

UNOFFICIAL COPY

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



Doc#: 0805718020 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/26/2008 11:59 AM Pg: 1 of 11

This space reserved for Recorder's use only

MODIFICATION AND CROSS COLLATERALIZATION OF LOAN DOCUMENTS

THIS MODIFICATION AND CROSS COLLATERALIZATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 1st day of November, 2007, by and among **193 SOUTH EVERGREEN STREET, LLC, an Illinois limited liability company**, with an address at 1919 West Warner Avenue, Chicago, Illinois 60613 ("**193 Evergreen**"), **1917-21 WEST WARNER, LLC, an Illinois limited liability company**, having an address at 1919 West Warner, Chicago, Illinois ("**1917-21 Warner**"), **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 ("193 Evergreen Loan") to 193 Evergreen 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 193 Evergreen to the order of Lender ("193 Evergreen Note") and a certain Construction Loan and Security Agreement ("193 Evergreen Loan Agreement") dated January 21, 2005 from 193 Evergreen in favor of the Lender.

B. The 193 Evergreen 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 "193 Evergreen Mortgage"), which 193 Evergreen Mortgage encumbers the real property and all, improvements thereon legally described as Parcel I on Exhibit "A" hereto ("193 Evergreen Property"), and (ii) that certain

UNOFFICIAL COPY

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 "193 Evergreen Assignment of Leases"), (iii) the personal Guaranty ("193 Evergreen Guaranty") of Gary DeStefano and DeStefano Development Incorporated, an Illinois Corporation, guaranteeing payment and performance of all obligations of Borrower under the Note and Loan Documents (as hereinafter defined) and (iv) certain other loan documents. The 193 Evergreen Note, the 193 Evergreen Mortgage, the 193 Evergreen Loan Agreement, the 193 Evergreen Guaranty, the 193 Evergreen Assignment of Leases and any other document evidencing, securing and guarantying the 193 Evergreen Loan, in their original form and as amended, are sometimes collectively referred to herein as the "193 Evergreen Loan Documents").

C. The 193 Evergreen 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 and the Fourth Modification of Loan Documents dated July 1, 2007, which extended the Maturity Date of the 193 Evergreen Loan until November 1, 2007 (the "193 Evergreen Loan Modifications").

D. Lender has heretofore made a construction loan ("1917-21 Warner Loan") to 1917-21 Warner in the principal amount of Two Million Seven Hundred Thirty One Thousand and Six Hundred Dollars (\$2,731,600.00), evidenced by three separate notes as follows (i) a promissory note in the principal amount of Nine Hundred Thousand and No/100ths Dollars (\$900,000.00), (ii) a promissory note in the principal amount of Nine Hundred Thirty One Thousand and Six Hundred Dollars (\$931,600.00) and (iii) a promissory note in the principal amount of Nine Hundred Thousand and No/100ths Dollars (\$900,000.00), each note dated effective as of August 4, 2005 (the "1917-21 Warner Notes") and a certain Construction Loan and Security Agreement ("1917-21 Warner Loan Agreement") dated August 4, 2005 from Borrower in favor of the Lender.

E. The 1917-21 Warner Notes are secured by, among other things, (i) that certain Mortgage dated August 4, 2005, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on August 8, 2005, as Document No. 05220118125 (the "1917-21 Warner Mortgage"), which 1917-21 Warner Mortgage encumbers the real property and all improvements thereon legally described as Parcel II on Exhibit "A" hereto ("1917-21 Warner Property"), and (ii) that certain Assignment of Rents and Leases dated August 4, 2005, from Borrower to Lender and recorded with the Recorder's Office on August 8, 2005, as Document No. 05220118126 (the "1917-21 Warner Assignment of Leases"), (iii) the personal Guaranty ("1917-21 Warner Guaranty") of Gary DeStefano and DeStefano Development Incorporated, an Illinois Corporation, guaranteeing payment and performance of all obligations of Borrower under the Note and Loan Documents (as hereinafter defined) and (iv) certain other loan documents (the 1917-21 Warner Notes, the 1917-21 Warner Mortgage, the 1917-21 Warner Loan Agreement, the 1917-21 Warner Guaranty, the 1917-21 Warner 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 "1917-21 Warner Loan Documents").

F. A portion of the 1917-21 Warner Loan evidenced by the promissory note in the principal amount of Nine Hundred Thirty One Thousand and Six Hundred Dollars (\$931,600.00) (the "\$931,600 Note"), has been paid by Borrower and the 931,600 Note has been cancelled.

G. The remaining 1917-21 Warner Loan Documents were amended by Modification of Loan Documents dated September 1, 2006, pursuant to which the Maturity Date on the 1917-21 Warner Note was

UNOFFICIAL COPY

extended from September 1, 2006 to March 1, 2007. On or about March 1, 2007, 1917-21 Warner, Guarantor and Lender entered into a certain Second Modification of Loan Documents, dated March 1, 2007, whereby the Maturity Date on the Note and the other 1917-21 Warner Loan Documents, including the 1917-21 Warner Mortgage, was extended from March 1, 2007 until July 1, 2007. On or about July 1, 2007, 1917-21 Warner, Guarantor and Lender entered into a certain Third Modification of Loan Documents, dated July 1, 2007, whereby the Maturity Date on the 1917-21 Warner Notes and the other 1917-21 Warner Loan Documents, were extended from July 1, 2007 to November 1, 2007.

H. Whereas, the 193 Evergreen Note and the 1917-21 Warner Notes are hereinafter referred to as the "Notes", and the mortgage securing the 193 Evergreen Loan and the mortgages securing the 1917-21 Warner Loan are hereinafter collectively referred to as "Mortgages" and the 193 Evergreen Loan Documents and the 1917-21 Warner Loan Documents are hereinafter collectively referred to as the "Loan Documents").

I. Whereas, the Notes mature by their terms on November 1, 2007. 193 Evergreen and 1917-21 Warner (collectively the "Borrowers") have requested that Lender (i) extend the maturity date of the 1917-21 Warner Loan and the 1917-21 Warner Loan Documents until July 1, 2008, (ii) extend the maturity date of the 193 Evergreen Loan and the 193 Evergreen Loan Documents until August 1, 2008, (iii) advance an additional amount of \$475,000 to 193 Evergreen and increase the current outstanding principal balance of the 193 Evergreen Loan by that amount and (iv) advance an additional amount of \$80,000 to 1917-21 Warner and increase the current outstanding principal balance of each of the 1917-21 Warner Notes by an amount of \$40,000.00, to provide funds to the Borrowers to pay interest due on the 1917-21 Warner Loan through the new maturity date of July 1, 2008.

J. Whereas, Lender is willing to (i) extend the maturity date of the 1917-21 Warner Loan and the 1917-21 Warner Loan Documents until July 1, 2008, (ii) extend the maturity date of the 193 Evergreen Loan and the 193 Evergreen Loan Documents until August 1, 2008, (iii) advance an additional amount of \$435,000 to 193 Evergreen and increase the current outstanding principal balance of the 193 Evergreen Loan by that amount, subject to the condition that from the additional advance, the sum of \$100,000 shall be held in reserve to pay interest on the 193 Evergreen Loan through the new maturity date of August 1, 2008, and (iv) advance an additional amount of \$80,000 to 1917-21 Warner and increase the current outstanding principal balance of each of the 1917-21 Warner Notes by an amount of \$40,000.00, to provide funds to the Borrowers to pay interest due on the 1917-21 Warner Loan through the new maturity date of July 1, 2008, subject to the Borrowers and Guarantors agreement (a) to guaranty repayment of each of the Loans and (b) to grant to Lender cross collateralization and cross default rights against each Borrower and the properties described in Exhibits "A" and "B" attached hereto, 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 and Borrowers to modify the Loan Documents, as provided herein, (iii) Borrowers agreement to pay Lender an irrevocable loan fee (the "Loan Fee") in the amount of \$4,050.00 for the extension and additional advance for the 193 Evergreen Loan and \$3,000.00 for the extension and additional advance for the 1917-21 Warner Loan, plus 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:

UNOFFICIAL COPY

1. **Additional Advance 1917-21 Warner Loan.** Lender agrees to advance to 1917-21 Warner an additional amount of \$80,000 (the "1917-21 Warner Additional Advance") and increase the current principal balance of the 1917-21 Warner Loan by said amount. To evidence the 1917-21 Warner Additional Advance, 1917-21 Warner shall execute separate Promissory Notes of even date herewith in the principal amounts of \$940,000.00 each (the "1917-21 Warner Amended Notes") described hereinafter and subject to the agreement by 1917-21 Warner that the 1917-21 Warner Additional Advance shall be held in an interest reserve at Lender to pay interest on the 1917-21 Warner Loan (at such time as all other funds currently being held by Lender in any other interests reserves for the 1917-21 Warner Loan has been depleted).
2. **Additional Advance 193 Evergreen.** Lender agrees to advance to 193 Evergreen an additional amount of \$435,000 (the "193 Evergreen Additional Advance") and increase the current principal balance of the 193 Evergreen Loan by said amount. To evidence the 193 Evergreen Additional Advance, 193 Evergreen shall execute a Promissory Note of even date herewith in the principal amounts of \$1,620,000.00 (the "193 Evergreen Amended Note") described hereinafter and subject to the agreement by 193 Evergreen that from the 193 Evergreen Additional Advance, at least \$100,000.00 shall be held in an interest reserve at Lender to pay interest on the 193 Evergreen Loan (at such time as all other funds currently being held by Lender in any other interests reserves for the 193 Evergreen Loan has been depleted).
3. **Extension of the Maturity Dates.** Lender agrees that the Maturity Dates for the Loans (as defined in the Loan Documents (as amended and modified from time to time), shall be amended and extended as follows: (a) the Maturity date for the 1917-21 Warner Loan is amended from November 1, 2007 until July 1, 2008 and (b) the Maturity date for the 193 Evergreen Loan is amended from November 1, 2007 until August 1, 2008. All references in any and all 1917-21 Warner Loan Documents to a Maturity date shall now mean July 1, 2008. All references in any and all 193 Evergreen Loan Documents to a Maturity date shall now mean August 1, 2008.
4. **Amendment of 1917-21 Warner Notes.** The 1917-21 Warner Notes shall be amended and restated by those certain Promissory Notes of even date herewith executed jointly and severally by 1917-21 Warner (the "1917-21 Warner Note"). As of the date hereof, the 1917-21 Warner Amended Notes shall be substituted for and replace in its entirety the existing 1917-21 Warner Notes.
5. **Amendment of 193 Evergreen Note.** The 193 Evergreen Note shall be amended and restated by that certain Promissory Note of even date herewith executed jointly and severally by 193 Evergreen (the "193 Evergreen Note"). As of the date hereof, the 193 Evergreen Amended Note shall be substituted for and replace in its entirety the existing 193 Evergreen Amended Note.
6. **Amendment to Interest Reserve Agreement.** 193 Evergreen agrees that all amounts advanced in connection with the Additional Advance, shall be deposited into an Interest Reserve Agreement, dated of even date with this Agreement, between Lender and Borrowers. 1917-21 Warner agrees that all amounts advanced in connection with the 1917-21 Warner Additional Advance, shall be deposited into an Interest Reserve Agreement, dated of even date with this Agreement, between Lender and 1917-21 Warner. Borrowers further agree that after depletion of the amounts held by Lender in any other interest reserve accounts or upon the occurrence of an Event of Default under terms of this Agreement or any of the Loan Documents, Lender may, at its sole option, use any funds remaining in either of the Interest Reserve Agreements to pay any interest or principal due on the Loans prior to the respective Maturity Dates (as amended herein).
7. **Additional Guarantees.** As a condition to Lender's agreements contained herein, 193 Evergreen agrees to guaranty payment and performance of all obligations of 1917-21 Warner to Lender in

UNOFFICIAL COPY

connection with the 1917-21 Warner Loan. To evidence this agreement, 193 Evergreen agrees to execute and deliver to Lender its Guaranty of Payment and Completion of even date herewith. As a condition to Lender's agreements contained herein, 1917-21 Warner agrees to guaranty payment and performance of all obligations of 193 Evergreen to Lender in connection with the 193 Evergreen Loan. To evidence this agreement, 1917-21 Warner agrees to execute and deliver to Lender its Guaranty of Payment and Completion of even date herewith.

7. **Cross Collateralization and Cross Default.** 193 Evergreen agrees that the 193 Evergreen Property legally described as Parcel I on Exhibit "A" attached hereto is hereby pledged as additional collateral to secure all past, present and future obligations of 1917-21 Warner to Lender is granted to Lender as additional collateral for the Lender's agreement to modify the Loans as herein provided. 1917-21 Warner agrees that the 1917-21 Warner Property legally described as Parcel II on Exhibit "A" attached hereto is hereby pledged as additional collateral to secure all past, present and future obligations of 193 Evergreen to Lender is granted to Lender as additional collateral for the Lender's agreement to modify the Loans as herein provided. A default by either Borrower under their respective loan shall be deemed an event of default under the terms of the other loan and shall afford the Lender the right to pursue an action against all Borrowers, the Grantors and the Properties, as Lender deems reasonable and necessary.

It is the intent of Borrowers to cross-collateralize and cross-default the Loans and obligations of Borrowers owing to Lender in connection with the Notes and Loan Documents described herein. Accordingly, in consideration of Lender's agreements contained herein, Borrowers agree that all of the collateral granted to Lender by 193 Evergreen as collateral for the 193 Evergreen Loan evidenced by the 193 Evergreen Note and secured by the 193 Evergreen Loan Documents (including the funds held in the Interest Reserve Agreements) are hereby pledged to secure all past, present and future obligations of 1917-21 Warner to Lender in connection with the 1917-21 Warner Loan evidenced by the 1917-21 Warner Notes and the 1917-21 Warner Loan Documents. Further, Borrowers agree that all of the collateral granted to Lender by 1917-21 Warner as collateral for the 1917-21 Warner Loan evidenced by the 1917-21 Warner Notes and secured by the 1917-21 Warner Loan Documents (including the funds held in the Interest Reserve Agreements), are hereby pledged to secure all past, present and future obligations of 193 Evergreen to Lender in connection with the 193 Evergreen Loan and the 193 Evergreen Loan Documents. Any default under the past, present and future obligations of Borrowers owed to Lender in connection with the 193 Evergreen Loan shall constitute an event of default under all past, present and future obligations of Borrowers to Lender in connection with the 1917-21 Warner Loan. In addition, any default under the past, present and future obligations of Borrowers owed to Lender in connection with the 1917-21 Warner Loan shall constitute an event of default under all past, present and future obligations of Borrowers to Lender in connection with the 193 Evergreen Loan.

Lastly, Borrowers agree that all proceeds generated from the sale of any of the 193 Evergreen Property or the 1917 Warner Property may be used by Lender, in its sole discretion, to pay down any of the Notes in any manner the bank deems reasonable.

8. **Reaffirmation of Guaranty.** Each of the Guarantors ratifies and affirms their respective Guarantees and agrees that the Guarantees remain in full force and effect following the execution and delivery of this Agreement and each of the amended and restated notes. The representations and warranties of each of the Guarantor in their respective Guarantees are, as of the date hereof, true and correct and no Guarantor knows of any default thereunder. The Guarantees (including the 1917-21 Warner Guaranty and the 193 Evergreen Guaranty) continue to be the valid and binding obligation of each Guarantor, enforceable in accordance with their terms and Guarantors have no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in their respective Guarantees.

UNOFFICIAL COPY

9. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgages 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 to require strict performance of the Mortgages as amended above nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the promissory notes or other credit agreement secured by the Mortgages. It is the intention of Lender to retain as liable all parties to the Mortgages and all parties, makers and endorsers to the Amended Notes, 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 Mortgages 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.

10. **Construction Mortgage.** The Mortgages constitute "construction mortgages" 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.

11. **Construction Loan.** If some or all of the proceeds of the Loans creating the Indebtedness are to be used to construct or complete construction of any Improvements on the Properties, the Improvements shall be completed no later than the maturity date of the Amended Notes (or such earlier date as Lender may reasonably establish) and Borrowers 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 Mortgages 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.

12. **Representations and Warranties of Borrowers and Guarantors.** Borrowers and Guarantors hereby represent, covenant and warrant to Lender as follows:

(a) The representations and warranties in the Notes (as amended and modified), the Loan Agreements, the Mortgages, 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 Notes (as amended and modified), the Loan Modifications, the Loan Agreements or the other Loan Documents and neither Borrowers nor Guarantors 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 Notes (as amended and modified), the Loan Agreements, 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 Borrowers and Guarantors 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 Borrowers, Guarantors 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 Borrowers nor Guarantors have any claims, counterclaims, defenses, or set-offs with respect to the Loans, the Notes 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 Borrowers and Guarantors. This Agreement has been duly executed and delivered on behalf of Borrowers and Guarantors.

13. **Title Policy.** At Lender's request, Borrowers shall, at its sole cost and expense, cause a title company acceptable to Lender to issue an endorsement to Lender's existing 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 Mortgages or any other encumbrances expressly agreed to by Lender.

14. **Expenses.** As a condition precedent to the agreements contained herein, Borrowers 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.

15. **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 Borrowers or Guarantors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrowers, Guarantors and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrowers, Guarantors 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 Borrowers nor shall privity of contract be presumed to have been established with any third party.

(d) Borrowers, Guarantors 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 Borrowers, Guarantors 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.

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

UNOFFICIAL COPY

(f) Any references to the "Notes", the "Mortgages" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Amended and Restated Note, the Mortgages 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 Borrowers obligations under this Agreement.

16. **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 provision, shall be in full force and effect.

17. **No Novation.** This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation, or release of the Loans 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 Notes.

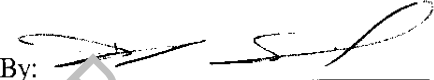
14. **Counterparts.** This Agreement may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered (whether by facsimile transmission or otherwise) shall be deemed an original, but all such counterparts together shall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

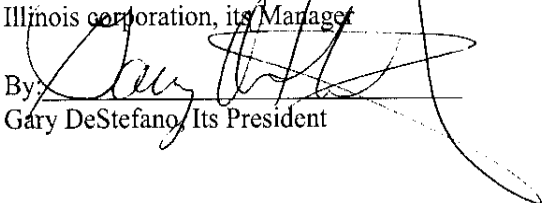
THE PRIVATEBANK AND TRUST COMPANY

By: 
Its: MANAGING DIRECTOR

BORROWER:

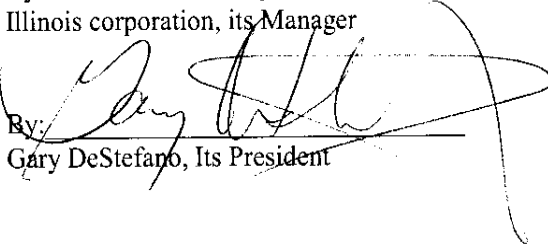
193 SOUTH EVERGREEN STREET, LLC,
an Illinois limited liability company

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

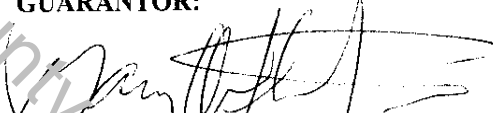
By: 
Gary DeStefano, Its President

1917-21 WEST WARNER LLC, an Illinois limited liability company

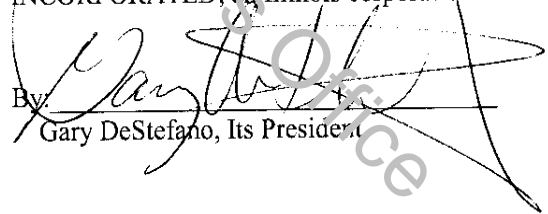
By: DeStefano Development, Incorporated., an Illinois corporation, its Manager

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

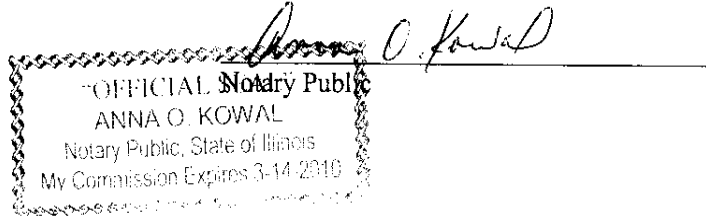
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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 1st day of November, 2007.

My Commission Expires:

3/14/2010



STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

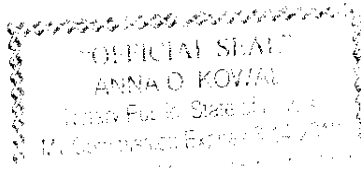
I, Anna O. Kowal, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Gary DeStefano, individually and as President of DeStefano Development, Incorporated, an Illinois corporation, the manager of 193 SOUTH EVERGREEN STREET, LLC, an Illinois limited liability company and the manager of 1917-21 WEST WARNER 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 and 1917-21 WEST WARNER LLC, an Illinois limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1st day of November, 2007.

My Commission Expires:

3/14/2010

Anna O. Kowal
Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL I:

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: 195 SOUTH EVERGREEN STREET, ARLINGTON HEIGHTS, ILLINOIS 60005

PARCEL II:

PARCEL A:

LOT 9 IN BLOCK 7 IN CUYLER ADDITION TO RAVENSWOOD, BEING A SUBDIVISION OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ (EXCEPT RAILROAD) IN SECTION 18, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN NO.: 14-18-416-015-0000

COMMONLY KNOWN AS: 1919 WEST WARNER AVENUE, CHICAGO, ILLINOIS

PARCEL B:

LOT 8 IN BLOCK 7 IN CUYLER ADDITION TO RAVENSWOOD, BEING A SUBDIVISION OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ (EXCEPT RAILROAD) IN SECTION 18, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. NO. 14-18-416-015-0000

COMMONLY KNOWN AS: 1921 WEST WARNER AVENUE, CHICAGO, ILLINOIS