

STATE OF ALABAMA  
COUNTY OF SHELBY

AMENDMENT TO NOTE AND LOAN AGREEMENTS

THIS AMENDMENT (the "Amendment") dated December 26, 2001, is entered into by and among Susan Schein (hereinafter referred to as the "Borrower"), Susan Schein Chevrolet, Inc., and Susan Schein Chrysler, Plymouth, Dodge, Inc. (sometimes Susan Schein Chevrolet, Inc., and Susan Schein Chrysler, Plymouth, Dodge, Inc. are referred to herein collectively as the "Guarantors" or the "Dealerships"), and General Motors Acceptance Corporation, a Delaware corporation at its office at 3885 Crestwood Parkway, Suite 400, Duluth, GA 30096 (hereinafter referred to as the "Lender").

WITNESSETH:

WHEREAS, Susan Schein and Lonnie G. Schein have heretofore executed and delivered to Lender a Promissory Note dated October 25, 1999, in the original principal amount of One Million Eight Hundred Fifty Thousand and No/100 Dollars (\$1,850,000.00) (the "Note") which Note has an outstanding balance due thereunder as of the date hereof of One Million Seven Hundred Five Thousand Six Hundred Fifty Two and 17/100 Dollars (\$1,705,652.17); and

WHEREAS, the Note has heretofore been jointly and severally guaranteed by the Guarantors pursuant to an Absolute Guaranty from Guarantors dated October 25, 1999 (referred to collectively as the "Guaranty Agreement"); and

WHEREAS, the Note is further secured and evidenced by the following agreements (the following agreements together with the Note and the Guaranty Agreement referenced above are hereinafter sometimes collectively referred to as the "Loan Agreements"):

- (i) Real Estate Mortgage and Security Agreement dated October 25, 1999, recorded at Instrument 1999-44339 in the Office of the Judge of Probate of Shelby County, Alabama (the "Mortgage");
- (ii) Assignment of Rents and Leases dated October 25, 1999, recorded at Instrument 1999-44340 in the Office of the Judge of Probate of Shelby County, Alabama;
- (iii) Subordination and Attornment Agreement from the Guarantors as Lessees under that certain Ground Lease Agreement dated October 25, 1999, said Subordination and Attornment Agreement being recorded at Instrument 1999-44342 in the Office of the Judge of Probate of Shelby County, Alabama;
- (iii) Security Agreement dated October 25, 1999;
- (iv) Environmental Indemnity Agreement dated October 25, 1999;

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Cahaba Title, Inc.

- (v) Cross Default and Cross Collateralization Agreement dated October 25, 1999 (the "Cross Default and Cross Collateralization Agreement");
- (vi) Any notes, mortgages, security agreements, loan agreements and other instruments which evidence or secure any of the foregoing or which are given as a renewal, modification or extension of any of the foregoing; and

**WHEREAS**, Lonnie Schein died on December 26, 2000, and Susan Schein (herein referred to as the "Borrower") became the owner of the real estate evidenced and secured by the Mortgage, and Borrower and the Dealerships have requested Lender make an additional working capital loan to Borrower to be utilized by the Dealerships for Two Hundred Seventy Five Thousand and NO/100 Dollars (\$275,000.00) (the "Working Capital Loan") which loan shall be evidenced and secured by the Note and the Loan Agreements, and Lender has agreed to make said loan and Borrower and Guarantors have agreed that said Working Capital Loan shall be one of the loans evidenced by or secured by the Note, said Cross Default and Cross Collateralization Agreement and the Loan Agreements; and

**WHEREAS**, Borrower and Guarantors have further requested Lender modify the interest rate of the Note and payment terms on the Note as provided hereinbelow; and

**WHEREAS**, Borrower has further requested Lender provide for a partial release from GMAC Loan Number 111000373 the of the property described on Exhibit "A" attached hereto and made a part hereof.

**NOW, THEREFORE**, in consideration of the foregoing premises, the agreement of Lender to (a) modify the interest rate and payment terms on the Note as provided hereinbelow, and (b) loan Borrower Two Hundred Seventy Five Thousand and NO/100 Dollars (\$275,000.00) pursuant to the Working Capital Loan as described below, and the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein as a material part of the this Amendment.
2. Borrower has borrowed from Lender this date Two Hundred Seventy Five Thousand and NO/100 Dollars (\$275,000.00) pursuant to the Working Capital Loan which loan shall be included in and shall become a part of the indebtedness evidenced by the Note. Borrower promises to pay said Working Capital Loan pursuant to the Note as provided herein.
3. The undersigned do further agree that the Note is amended and modified as follows:

(i) Effective as of the date hereof, the outstanding principal balance under the Note of One Million Seven Hundred Five Thousand Six Hundred Fifty Two and 17/100 Dollars

(\$1,705,652.17) as increased by the Working Capital Loan of Two Hundred Seventy Five Thousand and NO/100 DOLLARS (\$275,000.00), for a total outstanding balance of One Million Nine Hundred Eighty Thousand Six Hundred Fifty Two and 17/100 Dollars (\$1,980,652.17), shall bear interest at the rate of Seven and 5/100 percent (7.05 %) per annum and shall be payable in installments as follows:

An installment of Nineteen Thousand Four Hundred Twenty Five and 94/100 Dollars (\$19,425.94) shall be due and payable on the 1st day of February, 2002; an equal installment of Nineteen Thousand Four Hundred Twenty Five and 94/100 Dollars (\$19,425.94) shall be due and payable on the 1st day of each and every succeeding month thereafter, to and including the 1st day of December, 2003, and on the 1st day of January, 2004, the balance of principal and interest then remaining shall be due and payable in ONE FINAL BALLOON PAYMENT.

(ii) It is understood that Lender will retain the wholesale accounts of Susan Schein Chevrolet, Inc., and Susan Schein Chrysler, Plymouth, Dodge, Inc. so long as the loan evidenced by the Note remains outstanding. If the wholesale account is transferred to another financing source, Lender may, at its option, (a) declare the loan balance due and payable, or (b) increase the rate of the Note to 400 basis points above the then current 10-year Treasury Note rate. In no event shall the applicable interest rate exceed the maximum permitted by law.

(iii) The Borrower may prepay any portion of principal at any time with funds derived from cash flows of the normal business operations of Dealerships (operating cash flows must be calculated in general conformance with generally accepted accounting principals), without a prepayment premium. If prepayment is from a source other than operating cash flows of any such Dealerships, or as provided for herein, a prepayment premium must be paid to Lender, as hereinafter provided.

For purposes hereof, "Treasury Constant Maturity Yield Index" shall mean the average yield for "This Week" as reported by the Federal Reserve Board in Federal Reserve Statistical Release H.15(519) ("FRB Release") published during the second full week preceding the prepayment date for instruments having a maturity coterminous with the remaining term of the Note. In the event the FRB Release is not being published at the time of the prepayment of principal, Lender shall select a comparable publication to determine the Treasury Constant Maturity Yield Index. If there is no Treasury Constant Maturity Yield Index for instruments having a maturity coterminous with the remaining term of the Note, then the weighted average yield to maturity of the Treasury Constant Maturity Yield Indices with maturities next longer and shorter than such remaining term to maturity shall be used, calculated by averaging (and rounding upward to the nearest whole multiple of 1/100 of 1% per annum, if the average is not such a multiple) the yields of the relevant Treasury Constant Maturity Yield Indices (rounded, if necessary, to the nearest 1/100 of 1% with any figure of 1/200 of 1% or above rounded upward to the nearest hundredth of a percentage point).

Any prepayment premium will be waived by Lender if such prepayment is paid with the



proceeds of insurance covering casualty losses to the collateral pledged under the Loan Agreement, if such prepayment is the result of a bona fide sale either of the Dealerships, if such prepayment is derived from the operating cashflow or profits of the Dealerships resulting from their normal business operations, if the loan evidenced by the Note is terminated by Lender, or if such prepayment is derived from the sale of 11.03 acres more or less in Shelby County, Alabama (the "Lands") secured by the Mortgage so long as the Net Proceeds from such sales are applied against the principal balances then outstanding under the Note. As used herein, the term "Net Proceeds" shall mean the sales price for such Lands less reasonable closing costs, commissions and fees incidental to the sale. Notwithstanding the foregoing, nothing stated herein shall imply or infer that the sale of such Lands is permitted and such sales or transfers are specifically prohibited under the Mortgage.

All prepayments shall include the prepayment premium (if applicable) as well as all interest accrued on the amount being prepaid to the date of payment.

(iv) Time is of the essence in the Note and Loan Agreements and timely receipt of all payments due thereunder is required. Any payment which is not received by Lender on or before the tenth (10<sup>th</sup>) calendar day following its due date will be assessed a late charge equal to three percent (3.00%) of the total payment of principal and interest past due or the maximum amount permitted by law, whichever is less.

(v) The Note is payable in full on January 1, 2004. The Borrower must repay the entire principal balance of the Note and unpaid interest then due. Lender is under no obligation to refinance the Note at that time. The Borrower will, therefore, be required to make payment out of other assets that it may own, or the Borrower will have to find a lender, which may or may not be Lender, willing to lend the Borrower the money to refinance the Note. If the Borrower refinances the Note at maturity, it may have to pay some or all of the closing costs normally associated with a new loan even if the Borrower is obtaining refinancing from Lender.

4. Defined terms as used herein shall have such meaning as ascribed to such terms under the Cross Default and Cross Collateralization Agreement. The undersigned do further agree that said Working Capital Loan shall be included as one of the obligations (the "Obligations") evidenced by and secured by the Cross Default and Cross Collateralization Agreement and that Section 3 of said Cross Default and Cross Collateralization Agreement is hereby modified and amended to provide that any default under any of the Obligations as defined therein, including a default under the Working Capital Loan shall constitute a default under the remainder of the Obligations and under said Cross Default and Cross Collateralization Agreement. The undersigned do further agree that said Working Capital Loan and the Revolving Line of Credit from Lender dated March 30, 2001 shall also be included as Additional Agreements as described in Section 2 of Exhibit "A" of the Cross Default and Cross Collateralization Agreement. The undersigned do further agree that the Obligors, and each of them, shall and do hereby guarantee to Lender full payment and performance under each Security Agreement and instrument evidencing an Obligation to Lender as if all of the Obligors were original parties to each Security Agreement and instrument evidencing an Obligation to Lender.

5. Borrower has requested and Lender has agreed to enter into a Partial Release from GMAC Loan Number 111000373 upon the sale of property by Borrower to Interstate Restaurant Investors, LLP pursuant to a Commercial Sales Agreement dated November 20, 2001, described on Exhibit "A" attached hereto and made a part hereof; provided that the net proceeds from the sale of said property shall be applied against the outstanding balance due under GMAC Loan Number 111000373 and further provided that the lien of the mortgage on the remainder of the lands evidenced or secured thereby shall not be affected by such Partial Release.

6. If any provision or any part of any provision of this Amendment or of any of the Loan Agreements or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Amendment and of such Loan Agreements and the application of other such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

7. The Note and Loan Agreements as modified hereby are hereby ratified, approved and confirmed in all respects. Without limiting the generality of the foregoing, the Guarantors hereby ratify and confirm their joint and several Guaranty Agreement and Borrower's full and timely performance of all of Borrower's obligations under the Note and Loan Agreements. Further without limiting the generality of the foregoing, Borrower acknowledges that the Note, as modified by this Amendment, evidences Borrower's promise to pay to the order of Lender the Note as provided hereinabove and to perform any and all obligations as provided under the Loan Agreements.

8. Nothing herein contained shall be construed to satisfy or impair any of the obligations, liabilities or indebtedness of Borrower arising under or by virtue of the Note or Loan Agreements or of Guarantors arising under or by virtue of the Guaranty Agreement. To the contrary, Borrower and Guarantors, jointly and severally, do hereby ratify, confirm and approve the Note and Loan Agreements as amended hereby and do hereby further covenant and agree that the Note and Loan Agreements as amended hereby shall be and remain in full force and effect, and that this Amendment is merely a modification of the Note and Loan Agreements to the extent provided herein and not a replacement of, or substitution for, the Note and Loan Agreements. Likewise, nothing herein contained shall be construed to satisfy, release, discharge or impair any other instruments, agreements or other writings at any time heretofore or hereafter given by Borrower or by any or all of Guarantors in order to evidence and/or secure all or any part of the indebtedness evidenced by the Note and Loan Agreements, all of which shall be and remain in full force and effect, enforceable in accordance with their respective terms.

9. This Amendment shall be binding upon, and inure to the benefit of, the respective heirs, successors, personal representatives and assigns of the parties hereto.

10. The parties hereto hereby further agree that any claim, dispute or controversy arising from or relating to this Amendment, the Loan Agreements or the relationships which result from this Amendment or the Loan Agreements, including the validity of this provision regarding arbitration or the entire Amendment, shall be resolved by binding arbitration administered by the American



Arbitration Association in accordance with its commercial arbitration rules in effect when the claim is filed. The arbitration shall be held in Birmingham, Alabama, or at such other place as may be selected by mutual agreement of the parties.

This Amendment including this provision regarding arbitration is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C., Section 1-16. Judgment upon any award rendered in any proceeding commenced hereunder may be entered in any court having jurisdiction. Notwithstanding the foregoing, nothing stated herein shall be construed to prevent any of the parties' use of bankruptcy, replevin, repossession, foreclosure, or any other prejudgment or provisional remedy relating to any collateral, security or property interests for contractual debts now or hereafter owed by any party to the other under the Loan Agreements. The parties further intend and agree that the arbitration provisions contained in this Amendment shall be binding upon and enforceable against each of the parties, their respective heirs, personal representatives, successors and assigns.

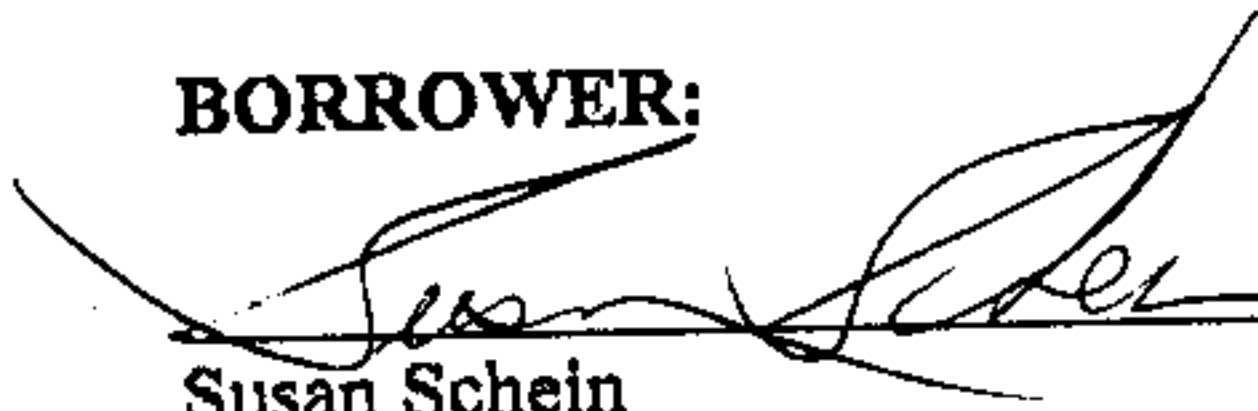
In the event it is ever determined by a court of competent jurisdiction that the arbitration provisions contained in this Amendment are not enforceable with respect to a particular dispute, claim or controversy asserted by or against any of the parties hereto (or any of their respective heirs, personal representatives, successors and assigns), then and in such event each of the parties do hereby covenant and agree that each of the parties (a) waive trial by jury of any and all issues arising in any such action or proceeding related to or connected with said dispute, claim or controversy, and (b) acknowledge and agree that as the Borrower's principal place of business is Pelham, Alabama and Mortgagee is a Delaware corporation, that jurisdiction of Federal Courts of the United States is appropriate and that jurisdiction of the Federal Courts of the United States for any such dispute is reasonable. The agreements contained herein shall survive the payment in full of the Note.

By entering into this Amendment, each of the parties acknowledge that they had a right or opportunity to litigate disputes through a court, but that they prefer to resolve any such disputes through arbitration.

**There is Nothing Further on This Page**

IN WITNESS WHEREOF, Borrower, Guarantors and Lender have caused this instrument to be executed as of the day and year first above written.

**BORROWER:**

  
Susan Schein

L.S.

**GUARANTOR:**

Susan Schein Chevrolet, Inc.  
An Alabama Corporation

By:   
As Its: President

L.S.

ATTEST:

By:   
As Its: Secretary

ATTEST:

By:   
As Its: Secretary

Susan Schein Chrysler, Plymouth,  
Dodge, Inc.  
An Alabama Corporation

By:   
As Its: President

L.S.

**GMAC:**

General Motors Acceptance Corporation

By:   
Ed Hval, as its Asst. Sec.

L.S.

**STATE OF ALABAMA  
JEFFERSON COUNTY**

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Susan Schein, whose name 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 said instrument, she executed same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this 26th day of December, 2001.

(SEAL)

  
NOTARY PUBLIC

My Commission Expires: 11/18/2002

**STATE OF ALABAMA  
JEFFERSON COUNTY**

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Susan Schein, whose name as President of Susan Schein 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 said instrument, she, 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 this 26<sup>th</sup> day of December, 2001.

(SEAL)

  
\_\_\_\_\_  
Notary Public

My commission expires 11/18/2002

**STATE OF ALABAMA  
JEFFERSON COUNTY**

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Susan Schein, whose name as President of Susan Schein Chrysler, Plymouth, Dodge, 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 said instrument, she, 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 this 26<sup>th</sup> day of December, 2001.

(SEAL)

  
\_\_\_\_\_  
Notary Public

My commission expires 11/18/2002

**STATE OF ALABAMA  
JEFFERSON COUNTY**

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Ed Hval, whose name as Asst. Sec., of General Motors Acceptance Corporation, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

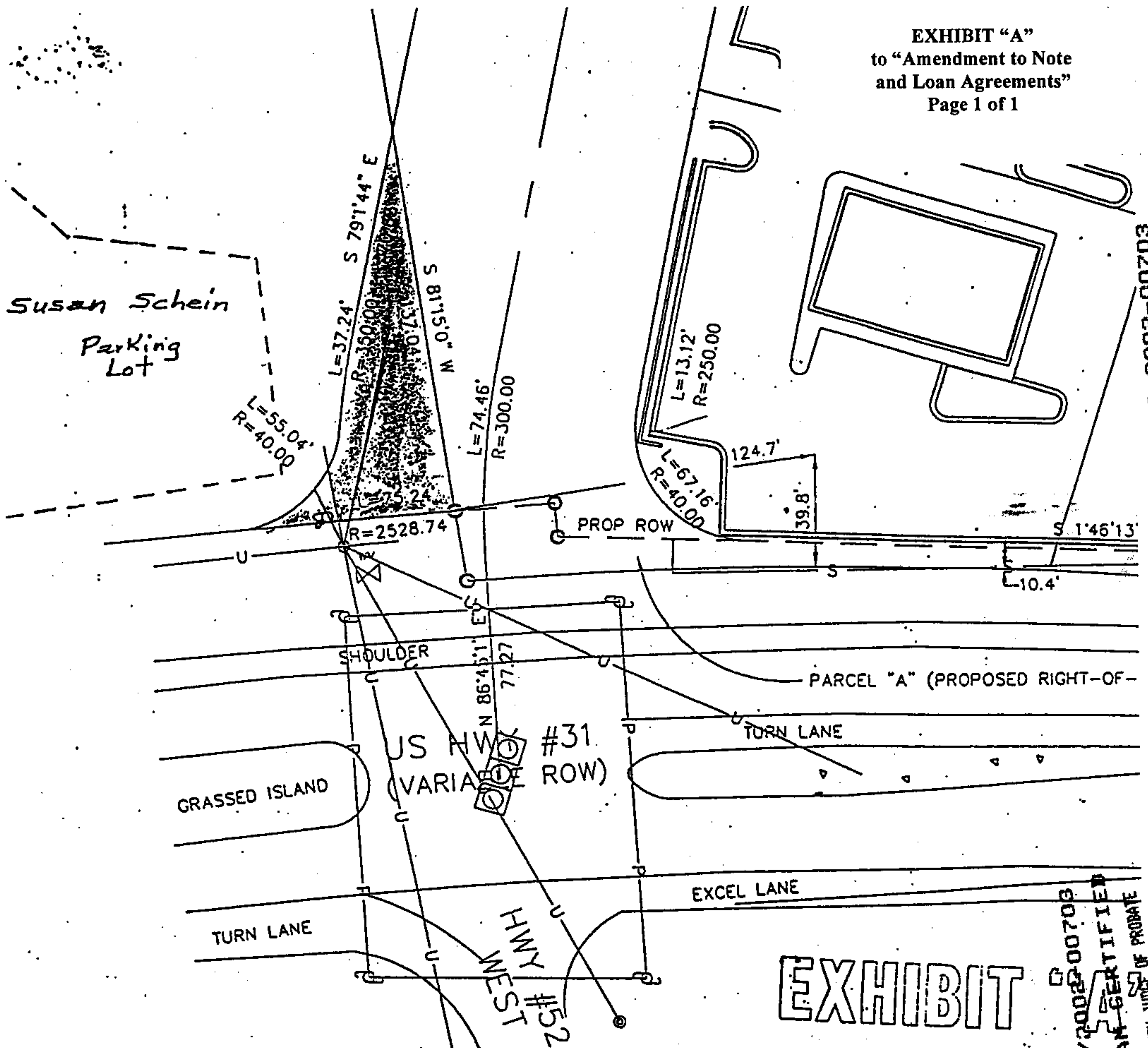
Given under my hand and official seal this 26<sup>th</sup> day of December, 2001.

(NOTARIAL SEAL)

  
\_\_\_\_\_  
Notary Public

My commission expires 11/18/2002





PROPOSED CITY OF PELHAM RIGHT-OF-WAY (SUSAN SCHEIN)

Commence at the NW corner of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama; thence S87°46'00"E, a distance of 1669.02'; thence S18°40'00"W, a distance of 190.46'; thence S11°40'00"W, a distance of 369.40'; thence N 81°15'00"E, a distance of 37.50'; thence S14°37'00"W, a distance of 75.00'; thence S81°15'00"W, a distance of 350.40'; to the POINT OF BEGINNING; thence continue along the last described course, a distance of 137.04' to the easterly right-of-way of U.S. Hwy. 31 to the point of curve to the left having a central angle of 01°42'17" and a radius of 2,528.74', said curve subtended by a chord bearing N5°25'55"W and a chord distance of 75.24'; thence northerly along the arc and along said right-of-way, a distance of 75.24' to the point of curve to the left having a central angle of 78°50'28" and a radius of 40.00', said curve subtended by a chord bearing S45°42'17"E and a chord distance of 50.80'; thence southeasterly along the arc and leaving said right-of-way, a distance of 55.04' to a point of reverse curve to the right having a radius of 350.00' and a central angle of 06°05'47" said curve subtended by a chord bearing S82°04'38"E and a chord distance of 37.22'; thence easterly along the arc, a distance of 37.24'; thence S79°01'44"E, a distance of 70.63' to the POINT OF BEGINNING. Containing 3,352.41 square feet or 0.08 acres, more or less.

EXHIBIT

Initials of parties  
[ ] [ ]

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SHELBY COUNTY JUDGE OF PROBATE  
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