

STATE OF ALABAMA

COUNTY OF SHELBY

06/16/1995-15720  
09:02 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
007 SNA 23.50

### LOAN AGREEMENT

This Agreement made this 16<sup>th</sup> day of May, 1995, by and among Gregory N. Johnson, (hereinafter called the "Borrower,") and Phillip J. Lusco, (hereinafter called the "Lender") for a loan in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) at 12% interest per annum, payable in twenty (20) years or Two Hundred Forty (240) payments upon the following conditions:

1. The Borrower agrees to borrow from the Lender, and the Lender agrees to lend to Borrower upon a satisfactory closing of a real estate transaction now pending between the Borrower and D. E. Hern, the "Seller", upon the following described property:

See attachment "A" for description

The contract dated February 1995 attached hereto along with any amendments or revisions of said contract.

2. NOTE: The obligation to repay the loan shall be evidenced by the Borrower's Promissory Note and Mortgage, to be executed by the Borrower and his spouse on the date of closing, which shall read Two Hundred Fifty Thousand Dollars (\$250,000.00) at 12% interest payable in Two Hundred Forty (240) installments with a late clause due of 5% of the note if received after the tenth day of each month when it becomes due. If payment received by the Lender more than ten (10) days after the monthly date due and shall continue through the entire note there shall not be a waiver of right to accelerate not and foreclose.

(a) Borrower may not pay this note off within ten (10) years unless a \$10,000.00 penalty is paid at the time of the payoff. Borrower is to pay a \$10,000.00 brokerage fee no later than ninety (90) days after the execution of the original note, which shall not be credited to the balance of said note as this is a 4% brokerage fee charged by the Lender.

3. REPRESENTATIONS: The Borrower and Guarantors represent and warrant to the Lender as follows:

The financial records of the Borrower and his two corporations and warrants that they are true and correct and that there is no fraudulent misrepresentations known to him or should be known to him upon furnishing these financial agreements and brochure to the Lender and his agreement to loan said mortgage to purchase said land.

(a) BINDING AGREEMENT: This Agreement constitutes, and the Note and Mortgage when issued and delivered pursuant hereto for

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value received will constitute, the legal, valid, and binding obligations of the Borrower in accordance with its terms, subject to bankruptcy and insolvency laws and any other laws of general application affecting the rights and remedies of creditors.

(b) Borrower further warrants that there will be no encumbrances on said real estate and that Alabama Title Insurance Company will issue a binder and title policy for the purchase of the land along with the insurance insuring the mortgage in the amount of \$250,000.00 which the Borrower will pay all the expenses including a reasonable attorney's fee and recording cost for recording of said mortgage at the time of closing. The note will contain any reasonable attorney's fee in the event of a foreclosure and collection of said note deficiency according to Alabama law.

(c) LITIGATION: There are no proceedings pending or, so far as the Borrower and the officers of the Borrower know, threatened before any court or administrative agency which, in the opinion of the officers of the Borrower, will materially adversely affect the financial condition or operations of the Borrower including both corporations.

(d) NO CONFLICTING AGREEMENTS: There is no charter, regulation, or preference stock provision of the Borrower and no provision of any existing mortgage, indenture, contract, or agreement binding on the Borrower or affecting its property, which would conflict with or in any way prevent the execution, delivery, or carrying out of the terms of this Agreement, Note and Mortgage.

(e) FINANCIAL CONDITION: The Borrower and his corporations are legally and factually solvent on the date of this loan and covenants and agrees that it will remain in at least as good a financial condition throughout the term of this Agreement as it is in on the date hereof. The Borrower further agrees to immediately advise the Lender of any material adverse change in its financial condition or operations, or of any litigation, claim, or cause of action which may bring about any material damage to the Borrower. The Borrower will furnish to the Lender accountants' reports on a yearly or quarterly basis as required by Lender and Borrower will certify that said reports are complete and current, financial conditions of his two corporations and his personal conditions as a result of his operations in automobile sales and repairs.

4. CONDITIONS OF LENDING: The obligation of the Lender to make the loan is subject to the following conditions:

(a) APPROVAL OF LENDER'S COUNSEL: All legal matters incident to this loan and mortgage shall be satisfactory to Counsel, John L. Cole, for the Lender.



(b) LEASE AGREEMENTS: The Borrower and his corporation will execute lease agreements to the Borrower and shall be reviewed by the counsel of the Lender prior to closing.

(c) OPINION OF BORROWERS COUNSEL: The Lender shall have received a favorable written opinion of counsel for the Borrower, dated the date of the loan and satisfactory in form and substance to the Lender, that all conditions are current and financial conditions are satisfactory and that all requirements under the sale of the contract from Mr. Hern to the Borrower shall have been met to his satisfaction and to the satisfaction of Lender's counsel.

(d) PENALTIES: The Borrower's note receipt will contain the certain penalties mentioned and shall contain the clause that the loan cannot be paid off within ten (10) years without a \$10,000.00 penalty being paid and this will be in excess of the \$10,000.00 brokerage fee paid at the beginning of the said agreement, which the Borrower will execute in a separate note for the \$10,000.00, payable in ninety (90) days.

(e) INSURANCE: The Borrower will carry insurance on said building for the appraised value and shall furnish to the Lender a copy showing that he or his designated family are insured and that premiums will be paid as they become due.

5. AFFIRMATIVE COVENANTS: Until payment in full of the Note and performance of all other obligations of the Borrower hereunder, the Borrower will:

(a) FINANCIAL STATEMENTS: Furnish to the Lender not later than seventy-five (75) days after the end of each of the first three (3) quarters, a balance sheet of the Borrower and income and expense statements of both corporations and his personal obligations; no later than the second year to the end of the payment of this note the Borrower will furnish quarterly his operations financial statements to the Lender to be prepared by an independant accountant. The Lender will not make any disclosures of these statements other than to protect himself or herself. The Borrower will pay and discharge all taxes and assessments of governmental charges upon said real estate, its income and its property and will furnish to the Seller, no later than the first day of each year for the previous years taxes, the receipt wherein the taxes have been paid.

(b) INSURANCE: The Borrower will maintain insurance with responsible insurance companies of such of its properties, in such amounts and against such risks as is customarily maintained by similar businesses operating in the same vicinity, and furnish evidence and detailed list there to the Lender, upon request.

The loss payee is to be included on the policy and said policy cannot be cancelled without the insurance company giving a written notice prior to cancellation.

(c) LITIGATION: The Borrower will notify the Lender of any litigation commenced or threatened against the Borrower involving \$10,000.00 or more or affecting the conduct of its business and threatening the security of his mortgage.

Payment of the Note and Mortgage by the Borrower, the Lender will satisfy the said Note and Mortgage according to the terms and conditions as set forth under the laws of the State of Alabama.

6. EVENTS OF DEFAULT: If one or more of the following events shall occur:

(a) ACCELERATION: Default shall be made in the payment of any installment or principal or of interest on the Note for a period of ten (10) days after it shall have become due and payable, whether at maturity, by notice of intention to prepay, or otherwise; or

Default shall be made in the due observance or performance of any term, covenant, or agreement contained in any of the paragraphs, and such default shall have continued unremedied for a period of ten (10) days; or

Any representation or warranty made by the Borrower herein or any statement or representation made in any certificate, report, or opinion delivered pursuant hereto shall prove to have been incorrect in any material respect when made; or

The Borrower makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any receiver or any trustee of the Borrower or any substantial part of its property, commences any proceeding relating to the arrangement or readjustment of debt, or for dissolution or liquidation under any law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the Borrower any such proceeding which remains undismissed for a period of thirty (30) days, or the Borrower by any act indicates its consent, approval of, or acquiescence in any such proceedings or the appointment of any receiver of or any trustee for the Borrower or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of thirty (30) days or

Any judgment against the Borrower and his two corporations or any attachment against its property for any amount in excess of \$10,000.00 remains unpaid, unstayed on appeal, undischarged, unbonded, or undismissed for a period of fifteen (15) days.

7. MANAGEMENT: The Borrower agrees to give the Lender prompt notice in the event that Gregory N. Johnson shall cease, for any

reason, to be an officer and director of the two corporations, or any subsequent corporation or operates a business in said premises within thirty (30) days within said notice the Borrower may determine whether or not it shall deem the mortgage in the following.

**8. MISCELLANEOUS:**

(a) EXPENSES: The Borrower agrees to pay all out-of-pocket expenses of the Lender (including the reasonable fees, brokerage fee and attorneys fee for counsel in preparation of this agreement, mortgage and note) and the enforcement of any provision of this Agreement or of the note and mortgage.

(b) NO WAIVER: The Lender shall not by any act of omission or commission be deemed to waive any of its rights or remedies hereunder unless such waiver be in writing and signed by the Lender, and then only to the extent specifically set forth therein; a waiver on one event shall not be construed as continuing or as a bar to or waiver of such right or remedy on a subsequent event.

(c) INTEREST RATE: The Borrower and each of the Guarantors specifically agree that, in the event of a default, as the same is defined hereinabove, interest shall continue to accrue at the rate set forth in the Note and the Lender shall be entitled to charge compound interest and collect interest at the rate set forth in the Note, before as well as after entry of any judgment, including judgment of foreclosure and sale, until payments in full of the balance due is made.

(d) LATE CHARGE: In the event that any installment of principal and/or interest is received by the Lender more than ten (10) days after the due date thereof, a late payment of five percent (5%) of said note. This charge shall be in addition to all other rights and remedies available to the Lender at law, in equity, or under this Agreement.

(e) FORECLOSURE: In the event of a foreclosure in this matter the Lender shall have the right to purchase the right of redemption from the Borrower for seventy-five percent (75%) of the appraised value at the time of foreclosure and the Borrower will terminate and give a release of any right of redemption under the laws of the State of Alabama or any other laws including federal bankruptcy statutes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by the Borrower and Seller as indicated below as of the date first above written.

  
GREGORY N. JOHNSON - BORROWER

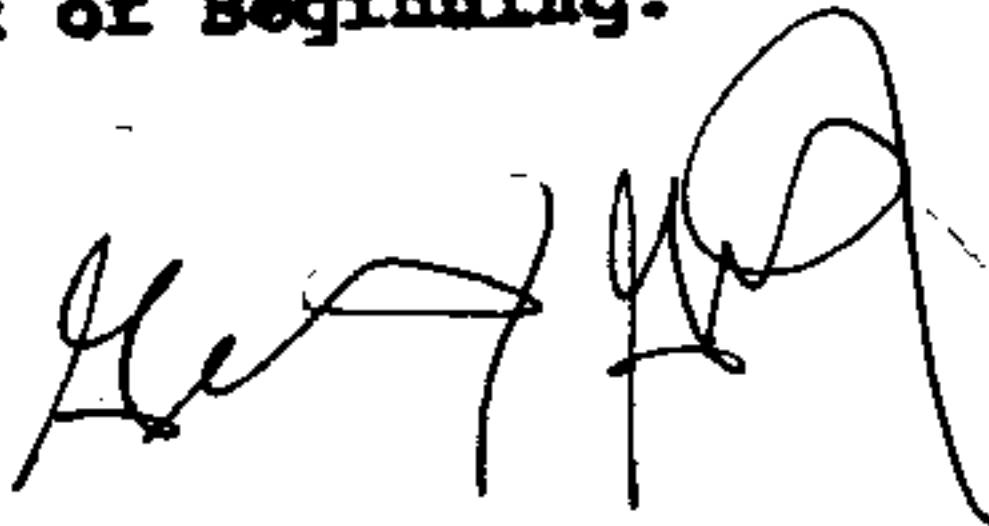
  
SELLER



EXHIBIT "A"

A parcel of land containing 1.21 Acres, more or less, located in the Southwest Quarter of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama; more particularly described as follows:

Commence at the Southwest corner of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama; thence run Easterly along the Section line a distance of 1336.32 feet; thence left Northwesterly  $107^{\circ}03'29''$  a distance of 1133.69 feet to the Point of Beginning; thence continue Northwesterly along the same course a distance of 155.07 feet; thence left Westerly  $73^{\circ}07'22''$  a distance of 353.39 feet to the Easterly Right-of-Way of U.S. Highway No. 31; thence left Southeasterly  $104^{\circ}56'55''$  a distance of 152.56 feet along said Easterly Right-of-Way; thence left Easterly  $74^{\circ}53'45''$  a distance of 359.05 feet to the Point of Beginning.

A handwritten signature in dark ink, appearing to be 'H. H. H.' or similar, located below the text description.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED



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