

UNOFFICIAL COPY

121595 - WA0203707.0002.WA060029.WPF

JAMES MILLER CHEVROLET, INC.-CHICAGO HEIGHTS)

This Amendment to Notes, Mortgage And Security Agreement, Security Agreement, Assignment of Rents, Lease Subordination Agreement, Wholesale Security Agreement, Collateral Assignment of Beneficial Interest, Guaranty, Assignment of Open Accounts and Certain Other Loan Documents (this "Amendment") is entered into as of this 21st day of December, 1995, by and among CHICAGO TITLE AND TRUST COMPANY, as Trustee Under Trust Agreement Dated November 18, 1983 and known as TRUST NO. 1084497 (the "Trust"), JAMES MILLER CHEVROLET, INC. and DAVID L. MILLER (together with the foregoing entities hereinafter sometimes referred collectively as the "Obligors" or individually as "Obligor"), and GENERAL MOTORS ACCEPTANCE CORPORATION, a New York corporation ("GMAC") and GENERAL MOTORS CORPORATION ("GMAC" and together with GMAC hereinafter referred to as "Lender").

459470

AMENDMENT TO NOTES, MORTGAGE AND SECURITY AGREEMENT,
 SECURITY AGREEMENT, ASSIGNMENT OF RENTS,
 LEASE SUBORDINATION AGREEMENT, WHOLESAL SECURITY AGREEMENT,
 COLLATERAL ASSIGNMENT OF BENEFICIAL INTEREST,
 GUARANTY, ASSIGNMENT OF OPEN ACCOUNTS, AND
 CERTAIN OTHER LOAN DOCUMENTS

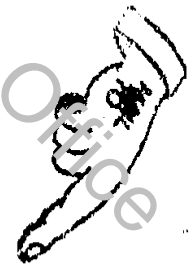
51677606

4750

This Space For Recorder's Use Only

DEPT-01 RECORDING 447.50
 140014 18AM 1456 01/23/95 1413100
 477544 JM *-96-060905
 COOK COUNTY RECORDER

William A. O'Connor, Esq.
 SACHNOFF & WEAVER, LTD.
 30 South Wacker Drive
 Suite 2900
 Chicago, IL 60606
 (312) 207-1000



THIS INSTRUMENT PREPARED BY AND TO BE RETURNED TO:

98060905

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

WHEREAS, Lender has further agreed to reduce the annual interest rate to the prime rate (as defined in the Notes) plus ONE PERCENT (1.00%);

WHEREAS, at Obligors sole request, Lender has agreed, subject to the terms and conditions contained herein, to amend and modify the Loan Documents in order to extend the maturity date of the Notes from November 1, 1995 to November 1, 2000, (the "Maturity Date");

WHEREAS, the Notes were also secured by certain other loan documents, including Assignments of Beneficial Interest, Assignments of Open Account, Security Agreements and Guaranties (such documents along with the Mortgage hereinafter referred to as the "Loan Documents");

WHEREAS, the Trust is the owner of certain real property located in the County of Cook, State of Illinois, commonly known as 55 West Lincoln Highway, Chicago Heights, Illinois, and legally described on Exhibit A attached hereto (the "Property");

WHEREAS, the Mortgage was amended on October 31, 1990 and recorded as Document Nos. 91040017 and 91040018 on January 25, 1991 with the Cook County Recorder's Office;

WHEREAS, the Notes were further secured by, among other things, that certain Mortgage and Security Agreement dated as of February 1, 1988 in favor of GMC and recorded as Document No. 88066877 on February 16, 1988 with the Cook County Recorder's Office (the "GMC Mortgage" and together with the GMAC Mortgage hereinafter referred to collectively as the "Mortgage");

WHEREAS, the Notes were secured by, among other things, that certain and Security Agreement dated as of February 1, 1988 in favor of GMAC and recorded as Document No. 88066875 on February 16, 1988 with the Cook County Recorder's Office (the "GMAC Mortgage");

WHEREAS, DAVID L. MILLER and Trust have executed and delivered to Lender certain Substitute Notes dated as of March 6, 1992 in the original principal amounts of \$9,859,007.52 ("Note 1") and \$3,404,916.05 ("Note 2") (jointly hereinafter referred to as the "Notes");

RECITALS:

506320030

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

WHEREAS, Lender has further agreed to reduce the annual interest rate to the prime rate (as defined in the Notes) plus ONE PERCENT (1.00%);

NOW, THEREFORE, in order to induce Lender to extend the Maturity Date and amend the rate of interest as aforesaid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, each of the parties hereto agrees as follows:

1. The recitals set forth above are hereby incorporated as though fully set forth herein and this Amendment shall be construed in light thereof. Each of the Obligors represents and warrants to Lender that the foregoing recitals are true and correct and contain no material misrepresentation or omit such information or facts that, but for such information or facts, would render the foregoing misleading.
2. Any and all security heretofore given GMAC and GMC, including but not limited to the Loan Documents, as may be amended from time to time, shall continue in full force and effect as security for the indebtedness as defined in the Mortgage.
3. This Amendment is not intended to release the Mortgage or other security heretofore given GMAC and GMC or to discharge the lien thereof.
4. Any other documents, agreements, obligations or contracts of any and every kind that refer to the Mortgage in any way shall incorporate the amendments made herein.
5. Each of the Obligors hereby confirms and certifies to Lender that each of their respective representations and warranties contained in the Loan Documents is true, complete and correct in all respects.
6. The Notes are hereby amended by deleting all references to a Maturity Date of November 1, 1995 and replacing such Maturity Date with November 1, 2000.
7. The parties acknowledge and agree that the outstanding principal amount owing under Note 1 as of the date of this Amendment is \$6,297,897.57. Note 1 is therefore amended hereby by deleting the words and numbers "NINE MILLION EIGHT HUNDRED FIFTY-NINE THOUSAND SEVEN and 52/100 DOLLARS (\$9,859,007.52)" contained in Note 1 and substituting "SIX MILLION TWO HUNDRED NINETY-SEVEN THOUSAND EIGHT HUNDRED NINETY-SEVEN and 57/100 DOLLARS (\$6,297,897.57)" therefor. Nothing contained in the foregoing Amendment shall be construed to deem to have repaid or forgiven the unpaid principal amount of, or unpaid accrued interest on, Note 1.
8. The parties further acknowledge and agree that the outstanding principal amount owing under Note 2 as of the date of this Amendment is \$2,906,650.16. Note 2 is therefore amended hereby by deleting the words and numbers "THREE MILLION FOUR HUNDRED FOUR THOUSAND NINE HUNDRED SIXTEEN and 05/100 DOLLARS

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(\$3,404,916.05)" and substituting "TWO MILLION NINE HUNDRED SIX THOUSAND SIX HUNDRED FIFTY and 16/100 DOLLARS (\$2,906,650.16)" therefor. Nothing contained in the foregoing Amendment shall be construed to deem to have repaid or forgiven the unpaid principal amount of, or unpaid accrued interest on Note 2.

9. Each of Note 1 and Note 2 is hereby further amended by deleting the first, second and third lines of the second paragraph on page 1 and substituting the following therefor:

"Interest shall be paid at a rate per annum equal to the prime rate (as hereinafter defined) from time to time in effect plus ONE PERCENT (1.00%). Installments shall be applied first to payment of interest then to principal."

10. Each Obligor who is a signatory to any guaranty of the payments of the Indebtedness or performance of any obligation by DAVID L. MILLER or any Affiliates as defined in the Mortgage consents to any and all prior Amendments to the Loan Documents or the Amendments contained herein.

11. The obligations of Lender to agree to the modifications contained in this Amendment shall be subject to each Obligor, as applicable, having delivered or caused to be delivered to Lender, the following, all of which shall be in the form and substance acceptable to Lender: (i) this Amendment; (ii) recording of this Amendment; (iii) Corporate Resolutions of Corporate Obligor authorizing this Amendment and the execution and delivery of any and all documents reasonably necessary to effectuate this Agreement or reasonably required by Lender in connection herewith; (iv) Consents of all Guarantors; (v) Certificates of Good Standing for the Corporate Obligor, as applicable, from the Secretary of State of Illinois; and (vi) such other documents as Lender may reasonably require.

12. Obligors hereby agree to pay all expenses, charges, costs and fees (including, but not limited to, reasonable attorneys' fees and expenses) in connection with the documentation of this Amendment, all recording fees and charges, title insurance charges and premiums, and all other expenses, charges, costs and fees referred to in or necessitated by the terms of this Amendment (collectively, the "Additional Loan Expenses"). In the event the Additional Loan Expenses are not paid to Lender within five (5) days after written demand therefore by Lender, the Additional Loan Expenses shall bear interest from the date so incurred until paid at the highest rate allowable by law.

13. Except as expressly modified hereby, all other terms of any prior Loan Documents shall remain unchanged and confirmed hereby.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

14. Each Obligor and the Trust hereby ratify and confirm its, his or her respective liabilities and obligations under the Note and Loan Documents and each other instrument or agreement delivered in connection with the Notes, each as amended by this Amendment, and the liens and security interest created by the Loan Documents and acknowledges and represents that it, he or she has no defenses, claims or set-offs to the enforcement by Lender of the obligations and liabilities of Obligor thereunder. Each Obligor, for themselves and for their successors, assigns, heirs, families, and agents, as applicable do hereby fully, unconditionally and absolutely forever release and discharge Lender, its successors, assigns, administrators, officers, shareholders and agents of and from any and all claims, judgments, demands or causes of action of whatsoever nature, whether known or unknown, which he, she or it may have against Lender for, or on account of, by reason of, or arising in connection with the Notes or the Loan Documents, this Amendment, or any matters relating to the provision or denial of credit, now or hereafter, to any Obligor by Lender.

15. Except as expressly provided herein, each of the Notes, the Loan Documents, and each other instrument or agreement delivered in connection with the Notes shall remain in full force and effect in accordance with their respective terms. The parties agree that the execution and delivery of this Amendment shall not operate to waive any remedies that Lender may have with respect to the Notes and the Loan Documents, or any other instrument or agreement delivered in connection with the Notes, or obligate Lender to make any further extensions of credit.

16. This Amendment may be executed in any number of counterparts and by the different parties on separate counterparts, and each such counterpart shall be deemed to be an original provided, however, that all such counterparts shall together constitute but one and the same Amendment.

17. This Amendment is executed by **CHICAGO TITLE AND TRUST COMPANY**, not personally but solely as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed that nothing in this Amendment shall be construed as creating any liability on such trustee personally to perform any express or implied covenant, condition or obligation under this Amendment. All such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Amendment; provided, however, that the foregoing exculpation of the trustee shall not impair or otherwise affect any of Lender's rights or remedies against the assets held by the Obligors or other collateral now or hereafter pledged to Lender as security of the obligations of the Obligors or against any of the Obligors or any other person or entity liable for the obligations of the Obligors.

18. Each of the Obligors and the Trust, represents and warrants to Lender that each has fully power and authority to execute and deliver this Amendment and to perform their respective obligations hereunder. Upon the execution and delivery hereof, this Amendment will be valid, binding and enforceable against Obligors in accordance with its terms. Execution and delivery of this Amendment do not and will not contravene, conflict with,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

violate or constitute a default under: (i) as applicable, the trust agreement governing the Trust or the Articles of Incorporation and By-Laws as applicable; or (ii) any applicable law, rules regulation, judgment, decree or order or any agreement, indenture or instrument to which Obligor or the Trust, is a party or is bound or which is binding upon or applicable to the "Property" or any portion thereof.

19. Each of Obligors and the Trust, represents and warrants to Lender that no default or event or condition which could become a default with the giving of notice or passage of time, or both, exists under the Notes or the Loan Documents all as amended by this Amendment.

20. There is not any condition, event or circumstance existing, or any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending or threatened affecting Obligors from complying with or performing his or its respective obligations under the Notes and the Loan Documents or any other instrument or agreement delivered in connection with the Notes all as amended by the Amendment, within the time limits set forth therein for such compliance or performance, and no basis for any such matter exists.

21. Each of Obligors and the Trust hereby ratifies and confirms its or his respective liabilities and obligations under the Notes, the Loan Documents, and each other instrument or agreement delivered in connection with the Notes each as amended by this Amendment, and the liens and security interests created by the Loan Documents, and acknowledge that it or he has no defenses, claims or set-offs to the enforcement by Lender of the obligations and liabilities of Obligor or, the Trust, thereunder. Each of Obligors and the Trust, represents and warrants that it has not materially amended by agreement or trust which alters or otherwise affects the obligations of any party hereunder.

22. This Amendment shall be binding on the Trust, and their respective heirs, legatees, administrators, personal representatives, successors and permitted assigns, and shall inure to the benefit of Lender, its successors and assigns. The obligations and liabilities of Obligors and the Trust, under this Amendment shall be joint and several.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Amendment has been entered into as of the date first above written.

LENDER:

GENERAL MOTORS
ACCEPTANCE CORPORATION,
a New York corporation

By: [Signature]
Its: [Signature]

BORROWER:

CHICAGO TITLE
AND TRUST COMPANY,
But Solely as Trustee as Aforesaid
SEE ATTACHED EXCULPATORY
CLAUSE FOR SIGNATURE

By: _____
Its: _____

GENERAL MOTORS CORPORATION
a New York corporation

By: [Signature]
Its: [Signature]

JAMES MILLER CHEVROLET, INC.,
an Illinois corporation

By: [Signature]
Its: V. PRESIDENT

[Signature]
DAVID L. MILLER, Individually

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXECUTION WITH EXCULPATORY CLAUSE FOR THE CHICAGO TRUST COMPANY, TRUSTEE UNDER TRUST # 1084497 ATTACHED TO THAT AMENDMENT TO NOTES, MTDG, SECURITY AGRMNT, ETC. DATED December 1995 TOWITH GMAC

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against The Chicago Trust Company, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, The Chicago Trust Company, not personally, but as Trustee as aforesaid, has caused these presents to be signed by its Assistant Vice President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

DATE January 16, 1996

The Chicago Trust Company,
as Trustee aforesaid and
not personally,



By: [Signature]
Assistant Vice President

Attest: [Signature]
Assistant Secretary

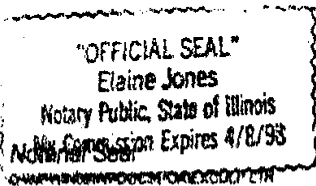
STATE OF ILLINOIS

COUNTY OF COOK

SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above named Assistant Vice President and

Assistant Secretary of The Chicago Trust Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal of said Company, caused the corporate seal of said Company to be affixed to said instrument as said Assistant Secretary's 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 16th day of January 1996.

[Signature]

50066905

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

PARCEL 3: PART (A) THE SOUTH 725 FEET OF THE EAST 312 FEET (EXCEPT THE NORTH 58.20 FEET OF THE WEST 40 FEET THEREOF AND EXCEPT THAT PART TAKEN FOR LINCOLN HIGHWAY BY CONDEMNATION UNDER CIRCUIT COURT OF COOK COUNTY CASE NO. 85 L 50038) OF THE WEST 624 FEET OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: PART (B) THE NORTH 30 FEET OF THE SOUTH 666.80 FEET OF THAT PART OF THE WEST 312 FEET LYING EASTERLY OF THE EASTERLY RIGHT-OF-WAY LINE OF HILLTOP AVENUE AS HERETOFORE DEDICATED FOR STREET PURPOSES OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 32-19-102-024
32-19-102-028

Street Address: 555 W. Lincoln Highway
Chicago Heights, IL 60411

Prepared by:

William A. O'Connor, Esq.
Sachnoff & Weaver, Ltd.
37 S. Wacker Drive
Suite 2900
Chicago, Illinois 60606

30060905

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

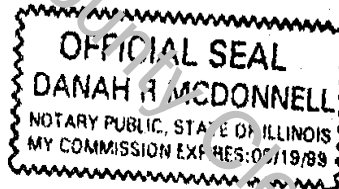
STATE OF ILLINOIS)
)
COUNTY OF _____) SS:

The Undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 21st day of December, 1998, personally appeared before me Ken Miller, the Assistant Secretary of GENERAL MOTORS ACCEPTANCE CORPORATION, which person is to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he/she is the Assistant Secretary of said corporation, and that he/she signed and delivered the same in behalf of said corporation acting as general partner of said partnership, with authority, as his/her and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Danah R. McDonnell
Notary Public

My commission expires: 9/19/99



UNOFFICIAL COPY

Property of Cook County Clerk's Office

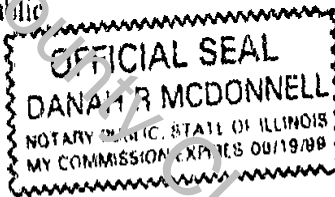
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF _____)

The Undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 21st day of December, 1995, personally appeared before me Ken Miller, the ~~Assistant Secretary~~ of GENERAL MOTORS CORPORATION, which person is to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he/she is the ~~Assistant Secretary~~ of said corporation, and that he/she signed and delivered the same in behalf of said corporation acting as general partner of said partnership, with authority, as his/her and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Dana R. McDonnell
Notary Public



My commission expires: 9/19/99

00000005

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF _____)

The Undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this _____ day of December, 1995, personally appeared before me _____, the _____ of CHICAGO TITLE AND TRUST COMPANY, as Trustee, which person is to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he/she is the _____ of said corporation, and that he/she signed and delivered the same in behalf of said corporation, with authority, as his/her and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Notary Public

My commission expires: _____

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF _____)

The Undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 21st day of November, 1995, personally appeared before me Dave Miller, the President of JAMES MILLER CHEVROLET, INC., which person is to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he/she is the President of said corporation, and that he/she signed and delivered the same in behalf of said corporation acting as general partner of said partnership, with authority, as his/her and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Dana R. McDonnell
Notary Public

My commission expires: 9/19/99



900003100

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF _____)

The Undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 21st day of November, 1995, personally appeared before me DAVID L. MILLER, which person is to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he/she signed and delivered the same in his/her own free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Danah R. McDonnell
Notary Public

My commission expires: 9/19/99



Clerk's Office
9000000000

UNOFFICIAL COPY

Property of Cook County Clerk's Office