hereunder, (ii) an Assignment and Assumption Agreement, in substantially the form of Exhibit II(A) hereto, pursuant to which Dartmouth assigns to the Partnership the Dartmouth Contracts and the Partnership assumes the Dartmouth Assumed Liabilities and (iii) an Assignment of Lease pursuant to which the Real Property Lease shall be transferred to the Partnership, in substantially the form of Exhibit III hereto. Dartmouth will also execute and deliver to the Partnership all such other bills of sale, endorsements, assignments, including assignments of leases, and other good and sufficient instruments and documents of conveyance and assignment (including without limitation assignments of patents, trademarks and other intellectual property), reasonably satisfactory in form and content to the Partnership and its legal counsel, as are requested by the Partnership and as are reasonably necessary or appropriate to vest in the Partnership title to the Dartmouth Assets or any thereof, subject only to the Dartmouth Assumed Liabilities (if any) applicable thereto.

6.2.6. Employment Agreements. Each of Grenville Byford and Gary Gut shall have entered into their respective Employment Agreements with the LLC.

6.2.7. Opinion of Counsel. The Partnership shall have received an opinion from counsel to Dartmouth, dated the Dartmouth Closing Date, in form and substance satisfactory to the Partnership.

6.2.8. Consents and Approvals. All necessary consents of, and filings with, any governmental authority or agency relating to the consummation of the transactions contemplated hereby shall have been obtained and made including, without limitation, consent to the transfer of the Liquor Licenses as contemplated by Section 5.1 hereof and consent to the transfer of the Real Property Lease.

## 7. CONDITIONS PRECEDENT TO 1776 CLOSING

7.1. Conditions to Obligations of 1776. The obligations of 1776 to consummate the sale of the 1776 Assets are subject to the fulfillment, on or prior to the 1776 Closing Date, of each of the following conditions, any of which may be waived by 1776:

7.1.1. Representations and Warranties; Performance of Obligations. The representations and warranties of the Buyers contained in Section 4 shall be true and correct on and as of the 1776 Closing Date with the same force and effect as though made on and as of such date; all of the terms, covenants and conditions of this Agreement to be complied with, performed and satisfied by the LLC on or before the 1776 Closing Date shall have been complied with, performed and satisfied; and a certificate to the foregoing effect dated the 1776 Closing Date and signed by a duly authorized officer of the LLC shall have been delivered to 1776.

7.1.2. Proceedings Satisfactory. All actions, proceedings, instruments and documents required to carry out this Agreement or incidental hereto and all other related legal matters shall be reasonably satisfactory to 1776 and its counsel.

7.1.3. No Litigation. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the purchase by the LLC of the 1776 Assets or the consummation of the other transactions contemplated hereby, and no governmental agency or body shall have taken any other action or made any request of 1776 as a result of which the management of 1776 deems it inadvisable to proceed with the transactions hereunder.

7.1.4. Opinion of Counsel. 1776 shall have received an opinion from counsel for the LLC, dated the 1776 Closing Date, in form and substance satisfactory to it.

7.1.5. Consents and Approvals. All necessary consents of, and filings with, any governmental authority or agency relating to the consummation of the transactions contemplated hereby shall have been obtained and made.

7.1.6. Employment Agreements. The LLC shall have entered into Employment Agreements with each of Grenville Byford and Gary Gut, respectively, and shall have appointed Byford and Gut to the offices specified in said employment agreements.

7.1.7. Assignment and Assumption Agreement. The LLC shall have executed, acknowledged and delivered to 1776 an Assignment and Assumption Agreement in substantially to form of Exhibit II(B) hereto.

7.2. Conditions to Obligations of the LLC. The obligations of the LLC to consummate the purchase of the 1776 Assets and the assumption of the 1776 Assumed Liabilities are subject to the

fulfillment, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by the LLC:

7.2.1. Representations and Warranties; Performance of Obligations. The representations and warranties of 1776 contained in Section 3 shall be true and correct on and as of the 1776 Closing Date with the same force and effect as though made on and as of such date; all of the terms, covenants and conditions of this Agreement to be complied with, performed and satisfied by 1776 on or before the 1776 Closing Date shall have been complied with, performed and satisfied; and a certificate to the foregoing effect dated the 1776 Closing Date and signed by 1776 shall have been delivered to the LLC.

7.2.2. Proceedings Satisfactory. All actions, proceedings, instruments and documents required to carry out this Agreement or incidental hereto and all other related legal matters shall be reasonably satisfactory to the LLC and its counsel.

7.2.3. No Litigation. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the acquisition of the 1776 Assets or the other transactions contemplated by this Agreement and no governmental agency or body shall have taken any other action or made any request of the LLC as a result of which the management of the LLC deems it inadvisable to proceed with the transactions hereunder.

7.2.4. No Material Adverse Change. No material adverse change in the results of operations, the financial condition or the prospects of the Acquired Business shall have occurred, and the Acquired Business shall not have suffered any material loss or damages to any of its properties or assets, whether or not covered by insurance, since August 31, 1994. The LLC shall have received a certificate signed by 1776 dated the 1776 Closing Date to such effect.

7.2.5. Instruments of Conveyance. 1776 shall have executed, acknowledged and delivered to the LLC (i) a Bill of Sale, substantially in the form of Exhibit I(B) attached hereto, pursuant to which 1776 transfers to the LLC the 1776 Assets to be transferred to the LLC hereunder and (ii) an Assignment and Assumption Agreement, in substantially the form of Exhibit II(B) hereto, pursuant to which 1776 assigns to the LLC the 1776 Contracts and the LLC assumes the 1776 Assumed Liabilities. 1776 will also execute and deliver to the LLC all such other bills of sale, endorsements, assignments, including assignments of leases, and other good

and sufficient instruments and documents of conveyance and assignment (including without limitation assignments of patents, trademarks and other intellectual property), reasonably satisfactory in form and content to the LLC and its legal counsel, as are requested by the LLC and as are reasonably necessary or appropriate to vest in the LLC title to the 1776 Assets or any thereof, subject only to the 1776 Assumed Liabilities (if any) applicable thereto.

7.2.6. Employment Agreements. Each of Grenville Byford and Gary Gut shall have entered into their respective Employment Agreements with the LLC.

7.2.7. Opinion of Counsel. The LLC shall have received an opinion from counsel to the 1776, dated the 1776 Closing Date, in form and substance satisfactory to the LLC.

7.2.8. Consents and Approvals. All necessary consents of, and filings with, any governmental authority or agency relating to the consummation of the transactions contemplated hereby shall have been obtained and made.

## 8. INDEMNIFICATION

8.1. Indemnification by the Sellers and the Original Investors. Each of the Sellers and the Original Investors agrees to indemnify and hold harmless each of the Buyers from and against any and all (a) liabilities, losses, costs or damages ("Loss") and (b) reasonable attorneys' and accountants' fees and expenses, court costs and all other reasonable out-of-pocket expenses ("Expenses") incurred by Buyers, directly or indirectly, in connection with or arising from:

(i) any breach by either of the Sellers or any of the Original Investors of any of their respective covenants or other obligations in this Agreement;

(ii) any obligation or liability of either of the Sellers or any of the Original Investors other than the Assumed Liabilities; and

(iii) the breach or inaccuracy of any warranty or representation of the Sellers or any of the Original Investors contained or referred to in this Agreement.

8.2. Indemnification by the Buyers. The Buyers agree to indemnify and hold harmless each of the Sellers or any of the Original Investors from and against any and all Loss and Expense incurred by the Sellers or any of the Original Investors, directly or indirectly, in connection with or arising from:

(a) any breach by the Buyers of any of its covenants

or other obligations in this Agreement;

(b) the Assumed Liabilities; and

(c) the breach or inaccuracy of any warranty or representation of the Buyers contained or referred to in this Agreement.

8.3. Notice of Claims. If either of the Buyers, either of the Sellers or any of the Original Investors believes that it has suffered or incurred any Loss or incurred any Expense, it shall so notify the other parties to this Agreement promptly in writing describing such Loss or Expense, the amount thereof, if known, and the method of computation of such Loss or Expense, all with reasonable particularity and containing a reference to the provisions of this Agreement or other agreement delivered pursuant hereto in respect of which such Loss or Expense shall have occurred. The failure to give the notice referred to herein promptly shall not relieve the indemnifying party of its indemnification obligations hereunder except to the extent that the indemnifying party is actually prejudiced as a result of the failure to give such notice. If any action at law or suit in equity is instituted by or against a third party with respect to which the Buyers, either of the Sellers or any of the Original Investors intends to claim any liability or expense as Loss or Expense under this Article 8, such party shall promptly notify the indemnifying party of such action or suit.

8.4. Third Party Claims. (a) Subject to Section 8.4(b), the party indemnified under this Article 8 shall have the right to conduct and control, through counsel of its choosing, any third party claim, action or suit, and may compromise or settle the same, provided that the indemnified party shall give the indemnifying party advance notice of any proposed compromise or settlement. The indemnified party shall permit the indemnifying party to participate in the defense of any such action or suit through counsel chosen by the indemnifying party, provided that fees and expenses of such counsel shall be borne by the indemnifying party. Subject to Section 8.4(b), any compromise or settlement with respect to a claim for money damages effected after the indemnifying party by notice to the indemnified party shall have disapproved such compromise or settlement shall discharge the indemnifying party from liability with respect to the subject matter thereof, and no amount in respect thereof shall be claimed as Loss or Expense under this Article 8.

(b) If the remedy sought in any action or suit referred to in Section 8.4(a) is solely money damages, the indemnifying party shall have 15 business days after receipt of the notice referred to in the last sentence of Section 8.4(a) to notify the indemnified party that it elects to conduct and control such action or suit. If the indemnifying party does not

give the foregoing notice, the indemnified party shall have the right to defend, contest, settle or compromise such action or suit in the exercise of its exclusive discretion, and the indemnifying party shall, upon request from the indemnified party, promptly pay to the indemnified party in accordance with the other terms of this Article 8 the amount of any Loss resulting from its liability to the third party claimant and all related Expense. If the indemnifying party gives the foregoing notice, the indemnifying party shall have the right to undertake, conduct and control, through counsel of its own choosing and at the sole expense of the indemnifying party, the conduct and settlement of such action or suit, and the indemnified party shall cooperate with the indemnifying party in connection therewith; provided that (x) the indemnifying party shall not thereby permit to exist any lien, encumbrance or other adverse charge upon any asset of the indemnified party, (y) the indemnifying party shall permit the indemnified party to participate in such conduct or settlement through counsel chosen by the indemnified party, but the fees and expenses of such counsel shall be borne by the indemnified party except as provided in clause (z) below and (z) the indemnifying party shall agree promptly to reimburse to the extent required under this Article 8 the indemnified party for the full amount of any Loss resulting from such action or suit and all related Expense incurred by the indemnified party, except fees and expenses of counsel for the indemnified party incurred after the assumption of the conduct and control of such action or suit by the indemnifying party. So long as the indemnifying party is contesting any such action or suit in good faith, the indemnified party shall not pay or settle any such action or suit. Notwithstanding the foregoing, the indemnified party shall have the right to pay or settle any such action or suit, provided that in such event the indemnified party shall waive any right to indemnity therefore by the indemnifying party, and no amount in respect thereof shall be claimed as Loss or Expense under this Article 8.

8.5. Method of Settlement. Any Loss or Expense for which the Buyers are entitled to be indemnified under Section 8.1 hereof by either of the Sellers or any of the Original Investors shall be settled either (i) in cash or (ii) under Section 3.11 of the Limited Liability Company Agreement of the LLC dated as of the date hereof (the "LLC Agreement"). If such indemnity obligation is not settled within 90 days after the obligation to indemnify arises, such obligation shall be settled under Section 3.11 of the LLC Agreement. If an indemnity obligation of an Original Investor is being satisfied under Section 3.11 of the LLC Agreement, once any Original Investor's Capital Account and Profits Percentage has been reduced to zero and any appropriate reduction is made in the amount set forth in Section 7.2.4 of the LLC Agreement with respect to such Original Investor, such Original Investor shall have no further indemnity obligations



under this Article 8. Any Loss or Expense for which the Sellers or any of the Original Investors is entitled to be indemnified under Section 8.2 hereof shall be paid in cash. The Buyers, the Sellers and the Original Investors agree that the provisions of this Article 8 shall, absent fraud, be the exclusive remedies against any Loss or Expense against which they are entitled to be indemnified under this Article 8.

## 9. TERMINATION OF AGREEMENT

9.1. Optional Termination. This Agreement may be terminated at any time prior to the Dartmouth Closing or the 1776 Closing, as the case may be:

(a) by mutual written consent of the Buyers and each of the Sellers;

(b) by either the Buyers or the Sellers upon written notice to the other if any court or governmental or regulatory agency, authority or body shall have enacted, promulgated or issued any statute, rule, regulation, ruling, writ or injunction, or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated hereby and all appeals and means of appeal therefrom have been exhausted;

(c) by the Buyers if (i) there shall have been a breach of any of the covenants or agreements of the Sellers hereunder which cannot be or has not been cured within 10 days after written notice to the breaching party, (ii) there shall have been any material breach of any representation or warranty of the Sellers contained herein or in any instrument or other document delivered by or on behalf of the Sellers in connection herewith or (iii) if the transfer of the Liquor Licenses contemplated by Section 5.1 hereof has not occurred by the "Trigger Date", as established from time to time pursuant to the Fall-Back Agreement dated as of the 1776 Closing Date (the "Fall-Back Agreement") by and among the Boston Ventures Entities, Dartmouth and the investors in the LLC identified therein;

(d) by the Sellers if (i) there shall have been a breach of any of the covenants or agreements of the Buyers hereunder which cannot be or has not been cured within 10 days after written notice to the breaching party or (ii) there shall have been any material breach of any representation or warranty of the Buyers contained herein or in any instrument or other document delivered by or on behalf of the Buyers in connection herewith.

9.2. Automatic Termination. This Agreement shall be terminated automatically with respect to the Dartmouth Closing if

at any time prior to the Dartmouth Closing the Boston Ventures Entities elect either (i) to put their interests in the LLC to Dartmouth pursuant to the Fall-Back Agreement or (ii) to reduce the Profits Percentages of the investors in the LLC pursuant to the Fall-Back Agreement.

9.3. Liabilities in Event of Termination. The termination of this Agreement will in no way limit any obligation or liability of any party based on or arising from a breach or default by such party with respect to any of its representations, warranties, covenants or agreements contained in this Agreement. Notwithstanding anything to the contrary herein, once the Dartmouth Closing or the 1776 Closing has occurred, this Agreement shall remain in full force and effect with respect to such Closing. The provisions of this Section 9 and of Section 8 shall survive the termination of this Agreement.

## 10. GENERAL

10.1. Cooperation. The Sellers and the Buyers shall each deliver or cause to be delivered to each other on the Closing Date, and at such other times and places as shall be reasonably agreed to, such additional instruments as each other may reasonably request for the purpose of consummating the transactions contemplated by this Agreement. The parties hereto will cooperate and use their best efforts, at no charge to the other party to have the officers, directors and employees of the Buyers and the Sellers cooperate with such party and their respective representatives on and after the Closing Date in furnishing information, evidence, documents, testimony, access to premises and other assistance in connection with any actions, proceedings, arrangements or disputes of any nature to which the Buyers or either of the Sellers is now or hereafter becomes a party with respect to matters pertaining to all periods prior to the Closing Date.

10.2. Successors and Assigns. This Agreement and the rights of the parties hereunder may not be assigned (except by operation of law) and shall be binding upon and shall inure to the benefit of the parties hereto, their successors and permitted assigns of the Buyers and the Sellers.

10.3. Entire Agreement. This Agreement (including the schedules and annexes attached hereto) and the documents and instruments delivered pursuant hereto constitute the entire agreement and understanding between the Sellers and the Buyers and supersede any prior agreement and understanding relating to the subject matter of this Agreement. This Agreement may be modified or amended only by a written instrument executed by each of the Sellers and the Buyers by their respective duly authorized officers.

10.4. Effectiveness. This Agreement shall become effective on such date as is designated the effective date (the "Effective Date") by the Sellers and the Buyers after each of the Sellers, each of the Buyers, Dartmouth Investors holding an aggregate of not less than 85% of the common stock of Dartmouth and 1776 Investors holding an aggregate of not less than 90% of the common stock of 1776 have duly executed and delivered a counterpart of this Agreement, regardless of whether any or all of the remaining Original Investors have executed this Agreement.

10.5. Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute one instrument.

10.6. Notices. All notices or communication required or permitted hereunder shall be in writing. Any notice, demand or other communication given under this Agreement shall be deemed to be given if given in writing (including telex, telecopy or similar transmission) addressed as provided below (or at such other address as the addressee shall have specified by notice actually received by the addressor) and if either (a) actually delivered in fully legible form, to such address or (b) in the case of a letter, five days shall have elapsed after the same shall have been deposited in the United States mails, with first-class postage prepaid and registered or certified.

If to the Buyers, addressed to them at:

c/o Boston Ventures Management, Inc.  
21 Custom House Street  
Boston, MA 02110  
Attention: Barbara M. Ginader

with a copy to:

Ropes & Gray  
One International Place  
Boston, Massachusetts 02110-2624  
Attention: Philip J. Smith, Esq.

If to the Sellers, addressed to them at:

c/o John Harvard's Brew House  
33 Dunster Street  
Cambridge, MA 02138  
Attention: Grenville Byford

with a copy to:

Goulston & Storrs  
400 Atlantic Avenue

10.7. Governing Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

10.8. Survival of Representations and Warranties. The representations, warranties, covenants and agreements of the parties made herein and at the time of the Closing or in writing delivered pursuant to the provisions of this Agreement shall survive the consummation of the transactions contemplated hereby and any examination on behalf of the parties.


10.9. Exercise of Rights and Remedies. Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

10.10. Reformation and Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.


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

THE BREW HOUSE LIMITED PARTNERSHIP

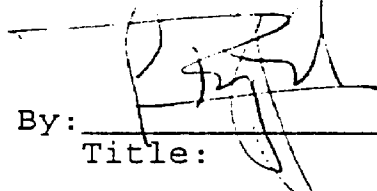
By: Brew House Management, Inc.  
its general partner

  
By: \_\_\_\_\_  
Title: PRESIDENT.

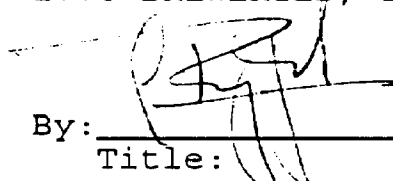
THE BREW HOUSE, L.L.C.

  
By: \_\_\_\_\_ PRESIDENT  
Authorized Signatory


DARTMOUTH BREWERIES, INC.

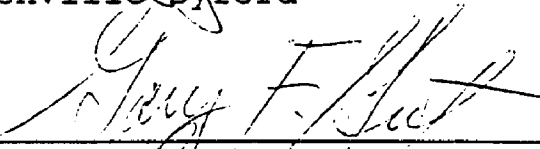
  
By: \_\_\_\_\_ PRESIDENT.  
Title:


1776 BREWERIES, INC.

  
By: \_\_\_\_\_ PRESIDENT.  
Title:

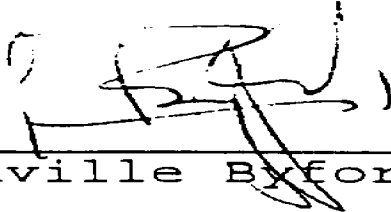
Dartmouth Investors

  
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Grenville Byford

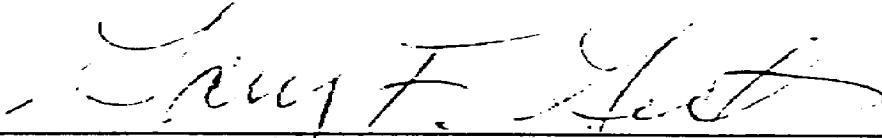
  
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Gary F. Gut

  
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Neil St. John Raymond

1776 Investors



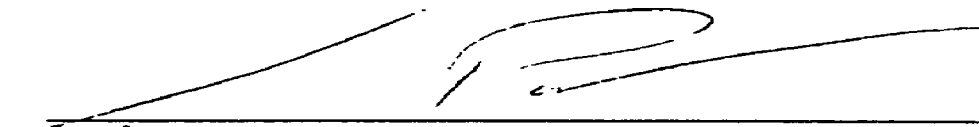
Grenville Byford



Gary F. Gut



Neil St. John Raymond



John Porter

Toxford Corporation

By: 

Title: Directors

LIST OF EXHIBITS AND SCHEDULES

<u>Exhibit Number</u>	<u>Description</u>
Exhibit 1.4	Form of Promissory Note of the LLC
Exhibit I(A)	Form of Dartmouth Bill of Sale
Exhibit I(B)	Form of 1776 Bill of Sale
Exhibit II(A)	Form of Dartmouth Assignment and Assumption Agreement
Exhibit II(B)	Form of 1776 Assignment and Assumption Agreement
Exhibit III	Assignment of Lease
Exhibit 6.1.6A	Employment Contract of Grenville Byford
Exhibit 6.1.6B	Employment Contract of Gary Gut

<u>Schedule Number</u>	<u>Description</u>
Schedule 1.1(a)	Equipment
Schedule 1.1(b)	Real Property Lease
Schedule 1.1(c)	Equipment Leases
Schedule 1.1(d)	Licenses
Schedule 1.1(f)	Dartmouth Patents; Dartmouth Trademarks
Schedule 1.1(j)	Dartmouth Contracts
Schedule 1.2(a)	1776 Patents; 1776 Trademarks
Schedule 1.2(d)	1776 Contracts
Schedule 1.5	Dartmouth Assumed Liabilities
Schedule 1.6	1776 Assumed Liabilities
Schedule 3.2	Stockholders
Schedule 3.3	Certain Contracts and Agreements Requiring Consents
Schedule 3.5	Permitted Mortgages and Liens
Schedule 3.6	Financial Statements
Schedule 3.8	Inventories
Schedule 3.14	Compensation
Schedule 3.15	Employee Benefit Plans
Schedule 3.16	Litigation
Schedule 3.17	Conformity with Law
Schedule 3.21	Environmental Matters

Schedule 1.1(f)

JOHN HARVARD'S BREW HOUSE, a common law trademark, and the subject of U.S. trademark application serial no. 74/306,505, filed August 19, 1992 (intent to use; statement of use to be filed shortly) for restaurant and bar services, in International Class 42.