

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Exclusive License Agreement with Option for Assignment		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Pearl Spirits, Inc.		05/07/2004	CORPORATION: CALIFORNIA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	David Sherman Corporation		
<b>Street Address:</b>	5050 Kemper Avenue		
<b>City:</b>	St. Louis		
<b>State/Country:</b>	MISSOURI		
<b>Postal Code:</b>	63139		
<b>Entity Type:</b>	CORPORATION: MISSOURI		
<b>PROPERTY NUMBERS Total: 3</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	78845424	PEARL	
<b>Serial Number:</b>	76633227	PEARL PERSEPHONE	
<b>Serial Number:</b>	78735572	PEARL LOCOCO	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(314)345-6060		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	314-345-6000		
<b>Email:</b>	smurphy@blackwellsanders.com		
<b>Correspondent Name:</b>	Alisha Huls		
<b>Address Line 1:</b>	720 Olive St.		
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<b>Address Line 4:</b>	St. Louis, MISSOURI 63101		
<b>ATTORNEY DOCKET NUMBER:</b>	713062.3		
<b>NAME OF SUBMITTER:</b>	Alisha Huls		

OP \$90.00 78845424

Signature:	/Alisha Huls/
Date:	05/05/2006
<p><b>Total Attachments: 31</b></p> <p>source=Pearl.Exclusive.License.Agreement#page1.tif source=Pearl.Exclusive.License.Agreement#page2.tif source=Pearl.Exclusive.License.Agreement#page3.tif source=Pearl.Exclusive.License.Agreement#page4.tif source=Pearl.Exclusive.License.Agreement#page5.tif source=Pearl.Exclusive.License.Agreement#page6.tif source=Pearl.Exclusive.License.Agreement#page7.tif source=Pearl.Exclusive.License.Agreement#page8.tif source=Pearl.Exclusive.License.Agreement#page9.tif source=Pearl.Exclusive.License.Agreement#page10.tif source=Pearl.Exclusive.License.Agreement#page11.tif source=Pearl.Exclusive.License.Agreement#page12.tif source=Pearl.Exclusive.License.Agreement#page13.tif source=Pearl.Exclusive.License.Agreement#page14.tif source=Pearl.Exclusive.License.Agreement#page15.tif source=Pearl.Exclusive.License.Agreement#page16.tif source=Pearl.Exclusive.License.Agreement#page17.tif source=Pearl.Exclusive.License.Agreement#page18.tif source=Pearl.Exclusive.License.Agreement#page19.tif source=Pearl.Exclusive.License.Agreement#page20.tif source=Pearl.Exclusive.License.Agreement#page21.tif source=Pearl.Exclusive.License.Agreement#page22.tif source=Pearl.Exclusive.License.Agreement#page23.tif source=Pearl.Exclusive.License.Agreement#page24.tif source=Pearl.Exclusive.License.Agreement#page25.tif source=Pearl.Exclusive.License.Agreement#page26.tif source=Pearl.Exclusive.License.Agreement#page27.tif source=Pearl.Exclusive.License.Agreement#page28.tif source=Pearl.Exclusive.License.Agreement#page29.tif source=Pearl.Exclusive.License.Agreement#page30.tif source=Pearl.Exclusive.License.Agreement#page31.tif</p>	

AGREEMENT

THIS AGREEMENT ("Agreement"), made and entered into on May 7, 2004, to be effective as of May 1, 2004 (the "Effective Date"), by and between, DAVID SHERMAN CORPORATION, a Missouri corporation, with a principal place of business at 5050 Kemper Avenue, St. Louis, Missouri 63139 (hereinafter "Licensee") and Pearl Spirits, Inc., a California corporation, with a principal place of business at 655 Redwood Highway, Suite 120, Mill Valley, California 94941 ("Licensor").

WHEREAS, Licensor owns certain intellectual property associated with the Pearl Products in the Territory, including United States, Canadian and Australian registered trademarks, and United States trademark applications listed on Exhibit A, and goodwill associated therewith (the "Registered Marks"), the common law trademarks associated with the Pearl Products and related products in the United States, Canada, and Australia, the names "Pearl" and "Pearl Spirits," all other names, marks, tradenames, service marks, logos, graphic designs, copyrights, trade dress, domain names, and any applications or registrations therefor, associated with the Pearl Products, including, but not limited to, those set forth on Exhibit A hereto; and other intellectual property in the Territory including (i) all formulas, recipes, processes, know how, and other proprietary information (including all distillation, filtering, finishing, and other manufacturing techniques) related to the Pearl Products, (ii) the domain names pearlvodka.com, pearlspirits.com, and pearlwisdom.com, (iii) public relations materials, marketing materials, point of sale materials, advertisements, graphics and other materials currently being used or in development or previously used or developed in connection with the Pearl Products, (iv) label and packaging designs used in connection with the Pearl Products, (v) customer, supplier and broker lists related to the Pearl Products, and (vi) other intellectual property related to or used in connection with the Pearl Products (all of the foregoing and any applications or registrations therefor, and associated goodwill, together with the Registered Marks, the "Pearl IP");

WHEREAS, Licensee desires to purchase certain assets of Licensor and to become the licensee of the Pearl IP with an option to purchase the Pearl IP on the terms and conditions hereafter set forth; and

WHEREAS, Licensor is willing to sell certain of its assets to Licensee and license the Pearl IP to Licensee on the terms and conditions hereafter set forth;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter provided, and intending to be legally bound, the parties hereby agree as follows:

1. DEFINITIONS

The capitalized terms used herein shall have the respective meanings as defined above and in this paragraph 1:

“Australia” means the states and territories of Australia and the federation thereof.

“Canada” means the provinces and territories of Canada and the federation thereof.

“Closing” has the meaning provided in Section 19 of this Agreement.

“Closing Date” has the meaning provided in Section 19 of this Agreement.

“Customers” means any third party to whom Licensee ships any Pearl Product in the Territory, including but not limited to end user customers, distributors, resellers or equivalent party.

“Effective Date” has the meaning provided in the first paragraph of this Agreement.

“Licensor” means Pearl Spirits, Inc.

“Licensee” means David Sherman Corporation.

“Operating Expenses” has the meaning provided in Section 8(a) of this Agreement.

“Option” has the meaning provided in Section 11(a) of this Agreement.

“Pearl IP” has the meaning provided in the second paragraph of this Agreement.

“Pearl Products” means (i) Pearl brand vodka as previously produced and marketed by Licensor in the Territory and, after the Closing, produced and marketed in the Territory by Licensee under this Agreement, (ii) all products containing such vodka previously produced by Licensor and produced by the

Licensee (or by any sublicensee) and marketed in the Territory after the Closing under this Agreement, (iii) any brand extensions involving flavored vodka incorporating the recipe or formula for manufacturing Pearl brand vodka and produced by Licensee after the Closing and marketed in the Territory; and (iv) all other beverage alcohol developed, manufactured, or sold by Licensee under the "Pearl" name for use within the Territory.

"Registered Marks" has the meaning provided in the second paragraph of this Agreement.

"Territory" means the United States, Canada, and Australia.

"United States" means the states of the United States of America and the District of Columbia, Puerto Rico, and the U.S. Territories and the federation thereof.

"U.S. Territories" means all territories and protectorates that are under the jurisdiction and control of the United States of America including but not limited to the United States Virgin Islands and Guam.

## 2. GRANT, ACKNOWLEDGMENT.

In consideration of the Licensor's receipt from Licensee of the sum of One Dollar (\$1.00) and other valuable consideration the adequacy and receipt of which is hereby acknowledged by Licensor and subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, an exclusive license to use the Pearl IP, on and in connection with Licensee's manufacture, marketing, distribution, and sale of Pearl Products to Customers in the Territory during the term of this Agreement. In consideration of this grant of such exclusive license, Licensee agrees that it will use commercially reasonable efforts to manufacture, market, distribute and sell the Pearl Products specified in clauses (i) through (iii) of the definition of Pearl Products in Section 1 hereof in the Territory. Licensee shall also be responsible at its expense for maintenance of the registered trademarks included in the Pearl IP, and, at or promptly after the Closing, Licensor shall provide Licensee with the complete file reflecting the registrations of the Registered Marks and the post-registration maintenance of such registrations and any renewals, declarations, or any post-registration fees that may be due to maintain the Registered Marks. Should Licensee begin development of additional Pearl Products as specified in clauses (iii) or (iv) of the definition of Pearl Products in Section 1 of this Agreement, Licensee will advise and consult with Licensor during such development to obtain Licensor's advice and recommendations about such products. During the term of this Agreement, Licensor shall deliver to Licensee in a timely manner copies of all notices and other communications that it receives with respect to the registration or maintenance of the registrations of the trademarks included in the Pearl IP and shall

cooperate in executing any documents or taking other actions reasonably necessary for the registration or maintenance thereof. Until the option granted under Section 11 of this Agreement is exercised, Licensor shall retain title to the Pearl IP.

### 3. OWNERSHIP

(a) Licensee acknowledges that the Pearl IP and all rights therein and the goodwill associated therewith throughout the Territory belong to Licensor. Licensee is a "related company" within the meaning of *15 U.S.C. § 1127* and any like provision of Canadian and Australian law, and Licensee's use of the Pearl IP pursuant to this Agreement inures to the benefit of Licensor. Subject to Licensee's rights under the Option, nothing in this Agreement conveys to Licensee any right, title or interest in or to the Pearl IP other than the right to use the Pearl IP in accordance with the provisions of this Agreement. Licensor makes no claim or representation of intellectual property rights of any kind outside the Territory, but to the extent Licensor may have any such rights outside the Territory, those rights are included in the Pearl IP.

(b) Licensee agrees that, except as otherwise provided in this Agreement, it will not (i) challenge or attack Licensor's rights to the Pearl IP in the Territory, (ii) use the Pearl IP in the Territory on or in connection with beverage goods other than as permitted herein, and (iii) register or file any application to register any mark confusingly similar to the Registered Marks, for use in connection with beverage alcohol products of any kind in the Territory.

(c) Licensor acknowledges that this Agreement may result in the sale of the Pearl IP to Licensee upon exercise of the Option and that the manufacture, marketing, and sale of Pearl Products under and in connection with the Pearl IP constitute substantially all of Licensor's business. To support the value and goodwill of the Pearl IP and its value to the Licensee, Licensor and certain of its directors and officers shall at the Closing enter into the Noncompetition Agreement with Licensee in substantially the form of Exhibit B hereto.

(d) Licensor shall not use, or grant any party other than Licensee, any license, right, or interest in the Pearl IP or any name, mark, trade dress, work of authorship, invention, method, or other intellectual property confusingly or substantially similar to or otherwise appropriating or infringing upon the Pearl IP.

(e) The parties acknowledge and agree that Licensee currently and will in the future continue to develop, produce, market, and sell vodka and other beverage alcohol products not

incorporating the Pearl IP and that such activities are not in violation of Licensee's obligations and representations under this Agreement.

#### 4. RELATIONSHIP

Licensee and Licensor acknowledge and agree that Licensee is an independent contractor, and nothing contained in this Agreement shall be construed as placing the parties in an agency, partnership, or joint venture relationship, and Licensee and Licensor shall not represent themselves as having any such relationship or that Licensee is in any other way associated with Licensor except as a licensee under this Agreement. Nothing herein shall be deemed to constitute a marketing plan with respect to the Pearl Products. Neither party shall have the power or right to make any commitment binding or obligating the other in any manner.

#### 5. INFRINGEMENT

Each party agrees to promptly notify the other party of (a) any unauthorized use of any of the Pearl IP by third parties, and (b) any infringement or similar third party claims based on Licensee's use of any of the Pearl IP, in each case as soon as any such use or claim may come to a party's attention. Licensee shall have the initial right and discretion to initiate or defend litigation or take other action with respect to such unauthorized use or claim, for its own benefit, and Licensor agrees that it will cooperate with Licensee in any enforcement or defense action or effort which Licensee may take to protect or to defend its rights in the Pearl IP and /or Licensee's rights to use the Pearl IP. Within thirty (30) days after Licensee gives or receives notice of a claim, Licensee shall advise Licensor whether it will exercise its initial right to initiate or defend litigation with respect to such unauthorized use or claim. If Licensee elects not to litigate or take other action, Licensor may at its sole expense, initiate or defend litigation or take other action with respect to the unauthorized use or claim provided that Licensor shall advise and consult with Licensee about the status of such litigation or other action, any material developments in the litigation or other action, and any proposed settlement, but Licensor shall not enter into any settlement without the prior written consent of Licensee, which consent shall not be unreasonably withheld. Licensor shall have the right to enter and participate at any time at its sole expense in any litigation or other action described above that is initiated, being defended, or taken by Licensee, provided that there shall be an equitable allocation of the costs and awards that may arise in the matter based upon the injury, time and expenses incurred by Licensor and Licensee. If Licensee elects to exercise its initial right to initiate or defend litigation or take other action with respect to an unauthorized use or claim, Licensee shall advise and consult with the Licensor from time to time about the status of such litigation or other

action, any material developments in the litigation or other action, and any proposed settlement. In the event of any such suit in which Licensee elects to exercise its initial rights to initiate or defend litigation, and further, in the event such litigation involves claims dealing with the Pearl Products, Licensor may join as a co-party to such litigation, at its own expense and through its own counsel, provided that there shall be an equitable allocation of the costs and awards that may arise in the matter based upon the injury, time and expenses incurred by the respective co-parties. Each party will take reasonable steps to cooperate with the other in the defense or prosecution of any claim. Any allocation of costs and awards hereunder shall not apply to any claims by one party against the other for contribution or relating to breach of this Agreement, or in connection with the indemnification provisions hereunder.

6. TERM; RIGHTS AND OBLIGATIONS ON TERMINATION.

Subject to the Option granted in Section 11 hereof:

(a) This Agreement and the license granted hereunder may be terminated by the mutual written agreement of Licensor and Licensee.

(b) If a party to this Agreement materially breaches or defaults in the performance of its representations, warranties, or covenants hereunder (the "Defaulting Party"), the other party may, if not also in breach or default of this Agreement (the "Non-Defaulting Party"), give the Defaulting Party written notice of such breach or default. The Defaulting Party shall have sixty (60) days from the date of such written notice to effect a cure of the breach or default specified in the notice if a cure is possible or such additional time as is reasonably necessary to effect such cure if it cannot be completed within such period due to events beyond the reasonable control of the Defaulting Party. If the Defaulting Party fails to cure such default within the period described above or a cure is not possible, the Non-Defaulting Party may thereafter terminate the Agreement and the license granted hereunder by giving the Defaulting Party written notice of such termination, provided, however, that neither party may terminate the Agreement as a result of the other party's immaterial breaches or defaults of this Agreement. Failure of Licensee to obtain or maintain any trademark or other registration of Pearl IP shall not be a breach of Licensee's obligations under this Agreement.

(c) Licensee may terminate this Agreement and, if the termination occurs after the Closing, the license granted hereunder if Licensor (i) is the subject of any involuntary bankruptcy proceeding that remains undismissed for more than sixty (60) days, (ii) files a voluntary proceeding in bankruptcy, (iii) makes an assignment for the benefit of creditors, (iv) suffers the appointment of a



receiver, liquidator, or other similar person for it or its assets, or (v) otherwise becomes the subject of any insolvency proceeding that remains undismissed for more than sixty (60) days.

(d) If not earlier terminated, this Agreement and the license granted hereunder will terminate at 11:59 p.m. (Pacific daylight savings time) on April 30, 2009.

(e) Upon the termination of this Agreement and the termination of the license granted hereunder, the parties shall have no further obligation or liability to one another except for (i) liabilities and obligations arising before the termination that are subject to indemnification under Section 23 hereof (which shall survive such termination) and (ii) liabilities and obligations of a party arising from a material breach of or default under this Agreement that result in a termination of this Agreement (and the license granted hereunder) pursuant to Section 6(b) of this Agreement. Notwithstanding this Section 6(e), if there is a termination of this Agreement other than a termination as a result of Licensee's material breach of a covenant or representation or warranty contained herein that remains uncured after the periods set out on Section 6(b) above following Licensor's notice to Licensee of the breach, Licensee's post-termination Option exercise rights under Section 11(a) of this Agreement shall survive the termination for the ninety (90) days.

#### 7. INSURANCE.

Licensee agrees to maintain in full force and effect during the term of this Agreement comprehensive general liability insurance, including personal injury and products liability, insuring both the Licensor (as an additional named insured) and Licensee and their respective employees, directors and officers in the aggregate amount of not less than \_\_\_\_\_ Licensor shall maintain same kinds of insurance with the same coverage amounts and shall make Licensee a named insured under such insurance. Within ten (10) business days after the Closing, Licensor and Licensee shall deliver to one another certificates of insurance evidencing the other party's inclusion as a named insured.

#### 8. ROYALTY

(b) If for any reason Licensee pays any of Licensor's accounts payable or other obligations (which Licensee does not assume), Licensee shall give Licensor notice of such payment, the payee, the date of payment, and the amount of the payment, and Licensee may set off the amount of such payment against the next occurring quarterly installments of royalties that become payable to Licensor under Section 8(a), provided however, that there shall be no set off for payments that Licensee makes to Saverglass to purchase glass bottleware previously manufactured on Licensor's order. This Section 8(b) shall not be interpreted or construed as Licensee's assumption of any of Licensor's accounts payable or other obligations.

(c) Within thirty (30) days after receiving a quarterly payment of royalties under this Section 8, Licensor shall provide Licensee with a schedule of the use of such payments, including a list of all

outstanding creditors of Licensee and the amounts paid thereon and the amounts used for Operating Expenses. The schedule will also show for the quarter the amount of cash on hand, royalty payments received, and the collections of Licensor's accounts receivable and the payments made from such collections, cash on hand, and royalty payments. During the thirty (30) days after the Closing, Licensor shall apply cash on hand at Closing and accounts receivables collections during such period to the payment of amounts due to (i) Licensor's distributors who do not become distributors of Licensee at or immediately after the Closing and (ii) control states. Concurrently with its making the payments specified in clauses (i) and (ii) of the immediately preceding sentence, Licensor shall provide Licensee with evidence of such payments including a list of payees, the dates of the payments, and the amounts of the payments. If the payees in clauses (i) and (ii) of the second immediately preceding sentence have not been paid in full within thirty days after the Closing, Licensee may pay the balances due and set off such payments against the next due quarterly payment of royalties under this Section 8. Following the thirty (30) day period immediately after Closing, Licensor shall apply any accounts receivable collections to the payment of its remaining creditors. Notwithstanding anything to the contrary in this Section 8(c), all accounts receivable that are generated by any sale made after the Closing shall be the property of Licensee, and Licensor shall hold all collections of such accounts receivable that it receives in trust for Licensee and shall promptly pay such amounts to Licensee. While Licensor's name remains posted as bailor in such control states, Licensor shall upon receipt promptly give Licensee copies of all reports it receives regarding withdrawals from bailment warehouses in those states and the amounts of the resulting accounts receivable.

(d) Licensee and Saverglass, Inc. ("Saverglass") and Licensor and Saverglass and, have entered into agreements under which Licensee shall apply each royalty payment required to be made under this Section 8 to direct payments to Saverglass for application against Licensor's unsecured indebtedness to it. (Licensor's total indebtedness to Saverglass may also be reduced by Licensee's purchase of certain glass bottleware previously produced by Saverglass upon Licensor's order, provided that Licensee shall be under no obligation or requirement to purchase such bottleware.)

## 9. PROMOTIONAL ACTIVITY

## 10. REVIEW

(a) Licensee agrees to keep accurate books of account and records reflecting (i) the monthly shipments of nine liter cases (or equivalent) of Pearl Products to Customers and the removal of nine liter cases (or equivalent) from control state bailment warehouses and (ii) expenditures for marketing, promoting, and advertising Pearl Products. Licensor and its duly authorized representatives shall have the right at Licensor's expense and at all reasonable hours of the day, and upon seven (7) days prior written notice, to examine and audit such books of account and records in Licensee's possession or under its control, and shall have free and full access thereto for such purposes and for the purpose of making extracts therefrom, provided that Licensor and its representatives shall be entitled to exercise such free access no more frequently than once in any May 1 through April 30 period during the term of this Agreement and, if the Closing has occurred, during the three month period after the termination of this Agreement and the license granted hereunder.

(b) Licensor shall deliver to Licensee copies of the results of its review and audit of Licensee's books of account and records pursuant to Section 10(a), a computation of the amounts that Licensor believes Licensee owes it or it owes Licensee, and the Licensor's and its representatives' workpapers. Licensee shall have thirty (30) days after Licensor's delivery to review Licensor's results and computations and the workpapers. If Licensee disputes Licensor's results or computations or the workpapers, Licensee shall give Licensor notice within such thirty (30) day period, and Licensor and Licensee shall negotiate for up to thirty (30) days to resolve the dispute. If Licensee does not give Licensor notice of its dispute, Licensor's computations and determinations of amounts owed shall apply. If Licensee gives notice of such a dispute and the parties cannot resolve the dispute within the thirty (30) day negotiation period, the parties shall refer the dispute to a mutually agreed accountant (the "Neutral Accountant") for resolution. Licensor and Licensee shall provide the Neutral Accountant with their

respective workpapers (and the workpapers of their representatives) and a briefing document in support of their positions. The written decision of the Neutral Accountant shall be binding upon Licensor and Licensee, who shall each pay one-half of the Neutral Accountant's fees and expenses.

(c) Licensee further agrees that, to facilitate Licensor's inspection and audit of such books of account and records, it will designate brand codes, including SKUs, which will be used exclusively in connection with Pearl Products and with no other beverages and goods which Licensee may manufacture, sell or distribute. Following any review and audit, and the resolution of any disputes related thereto, each party shall promptly pay any overpayment or underpayment of royalties found owing to the other, with interest at the average one (1) year U.S. Treasury Bill rate from the end of a May 1 through April 30 period applicable to such royalties to the date of payment of the amount due. If Licensee has underpaid the required advertising, promotional, or marketing expenditures for any May 1 through April 30 period, Licensee shall add the amount of the under payment to the amount required in the next following May 1 through April 30 period.

(d) Licensee may inspect Licensor's books and records in substantially the same manner as contemplated above in this Section 10, for the purpose of confirming Licensor's performance of its obligations under this Agreement, and Licensor and Licensee shall resolve any disputes resulting from such inspections in substantially the same manner as set forth above in this Section 10.

## 11. PURCHASE OPTION

(a) If the Closing occurs, Licensor hereby grants Licensee an irrevocable and non-terminable option to purchase all of the Pearl IP (including goodwill of the business associated therewith) on \_\_\_\_\_ (the "Option"). The Option shall be exercised automatically on \_\_\_\_\_ without any action or notice to Licensor by Licensee unless at any time during the term of the license of the Pearl IP hereunder Licensee gives Licensor notice that it does not want the Option be exercised. If the Closing occurs, except in the case of a termination of this Agreement as a result of Licensee's material breach of a covenant herein that remains uncured after the periods set out in Section 6(b) above following Licensor's notice to Licensee of the breach, within ninety (90) days after the termination of this Agreement (and the license granted hereunder) pursuant to Section 6 hereof, Licensee may exercise the Option by giving Licensor notice of such exercise. The exercise price of the Option shall be \$ \_\_\_\_\_ payable by Licensee to Licensor within thirty (30) days after \_\_\_\_\_ the earlier exercise of the Option, plus

Notwithstanding anything to the contrary in this

Section 11(a), the Option shall not be exercisable if this Agreement has been terminated by Licensor under Section 6(b) as a result of Licensee's uncured material breach of its covenants or representations and warranties herein.

(b) To facilitate the transfer of the Pearl IP upon the exercise of the Option, at the Closing hereunder (as hereafter defined), Licensor shall deposit with an escrow agent acceptable to Licensee and Licensor, signed and, if necessary, notarized, undated assignments and other instruments of transfer specified in Section 19(a)(ii) hereof assigning and transferring the Pearl IP to Licensee. Licensor and Licensee and the escrow agent will enter into a mutually agreeable escrow letter instructing the escrow agent to hold the deposited documents and deliver them to the Licensee upon any exercise of the Option or to Licensor if the Option is not exercised within the time period provided by this Agreement. Licensee and Licensor agree that Licensor's counsel at the time of the Closing may act as the escrow agent. The escrow agent shall hold an irrevocable power of attorney from Licensor to re-execute and re-date any of the assignments held in escrow if necessary to permit the transfer of the Pearl IP and the recordation of any such transfer with governmental offices.

(c) Within thirty (30) days after any exercise of the Option, Licensor shall change its name to a name not containing "Pearl" or any other word or description confusingly or substantially similar to "Pearl" or "Pearl Spirits."

## 12. OTHER LICENSE MATTERS

(a) During the term of this Agreement, Licensor shall not grant any liens, security interests, mortgages, pledges, options, or other encumbrances of any kind on or with respect to any of the Pearl IP.

(b) During the term of this Agreement, Licensee shall have the right to sublicense all or any part of the Pearl IP to any person or entity provided that any such sublicense shall not release Licensee from its obligations and liabilities hereunder to Licensor. Without limiting the generality of the immediately preceding sentence, if Licensee does not produce all Pearl Products at its production facilities, Licensee may contract with other manufacturers for the production, bottling, and labeling of Pearl Products and in connection with such subcontracting, Licensee may sublicense all or any part of the Pearl IP to the contract manufacturer. No manufacturing contract between Licensee and a third party manufacturer shall release Licensee from its obligations and liabilities under this Agreement. In addition, Licensee shall ensure that any Pearl Products manufactured by a third party at Licensee's direction be comparable in quality to Licensor's product immediately prior to the Closing.

(c) Licensee and Licensor expressly acknowledge and agree that all technical and commercial information whether written or oral, furnished by either to the other or to an affiliate, officer, director, employee, agent or representative thereof and relating to the production, marketing, advertising, promotion, distribution or sale of Pearl Products shall be deemed to be confidential information and shall be maintained by each party and such other persons in confidence; provided, that this confidentiality requirement shall not apply to the extent that: (i) the information in question is in the public domain as of the date of this Agreement or thereafter becomes part of the public domain through no breach of this Agreement by the disclosing party; (ii) such requirement is waived in writing by the non-disclosing party; (iii) disclosure of the information in question is required by court order or applicable law (provided that the disclosing party shall inform the non-disclosing party in advance of any such disclosure so that the non-disclosing party may seek a protective order); (iv) disclosure of the information in question is required for the purpose of enforcing this Agreement; (v) the information in question becomes known to the disclosing party via a third party that, to the knowledge of the disclosing party, is not prohibited from disclosing the same to the disclosing party; (vi) the information in question was, or is subsequently, independently developed by the disclosing party (y) as evidenced by the written records of such party or otherwise, or (z) without reliance upon the disclosing party's confidential information; or (vii) the information is disclosed to a party's affiliates, attorneys, accountants, insurance agents, bankers or other professional advisors, provided that any such person agrees or is otherwise obligated to comply with the requirements of this Section 12(c). Notwithstanding the provisions of this Section 12(c) or any Confidentiality Agreement between Licensor and Licensee, Licensor and Licensee shall have the right to disclose the existence and terms of this Agreement in connection with any proposed merger, consolidation or any other transaction with any other person; Licensor may provide copies of this Agreement to its creditors; and Licensee may file a copy of this Agreement, with the financial terms redacted, with the United States Patent and Trademark Office, the Canadian Trade-Mark Office, the Australian Trademark Office, and any filing office for UCC financing statements.

(d) Licensee agrees that Pearl Products sold by Licensee in connection with the Pearl IP shall be of merchantable quality similar in material respects to the Pearl Products produced by Licensor in the year prior to this Agreement (samples of which have been provided to Licensee).

13.

14. PURCHASE PRICE; PERIOD BETWEEN EFFECTIVE DATE AND CLOSING  
DATE.



(b) During the ten days following the Closing, Licensee shall conduct a count of the inventory of finished goods, raw materials, and supplies that it has purchased and that are located at the Licensor's warehouse and contract production facility, and Licensor may observe the inventory. If the results of the inventory valued in accordance with Section 14(a) yields an adjusted Purchase Price for such items that is greater or less than the amount paid at Closing, Licensee shall pay Licensor the amount of any excess within thirty (30) days following the completion of the inventory count, and Licensee will set off against royalties payable under Section 8 of this Agreement the amount by which the adjusted Purchase Price for such items is less than the amount paid at Closing. When Licensor has received April 30, 2004 inventory statements from all alcoholic beverage control authorities in the control states where Licensor had inventories of finished goods on such date, Licensor shall deliver copies of them to Licensee, and Licensor and Licensee shall value the inventory in control state bailment warehouses based upon such inventory statements and the valuation method provided in Section 14(a) of this Agreement. If the results of such valuation yield an adjusted Purchase Price for the control state inventory that is greater or less than the amount paid at Closing, Licensee shall pay Licensor the amount of any excess within thirty (30) days following the completion of the valuation, and Licensee will set off against royalties payable under Section 8 of this Agreement the amount by which the adjusted Purchase Price for the control state inventory is less than the amount paid at Closing.

(c) Licensee shall receive the proceeds and all accounts receivable generated by all withdrawals from control state bailment warehouses from the Effective Date through the Closing Date.

15. CERTAIN PAYMENTS

16. PERSONNEL

(a) At or after the Closing, Licensee will interview one sales employee of Licensor and one manufacturing employee of Licensor for possible employment by Licensee, but Licensee shall have no obligation to employ or otherwise engage the services of such persons or any other employee of Licensor. Licensor shall be responsible for all salaries, benefits, severance pay, vacation pay, and other liabilities arising from the employment of its employees, and Licensor shall offer and provide any of its employees who are eligible COBRA coverage, and Licensor shall indemnify Licensee against any such liabilities. Licensor shall be responsible for all liabilities and obligations under Licensor's retirement plans and welfare benefit plans and for all WARN Act and similar state law liabilities, and Licensor shall indemnify Licensee against any such liabilities.

17. REPRESENTATIONS AND WARRANTIES OF LICENSOR

Licensor represents and warrants to Licensee as follows:

(a) Licensor is a corporation duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its contractual obligations. Licensor is duly qualified to do business as a foreign corporation and is in good standing under the laws of each nation, state, or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

(b) This Agreement constitutes the legal, valid and binding obligation of Licensor, enforceable against it in accordance with its terms.

(c) Neither the execution and delivery of this Agreement nor the consummation or performance of transactions contemplated by this Agreement will, directly or indirectly (without or without notice or lapse of time):

- (i) breach (A) any provision of any of the Articles of Incorporation or By-laws of Licensor or (B) any resolution adopted by the board of directors or the shareholders of Licensor;
- (ii) breach or give any governmental authority or other person the right to challenge any of the transactions contemplated by this Agreement, or to exercise any remedy or obtain any relief under any statute, rule, regulation, ordinance, or other law or any judicial or administrative order to which Licensor or any of the Purchased Assets or Pearl IP may be subject;
- (iii) breach any provision of, or give any person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any contract or contractual obligation binding upon Licensor; or

(iv) result in the imposition or creation of any lien, security interest, mortgage, or other encumbrance upon or with respect to any of the Purchased Assets or the Pearl IP.

(d) Except as set forth in Schedule 17(d), Licensor is not required to give any notice to or obtain any consent from any person, entity or governmental authority in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

(e) Licensor has delivered to Licensee: (i) unaudited balance sheets of Licensor as at December 31, 2003, and 2002 (including the notes thereto, the "Balance Sheets"), and the related unaudited statements of income, changes in shareholders' equity and cash flows for the fiscal year then ended, including in each case the notes thereto, (ii) an unaudited balance sheet of Licensor as at March 31, 2004, (the "Interim Balance Sheet") and the related unaudited statements of income, changes in shareholders' equity, and cash flows for the three (3) months then ended, including in each case the notes thereto certified by Licensor's chief financial officer; (iii) reports showing the Licensor's expenditures for advertising, promotional, and marketing activities (as such are described in Section 9 hereof) for the fiscal years ended December 31, 2003, and 2002, and the three months ended March 31, 2004; (iv) other financial and statistical information about Licensor and the Pearl Products business contained in Licensor's Confidential Memorandum delivered on or about March 3, 2004, and (v) product depletions data for the years ended December 31, 2003, and 2002, and the three months ended March 31, 2004. Such financial statements and other financial and statistical information and product depletions data fairly present the financial condition and the results of operations, changes in shareholders' equity, cash flows and other financial and statistical information and product depletions of Licensor as at the respective dates of and for the periods referred to in such financial statements. The financial statements referred to in this Section 17(e) reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. The financial statements and other financial and statistical information and product depletions data have been and will be prepared from and are in accordance with the accounting books and records of Licensor.

(f) The accounting books and records and other financial records of Licensor, all of which have been made available to Licensee, are to the best knowledge of Licensor, complete and correct and represent actual, bona fide transactions and have been maintained in accordance with sound business practices.

(g) Except as set forth in Schedule 17(g) Licensor owns good and marketable title to the Pearl IP and the Purchased Assets free and clear of any liens, mortgages, security interests, pledges, option, and other encumbrances of any kind.

(h) There is no contest, claim, defense, or right of setoff, other than returns in the ordinary course of business of Licensor, under any contract or agreement to which Licensor is a party with any account debtor of Licensor.

(i) All items included in Licensor's inventories of finished goods, raw materials, packaging, labels, bottles, closures and other dry goods included in the Purchased Assets consist of a quality and quantity usable and, with respect to finished goods, saleable, in the ordinary course of business of Licensor except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the accounting books and records and financial statements of Licensor. Licensor is not in possession of any inventory not owned by Licensor, including goods already sold.

(j) Except as set forth in Schedule 17(j):

- (i) Licensor is, and at all times since January 1, 2001, has been, in full compliance with each statute, rule, regulation, ordinance, or other law each judicial or administrative order that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets;
- (ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a violation by Licensor of, or a failure on the part of Seller to comply with, any statute, rule, regulation, ordinance, or other law or any judicial or administrative order by which Licensor is bound, or (B) may give rise to any obligation on the part of Licensor to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and
- (iii) Licensor has not received, at any time since January 1, 2001, any notice or other communication (whether oral or written) from any governmental authority or any other person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any statute, rule,

regulation, ordinance, or other law or any judicial or administrative order by which Licensor is bound, or (B) any actual, alleged, possible or potential obligation on the part of Licensor to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(k) Except as set forth in Schedule 17(k), there is no pending or threatened judicial or administrative proceeding

- (i) by or against Licensor or that otherwise relates to or may affect the business of Licensor, or any of the Pearl IP or Purchased Assets; or
- (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated by this Agreement.

To the knowledge of Licensor, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such a proceeding.

- (l) (i) Schedule 17(l) contains a complete and accurate list and summary description of all the Registered Marks (including active trademark applications).
- (ii) All Registered Marks have been registered or are actively pending with the United States Patent and Trademark Office and equivalent offices in Canada and Australia, are currently in compliance with all statutes, rules, regulations, ordinances, and other laws (including the timely post-registration filing of affidavits of use and incontestability and renewal applications and equivalent filings in Canada and Australia), are valid and enforceable and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date, except for a Response to Office Action due on the application for LOCOCO, U.S. Serial No. 76-529,029, and a Statement of Use or Extension of Time to file a Statement of Use due on the application for PEARL DIVER, U.S. Serial No. 76-390,607.

- (iii) No Registered Mark has been or is now the subject matter of any opposition, invalidation or cancellation proceeding and no such action is threatened with respect to any of the Registered Marks.
- (iv) There is no trademark or trademark application or other intellectual property of any third party that infringes the Pearl IP.
- (v) No Registered Mark is infringed or has been challenged or threatened in any way. None of the Registered Marks infringes or is alleged to infringe any trade name, trademark, or service mark or violates any other right, title, or interest of any other person.
- (vi) All products and materials containing a Registered Mark bear the proper federal registration notice where permitted by law.
- (vii) Schedule 17(I) contains a complete and accurate list and summary description of all Pearl IP other than the Registered Marks.
- (viii) All of the right, title, and interest in the Pearl IP is exclusively owned by Licensor. All of the Pearl IP other than the Registered Marks is currently in compliance with all statutes, rules, regulations, ordinances, and other laws, is valid and enforceable, and is not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the date of Closing (except with respect to certain actions due on Registered Marks as expressly set out in Section 17(I)(ii)).
- (ix) No item of Pearl IP (excluding the Registered Marks) is infringed or, to Licensor's knowledge, has been challenged or threatened in any way. None of the subject matter of any item of the Pearl IP or is alleged to infringe any copyright of any third party or is a derivative work based upon the work of any other person or entity, or otherwise infringes or violates the right, title, or interest of any third party or entity.
- (x) With respect to each item of Pearl IP that is a trade secret, the documentation relating to such trade secret is current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual.

- (xi) Licensor has taken all reasonable precautions to protect the secrecy, confidentiality and value of all trade secrets.

## 18. REPRESENTATIONS AND WARRANTIES OF LICENSEE

Licensee represents and warrants to Licensor as follows:

(a) Licensee is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri, with full corporate power and authority to conduct its business as it is now conducted.

(b) This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

(c) Neither the execution and delivery of this Agreement by Licensee nor the consummation or performance of any of the transactions contemplated by this Agreement by Licensee will give any person or entity the right to prevent, delay or otherwise interfere with any of such transactions pursuant to:

- (i) any provision of Licensee's Articles of Incorporation or By-laws;
- (ii) any resolution adopted by the board of directors or the shareholders of Licensee;
- (iii) any statute, rule, regulation, ordinance, other law, or judicial or administrative order to which Licensee may be subject; or
- (iv) any contract to which Licensee is a party or by which Licensee may be bound.

(d) There is no pending judicial or administrative proceeding that has been commenced against Licensee and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated by this Agreement. To Licensee's knowledge, no such proceeding has been threatened.

(e) Neither Licensee nor any of its representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the transactions contemplated by this Agreement.

(f) Licensee is and will remain financially capable in meeting its royalty obligations, promotional activity obligations, and the production demands of Customers for Pearl Products.

## 19. DELIVERIES AT CLOSING



At the Closing ("Closing") of the transactions contemplated by this Agreement, which shall take place at 10:00 a.m. (Pacific time) at the offices of Licensor on May 5, 2004, or such other date as the parties may agree (the "Closing Date"),

- (a) Licensor shall deliver:
  - (i) An executed copy of this Agreement;
  - (ii) Executed, undated, and where required, notarized copies of (i) an Assignment Agreement in substantially the form of Exhibit C hereto, (ii) a Trademark Assignment in substantially the form of Exhibit D hereto, (iii) a Deed of Assignment in substantially the form of Exhibit E hereto, (iv) an Assignment in substantially the form of Exhibit F hereto, (v) domain names transfer agreement and related authorization letter in substantially the form of Exhibit G hereto, and (vi) all other assignments, conveyances, and other instruments of transfer necessary to assign and transfer title to the Pearl IP to Licensee in form and substance acceptable to Licensee;
  - (iii) An executed Bill of Sale in form and substance acceptable to Licensee assigning and transferring the Purchased Assets to Licensee;
  - (iv) Evidence satisfactory to Licensee that the Pearl IP and Purchased Assets are free and clear of all liens, pledges, security interests, mortgages and other encumbrances;
  - (v) An executed copy of the escrow agreement or letter with Licensee and the escrow agent;
  - (vi) Certificates of Good Standing in California and each other jurisdiction or nation in which Licensor conducts business;
  - (vii) Copies, certified by Licensor's secretary, of resolutions of Licensor and its shareholders authorizing the Licensor's executory delivery and performance of this Agreement and the other agreements and instruments to be executed by it hereunder and authorizing the Licensor's disposition of the Purchased Assets and the Pearl IP;

- (viii) A copy of the Noncompetition Agreement in substantially the form of Exhibit B hereto executed by
- (ix) Such other agreements and instruments as the Licensee may reasonably request;

- (xiii) Signed copies of any agreements between Licensor and Saverglass; and
- (b) Licensee shall deliver:
  - (i) An executed copy of this Agreement;
  - (ii) An executed copy of the escrow agreement or letter with Licensor and the escrow agent;
  - (iii) An executed copy of the Noncompetition Agreement identified above;
  - (iv) A Certificate of Good Standing in Missouri;
  - (v) The Purchase Price by wire transfer; and
  - (vi) Such other agreements and instruments as the Licensor may reasonably request.

20. COVENANTS OF LICENSOR

(a) Until such time as this Agreement shall be terminated pursuant to its terms, Licensor shall not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any person (other than Licensee) relating to any business combination

transaction involving Licensor, including the sale by its shareholders of Licensor's stock, the merger or consolidation of Licensor, or the sale of Licensor's business or any of the Purchased Assets or Pearl IP (other than in the ordinary course of business). Licensor shall notify Licensee of any such inquiry or proposal within twenty-four (24) hours of receipt or awareness of the same by Licensor.

(b) Licensor shall pay or otherwise satisfy in the ordinary course of business all of its liabilities and obligations. Licensor and Licensee hereby waive compliance with the bulk-transfer provisions of the Uniform Commercial Code (or any similar law) ("Bulk Sales Laws") in connection with the transactions contemplated by this Agreement.

(c) During the term of this Agreement, Licensor shall not grant or permit to exist any lien, mortgage, pledge, security interest, option (other than the Option hereunder), or other encumbrance of any kind on the Registered Marks or other Pearl IP.

21. [Intentionally omitted.]

22. [Intentionally omitted.]

## 23. INDEMNIFICATION

(a) All representations, warranties, covenants, and obligations in this Agreement shall survive the Closing and the consummation of the transactions contemplated by this Agreement, provided that the representations and warranties in Sections 17(a) through (f) and (h) through (k) and 18(b) through (d) shall terminate eighteen (18) months after the Closing Date, and all other representations and warranties shall survive indefinitely.

(b) Licensor shall defend, indemnify and hold Licensee and its officers, directors, employees, agents, representatives, and sublicensees harmless from and against all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) arising out of or in connection with: (i) claims that any authorized use by Licensee of the Registered Marks or other Pearl IP as permitted by this Agreement or on or in connection with the manufacture, marketing, packaging, labeling, advertising, promotion, distribution or sale of Pearl Products in the Territory violates the rights of any third party; (ii) any breach of any representation, warranty, covenant or agreement made by Licensor herein, (iii) any liability arising out of the ownership, use, or operation of the Purchased Assets and Pearl IP before the Closing, (iv) except as specifically provided to the contrary herein, any brokerage, finders, investment banking or similar fee obligations of Licensor, (v) any liability with respect to the Pearl Products manufactured before the Closing, including without limitation the death of or injury to persons or damages to or loss of property arising out of or related to the use or consumption of the Pearl Products including all product liability, negligence, or other tort or dram shop

liabilities, (vi) any noncompliance with Bulk Sales or fraudulent transfer laws, (vii) licensor's liabilities under contracts and agreement to which it is a party or by which it is bound, including, without limitation, contracts and agreements with distributor's of Pearl Products, (viii) Licensor's liabilities under COBRA or the WARN Act or any similar state or federal statutes; and (ix) Licensor's other liabilities of any kind.

(c) Licensee shall defend, indemnify and hold Licensor and its officers, directors, employees, agents harmless from and against all claims, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) arising out of or in connection with: (i) claims arising from any unauthorized use by Licensee of the Registered Trademarks; (ii) any liability with respect to Pearl Products that is manufactured after the Closing, including without limitation the death of or injury to persons or damages to or loss of property arising out of or related to the use or consumption of Pearl Products including all product liability, negligence, or other tort or dram shop liabilities, (iii) any breach of any representation, warranty, covenant or agreement made by Licensee herein; and (iv) the ownership and use of the Purchased Assets after the Closing.

(d) (i) Upon receiving actual knowledge of a matter for which a party seeks to be indemnified hereunder, the party to be indemnified (the "Indemnified Party") shall promptly notify the other party (the "Indemnifying Party") of same; provided, however, that the failure by the Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that the Indemnifying party is actually prejudiced by such failure to give notice. The Indemnifying Party shall assume the defense of such matter with counsel as may be reasonably satisfactory to the Indemnified Party, provided that the Indemnifying Party shall have the right to employ separate counsel to represent it at its own expense. The indemnifying Party shall not, without the written consent of the Indemnified Party: (i) settle or compromise any third-party claim or consent to the entry of any judgment which does not include as an unconditional term thereof the delivery by the claimant or plaintiff to the Indemnified Party of a written release of the Indemnified Party from all liability in respect of such third-party claim, or (ii) settle or compromise any third-party claim in any manner that might adversely affect the Indemnified Party. Similarly, no third-party claim which is being defended in good faith by the Indemnifying Party in accordance with the provisions of this Agreement

shall be settled by the Indemnified Party without the written consent of the Indemnifying Party. The Indemnifying Party shall promptly notify the Indemnified party of its assumption of the defense of any such claim or action, and thereafter the Indemnifying Party shall not be liable to the Indemnified Party under this Section of the Agreement for any legal or other expenses subsequently incurred by the Indemnified Party in connection with such party's independent defense, or monitoring, thereof, which is permitted hereunder. If the Indemnifying Party fails to assume the defense within ten (10) days after receiving notice of the third-party claim from the Indemnified Party, the Indemnified Party may assume such defense and the reasonable fees and expenses of its counsel will be borne by the Indemnifying Party (and such fees and expenses shall be paid by the Indemnifying Party as they are incurred). Licensor and Licensee each agree to render to each other such assistance as reasonably may be requested in order to insure the proper and adequate defense of any such claim or proceeding.

- (ii) The Indemnifying party shall be subrogated to any and all defenses, claims and setoffs which the Indemnified Party asserted or could have asserted against the third party making a claim. The Indemnified Party shall execute and deliver to the Indemnifying Party such documents as may be reasonably necessary to establish by way of subrogation the ability and right of the Indemnifying Party to assert such defenses, claims and setoffs.
- (iii) The Indemnified Party, as a condition of its right to be indemnified, shall not continue conduct that has been adjudicated in a judgment or decision from which no appeal is possible or the time period for appeal from which has expired without an appeal having been filed to violate the rights of others, even if such conduct conforms to this Agreement. In addition, the Indemnified and Indemnifying Party shall reasonably attempt to minimize the damages and costs related to any claim by a third party.

In the event of a conflict between this Section 23(d) and Section 5 of this Agreement with respect to procedures in the infringement actions covered by Section 5, Section 5 shall prevail.

(e) Notwithstanding the foregoing indemnity obligations, Licensor will have no liability (for indemnification or otherwise) to Licensee with respect to the matters described in Section 23(b) above until the total of all damages exceeds \$\_\_\_\_\_ in the aggregate.

#### 24. MISCELLANEOUS

(a) This Agreement, the Noncompetition Agreement, the escrow letter, and the other agreements and instruments to be delivered under Section 19 hereof constitute the entire agreement between the parties and supersede and cancel any and all prior understandings, contracts or agreements between the Licensor and the Licensee regarding the subject matter hereof.

(b) No waiver by either party to this Agreement of any default with respect to any provision, condition or requirement hereof shall be deemed to be a waiver of any other provisions, condition or requirement; nor shall any delay or omission of either party to exercise any right hereunder on one occasion in any manner impair its exercise of any such right on any other occasion.

(c) If any provision of this Agreement is determined by a court having jurisdiction to be illegal or in conflict with any laws of any state or jurisdiction, the parties hereto agree that such provision shall be modified to the extent necessary to remove the illegality, or deleted if necessary, so that the intent of this Agreement may legally be carried out and that, to the extent possible, the remaining provisions of this Agreement shall remain in full force and effect.

(d) This Agreement may not be amended in any respect, except by an instrument in writing signed by both parties hereto. This Agreement may be executed in multiple counterparts, including facsimile counterparts.

(e) This Agreement shall be construed, governed and enforced in all respects in accordance with the laws of the State of Missouri without giving effect to its rules governing the choice of law.

(f) All notices required or permitted or materials or samples to be provided under this Agreement shall be in writing and tangible form and shall be delivered by hand, by registered or by certified mail, facsimile transmission, or by overnight courier to:

To the Licensee at:

David Sherman Corporation  
5050 Kemper Avenue  
St. Louis, Missouri 63139  
Facsimile No.: 314-772-7120

To the Licensor at:

Pearl Spirits, Inc.  
655 Redwood Highway, Suite 120  
Mill Valley, California 94941  
Facsimile No.: (415) 380-3737

With a copy to:

David R. Lee  
White & Lee LLP  
545 Middlefield Road, Suite 250  
Menlo Park, CA 94025  
Facsimile No.: (650) 470-4099

Or at such other address as either party may hereafter designate by giving written notice thereof to the other Party.

A notice shall be deemed given on the date delivered if delivered by hand, on receipt of electronic confirmation of receipt if delivered by facsimile transmission, on the seventh (7th) business day following the mailing thereof if sent by mail, certified or registered mail with a return receipt requested (and either signature of receipt or refusal thereof), or on the business day next following the day the notice was deposited with an overnight courier with return receipt requested (and either signature of receipt or refusal thereof).

(g) Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person other than the parties any rights under this Agreement.

(h) Licensee may use in connection with its manufacture, marketing, and sale of Pearl Products any pre-printed labels, shipping cartons, advertising or promotional materials contained in the inventory and dry goods that are part of the Purchased Assets that include any corporate or trade name

of Licensor, it being understood that Licensee will use or sell such items prior to using or selling any other such items. After Closing, Licensee shall notify its distributors, retailers and customers that it now markets the Pearl Products brand and is the entity to which such items relate and to whom payment should be made, if applicable, and provide a phone number and address for questions or claims regarding such products or goods.

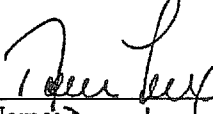
(i) Following the Closing Date, Licensor shall cooperate with Licensee, at Licensee's sole expense, in connection with Licensee's reasonable efforts to obtain "use-up" rights from national, federal and state alcoholic beverages authorities with respect to preprinted bottling labels, shipping cartons and advertising and promotional materials included in the Purchased Assets including, if so requested by Licensee, confirmation to national, federal and state alcoholic beverage authorities that Licensee is authorized by Licensor to use such labels and notice thereto of the sale of the Pearl Products brand by Licensor to Licensee.

(j) If following the Closing Licensor receives any payment of accounts receivable included in the Purchased Assets, Licensor shall hold such payment in trust for the benefit of Licensee and shall promptly pay over to Licensee such amount. If following the Closing Licensee receives any payment of Licensor's accounts receivable that were not included in the Purchased Assets, Licensee shall hold such payment in trust for benefit of Licensor and shall promptly pay over to Licensor such amount.

(k) This Agreement and the license granted hereunder is personal to Licensor and may not be assigned, transferred, secured, or otherwise encumbered without the prior written consent of Licensee, which shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed in duplicate counterparts and year first written above.

DAVID SHERMAN CORPORATION

By:   
Name: Dawn Lux  
Title: PRESIDENT

PEARL SPIRITS, INC.

By: \_\_\_\_\_  
Name:



of Licensor, it being understood that Licensee will use or sell such items prior to using or selling any other such items. After Closing, Licensee shall notify its distributors, retailers and customers that it now markets the Pearl Products brand and is the entity to which such items relate and to whom payment should be made, if applicable, and provide a phone number and address for questions or claims regarding such products or goods.

(i) Following the Closing Date, Licensor shall cooperate with Licensee, at Licensee's sole expense, in connection with Licensee's reasonable efforts to obtain "use-up" rights from national, federal and state alcoholic beverages authorities with respect to preprinted bottling labels, shipping cartons and advertising and promotional materials included in the Purchased Assets including, if so requested by Licensee, confirmation to national, federal and state alcoholic beverage authorities that Licensee is authorized by Licensor to use such labels and notice thereto of the sale of the Pearl Products brand by Licensor to Licensee.

(j) If following the Closing Licensor receives any payment of accounts receivable included in the Purchased Assets, Licensor shall hold such payment in trust for the benefit of Licensee and shall promptly pay over to Licensee such amount. If following the Closing Licensee receives any payment of Licensor's accounts receivable that were not included in the Purchased Assets, Licensee shall hold such payment in trust for benefit of Licensor and shall promptly pay over to Licensor such amount.

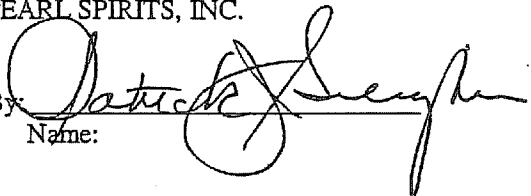
(k) This Agreement and the license granted hereunder is personal to Licensor and may not be assigned, transferred, secured, or otherwise encumbered without the prior written consent of Licensee, which shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed in duplicate counterparts and year first written above.

DAVID SHERMAN CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

PEARL SPIRITS, INC.

By:   
Name: