

UNOFFICIAL COPY

09041337

93137006 90 001 Page 1 of 22
1999-11-04 12:28:11
Cook County Recorder 63.50



09041337

INSTALLMENT ASSET-BUSINESS AND REAL ESTATE
PURCHASE AGREEMENT

OF NANA'S HOTDOGS AT 1102 EAST IRVING PARK ROAD STREAMWOOD

BETWEEN

GMN ENTERPRISES, INC. AND FRANK BATTAGLIA ("SELLER")

AND

DUE RAGAZZI, INC
("BUYER")

MAIL TO

STEPHEN P. DI SILVESTRO
5231 N. HARLEM Ave.
CHICAGO, Ill. 60656

INSTALLMENT ASSET-BUSINESS AND REAL ESTATE
PURCHASE AGREEMENT

OF NANA'S HOTDOGS AT 1102 EAST IRVING PARK ROAD STREAMWOOD

BETWEEN

GMN ENTERPRISES, INC. AND FRANK BATTAGLIA ("SELLER")

AND

DUE RAGAZZI, INC
("BUYER")

WITNESSETH:

WHEREAS GMN Enterprises, Inc. (the "Seller") operates Nana's Hot Dog and Italian Beef and Sausage Stand ("Nana's") located at 1102 East Irving Park Road, Streamwood, Illinois; and

WHEREAS Due Ragazzi, Inc. (the "Buyer") desires to purchase, and GMN Enterprises, Inc. desires to sell, the assets, real estate, and the business, of Nana's, located at 1102 East Irving Park Road, Streamwood, Illinois;

Now, THEREFORE, in consideration for the mutual agreements herein, the Seller and Buyer agree as follows (the "Agreement"):

1. BUYER & SELLER:

Due Ragazzi, Inc. ("BUYER"), of Cook County, State of Illinois agrees to purchase, and GMN Enterprises, Inc. ("SELLER"), of Du Page County, State of Illinois agree to sell to Buyer at the PURCHASE PRICE of Five Hundred Thousand (\$500,000) the PROPERTY commonly known as 1102 East Irving Park Road, Streamwood, Illinois and the business operated thereon, the real property legally described as follows:

~~SEE ATTACHED LEGAL DESCRIPTION~~

LOT 1 IN NANA'S SUBDIVISION, A SUBDIVISION OF LOT 3 (EXCEPT THE WEST 100.0 FEET AND EXCEPT THE EAST 100.0 FEET) OF STREAMWOOD DEVELOPMENT CORPORATION'S SUBDIVISION, A PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 22, 1981 AS DOCUMENT 25880294, IN COOK COUNTY, ILLINOIS.

~~(hereinafter referred to as the premises):~~

P.I.N.: 06-25-301-038-0000

Property Address: 1102 East Irving Park Road, Streamwood, Illinois

with approximate lot dimensions of _____,
together with all improvements and fixtures, if any,
including the following described personal property, to-wit:
Existing hot water heater, plumbing and electrical fixtures,
, central heating and cooling humidifying and filtering
equipment, built-in kitchen appliances, equipment and
cabinets, water softener; storm and screen windows and doors,
attached shutters, window treatment hardware, blinds and
shades, shelving systems, , roof or attic T.V. antenna, , if
any, oven, refrigerator, washer, dryer and all window
treatments, dishwasher and ceiling fan ALL TAKEN AS IS WITH
NO REPRESENTATIONS OR WARRANTIES FROM THE SELLER.

All of the foregoing items shall be left on the premises, are
included in the sale price, and shall be transferred to the
Buyer by the Bill of Sale herein referenced at the time of
final closing.

2. **THE DEED:**

If the Buyer shall first make all the payments and perform
all the covenants and agreements in this agreement required
to be made and performed by said Buyer, at the time and in
the manner hereinafter set forth, Seller shall convey or
cause to be conveyed to Buyer (in joint tenancy) or his
nominee, by a recordable, stamped general trustees or
warranty deed with release of homestead rights, good title to
the premises subject only to the following "permitted
exceptions," if any: (a) General real estate taxes not yet
due and payable; (b) Special assessments confirmed after this
contract date; (c) Building, building line and use of
occupancy restrictions, conditions and covenants of record
which have not been violated; (d) Zoning laws and ordinances
which have not been violated; (e) Easements for public
utilities; (f) Drainage ditches, feeders, laterals and drain
tile, pipe or other conduit; (g) Covenants, conditions and
restrictions of record which have not been violated. Seller
represents, to the best of their knowledge, that there exists
no building, building line, zoning or covenant violation.

The performance of all the covenants and conditions herein to
be performed by Buyer shall be a condition precedent to
Seller's obligation to deliver the deed aforesaid.

3. **INSTALLMENT PURCHASE:**

a. **Earnest Money.**

Buyer has paid \$10,000 earnest money, which is to be
held by Seller's Attorney. Buyer agrees to forward an
additional \$90,000 within 5 business days of the

UNOFFICIAL COPY

09041337

execution of this contract. THIS TOTAL AMOUNT, \$100,000, SHALL BE NON-REFUNDABLE.

b. Financing of Balance.

Buyer shall use its best efforts to obtain a loan for the balance owing (\$400,000 plus 9.25% computed on a daily basis) from a third party within 120 days of execution of this agreement. Such amount shall be forwarded to Seller at the 2nd closing.

If the Buyer does not obtain third party financing, the Seller agrees to finance the \$400,000 for an additional 20 months after the 120 period at an annual effective rate of 9.25% amortized over 15 years. The Buyer will pay the Seller \$\$4,116.77 on November 19, 1999, and agrees to pay the Seller the amount of \$4,116.77 on a monthly basis on the fifteenth of each month thereafter until the earlier of the Final Closing or October 19, 2001. At the Final Closing, the Buyer shall also pay the Seller \$372,869.43. This amount represents \$400,000 financed at nine and one-quarter percent (9.25%) (the "Interest Rate") annual interest amortized monthly over 15 years. The final payment of the purchase price and all accrued but unpaid interest and other charges as hereinafter provided, if not sooner paid, shall be due 24 months from the date of the initial closing. Buyer shall have the right to prepay the purchase price without penalty. Assuming timely monthly payments and no additional unpaid interest or other charges due from the Buyer to the Seller the final amount due from the Buyer to the Seller is \$372,869.43. In addition to the payment obligation set forth herein, Buyer shall be responsible for other charges, including, but not limited to, those amounts provided in paragraphs 16 and 17 hereof.

Notwithstanding anything else contained herein, Seller agrees to finance up to \$100,000 of the unfinanced purchase price on October 19, 2001 at a rate of 12% annually payable monthly as interest only in \$1,000 payments. The term for this \$100,000 interest only loan shall be 15 years and shall be in a form agreeable to both parties.

c. Paydowns

Buyer and Seller agree any paydowns of this balance shall be reflected in the final payment due, with no penalty due towards Buyer.

UNOFFICIAL COPY**4. CLOSINGS:**

The "initial closing" shall occur on or before October 19, 1999 (or on the date, if any, to which the parties mutually agree) at Seller's attorney's office. Seller shall deliver to Seller's attorney as escrowee the following documents at the initial closing: executed deed, transfer declarations and ALTA statements. "Final closing" shall occur if and when all covenants and conditions herein to be performed by Buyer have been so performed.

5. POSSESSION:

Possession shall be granted to Buyer on OCTOBER 19, 1999, provided that the additional \$90,000 has been paid to Seller in cash or by cashier's or certified check on or before OCTOBER 19, 1999.

- 6. PRIOR MORTGAGES:** Seller reserves the right to keep existing mortgage of \$153,778.27 to Midwest Bank and Trust ("prior mortgage") against the title to the premises with a balance including interest not to exceed the balance of the purchase price unpaid at any time under this Agreement, the lien of which prior mortgage shall, at all times notwithstanding that this Agreement is recorded, be prior to the interest that Buyer may have in the premises. No mortgage or trust deed existing on said premises shall in any way accelerate the time of payment provided for in this Agreement or provide for payment of any amount, either interest or principal, exceeding that provided for under this Agreement, or otherwise be in conflict with the terms and provisions of this Agreement, nor shall such mortgage or trust deed in any way restrict the right of prepayment, if any, given to Buyer under this Agreement. Buyer shall have no liability with respect to the prior mortgage.

Seller shall from time to time upon the reasonable request of Buyer, exhibit to Buyer receipts for payments made to the holders of any indebtedness secured by any such prior mortgage. All payments shall go into a separate account under the control of Seller which shall be used exclusively to service the prior mortgage with balances to be paid to the Seller. The statements shall be made available to the Buyer monthly.

In the event Seller shall fail to make any payment on the indebtedness secured by a prior mortgage or shall suffer or permit there to be any other breach or default in the terms of any indebtedness or prior mortgage, Buyer shall have the right, but not the obligation, to make such payments or cure such default and to offset the amount against the purchase price so paid or expended including all incidental costs,

expenses and attorney's fees attendant thereto incurred by Buyer to protect Buyer's interests hereunder from the unpaid balance of the purchase price or from the installment payments to be made under this Agreement.

7. **SURVEY:**

Prior to the final closing, Seller shall deliver to Buyer or his agent a current ALTA survey of the premises, certified by a licensed surveyor, showing all improvements existing as of this contract date and all easements and building lines and showing no encroachments or violations of building or setback lines.

8. **TITLE:**

Within 21 business days of the and final closing, Seller shall furnish or cause to be furnished to Buyer at Seller's expense a commitment issued by Chicago Title Insurance Company to issue a contract purchaser's title insurance policy on the current form of American Land Title Association Owner's Policy (or equivalent policy) in the amount of the purchase price covering the date hereof, subject only to: (1) the general exceptions contained in the policy, unless the real estate is improved with a single family dwelling or an apartment building of four or fewer residential units; (1) the "permitted exceptions" set forth in paragraph 2; (2) prior mortgages permitted in paragraph 6; (3) other title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount, which may be removed by the payment of money and which shall be removed at or prior to the initial closing and (4) acts done or suffered by or judgments against the Buyer, or those claiming by, through or under the Buyer.

If the title commitment discloses unpermitted exceptions, the Seller shall, before the initial and final closing, have the said exceptions waived, or to have the title insurer commit to insure against loss or damage that may be caused by such exceptions. Said waiver or insurance subject to Buyer's approval.

Every title commitment which conforms with subparagraph "a" shall be conclusive evidence of good title therein shown, as to all matters insured by the policy, subject only to special exceptions therein stated.

Seller agrees the Buyer shall have the right to offset any future amounts due and owing Seller as a result of items affecting the premises or the business, including any amounts under §24(e) below.

9. AFFIDAVIT OF TITLE:

Seller shall furnish Buyer at or prior to the initial closing and, again, prior to final closing with an Affidavit of Title, covering said dates, subject only to those permitted exceptions set forth in paragraph 2, unpermitted exceptions, if any, as to which the title insurer commits to extend insurance in the manner specified in paragraph 8.

10. INITIAL CLOSING ESCROW:

Seller agrees all funds of the initial closing shall be placed in escrow to secure payment of the following; 1998 second installment of real estate taxes, any amounts required to be held under the Illinois Bulk Sales Act, and any amounts disclosed in the UCC, name and other searches.

Once the "tax clearance letter" is received from the Illinois Department of Revenue, both parties agree the Initial Closing Escrow shall be no greater than 100% of any known amounts disclosed in any searches and the 2nd installment of the 1998 real estate taxes.

11. PRORATIONS:

Insurance premiums, general taxes, association assessments and, if final meter readings cannot be obtained, water and other utilities shall be adjusted ratably as of the date of initial closing. Real estate taxes for the year of possession shall be prorated as of the date of initial closing at 110% of the most recent issued tax bill. Further, interest on the unpaid principal amount of the purchase price from the initial closing date until the date of the first installment payment shall be made pursuant to the amortization schedule attached. Seller agrees to pay 1998 taxes in full.

FAB
MDS

12. ESCROW CLOSING:

At the election of Seller or Buyer, upon notice to the other party not less than five (5) days prior to the date of either the initial or final closing, this transaction or the conveyance contemplated hereby shall be made through escrow with a title company, bank or other institution or an attorney licensed to do business or to practice in the State of Illinois in accordance with the general provisions of an escrow trust covering articles of agreement for deed consistent with the terms of this Agreement. Upon creation of such an escrow, anything in this Agreement to the contrary notwithstanding, installments or payments due thereafter and delivery of the Deed shall be made through escrow. The cost of the escrow including an ancillary money lender's escrow, shall be paid by the party requesting it.

PARTIES AGREE TO PRORATE THE 1999 REAL ESTATE TAXES. WHEN AND 1ST INSTALLMENT 1999 THE ACTUAL 1999 REAL ESTATE TAX BILL IS RECEIVED.

WHEP
MDS
FAB

MDS FAB
Initials Initials

13. SELLER'S REPRESENTATIONS:

- a. Seller expressly warrants to Buyer that no notice from any city, village or other governmental authority of a dwelling code violation which existed in the dwelling structure on the premises herein described before this Agreement was executed, has been received by the Seller, his principal or his agent within five (5) years of the date of execution of this Agreement.
- b. Seller represents that all equipment and appliances to be conveyed, including but not limited to the following, are in operating condition: all mechanical equipment; heating and cooling equipment; water heaters and softeners; septic, plumbing, and electrical systems; kitchen equipment remaining with the premises and any miscellaneous mechanical personal property to be transferred to the Buyer. Upon the Buyer's request prior to the time of possession, Seller shall demonstrate to the Buyer or his representative all said equipment and upon receipt of written notice of deficiency shall promptly and at Seller's expense correct the deficiency. IN THE ABSENCE OF WRITTEN NOTICE OF ANY DEFICIENCY FROM THE BUYER PRIOR TO THE DATE SPECIFIED FOR INITIAL CLOSING IT SHALL BE CONCLUDED THAT THE CONDITION OF THE ABOVE EQUIPMENT IS SATISFACTORY TO THE BUYER AND THE SELLER SHALL HAVE NO FURTHER RESPONSIBILITY WITH REFERENCE THERETO.
- c. Seller agrees to leave the premises in broom clean condition. All refuse and personal property not to be delivered to Buyer shall be removed from the premises at Seller's expense before the date of initial closing.
- d. Seller agrees to provide the recipes for the Italian beef, red (marinara) sauce and chili to the Buyers. SELLER SHALL

14. BUYER TO MAINTAIN: REPAIR AUTOMATIC MEAT SLICER BY NOVEMBER, 2025, 999. IN THE EVENT SLICER CANNOT BE RESTORED TO GOOD WORKING CONDITION, SELLER SHALL REPLACE IT WITH COMPARABLE SLICER OR PROVIDE PURCHASER A CREDIT. MDS JPK

- a. Buyer shall keep the improvements on premises and the grounds in as good repair and condition as they now are, ordinary wear and tear excepted. Buyer shall make all necessary repairs and renewals upon said premises including by way of example and not of limitation, interior and exterior painting and decorating; window glass; heating, ventilating and air condition equipment; plumbing and electrical systems and fixtures; roof; masonry including chimneys and fireplaces, etc. If, however, the said premises shall not be thus kept in good repair, and in a clean, sightly, and healthy condition by Buyer, Seller may upon (10) days notice

either (a) enter same, himself, or by their agents, servants, or employees, without such entering causing or constituting a termination of this Agreement or an interference with Buyer's possession of the premises, and make the necessary repairs and do all the work required to place said premises in good repair and in a clean, sightly, and healthy condition, and Buyer agrees to pay to Seller, as so much additional purchase price for the premises, the expenses of the Seller in making said repairs and in placing the premises in a clean, sightly, and healthy condition; or (b) notify the Buyer to make such repairs and to place said premises in a clean, sightly, and healthy condition within thirty (30) days of such notice (except as is otherwise provided in paragraph 20), and, upon default by Buyer in complying with said notice, then, Seller may avail himself of such remedies as Seller may elect, if any, from those that are by this Agreement or at law or equity provided. No structural modifications shall be made to the premises without the consent of the Seller, such consent shall not be unreasonably withheld.

b. Buyer shall not enter into future lease agreements for the premises for a term in excess of two (2) years without the consent of the Seller, such consent shall not be unreasonably withheld.

15. **FIXTURES AND EQUIPMENT:**

At the time of delivery of possession of the premises to Buyer, Buyer also shall receive possession of the personal property to be sold to Buyer pursuant to the terms of this Agreement as well as of the fixtures and equipment permanently attached to the improvements on the premises, but until payment in full of the purchase price is made, none of such personal property, fixtures or equipment shall be removed from the premises without the prior written consent of the Seller.

16. **INSURANCE:**

Buyer shall from and after the time specified in paragraph 5 for possession, keep insured fire and extended coverage in an amount not less than full replacement value against loss or damage by fire or other casualty, the improvements now and hereafter erected on premises with a company, or companies, reasonably acceptable to Seller and, also, flood insurance where applicable, with coverage not less than the balance of the purchase price hereof for the benefit of the parties hereto and the interests of any mortgagee or trustee, if any, as their interests may appear. Such policy or policies shall

be held by Seller, and Buyer shall pay the premiums thereon when due as per paragraph 17 herein. Buyer shall be named as an additional insured with respect to said policies.

In case of loss of or damage to such improvements, whether before or after possession is given hereunder, any insurance proceeds to which either or both of the parties hereto shall be entitled on account thereof, shall be used (i) in the event the insurance proceeds are sufficient to fully reconstruct or restore such improvements, to pay for the restoration or reconstruction of such damaged or lost improvement, or (ii) in the event the insurance proceeds are not sufficient to fully reconstruct or restore such improvements, then the proceeds of insurance shall be applied to the unpaid balance of purchase price.

17. TAXES AND CHARGES:

It shall be the Buyer's obligation to pay immediately when due and payable and prior to the date when the same shall become delinquent all general and special taxes, special assessments confirmed after the date hereof, water charges, sewer service charges and other taxes, fees, liens (not caused by Seller), and charges now or hereafter levied or assessed or charged against the premises or any part thereof or any improvements thereon

18. FUNDS FOR TAXES AND CHARGES:

In addition to the agreed installments, provided in paragraph 3, Buyer shall deposit with the Seller on the day each installment payment is due, a sum (herein referred to as "funds") equal to one-twelfth of the yearly taxes (\$20,400 for 1998 taxes - approximately) in the amount of \$1,700, assessments which may become a lien on the premises, and the estimated annual premiums for the insurance coverages, all as reasonably estimated to provide sufficient sums for the full payment of such charges one month prior to their each becoming due and payable. Failure to make the deposits required hereunder shall constitute a breach of this Agreement. Such deposits shall be made to the account designated in paragraph 6 hereof.

The funds shall be held by Seller in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency. Seller shall use the funds for the payment of the aforementioned taxes, charges and premiums. Seller shall, upon the reasonable request of the Buyer, give the Buyer an accounting of all such funds deposited and disbursed including evidence of paid receipts for the amounts so disbursed. The funds are hereby pledged as additional security to the Seller for the periodic payments and the

MDS KOB
Initials Initials

unpaid balance of the purchase price. Seller agrees to place escrowed funds in an interest bearing account for the benefit of the Buyers.

If the amount of the funds together with the future periodic deposits of such funds payable prior to the due date of the aforementioned charges shall exceed the amount reasonably estimated as being required to pay said charges one month prior to the time at which they fall due such excess shall be applied first to cure any breach in the performance of the Buyer's covenants or agreements hereunder of which Seller has given written notice to Buyer and, second, at Buyer's option, as a cash refund to Buyer or a credit toward Buyer's future obligations hereunder. If the amount of the funds held by Seller shall not be sufficient to pay all such charges as herein provided, Buyer shall pay to Seller any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Seller to Buyer requesting payment thereof.

Seller may not charge for so holding and applying the funds, analyzing said account, or verifying and compiling said assessments and bills, unless otherwise agreed in writing at the time of execution of this Agreement. Upon payment in full of all sums due hereunder, Seller shall promptly refund to Buyer any funds so held by Seller or offset same against the purchase price. If the funds are not used to pay for any required payments, Buyer may pay the amounts due, after reasonable notice to the Seller, and such payment shall be a reduction of the purchase price.

19. BUYER'S INTEREST:

- a. No right, title, or interest, legal or equitable, in the premises (except for a contract Purchaser's interest) described herein, or in any part thereof, shall vest in the Buyer until the Deed, as herein provided shall be delivered to the Buyer.
- b. In the event of the termination of this Agreement by lapse of time, forfeiture or otherwise, all improvements, whether finished or unfinished, whether installed or constructed on or about said premises by the Buyer or others shall belong to and become the property of the Seller without liability or obligation on Seller's part to account to the Buyer therefore or for any part thereof.

20. LIABILITIES

The Buyer will assume no liabilities with respect to Seller's

UNOFFICIAL COPY

09041337

business or Seller's assets. Buyer assumes liability for any sale of the Acquired Assets by Buyer after the Closing Date.

21. INDEMNITY. Seller and Seller's shareholders hereby agree to indemnify, defend and hold Buyer harmless from any and all losses, costs, expenses and damages, including reasonable attorney fees, incurred by them in connection with the prosecution, defense, settlement or payment of any by them in connection with the prosecution, defense, settlement or payment of any claim, demand, action or proceeding arising out of or in connection with the breach by Seller of any provision or warranty of this Agreement or the enforcement of this Agreement, or as a result of any action or proceeding in dispute of any debts contracts or engagements of Seller on account of the business or credit thereof.
22. ALLOCATION OF PURCHASE PRICE BETWEEN ASSETS ACQUIRED Buyer and Seller agree to allocate the purchase price among the assets acquired.
23. BUYER DELIVERIES:

Stop Order. A Stop Order from the Illinois Department of Revenue stating the amount which Buyer is to withhold from the proceeds of this Purchase and Sale of Assets. Seller to apply for and obtain Stop Order.

Check Payable to Seller. Cashier's or Certified check payable to Seller equal to the amount by which the Purchase Price exceeds the amount specified to be withheld in the Stop Order.

24. RIGHT OF SELLER TO OPERATE OTHER BUSINESSES. Seller will continue to operate its other businesses, namely Nana's Catering Concepts and Nana's Pasta Grill. Nothing in this agreement is intended to limit in any way Seller's right to operate its Catering and Pasta Grill business.
25. SELLER'S RIGHT TO USE NAME "NANA'S". Buyer's agree, notwithstanding anything else contained within this Agreement or otherwise, the Seller has the full and absolute right to the name "Nana's", "Nana's Catering Concepts" and "Nana's Pasta Grill." Buyer agrees and understands the use of the name "Nana's" is a right being conveyed by the Seller to the Buyer in the form of a 99-year license, for the consideration of \$1. Buyer agrees not to represent itself as the owner of the name Nana's and not to use the name Nana's without the prior written consent of the Seller, except for the operations of the business located at

UNOFFICIAL COPY

09041337

1102 Irving Park Road, Streamwood, Illinois.

Notwithstanding anything else contained herein, the Buyers have the right to open two additional businesses besides 1102 Irving Park Road, Streamwood, Illinois, under the name of Nana's without Seller's prior written consent.

26. **REPRESENTATIONS AND WARRANTIES OF SELLER.**

Seller represents and warrants to the Buyer that the following statements. Will be correct as of the date of the Final Closing as described in §4 above

- a. **Authorization of Transaction.** Seller has full power and authority to execute and deliver this Agreement.
- b. **Title to Assets.** Seller has good and marketable title to all the Acquired Assets, free of any security interests or any restrictions on transfer:
- c. **Noncontravention.** The execution of this Agreement will not (i) violate any statute, regulation or other restriction of any governmental agency or (ii) conflict with, result in a breach of, constitute a default under, or create in any party the right to terminate or modify any agreement, contract or license. Seller does not need to give any notice to, or make any filing with, or obtain any authorization consent or approval of any government or governmental agency in order for the Seller and Buyer to consummate this Agreement.
- d. **Broker's Fees.** There are brokers' fees payable as a result of this transaction and shall be the sole responsibility of the Seller.
- e. **Undisclosed Liabilities.** Seller warrants there are no outstanding liabilities as against the Acquired Assets, and there is no basis for any present or future action, suit, proceeding, claim or demand giving rise to any liability against the Acquired Assets.
- f. **Legal Compliance.** To the best of Seller's knowledge, Seller has complied with all applicable laws of federal, state and local governments, and no action, suit, proceeding, hearing, charge, complaint or notice has been filed or commenced against the Acquired Assets.
- g. **Tax Matters.** Seller has filed all the tax returns that it was required to file. All such tax returns were correct and complete in all aspects, and any taxes owed, whether or not shown on the return, have been paid. Seller has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid

UNOFFICIAL COPY

09041337

or owing to any employee, independent contractor, or other third party.

- h. **Employee Benefits.** Seller has no employee benefit plan or arrangement.

09041337

27. **Noncompete Agreement.**

Seller will not, for a period of ten (10) years following the date of closing hereunder, enter into, directly or indirectly, or become an agent, employee, or sales representative of, any business, partnership, association, corporation or other entity that engages in the operation of a Hot Dog, Italian Beef or Sausage fast food restaurant or the operation of a business substantially similar having a physical location within a seven (7) mile radius of the Premises. Seller acknowledges that the time and territorial restrictions of this covenant not to compete are not unreasonable and that as a result of the purchase and sale hereunder Purchaser has acquired a valid business interest in need of such protections. Purchaser shall have the right to an injunction against Seller issued by a court of competent jurisdiction enjoining the breach of this covenant not to compete. This provision shall not apply to Seller's existing businesses as of the date of this contract.

28. **LIENS:**

- a. Buyer shall not suffer or permit any mechanics' lien, judgment lien or other lien or any nature whatsoever to attach to or to be against the premises which shall or may be superior to the rights of the Seller.
- b. For each and every contract for repairs or improvements on the premises aforesaid, or any part thereof, Buyer shall commit to obtain full and final lien waivers in a timely fashion after the completion of such work, a copy of which shall be promptly delivered to Seller.

29. **PERFORMANCE:**

- a. If Buyer (1) defaults by failing to pay when due any single installment or payment required to be made to Seller upon the terms of this Agreement and such default is not cured within twenty (20) days of written notice to Buyer; or (2) defaults in the performance of any other covenant or agreement hereof and such default is not cured by Buyer (or if the default cannot reasonably be cured within thirty (30) days and if Buyer has committed to cure such default and is diligently

proceeding to cure, Buyer shall not be in default) within thirty (30) days after written notice to Buyer (unless the default involves a dangerous condition which shall be cured forthwith); Seller may treat such a default as a breach of this Agreement and Seller shall have any one or more of the following remedies in addition to all other rights and remedies provided at law or in equity: (i) maintain an action for any unpaid installments; (ii) declare the entire balance due and maintain an action for such amount; (iii) forfeit the Buyer's interest under this Agreement and retain all sums paid as liquidated damages in full satisfaction of any claim against Buyer, and upon Buyer's failure to surrender possession, maintain an action for possession under the Forcible Entry and Detainer Act, subject to the rights of the Buyer to reinstate as provided in that Act.

- b. As additional security in the event of default, Buyer assigns to Seller all unpaid rents, and all rents which accrue thereafter, and in addition to the remedies provided above and in conjunction with any one of them, Seller may collect any rent due and owing and may seek the appointment of receiver.
- c. If default is based upon the failure to pay taxes, insurance, or liens, Seller may elect to make such payments and add the amount to the principal balance due, which amounts shall become immediately due and payable by Buyer to Seller.
- d. Seller may impose and Buyer agrees to pay a late charge not exceeding 5% of any individual monthly installment due hereunder which Seller elects to accept after the date the sum was due, if said sum was not paid to Seller within 10 days of the date it was due.
- e. Anything contained in subparagraphs (a) through (d) to the contrary notwithstanding, this Agreement shall not be forfeited and determined, if within 20 days after such written notice of default, Buyer tenders to Seller the entire unpaid principal balance of the Purchase Price and accrued interest then outstanding and cures any other defaults of a monetary nature affecting the premises or monetary claims arising from acts or obligations of Buyer under this Agreement.
- f. Buyer may maintain an action for specific performance for a Seller default hereunder. If Buyer prevails, Seller shall pay reasonable attorneys' fees and costs

incurred by Buyer with respect to an action for a specific performance.

30. DEFAULT, FEES:

All rights and remedies given to Buyer or Seller shall be distinct, separate and cumulative, and the use of one or more thereof shall not exclude or waive any other right or remedy allowed by law, unless specifically waived in this Agreement; (2) no waiver of any breach or default of either party hereunder shall be implied from any omission by the other party to take any action on account of any similar or different breach or default; (3) the payment or acceptance of money after it falls due after knowledge of any breach of this agreement by Buyer or Seller, or after the termination of Buyer's right of possession hereunder, or after the service of any notice, or after commencement of any suit, or after final judgment for possession of the premises shall not reinstate, continue or extend this Agreement nor affect any such notice, demand or suit or any right hereunder not herein expressly waived.

31. NOTICES: All notices required to be given under this Agreement shall be construed to mean notice in writing signed by or on behalf of the party giving the same, and the same may be served upon the other party personally, by Federal Express (with evidence of receipt) or by certified or registered mail, return receipt requested, to the parties. Notice shall be deemed made when mailed, sent or served. Service of any notice by a fax shall also be deemed to be sufficient when followed by a mailing of the faxed document. Any such faxed document shall be considered an original document and the signature on any such faxed document shall be considered an original signature. At the request of any party faxed signatures shall be re-executed on original documents.

32. ABANDONMENT: Fifteen (15) days physical absence by Buyer with any installments being unpaid, and, in either case, reason to believe Buyer has vacated the premises with no intent again to take possession thereof shall be conclusively deemed to be an abandonment of the premises by Buyer. In such event, and in addition to Seller's remedies set forth herein, Seller may, but need not, enter upon the premises and act as Buyer's agent to perform necessary decorating and repairs and to re-sell the premises outright or on terms similar to those contained in this Agreement with allowance for then existing marketing conditions. Buyer shall be conclusively deemed to have abandoned any personal property remaining on or about the premises and Buyer's interest

therein shall thereby pass under this Agreement as a bill of sale to Seller without additional payment by Seller to Buyer.

33. **SELLER'S ACCESS:** Seller may make or cause to be made reasonable entries upon and inspection of the premises, provided that Seller shall give Buyer one day's notice prior to any such inspection specifying reasonable cause therefor related to Seller's interest in the premises.
34. **CALCULATION OF INTEREST:** Interest for each month shall be added to the unpaid balance of the first day of each month at the rate of one-twelfth of the annual interest rate and shall be calculated upon the unpaid balance due as of the last day of the preceding month based upon a 360 day year. Interest for the period from the date of initial closing until the date the first installment is due shall be payable on or before the date of initial closing.
35. **ASSIGNMENT:** The Buyer shall not transfer, pledge or assign this Agreement, or any interest herein or hereunder nor shall the Buyer lease nor sublet the premises, or any part thereof. Any violation or breach or attempted violation or breach of the provisions of this paragraph by Buyer, or any acts inconsistent herewith, shall vest no right, title or interest herein or hereunder, or in the said premises in any such transferee, pledgee, assignee, lessee or sub-lessee, but Seller may, at Seller's option, declare this Agreement null and void and invoke the provisions of this Agreement relating to forfeiture hereof.
36. **FINAL CLOSING:** Buyer shall be entitled to delivery of the Deed of conveyance, Affidavit of Title and a Bill of Sale to the personal property to be transferred to Buyer under this Agreement at any time upon payment of all amounts due hereunder in the form of cash or cashier's or certified check made payable to Seller, which amount shall be without premium or penalty. At the time Buyer provides notice to Seller that he is prepared to prepay all amounts due hereunder, Seller forthwith either shall produce and record at his expense a release deed for the prior mortgage, or obtain a currently dated loan repayment letter reflecting the amount necessary to discharge and release the prior mortgage. Seller shall have the right to repay and discharge such prior mortgage in whole or in part from sums due hereunder from Buyer. Upon repayment of the prior mortgage, Seller shall receive the canceled note and a release deed in form satisfactory for recording which, shall be delivered to Buyer. Seller shall give Buyer a credit against the balance of the purchase price for the cost of recording such release. In the event Buyer does not have a mortgage lender, then the delivery of the

canceled note to Seller shall be simultaneous with the delivery of the Deed from Seller to Buyer, and to facilitate the delivery of documents and the payment of the prior mortgage and the balance of the amount due hereunder, the parties agree to complete such exchange at the offices of Timothy P. McHugh. At the time of delivery of the Deed, Buyer and Seller shall execute and furnish such real estate transfer declarations as may be required to comply with State, County or local law. Seller shall pay the amount of any stamp tax then imposed by State or County law on the transfer of title to Buyer, and Buyer shall pay any such stamp tax and meet other requirements as then may be established by any local ordinance with regard to the transfer of title to Buyer unless otherwise provided in the local ordinance.

37. TITLE IN TRUST:

- a. In the event that title to the premises is held in or conveyed into a trust prior to the initial closing, it shall be conveyed to Buyer when and if appropriate under the terms of this Agreement in accordance with the provisions of paragraph 2, except that the conveyance shall be by Trustee's Deed.
- b. The beneficiary or beneficiaries of and the person or persons with the power to direct the Trustee shall cumulatively be deemed to jointly and severally have all of the rights, benefits, obligations and duties by the Seller to be enjoyed or performed hereunder and such person or persons with the power to direct the Trustee jointly and severally agree to direct the Trustee to perform such obligations and duties as such persons or the beneficiaries may not under the terms of the Trust Agreement do or perform themselves directly.
- c. If, at the time of execution of this Agreement, title to the premises is not held in a trust, Seller agrees that upon the written request of the Buyer any time prior to the final closing, Seller shall convey title into a trust and comply with subparagraphs (a) and (b) of this paragraph 28 with Buyer paying all trust fees and recording cost resulting thereby.

38. RECORDING:

The Buyer may record this Agreement or a memorandum thereof at Buyer's expense.

39. Survival of Representations and Warranties.

All of the representations and warranties of the Seller and Buyer contained in this Agreement shall survive the Closing,

UNOFFICIAL COPY

09041337

provided, however, that Buyer may not bring any cause of action or claim against the Seller more than one year after the Closing Date.

40. **CAPTIONS AND PRONOUNS:** The captions and headings of the various sections or paragraphs of this Agreement are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.
41. **PROVISIONS SEVERABLE:** The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.
42. **BINDING ON HEIRS, TIME OF ESSENCE:** This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the Seller and Buyer. Time is of the essence in this Agreement.
43. **JOINT AND SEVERAL OBLIGATIONS:** The obligations of two or more persons designated "Seller" or "Buyer" in this Agreement shall be joins and several, and in such case each hereby authorizes the other or others of the same designation as his or her attorney-in-fact to do or perform any act or agreement with respect to this Agreement or the premises.
44. **MODIFICATIONS:** This Agreement shall modify and supersede the previous Real Estate Sale Contracts between the parties
45. **Expenses.**
The Seller and Buyer will each bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement.
46. **Governing Law.**
This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Illinois,
47. **Amendments.**
No amendments, modifications or alterations to this Agreement will be valid unless in writing and signed by the Seller and Buyer.
48. **Severability.**
Any term or provision of this Agreement that is invalid or unenforceable in any situation shall not effect the validity or enforceability of the remaining terms and provisions of the Agreement.

UNOFFICIAL COPY

09041337

49. Construction.

The Seller and Buyer have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as drafted jointly by the Seller and Buyer and no presumption or burden of proof shall arise favoring or disfavoring either Seller or Buyer by virtue of the authorship of any of the provisions of this Agreement.

50. Entire Agreement. This Agreement, including Exhibit A, constitutes the entire agreement between the Seller and Buyer and supersedes any prior understandings, agreements, or representations by or between the Seller and Buyer, whether written or oral.

51. REAL ESTATE BROKER: Seller shall pay the brokerage commission of said broker(s) in accordance with a separate agreement between Seller and said broker(s) at the time of initial closing.

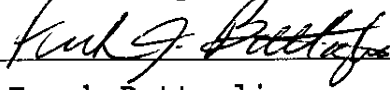
52. COUNTERPARTS: This Agreement may be executed by the Seller and Buyer in multiple counterparts, all of which together will be construed as one in the same contract.

IN WITNESS OF, the parties hereto have hereto set their hands and seals this 19TH day of OCTOBER 1999.

SELLER:

BUYER:

GMN Enterprises, Inc by



Frank Battaglia,
President

Due Ragazzi, Inc by



Michael Di Silvestro,
President

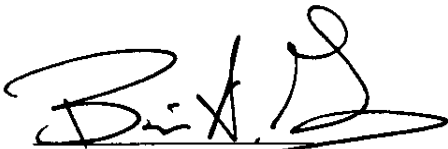
UNOFFICIAL COPY

09041337

STATE OF Illinois)
COUNTY OF Cook) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Frank Battaglia, President of GMN enterprises, Inc. and Michael Di Silvestro, President of Due Ragazzi, Inc. personally known to me to be the same persons whose name subscribed to the foregoing instrument appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as a free and voluntary act, for the uses and purposes herein set forth.

Given under my hand and official seal
this 19 day of October, 1999.



Notary Public



This instrument prepared by:
Timothy P. McHugh, Ltd.
Attorney At Law
360 West Butterfield Suite 200
Elmhurst IL 60126

Cook County Clerk's Office

UNOFFICIAL COPY

09041337

09041337

Principal Amount \$ 400,000.00
Interest Rate 9.25%
Payment Term 2 yr Balloon
Payment Schedule Monthly
Payment \$4,116.77

| Payment # | Date | Interest | Payment | Balance |
|-----------|----------|-------------|-------------|---------------|
| | | | | \$ 400,000.00 |
| 1 | 11/15/99 | \$ 3,083.33 | \$ 4,116.77 | \$ 398,966.56 |
| 2 | 12/15/99 | \$ 3,075.37 | \$ 4,116.77 | \$ 397,925.16 |
| 3 | 1/15/00 | \$ 3,067.34 | \$ 4,116.77 | \$ 396,875.73 |
| 4 | 2/15/00 | \$ 3,059.25 | \$ 4,116.77 | \$ 395,818.21 |
| 5 | 3/15/00 | \$ 3,051.10 | \$ 4,116.77 | \$ 394,752.54 |
| 6 | 4/15/00 | \$ 3,042.88 | \$ 4,116.77 | \$ 393,678.66 |
| 7 | 5/15/00 | \$ 3,034.61 | \$ 4,116.77 | \$ 392,596.50 |
| 8 | 6/15/00 | \$ 3,026.26 | \$ 4,116.77 | \$ 391,505.99 |
| 9 | 7/15/00 | \$ 3,017.86 | \$ 4,116.77 | \$ 390,407.08 |
| 10 | 8/15/00 | \$ 3,009.39 | \$ 4,116.77 | \$ 389,299.70 |
| 11 | 9/15/00 | \$ 3,000.85 | \$ 4,116.77 | \$ 388,183.78 |
| 12 | 10/15/00 | \$ 2,992.25 | \$ 4,116.77 | \$ 387,059.26 |
| 13 | 11/15/00 | \$ 2,983.58 | \$ 4,116.77 | \$ 385,926.08 |
| 14 | 12/15/00 | \$ 2,974.85 | \$ 4,116.77 | \$ 384,784.15 |
| 15 | 1/15/01 | \$ 2,966.04 | \$ 4,116.77 | \$ 383,633.43 |
| 16 | 2/15/01 | \$ 2,957.17 | \$ 4,116.77 | \$ 382,473.83 |
| 17 | 3/15/01 | \$ 2,948.24 | \$ 4,116.77 | \$ 381,305.30 |
| 18 | 4/15/01 | \$ 2,939.23 | \$ 4,116.77 | \$ 380,127.76 |
| 19 | 5/15/01 | \$ 2,930.15 | \$ 4,116.77 | \$ 378,941.14 |
| 20 | 6/15/01 | \$ 2,921.00 | \$ 4,116.77 | \$ 377,745.38 |
| 21 | 7/15/01 | \$ 2,911.79 | \$ 4,116.77 | \$ 376,540.40 |
| 22 | 8/15/01 | \$ 2,902.50 | \$ 4,116.77 | \$ 375,326.13 |
| 23 | 9/15/01 | \$ 2,893.14 | \$ 4,116.77 | \$ 374,102.50 |
| 24 | 10/15/01 | \$ 2,883.71 | \$ 4,116.77 | \$ 372,869.43 |

09041337

Property of Clerk's Office

MDS
KAB

Balloon Payment Due at End of 24 Months