



0310518124

Eugene "Gene" Moore Fee: \$54.50
Cook County Recorder of Deeds
Date: 04/15/2003 12:28 PM Pg: 1 of 16

1 all
01-01847
This instrument was prepared by, and after recording, return to:

Patrick J. Smith, Esq.
Stahl Cowen Crowley LLC
55 West Monroe Street
Suite 500
Chicago, Illinois 60603

PREMIER TITLE

CHS810-10

AMENDMENT TO
MORTGAGE, ASSIGNMENT OF RENTS, CONSTRUCTION LOAN AGREEMENT
AND OTHER LOAN DOCUMENTS

16^m

THIS AMENDMENT TO MORTGAGE, ASSIGNMENT OF RENTS, CONSTRUCTION LOAN AGREEMENT AND OTHER LOAN DOCUMENTS ("Amendment") is made and entered into as of the 30th day of November, 2002, by and among Oak Brook Bank, not personally but as Trustee under Trust Agreement dated August 1, 2001 and known as Trust No. 3209 ("Borrower"), The Edward F. Napleton Revocable Self Declaration of Trust Dated October 1, 1992 (the "Edward Napleton Trust"), The Katherine R. Napleton Revocable Self Declaration of Trust dated October 1, 1992 (the "Katherine Napleton Trust"), Napleton Dodge, Inc., an Illinois corporation ("Napleton Dodge"), Edward F. Napleton ("Napleton") North Star Realty Services III, LLC, an Illinois limited liability company ("North Star") and Oak Brook Bank ("Lender").

RECITALS

A. Borrower is indebted to Lender pursuant to the terms of a construction loan (the "Loan"), which indebtedness is evidenced by that certain Promissory Note ("Note") dated as of October 31, 2001, executed by Borrower in the original principal amount of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,200,000.00).

B. The indebtedness evidenced by the Note is secured by, among other documents, the following:

- (i) Mortgage dated October 31, 2001, executed by Borrower in favor of Lender and recorded on November 20, 2001, in the Recorder's Office of Cook County, Illinois as Document No. 0011093698 ("Construction Mortgage") as amended by that certain Mortgage Amendment

UNOFFICIAL COPY

recorded October 1, 2002 in the Recorder's Office of Cook County, Illinois as Document No. 0021072875 increasing the loan amount to \$4,000,000.00.

- (ii) Commercial Guaranty dated October 31, 2001 ("Guaranty") from Napleton, Napleton Dodge, and Edward Napleton Trust (each a "Guarantor" and collectively the "Guarantors") to Lender;
- (iii) Assignment of Rents and Leases dated October 31, 2001, executed by Borrower in favor of Lender and recorded November 20, 2001, in the Recorder's office of Cook County, Illinois as Document No. No. 0011093699("Assignment of Rents");
- (v) Commercial Security Agreement dated June 28, 2001, executed by Borrower, Edward Napleton Trust and Katherine Napleton Trust in favor of Lender ("Security Agreement");
- (vi) An Environmental Indemnity Agreement dated October 31, 2001, executed by Napleton Dodge, Edward Napleton Trust and Katherine Napleton Trust in favor of Lender ("Environmental Indemnity"); and
- (ix) Construction Loan Agreement dated October 31, 2001 and executed by Borrower, Edward Napleton Trust, Katherine Napleton Trust, Napleton, Napleton Dodge and Lender ("Loan Agreement").

The Note, Mortgage, Assignment of Rents, Security Agreement, any UCC-1 Financing Statements, Environmental Indemnity, Loan Agreement and Guaranty, together with all other documents evidencing or securing the Loan including this Amendment and security documents entered into simultaneous with or attendant to this Agreement, are sometimes hereinafter collectively referred to as the "Loan Documents."

C. The Mortgage constitutes a valid first lien on the real property located at 5760, 5800 and 5830 W. 95th Street, Oak Lawn, Illinois (the "Property"), which is legally described on Exhibit A attached hereto and made a part hereof.

D. Since the inception of the Loan, the Borrower has agreed with the City of Oak Lawn to the voluntary vacation of a public way bisecting a portion of the Property which Borrower shall take fee simple title to, and the related dedication of a portion of the Property for public roadway purposes, currently encumbered by the Mortgage and Assignment of Rents.

F. Borrower has requested that Lender consent to the public dedication and the vacation, and to the simultaneous revision of the Loan Documents to include the

UNOFFICIAL COPY

vacated parcel within the property affected and encumbered thereunder, and to release Lender's lienhold interest in that portion to be dedicated.

G. Borrower has further requested that Lender consent to the assignment of beneficial interest of the Borrower trust from the Edward Napleton Trust and Katherine Napleton Trust to North Star;

H. Lender has agreed to the assignment of beneficial interest provided North Star, as successor beneficiary: (i) execute a collateral assignment of beneficial interest in favor of lender securing the Indebtedness, and (ii) execute this Agreement for the purposes set forth hereunder;

I. Lender agrees to modify the Loan Documents as aforesaid provided that: (a) that the Loan Documents, and any and all modifications thereof, and the liens of any of the foregoing, as amended hereby, shall have the same validity, priority and effect against all of the real and personal property to which they apply following this modification that said liens had immediately prior to the execution and delivery of this Amendment; (b) that no such amendment or modification shall constitute a waiver by Lender of any default by Borrower under any of the Loan Documents; and (c) the Borrower complies with and fulfills all of its obligations and requirements set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Lender, and Guarantors hereby mutually agree as follows:

1. Incorporation by Reference. The foregoing recitals are hereby incorporated herein by reference as if set forth in full in the body of this Amendment. Terms used, but not defined herein have the meaning ascribed to them in the Loan Documents.

2. Modification of the Loan Documents.

(A.) The Mortgage, Assignment of Rents, Guaranty, Security Agreement, Indemnity and Construction Loan Agreement are hereby modified by striking, in each case, the legal description of the Property attached thereto as an exhibit and replacing the same with the legal description attached hereto as Exhibit A.

(B) All references under the Loan Documents to the beneficial owner of the Borrower trust, or to 'Beneficiary' shall as of the date of this agreement be deemed to include in such reference North Star. North Star agrees that, in accepting the assignment of the beneficial interest of the Borrower trust, it shall comply with each term of the Loan Documents fully and as required of the initial beneficiaries.

UNOFFICIAL COPY

3. Reaffirmation of Note and Guaranty. Borrower hereby acknowledges and reaffirms its obligations under the Loan Documents and the indebtedness evidenced thereby, and acknowledges and agrees that such indebtedness is owing to the Lender and is enforceable against the Borrower in accordance with the terms of the Note and the other Loan Documents as modified by this Amendment, subject to no defenses, counterclaims, deductions or set-offs whatsoever. Nothing contained in this Amendment, or the transactions contemplated hereby, shall be deemed or construed to be a consent to or a waiver of any breach or default in the performance by Borrower or Guarantors of their respective obligations to Lender, whether evidenced by the Note, the Guaranties or the other Loan Documents, or otherwise, nor shall Lender be impaired or limited in its ability to fully and completely enforce any and all of the rights and remedies presently available to Lender under the Loan Documents for a breach of Borrower's obligations as required by the Note or the other Loan Documents as may exist at the time of the making of this Amendment.

4. Reaffirmation of Representations and Warranties. Borrower and Guarantors hereby acknowledge and reaffirm that all the representations and warranties of Borrower and the Guarantors as stated in the Loan Documents are true and correct as of the date hereof as to Borrower and the Guarantors, respectively.

5. Title Insurance. As a condition precedent to Lender's agreement to modify the Note and the other Loan Documents in accordance with the terms hereof, Borrower shall: (i) cause this Amendment to be promptly recorded with the Recorder's Office of Cook County, Illinois and (ii) provide Lender with an endorsement to the Mortgagee's Policy of Title Insurance issued by Premier Title Insurance Company, as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender, and containing updated endorsements thereto as required by Lender.

6. Expenses. Borrower shall be solely responsible for any and all costs, expenses, fees, charges, taxes, of whatever kind and nature, incurred by Lender in connection with the modification of the Loan Documents provided for in this Amendment, including, without limitation, attorneys' fees and costs, mortgage taxes, recording fees, title insurance charges, appraisal fees, credit reports, surveys, environmental consultant fees, intangible taxes and documentary stamp taxes.

7. Intent of Parties. The parties expressly agree that the liens evidenced by the Loan Documents shall be in no way be deemed to have been subordinated, released, modified, terminated, or otherwise affected by this Amendment, it being understood by the parties hereto that the liens of said documents shall continue in full force and effect, and are to have the same validity, priority and effect that they had immediately prior to the execution of this Amendment and the documents and instruments executed and delivered pursuant to this Amendment, and shall survive and not be merged into the execution and delivery of this

UNOFFICIAL COPY

Amendment or any of the documents and instruments to be executed pursuant to this Amendment, without interruption; provided, however, that the respective liens shall be documented by, and all rights and privileges and obligations of the parties hereto, and the respective successors and assigns, shall be governed by the (i) Mortgage, as modified by this Amendment; (ii) Loan Documents, as modified by this Amendment; and (iii) all other documents and agreements executed in connection with the transactions described in this Amendment.

7. Release of Claims. Borrower acknowledges and agrees that Lender has fulfilled any and all of Lender's obligations under the Loan Documents to date. Borrower hereby releases and holds Lender harmless from and against any and all claims, actions, lawsuits, damages, costs and expenses whatsoever which Borrower may have had or currently has against Lender in connection with or related to the Loan Documents or the Loan evidenced thereby.

8. Guarantors Not Insolvent. The Guarantors hereby represent and warrant to Lender that the Guarantors are currently solvent and generally paying their respective debts as they become due and payable. Guarantors further represent and warrant that they own property which, at fair valuation, is greater than the sum of their respective debts.

9. No Third Party Beneficiaries. This Amendment is made and entered into for the sole protection and benefit of the Lender, Borrower and Guarantors, and no other person, entity or entities shall have the right of action hereon, right to claim any right or benefit from the terms contained herein, or be deemed a third party beneficiary hereunder.

10. Conflicts. The provisions of this Amendment shall govern and control in the event of any conflict between this Amendment and the provisions of any of the Loan Documents.

11. Entire Agreement. Except as expressly set forth herein, this Amendment and the Loan Documents constitute the entire agreement of the parties hereto with respect to the matters addressed herein, and supersede all prior or contemporaneous contracts, representations, statements and warranties, whether oral or written, with respect to such matters.

12. Successors and Assigns; Assignability. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors, legal representatives and assigns; provided, however, that Borrower may not further assign its rights under the Loan Documents or this Amendment.

13. Effect of Amendment. Except as specifically amended or modified by the terms of this Amendment, all terms and provisions of each of the Loan Documents shall remain in full force and effect. Lender's agreement to modify the Loan and the Loan Documents as set forth herein shall not be interpreted or construed as obligating Lender to make

UNOFFICIAL COPY

any future modifications to, or extensions of the Loan. Any capitalized term not defined herein shall have such meaning as ascribed thereto in the Loan Documents.

14. Governing Law. This Agreement shall be governed by and be construed in accordance with the internal laws of the State of Illinois.

15. Captions. The title of this Amendment and the headings of the various paragraphs of this Amendment have been inserted only for the purposes of convenience and are not part of this Amendment and should not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Amendment.

16. Counterpart. This Amendment may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same instrument.

[SIGNATURE PAGE TO FOLLOW ON NEXT PAGE]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day first above written.

BORROWER:

This instrument is executed by OAK BROOK BANK, not personally but solely as Trustee, as aforesaid. All the covenants and conditions to be performed hereunder by OAK BROOK BANK are undertaken by it solely as Trustee, as aforesaid and not individually, and no personal liability shall be asserted or be enforceable against OAK BROOK BANK by reason of any of the covenants, statements, representations or warranties contained in this instrument.

OAK BROOK BANK
Not individually, but as Trustee under Trust Agreement dated August 1, 2001 and known As Trust Number 3209

By: [Signature]
Its: VP + TO
Title: VP + TO

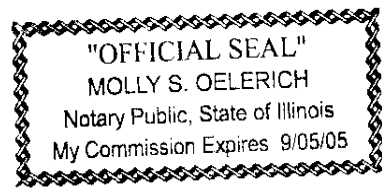
STATE OF ILLINOIS)
COUNTY OF Illinois) SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that A. Rodek, the VP + TO of Oak Brook Bank, not individually but as Trustee under Trust Agreement dated August 1, 2001 and known as Trust Number 3209, who is personally known to me to be the same persons whose name is subscribed to the foregoing instrument, as such Trustee, appeared before me this day in person, and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of the Trust, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 23rd day of December, 2002.

[Signature]
Notary Public

My commission expires: 9/5/05



UNOFFICIAL COPY

NAPELTON DODGE, INC.
an Illinois corporation

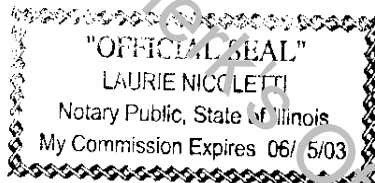
By: [Signature]
Its: Vice President

STATE OF ILLINOIS)
) SS.
COUNTY OF DuPage)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Ed Napleton, the Vice President of Napleton Dodge, Inc., an Illinois corporation, who is 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/she signed, sealed and delivered the said instrument as his/her 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 official seal this 16 day of Dec, 2002.

[Signature]
Notary Public



My commission expires: 6-15-03

UNOFFICIAL COPY

[Signature] Katherine R. Napleton
 Katherine R. Napleton, not individually but as Trustee
 Under The Katherine R. Napleton Revocable Self
 Declaration of Trust dated October 1, 1992

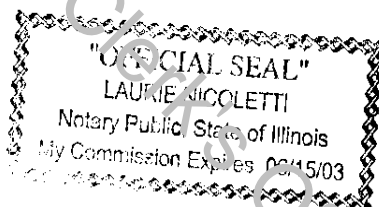
STATE OF ILLINOIS)
) SS.
 COUNTY OF DuPage)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Katherine R. Napleton, not individually but as Trustee under The Katherine R. Napleton Revocable Self Declaration of Trust dated October 1, 1992, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such Trustee, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, and as the free and voluntary act of the Trust, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 12 day of Dec, 2002.

[Signature]
 Notary Public

My commission expires: 6-15-03



UNOFFICIAL COPY

LENDER:

OAK BROOK BANK

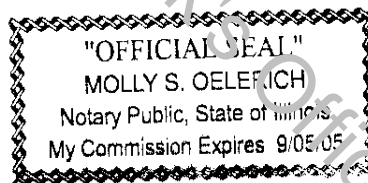
By: Jennifer M Miles
Name: Jennifer Miles
Title: AVP

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jennifer Miles, the AVP of **Oak Brook Bank**, who is personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as such AVP, appeared before me this day in person, and acknowledged that he/she signed, sealed and delivered the said instrument as his/her 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 official seal this 28th day of December, 2002.

Molly S Oelerich
Notary Public



My commission expires: 9/5/05

UNOFFICIAL COPY



EXHIBIT A
LEGAL DESCRIPTION

F:\Clients\OAK BROOK BANK - JJS\23641 - OAK BROOK - NAPLETON\30001-001 - NAPLETON DODGE CONSTRUCTION
LOAN\Amendment to Loan Documents v2.doc

Property of Cook County Clerk's Office

UNOFFICIAL COPY**SCHEDULE C****PROPERTY DESCRIPTION**

The land referred to in this policy is described as follows:

PARCEL 1:

LOTS 4 THROUGH 8 AND THE EAST 23 FEET OF LOT 9 IN 95TH STREET ADDITION TO LYNWOOD, BEING A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

THE EAST 23 FEET OF THAT PART OF LOTS 12, 13 AND 14 IN 95TH STREET ADDITION TO LYNWOOD AFORESAID, LYING SOUTH OF A LINE PARALLEL TO AND 350 FEET NORTH OF THE SOUTH LINE OF SECTION 5 AFORESAID AND WEST OF THE EAST LINE OF LOT 9 IN 95TH STREET ADDITION TO LYNWOOD AFORESAID EXTENDED NORTH TO A LINE 350 FEET NORTH OF THE SOUTH LINE OF SECTION 5 AFORESAID, IN COOK COUNTY, ILLINOIS.

ALSO

THAT PART OF LOTS 12, 13 AND 14 IN 95TH STREET ADDITION TO LYNWOOD, AFORESAID LYING SOUTH OF A LINE PARALLEL TO AND 350 FEET NORTH OF THE SOUTH LINE OF SECTION 5 AFORESAID AND EAST OF THE EAST LINE OF LOT 9 IN 95TH STREET ADDITION TO LYNWOOD AFORESAID EXTENDED NORTH TO A LINE 350 FEET NORTH OF THE SOUTH LINE OF SECTION 5 AFORESAID, IN COOK COUNTY, ILLINOIS.

ALSO

LOT 9 (EXCEPT THE EAST 23 FEET THEREOF) AND LOT 10 IN 95TH STREET ADDITION TO LYNWOOD, A SUBDIVISION IN THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

THAT PART OF LOTS 12, 13 AND 14 IN 95TH ST ADDITION TO LYNWOOD AFORESAID, LYING SOUTH OF A LINE PARALLEL TO AND 350 FEET NORTH OF THE SOUTH LINE OF SECTION 5 AND LYING WEST OF A LINE 23 FEET WEST OF THE EAST LINE OF LOT 9 IN 95TH STREET ADDITION TO LYNWOOD AFORESAID EXTENDED TO A LINE 350 FEET NORTH OF THE SOUTH LINE OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO

THE SOUTHEASTERLY 1/2 OF VACATED JAMES PLACE LYING NORTHWESTERLY OF AND ADJOINING LOTS 12 AND 13 IN 95TH STREET ADDITION TO LYNWOOD AFORESAID AND LYING SOUTH OF A LINE PARALLEL TO AND 350 FEET NORTH OF THE SOUTH LINE OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 11 AND THE EASTERLY 1/2 OF VACATED JAMES PLACE LYING WEST OF AND ADJOINING SAID LOT 11 IN 95TH STREET ADDITION TO LYNWOOD, BEING A SUBDIVISION IN THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO;

THE WESTERLY HALF OF VACATED JAMES PLACE LYING EASTERLY OF AND ADJOINING LOT 2 IN THE

UNOFFICIAL COPY

SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 394, 395, 396 AND 397 IN ELMORE'S PARKSIDE TERRACE, A SUBDIVISION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office