

STATE OF ALABAMA)

JEFFERSON COUNTY)

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Shelby Cnty Judge of Probate, AL  
09/11/1980 00:00:00 FILED/CERTIFIED

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LEASE AGREEMENT

THIS LEASE, made and entered into this 10th day of July, 1980, by and between KEN TERRY CHEVROLET, INC., and Alabama corporation ("Lessor"), and EAGLE CHEVROLET, INC. ("Lessee").

W I T N E S S E T H:

1. Demise and Rent. Lessor hereby leases to Lessee and Lessee hereby rents from Lessor upon the terms and conditions herein contained, the premises located in Shelby County, Alabama, as described in Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Property"), free and clear of all liens, encumbrances, easements or encroachments, except for the current years' ad valorem taxes.

2. The term of this Lease shall be ten (10) years and shall terminate at midnight on that date ten (10) years from the date of execution of this Lease Agreement, unless sooner terminated or extended as herein provided.

3. Rent. Lessee agrees to pay Lessor at such address as Lessor shall specify to Lessee in writing, promptly on the 10th day of each month in advance, during the term of this lease, a monthly rental equal to (i) Six Thousand Dollars (\$6,000.00) per month for each of the months during the first five (5) years of the lease term, and (ii) Eight Thousand Dollars (\$8,000.00) per month for each of the months in the second five (5) years of the lease term.

4. Taxes. Lessee shall pay all real estate taxes, assessments, utility charges, and all other governmental charges of any kind and nature assessed during the terms of this Lease. All taxes assessed during the Lease shall be adjusted and prorated, so that the Lessor shall pay its pro-rated share for the lease term period. Lessee shall

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furnish to Lessor within thirty (30) days after any such governmental charge would become delinquent, official receipts evidencing the payment thereof before delinquency. Lessee shall have the right, however, to contest in its name or in the name of the Lessor the validity of any such charge by appropriate and diligently pursued proceeding. Lessor may make any such payment, however, on behalf of Lessee, in the event withholding of such payment would adversely affect any of Lessor's rights under this Lease. Lessor will cooperate with Lessee in any such contest. Nothing herein contained however shall require Lessee to pay any municipal, state or federal capital levy, corporate franchise, estate, inheritance, succession, gift or income taxes imposed upon the Lessor after commencement of this Lease. To the extent permitted by law, Lessee shall have the right to apply for the conversion of any special assessment for local improvements in order to cause such assessment to be payable in installments, and upon such conversion Lessee shall be obligated to pay only such installments as shall become due and payable during the lease term period.

5. Insurance.

A. Lessee at its sole cost and expense shall keep the Property insured for the mutual benefit of Lessor and Lessee during the term of this Lease, against loss or damage by fire and against the loss or damage by other risks now or hereafter embraced by "extended coverage" within the commercially accepted definition of such coverage, including, if available, damage by lightning, windstorm, hail, explosion, riot and civil commotion, aircraft, vehicles and smoke in amounts sufficient to prevent Lessor and Lessee from becoming a co-insured under the terms of the applicable policies, but in any event in an amount no less than 80% of the replacement cost of the buildings and improvements (foundations, excavations and footings below the basement floor excepted). Lessee shall also maintain comprehensive general public liability



insurance with minimum limits of Five Hundred Thousand and NO/100 Dollars (\$500,000.00) in respect of bodily injury or death of any one person, and of One Hundred Thousand and NO/100 Dollars (\$100,000.00) in respect of property damages.

B. Lessor shall be named as an additional insured, as its interest may appear, in all insurance policies; and Lessee shall deliver copies of such policies (or certificates thereof) to Lessor. All insurance policies shall be issued by insurers of recognized responsibility, which are licensed to do business in the State of Alabama, and which are well rated by national rating organizations. Lessee will furnish to Lessor within fifteen (15) days after the date when any premium under any such insurance policy becomes due receipts or other evidence satisfactory to Lessor that such premiums have been paid.

C. Lessor shall make no claim for recovery against Lessee and expressly waives any right of recovery against Lessee for damage to or loss of the Property or improvements thereon which damage or loss may arise by fire or other peril covered by any policy of insurance containing a waiver of subrogation right against the Lessee in which said policy Lessor is or may be the insured and when said loss is caused by or result from any acts of carelessness or negligence of Lessee, its officers, agents, employees or other persons under its control. Lessor further covenants and agrees to apply to its insurers for waiver of subrogation against Lessee, its agents and employee.

#### 6. Covenants and Warranties.

A. Nothing herein contained shall be construed as a warranty that said premises are in good condition or are fit or suitable for the use or purposes for which they are let. The Lessor or Lessor's agent have made no representations or promises with respect to said building or the demised premises except as herein expressly set forth. The Lessee has examined the leased premises and accepts the same

in the physical condition in which the same now exists (except as otherwise expressly provided herein).

B. It is contemplated by the parties that the Lessee will use the property as and for an motor vehicle dealership, and related uses, but said use shall not be a condition to this lease, and Lessee may at its option use the property for any lawful purpose, not inconsistent with the rights of Lessor. Lessee will not use or allow the property or any part thereof to be used or occupied for any unlawful purpose or in violation of any laws, rules, regulations and requirements of any governmental body applicable to the property or any part thereof and will not suffer any act to be done or condition to exist which may be dangerous, constitute a nuisance, public or private or which may make void or voidable any insurance then in force with respect thereto.

C. Lessor covenants and warrants that the erection, use, and occupancy of an automobile dealership including but not limited to sale and storage of petroleum products, will be in conformity with and will not be in violation of any municipal zoning ordinance or other municipal rule or regulation of the City of Pelham, Alabama, or of Shelby County, Alabama. Lessor further warrants that it owns good and merchantable title in and to the Property free of all liens and encumbrances except as set out on Exhibit "A" and that there exists no lien, encumbrance, covenant or agreement which prohibits or restricts the lease of the Property on the terms and conditions set out herein by the Lessor to the Lessee.

D. Throughout the term of this Lease, Lessee at its cost and expense, will take good care of the Property and will keep the same in first class order and condition and will make all necessary repairs required to be made by it under this Lease. Lessee agrees to repair and maintain in good order and serviceable condition the structural and non-structural interior portions of the improvements. All repairs made by Lessee shall be substantially equal in



quality and class to the original work. The necessity for and adequacy of repairs to the Property shall be measured by the standard which is appropriate for buildings of similar construction and class.

E. Lessee will replace all plate and other glass, if and when broken, and failing so to do the Lessor may replace the same and the Lessee will pay the Lessor the cost and expense thereof upon demand. Lessee will replace all keys lost or broken, and will pay all bills for utilities and services used on said premises. Lessee will keep all elevators, air conditioning equipment, electric wiring, water pipes, water closets, drains, sewer lines and other plumbing on said premises in such good order and repair and will do all repairs, modifications and replacements which may be required by the applicable laws or ordinances. Lessor shall not be liable for any damages caused by, or growing out of, any breakage, leakage, getting out of order or defective conditions of said elevators, air conditioning equipment electric wiring, pipes, water closets, drains, and sewer lines or plumbing, or any of them. Lessee will comply, at all times and in all respects with all the applicable laws and ordinances relating to nuisance, insofar as the building and premises hereby let, and the streets and highways bounding the same, are concerned, and the Lessee will not by any act, or omission render the Lessor liable for any violation thereof. Lessee will not commit any waste of property, or permit the same to be done, and will take good care of said building and said premises at all times.

F. Should the roof of the building leak at any time during said term, due to no fault on the part of the Lessee, the Lessor will repair the same within a reasonable time after being requested in writing by the Lessee so to do, but in no event shall the Lessor be liable for damages or injuries arising from such defect or the failure to make said repairs after being so notified, except to the extent of the reasonable cost of repairing said roof; nor shall the Lessor

be liable for damages or injuries arising from defective workmanship or materials, the Lessee hereby expressly waiving the same. Lessor and its agents, shall not be liable for any deaths, injury, loss or damages resulting from any repair or improvement and undertaken, voluntarily or involuntarily, by or on behalf of, the Lessor, other than willfully wrongful acts of Lessor.

In the event air conditioning equipment or a part of any air conditioning equipment is installed on the roof of any building hereby leased, or in the event that the Lessee installs a sign on the roof, then Lessee shall be responsible for repairing any roof leaks, attributable to such installation, during the term of this lease at Lessee's sole cost and expense, but no such air conditioning equipment or sign may be installed until the consent in writing of the Lessor is first had and obtained thereto.

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G. The Lessee will keep the roof and the leased grounds free of all cans, bottles, fragments, debris and trash, and the Lessee will keep the downspouts, gutters and drains clean, open and free of obstruction, and in good working order.

H. Lessor shall not be obligated or required to make any other repairs or do any other work on or about said premises or any part thereof, or the elevators therein, if any, or on or about any premises connected therewith, but not hereby leased, unless and only to the extent herein agreed. All other portions of any building hereby leased shall be kept in good repair by Lessee and at the end of the term hereof, the Lessee shall deliver the demised premises to Lessor in good repair and conditions, reasonable wear and tear excepted.

However, Lessor reserves the right to enter upon said premises and to make such repairs and to do such work on or about said premises as Lessor may deem necessary or proper, or that Lessor may be lawfully required to make.



Lessor reserves the right to visit and inspect said premises at all reasonable times and the right to show said premises to prospective tenants and purchasers, and the right to display "For Sale" and "For Rent" signs on said premises.

I. The Lessee agrees to pay all sewer rentals or other charges becoming due, levied under the authority of the Act No. 619 of the Alabama Legislature of 1949, approved September 19, 1949, or any other act, law or regulation. Failure to pay said rental shall constitute a default under the terms of this lease.

J. Lessor shall not be liable for any injury or damage caused by, or growing out of, any defect in said building, or its equipment, drains, plumbing, wiring, electric equipment or appurtenances, or in said premises, or caused by, or growing out of fire, rain, leaks, seepage or other cause.

K. If the leased premises, or any part thereof, consist of first floor space, adjacent upon the street, or ground adjacent to the street, the Lessee will keep the sidewalk, curb and gutter in front thereof or adjacent thereto clean and free from snow, ice, debris and obstructions and will hold the Lessor harmless from all damages or claims arising out of the Lessee's failure to so do.

7. Events of Default. Any one or more of the following events shall be considered an "Event of Default" hereunder:

(a) Default in the payment of any rent when due under this lease which default shall continue for a period of twenty (20) days after written notice;

(b) Default by the Lessee in the performance of or compliance with any of the covenants, terms or provisions of this Lease other than those referred to in the foregoing paragraph 7 (a) which default shall continue for a period of thirty (30) days

after receipt by Lessee of written notice thereof from Lessor specifying such default, except that in connection with a default arising hereunder which is not susceptible of being cured with due diligence within thirty (30) days, the time within which to cure the same shall be extended for such time as may be necessary to cure the same with all due diligence, provided Lessee commences promptly and proceeds diligently to cure the same and further provided that such period of time shall not be so extended as to subject Lessor to any criminal liability or to the execution of any lien on the premises; and

(c) The appointment of a receiver or trustee or other court officer for the liquidation of a substantial part of the assets of the Lessee, provided such appointment is not vacated within thirty (30) days thereafter, or the filing of a petition in Bankruptcy, petition for an arrangement or reorganization by or against the Lessee.

8. Remedies. Subject to the provisions hereof, Lessor may at any time after the happening of an Event of Default serve a written notice upon Lessee that Lessor elects to terminate this Lease upon a specified date after the serving of such notice and this Lease shall then expire and terminate on the date so specified and Lessor may re-enter and take possession of the premises. After an assignment or subletting of the entire premises covered by this lease, the occurring of any of the foregoing Events of Default shall affect this lease only if caused by, or happening to, the assignee or sublessee, however, Lessee shall not be released from his obligations by virtue of any such assignment or subletting. The Lessee agrees to pay Lessor, or on Lessor's behalf, a reasonable attorney's fee in the event Lessor employs an attorney to collect any rents due hereunder by



Lessee, or to protect the interest of Lessor in the event the Lessee is adjudged a bankrupt, or upon the interest of the Lessee in this lease or in said premises, or in the event the Lessee violates any of the terms, conditions, or covenants on the part of the Lessee herein contained, when in such event Lessor is the prevailing party in legal action. In order to further secure the prompt payments of said rents, as and when the same mature, and the faithful performance by the Lessee of all and singular the terms, conditions and covenants on the part of the Lessee herein contained, and all damages, and costs that the Lessor may sustain by reason of the violation of said terms, conditions and covenants, or any of them, the Lessee hereby waives any and all rights to claim personal property as exempt from levy and sale, under the laws of the State or the United States.

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building on the Property be damaged, destroyed or rendered untenable by fire or other casualty when less than five (5) years remain under the term of this Lease, or should completion of repairs within One Hundred Eighty (180) days of the occurrence of the damage not be possible, Lessor or Lessee may elect to terminate this Lease. Should this Lease be terminated pursuant to this provision, Lessee shall assign to Lessor all of its right and interest in any insurance proceeds received by Lessee from the improvements, except proceeds covering personal property and improvements made pursuant to paragraph 13 hereof. The right to cancel shall be exercised by giving to the other party five (5) days' written notice thereof within thirty (30) days after the date of such damage or destruction. All taxes, rents and other charges shall be pro-rated and paid to the date specified in such notice of cancellation.

11. Condemnation. If the whole of the leased premises, or such portion thereof as will, in the opinion of Lessee, make the premises unusable for the purposes herein leased, be condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the time when possession thereof is taken by public authorities, and rental shall be accounted for as between Lessor and Lessee as of that date. Such termination, however, shall be without prejudice to the rights of either Lessor or Lessee to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed that neither Lessee nor Lessor shall have any rights in any award made to the other by any condemning authority.

12. Covenant of Quiet Enjoyment. The Lessee, upon the payment of the rent herein reserved and upon the performance of all the terms of this Lease, shall at all times during the lease term and during any extension or renewal term peaceably and quietly enjoy the Property without any



hindrance, molestation or disturbance from the Lessor or from any person claiming through the Lessor.

13. Lessee's Right to Alter and Improve. Lessee may, at its own expense, make such alterations and improvements, additions and changes to the Property as it may deem necessary or expedient in the operation of its business or the use of said Property, provided Lessee without the written consent of Lessor shall not tear down or materially demolish any of the improvements on the Property, or make any material change or alteration in such improvements which, when completed, would substantially diminish the value of the Property. If the estimated cost of any proposed alteration, improvement, addition or change to the Property shall exceed the sum of Twenty-Five Thousand and NO/100 Dollars (\$25,000.00), the Lessee shall first obtain Lessor's approval of the plans therefor, but such approval shall not be unreasonably withheld by Lessor.

14. Lessee will indemnify and hold Lessor and Lessor's agent free and harmless from all demands, claims and suits or expenses caused by any default committed hereunder on the part of the Lessee. Lessee will further indemnify and save harmless Lessor and Lessor's agent from any loss, cost, damage and/or expenses caused by injuries to persons or property while in, on or about the demised premises, not attributable to the willfully wrongful act of the Lessor or Lessor's agent, but is attributable to actions of Lessee or Lessee's agents or assigns. Any property stored in the demised premises shall be at the sole risk of Lessee.

15. Neither Lessor nor Lessee shall be liable to the other for any loss or damage from risks ordinarily insured against under fire insurance policies with extended coverage endorsements, irrespective of whether such loss or damage results from their negligence or that of any of their agents, servants, employees, licensees or contractors to the extent that such losses are covered by valid and collectable insurance on the property at the time of the loss.

16. The failure of the Lessor to insist, in any one or more instances, upon a strict performance of any of the covenants of this lease, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option, but the same shall continue and remain in full force and effect. The receipt by the Lessor of rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Lessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Lessor.

17. Assignment. Assignment or subletting of any rights by Lessee under this lease shall be made only with prior written consent and approval of Lessor, which consent and approval shall not be unreasonably withheld by Lessor. This Lease shall inure to the benefit of the parties hereto and their successors and assigns. Lessee shall remain primarily liable on said Lease in the event of any such assignment or subletting of said Lease.

18. Utilities. Lessee shall pay and remit any and all charges for utilities extended to the Property during the term of the Lease including without limitation gas, water, electricity, sanitation, sewer, light, heat, power, fuel, janitorial and other charges or services.

19. End of Term. Upon expiration or other termination of the term of this Lease, Lessee shall peaceably and quietly surrender the Property in good order and condition, excepting reasonable wear and tear, and depreciation arising from the lapse of time.

20. Holding Over. At the expiration of this Lease or any renewal hereof, should the Lessee hold over for any reason whatsoever, it is hereby agreed that in the absence of a written agreement to the contrary Lessee shall be entitled to thirty (30) days additional hold-over period at the same rental provided for herein for the second five (5) years of



the rental term. Should the Lessee hold over for a period in excess of thirty (30) days, it is agreed that in the absence of a written agreement to the contrary such tenancy shall be from month-to-month only thereon at a monthly rental equal to One Percent (1%) of the fair market value of the demised premises.

21. Notices. Any notice required or permitted to be given to Landlord or Tenant pursuant to this lease shall be sufficiently given if hand delivered or if sent to Landlord or Tenant by registered or certified mail addressed to:

If sent to Landlord:

Ken Terry Chevrolet, Inc  
c/o Kenneth L. Terry  
3308 Cullodean Lane  
Birmingham, Alabama 35243

If sent to Tenant:

Eagle Chevrolet, Inc.  
c/o Allen E. Willey  
9709 Parkway East  
Birmingham, Alabama 35215

or to such other address as Lessor or Lessee shall designate by notice to Lessee or Lessor.

22. Rights Cumulative. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative with, but not registered to, those given by law.

23. Entire Agreement, Modification, Severability.

This Lease contains the entire agreement between Lessor and Lessee, supercedes any and all other agreement, oral or written, and shall not be modified or waived in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or

unenforceable shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on their respective behalfs all as of the day and year first above written.

KEN TERRY CHEVROLET, INC.

BY: [Signature]  
Its Pres.

ATTEST: [Signature]  
Its V.P.

EAGLE CHEVROLET, INC.

BY: [Signature]  
Its Pres.

ATTEST: [Signature]  
Its Secy.



STATE OF ALABAMA )

JEFFERSON COUNTY )

I,                                 , a Notary Public in and for said County in said State, hereby certify that                                 , whose name as President of Ken Terry Chevrolet, Inc., a Delaware corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal of office, this            day of                                 , 1980.

                                  
Notary Public

My commission expires                                 

STATE OF ALABAMA )

JEFFERSON COUNTY )

I,                                 , a Notary Public in and for said County in said State, hereby certify that                                 , whose name as President of Eagle Chevrolet, Inc., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal of office, this            day of                                 , 1980.

                                  
Notary Public

My commission expires                                 

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## EXHIBIT "A"

19800911000100890 Pg 16/16 .00  
Shelby Cnty Judge of Probate, AL  
09/11/1980 00:00:00 FILED/CERTIFIED

Commence at the N. W. corner of the NW 1/4 of the SW 1/4 of Section 24, Township 20 South, Range 3 West; thence run in an Easterly direction along the North line of the NW 1/4 of SW 1/4 of Sec. 24, Township 20 South, Range 3 West, for a distance of 808.01 feet to a point on the Easterly right-of-way line of U. S. Highway #31 South, said point being the point of beginning; from point of beginning thus obtained, thence turn an angle to the right of 98 deg. 52' 34" and run in a Southwesterly direction along the Easterly right-of-way line of U. S. Highway #31 South for a distance of 656.59 feet; thence turn an angle of 90 deg. to the left and run in a Southeasterly direction for a distance of 331.71 feet; thence turn an angle to the left of 90 deg. and in a North-easterly direction for a distance of 656.59 feet; thence turn an angle to the left of 90 deg. and run in a Northwesterly direction for a distance of 331.71 feet to the point of beginning. Situated in Shelby County, Alabama.

Together with all structures and other improvements contained thereon.

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ALABAMA SHELBY CO.  
FILED BY THIS  
CLERK OF COURTS

SEP 11 AM 10:10

James F. Shumaker, Jr.  
CLERK OF PROBATE

Need tax - 70850

Loc. 2400

And. 100

72350