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and after recording, return to:

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13541-13551 South Cicero
Crestwood, Illinois



1101433045

Doc#: 1101433045 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/14/2011 10:24 AM Pg: 1 of 14

orders use only.

THIRD MODIFICATION OF LOAN DOCUMENTS

THIS THIRD MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 11th day of November, 2010, by and between **MCHENRY ELLIOTT L.L.C.**, an Illinois limited liability company ("Borrower"), **MICHAEL H. ROSE** ("Guarantor") and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois banking association, its successors and assigns ("Lender").

RECITALS

A. Lender has heretofore made a loan ("Loan") to Borrower of up to the maximum principal amount of Five Million Nine Hundred Thousand and 00/100 Dollars (\$5,900,000.00), pursuant to the terms and conditions of that certain Loan Agreement dated as of November 12, 2008, between Borrower and Lender (the "Loan Agreement", all terms not otherwise defined herein having the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated November 12, 2008, in the principal amount of the Loan made payable by Borrower to the order of Lender (the "Note").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated November 12, 2008, from Borrower to Lender (the "Mortgage"), and recorded with the Recorder of Deeds of Cook County, Illinois, as Doc. No. 0833626073 on December 1, 2008 which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit "A" attached hereto and made a part hereof (the "Property"); (ii) that certain Guaranty of Payment and Completion dated as of November 12, 2008, from Guarantor in favor of Lender (the "Guaranty") and (iii) certain other loan documents (the Note, the Mortgage, the Guaranty, the Loan Agreement and the other documents evidencing, securing and guarantying the Loan are sometimes collectively referred to herein as the "Loan Documents").

C. Lender, Borrower and Guarantor entered into that certain Modification of Loan Documents dated as of November 11, 2009, which, among other things, extended the maturity date of the Loan to March 11, 2010 and reduced the maximum principal amount of the Loan to Five Million One Hundred Seventy Five Thousand Dollars (\$5,175,000).

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D. Lender, Borrower and Guarantor entered into that certain Second Modification of Loan Documents dated as of March 11, 2010, which, among other things, extended the maturity date of the Loan to November 11, 2010. In connection with the Second Modification of Loan Documents, Borrower executed and delivered to Lender a Net Cash Flow and Pledge Agreement dated as of March 11, 2010, which is one of the Loan Documents.

E. Borrower and Lender desire to amend the Loan Documents to extend the maturity date of the Loan, require monthly payments of outstanding principal of the Loan and make certain other modifications on the terms and conditions set forth in this Agreement.

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) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Extension of Maturity Date.** The Maturity Date is hereby extended to November 11, 2011. All references in this Agreement, the Loan Agreement, the Note, the Mortgage and the other Loan Documents to the Maturity Date or the Initial Maturity Date shall be deemed references to November 11, 2011.

2. **Decrease In Loan Amount.** As of the date hereof, the maximum outstanding principal balance of the Loan is Four Million Nine Hundred Thirty Seven Thousand Seven Hundred and Four Dollars (\$4,937,704). The maximum principal amount of the Loan is hereby decreased to Four Million Nine Hundred Thirty Seven Thousand Seven Hundred and Four Dollars (\$4,937,704). The Loan Agreement, the Mortgage, the Note, and each of the other Loan Documents are hereby modified such that any reference in the Loan Agreement, the Mortgage, the Note and each of the other Loan Documents to the Loan or the Loan Amount is hereby amended to be Four Million Nine Hundred Thirty Seven Thousand Seven Hundred and Four Dollars (\$4,937,704).

3. **Amendments to the Note.**

(a) Section 2.1(c)(iv) is deleted and replaced with the following:

“(iv) “Interest Period” shall mean, with regard to any LIBOR Loan, successive one month periods; provided, however, that: (A) each Interest Period occurring after the initial Interest Period of any LIBOR Loan shall commence on the day on which the preceding Interest Period for such LIBOR Loan expires; (B) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day; (C) whenever the first day of any Interest Period occurs on a date for which there is no numerically corresponding date in the month in which such Interest Period terminates, such Interest Period shall end on the last day of such month, unless such day is not a Business Day, in which case the Interest Period shall terminate on the first

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Business Day of the following month, provided, however, that so long as the LIBOR Rollover remains in effect, all subsequent Interest Periods shall terminate on the date of the month numerically corresponding to the date on which the initial Interest Period commenced; and (D) the final Interest Period for any LIBOR Loan must be such that its expiration occurs on or before the Maturity Date. If at any time an Interest Period expires less than one month before the Maturity Date, such LIBOR Loan shall automatically convert to a Prime Loan on the last day of the then existing Interest Period, without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower."

(b) Section 4.1(a) is hereby deleted and replaced with the following:

"(a) (i) Commencing on December 1, 2008, and continuing on the first day of each month thereafter through and including the month in which the Maturity Date occurs, all accrued and unpaid interest on the principal balance of this Note outstanding from time to time shall be due and payable. Interest accrued on any LIBOR Loan as of the date of termination, breakage or other disposition shall be due and payable in full on the date of such termination, breakage or disposition."

(ii) Commencing on January 1, 2011, and continuing on the first day of each month thereafter through and including the month in which the Maturity Date occurs, a monthly principal payment in the amount of Ten Thousand Nine Hundred Eighty Six and 10/100 Dollars (\$10,986.00) shall be due and payable, which amount is calculated using an amortization period of two hundred and forty (240) months and an interest rate of six percent (6%)."

4. **Amendments to the Loan Agreement.** The Loan Agreement is hereby amended by deleting the definitions of "Debt Service", "Loan", "Loan Amount", and "Maturity Date" in Article 1 and replacing them, respectively, with the following:

***"Debt Service:** Debt service (principal and interest) on a hypothetical loan in the principal amount of \$4,937,704 with monthly principal and interest payments based on a twenty-five (25) year amortization with interest equal to six percent (6.0%) per annum."*

***"Loan:** The loan being made by Lender to Borrower in accordance with the provisions of this Agreement, up to the maximum principal amount of Four Million Nine Hundred Thirty Seven Thousand Seven Hundred and Four Dollars (\$4,937,704)."*

***"Loan Amount:** The maximum principal amount of the Loan, being up to Four Million Nine Hundred Thirty Seven Thousand Seven Hundred and Four Dollars (\$4,937,704)."*

***"Maturity Date:** November 11, 2011.*

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5. **DSCR Covenants.** Borrower shall maintain a DSCR of not less than 1.15 to 1 during each calendar quarter through the Maturity Date, commencing with the calendar quarter ending December 31, 2010. Within thirty (30) days after the end of each calendar quarter ("Loan Quarter"), Borrower shall submit to Lender a calculation showing the DSCR for such Loan Quarter. Borrower shall provide Lender such financial information as may be available to Borrower or that Lender may request in order to support Borrower's calculation of the DSCR for the Loan Quarter. Such calculation of DSCR shall be submitted in connection with the submittal to Lender of the financial statements of the Borrower and the calculation of Operating Cash Flow for such Loan Quarter as required by Section 30 of the Mortgage; such submittal shall be in the form of Exhibit B attached hereto and made a part hereof.

6. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement and the other Loan Documents are true and correct in all material respects as of the date hereof.

(b) There is currently no Event of Default (as defined in the Loan Agreement) under the Loan Agreement, the Note, the Mortgage or the other Loan Documents, and to the actual knowledge of Borrower there is no event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Loan Agreement, the Note, the Mortgage 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 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 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.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. 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. This Agreement has been duly executed and delivered on behalf of Borrower.

(g) The Manager of Borrower has the requisite power and authority to execute and deliver this Agreement on behalf of Borrower as its Manager. The execution and delivery of this Agreement by the Manager of Borrower on behalf of Borrower has been duly authorized by all requisite action by or on behalf of Borrower.

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7. **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. 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.

8. **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 merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower and Lender 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 or his respective counsel of the legal and practical effect of this Agreement, and recognizes that it or he is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its or his own free will, without promises or threats or the exertion of duress upon it or him. 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 and Lender acknowledge 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 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.

(f) Any references to the "Loan Agreement", "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement, the 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

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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 Borrower's obligations under this Agreement.

(i) As a condition precedent to the agreements contained herein, Borrower shall pay to Lender a \$12,344.00 loan modification fee and shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, attorneys' fees and expenses.

[SIGNATURE PAGE FOLLOWS]

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

BORROWER:

MCHENRY ELLIOTT L.L.C., an Illinois limited liability company

By: Michael Rose
Name: Michael H Rose
Title: Manager

GUARANTOR:

Michael Rose
MICHAEL H. ROSE

LENDER:

THE PRIVATE BANK AND TRUST COMPANY, an Illinois banking association

By: _____
Name: _____
Title: _____

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

BORROWER:

MCHENRY ELLIOTT L.L.C., an Illinois limited liability company

By: _____

Name: _____

Title: _____

GUARANTOR:

MICHAEL H. ROSE

LENDER:

THE PRIVATEBANK AND TRUST COMPANY, an Illinois banking association

By: Alison Dempsey

Name: Alison Dempsey

Title: Associate Managing Director

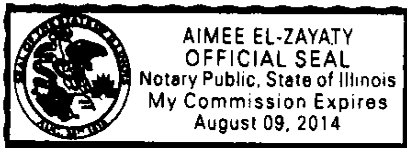
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STATE OF ILLINOIS)
) SS.
COUNTY OF Will)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael H. Rose, the Manager of McHenry Elliott L.L.C., 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17th day of December, 2010.



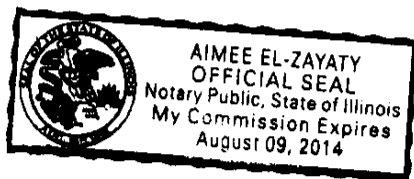
Aimee El-Zayaty
Notary Public

My Commission Expires:
8/9/14

STATE OF ILLINOIS)
) SS.
COUNTY OF Will)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael H. Rose, who is 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 and delivered the said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17th day of December, 2010.



Aimee El-Zayaty
Notary Public

My Commission Expires:
8/9/14

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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 ALISON Dempsey, personally known to me to be the AMB the PrivateBank and Trust Company, an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such AMB, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of December, 2010.

Maria T. Esparza
Notary Public

My Commission Expires:

"OFFICIAL SEAL"
MARIA T. ESPARZA
NOTARY PUBLIC STATE OF ILLINOIS
My Commission Expires 06/26/2011

Notary Public of Cook County Clerk's Office

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EXHIBIT A

THE REAL PROPERTY

PARCEL 1: LOTS 1 AND 2 IN CRESTWOOD COURTS A SUBDIVISION OF PART OF THE NORTHWEST ¼ OF SECTION 3, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE NORTH 183 FEET OF THE WEST 350 FEET OF THE NORTHWEST ¼ OF SECTION 3, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THOSE PARTS DEFINED AS FOLLOWS:

- (1) A TRIANGULAR PARCEL LYING NORTHWESTERLY OF A LINE RUNNING FROM A POINT 35.3 FEET SOUTH OF THE SOUTH LINE OF 135TH STREET AS NOW OCCUPIED TO A POINT ON THE SOUTH LINE OF THE NORTH 50 FEET THEREOF 29.0 FEET EAST OF THE EAST LINE OF CICERO AVENUE.
- (2) THE WEST 50.0 FEET TAKEN FOR CICERO AVENUE
- (3) THE NORTH 50.0 FEET TAKEN FOR 135TH STREET ALL IN COOK COUNTY, ILLINOIS.

PARCEL NOS.: 28-03-100-042-0000
 28-03-100-100-0000
 28-03-100-101-0000

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EXHIBIT B FORM OF COMPLIANCE CERTIFICATE

To: The PrivateBank and Trust Company

Please refer to the Loan Agreement dated as of November 12, 2008 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") among McHenry Elliott, L.L.C., an Illinois limited liability company (the "Company"), and The PrivateBank and Trust Company. Terms used but not otherwise defined herein are used herein as defined in the Loan Agreement.

- I. Company Reports. Enclosed herewith is a copy of the [annual report/quarterly financial data report/current (being the most recent quarterly report with material adjustments) financial data report] of the Company as at _____, ____ (the "Computation Date"), which report is true, correct and complete and fairly presents in all material respects the financial condition and results of operations of the Company as of the Computation Date.

- II. Financial Tests. The Company hereby certifies and warrants to you that the following is a true and correct computation as at the Computation Date of the following ratios and/or financial restrictions contained in the Loan Agreement and the Third Modification:
 - A. Operating Cash Flow. As of the Computation Date, the Operating Cash Flow for the Property, calculated in accordance with the Loan Agreement, is _____ (\$_____). The calculations for the Operating Cash Flow are attached hereto as Schedule I.

 - B. DSCR. As of the Computation Date, the DSCR for the Property, calculated in accordance with the Loan Agreement, is _____ (\$_____). The calculations for the DSCR are attached hereto as Schedule II.

The Company further certifies to you that no Event of Default has occurred and is continuing.

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The Company has caused this Certificate to be executed and delivered by its duly authorized officer on _____, _____.

BORROWER:

MCHENRY ELLIOTT L.L.C., an Illinois limited liability company

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

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SCHEDULE I

OPERATING CASH FLOW CALCULATIONS and DSCR CALCULATIONS

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

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