



Doc#: 1427235066 Fee: \$60.00  
RHSP Fee:\$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/29/2014 09:14 AM Pg: 1 of 12

This document was prepared by,  
and after recording, return to:

Bronson & Kahn LLC  
150 North Wacker Drive, Suite 1400  
Chicago, Illinois 60606  
Attn: Jason L. LaBella

Permanent Tax Index Numbers:

17-10-200-022-0000  
17-10-200-023-0000  
17-10-200-024-0000

*This space reserved for Recorders use only.*

Property Address:

162 East Superior Street  
Chicago, Illinois 60611

85858700412  
BH-001-858588

**FIRST MODIFICATION OF LEASEHOLD MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

THIS FIRST MODIFICATION OF LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING dated to be effective as of August 28, 2014 (this "Modification") is executed by BH ACQUISITION, LLC, an Illinois limited liability company ("New Mortgagor"), and PMO HARRIS BANK N.A., a national banking association, its successors and assigns ("Mortgagee").

RECITALS:

A. Mortgagee previously made a loan (the "Loan") to Original Mortgagor in the original principal amount of \$9,280,000.00 as evidenced by a Promissory Note in such amount dated July 18, 2012 (the "Original Note") made by BG EAST, LLC, an Illinois limited liability company ("Original Mortgagor") in favor of Mortgagee. The Original Note is secured by that certain: (a) Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as July 18, 2012, executed by Original Mortgagor to and for the benefit of the Mortgagee, and recorded on July 19, 2012 with the Cook County Recorder of Deeds as Document 1220129068 (the "Original Mortgage"), creating a first mortgage lien on certain improvements and leasehold interests (the "Premises") legally described in Exhibit "A" attached to the Mortgage; (b) Assignment of Rents and Leases dated as of July 18, 2012, executed by Original Mortgagor to and for the benefit of Mortgagee, and recorded on July 19, 2012 with the Cook County Recorder of Deeds as Document 1220129069 (the "Assignment of Rents"); (c)

Box 400-CTCC

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Guaranties of Payment dated as of July 18, 2012, executed by each of the Guarantors (as defined in the Loan Documents) to and for the benefit of the Lender (collectively, the "Original Guaranty"); and (d) Environmental Indemnity Agreement dated as of July 18, 2012, jointly and severally executed by BG East and each of the Guarantors to and for the benefit of the Mortgagee (the "Original Indemnity Agreement").

B. Concurrently with the execution and delivery of this Modification, Original Mortgagor is conveying, transferring and assigning to New Mortgagor all of its right, title and interest in and to the Premises.

C. Concurrently with the execution and delivery of this Modification: (i) New Mortgagor has executed and delivered to Mortgagee that certain Amended and Restated Promissory Note (the "Amended Note"), in the original principal amount of \$7,991,111.00, which amends and restates in its entirety the Original Note, (ii) Guarantors have each executed and delivered a certain Amended and Restated Guaranty of Payment dated as of the date hereof (collectively, the "New Guaranty") which amends and restates in its entirety the Original Guaranty, and Borrower and Guarantors have executed and delivered that certain Amended and Restated Environmental Indemnity Agreement dated as of the date hereof (the "New Indemnity Agreement") which amends and restates in its entirety the Original Indemnity.

D. The Mortgage, the Assignment of Rents, the New Guaranty, the New Indemnity Agreement and any and all other document now or hereafter given to evidence or secure payment of the Loan as originally granted, as such documents may hereafter be amended, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents")

D. Mortgagor and Mortgagee desire to modify the Original Mortgage to reflect the agreements of Mortgagor and Mortgagee set forth in the Amended Note. The Original Mortgage as modified by this Modification is sometimes referred to herein as the "Mortgage".

E. Capitalized terms not defined herein shall have the meaning ascribed to them in the Original Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the New Mortgagor and Mortgagee agree as follows:

## A G R E E M E N T S:

1. Recitals. The foregoing recitals are hereby incorporated into and made a part of this Agreement.
2. Security of Mortgage. The Mortgage shall, and hereby does, secure the obligations of Mortgagor to Mortgagee under and as evidenced by the Amended Note.
3. Defined Terms.

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(a) The term “Note” as used in the Mortgage shall mean and refer to the Amended Note, as amended, restated, supplemented, extended, replaced, split or otherwise modified from time to time.

(b) The term “Mortgage” as used in the Mortgage and all of the other Loan Documents shall mean and refer to the New Mortgage.

(c) The term “Indemnity” as used in the Mortgage and all of the other Loan Documents shall mean and refer to the New Indemnity Agreement.

(d) The term “Guaranty” as used in the Mortgage and all of the other Loan Documents shall mean and refer to the New Guaranty.

4. Amendment of Section 37. Section 37 of the Original Mortgage is hereby deleted in its entirety and the following is substituted in its place:

“37. Debt Service Coverage Ratio. As of the last day of each Quarter, the Covenant Parties shall maintain a ratio of (i) EBITDAR of BG East, LLC, an Illinois limited liability company (“Operating Company”) for the Quarter then ended, minus the sum of federal, state, and local income taxes (and franchise taxes in lieu of income taxes) paid or required to be paid in cash by Operating Company during the Quarter then ended, to (ii) the sum of Adjusted Debt Service of Operating Company for the Quarter then ended plus Adjusted Debt Service of Mortgage for the Quarter then ended, each computed in accordance with Agreement Accounting Principles, of not less than 1.50 to 1.00. For purposes of this Agreement:

(a) “Accounting Period” means each successive four-week period in a Fiscal Year, with the first Accounting Period beginning on the first Monday of each such Fiscal Year; provided, however, for any Fiscal Year containing 53 weeks, the last Accounting Period of such Fiscal Year shall contain five weeks. There are 13 Accounting Periods in any given Fiscal Year.

(b) “Agreement Accounting Principles” means generally accepted accounting principles applied on a consistent basis. If there is more than one Covenant Party, all computations shall be made on a consolidated basis. All references to GAAP in this Agreement and the Related Documents shall instead be deemed to be references to Agreement Accounting Principles.

(c) “Covenant Parties” means Mortgage and Operating Company.

(d) “Adjusted Debt Service” means:

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(i) with reference to Operating Company for any period, the sum of (x) the aggregate amount of payments required to be made by such Covenant Party during such period in respect of principal on all Indebtedness (but specifically excluding any such payments made by Mortgagor as provided below in Subsection 37(d)(ii)) plus (y) Interest Expense of such Covenant Party for such period (but specifically excluding any such Interest Expense of Mortgagor as provided below in Subsection 37(d)(ii)), and

(ii) with reference to Mortgagor for any period, the sum of (x) the aggregate amount of payments required to be made by such Covenant Party during such period in respect of principal on all Indebtedness relating in any manner to the Premises (including without limitation Indebtedness incurred to purchase, maintain, or improve the Premises or any part thereof and all refinancings of the foregoing) plus (y) Interest Expense of such Covenant Party relating in any manner to the Premises for such period.

(e) "EBITDAR" means, with reference to any period, (i) Net Income of Operating Company for such period, plus (ii) all amounts deducted in arriving at such Net Income amount in respect of (x) Interest Expense of Operating Company for such period, (y) federal, state and local income taxes of Operating Company for such period, and (z) depreciation and amortization expense of Operating Company for such period, plus (iii) rent paid by Operating Company to Mortgagor in respect of the Premises for such period, minus (iv) payments made by Mortgagor during such period to maintain or improve the Premises or any part thereof, minus (v) payments made by Mortgagor during such period for taxes and insurance on or otherwise relating to the Premises.

(f) "Fiscal Year" means the 52 (or 53) calendar weeks beginning on the Monday immediately following the Sunday nearest December 31 of each year, and ending on the Sunday nearest to the following December 31.

(g) "Indebtedness" means, with reference to any Covenant Party (without duplication) (i) all indebtedness created, assumed or incurred in any manner by such Covenant Party representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness of such Covenant Party for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business), (iii) all indebtedness secured by any lien upon any property of such Covenant Party, whether or not such Covenant Party has assumed or become liable for the payment of such indebtedness, (iv) all capitalized lease obligations of such Covenant Party, and (v) all obligations of such Covenant Party on or with respect to letters of credit, bankers' acceptances and other extensions of credit whether or not representing obligations for borrowed money.

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(h) **“Interest Expense”** means, with reference to any Covenant Party for any period, the sum of all interest charges (including imputed interest charges with respect to capitalized lease obligations and all amortization of debt discount and expense) of such Covenant Party for such period.

(i) **“Net Income”** means, with reference to any period, the net income (or net loss) of Operating Company for such period, but excluding any nonrecurring income and any extraordinary profits during such period and any taxes on such nonrecurring income and extraordinary profits.

(j) **“Quarter”** means Accounting Periods 1 through 4, Accounting Periods 5 through 7, Accounting Periods 8 through 10 and Accounting Periods 11 through 13 in any given Fiscal Year. There are four Quarters in any given Fiscal Year.”

5. **Reaffirmation.** Mortgagor hereby reaffirms, restates and agrees that it shall be bound by all of the terms, conditions, duties, obligations, undertakings, indemnities, covenants, representations and warranties contained in the Mortgage.

6. **Representations, Warranties and Covenants.** To induce Mortgagee to enter into this Modification, Mortgagor represents, warrants and covenants to Mortgagee that:

(a) Mortgagor has the limited liability company power and authority, and the legal right, to make and deliver this Modification and to perform all of its obligations under the Assignment of Rents, and has taken all necessary limited liability company action to authorize the execution and delivery of this Modification and the performance of the Assignment of Rents.

(b) When executed and delivered, this Modification and the Mortgage will constitute legal, valid and binding obligations of Mortgagor, enforceable against it, in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

7. **Miscellaneous.**

(a) This Modification may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute but one and the same document.

(b) This Modification shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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(c) Section captions and headings used in this Modification are for convenience only and are not part of and shall not affect the construction of this Modification.

(d) This Modification shall be a contract made under and governed by the laws of the State of Illinois, without regard to conflict of laws principles. Whenever possible, each provision of this Modification shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Modification shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Modification.

(e) From and after the date of execution of this Modification, any reference to the Mortgage contained in the Loan Documents or in any notice, request, certificate or other instrument, document or agreement executed concurrently with or after the execution and delivery of this Modification shall be deemed to include this Modification unless the context shall otherwise require.

(f) Except as expressly set forth herein, nothing in this Modification is intended to or shall be deemed to have amended the Original Mortgage, which is hereby reaffirmed in all respects. Notwithstanding anything contained herein, the terms of this Modification are not intended to and do not serve to effect a novation of the Original Mortgage.

*[Rest of page intentionally blank – signatures on following page.]*

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IN WITNESS WHEREOF, the Original Mortgagor and Mortgagee have executed and delivered this First Modification of Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing as of the day and year first above written.

**NEW MORTGAGOR:**

BH ACQUISITION, LLC, an Illinois limited liability company

By: Joey Buona's Pizzeria Grille – Chicago, L.L.C., an Illinois limited liability company, its sole Manager

By: The Buona Companies, L.L.C., an Illinois limited liability company, its sole Manager

By: Carlo M A  
Name: Carlo Buonavolanto, Manager

**MORTGAGEE:**

BMO HARRIS BANK N.A., a national banking association

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

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IN WITNESS WHEREOF, the Original Mortgagor and Mortgagee have executed and delivered this First Modification of Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing as of the day and year first above written.

**NEW MORTGAGOR:**

BH ACQUISITION, LLC, an Illinois limited liability company


By: Joey Buona's Pizzeria Grille - Chicago, L.L.C., an Illinois limited liability company, its sole Manager

By: The Buona Companies, L.L.C., an Illinois limited liability company, its sole Manager

By: \_\_\_\_\_  
Name: Carlo Buonavolanto, Manager

**MORTGAGEE:**

BMO HARRIS BANK N.A., a national banking association

By:   
Name: Amy J Bura  
Its: Senior Vice President

Property of Cook County Clerk's Office



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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that CARLO BUONAVOLANTO, a Manager of The Buona Companies, L.L.C., an Illinois limited liability company, the sole Manager of Joey Buona's Pizzeria Grille – Chicago, L.L.C., an Illinois limited liability company, the sole Manager of BH Acquisition, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26 day of August, 2014.



Kathleena Darden  
Notary Public

My Commission Expires: 7/11/2016

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, a \_\_\_\_\_ of BMO HARRIS BANK N.A., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My Commission Expires:

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that CARLO BUONAVOLANTO, a Manager of The Buona Companies, L.L.C., an Illinois limited liability company, the sole Manager of Joey Buona's Pizzeria Grille – Chicago, L.L.C., an Illinois limited liability company, the sole Manager of BH Acquisition, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

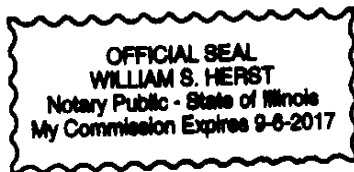
\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK         )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Amy J Burk, a Senior vice Pres of BMO HARRIS BANK N.A., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29<sup>th</sup> day of August, 2014.



[Signature]  
Notary Public

My Commission Expires: 9/6/17

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## EXHIBIT "A"

### LEGAL DESCRIPTION OF REAL ESTATE

#### ESTATE A:

THE ESTATE OR INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS:

THE LEASEHOLD ESTATE CREATED BY THAT CERTAIN REAL ESTATE LEASE DATED NOVEMBER 1, 1998 BY AND BETWEEN THE COSMOPOLITAN NATIONAL BANK OF CHICAGO, NOT PERSONALLY, BUT SOLELY AS TRUSTEE UNDER A TRUST AGREEMENT DATED SEPTEMBER 25, 1980 AND KNOWN AS TRUST NO. 25605, AS LANDLORD, AND SUPERIOR STREET, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, AS TENANT, DATED AS OF NOVEMBER 1, 1998, FOR WHICH A MEMORANDUM OF LEASE WAS RECORDED DECEMBER 4, 1998 AS DOCUMENT NO. 08099962 AND WHICH LEASE DEMISES THE LAND FOR A TERM OF YEARS BEGINNING ON THE DATE THE THEN-CURRENT TENANT VACATED THE PREMISES AND ENDING 20 YEARS THEREAFTER:

#### PARCEL 1:

LOTS 1, 2 AND 3 IN HENRY WISCHMEYER'S SUBDIVISION IN BLOCK 54 IN KINZIE'S ADDITION TO CHICAGO, SAID SUBDIVISION BEING A RESUBDIVISION OF THE EAST 15 FEET OF LOT 11 AND ALL OF LOT 12 IN LEGG'S SUBDIVISION OF SAID BLOCK 54, TOGETHER WITH LOTS 1, 2 AND 3 IN OGDEN AND LOMBARD'S SUBDIVISION OF THE ACCRETIONS, LYING EAST OF AND ADJOINING LOT 12 IN COOK COUNTY, ILLINOIS, SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

AN EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT DATED OCTOBER 7, 2002 AND RECORDED DECEMBER 24, 2004 AS DOCUMENT 0021435569 BY AND BETWEEN THE COSMOPOLITAN NATIONAL BANK OF CHICAGO AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 25, 1980 AND KNOWN AS TRUST NUMBER 25605, SUPERIOR STREET, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY AND FITZPATRICK CHICAGO HOTEL, L.P. FOR THE PURPOSE OF BUILDING IMPROVEMENTS LOT ENCROACHMENT BY APPROXIMATELY 0.21 FEET.

#### ESTATE B:

OWNERSHIP OF THE BUILDINGS AND IMPROVEMENTS LOCATED ON THE LAND.

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PROPERTY ADDRESS OF REAL ESTATE:

162 East Superior Street  
Chicago, Illinois 60611

PERMANENT TAX IDENTIFICATION NUMBER:

17-10-200-022-0000  
17-10-200-023-0000  
17-10-200-024-0000

**COOK COUNTY**  
**RECORDER OF DEEDS**  
**SCANNED BY \_\_\_\_\_**

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