

# UNOFFICIAL COPY

This Instrument prepared by  
And after recording should be returned to:

Wesley W. Broquard  
Barnes & Thornburg LLP  
One N. Wacker Drive, Suite 4400  
Chicago, Illinois 60606



Doc#: 1106210031 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/03/2011 12:27 PM Pg: 1 of 12

Address of Property:

7220, 7230, 7240 W. 111<sup>th</sup> Street  
Worth, Illinois 60482  
and  
7205, 7215, 7225 and 7235 W. 110<sup>th</sup> Place  
Worth, Illinois 60482

Permanent Identification Numbers:  
23-13-412-002 through 008

## THIRD LOAN MODIFICATION AND EXTENSION AGREEMENT

This Third Loan Modification and Extension Agreement ("Third Modification") is made as of February 28, 2011 ("Effective Date"), by and among Southern Farm Bureau Life Insurance Company, a Mississippi corporation ("Lender"), Chicago Title Land Trust Company, not personally but as Successor Trustee of a certain Trust Agreement dated October 31, 1972, and known as Trust Number 1917 ("Trust"), and Chateau Royale Limited Partnership, an Illinois Limited Partnership ("Borrower").

### RECITALS

A. By Assignment of Debt Obligation and Security recorded in the Recorder of Deeds of Cook County, Illinois, as Document No. R96-856845, Lender is the legal owner and holder of Promissory Note dated August 12, 1994 ("Note"), executed and delivered by Trust and Matt Pauga and Inga Pauga (the "Original Beneficiaries") in favor of Lender in the original principal amount of \$1,600,000 (the "Loan").

B. The Note is secured by that certain First Mortgage and Security Agreement of even date with the Note, executed by Trust and Original Beneficiaries, mortgaging the land and improvements legally described on Exhibit A attached hereto ("Land and Improvements"), recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document Number R94-753529 ("Mortgage") and other documents of record executed by Trust and Original Beneficiaries to evidence and secure the Loan (the Mortgage and other documents of record are collectively referred to herein as the "Security Documents", and the Land and Improvements and all other interests encumbered by the Security Documents are collectively referred to as the "Property").

*Handwritten signature*

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C. By a First Loan Modification and Assumption Agreement, dated May 1, 1998 (“First Modification”), and recorded as Document No. 98-886551, Lender consented to the transfer of the beneficial interest in the Trust from Original Beneficiaries to Borrower and the assumption by Borrower of the obligations of Original Beneficiaries pursuant to the terms and provisions of the Note and the Security Documents. Lender consented thereto upon the terms and conditions specified in a certain letter dated December 19, 1997, issued by Lender and addressed to Original Beneficiaries.

D. By a Second Loan Modification and Extension Agreement, dated December 16, 2002 (the “Second Modification”), and recorded as Document No. 0021433413, Lender agreed to increase the principal balance of the Loan to \$1,650,000 and to extend the maturity date of the Loan to January 1, 2023. The Note, Security Documents, First Modification, Second Modification, and all other instruments or agreements evidencing, securing, guarantying or assuming obligations of any party under or relating to the Loan, as the same may have been previously amended, restated, modified, extended, renewed, guaranteed or assumed from time to time, are herein collectively referred to as the “Existing Loan Documents”).

E. As of the Effective Date, the outstanding principal balance of the Loan is the amount specified in Section 3 of this Third Modification.

F. Borrower has requested that Lender increase the principal amount of the Loan to \$1,800,000 and extend the term of the Loan for 20 years from the disbursal of the additional principal pursuant to this Third Modification (the “Disbursal Date”).

In consideration of the foregoing recitals and the mutual covenants in this Third Modification, IT IS HEREBY AGREED AS FOLLOWS:

1. AMENDMENTS TO THE EXISTING LOAN DOCUMENTS.

- a. The principal balance of the Loan shall be increased to \$1,800,000.
- b. Commencing on the Disbursal Date and continuing until maturity of the loan (whether by acceleration of the maturity date upon default or otherwise), the principal sum outstanding shall bear interest at the rate of five and one-half percent (5.50%) per annum.
- c. Borrower shall pay two hundred thirty-nine (239) equal, consecutive payments of \$12,381.97 covering principal and accrued and unpaid interest, which shall be due and payable monthly, in arrears, on or before the first day of each calendar month for the preceding calendar month or portion thereof, commencing with the first payment due April 1, 2011 and continuing thereafter until maturity under this Third Modification on March 1, 2031 (the “Maturity Date”). All references in the Existing Loan Documents to the maturity date of the Loan shall be deemed to be the Maturity Date set forth in this Third Modification.
- d. The two hundred fortieth (240<sup>th</sup>) and final payment shall be in the amount equal to the entire outstanding principal balance, together with all accrued and unpaid in-

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terest and any other unpaid sums under this Third Modification or Existing Loan Documents.

e. Section 3.5 of the Note is deleted in its entirety and hereby replaced with the following paragraph:

§3.5 For purposes of the Note as extended by this Third Modification, each "Loan Year" is defined as a period of twelve (12) months following the expiration of the prior Loan Year, with the first Loan Year being a period of twelve (12) months commencing on the 1<sup>st</sup> day of March 2011. The Note may not be prepaid during the period beginning on the date of this Note and ending upon the expiration of the fifth (5<sup>th</sup>) Loan Year after the Disbursal Date. Thereafter, this Note may be prepaid in full, but not in part, upon at least thirty (30) days but not more than ninety (90) days prior written notice to Lender and only upon payment of the premium required by this §3.5 as hereinafter set forth. During the sixth (6<sup>th</sup>) loan year after the Disbursal Date, this Note may be prepaid in full at the price of one hundred five percent (105%) of the principal balance of the Loan at the time of said prepayment. Thereafter this Note may be prepaid in full, but not in part, as follows:

<u>Prepayment During Loan Year</u>	<u>Prepayment Amount Expressed as Percentage of Outstanding Principal Balance</u>
7	104.5%
8	104%
9	103.5%
10	103%
11	102.5%
12	102%
13	101.5%
14-20	101%

Any such prepayment shall include, but shall not be limited to, the outstanding principal, together with all accrued and unpaid interest, late payment charges and any other unpaid sums hereunder and under the Mortgage. This provision shall, at Lender's election, be applicable whether the prepayment is the result of a default, an Event of Default or otherwise. If a prepayment is received prior to the expiration of the fifth (5<sup>th</sup>) Loan Year after the Disbursal Date as a result of the Borrower's default or otherwise, Lender may, in its sole discretion, refuse to accept such payment or elect to collect a premium of ten percent (10%) of the outstanding principal balance. The restrictions and premiums on prepayment set forth above shall not be applicable (a) to a prepayment resulting from Lender's application of any insurance proceeds or condemnation awards on account of the indebtedness evidenced hereby pursuant to the terms of the Mortgage, or (b) to a

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prepayment in full made during the ninety (90) day period immediately preceding the Maturity Date.

f. The third to the last sentence in Section 3.52 of the Note is deleted and replaced with the following sentence: "If the Acceleration occurs during a period when prepayment of this Note is prohibited, the amount of liquidated damages payable to Lender under this provision shall be equal to ten percent (10%) of the unpaid principal balance of this Note at the time of such Acceleration."

g. Section 2.6(h) of the Mortgage is hereby deleted and replaced with the following paragraph:

Notwithstanding the foregoing, if there is not then existing an Event of Default under this Mortgage and there are no conditions existing which but for the passage of time and/or the giving of notice would constitute an Event of Default, Mortgagee agrees to provide its written consent to the transfer of a partnership interest in Borrower to a Family Member (defined as a parent, spouse, sibling, child or grandchild of a partner) or to a trust for the benefit of a Family Member, provided that (i) if the transfer is to a trust, the trustee must be a Family Member without a legal disability or a national bank with trust powers; (ii) there is no change in management; (iii) none of the existing Obligors under the Loan Documents is released from liability; (iv) any individual transferee is not under a legal disability and is determined by Mortgagee to be financially capable; (v) prior to the transfer, Mortgagee is furnished such documentation as is reasonably required by Mortgagee to evidence that such transfer is permitted hereunder; and (vi) Borrower pays to Mortgagee a reasonable review fee, not to exceed \$2,500.00, and all expenses related to the transfer, including but not by way of limitation, the fees and expenses of Mortgagee's attorneys.

h. The term "Loan Documents" as used in the Existing Loan Documents shall refer collectively to the Existing Loan Documents, this Third Modification, and all other instruments, agreements or items required by this Third Modification, or evidencing, securing, guarantying or assuming obligations of any party under or relating to the Loan as modified by this Third Modification.

2. WARRANTIES AND REPRESENTATIONS. Borrower represents and warrants as follows (collectively "Warranties and Representations"):

a. Beneficiary is a limited partnership duly formed and validly existing under the laws of the State of Illinois and is the sole beneficiary of Trust.

b. The execution and delivery of this Third Modification and all other instruments, agreements or items required by this Third Modification, or evidencing, securing, guarantying or assuming obligations of any party under or relating to this Third Modification (collectively, as the same may be amended, restated, modified, extended, or renewed from time to time, the "Third Modification Documents") were duly authorized;

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c. The Existing Loan Documents, the Third Modification Documents, and each of the covenants, conditions and agreement contained therein, are in full force and effect, are the valid and legally binding obligations of Trust, Original Beneficiaries, and Borrower, and are free from all legal and equitable defenses, offsets and counterclaims;

d. No part of the Property is in receivership nor is any application for receivership pending and no petition in bankruptcy has been filed by or against the Trust or either of the Original Beneficiaries or Borrower, nor is there any litigation existent which adversely and materially affects the Property;

e. There are no agreements, state of facts or circumstances presently existing and known to either Original Beneficiaries or Borrower which, with or without the service of Notice, passage of time, or both, would grant to Trust, Original Beneficiaries, or Borrower the right to refuse to make or delay the payments or otherwise perform the terms, covenants, conditions and agreements required pursuant to the Existing Loan Documents or the Third Modification Documents.

f. All statements and representations contained in all documentation provided to Lender and all other representations or statements made by or on behalf of Original Beneficiaries or Borrower to Lender in connection with this Third Modification are true and correct in all material respects.

g. Borrower is not insolvent and will not be rendered insolvent by the execution and delivery of the Third Modification Documents.

h. To the best knowledge of Original Beneficiaries and Borrower, no person, firm or corporation has or claims any interest in and to the Property which does not appear in Policy for Title Insurance, Policy Number 1401 007517565 D1 dated August 25, 1994, issued by Chicago Title Insurance Company, as updated by that certain Pro Forma Date Down Endorsement dated December 21, 2010, other than the tenants of the Property pursuant to their respective leases, nor is there any unrecorded deed, deed of trust, mortgage or other conveyance or encumbrance or any undelivered bill of sale, assignment, option, right of first refusal or instrument of transfer relating to or affecting the Property.

Any inaccuracies in the Representations and Warranties is an event of default hereunder and pursuant to the Existing Loan Documents and Third Modification Documents, and entitles Lender to exercise its right to accelerate the payment of Principal Amount and exercise any and all other rights and remedies available to Lender pursuant to the provisions hereof and Existing Loan Documents and Third Modification Documents or at law or in equity.

3. ACKNOWLEDGMENT OF PRINCIPAL AMOUNT OF LOAN AMOUNT DUE. As of the Effective Date, after application of the payment of principal and interest made for the February 2011 installment, the balance of the Loan is \$1,209,780.86. Borrower agrees that as of the Effective Date there exist no offsets, counterclaims or defenses to payment or performance of the obligations set forth in the Existing Loan Documents as modified by the Third Modification Documents, and, in consideration hereof, Borrower expressly waives any and all

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such offsets, counterclaims and defenses or any other claims arising out of any alleged acts, transactions or omissions on the part of Lender existing or claimed to exist prior to the Effective Date. Borrower will take no action to contest or challenge the enforceability or priority of the Mortgage by reason of the execution by Lender of this Third Modification or any other Third Modification Documents.

4. NO OTHER CHANGE. Except as herein expressly amended, each and every term, condition, warranty and provision of the Existing Loan Documents shall remain in force and effect, and such are hereby ratified, confirmed and approved by the parties hereto. Nothing herein shall be construed to release, discharge, alter or affect the priority of the lien or title created by the Existing Loan Documents, it being the expressly declared intention of the parties that no novation of the Existing Loan Documents be created hereby.

5. DEFAULT. Any default under the terms of the Existing Loan Documents shall constitute a default under the Third Modification Documents, and any default under the Third Modification Documents shall constitute a default under the Existing Loan Documents.

6. RELEASE OF LENDER. As additional consideration for Lender's consent to the loan modification and extension, as herein provided, Original Beneficiaries and Borrower, their general partners, limited partners and managers hereby release and forever discharge Lender, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors, assigns and all persons, firms, and corporations acting in its behalf, of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Original Beneficiaries and Borrower or their general partners, limited partners or members may now have or claim to have against Lender as of the Effective Date and whether presently known or unknown and of every nature and extent whatsoever on account of or in any way concerning, arising out of or founded upon the Existing Loan Documents or the Third Modification Documents, including, but not limited to, all loss or damage of any kind sustained or which may arise as a consequence of the transactions between Original Beneficiaries, Borrower, or their general partners, limited partners or managers, and Lender to and including the Effective Date. This release and covenant by Original Beneficiaries, Borrower and their general partners, limited partners, managers, members and Lender is contractual and not a mere recital.

7. REQUIRED NOTICES. Wherever notices are required, pursuant to the Existing Loan Documents or the Third Modification Documents, the same shall be in writing and shall be delivered either personally, or by United States certified or registered mail, postage prepaid, return receipt requested, or by commercial courier, with receipt, shall be effective upon receipt or refusal, and shall be sent to Lender, Trust, and Borrower at their respective addresses set forth below or to such other addresses as shall direct in writing.

If to Lender, 1401 Livingston Lane, P.O. Box 78, Jackson, Mississippi 39205

If to Borrower, 7330 Fairmont, Suite B, Downers Grove, Illinois 60516;

If to Trust, 171 N. Clark Street, Suite 575, Chicago, Illinois 60601

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8. FAILURE OR DELAY. No failure by Lender to exercise, or delay by Lender in exercising, any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in the Existing Loan Documents and the Third Modification Documents are cumulative and not exclusive of each other or of any right or remedy provided by law or in equity. No notice to or demand upon Trust, Original Beneficiaries, or Borrower, in any instance, shall, in itself, entitle Trust, Original Beneficiaries, or Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Lender to any other or further action in any circumstance without notice or demand.

9. CONSTRUCTION. This Third Modification shall not be construed more strictly against Lender than against Trust, Original Beneficiaries, or Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Trust, Original Beneficiaries, Borrower, and Lender have contributed substantially and materially to the preparation of this Third Modification, and Trust, Original Beneficiaries, Borrower, and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the others in entering into this Third Modification. This Third Modification shall universally modify the Existing Loan Documents and shall be construed in conjunction with Existing Loan Documents. All terms used herein shall have the meanings ascribed in Existing Loan Documents unless otherwise defined herein. Except to the extent modified herein, the provision of Existing Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

10. ENTIRE AGREEMENT. Trust, Original Beneficiaries, Borrower, and Lender each acknowledge that there are no other agreements or representations, either oral or written, expressed or implied, not embodied in the Existing Loan Documents and the Third Modification Documents, and any other documents executed in connection with the Property, which, together, represent a complete integration of all prior and contemporaneous agreements and understandings of Trust, Original Beneficiaries, Borrower, and Lender.

11. TRUST EXCULPATION. This Third Modification is executed by the Trustee, not personally but solely as successor trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally hereunder, to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder, and that so far said Trustee personally is concerned, the legal holder or holders of the Note shall look solely to the Property for the payment thereof, by the enforcement of the lien created by the Mortgagee in the manners provided therein and in the Note or by action to enforce the personal liability of any guarantor of the Note.

Lender, Trust, and Borrower have executed this Third Modification on the day and year first above written.

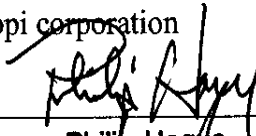
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LENDER:

Southern Farm Bureau Life Insurance Company, a  
Mississippi corporation

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

Title: \_\_\_\_\_



**Philip Hogue**

**Vice President  
Realty Investments**

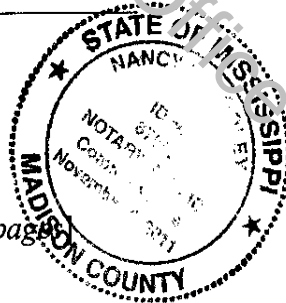
STATE OF MISSISSIPPI    )  
  ) SS  
COUNTY OF HINDS        )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Philip Hogue of SOUTH FARM BUREAU LIFE INSURANCE COMPANY, a Mississippi corporation ("Lender"), as V.P. Realty Investments thereof, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of Lender, for uses and purposes therein set forth.

GIVEN UNDER MY HAND AND NOTARIAL SEAL this 25 day of February 2011.

Nancy D. Cooley  
Notary Public

My Commission Expires: 11-04-11



[signatures continue on following page]



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TRUST:

Chicago Title Land Trust Company, not personally but as Successor Trustee to LaSalle Bank National Association, as Successor Trustee to Bank One Trust Company, N.A. (formerly known as First Illinois Bank and Trust, formerly known as LaGrange State Bank), under Trust Agreement dated October 31, 1972, and known as Trust Number 1917

By: \_\_\_\_\_  
Title: Trust Officer

BORROWER:

Chateau Royale Limited Partnership, an Illinois Limited Partnership, by Whitebirch Management Company, an Illinois Corporation, its General Partner

By: Matt Pauga  
Title: Matt Pauga, its President

JOINING FOR PURPOSES OF CERTAIN REPRESENTATIONS,  
WARRANTIES, AND COVENANTS MADE HEREIN:

ORIGINAL BENEFICIARIES:

Matt Pauga  
Matt Pauga  
Inga Pauga  
Inga Pauga

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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for said County, in the state aforesaid, DOES HEREBY CERTIFY that MARIO V. GOTANCO of CHICAGO TITLE LAND TRUST COMPANY, not personally but as successor trustee as aforesaid, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as her/his 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 22nd day of FEBRUARY, 2011.

Lidia Marinca  
Notary Public



My Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for said County, in the state aforesaid, DOES HEREBY CERTIFY that MATT PAUGA, PRESIDENT OF WHITEBIRCH MANAGEMENT COMPANY, an Illinois corporation, acting as the general partner of CHATEAU ROYALE LIMITED PARTNERSHIP, an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited partnership, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND NOTARIAL SEAL this 15<sup>th</sup> day of Feb., 2011.

Maryann C. Polson  
Notary Public



My Commission Expires: January 13, 2014

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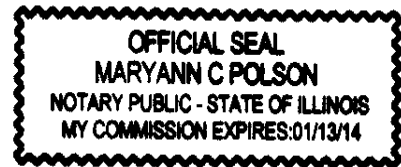
STATE OF ILLINOIS     )  
   ) SS  
 COUNTY OF COOK        )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that MATT PAUGA and INGA PAUGA , personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act.

GIVEN UNDER MY HAND AND NOTARIAL SEAL this 15<sup>th</sup> day of Feb 2011.

Maryann C. Polson  
 Notary Public

My Commission Expires: January 13, 2014



Property of Cook County Clerk's Office

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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 1, 2, 3, 4, 5, 6 AND 7 IN THE RESUBDIVISION OF THAT PART OF BLOCK 4 LYING NORTH OF COLUMBUS AVENUE IN WORTH FOREST HEIGHTS, A SUBDIVISION IN THE SOUTHEAST  $\frac{1}{4}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 13, TOWNSHIP 37 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address of Property:

7220, 7230, 7240 W. 111<sup>th</sup> Street  
Worth, Illinois 60482

and

7205, 7215, 7225 and 7235 W. 110<sup>th</sup> Place  
Worth, Illinois 60482

Permanent Identification Numbers:

23-13-412-002  
23-13-412-003  
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23-13-412-006  
23-13-412-007  
23-13-412-008