


2 of 4

<p>RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:</p> <p>Stahl Cowen Crowley LLC 55 West Monroe Street Suite 500 Chicago, Illinois 60603 Attn: Jeffrey J. Stahl, Esq.</p>	 <p>Doc#: 0415349037 Eugene "Gene" Moore Fee: \$44.00 Cook County Recorder of Deeds Date: 06/01/2004 09:50 AM Pg: 1 of 11</p>
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PREMIER TITLE

THIRD LOAN MODIFICATION AGREEMENT

THIS THIRD LOAN MODIFICATION AGREEMENT ("Agreement") is made and entered into as of the 17th day of April, 2004, by and between **Napleton Investment Partnership, LP**, an ~~Illinois~~ **limited partnership**, having an address at 17W240 22nd Street, Suite 312, Oakbrook Terrace, Illinois 60181 ("New Borrower") **Edward F. Napleton**, The **Edward F. Napleton Revocable Self-Declaration of Trust**, dated October 1, 1992 and **Napleton Dodge, Inc.**, an Illinois corporation (each individually referred to as the "Guarantor" and collectively as the "Guarantors") and **Oak Brook Bank** ("Lender"), having an address at 1400 West Sixteenth Street, Oak Brook, Illinois 60523.
* ~~Delaware~~

RECITALS

A. On October 31, 2001 Lender made a loan to **OAK BROOK BANK**, Trustee under Trust Agreement dated August 1, 2001 and known as Trust Number 3209, whose mailing address is 1400 W. Sixteenth Street, Oak Brook, Illinois 60523 ("Trust") and its beneficiaries, **The Edward F. Napleton Revocable Self Declaration of Trust dated October 1, 1992**, and **the Katherine R. Napleton Revocable Self Declaration of Trust dated October 1, 1992** (in the aggregate, the "Beneficiaries") (Trust and Beneficiary being referred to in the aggregate as "Original Borrower"), whose address is 160 Forest Trail, Oak Brook, Illinois, in the original principal amount of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00) ("Loan"), which is evidenced by that certain Construction Promissory Note ("Note") dated as of October 31, 2001 (the "Disbursement Date"), executed by Original Borrower in the original principal amount of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00) as modified by that certain Amendment to Mortgage, Assignment of Rents, Construction Loan Agreement and Other Documents dated November 30, 2002 by Mortgagor, Beneficiary, Borrower and others (the "Amending Parties") and Lender and recorded April 15, 2003 as Document No. 0310518124 ("First Amendment") and that certain Amendment to Construction Promissory Note, Construction Mortgage, Construction Loan Agreement and Other Loan Documents dated August 1, 2002 by the Amending Parties and Lender, and recorded April 15, 2003 as Document No. 0310518124, ("Second Amendment") which among other things increased the face amount of the Note to Four Million and NO/100 Dollars (\$4,000,000.00).

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

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- (i) Construction Mortgage dated as of October 31, 2001, granted by Trust to Lender and recorded on November 20, 2001 in the Office of the Cook County Recorder of Deeds as Document No. 0011093698 encumbering the Property ("Mortgage"); and
- (ii) Assignment of Rents and Leases, granted by Original Borrower to Lender, dated as of October 31, 2001 and recorded November 20, 2001 as Document No. 0010093699 in the Office of the Cook County Recorder of Deeds with respect to the Property (the "Assignment of Rents and Leases");
- (iii) Assignment of Beneficial Interest for Collateral Purposes and Irrevocable Right to Approve Trust Documents dated as of October 31, 2001 (the "ABI") made by Beneficiary; and
- (iv) Construction Loan Agreement dated as of October 31, 2001 made by Mortgagor and Beneficiary to and for the benefit of Lender (the "Loan Agreement") (the Note, Mortgage, Assignment of Rents, ABI, Security Agreement and all other instruments evidencing or securing the Loan as thereafter amended, are referred to collectively herein as the "Loan Documents").
- (v) Guaranty dated as of October 31, 2001 made by Guarantors (as hereinafter defined) to and for the benefit of Lender (the "Guaranty").

The Note, Mortgage and Assignment of Leases, together with all other documents evidencing or securing the Loan, as amended, including this Agreement are sometimes hereinafter collectively referred to as the "Loan Documents."

C. The Mortgage constitutes a valid first lien on that certain parcel of land located in the State of Illinois and legally described on Exhibit A attached hereto and made a part hereof ("Property").

D. Original Borrower simultaneously herewith, has transferred all of its right, title and interest in the Property to New Borrower. As consideration for Lender's approval of said transfer, Original Borrower and New Borrower have agreed to enter into this Loan Modification Agreement whereby New Borrower has agreed to assume all of Original Borrower's obligations and requirements under the Loan Documents and Original Borrower executes this Agreement to evidence its acknowledgement of the terms and provisions of this Agreement.

E. Lender is willing to provide the modification set forth above in Recital E provided: (a) the Loan Documents, and any and all modifications thereto, 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 and to the extent that said lien had immediately prior to the execution and delivery of this Agreement; (b) that no such amendment or modification shall constitute a waiver by Lender of any default by Original Borrower under any of the Loan Documents; and (c) the New Borrower complies with and fulfills all of the obligations and requirements of the Original Borrower set forth under

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the Loan Documents and all of the 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, New Borrower, Original Borrower and Lender 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 Agreement.
2. Modification of Loan Documents. The terms and provisions of the Loan Agreement and all other Loan Documents are hereby amended and modified to provide that all obligations and requirements of Original Borrower (defined in the Loan Documents as "Borrower") are hereby assigned to New Borrower, and New Borrower hereby agrees to assume all obligations and requirements under the Loan Documents.
3. Reaffirmation of Note and other Loan Documents. New Borrower, Original Borrower and Guarantors hereby acknowledge and reaffirm their obligations under the Note and the other 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 and amended by this Agreement, subject to no defenses, counterclaims, deductions or set-offs whatsoever.
4. Reaffirmation of Representations and Warranties. New Borrower, Original Borrower and Guarantor hereby acknowledge and reaffirm that all the representations and warranties of Original Borrower, New Borrower and Guarantor as stated in the Loan Documents are true and correct as of the date hereof.
5. Title Insurance. As a condition precedent to Lender's agreement to modify the Loan Documents in accordance with the terms of this Agreement, New Borrower shall: (i) cause this Agreement to be promptly recorded with the Recorder's Office of Cook County, Illinois, (ii) provide Lender with a date down endorsement to Lender's policy of title insurance on the Property which was issued by Chicago Title Company and known as Policy No. 72107-372635, which shall reflect the New Borrower as the property owner and is free and clear of any and all liens except for those accepted by Lender in the initial policy, and (iii) pay a fee for Lender's expenses as set forth in Section 6 below to Lender.
6. Expenses. New 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 Agreement, including, without limitation, document preparation fees, recording fees and title insurance charges.
7. Intent of Parties. The parties expressly agree that the liens evidenced by the Loan Documents shall in no way be deemed to have been subordinated, released, modified, terminated, or otherwise affected by this Agreement, 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

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they had immediately prior to the execution of this Agreement.

8. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Lender, New Borrower and Original Borrower, 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.
9. Conflicts. The provisions of this Agreement shall govern and control in the event of any conflict between this Agreement and the provisions of any of the Loan Documents.
10. Entire Agreement. Except as expressly set forth herein, this Agreement 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.
11. Effect of Agreement. Except as specifically amended or modified by the terms of this Agreement, 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 any future modifications to, or extensions of the Loan.
12. Governing Law. This Agreement shall be governed by and be construed in accordance with the internal laws of the State of Illinois.
13. Captions. The title of this Agreement and the headings of the various paragraphs of this Agreement have been inserted only for the purposes of convenience and are not part of this Agreement and should not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement.
14. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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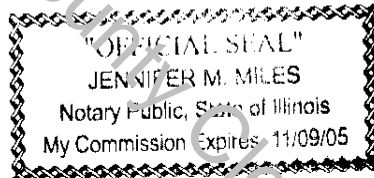
STATE OF ILLINOIS)
) SS.
COUNTY OF DuPage)

I, Jennifer Miles, a Notary Public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY, that Ern VanHed and _____ of **OAK BROOK BANK,**
TRUSTEE U/T/A/D August 1, 2001 A/K/A/T/N 3209 who are personally known to me to be
the same persons whose names are subscribed to the foregoing instrument as such TO, and
_____, each appeared before me this day in person and acknowledged that he or
she signed and delivered the said instrument as his or her own free and voluntary act and as the
free and voluntary act of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 19 day of April, 2004.

Jennifer Miles
Notary Public

My Commission Expires:



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

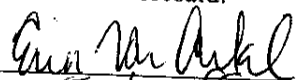
LENDER:

OAK BROOK BANK

By: 
Its: _____

ORIGINAL BORROWER:

OAK BROOK BANK, not individually, but as Trustee aforesaid.

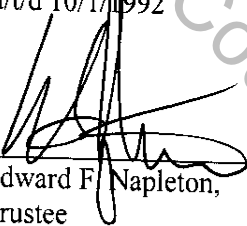
By: 
Its: Trust Officer

NEW BORROWER:

NAPLETON INVESTMENT PARTNERSHIP, LP,
an Illinois limited partnership
* Delaware

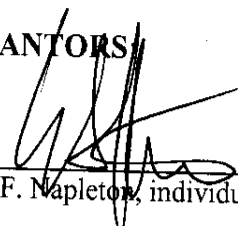
By: Napleton Management Company, LLC,
an Illinois limited liability company
Its: General Partner

By: The Edward F. Napleton Revocable Self-Declaration
of Trust a/t/d 10/1/1992
Its: Manager

By: 
Name: Edward F. Napleton,
Its: Trustee

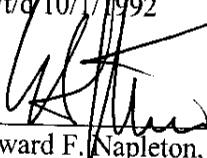
This instrument is executed by OAK BROOK BANK, not personally but solely as Trustee, as aforesaid. All the covenants and conditions to be performed hereunder by OAK BROOK BANK are undertaken by it solely as Trustee, as aforesaid and not individually, and no personal liability shall be asserted or be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

GUARANTORS

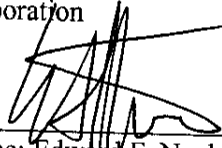


Edward F. Napleton, individually

The Edward F. Napleton Revocable Self-Declaration
of Trust a/t/d 10/1/1992

By: 
Name: Edward F. Napleton,
Its: Trustee

Napleton Dodge, Inc., an Illinois
corporation

By: 
Name: Edward F. Napleton, President

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STATE OF ILLINOIS)
) SS
COUNTY OF DuPage)

I, a notary public, in and for and residing in DuPage County, in the State aforesaid, do hereby certify that Glenn Grietsch the VP of OAK BROOK BANK, personally known to me to be the same person whose name is subscribed on the foregoing instrument as such, appeared before me this day in person and being first duly sworn by me, acknowledged that they signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purpose therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 19 day of April, 2004.

Jennifer M. Miles
Notary Public

My commission expires: _____



Property of Cook County Clerk's Office

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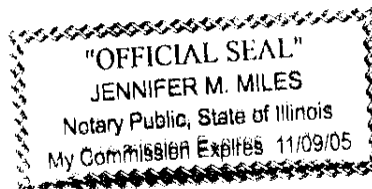
STATE OF ILLINOIS)
COUNTY OF DuPage) SS.

I, Jennifer M Miles, a Notary Public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY, that Edward F. Napleton, as Trustee of the Edward F. Napleton Revocable Self
Declaration of Trust, dated October 1, 1992, and as President of Napleton Dodge, Inc., 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 he signed and delivered the said instrument
as his own free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes
therein set forth

GIVEN under my hand and Notarial Seal, this 19th day of April, 2004.

Jennifer M Miles
Notary Public

My Commission expires: _____



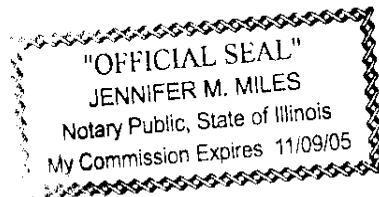
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STATE OF ILLINOIS)
) SS.
COUNTY OF DuPage)

I, Jennifer M Miles, a Notary Public, in and for said County, in the State aforesaid, DO
HEREBY CERTIFY that EDWARD F. NAPLETON is personally known to me to be the same person
whose name is subscribed to the foregoing instrument and appeared before me this day in person and
acknowledged that he signed and delivered 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 19th day of April, 2004.

Jennifer M Miles
Notary Public



My Commission expires: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION**

LOTS 4 THROUGH 8 AND THE EAST 23 FEET OF LOT 9 IN 95TH STREET ADDITION TO LYNWOOD, BEING A SUBDIVISION IN THE WEST ½ OF THE SOUTHEAST ¼ 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 ST ADDITION TO LYNWOOD, A SUBDIVISION IN THE WEST ½ OF THE SOUTHEAST ¼ 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 STREET 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 ½ OF VACATED JAMES PLAY 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

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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 FO 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 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:

LOT 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.

Permanent ID Numbers: 24-05-423-006-0000; 24-05-423-009-0000
24-06-423-010-0000; 24-05-423-012-0000
24-05-423-013-0000; 24-05-423-014-0000
24-05-423-015-0000; 24-05-423-016-0000
24-05-423-019-0000; 24-05-423-011-0000
24-05-400-067-0000; 24-05-413-099-0000
24-05-413-019-0000; 24-05-413-020-0000
24-05-413-021-0000

F:\Clients\OAK BROOK BANK - JJS\23641 - OAK BROOK - NAPLETON\5800 Oak Lawn\5800 Oak Lawn Loan Modification Agreement.DOC
\$4,000,000 REVOLVING
LINE OF CREDIT\5800 Oak Lawn\5800 Oak Lawn Loan Modification Agreement.DOC