

UNOFFICIAL COPY



Doc#: 0725531081 Fee: \$38.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/12/2007 03:30 PM Pg: 1 of 8

THIS DOCUMENT PREPARED BY:

Crowley & Lamb, P.C.
350 North LaSalle Street, Suite 900
Chicago, Illinois 60610

AFTER RECORDING RETURN TO:

The PrivateBank and Trust Company
70 West Madison, Suite 200, Chicago,
Illinois 60602
Attn: Daniel Siadak, Managing Director

This space reserved for Recorder's use only

FOURTH MODIFICATION OF LOAN DOCUMENTS

THIS FOURTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 1st day of July, 2007, by and among **195 SOUTH EVERGREEN STREET, LLC**, an Illinois limited liability company, with an address at 1919 West Warner Avenue, Chicago, Illinois 60613 ("Borrower"), **GARY DESTEFANO and DESTEFANO DEVELOPMENT INCORPORATED**, an Illinois corporation, having an address at 1919 West Warner Avenue, Chicago, Illinois 60613 (collectively "Guarantor") and **THE PRIVATEBANK AND TRUST COMPANY**, its successors and assigns, having an address at 70 West Madison, Suite 200, Chicago, Illinois 60602 ("Lender").

RECITALS:

A. Lender has heretofore made a construction loan ("Loan") to Borrower in the principal amount of ONE MILLION ONE HUNDRED EIGHTY FIVE THOUSAND AND NO/100THS DOLLARS (\$1,185,000.00), as evidenced by a Promissory Note dated January 21, 2005, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note") and a certain Construction Loan and Security Agreement ("Loan Agreement") dated January 21, 2005 from Borrower in favor of the Lender.

B. The Note is secured by, among other things, (i) that certain Mortgage dated January 21, 2005, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on January 25, 2005, as Document No. 0502519012 (the "Mortgage"), which Mortgage encumbers the real property and all, improvements thereon legally described on Exhibit "A" hereto ("Property"), and (ii) that certain Assignment of Rents and Leases dated January 21, 2005, from Borrower to Lender and recorded with the Recorder's Office on January 25, 2005, as Document No. 0502519013 (the "Assignment of Leases"), (iii) the personal Guaranty ("Guaranty") of Gary DeStefano and DeStefano Development Incorporated, an Illinois Corporation, guaranteeing payment and performance of all obligations of Borrower

UNOFFICIAL COPY

under the Note and Loan Documents (as hereinafter defined) and (iv) certain other loan documents. The Note, the Mortgage, the Loan Agreement, the Guaranty, the Assignment of Leases and any other document evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C.. The Loan Documents were amended by First Modification of Loan Documents dated February 1, 2006 pursuant to which the Maturity Date on the Note was extended from February 1, 2006 to November 1, 2006 and further amended by Second Modification of Loan Documents dated November 1, 2006 pursuant to which the Maturity Date on the Note was extended from November 1, 2006 to July 1, 2007, the Third Modification of Loan Documents dated December 28, 2006, as amended by that certain Amended and Restated Third Modification of Loan Documents dated January 2, 2007 (the "Loan Modifications").

D. Borrower now desires to amend the Loan Documents in order to extend the Loan Maturity Date from July 1, 2007 until November 1, 2007, and Lender is willing to extend the Loan Maturity Date from July 1, 2007 until November 1, 2007, on the terms and conditions more fully set forth hereinafter.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) Borrowers agreement to pay all of Lender's reasonable attorneys fees and costs in connection with this Modification, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Loan Maturity Date and/or the Completion Date, as described in the Loan Agreement, the remaining note, the Mortgage or in any of the other Loan Documents, shall be amended from July 1, 2007 until November 1, 2007.

2. **Amendment of Note.** The Note (as amended), shall be amended and restated by that certain Promissory Note of even date herewith, executed by Borrower in favor of Lender (the "Amended Note"). As of the date hereof, the Amended Note shall be substituted for and replace in their entirety the existing unpaid note dated November 1, 2006.

3. **Interest Reserve.** Notwithstanding the terms of the Loan Agreement, Borrower agrees there are no funds in the Loan which have not been disbursed and Borrower shall be obligated to pay all interest due Lender with respect to the Loan.

4. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement and the Amended and Restated Note. The representations and warranties of Guarantor in the Guaranty are as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

5. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgage shall remain unchanged and in full force and effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Agreement does not waive Lender's rights

UNOFFICIAL COPY

to require strict performance of the Mortgage as amended above nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the promissory note or other credit agreement secured by the Mortgage (the "Amended Note"). It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorsers to the Amended Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Agreement. If any person who signed either of the Mortgage does not sign this Agreement, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension or modification, but also to all such subsequent actions.

6. **Construction Mortgage.** The Mortgage constitute a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Illinois.

7. **Construction Loan.** If some or all of the proceeds of the Loan creating the Indebtedness are to be used to construct or complete construction of any Improvements on the Property, the Improvements shall be completed no later than the maturity date of the Amended Note (or such earlier date as Lender may reasonably establish) and Borrower shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by the Mortgage shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipted bill, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

8. **Representations and Warranties of Borrower and Guarantor.** Borrower and Guarantor hereby represent, covenant and warrant to Lender as follows:

(a) The representations and warranties in the Note (as amended and modified), the Loan Agreement, the Mortgage, the Loan Documents and the Loan Modifications are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Loan Documents) under the Note (as amended and modified), the Loan Modifications, the Loan Agreement or the other Loan Documents and neither Borrower nor Guarantor knows of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the the Note (as amended and modified), the Loan Agreement, the Loan Modifications or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower and Guarantor enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

UNOFFICIAL COPY

(e) As of the date hereof, neither Borrower nor Guarantor have any claims, counterclaims, defenses, or set-offs with respect to the Loan, the LOC Note or the Loan Documents as modified herein.

(f) The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower and Guarantors. This Agreement has been duly executed and delivered on behalf of Borrower and Guarantors.

9. **Title Policy.** At Lender's request, Borrower shall, at its sole cost and expense, cause Greater Illinois Title Company to issue an endorsement to Lender's Title Policy, as of the date this Agreement is recorded, reflecting the recording of this Agreement, subject only to the Permitted Exceptions set forth in the Mortgage or any other encumbrances expressly agreed to by Lender.

10. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

11. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

UNOFFICIAL COPY

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Amended and Restated Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Guarantor and Borrower's obligations under this Agreement.

12. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives, except to the extent of any contrary provision in this Agreement. Each party intends that this Agreement, in all respects, shall be deemed and construed to have been prepared mutually by all parties, and it is expressly agreed that any uncertainty and ambiguity existing herein shall not be construed more strictly against one party or the other against the other party. If any part or any provision of this Agreement shall be determined to be invalid under any applicable law or the regulation, the remaining part of this Agreement, that can be separated from the invalid, unenforceable provisions, shall be in full force and effect.

13. **No Novation.** This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation, or release of the Loan or of any of the other Loan Documents, or, except as expressly provided herein, nor shall it be deemed a waiver by Lender of any of the rights of Lender under the Notes (or the Amended Notes) or any of the other Loan Documents, or at law or in equity, and shall not be construed as a repayment or novation of the Prior Notes.

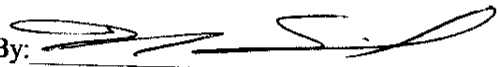
14. **Counterparts.** This Agreement may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered (whether by facsimile transmission or otherwise) shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

LENDER:

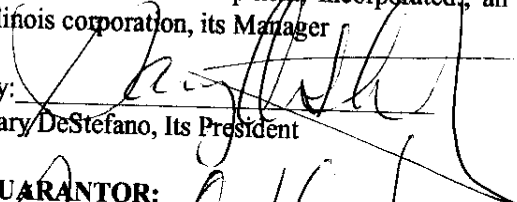
THE PRIVATEBANK AND TRUST
COMPANY

By: 
Its: MANAGING DIRECTOR

BORROWER:

193 SOUTH EVERGREEN STREET, LLC,
an Illinois limited liability company

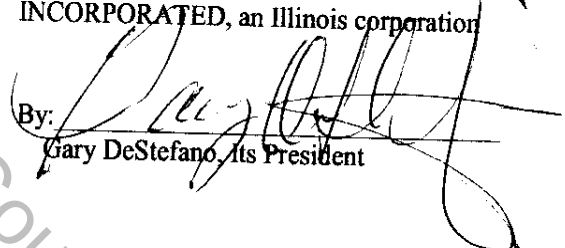
By: DeStefano Development, Incorporated, an
Illinois corporation, its Manager

By: 
Gary DeStefano, Its President

GUARANTOR:


GARY DESTEFANO

DESTEFANO DEVELOPMENT
INCORPORATED, an Illinois corporation

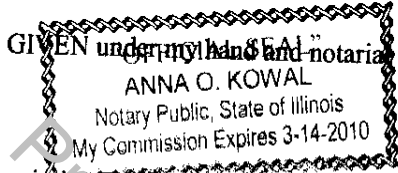
By: 
Gary DeStefano, Its President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, ANNA O. KOWAL, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Daniel Siadak, Managing Director of THE PRIVATEBANK AND TRUST COMPANY, known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Director, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary acts, and as the free and voluntary act of THE PRIVATEBANK AND TRUST COMPANY, for the uses and purposes therein set forth.



GIVEN under my hand and notarial seal this 10th day of September 2007.

Anna O. Kowal
Notary Public

My Commission Expires:

3/14/2010

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

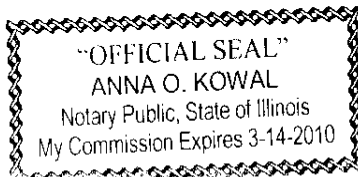
I, ANNA O. KOWAL, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Gary DeStefano, individually and as President of DeStefano Development, Incorporated, an Illinois corporation, the manager of 193 SOUTH EVERGREEN STREET, LLC, an Illinois limited liability company, 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 acts, and as the free and voluntary act of DeStefano Development, Inc., an Illinois corporation, as the manager for 193 SOUTH EVERGREEN STREET, LLC, an Illinois limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of September 2007.

Anna O. Kowal
Notary Public

My Commission Expires:

3/14/2010



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

THE WEST ½ (EXCEPT THE EAST 3.08 FEET) OF THAT PART OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 32, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE CENTER OF ROAD, 418 FEET SOUTH OF THE NORTHEAST CORNER OF THE WEST ½ OF THE NORTHWEST ¼ OF SAID SECTION 32, THENCE 4.80 CHAINS, THENCE SOUTH 77 FEET, THENCE EAST 4.80 CHAINS, THENCE NORTH 77 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

P.I.N. NO. 03-32-103-007-0000

Commonly Known as: 193 SOUTH EVERGREEN STREET, ARLINGTON HEIGHTS, ILLINOIS 60005