

RECEIVED

JAN 24 9 57 AM '96

GEORGE J. BOLEWICZ  
REGISTER CLERK  
DOUGLAS COUNTY



1167 194 MISC



00742 96 194-204

00742 03-80000  
D FEE 55.90  
DEL. C/O  
LEGAL PG SCAN FV

BRENT LAMUS?  
1105 HOWARD  
OMAHA, NE. 68102

REAL ESTATE PURCHASE AND SALE AGREEMENT

30th 88

THIS AGREEMENT, dated for reference purposes only the 16th day of June, 1995, between Spaghetti Works Restaurant, Inc., (hereinafter referred to as "Seller"), and Upstream Brewing Company, L.L.C., a Colorado Limited Liability Company, (hereinafter referred to as "Purchaser").

WITNESSETH:

1. PROPERTY. In consideration of the mutual promises, covenants, and agreements hereinafter contained, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to buy and take from Seller, upon the terms and conditions hereinafter set forth, that real property owned by Seller located at 514 South 11th Street, in Omaha, Nebraska, and legally described as follows:

SEE ATTACHED EXHIBIT "A"

together with certain improvements, rights, privileges and appurtenances (as listed in Exhibit B) thereunto belonging, if any (hereinafter referred to as the "Property").

2. PURCHASE PRICE. Purchaser agrees to pay as the Purchase Price for the Property the sum of Eight Hundred Ten Thousand and no/100 Dollars (\$810,000.00) on the following terms:

- (a) Ten Thousand and no/100 Dollars (\$10,000.00) in earnest money deposit upon execution of Purchase and Sale Agreement.
- (b) An additional Fifteen Thousand and no/100 Dollars (\$15,000.00) in earnest money deposit due 45 days after execution of Purchase and Sale Agreement.
- (c) Balance of Purchase Price to be paid at closing which shall take place on or within 135 days after the execution of the Purchase and Sale Agreement.

3. FINANCING. Closing of the sale shall be subject to Purchaser's ability to obtain acceptable bank financing for the property in an amount of Eight Hundred Thousand and no/100 Dollars (\$800,000.00). The determination of acceptable financing shall be at the sole discretion of the Purchaser.

4. ACCEPTANCE OF CONTRACT. Purchaser's signature hereon constitutes an offer to purchase the Property upon the terms and conditions hereof. Unless acceptance hereof is executed by Seller and the duly executed copy delivered to Purchaser, either in person or by mail, in Omaha, Nebraska as provided in Section 17 hereof, on or before June 23, 1995, this offer shall be deemed revoked.

5. BROKER'S FEES. The parties recognize that Seller has not entered into an agreement on the Property with any real estate agent and accordingly no commission or broker's fee is due and owing in connection with the sale of the Property. Seller shall hold Purchaser harmless and indemnify him from all claims for real estate sales commissions or broker's fees arising out of this transaction.

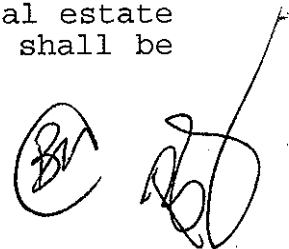
6. CLOSING DATE. The closing date for the purchase of the Property shall be on or within 135 days after the execution of this Purchase and Sale Agreement, unless extended by mutual agreement. The closing shall be held at a time and place as the parties shall mutually agree.

7. CONVEYANCE OF PROPERTY. The Seller shall, at closing, deliver to Purchaser an executed general warranty deed in recordable form conveying fee simple title of record to the Property to the Purchaser. A Bill of Sale will be delivered to Buyer for all fixtures and personal property conveyed and listed on the attached Exhibit B. Title to the Property shall be conveyed by Seller to Purchaser free and clear of all liens, encumbrances, covenants, conditions, restrictions, easements, subject, however, to the following permitted exceptions:

- (a) Current taxes which are a lien not yet delinquent;
- (b) Applicable zoning regulations and municipal ordinances;
- (c) Easements, reservations, covenants and restriction of record as Purchaser determine do not and will not unreasonably interfere with Purchaser's intended use and enjoyment of the Property.

8. SURVEY. Within thirty (30) days after acceptance hereof by Seller, Purchaser shall have the right to have the Property surveyed at Purchaser's expense, which survey shall show the Property to be free from discrepancies or conflicts in boundary lines and encroachments. If the survey discloses any such discrepancies, conflicts or encroachments, Purchaser shall have the right to terminate this Agreement by notice to Seller, whereupon Purchaser's deposits shall be refunded.

9. APPRAISAL. The Purchaser shall pay for any real estate appraisal necessary to obtain financing. The appraisal shall be



the sole property of Purchaser.

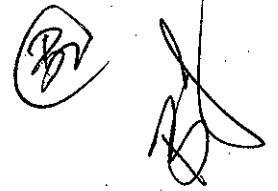
10. ENVIRONMENTAL AUDIT. Seller agrees to pay for a Phase I Environmental Audit conducted by Geotechnical Services, Inc. of Omaha, Nebraska. In the event the audit uncovers material hazards which the Purchaser, at its sole and reasonable discretion, deems unacceptable it shall give notice to Seller who may then correct such before closing, at its own expense, or Purchaser may terminate this Agreement by notice to Seller whereupon Purchaser's deposits shall be refunded. Seller's expense for such shall not exceed \$2,000.00 and cost of the Audit shall be deducted from the Purchase Price at closing..

11. EVIDENCE OF TITLE. Within sixty (60) days after the acceptance of this Agreement by the Seller, Seller shall deliver to Purchaser a title insurance commitment for an ALTA and Owner's Policy in the full amount of the Purchase Price, which shall show good and marketable title to the Property in Seller. The cost of the title insurance shall be split equally by the Seller and Purchaser. Upon receipt of a written request from Purchaser, Seller shall deliver to Purchaser copies of instruments listed on the schedule of exceptions in the title commitment. Purchaser shall have until the ninetieth (90th) day following acceptance hereof by the Seller to deliver to Seller a copy of its attorney's opinion setting forth any defects in title, other than the permitted exceptions, which render title unmarketable, otherwise Purchaser shall be deemed to have approved the title to the Property. Seller shall have until closing to cure any defects causing title to be less than marketable and, if not cured in such time, Purchaser shall have the right to either rescind this Agreement or waive such defects by notice in writing given to Seller. These rights shall be in addition to any other rights Purchaser might have against Seller. In the event this Agreement is so rescinded, Purchaser shall be entitled to a refund of the Deposits and the parties shall be discharged from all further obligation or liability under this contract.

12. PRORATIONS AT CLOSING. Consolidated real estate taxes assessed for the year of closing shall be prorated as of the date of closing; all prior taxes shall be payable by Seller and all subsequent taxes shall be payable by Purchaser. Seller shall pay all special assessments for public improvements completed prior to closing. Purchaser shall pay all other special assessments.

13. POSSESSION. Seller shall deliver possession of the Property at the time of closing.

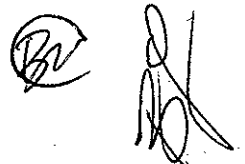
14. CONDITION OF PREMISES. After inspection of the Property by Purchaser, Purchaser shall be deemed to have satisfied itself as to the condition of the Property, and shall take the Property in its present condition, "AS IS", except as otherwise specifically provided in this Agreement.

Handwritten initials "BR" in a circle and a signature.

15. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller represents and warrants to Purchaser as follows:

- (a) Title. Seller has good and marketable title to the Property, as specified in Section 7, above, free and clear of any mortgage, pledge, lien, judgment, encumbrance, security interest or other charge and will create or allow no such mortgage, pledge, lien, judgment, encumbrance, security interest or other charge on the Property prior to closing without the prior written consent of Purchaser.
- (b) Condemnation. Seller has no knowledge that the Property, or any part thereof, is or will be the subject of or affected by any condemnation, eminent domain, or similar proceedings.
- (c) Litigation. There is no known existing or threatened action, suit, or proceeding affecting the Property, or any part thereof, or relating to or arising out of the ownership, use and operation of the property, or any part thereof, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency, or governmental instrumentality.
- (d) Labor and Materials. All known bills for work done or materials furnished with respect to the Property have been paid in full and discharged by law.
- (e) Rights and Options to Purchase. Seller has not granted to any person, firm or other entity a right or option to acquire the Property, or any part thereof, and will create no such right or option prior to closing with respect to the option property without the prior written consent of Purchaser.
- (f) Taxes. All general taxes and special assessments on the Property due and payable with respect to calendar years prior to the year 1995 have been paid in full and discharged by law.
- (g) Service Contracts. There are no contracts in existence for the performance of services on or with respect to the Property, or any part thereof, and no such agreements will be entered into with respect to the Property prior to closing without the prior written consent of the Purchaser.

The foregoing representations and warranties of Seller shall survive closing. In the event Seller shall breach any of said representations or warranties, Purchaser may, elect to rescind this



Agreement, whereupon all monies previously paid to Seller by Purchaser shall be refunded to Purchaser, and Purchaser shall have no further liability hereunder.

16. RECORDING. Purchaser may record this Agreement provided, however, in the event either party terminates this Agreement in accordance with the terms hereof, Purchaser shall execute such documents as are reasonably necessary to clear Seller's title of any encumbrance hereby created.

17. NOTICES. Any notice which may be or is required to be given pursuant to the provisions of this Agreement shall be delivered or sent by certified mail, postage prepaid, return receipt requested and addressed as follows:

If to the Seller, to:  
Brent Lambi  
Spaghetti Works Restaurant, Inc.  
1105 Howard Street  
Omaha, NE 68102

If to the Purchaser, to:  
Brian Magee  
Upstream Brewing Company, L.L.C.  
2716 Country Club Avenue  
Omaha, NE 68104

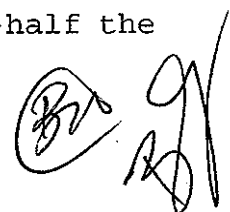
18. BENEFIT. This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and assigns.

19. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties with respect to the transaction hereinabove set forth and may not be amended or modified in whole or in part except with the consent of both of the parties hereto in writing.

20. TIME OF THE ESSENCE. Time shall be of the essence with respect to the performance by the parties of their respective obligations hereunder.

21. EXPENSES. Except as otherwise provided herein, the parties shall be liable for expenses as follows:

- (a) Documentary or Transfer Taxes. Seller shall pay the cost of any required documentary or transfer taxes.
- (b) Recording Fees. Purchaser shall pay any and all recording fees required by this transaction.
- (c) Title Insurance. The Seller shall pay one-half the



cost of obtaining title insurance, and the Purchaser shall pay one-half the cost.

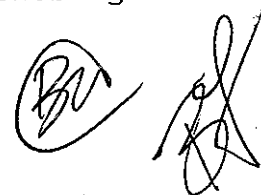
- (d) Environmental Audit. Seller shall pay subject to limitations herein.
- (e) Appraisal. Purchaser shall pay.
- (f) Survey. Purchaser shall pay.
- (g) Other Fees and Expenses. As to all other closing costs and expenses, each party shall pay its respective expenses, taxes, charges and liabilities incurred in connection with or arising out of the exercise of this Agreement and the transfer to title from Seller to Purchaser.

22. ASSIGNMENT. Purchaser shall have the right to assign, transfer or sell this Agreement or its rights under this Agreement.

23. RIGHT OF FIRST REFUSAL. In the event Purchaser receives an offer from a third party to buy the Property, Purchaser will deliver to Seller written notice of the offer. The Seller shall have the right for 14 days after receiving such notice to make a written offer to purchase the Property for cash from the Purchaser at an amount at least equal to the amount offered by the third party. If the Purchaser and Seller do not sign a definitive agreement for the sale of the Property to the Seller within such 14 day period, then the Purchaser may sell the Property to the third party.

24. LIKE KIND EXCHANGE. Purchaser agrees to accommodate Seller if Seller decides to structure the transaction as a like kind exchange under §1031 of the Internal Revenue Code provided that (1) Seller gives written notice to Purchaser; (2) Seller pays all costs caused by the exchange; (3) Seller locates and negotiates the purchase of the replacement property; (4) Purchaser does not have to take title to the replacement property; and (5) the closing on Purchaser's purchase of the real estate governed by this Real Estate Purchase and Sale Agreement is not altered or delayed.

Such transaction shall be handled through an exchange escrow at a mutually agreeable title insurance company with all expenses paid by Seller. Seller shall indemnify and hold harmless Purchaser for any loss, damages, claim, liability, cost or expense, or any combination thereof including reasonable attorneys fees arising or resulting from Purchaser's activity associated with such tax deferred exchange. Purchaser shall be given such further exculpation as it shall reasonably request. Notwithstanding anything else to the contrary contained in this Agreement, the aforesaid indemnification by Seller shall survive the closing of

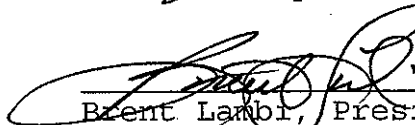


this transaction and shall remain in full force and effect for a period of two (2) years following the closing date. Purchaser's obligation to cooperate with Seller in connection with such tax deferred exchange shall be limited to Seller's reasonable request.


25. DEFAULT; REMEDIES. If Seller shall perform all obligations required by this Agreement and Purchaser shall fail or refuse to perform this Agreement within the time and in the manner provided, then Seller's sole remedy shall be to terminate this Agreement by giving written notice thereof to Purchaser, and upon giving such notice, Seller shall retain the Deposits, as liquidated damages. In the event of default by Seller, Purchaser may seek specific performance of this Agreement or Purchaser may terminate this Agreement by written notice to Seller and all earnest money deposits shall be promptly returned to Purchaser.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year and at the place indicated by their respective signatures.

Executed at OMAHA, NE., on  
the ~~30<sup>th</sup>~~ day of ~~JUNE~~, 1995

  
\_\_\_\_\_  
Brent Lambi, President  
Spaghetti Works Restaurant, Inc.

Executed at OMAHA, NE, on  
the ~~27<sup>th</sup>~~<sup>30<sup>th</sup></sup> day of JUNE, 1995

  
\_\_\_\_\_  
Brian Magee, Manager  
Upstream Brewing Company, L.L.C.

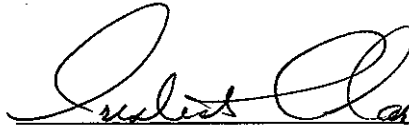
  


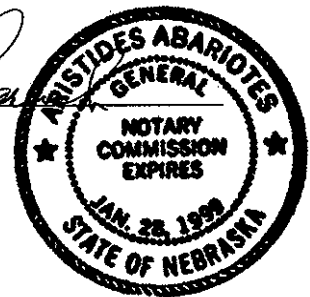


State of Nebraska )  
 ) ss.  
County of Douglas )

Before me, the undersigned, a notary public in and for said county and state, on this 30<sup>th</sup> day of June, 1995, personally appeared Brent Lambi, President of Spaghetti Works Restaurant, Inc., to me known to be the identical person who subscribed his name to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written.

  
Notary Public




State of Nebraska )  
 ) ss.  
County of Douglas )

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

Before me, the undersigned, a notary public in and for said county and state, on this 30<sup>th</sup> day of JUNE, 1995, personally appeared Brian Magee, Manager of Upstream Brewing Company, L.L.C., to me known to be the identical person who subscribed his name to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written.

  
Notary Public

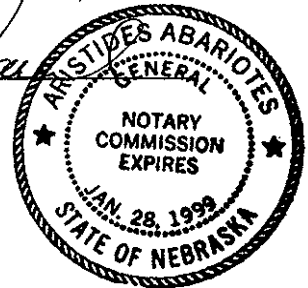




EXHIBIT "A"

LEGAL DESCRIPTION: Lot 8, Block 165, Original City of Omaha, as surveyed and lithographed, in Douglas County, Nebraska

BN  
BF

Exhibit B

Items that remain include all permanently attached personal property and fixtures including:

On the Lower Level;

Booth seating, booth tables and booth lamps, bar stools and tables, colored glass in ceiling by bar, and green metal hanging lamp fixtures. Kitchen hood, range and dishwasher, walk-in cooler and all attached shelving. Front and back bar including all associated refrigeration, wash sink and counter. All wooden doors, both operational and decorative.

On the First Level;

All wooden doors, both operational and decorative. Spiral stairway and gate, and wooden artifact attached in south lobby. Sinks in southeast kitchen. All ceiling fixtures in the theater with the exception of theater lighting.

On the Second Level;

No specific items.

Outside of the building:

All garden tables and seating, garden fences and antique fountain.

The following items may be removed by the seller (without causing damage during removal):

Lower Level;

All furniture including tables and chairs, Tiffany-style lamps, pictures and antiques hung on walls. Bathtubs and decorative mirrors. Two-burner range and grill, ventless oven, and refrigerators. Light fixture suspended in Noodles Comedy Club exterior entrance.

First Level;

Chandelier, colored glass pieces, and antique furniture. Salad bar. Refrigeration and two-burner stove in southeast kitchen. All theater lighting and sound equipment and all associated rigging. All theater seats and tables. Theater stage and revolving stage mechanism.

Second Level;

Newly-installed carpet, all costumes and shelving.

Handwritten signature and initials in the bottom right corner. The initials 'Br' are circled, and there is a large, stylized signature below it.