

FILED SARY CO. NE.  
INSTRUMENT NUMBER  
93-019757

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*Carol A. Davis*  
REGISTER OF DEEDS

Proof	<u>J. W. J.</u>
D.E.	<u>W</u>
Verify	<u>W</u>
Filed	<u>W</u>
Checked	<u>W</u>
Fee \$	<u>48.50</u>

*93-19757*

Return To:  
NP Dodge  
8101 N. Dodge Rd  
Suite 300  
Omaha, NE 68114

SPACE ABOVE RESERVED FOR RECORDER'S USE.

NOTE AND MORTGAGE MODIFICATION AGREEMENT

Loan No. 583418

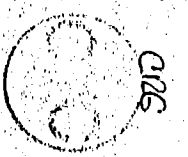
THIS MODIFICATION AGREEMENT ("Agreement") is made and entered into effective as of June 1, 1993, by and among COMMERCIAL FEDERAL BANK, A FEDERAL SAVINGS BANK, formerly known as Commercial Federal Savings and Loan Association ("Lender"), and DODGE INVESTMENTS LTD., 8303, a Nebraska limited partnership ("Borrower").

RECITALS:

- A. Borrower is the maker of a Mortgage Note (the "Note") dated May 13, 1983, in the original principal amount of Five Hundred Thousand Dollars (\$500,000.00) payable to the order of Lender;
- B. The Note is secured by, among other things, a Mortgage dated May 13, 1983, and recorded in the Office of the Register of Deeds of Sarpy County, Nebraska on May 13, 1983 in Book 202, Page 2473, Reception No. 04307, Real Property Records ("Mortgage");
- C. The Mortgage encumbers the real property ("Property") located in Sarpy County, Nebraska, described as:  
  
The North 350 feet of Lot 1, CHANDLER HILLS, a subdivision in Sarpy County, Nebraska, also known as Parcels 1B2, 1B1A, 1B1B, 1G and 1B1C, all lying within the North 350 feet of said Lot 1, CHANDLER HILLS.
- D. Lender is currently the owner and holder of the Note and the beneficiary of the Mortgage and the unpaid principal balance of the Note after the May 1, 1993 payment is Four Hundred Fifty-Eight Thousand Forty-Seven and 89/100 Dollars (\$458,047.89);
- E. The Note, Mortgage, and all other documents and agreements evidencing or securing the obligations under the Note shall herein be collectively referred to as the "Loan Documents";
- F. Borrower has requested that Lender grant to Borrower certain concessions with respect to the Loan Documents, including reduction of the interest rate and extension of the term, and Lender has agreed, solely as an accommodation to Borrower, to honor such request on the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

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93-19757A

1. Extension/Modification Fee. Contemporaneously with the execution of this Agreement by Borrower, Borrower shall pay to Lender the sum of Four Thousand Five Hundred Eighty Dollars (\$4,580.00), as an extension/modification fee to Lender in consideration of this Agreement. Such fee is deemed to be fully earned by Lender upon payment by Borrower, and shall not be applied by Lender against any of the sums due under the Note.
2. Modification of Term. The maturity date ("Maturity Date") of the Note and Mortgage is hereby modified and extended from March 1, 1996 to June 1, 2003, on which date all remaining unpaid principal, interest, and other sums due under the terms of the Loan Documents, as modified herein, shall be immediately due and payable to Lender in full.
3. Interest. Effective on and after June 1, 1993, the interest rate applicable under the Note is reduced to nine percent (9.00%) per annum and shall remain effective, so long as Borrower does not default under this Agreement or the Loan Documents or as otherwise provided in this Agreement, until adjusted in accordance with the terms of Paragraph 5 below. If, however, at any time prior to the Maturity Date an event of default occurs and is not cured, or if all remaining unpaid principal, interest and other sums referenced in Paragraph 2 above are not paid in full to Lender on the Maturity Date, then the interest rate shall automatically and without notice to Borrower increase to the rate of fifteen percent (15%) per annum (the "Default Rate").
4. Monthly Payments. Commencing with the monthly payment due July 1, 1993, and continuing through and including the payment due June 1, 2003 (except as may be adjusted as a result of an interest rate adjustment as hereafter provided), Borrower shall pay to Lender monthly payments of principal and interest in the amount of Four Thousand Five Hundred Eleven and 77/100 Dollars (\$4,511.77) each, based upon an amortization term of sixteen (16) years. In addition, Borrower shall make all monthly escrow payments as may be required by Lender.
5. Adjustment of Interest Rate. The interest rate on the Note shall be adjusted one time to be effective as of the Interest Rate Adjustment Date, as defined below, to be equal, as of such date until the Maturity Date, to the sum of (i) the Five Year Federal Home Loan Bank of Topeka Advance Borrowing Rate effective as of the Interest Rate Adjustment Date (or the last business day immediately preceding such date if such date is a Saturday, Sunday or federal holiday) ("Index"); plus (ii) three and one-half (3.50) percentage points (or 350 basis points).
  - (a) Interest Rate Adjustment. The change in the interest rate will become effective commencing on the "Interest Rate Adjustment Date", which is defined to be June 1, 1998.
  - (b) Payment Adjustment. The monthly payment amount shall be adjusted by Lender in the exercise of its reasonable discretion, to be effective with the payment due on July 1, 1998, and will include interest at the changed rate from and after the Interest Rate Adjustment Date.
  - (c) Alternative Index. If, at any time during the term of the Note as modified by this Agreement, the Index is no longer available or is otherwise unpublished, Lender may select an alternative published index over which Lender has no control, in which case such alternative index will become the Index provided in this Note. The alternative index selected by Lender shall be reasonably comparable to the former index with respect to rate levels and frequency of fluctuation.

93-19757B

6. Prepayment. Borrower shall not prepay the principal of the Note, in whole or in part, at any time prior to June 1, 1995. On or after June 1, 1995, Borrower may at its option prepay the principal of the Note in whole or in part, prior to the Maturity Date, provided that contemporaneously with such prepayment Borrower pays to Lender a prepayment fee equal to one percent (1%) of the principal balance of the Note then being prepaid by Borrower. Such fee shall be in addition to the principal balance prepaid.

7. Assumability of Note and Loan Documents. If the Note, any Loan Documents or any property encumbered by such Loan Documents is assumed, assigned or conveyed by Borrower in whole or in part, or upon a sale, assignment or conveyance of any ownership interest in Borrower, or upon a sale or conveyance (whether voluntary or involuntary) of all or a portion of the property described in the Loan Documents, or if any plan or attempt is made to do or perform any of the foregoing, without the prior written consent of Lender, which may be withheld by Lender in its sole discretion, the Note and all unpaid principal, interest and other sums under the Note shall automatically and without notice from Lender be deemed to be immediately due and payable in full. The foregoing acceleration shall not be applicable in the case of:

- (i) transfers of limited partnership interests by devise or descent or by operation of law upon the death of a limited partner;
- (ii) the grant of an occupancy leasehold interest in an apartment unit in accordance with usual and customary rental terms and rates and not containing an option to purchase;
- (iii) sales or transfers of limited partnership interests in Borrower provided that such sales or transfers, together with any prior sales or transfers of limited partnership interests in Borrower, in the aggregate do not result in more than forty-nine percent (49%) of the limited partnership interests in Borrower having been sold or transferred since commencement of amortization of the Note and provided that N.P. Dodge Investments, Inc. at all times remains as sole general partner and sole managing partner; and
- (iv) sales or transfers for fair market consideration of fixtures or any routine personal property in the ordinary course of business, provided that such sales or transfers are incidental to the replacement of like fixtures and personal property of newer and better quality and condition.

8. Attorneys' Fees. A" attorneys' fees and costs incurred by Lender with respect to the Note, the Mortgage, the Property, Loan Documents, and/or this Agreement shall be reimbursed to Lender by Borrower on demand and, if not paid when due, shall bear interest at the Default Rate set forth herein from the due date therefor until paid in full. In addition, failure to pay such fees and costs when due shall constitute a default under this Agreement and the Loan Documents.

9. Closing Costs. Borrower shall pay when due or upon Lender's demand all closing costs including, but not limited to, recording fees, title insurance premiums, and title company closing fees incurred by virtue of the loan modification evidenced by this Agreement. Failure to pay the same when due or upon demand shall constitute a default under this Agreement and the Loan Documents.

93-197572

10. Title Insurance. As a condition precedent to Lender entering into this Agreement, Borrower shall obtain and deliver to Lender, and pay the premium for, endorsements to Lender's policy of title insurance, Chicago Title Insurance Company Policy No. 28-039-J2-00266, (a) insuring the continuing priority of the Mortgage as security for the Note, as modified, as a first and prior Mortgage against the Property subject only to general taxes for 1993 and subsequent years and such other exceptions as Lender may consent to in writing; (b) bringing the effective date of the policy current; (c) reflecting that no liens, encumbrances, or other matters subsequent to the Mortgage have been recorded against the Property, except for this Agreement; and (d) changing the insured Lender's name to Commercial Federal Bank, a Federal Savings Bank, its successors and assigns.

11. Easements. As a condition precedent to Lender entering into this Agreement, Borrower shall furnish to Lender true and accurate copies of all ingress, egress and parking easements and related agreements affecting the Property, all of which will have been duly filed for record in the Office of the Sarpy County, Nebraska Register of Deeds. This Agreement shall become binding and effective only when (i) properly executed by Borrower and Lender and (ii) such easements and the access and parking rights created thereby have been deemed to be acceptable by Lender in its sole discretion and (iii) Lender has notified Borrower in writing of the acceptance of the same. Lender may, at its option (but shall not be required to), condition acceptance of the easements upon Borrower's compliance with and satisfaction of certain terms and requirements.

12. Subordination. To the extent required by Lender, Borrower shall obtain from all parties holding any interest subordinate to Lender's in the Property or in any other collateral securing the Note, their consent, in form and substance acceptable to Lender, to the modifications set forth in this Agreement and their acknowledgment of the continuing subordination of such interest to Lender's interest in the Property and such other collateral as evidenced by the Mortgage or Loan Documents.

13. Representations by Borrower. Borrower hereby represents and warrants to Lender as follows:

- a. Borrower is a Nebraska limited partnership, duly formed, validly existing and in good standing under the laws of such state.
- b. The sole general partner and managing partner is N.P. Dodge Investments, Inc., a Nebraska corporation, whose president, N.P. Dodge, Jr., is authorized to execute this Agreement on behalf of Borrower.
- c. This Agreement is duly authorized, executed, and delivered by Borrower and constitutes a legal, valid, and binding obligation of Borrower, fully enforceable in accordance with the terms hereof.
- d. Neither the business of Borrower nor the condition (financial or otherwise) of Borrower, any of Borrower's assets, or the Property, the project constructed thereon, or any part thereof which is subject to the agreements of the parties, has been materially adversely affected in any way since the date of execution of the Loan Documents, except as has been revealed to Lender in writing.
- e. Borrower is in strict and complete compliance with all the terms and conditions of the Loan Documents, except as revealed to Lender in writing.

93-197572

f. Borrower has no defenses to the payment of the Note, the performance of the strict terms of the Mortgage or Loan Documents, or right of offset or claim against Lender. Borrower specifically acknowledges and agrees that Lender has performed each and all of its obligations, commitments, and agreements under the Loan Documents and all other agreements related to the indebtedness, both written and verbal, direct or implied, up to and including the date of this Agreement, that Lender is not in default in the observance or performance of any obligation, commitment, agreement, or covenant, expressed or implied, including, but not limited to, covenants of good faith and fair dealing to be observed or performed by it under the foregoing, and that no facts exist and no event has occurred which now or hereafter will authorize Borrower to terminate the loan, to fail or refuse to abide by the terms of the Loan Documents, or form the basis, in whole or in part, for a claim of any kind against Lender including, but not limited to, lack of good faith or fair dealing.

g. All real property taxes and special assessments currently assessed against the Property have been paid in full, except for general taxes, which are due and payable prior to becoming delinquent in 1993.

14. Default. Any default by Borrower under this Agreement (including any misrepresentation under Paragraph 13 above) shall also constitute a default under the Loan Documents, including the Note and the Mortgage. Any default by Borrower under the Loan Documents as modified by this Agreement, shall constitute a default under this Agreement. In the event of any such default, Lender shall be entitled to exercise all of its remedies hereunder and under the Loan Documents, and at law or in equity.

15. Bankruptcy. In the event that Borrower or Borrower's general partner should file for protection under the Bankruptcy Code, or if any involuntary proceeding under the Bankruptcy Code is commenced against Borrower or its general partner, and an order of relief is entered, the obligations of Borrower under the Loan Documents shall automatically be deemed accelerated and Lender shall be entitled to immediate relief from the automatic stay so that Lender may proceed with foreclosure of the Property and otherwise enforce its security interest in any of the property owned in whole or in part by the debtor.

16. No Further Commitment. Borrower hereby acknowledges and agrees that this Agreement modifies the Note, the Mortgage, and the Loan Documents only to the extent and on the terms set forth herein, and this Agreement is not, nor shall it be, construed as a commitment by Lender to modify the Note, the Mortgage, or any of the Loan Documents securing the Note in any other respect. Borrower further agrees that Borrower is precluded from claiming that any prior written or oral negotiations, discussions, comments, questions, or representations not specifically incorporated into this Agreement or the Loan Documents are binding upon Lender. Furthermore, none of the same shall in any manner whatsoever be deemed to modify or constitute a waiver of the rights and obligations of the parties as stated in the Loan Documents or this Agreement.

17. Full Force and Effect. Except as otherwise modified herein, each and every provision of the Note, the Mortgage, and all other Loan Documents shall be and remain in full force and effect. Borrower hereby reaffirms the Note, as modified hereby, and all of the indebtedness secured by the Mortgage and Loan Documents, and agrees to perform the obligations thereunder as they become due.



93-14757 E

18. Security Instruments. The Mortgage, as modified hereby, and all other Loan Documents shall continue to secure Borrower's obligations under the Note, as modified. Borrower hereby reaffirms all liens and security interests securing the Note, including, without limitation, the Mortgage, and acknowledges all of the same to be valid and subsisting.
19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and permitted assigns.
20. Armi's Length Negotiations. The parties hereto have conducted armi's length negotiations resulting in this Agreement.
21. Further Assurances. Borrower agrees to execute and deliver such documents and to perform such other acts, promptly upon request, as Lender requests and which are, in Lender's reasonable judgment, necessary or appropriate to effectuate the purposes of this Agreement. This Agreement and any memorandum hereof may be filed and recorded by Lender with any governmental agency or other public office.
22. Amendment. This Agreement may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by Borrower and Lender.
23. Waiver. The waiver of any breach of any of the provisions of this Agreement by any party shall not constitute a continuing waiver or a waiver of any subsequent breach by said party either of the same or of another provision of this Agreement.
24. Exclusive Agreement. This Agreement contains the entire agreement between the parties with respect to the modification of the Note, the Mortgage, and the Loan Documents evidenced hereby and no statement, promise, or inducement made by any party or the agent of any party that is not contained in this Agreement shall be valid or binding.
25. Headings for Convenience Only. The paragraph headings, captions, and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.
26. Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of the remainder of this Agreement.
27. Time of the Essence. Time is of the essence for the performance of each and every provision hereof.
28. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Nebraska.
29. Litigation. The parties hereto hereby stipulate and agree that any litigation regarding the Note or any instrument evidencing, relating to, or securing the indebtedness evidenced by the Note, including, but not limited to, this Agreement, shall be tried by the court having jurisdiction over the matter and the right to trial by jury is hereby expressly waived. In the event the Note or Loan Documents are placed in the hands of an attorney for any reason related to a default by Borrower, Lender will be entitled to collect a reasonable attorney's fee.

93-18757 E

30. Release. A full release of the Mortgage shall release this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date and year above first written.

COMMERCIAL FEDERAL BANK, A FEDERAL SAVINGS BANK, Lender

By: *J. Charles Whitfield*  
J. Charles Whitfield, Vice President

DODGE INVESTMENTS LTD., 8303, a Nebraska limited partnership, Borrower,

By: N.P. Dodge Investments, Inc., a Nebraska corporation, sole general partner,

By: *N.P. Dodge Jr.*  
N.P. Dodge Jr., President

STATE OF NEBRASKA )  
                                  ) SS.  
COUNT OF DOUGLAS )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of May, 1993, by J. Charles Whitfield, Vice President of Commercial Federal Bank, a Federal Savings Bank, for and on behalf of the Bank.

WITNESS my hand and official seal the day and year first above written.



*James R. Peterson*  
Notary Public

My commission expires:

NOV 21, 1996

93-15757 G

STATE OF NEBRASKA )  
 ) SS.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 10 day of August, 1993, by N.P. Dodge, Jr., President of N.P. Dodge Investments, Inc., a Nebraska corporation, the sole general partner of Dodge Investments Ltd., 8303, a Nebraska limited partnership, for and on behalf of the general partner and the partnership.

WITNESS my hand and official seal the day and year first above written.

 **SUE KIRCH**  
My Comm. Exp. Sept 21, 1994

Sue Kircht  
Notary Public

My commission expires:

Sept. 23, 1996