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THIS DOCUMENT WAS PREPARED  
BY AND AFTER RECORDING  
RETURN TO:

Edward J. Lesniak  
Burke, Warren & MacKay, P.C.  
225 W. Washington Street  
24th Floor  
Chicago, IL 60606

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COOK COUNTY RECORDER

## SECOND AGREEMENT OF MODIFICATION AND EXTENSION OF NOTE AND MORTGAGE

THIS SECOND AGREEMENT OF MODIFICATION AND EXTENSION OF NOTE AND MORTGAGE (this "Agreement") is made as of the 30th day of December, 1994, by and among (i) AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally, but solely as Trustee under that certain Trust Agreement dated July 24, 1986 and known as Trust No. 068847-04 (said bank in its capacity as Trustee under the above mentioned Trust and not personally, being herein referred to as "Borrower"), (ii) JOHN APOSTOLOU (said person being herein referred to as "Beneficiary") and (iii) EFREN BOGLIO, individually and as Trustee of the Efren E. Boglio 1983 Trust dated June 16, 1983, as Restated May 4, 1994, JOSE L. BOGLIO and CARLOS A. SUAN (said individuals being hereinafter collectively referred to as "Lender").

### RECITALS:

A. Borrower and Beneficiary made, executed and delivered a Secured Installment Note dated December 22, 1988 (the "Note"), in the original principal amount of Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) in favor of Lender and Bola, Inc., an Illinois corporation ("Bola"), Giordano's Pizzeria, Inc., an Illinois corporation ("Giordano's"), Americana Enterprises, Inc., an Illinois corporation ("Americana") and America's Best Pizza, Inc., an Illinois corporation ("America's Best"), collectively, which Note was due and payable on December 30, 1991.

B. The Note is secured by that certain Junior Mortgage dated as of December 22, 1988, and recorded December 30, 1988, in the office of the Recorder of Deeds, Cook County, Illinois as Document Number 88599658 (the "Mortgage") made by Borrower in favor of Lender, Bola, Giordano's, Americana and America's Best, collectively, mortgaging and conveying, and granting a security interest in, the property situated in Cook County, Illinois, and more particularly described on Exhibit A attached hereto and made

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a part of this Agreement and commonly known as 308 W. Randolph Street, Chicago, Illinois (the "Property").

C. On December 30, 1988, each of Bola, Giordano's, Americana and America's Best dissolved and assigned their respective interests in the Note and Mortgage to Lender.

D. As of October 18, 1991, Borrower, Lender and Beneficiary entered into a certain First Agreement of Modification and Extension of Note and Mortgage (the "First Agreement") recorded with the Recorder of Deeds of Cook County on June 3, 1992 as Document Number 92387210, whereby the "Date of Maturity" (as such term was defined in the Mortgage) was extended to December 30, 1994.

E. As of May 4, 1994, Efren Boglio assigned his interest in the Note, as secured by the Mortgage, to the Efren E. Boglio 1983 Trust dated June 26, 1983, as Restated May 4, 1994.

F. Beneficiary, for himself and on behalf of Borrower, has requested Lender, and Lender is willing to extend the maturity date of the Note, as amended by the First Agreement, and to further modify the terms of the Note and the Mortgage subject to and in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and also in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid to Lender by Borrower and Beneficiary, it is agreed as follows:

1. The "Date of Maturity" (as such term is defined in the Mortgage, as amended by the First Agreement) is hereby extended from December 30, 1994 to December 30, 1997 and the terms "maturity" and "Date of Maturity" as used in the Note and Mortgage, and the First Agreement, respectively, shall mean and refer to the Date of Maturity as extended herein.

2. The unpaid principal amount of the Note shall bear interest from and after December 30, 1994, at eleven percent (11%) per annum and shall be payable on the thirtieth day of each month commencing on January 30, 1995, to and including November 30, 1997, with a final payment of the outstanding principal balance together with all accrued and unpaid interest thereon due on the Date of Maturity.

3. Concurrent with the execution of this Agreement by Lender, Borrower/Beneficiary shall pay to Lender, in certified or cashier's funds, all interest accrued from the date hereof until the date of such payment, together with a principal payment of Fifty Thousand Dollars and 00/100 (\$50,000.00).

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4. In addition to the monthly interest payment, Borrower/Beneficiary shall pay to Lender a principal payment of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) on or before September 30, 1996, and a principal payment of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) on or before September 30, 1997.

5. Borrower/Beneficiary shall pay to Lender a late charge of Five Hundred Dollars (\$500.00) for each and every scheduled payment (after the execution of this Agreement by Lender) which is not paid within thirty-one (31) days after its scheduled due date.

6. (a) Borrower hereby represents to, and Beneficiary hereby represents and warrants to, and covenants with Lender that:

(i) Beneficiary is the sole beneficiary and owner of 100% of the entire beneficial interest, with full power of direction, in and under the aforementioned Trust Agreement;

(ii) The balance of the principal sum unpaid under the Note as of the date hereof is the sum of Seven Hundred Thousand and 00/100 Dollars (\$700,000.00);

(iii) All interest under the Note has been paid to the date hereof;

(iv) At the date hereof, the "Loan Documents" (as such term is herein defined) are in full force and effect, and neither Borrower nor Beneficiary is in default in the payment of any sums, charges or obligations under the Loan Documents or in the payment or performance of any covenants, agreements or conditions of Borrower or Beneficiary, respectively, contained in the Loan Documents;

(v) At the date hereof, neither Borrower nor Beneficiary has any right or claim of set-off, discount, deduction, defense or counterclaim which could be asserted in any action brought to enforce the Loan Documents;

(vi) Lender is not in default in the performance or observance of any of its covenants, agreements and obligations under the Loan Documents;

(vii) There are no actions, suits or proceedings (including, without limitation, proceedings before any court, arbitrator or governmental authority or agency) pending or threatened against Borrower, Beneficiary, the Property (or to the knowledge of Borrower or Beneficiary, any basis for any such action, suit or proceeding), which

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if adversely determined, might individually, or in the aggregate, materially adversely:

(1) impair the ability of Borrower or Beneficiary to pay or perform their respective obligations under the Loan Documents; or

(2) affect the Property or the use or operation thereof; and

(viii) There is no presently known fact which affects, or may affect in the future (so far as Borrower or Beneficiary can foresee), materially and adversely the condition (financial or other) of Borrower or Beneficiary, the operation or use of the Property or the ability of Borrower or Beneficiary to pay or perform their respective obligations under the Loan Documents;

(b) The representations and covenants of Borrower and the representations, warranties and covenants of Beneficiary made in subparagraph 6(a) hereof are, as of the date hereof, and shall be, at all times, true and correct in all material respects, and are and shall be of continuing force and effect until all indebtedness and obligations of Borrower and Beneficiary under the Loan Documents have been fully and finally paid and performed.

7. (a) The Note and the Mortgage together with this Agreement, the First Agreement and all other amendments, modifications and supplements to any or all of the aforementioned documents, are herein sometimes collectively referred to as the "Loan Documents."

(b) All the terms, covenants, agreements, conditions, representations, warranties and provisions contained in each of the Loan Documents are adopted and incorporated into all of the other Loan Documents to the same full extent and with the same binding force and effect as if all the terms, covenants, agreements, conditions, representations, warranties and provisions of each of the Loan Documents were stated in full in all of the other Loan Documents, it being the intent that each of the Loan Documents complements and supplements the others to the fullest extent necessary or required to protect, preserve and confirm all the rights, benefits, privileges, powers and remedies of Lender and under the Loan Documents.

(c) Any breach or violation by Borrower or Beneficiary of any of the covenants, agreements, conditions, representations and warranties of Borrower or Beneficiary, respectively, under this Agreement shall constitute and be a default under the Note and the Mortgage and shall entitle Lender, at the election of Lender, to exercise any and all

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rights, powers and remedies available to Lender under the Loan Documents or otherwise.

(d) Except as herein expressly modified, all the Loan Documents and the terms and provisions thereof are hereby reaffirmed and ratified and remain in full force and effect, and unchanged, in all respects.

8. Lender hereby represents to Borrower and Beneficiary that Lender is, at the date hereof, the owner of the Note and, as such, has full power and authority to enter into, and is bound by, this Agreement.

9. Notwithstanding any prior act of Lender or any procedure established by Lender with regard to the loan evidenced by the Note and secured by the Loan Documents, Borrower and Beneficiary both acknowledge and agree that Lender has not heretofore waived any of its rights or remedies under the Loan Documents nor has Lender waived any of the duties or obligations of Borrower and Beneficiary thereunder. No waiver by Lender of any covenant or condition under the Loan Documents shall be deemed a waiver of any subsequent breach of the same or any other covenant or condition. No covenant, term or condition of the Loan Documents shall be deemed waived by Lender unless waived in writing.

10. (a) Time is of the essence with respect to the payment, performance and observance of each and every covenant, agreement, condition, representation, warranty and obligation of Borrower and Beneficiary under the Loan Documents.

(b) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.

(c) None of the covenants, terms or conditions of this Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.

(d) This Agreement contains the whole agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind.

(e) This Agreement shall extend to, be obligatory upon and inure to the benefit of the respective successors and assigns of Borrower, Lender and Beneficiary.

(f) This Agreement has been executed by Borrower and Beneficiary in the State of Illinois and, together with all

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the Loan Documents, shall be construed and enforced in accordance with the laws of the State of Illinois.

11. This Agreement is executed by the Borrower, not personally, but in its capacity as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and American National Bank and Trust Company of Chicago hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing contained herein or in the Note or the Mortgage shall be construed as creating any liability on American National Bank and Trust Company of Chicago, personally, to pay and perform any of the obligations and liabilities evidenced by the Note and secured by the Mortgage.

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IN WITNESS WHEREOF, the Lender, Borrower and Beneficiary have caused this Agreement to be executed the day and year first above written.

**BORROWER:**

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, as Trustee  
aforesaid and not personally

Attest: \_\_\_\_\_

Its: \_\_\_\_\_ ASSISTANT SECRETARY

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

Its: \_\_\_\_\_ VP

**BENEFICIARY:**

John Apostolou  
John Apostolou

**LENDER:**

Efren Boglio  
Efren Boglio, individually and as  
trustee of the Efren E. Boglio  
1983 Trust dated June 16, 1983,  
and Restated May 4, 1994

Jose L. Boglio

By: \_\_\_\_\_  
Efren Boglio, pursuant to  
Power of Attorney

Carlos A. Juan

By: \_\_\_\_\_  
Efren Boglio, pursuant to  
Power of Attorney

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF )

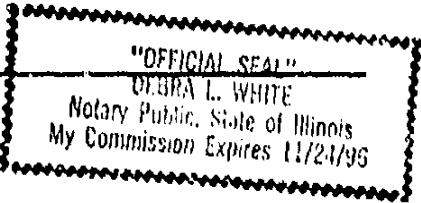
DEBRA L. WHITE

I, DEBRA L. WHITE, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that MICHAEL WIELAN, Vice President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, and GREGORY E. KASPRZYK, SECRETARY Secretary of said banking association, and known to me to be the same persons, whose names are subscribed to the foregoing instrument as such Vice President and SECRETARY Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said banking association, as Trustees, for the uses and purposes therein set forth; and the said SECRETARY Secretary then and there acknowledged that said SECRETARY Secretary, as custodian of the seal of said banking association, caused the seal of said banking association to be affixed to said instrument as said SECRETARY Secretary's own free and voluntary act and as the free and voluntary act of said banking association, as Trustee, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 12 day of Dec, 1995.

Debra L. White  
Notary Public

My Commission Expires:



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STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF             )

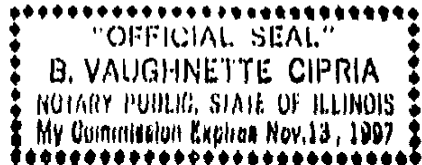
I, B. Vaughnette Cipria, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that John Apostolou, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 11th day of December, 1995.

B. Vaughnette Cipria  
Notary Public

My Commission Expires:

11-13-1997



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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

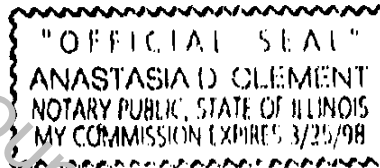
I, ANASTASIA D. CLEMENT, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Efren Boglio, individually, and as trustee aforesaid, and as attorney in fact for Jose L. Boglio and Carlos A. Juan, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21st day of October, 1995.

Anastasia D. Clement  
Notary Public

My Commission Expires:

3/25/98



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## EXHIBIT A

### LEGAL DESCRIPTION - PROPERTY

Lots 7 and 8 in Assessor's Division of Lot 8 in Block 31 Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian.

ALSO

The East 1/4 of Lot 7 in Block 31 in the Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Common Address: 308 W. Randolph Street, Chicago, Illinois

Permanent Tax Index Numbers: 1709429007 and 1709429011

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