

# UNOFFICIAL COPY

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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#: 1520418007 Fee: \$54.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 07/23/2015 08:29 AM Pg: 1 of 9

## FIRST LOAN MODIFICATION AND EXTENSION AGREEMENT

This First Loan Modification and Extension Agreement ("Modification") is made as of July 21, 2015 ("Effective Date"), by and between Southern Farm Bureau Life Insurance Company, a Mississippi corporation ("Lender"), and Lexington Drive, L.L.C., an Illinois limited liability company ("Borrower"), with reference to the following facts:

A. Lender is the legal owner and holder of Promissory Note dated January 26, 2007 (the "Note"), executed and delivered by Borrower in favor of Lender in the original principal amount of \$3,950,000 (the "Loan").

B. The Note is secured by that certain Mortgage, Security Agreement and Assignment of Leases dated January 26, 2007, and recorded on January 31, 2007, in the Office of the Recorder of Deeds of Cook County, Illinois, as Document Number 0703141093 (the "Mortgage"), mortgaging the land and improvements legally described on Exhibit A attached hereto ("Land and Improvements"), and other documents of record executed by Borrower 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").

C. The Note, Security Documents, 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."

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

E. Borrower has requested that Lender increase the outstanding principal balance of the Loan to be \$3,400,000, extend the term of the Loan for five (5) years, and make other modifications to the Existing Loan Documents, all as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower and Lender agree as follows:

CCRD REVIEWER

*R*

*B* 334  
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1. AMENDMENTS TO THE EXISTING LOAN DOCUMENTS. Effective as of the Effective Date, Borrower and Lender agree to amend the Existing Loan Documents as follows:

a. The outstanding principal balance of the Loan shall be increased to be \$3,400,000 and Lender shall advance to Borrower the difference between \$3,400,000 and the outstanding principal balance of the Loan as specified in Section 3 of this Modification.

b. Commencing on the Effective 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 3.62% per annum.

c. Borrower shall pay 59 equal, consecutive payments of \$18,699.16 each, based on a 22 year amortization, 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 payment due on September 1, 2015, and continuing thereafter until maturity of the Note (whether by acceleration of the Maturity Date or otherwise).

d. The 60<sup>th</sup> and final payment shall be in the amount equal to the entire outstanding principal balance, together with all accrued and unpaid interest and any other unpaid sums under this Modification or the Existing Loan Documents, and shall be due and payable in full on August 1, 2020 (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 Modification.

e. For purposes of the Note as extended by this 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 August 2015.

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

§3.5 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 first Loan Year, this Note may be prepaid in full at the price of one hundred three percent (103%) of the outstanding 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:

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| Prepayment During<br><u>Loan Year</u> | Prepayment Amount Expressed as<br>Percentage of Outstanding Principal<br><u>Balance</u> |
|---------------------------------------|---|
| 2                                     | 102%  |
| 3 through 5                           | 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. 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 prepayment in full made during the ninety (90) day period immediately preceding the Maturity Date. In the event the provisions of this Section 3.5 conflict with applicable state law regarding prepayment, then this provision shall be modified to comply with existing state law.

g. Notwithstanding Section 4(b) of the Mortgage, Lender will exercise its rights under the Existing Loan Documents to collect escrows for taxes on the Property.

h. The debt service coverage ratio set forth in Section 8(b) of the Mortgage is hereby changed from 1.25 to be 1.20.

i. The term "Note" as used in the Existing Loan Documents shall refer to the Note as defined in and modified by this Modification, as further amended, restated, modified, extended, renewed, guaranteed or assumed from time to time.

j. The term "Loan Documents" as used herein and in the Existing Loan Documents shall refer collectively to the Existing Loan Documents and the Modification Documents (as defined below).

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

a. Borrower is a limited liability company duly organized and validly existing in good standing under the laws of the State of Illinois.

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

c. The Existing Loan Documents and, once executed and delivered to Lender, the Modification Documents, and each of the covenants, conditions and agreement

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contained therein, are in full force and effect, are the valid and legally binding obligations of Borrower, and Borrower is not aware of any 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 Borrower, nor is there any litigation existent which adversely and materially affects the Property. Notwithstanding the foregoing, Lender has acknowledged that there is currently a lawsuit pending by Trusweets, LLC, one of Borrower's tenants. Borrower does not believe that the Trusweets lawsuit will have any material impact on Borrower's financial condition or the Property, but Borrower acknowledges and agrees that this Modification does not alter Borrower's sole responsibility for the outcome of the Trusweets lawsuit. Borrower shall be responsible for any and all damages, costs, expenses and losses of any and every kind and nature whatsoever suffered by Lender, if any, relating to and/or resulting, directly or indirectly, from the Trusweets lawsuit.

e. There are no agreements, state of facts or circumstances presently existing and known to Borrower which, with or without the service of Notice, passage of time, or both, would grant to 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 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 Borrower to Lender in connection with this 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 Modification Documents.

h. To the best knowledge of Borrower, no person, firm or corporation has or claims any interest in and to the Property which does not appear on the Policy of Title Insurance, Policy Number 1401 008359855 dated January 31, 2007, issued by Chicago Title Insurance Company, as updated by that certain Pro Forma Date Down Endorsement dated June 10, 2015, 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 Modification Documents, and entitles Lender to exercise its right to accelerate the payment of the Loan and exercise any and all other rights and remedies available to Lender pursuant to the provisions hereof and Existing Loan Documents and 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

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for the July 2015 installment, the balance of the Loan is \$3,111,589.45. Borrower agrees that, as of the Effective Date, Borrower is not aware of any offsets, counterclaims or defenses to payment or performance of the obligations set forth in the Existing Loan Documents as modified by the Modification Documents, and, in consideration hereof, Borrower expressly waives any and all 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 Modification or any other 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 Modification Documents, and any default under the 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, Borrower and its members 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 Borrower or its members or managers may now have or claim to have against Lender as of the Effective Date of which Borrower is aware or should be aware 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 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 Borrower or its members or managers and Lender to and including the Effective Date. This release and covenant by Borrower and its members and managers and Lender is contractual and not a mere recital.

7. REQUIRED NOTICES. Wherever notices are required or advisable to be given pursuant to the Loan Documents, the same shall be given in writing in the manner set forth in Section 6.4 of the Note.

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 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 Borrower, in any instance, shall, in itself, entitle Borrower to any other or fur-

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ther 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 Modification shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been initially prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Modification, and Borrower and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration give by the others in entering into this Modification. This 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. 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 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 Borrower and Lender.

*[signature pages follow]*

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

LENDER:

Southern Farm Bureau Life Insurance Company, a Mississippi corporation

By: *Perry McGaugh*  
Title: **PERRY McGAUGH**  
**VICE PRESIDENT, LEGAL**

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 *Perry McGaugh* of SOUTHERN FARM BUREAU LIFE INSURANCE COMPANY, a Mississippi corporation ("Lender"), as *v.p. Legal* 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 *11* day of *July* 2015.

*Nancy O. Cooley*  
Notary Public

My Commission Expires: *11-04-15*



[signatures continue on following page]

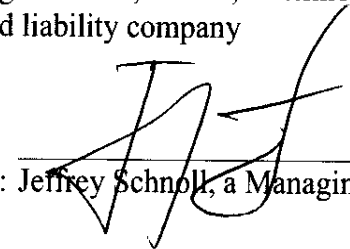
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BORROWER:

Lexington Drive, L.L.C., an Illinois  
limited liability company

By:

Name: Jeffrey Schnoll, a Managing Member

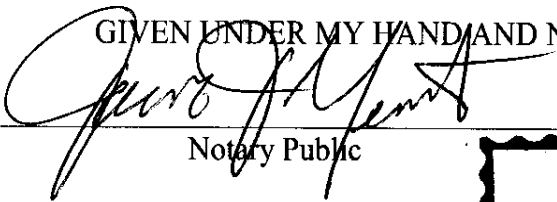


STATE OF ILLINOIS )

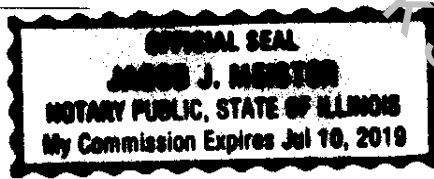
COUNTY OF Cook ) SS

The undersigned, a Notary Public in and for said County, in the state aforesaid, DOES HEREBY CERTIFY that Jeffrey Schnoll, a Managing Member of Lexington Drive, L.L.C., and 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 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 21 day of July 2015.



Notary Public





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## EXHIBIT A

### LEGAL DESCRIPTION

The South 400 feet of Block 3 (except the West 495 feet thereof and except the East 15.25 feet thereof) in Herzog's First Industrial Subdivision of part of the East ½ of Section 10, Township 42 North, Range 11, East of the Third Principal Meridian, and part of the West ½ of Section 11, Township 42 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois on December 13, 1955, as Document Number LR1639763 and Certificate of Correction thereof registered December 14, 1956 as Document Number LR1713481, in Cook County, Illinois.

Common address: 600-668 S. Wheeling Road  
Wheeling, Illinois 60090

PIN: 03-10-400-007-0000