

UNOFFICIAL COPY



THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Wendy M. Reutebuch
Much Shelist
191 N. Wacker Drive, Suite 1800
Chicago, IL 60606
(312) 521-2673

Doc#: 1111110090 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 04/21/2011 04:31 PM Pg: 1 of 10

Permanent Tax Index Numbers:

See Attached Exhibits A & B

Property Commonly Known As:

See Attached Exhibits A & B

This space reserved for Recorder's use only

MODIFICATION OF MORTGAGE AND LOAN DOCUMENTS

THIS MODIFICATION OF MORTGAGES AND LOAN DOCUMENTS (this "Agreement") is made effective as of the 31st day of March, 2011, by and among STEPHENS & HAYES WILMINGTON, LLC, an Illinois limited liability company ("Borrower"), LOUIS G. STEPHENS ("Stephens"), JOHN P. HAYES ("Hayes") and FIRST MIDWEST BANK, its successors and/or assigns ("Bank").

RECITALS:

A. Bank previously made a loan to Borrower (the "Loan") in the principal amount of Two Million Nine Hundred Ninety Thousand and 00/100 Dollars (\$2,990,000.00). Loan is evidenced by, among other things, that certain Promissory Note in the principal amount of Two Million Nine Hundred Ninety Thousand and 00/100 Dollars (\$2,990,000.00) dated as of September 29, 2008, made by Borrower in favor of Bank (as amended, restated, consolidated or replaced from time to time, the "Note").

B. The Note is secured by, among other things, (i) that certain Mortgage dated as of July 1, 2003, from Borrower to the Bank, recorded with the Will County, Illinois Recorder (the "Recorder") on July 3, 2003 as Document No. R2003156643, as modified by that certain Modification of Mortgage dated as of July 12, 2004, from Borrower to the Bank, recorded with the Recorder on August 18, 2004 as Document No. R2004152976, and as further modified by that certain Modification of Mortgage dated as of July 1, 2006, from Borrower to the Bank, recorded with the Recorder on September 9, 2006 as Document No. R2006149950 (collectively, and as amended and/or restated from time to time, the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "Property"), (ii) that certain Assignment of Rents dated as of July 1, 2003, from Borrower to the Bank, recorded with the Recorder on July 3, 2003 as Document No. R2004152977 and that

UNOFFICIAL COPY

certain Assignment of Rents dated as of July 12, 2004, from Borrower to the Bank, recorded with the Recorder of July 12, 2004 (collectively, and as amended from time to time, the "Assignment of Rents"), which Assignment of Rents encumbers the Property.

C. The Loan is further secured by a Commercial Guaranty dated as of July 1, 2003 from each of (i) Stephens and (ii) Hayes, in favor of the Bank (each, a "Guaranty" and collectively, the "Guaranty"). Stephens and Hayes are each, a "Guarantor", and are sometimes referred to herein collectively as, the "Guarantors".

D. The Note, the Mortgage, the Assignment of Rents, the Guaranty and the Forbearance (as defined herein) are referred to herein collectively as, the "Loan Documents".

E. Guarantors are principals of an affiliate of Borrower, Stephens and Hayes Construction, Inc, an Illinois corporation ("S&H Construction"), and as such, have financial interests in both entities. The Bank has also extended financing to S&H Construction (the "S&H Construction Loan") in the original principal amount of One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00). The S&H Construction Loan is evidenced by, among other things, that certain Promissory Note in the original principal amount of One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00) dated as of January 1, 2007, made by S&H Construction in favor of Bank (as amended, restated, consolidated or replaced from time to time, the "S&H Construction Note"). For purposes of this Agreement, the defined term "S&H Construction Loan" shall include all amendments, modifications and refinancings of the existing S&H Construction Loan between S&H Construction and the Bank, which includes the advance of any additional funds from the Bank to S&H Construction. As of April 4, 2011, the principal outstanding balance of the S&H Construction Loan was \$1,256,402.65.

F. The S&H Construction Note is secured by, among other things, (i) that certain Mortgage dated as of January 1, 2007, and executed by First Midwest Bank, as Trustee under Trust Agreement dated April 8, 1977, and known as Trust No. 77-865, recorded with the Cook County Recorder of Deeds as Document No. 0707447207 (as amended, restated or replaced from time to time, the "S&H Construction Mortgage"), which S&H Construction Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A thereto and Exhibit B hereto (the "S&H Construction Property"), (ii) that certain Assignment of Rents and Leases dated as of January 1, 2007, and executed by First Midwest Bank, as Trustee under Trust Agreement dated April 8, 1977, and known as Trust No. 77-865, recorded with the Cook County Recorder as Document No. 0707447206 (as amended, restated or replaced from time to time, the "S&H Construction Assignment of Rents"), which S&H Construction Assignment of Rents encumbers the S&H Construction Property.

G. The S&H Construction Loan is further secured by a Commercial Guaranty dated as of January 1, 2007 from each of (i) Stephens and (ii) Hayes, in favor of the Bank (as amended, restated or replaced from time to time, collectively, the "S&H Construction Guaranty"). Stephens and Hayes are each, an "S&H Construction Guarantor", and are sometimes referred to herein collectively as, the "S&H Construction Guarantors".

UNOFFICIAL COPY

H. The S&H Construction Note, the S&H Construction Mortgage, the S&H Construction Assignment of Rents and the S&H Construction Guaranty are referred to herein collectively as, the "S&H Construction Loan Documents". For purposes of this Agreement, the defined term "S&H Construction Loan Documents" shall include all amendments, modifications and refinancings of the existing S&H Construction Loan Documents between S&H Construction and the Bank.

I. Concurrently herewith, the Bank, Borrower and Guarantors are executing a Forbearance Agreement of even date herewith (the "Forbearance"). In consideration for the Bank's agreement to extend the Forbearance to Borrower and Guarantors, Borrower, Guarantors, S&H Construction and the S&H Construction Guarantors have agreed to cross-collateralize and cross-default the Loan with the S&H Construction Loan, upon the terms set forth herein and as set forth in the S&H Construction Loan Documents.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are incorporated into and made a part of this Agreement), (ii) the agreements by and between Bank, Borrower and Guarantors, as provided in this Agreement, and the agreements by and between Bank, Borrower and Guarantors contained in the Forbearance, (iii) the covenants and agreements contained in this Agreement, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The Recitals set forth above are incorporated into and made part of this Agreement.
2. **Modification of Mortgage.** The Mortgage shall be modified as follows:
 - (a) An "Event of Default" as defined in the Mortgage shall include any default, event of default, or "Event of Default" under the S&H Construction Loan Documents.
 - (b) The "MAXIMUM LIEN" paragraph of the Mortgage shall be amended such that "At no time shall the principal amount of Indebtedness secured by the Mortgage, not including sums advanced to protect the security of the Mortgage, exceed \$10,000,000.00."
 - (c) The second full paragraph on Page 2 of the Mortgage is hereby amended to add: "THIS MORTGAGE IS ALSO GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE S&H CONSTRUCTION NOTE, THE S&H CONSTRUCTION MORTGAGE AND THE OTHER S&H LOAN DOCUMENTS."
3. **Modification of Note.** The Note shall be modified as follows:
 - (a) An "Event of Default" as set forth in the Note shall include any default, event of default, or "Event of Default" under the S&H Construction Loan Documents.

UNOFFICIAL COPY

(b) The collateral securing the Note shall be amended to include any and all collateral securing the S&H Construction Note, including, but not limited to, the real property and improvements thereon located in Tinley Park, Illinois, as described in the S&H Construction Mortgage.

4. **Reaffirmation of Guaranty.** The Guarantors hereby ratify and affirm the Guaranty and agree that the Guaranty is in full force and effect, as amended hereby, following the execution and delivery of this Agreement. The representations and warranties of the Guarantors in the Guaranty are, as of this date, true and correct and the Guarantors do not know of any default thereunder. The Guaranty, as amended hereby, continues to be the valid and binding obligations of the Guarantors, enforceable in accordance with its terms and the Guarantors have no claims or defenses to the enforcement of the rights and remedies of the Bank thereunder, except as provided in the Guaranty.

5. **Expenses.** The Bank acknowledges and agrees that the Bank shall be responsible for customary loan documentation and closing fees including but not limited to: appraisal, inspection, environmental analysis, legal and title charges in connection with this Agreement.

6. **Authority.** Borrower and Guarantors hereby represent and warrant to the Bank that: (a) Borrower and Guarantors duly authorized, executed and delivered this Agreement and the Loan Documents, (b) this Agreement and the Loan Documents constitute the legal, valid and binding obligations of Borrower and Guarantors and are enforceable in accordance with their terms, and (c) the organizational documents of Borrower previously provided to the Bank have not been materially modified, replaced or amended.

7. **Miscellaneous.**

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

(b) This Agreement may not be construed more strictly against the Bank than against Borrower or Guarantors merely by virtue of the fact that the same has been prepared by counsel for the Bank, it being recognized that Borrower, Guarantors and the Bank have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantors and the Bank each acknowledge and waive any claims 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 parties state that they have read and understand this Agreement, that they intend to be legally bound by it.

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

UNOFFICIAL COPY

(d) Borrower, Guarantors and the Bank each 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, the Forbearance and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantors and the Bank; and that all such prior understandings, agreements and representations are modified as set forth in this Agreement. Except as expressly modified herein or pursuant to the Forbearance, the terms of the Loan Documents remain unmodified and in full force and effect.

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

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

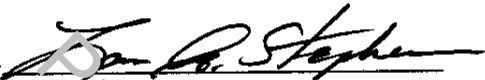
[Remainder of page intentionally blank-signature page follows]

UNOFFICIAL COPY

This Agreement was executed as of the date and year set forth above.

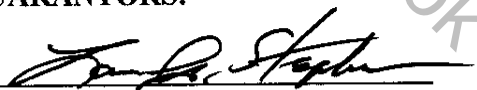
BORROWER:

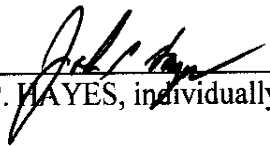
STEPHENS & HAYES WILMINGTON,
LLC, an Illinois limited liability company

By: 
Name: Louis G. Stephens
Its: Manager

By: 
Name: John P. Hayes
Its: Manager

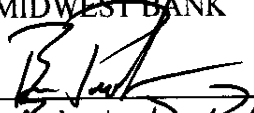
GUARANTORS:


LOUIS G. STEPHENS, individually


JOHN P. HAYES, individually

BANK:

FIRST MIDWEST BANK

By: 
Name: Benjamin D. Polson
Title: Commercial Banking Officer

[Notary pages attached, following]

UNOFFICIAL COPY

STATE OF Illinois)
COUNTY OF Cook)^{ss}

I K Daley, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that LOUIS G. STEPHENS, individually, as a Guarantor, and in his capacity as Manager of STEPHENS & HAYES WILMINGTON, LLC, an Illinois limited liability company, 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 said instrument as his free and voluntary act and as the free and voluntary act of the corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of April, 2011.



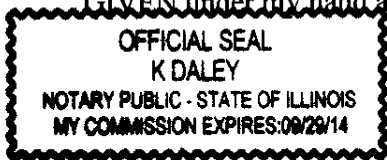
K Daley
Notary Public

My Commission Expires: 9/29/14

STATE OF Illinois)
COUNTY OF Cook)^{ss}

I K Daley, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOHN P. HAYES, individually, as a Guarantor, and in his capacity as Manager of STEPHENS & HAYES WILMINGTON, LLC, an Illinois limited liability company, 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 said instrument as his free and voluntary act and as the free and voluntary act of the corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of April, 2011.



K Daley
Notary Public

My Commission Expires: 9/29/14

[ADDITIONAL NOTARY PAGE FOLLOWING]

UNOFFICIAL COPY

STATE OF Illinois)
) ss
COUNTY OF COOK)

I K. Daley a Notary Public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that Ben Poole personally known to
me to be the CEO of FIRST MIDWEST BANK, appeared before me this
day in person and acknowledged that he signed and delivered said instrument as his own free and
voluntary act on behalf of FIRST MIDWEST BANK, for the uses and purposes therein set forth.



Notarial Seal this 5th day of April, 2011.

K. Daley
Notary Public

My Commission Expires: 9/29/14

of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL A:

THAT PART OF THE FOLLOWING DESCRIBED LAND TAKEN AS A TRACT LYING WEST OF A LINE DRAWN FROM A POINT 1566.60 FEET EAST (AS MEASURED ALONG THE NORTH LINE OF THE NORTHWEST 1/4) OF THE WEST LINE OF THE NORTHWEST 1/4, TO A POINT 1563.08 FEET EAST, (AS MEASURED ALONG THE SOUTH LINE OF THE NORTHWEST 1/4) OF THE WEST LINE OF THE NORTHWEST 1/4; SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS:

PARCEL 1:

THE NORTHWEST 1/4 (EXCEPT THE WEST 417 FEET THEREOF) OF SECTION 30 IN TOWNSHIP 33 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN;

PARCEL 2:

THE WEST 2 ACRES OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 30 IN TOWNSHIP 33 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN;

PARCEL 3:

THE WEST 2 ACRES OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 33 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN;

ALL IN WILL COUNTY, ILLINOIS.

PARCEL B:

THAT PART OF THE FOLLOWING DESCRIBED LAND TAKEN AS A TRACT LYING EAST OF A LINE DRAWN FROM A POINT 1566.60 FEET EAST (AS MEASURED ALONG THE NORTH LINE OF THE NORTHWEST 1/4) OF THE WEST LINE OF THE NORTHWEST 1/4, TO A POINT 1563.08 FEET EAST, (AS MEASURED ALONG THE SOUTH LINE OF THE NORTHWEST 1/4) OF THE WEST LINE OF THE NORTHWEST 1/4; SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS:

PARCEL 1:

THE NORTHWEST 1/4 (EXCEPT THE WEST 417 FEET THEREOF) OF SECTION 30 IN TOWNSHIP 33 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN;

PARCEL 2:

THE WEST 2 ACRES OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 30 IN TOWNSHIP 33 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN;

PARCEL 3:

THE WEST 2 ACRES OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 33 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN;

ALL IN WILL COUNTY, ILLINOIS.

PIN: 18-30-100-006-0000

Property Commonly Known As: 139.3 Acre Parcel on the South Side of Wilmington/Peotone Road East of Illinois Route 53, Wilmington, IL

UNOFFICIAL COPY

EXHIBIT B

LEGAL DESCRIPTION OF THE S&H CONSTRUCTION PROPERTY

LOT 1 IN CENTURY PLAZA RESUBDIVISION OF LOTS 1 AND 2 IN CENTURY PLAZA SUBDIVISION BEING A RESUBDIVISION OF LOT 2 IN PHEASANT CHASE WEST COMMERCIAL SUBDIVISION OF LOT 68 IN PHEASANT CHASE WEST, BEING A SUBDIVISION OF PART OF THE NORTHWEST ¼ OF SECTION 34, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 12, 2005 AS DOCUMENT 0513234078, IN COOK COUNTY, ILLINOIS.

PIN: 27-34-113-014

Property Commonly Known As: 9410-42 West 179th Avenue, Tinley Park, Illinois 60487