

MTG-13667-L

38687

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AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT made this 13th day of June 1984, by and between:

ACHIM BASSLER
ARLETTE J. BASSLER
husband and wife

"Sellers"

and

E T RESTAURANTS, INC.,
an Oregon corporation.

"Buyer"

W I T N E S S E T H:

WHEREAS, Sellers are the owners of a restaurant and lounge at 535 Main Street, Klamath Falls, Oregon, known as The Blue Ox Restaurant And Lounge (hereinafter referred to as the "business");

WHEREAS, Sellers own and maintain said business along with the equipment, inventory, and other miscellaneous assets used in the operation of said business;

WHEREAS, Buyer desires to acquire said business along with all of the assets used in the operation of Sellers' business and Sellers desire to sell same to Buyer;

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. SALE OF BUSINESS. Sellers agree to sell to Buyer and Buyer agrees to purchase from Sellers, free from all liabilities and encumbrances, the restaurant and lounge owned and

operated by Sellers at 535 main Street, Klamath Falls, Oregon, including goodwill, use of assumed business name, and rights of contact assumption as defined in Paragraphs 2 and 15 hereafter, along with all of the assets used in connection with the operation of the hereinabove described restaurant and lounge. Said assets are more fully set forth in Exhibit "A", attached hereto and incorporated herein by this reference as though fully set forth in full.

2. ASSIGNMENT OF SELLERS' CONTRACT RIGHTS. Sellers agree to assign and Buyer agrees to accept all of Sellers' rights under a "Sale Agreement" (attached hereto as Exhibit "B") of the present business entered into on the first day of February 1979 between Sellers (as "Buyers" in that Agreement) and Noreen Pearson (as "Seller" in that Agreement).

3. SALE CONTINGENT UPON SELLERS OBTAINING CONSENT TO THE ASSIGNMENT. The parties agree that this Agreement is expressly contingent upon Sellers obtaining a consent to the assignment of the February 1, 1979 Sale Agreement from Noreen Pearson in the form set forth in Exhibit "C", attached hereto and incorporated herein by this reference as though fully set forth in full. Sellers also warrant that they are not in default on the February 1, 1979 Sale Agreement as of the date of this Agreement and will not be as of the date of closing.

4. PURCHASE PRICE FOR ASSETS OTHER THAN INVENTORY OF SUPPLIES. Buyer agrees to pay Sellers the sum of ONE HUNDRED

TWELVE THOUSAND FIVE HUNDRED AND NO/100 (\$112,500.00) DOLLARS as the purchase price of said business and assets, excluding the inventory of supplies. Such amount shall be paid as follows:

(a) Buyer has paid the sum of \$2,500.00 as earnest money, receipt of which is acknowledged by the Seller.

(b) Buyer agrees to pay the sum of \$30,000.00 as further down payment upon date of closing.

(c) Buyer agrees to pay the remaining balance of \$80,000.00 in monthly installments of not less than \$1,013.91 each, including interest at the rate of 9% per annum on the unpaid balances, the first of such installments to be paid within 30 days of date of closing, and subsequent installments to be paid on or before the first day of each month thereafter, with the entire balance, including principal and interest to be paid in full over a 10-year period. Interest on all unpaid balances shall commence upon the date of closing. Each payment shall be applied first to the interest to date of payment and the balance to principal.

(d) Buyer may at any time pay off all or part of the purchase price remaining due, together with interest due thereon to the date of payment, without penalty.

5. NOTICE OF BUYER'S DEFAULT. In the event that Buyer shall default in the payment of any sum due under the terms of this Agreement, Sellers shall give Buyer ten (10) days written notice, specifying said default, and Buyer shall have ten (10) days in which to make said payment. If Buyer fails to make such payment, after notice, Sellers shall have the right to declare the entire unpaid balance under this Agreement immediately due and payable. Sellers shall also have the following remedies:

(a) The right to declare the full unpaid balance fully due and payable;

(b) The right to exercise each and all remedies granted to the Sellers under the Oregon Uniform Commercial Code;

(c) The right to have a receiver appointed to take possession, manage and control the collateral and collect the profits and pay the net income as ordered by a court of competent jurisdiction. The right to appoint a receiver shall be available without regard to the adequacy of the security for the balance due Sellers or the solvency of the Buyer.

(d) The right to exercise any other remedy available to the Sellers at law.

6. PURCHASE PRICE OF INVENTORY OF SUPPLIES. Sellers shall take an inventory of supplies previous to the date of closing. Buyer shall have the right to observe and inspect the taking of the inventory and parties shall agree to the inventory to be sold. The purchase price for Sellers' inventory of supplies shall be computed at Sellers' cost as reflected in Sellers' records of inventories on hand at closing. Buyer shall pay the purchase price for the agreed upon inventory of supplies to Sellers in cash at closing.

7. ALLOCATION OF PURCHASE PRICE. Sellers and Buyer expressly agree that the purchase price shall be allocated as follows:

<u>Assets</u>	<u>Value</u>
Goodwill	\$ 2,500.00
Equipment, Furniture, and Fixtures	\$110,000.00

8. REPRESENTATIONS AND WARRANTIES OF SELLERS. Sellers represent and warrant to Buyer as follows:

- (a) Sellers are the owners of and have good and marketable title to all of the assets agreed to be sold herein and the power to convey same free and clear of restrictions on or conditions to transfer or assignment, and free and clear of all liens, pledges, charges, or other encumbrances, excepting that contract specified in Paragraph 2, above.
- (b) All equipment and other assets agreed to be sold herein are in good working order and condition as of the date of closing. Sellers make no other warranties of any kind, express or implied, as to the condition of the equipment and other assets subject to this Agreement. Sellers shall not be liable for any loss or damage arising out of or connected with Buyer's use of same.
- (c) Sellers have no knowledge of any claim, litigation, proceeding or investigation pending or threatened against the business or Sellers individually which may result in any adverse change in the business or condition of the assets being conveyed herein.
- (d) Sellers agree that Bixler Real Estate Co. has served as broker in this transaction and that said broker's compensation will be paid by Sellers as set forth in a separate agreement between said broker and Sellers.
- (e) At the time of closing, there will be no material leases, employment contracts, contracts for services or maintenance or other similar contracts existing or relating to or connected with the operation of Sellers' business, except those mentioned in this Agreement.
- (f) Sellers have paid, to the city, state and federal governments, all Social Security, withholding, sales and unemployment insurance taxes connected with the operation of the business up to the date of closing.
- (g) The conduct of the business being sold herein does not now infringe or conflict with and has not in the past infringed or conflicted with, and Sellers are not in receipt of any notice or complaint of conflict with or infringement of, or misappropriation of the asserted rights of others in any patents, trademarks or trade secrets.
- (h) Sellers are not delinquent in the payment of any taxes, assessments or governmental charges and shall

indemnify and hold Buyer harmless from all taxes, assessments, or governmental charges incurred by the business being sold herein prior to the date of closing.

(i) The execution and delivery of this Agreement by Sellers and the consummation of the transactions contemplated hereunder, will not result in the creation or imposition of any valid lien, charge or encumbrance on any of the assets, and will not require the authorization, consent or approval of any third party, including any governmental subdivision or regulatory agency, except as specifically set out herein.

(j) All information provided to Buyer by Sellers in compliance with the provisions of this Agreement is accurate and complete in all respects, does not contain any untrue statement of material fact, and does not omit any fact necessary to make the statements therein not misleading.

(k) All representations and warranties made by the Sellers and remedies attached thereto shall survive the closing.

9. PAYMENT OF DEBTS. Sellers agree to pay and hold Buyer harmless for any and all debts of the business being transferred herein and the principals thereof, and agree to defend Buyer from any claim of any creditors in connection therewith. Sellers' further agree to discharge and hold Buyer harmless from any and all liens, encumbrances and security interests on assets transferred herein.

In the event Sellers do not pay any debts, liens, encumbrances or security interests arising out of or related to Sellers' business prior to the date of closing, Buyer may pay such amounts and credit the amount paid against the next payment or payments due to Sellers.

10. NON-COMPETITION COVENANT. The parties hereto

acknowledge that Sellers are presently and will continue to operate a restaurant and lounge establishment located at 3927 S. Sixth Street, Klamath Falls, Oregon.

Sellers covenant with Buyer, however, that Sellers will not, directly or indirectly, whether individually or as employees of another or as an officer, director, partner, or shareholder, purchase, operate, or manage any restaurant or lounge establishment within the city limits of Klamath Falls as the city limits exist as of the date of closing. Sellers' covenant not to compete will last for a period of five (5) years from the date of this Agreement.

Should any of the terms or conditions of this covenant be found unreasonable or excessive by any court of competent jurisdiction, the parties agree to accept as binding in lieu thereof any such lesser restrictions which said court may deem reasonable.

11. BULK SALES LAW. Buyer waives compliance by Sellers with the Oregon Bulk Transfer Act, ORS Chapter 76. In the event any creditor of Sellers claims the benefit of the Bulk Transfer Law as against Buyer or any of the assets being conveyed to Buyer under this Agreement, Sellers shall immediately pay or otherwise satisfy such claims or undertake its defense. Sellers shall indemnify and hold Buyer harmless from and against any and all losses, expense or damage resulting from the failure to comply with the Bulk Transfer Laws. If Sellers fail to comply

with the provisions of this paragraph and Buyer is required to pay any of Sellers' creditors in order to protect the property purchased under this Agreement from claims or liens of Sellers' creditors, Buyer may offset the amount he pays against the balance due Seller by furnishing proof of such payment in the form of a receipt from the creditor involved.

12. COVENANTS OF SELLERS. Sellers covenant that between the date hereof and date of closing, they will:

(a) Continue to operate the business which is the subject of this Agreement in the useful and ordinary course thereof and in substantial conformity with all applicable laws, ordinances and regulations and will use their best efforts to preserve the business organization and to preserve the continued operation of the business.

(b) Not assign, sell, lease or otherwise transfer or dispose of any of the assets used in the performance of the business, except in the normal and ordinary course of business and in connection with the business's normal operation.

13. INDEMNIFICATION. Sellers agree to indemnify and hold Buyer, its successors and assigns, harmless from and against:

(a) Any and all claims, liabilities, obligations of every kind and description, contingent or otherwise arising out of or related to the operation of Sellers' business prior to the date of closing.

(b) Any and all damage or deficiency resulting from any misrepresentation, breach of warranty or covenant, or nonfulfillment of any Agreement on the part of Sellers under this Agreement.

14. SALE CONTINGENT UPON BUYER OBTAINING A LICENSE FROM THE OREGON LIQUOR CONTROL COMMISSION TO SELL LIQUOR ON THE

BUSINESS PREMISES. The parties expressly agree that this Agreement is expressly contingent upon Buyer obtaining a liquor license from the O.L.C.C. to sell liquor on the business premises. In the event the Oregon Liquor Control Commission does not approve the Buyer's application for license this Agreement may be terminated by the Buyer and any monies paid hereunder shall be returned.

15. SALE CONTINGENT UPON SELLERS OBTAINING A CONSENT TO SUBLEASE THE PREMISES. The Sellers' business premises are presently covered by a lease, entered into January 30, 1979 between Sellers (as lessees) and Harry Boivin (as lessor). A copy of the lease is attached hereto as Exhibit "D". On September 1, 1983, Harry Boivin assigned his lessor's interest in the lease to Robert D. Boivin. A copy of this assignment is attached hereto as Exhibit "E".

The parties agree that this Agreement is expressly contingent upon Buyers obtaining from Robert D. Boivin a consent to sublease the premises to Buyers and a renewal option of the lease in the form set forth in Exhibit "F", attached hereto and incorporated herein by this reference as though fully set forth in full.

Upon assignment of the lease of the business premises and after closing, Buyer agrees to make lease payments to Boivin directly. Buyer agrees to furnish Sellers with proof of lease payments made on Sellers' request.

16. ASSUMED BUSINESS NAME. Sellers warrant that they have all right to use the assumed business name of Blue Ox Restaurant and Lounge and acknowledge that the same assumed business name is being sold to Buyer herein. Sellers agree to take all appropriate action necessary to transfer the right to use that name from Sellers to Buyer.

17. RISK OF LOSS. The risk of loss, damage or destruction to any of the equipment, inventory or other personal property to be conveyed to Buyer under this Agreement shall be borne by Sellers to the time of closing. In the event of such loss, damage or destruction, Sellers shall, to the extent reasonable, replace the lost property or repair, or cause to repair, the damaged property to its condition prior to the damage. If replacement, repairs or restorations are not completed prior to closing, the purchase price shall be adjusted by the amount agreed upon by Buyer and Sellers which will be amount required to complete the replacement, repair or restoration following closing. If Buyer and Sellers are unable to agree, Buyer, at its sole option, and notwithstanding any other provision of this Agreement may, upon notice to the Seller, rescind this Agreement and declare it to be of no further force and effect, in which event there shall be no closing of this Agreement and all of the terms and provisions hereof shall be deemed null and void and the earnest money previously paid by Buyer shall be immediately refunded.

If, prior to closing, any of the real properties which are subject of the lease mentioned in Subparagraph (15) are damaged or destroyed, Buyer may rescind this Agreement in the manner provided above, unless arrangements for repairs satisfactory to all parties involved are made prior to closing.

18. SELLERS' ASSISTANCE. Sellers agree to assist Buyer in the operation of the business, at no cost, for one hour a day for a period of thirty days from the date of closing.

19. NOTICE OF DEFAULT. Neither party shall be deemed in default for failure to perform the terms, covenants and conditions of this Agreement until notice of the default has been given to such party and that party has failed to remedy the default within 20 days after the notice.

20. NOTICE. Any notice required by this Agreement shall be sent by certified mail, return receipt requested, to the following parties at the following addresses, unless written notice of a change of address is received:

Sellers: Achim and Arlette Bassler

Buyers: E T Restuarants, Inc.
535 Main Street
Klamath Falls, Oregon 97601

cc: James T. Dunn
Niehaus, Hanna, Murphy, Green, Osaka & Dunn
Suite 1111 Benjamin Franklin Plaza
One S.W. Columbia
Portland, Oregon 97258

Notice shall be deemed received five (5) days after mailing.

21 BUYER REMEDIES ON DEFAULT. In the event Sellers fail to perform any terms, conditions or obligations under this Agreement, Buyer may have the following remedies:

(a) To make payments required to be made by Sellers under this Agreement and to deduct amounts paid from the balance owing under this Agreement, or if the balance is insufficient to recover said amounts from Sellers;

(b) If before closing, to rescind this contract by notice to Sellers. If the Agreement is rescinded, all monies paid shall be refunded to Buyer hereunder.

(c) Any and all other remedies granted by law.

22. PAYMENTS. Monthly payments should be made for the benefit of Sellers by Buyers to:

First Interstate Bank
Downtown Branch
P.O. Box 608
Klamath Falls, Oregon 97601

Amounts paid shall be first applied to pay the greater of the monthly contract payments of \$698.50 on the underlying contract of Sellers to Noreen Pearson or a monthly amount sufficient to pay the Pearson Contract by January 1, 1989. All remaining balances shall be directed to Sellers under this Agreement.

In the event Sellers are delinquent in any payment to Noreen Pearson under the February 1, 1979 Sale Agreement (Exhibit "B"), any payments of Buyers shall be applied directly to the Noreen Pearson contract only and offset the amount so paid against balance due Sellers.

23. PRORATED ITEMS. The payment of all the following items shall be prorated between Sellers and Buyer as of the date of closing: lease payments, personal property taxes on the business, all insurance premiums, deposits with utility companies. Payroll to date of closing shall be completed by Sellers and all employees paid and corresponding taxes paid.

24. SECURITY INTEREST. As security for the timely performance of Buyer's obligation under this Agreement, Sellers retain and, effective at closing, Buyer grants to Sellers, until the purchase price has been paid in full, a security interest in the property sold under this Agreement. Buyers agree to execute at closing the appropriate uniform commercial code financing statements for filing with the State of Oregon. Costs for filing shall be borne by the Sellers.

25. INSURANCE. Buyers agree to maintain insurance equal to the balance due Sellers under this Agreement, insuring against loss of collateral by fire, theft, vandalism and other related hazards. Sellers shall be named as an additional insured on the policy.

26. PERSONAL GUARANTEE. The obligations of E T Restaurants, Inc. under this Agreement are personally guaranteed by Theodore I. Williams and Mary Elaine Williams, jointly and severally, sole shareholders of E T Restaurants, Inc.

27. CLOSING. Upon completion of the conditions provided in this Agreement, the parties shall arrange for closing.

Sellers agree at that time to provide a copy of a current ledger for the Pearson contract referred to in Paragraph 2 and a bill of sale for assets purchased. Upon closing, possession of the business subject of this Agreement shall transfer.

28. ATTORNEY'S FEES. In the event suit, action or other legal proceeding shall be instituted to declare or enforce any right created by this Agreement, the prevailing party therein shall be entitled to the costs and disbursements provided by statute, and any other sum as the court may adjudge reasonable for attorney's fees. The parties further promise to pay such sum as an appellate court shall adjudge reasonable as the prevailing party's attorney's fees on such appeal.

29. BINDING EFFECT. All rights, remedies and liabilities herein given or imposed upon either of the parties hereto shall extend to inure to the benefit of and bind, as circumstances may require, the heirs, executors, administrators, successors and assignees of such parties.

30. ENTIRE AGREEMENT. This document is the entire, final and complete Agreement of the parties and supersedes and replaces all written and oral agreements hereto made or existing by and between the parties or their representatives. No modification of this contract shall be valid, unless the same be in writing and signed by the party to be charged.

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IN WITNESS WHEREOF, the parties have executed this Agreement on this 13th day of June, 1984.

Achim Bassler
Achim Bassler

Arlette J. Bassler
Arlette J. Bassler

SELLERS

E T RESTAURANTS, INC.

Mary Elaine Williams
Mary Elaine Williams, President

BUYER

Mary Elaine Williams
Mary Elaine Williams, Individually

Theodore I. Williams
Theodore I. Williams, Individually

STATE OF OREGON,)
County of Klamath)
Filed for record at request of

on this 11 day of July A.D. 19 84
at 3:20 o'clock P M, and duly
recorded in Vol. M84 of Misc.
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EVELYN BIEHN, County Clerk
By *Pam Smith* Deputy
Fee 60.00

Return MTC
15 - AGREEMENT FOR PURCHASE AND SALE