

STATE OF ALABAMA)

SHELBY COUNTY)

COMMERCIAL LAND AND OFFICE LEASE

THIS COMMERCIAL LAND AND PROPERTY LEASE made and entered into on the 10th day of January, 1994, by and between G & H AUTO SALES, INC. (hereinafter referred to as the "Lessor"), and ACTION MOTORS, INC., an Alabama corporation, and JACK L. MONTGOMERY, individually, (hereinafter collectively referred to as the "Lessee").

W I T N E S S E T H:

1. DEMISE. The Lessor, for the considerations and upon the terms, conditions and agreements hereinafter expressed, does hereby demise, rent and let unto the Lessee, for occupation and use only for the purposes stated, the following described property (hereinafter referred to as the "Premises"), situated in the City of Alabaster, County of Shelby, State of Alabama, to-wit:

A tract of land for use in merchandising and displaying automobiles and for the conduct of used automobile sales business, more particularly described as follows:

- a) 717 First Street North, Alabaster, AL 35007.
- b) Begin at the Northeast corner of the SE 1/4 of NE 1/4, Section 35, Township 20 South of Range 3 West; thence run in a Westerly direction along North boundary of said quarter-quarter section 299.98 feet to the point of intersection with East boundary of right-of-way of L & N Railroad; thence turning an angle of 83 degrees and 18 minutes to the left run in a Southwesterly direction 937.16 feet to South boundary of a county road easement, said point being the point of beginning of tract of land hereby conveyed. Thence continuing along a straight line which is the East boundary of r/o/w of L & N Railroad run 183.61 feet; thence turning an angle of 96 degrees, 44 minutes, and 30 seconds to the left, run in Easterly direction 108.93 feet to the point of intersection with the West boundary of r/o/w of U. S. Highway No. 31; thence turning an angle of 83 degrees, 52 minutes, 30 seconds to the left run in Northeasterly direction along said line of said r/o/w of said Highway 53.71 feet; thence turning an angle of 90 degrees and 43 minutes to the left run in Westerly direction along boundary of said r/o/w

Michael W. Carroll
P. O. Box 1327
Pelham, AL 35124

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21.72 feet; thence turning an angle of 90 degrees and 33 minutes to the right run in Northeasterly direction along said West line of said r/o/w 118.74 feet to South boundary of county road easement, thence turning an angle of 90 degrees and 00 minutes left run in Northwesterly direction along said South line of said County road 84.30 feet to the point of beginning; being 0.3786 acres, m/o/l; except a one foot strip of land running along the south edge of the property herein described.

c) All appurtenances, privileges and easements pertaining to the property described in Paragraph 1 (a) above and all improvements located thereon.

d) This property includes a 14 foot by 70 foot mobile building, most specifically to wit:

One 1982 manufactured structure by Quality Specialty Homes, Inc.

In the front of the building there contains a structure identified as a front porch, and on the back of this building it contains steps. Any improvements by the Lessee to this building during the term of this Lease shall remain with the building and property as specified herein this Lease and shall not be removed by the Lessee at any time during the term of this Lease nor upon the expiration of this Lease.

2. **RENTAL TERM.** The term of this Lease shall commence on January 5, 1994 and shall continue thereafter through and including July 5, 1994. After this period, and upon the written agreement between the Lessor and the Lessee, this Lease may be continued on a month to month basis at the rate of \$1,250.00 (one thousand two hundred fifty dollars) per month, and under the same terms of this Lease in whole with the exception of the Rental Term. In the event there is no written agreement for the continuation of this Lease, and the Lessee remains on the Premises, the monthly rental rate of \$1,250.00 (one thousand two hundred fifty dollars) will be due and payable under the terms of this Lease. After the expiration of the Rental Term of this Lease, any further occupancy will be considered on a month-to-month basis and shall be terminated by either party receiving a thirty (30) day written notice from the other.

3. RENTAL.

a) Base Rental. Lessee shall pay Lessor as rental hereunder the sum of \$750.00 (seven hundred fifty dollars) for the month of January, 1994, and the sum of \$1,250.00 (one thousand two hundred fifty dollars) each month for the months February through July 5, 1994, for a total sum of \$6,000.00 (six thousand dollars) for this six month Rental Lease. Lessee agrees to pay Lessor a total sum of \$6,000.00 (six thousand dollars) for the period January 5, 1994 through July 5, 1994. Lessee also agrees to pay any additional taxes as set out herein below.

b) Increase in Ad Valorem Taxes. As additional rent hereunder, Lessee shall pay to Lessor the amount by which ad valorem taxes on the Premises for the term hereof exceed the ad valorem taxes due on the Premises for the year ending September 30, 1994., Because ad valorem taxes are determined by the use of the land and structures thereon on October 1 of any tax year and are payable in arrearage the following September 30, any increase in ad valorem taxes which may be determined while Lessee is in possession will be payable to Lessor (i.e., if Lessee is in possession October 1, 1994, any increase in ad valorem taxes due and payable October 1, 1995, will be paid by Lessee).

c) Lessee shall pay all personal property taxes, franchise taxes, and other taxes and assessments due or that may become due on any part of the Demised Premises, when due, and shall not allow any such taxes or assessments to ever form a lien on any part of the Demised Premises (including improvements thereon and the items listed on Exhibit A hereto). If Lessee should fail to pay when due any tax or assessment which might form a lien on any part of the Demised Premises, Lessor may pay same and bill Lessee for same, which Lessee shall pay on the first day of the month following presentation of a statement for same to Lessee.

4. DELIVERY OF POSSESSION. Possession shall be delivered retroactive to January 1, 1994. Lessee's act of taking possession of the Premises shall be regarded as conclusive proof that the same is in satisfactory condition. The Lessor makes no representation or warranty that the land or property, including the building, is suitable for the purpose for which it is leased.

5. TERMINATION OF POSSESSION. Upon termination of possession of the Premises, for any reason, Lessee agrees to return the Premises to Lessor clear of all debris. The Premises shall be level and not restricted to prevent parking, and any dangerous condition corrected. In the event Lessee fails or refuses to comply with this requirement upon termination of this Lease for any reason, said failure to restore shall constitute a default under this Lease

and Lessor shall have the right to restore the lot as stated and charge Lessee for said restoration, and Lessor shall be entitled to a reasonable overhead expense for time and all other remedies set out in this Lease upon default of Lessee.

6. **REPAIRS.** Lessor shall have no obligation or responsibility to make any repairs or improvements of any nature. Lessee shall, at all times during the term of this Lease, and at its own cost and expense, repair, replace, and maintain in a good, safe, and substantial condition, all buildings and any improvements thereto (including the equipment and furniture listed in Exhibit A hereto) on the Demised Premises, and shall use all reasonable precaution to prevent waste, damage or injury to the Demised Premises. If the Lessee shall fail or neglect to make any repair, Lessor shall have the right to do so at Lessee's expense. Lessee shall reimburse Lessor for such repairs as Lessor makes or causes to be made on the first day of the month following the presentation to Lessee of a statement for same.

At the end of the term of this Lease, or its sooner termination, Lessee shall return to Lessor the Demised Premises (including the items listed on Exhibit A hereto, and all buildings and improvements thereon) in original condition, less ordinary wear and tear.

7. **USE.** Lessee agrees to occupy and use the Premises only for the purposes herein expressed, for merchandising and displaying automobiles for sale and for the conduct of a used automobile business.

8. **SUBLEASE; ASSIGNMENT.** The Lessee agrees not to sublease the Premises, or any part thereof, or to transfer the Lessee's interest in this Lease. If the Lease is assigned or transferred, or if all or part of the Premises are sublet or occupied by anyone other than Lessee, the Lessee will be in default and the Lessor may pursue its remedies under the terms of this Lease and the Laws of the State of Alabama.

9. **UTILITY AND OTHER SERVICES.** Lessor shall furnish no utilities or services to Lessee. Lessee shall hold Lessor harmless for any lien placed on the Demised Premises because of any unpaid utility charge or charges.

10. **LIEN.** The lessor shall have, and is hereby given and granted a lien (in addition to the statutory lien existing in favor of landlords) on all of the Lessee's automobiles, furniture, goods and merchandise at any time on or moved into the Premises during the rental period, to secure the payment of the rents and any and all

other indebtedness which shall accrue to the Lessor under the terms of this Lease. The lien hereby granted shall be and remain effective notwithstanding that any part or all of the Lessee's said property may be removed from the Premises. The Lessee hereby represents to the Lessor as an important factor in obtaining this Lease, that all automobiles, furniture, goods, and merchandise which have been or are to be moved onto or used on the Premises under this Lease belong to the Lessee.

11. EXEMPTIONS AND ATTORNEY'S FEES. Respecting the payment of rents and any other indebtedness which shall accrue to the Lessor under the terms of this Lease, the Lessee waives all exemptions as to personal property allowed the Lessee under the Constitution and Laws of the State of Alabama, or any other State, and agrees to pay all costs of collecting the same, including a reasonable attorney's fee. In the event of the breach by the Lessee of any one or more of the terms and conditions of this Lease, the Lessor shall be and is hereby authorized to employ attorneys to do any and all things deemed by the Lessor or such attorneys necessary to protect, conserve or promote the interest of the Lessor under this Lease, including the institution of legal proceedings against the Lessee, and including suit for damages for any such breach, and the Lessee agrees in that event to pay a reasonable attorney's fee to said attorneys for such services, which fee shall be secured by the lien granted to the Lessor in the next preceding paragraph hereof.

12. RE-ENTRY. In the event the Lessee should, without written consent of the Lessor, vacate the Premises before the expiration of the rental period, while any rents or any other indebtedness payable under the terms of this Lease are due and unpaid, or in the event this Lease is terminated as authorized by any of the provisions of Paragraph 13 hereof, the Lessor or its agents shall have the right to re-enter and re-let the Premises from time to time, as agent of the Lessee, and without notice to the latter, and such re-entry or re-letting shall not discharge the Lessee from any liability or obligation hereunder, except that net rents, (that is, gross rents less the expense of collecting and handling, and less commissions) collected as a result of such re-letting shall be a credit against the Lessee's liability for rents under the terms of this Lease. Nothing herein, however, shall be construed to require the Lessor to re-enter and re-let in such event. Nor shall anything herein be construed to postpone the right of the Lessor to sue for rents, whether matured by acceleration or otherwise, but on the contrary the Lessor is hereby given the right to sue therefor at any time after default.

13. **DEFAULT.** The lessee agrees that in the event of (a) the adjudication of the Lessee (or either of them, if more than one) as a bankrupt; (b) the levy of an execution or other legal process; (c) the use of the Premises or any part thereof by the Lessee, or by anyone else at the Lessee's sufferance, for immoral or illegal purposes, or in such manner as to constitute a nuisance, or for any purpose prohibited by this Lease or not reasonable within the spirit of the purposes for which the Premises are let; (d) the failure of the Lessee to pay promptly when due the rents and other indebtedness, or any part thereof, herein agreed to be paid and such failure continues for a period of ten (10) days after written notice thereof by Lessor; (e) the removal of any of Lessor's furniture, fixtures, goods, merchandise and effects from the Premises; (f) the Lessee's breach or failure to promptly perform any one or more of the material separate and several covenants or agreements in this Lease set forth and any such failure is not cured within thirty (30) days after written notice thereof by Lessor to Lessee; then, upon the happening of one or more of said events, the Lessor may, at its election, terminate this Lease at any time, by giving three (3) days' written notice to the Lessee of the Lessor's election to so terminate. Such termination shall be effective after three (3) days from the date such notice is given to the Lessee. Such notice, or any notice regarding this Lease or authorized or required to be given to the Lessee under the provisions of this Lease, may be properly given by mailing the same, certified mail, return receipt requested, postage prepaid, addressed to the Lessee at the address of the Premises (i.e., c/o ACTION MOTORS, INC., 717 First Street North, Alabaster, Alabama 35007) or be delivering same, in any other manner, to the Lessee or to any of his or its agents or employees at said address. Similarly, any notice regarding the Lease required or authorized to be given to the Lessor may be properly given by mailing same, certified mail, return receipt requested, postage prepaid, addressed to the Lessor as follows: G & H AUTO SALES, INC., Post Office Box 954, Alabaster, Alabama 35007, or by delivering same, in any other manner, to the Lessor. Upon termination of this Lease as provided hereby, the Lessor shall have the right immediately to re-enter and repossess the Premises, without notice to anyone.

14. **NON-WAIVER.** The Lessor's right to terminate this Lease upon the happening of any one or more of the events set forth in Paragraph 13 hereof, shall continue throughout the period of existence of any default, and such right to terminate shall not be deemed waived or relinquished by the Lessor's delay in giving notice of its election to terminate, or by the Lessor's receipt of rents or other indebtedness, less than the entire amount due hereunder. No delay in the exercise by the Lessor of any other right, option or privilege given or reserved to the Lessor under

this Lease shall be deemed a waiver thereof. No terms or conditions in this Lease set forth can be waived, altered or changed except in writing. This Lease evidences the entire contract between the Lessor and Lessee, and no understanding or agreement made by either party with agents or others, except as set forth herein, shall be binding on the parties hereto.

15. ACCELERATION OF MATURITY. Upon the termination of this Lease for any one or more of the causes set forth in Paragraph 13 hereof, or upon any termination of this Lease whether by acceleration or otherwise, the rents for the entire rental period, and other indebtedness, if any, payable under the provisions hereof, shall be and become immediately due and payable, without notice to the Lessee or anyone else and without regard to whether or not repossession of the Premises shall have been surrendered to or taken by the Lessor.

16. INSURANCE.

a) As a requirement of this Lease, Lessee shall be required to purchase on and keep in effect at its sole expense, a public liability policy, acceptable to Lessor, insuring Lessor for a minimum of \$1,000,000.00 against injury on or about said property.

b) Lessee shall keep all buildings, improvements, and equipment (including contents of buildings) on the Demised Premises, including all alterations, additions, and improvements, insured against any loss or damage by fire, smoke, explosion, rain, wind, flood, lightning, vandalism, theft, water, falling objects, and wind driven objects and debris. The insurance shall be in an amount not less than \$50,000.00 on the building or buildings, improvements and additions and alterations, plus not less than \$10,000.00 on the fixtures and the contents of the building or buildings, plus coverage for debris removal.

c) All insurance provided by Lessee as required above shall be carried in favor of Lessor and Lessee as their respective interests may appear, and in the case of insurance against damage to the Demised Premises, shall provide that loss, if any, shall be adjusted with and be payable to Lessor. Lessor must be furnished with a copy of each policy and a receipt showing premiums paid on same. All policies shall require thirty (30) days notice by certified or registered mail to Lessor of any cancellation or change affecting any interest of Lessor.

d) If Lessee shall fail or refuse to provide any insurance required above, Lessor may either terminate the Lease at once by written notice to Lessee by mail or hand delivery, or procure the required insurance and bill Lessee for same. Lessee shall pay Lessor for any insurance so procured by Lessee on the first day of the month following Lessor's presentation to Lessee of a statement for same.

17. **PERSONS BOUND.** The designation "Lessee", and all plural and singular words used herein to refer to the person or persons hereby leasing the Premises from the Lessor, shall be construed to refer to all of the undersigned (except the Lessor), whether one or more than one. The terms, provisions and agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, and to their respective successors, assigns, heirs and representatives, as the case may be; provided, however, that Lessee may not assign this Lease or sublease the Premises.

18. **EMINENT DOMAIN.** If the whole or any part of the Premises shall be taken by Federal, State, County, City or other authority for public use or under any statute, or by right of eminent domain, then when possession shall be taken thereunder of said Premises, or any part thereof, the term hereby granted and all rights of the Lessee hereunder shall immediately cease and terminate, and the Lessee shall not be entitled to any part of any award that may be made for such taking, nor to any damages thereof except that the rent shall be adjusted as of the date of such termination of the Lease.

19. **FIRST RIGHT OF REFUSAL.** In the event Lessor receives a bona fide binding offer to purchase the Premises made at arms length by an individual, partnership, corporation or other entity, Lessee shall have the first right of refusal to purchase the premises on the same terms and conditions as the above offer. Lessor shall notify Lessee of any such offer for sale and shall disclose all terms and conditions of such offer to Lessee. Lessee shall then have thirty (30) days to exercise its first right of refusal by written notice to Lessor. In the event Lessee does not exercise its right of first refusal by written notice within the period described above, then Lessor shall have thirty (30) days after the expiration of the above period or the giving of such notice, as the case may be, to close the sale of the Premises to the third party offeror on the same terms and conditions set forth in the offer described above. In the event such sale is not closed within such thirty (30) day period on the same terms and conditions, then the provisions of this Paragraph 19 shall again apply to any offer to purchase the Premises (whether by the same offeror or a different offeror and whether or not upon the same or different terms). In

the event that the Premises are sold within such thirty (30) day period to the offeror on the same terms contained in the offer described above, then this Lease shall continue through the following month, at which time this Lease shall terminate and Lessee shall deliver possession of the Premises to the owner thereof.

IN WITNESS WHEREOF, this Lease has been executed and subscribed by the Lessor, G & H AUTO SALES, INC., by its legally authorized agent, and by the Lessee, ACTION MOTORS, INC., by its legally authorized agent thereunto on this the day and year first above written.

LESSOR:
G&H Auto Sales, Inc.

By: Charles Gray
Charles Gray, Its Legal Authorized Agent

LESSEE:
Action Motors, Inc.

By: Jack L. Montgomery
Jack L. Montgomery, Its Legal
Authorized Agent

LESSEE:

Jack L. Montgomery
Jack L. Montgomery, Individually

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles Gray whose name as authorized agent for G & H Auto Sales, Inc., is signed to the foregoing Land Lease, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 10th day of January, 1994.

Edwina L. Jones
Notary Public

My Commission Expires: 11-22-97

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jack L. Montgomery, whose name as authorized agent of Action Motors, Inc., an Alabama corporation and individually, and is signed to the foregoing Land Leases, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation on the day the same bears date.

Given under my hand and official seal this the 10th day of January, 1994.

Edwina L. Jones
Notary Public

My Commission Expires: 11-22-97

