

STATE OF ALABAMA  
COUNTY OF SHELBY

**THIRD AMENDMENT TO NOTE, MORTGAGE  
AND LOAN AGREEMENTS**

**THIS THIRD AMENDMENT** (the "Amendment") dated February 11, 2004, is entered into by and among Susan S. Schein (hereinafter referred to as the "Borrower"), Susan Schein Chevrolet, Inc., Susan Schein Chrysler, Plymouth, Dodge, Inc., Schein Holding Company, Inc. (sometimes Susan Schein Chevrolet, Inc., Susan Schein Chrysler, Plymouth, Dodge, Inc. and Schein Holding Company, Inc. are referred to herein collectively as the "Guarantors"), 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 evidences a loan from Lender to Borrower (the "Loan") of even date therewith; and

**WHEREAS**, the Note has heretofore been jointly and severally guaranteed by Susan Schein Chevrolet, Inc. and Susan Schein Chrysler, Plymouth, Dodge, Inc. (sometimes being referred to herein as the "Dealerships") pursuant to an Absolute Guaranty from Guarantors dated October 25, 1999 (referred to collectively as the "Guaranty Agreement") and Schein Holding Company, Inc. has guaranteed said Note pursuant to a Cross Default, Cross Collateralization and Cross Guaranty Agreement dated 2-11 2003; 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" and sometimes as the Separate 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;
- (v) Cross Default and Cross Collateralization Agreement dated October 25, 1999 (the "Cross Default and Cross Collateralization Agreement");
- (vi) First Amendment dated \_\_\_\_\_, 2002 (the "First Amendment")
- (vii) Second Amendment dated \_\_\_\_\_, 2002 (the "Second Amendment")
- (viii) 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 modify the terms of the Note and Loan Agreements as provided herein and Lender has agreed to such modification as provided for herein.

**NOW, THEREFORE**, in consideration of the foregoing premises, the agreement of Lender to modify the interest rate and payment terms pursuant to a Note as provided hereinbelow, 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. Contemporaneously with the execution of this Agreement, Borrower shall enter into a Note in favor of Lender for One Million Seven Hundred Eighty Nine Thousand Four Hundred Twenty Two and 85/100 Dollars (\$1,789,422.85) evidencing the outstanding balance being due and payable under the Loan, which Note (the "Note") shall provide for repayment of the outstanding indebtedness in Twenty-Four (24) successive payments of principal and interest at the rate or rates provided for therein with the entire outstanding balance then being due and payable being due in ONE FINAL BALLOON payment being due on March 1, 2006. Said Note shall be substituted for the Note or Notes provided for under the Separate Agreements and references in each of the Separate Agreements to the "Note", "Promissory Note" or similar references shall be deemed to refer to the Note entered into of even date herewith but the Promissory Note dated October 25, 1999 shall not be extinguished or canceled.

3. If the wholesale floorplan account(s) of Susan Schein Chevrolet, Inc. or Susan Schein



Chrysler, Plymouth, Dodge, Inc. is (are) transferred to another financing source, Lender, may, at its option, (a) declare the loan balance due and payable, (b) increase the rate of this loan to 400 basis points above the then current prime rate (as defined in the Note), or (c) increase the rate of this loan to 400 basis points above the existing loan rate. In no event will the applicable interest rate exceed the maximum permitted by law.

4. The Note is payable in full on March 1, 2006. 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.

5. Defined terms as used herein shall have such meaning as ascribed to such terms under the Cross Default, Cross Collateralization and Cross Guaranty Agreement dated December \_\_\_, 2003. The undersigned do further agree that this Loan as modified shall continue to be included as one of the obligations (the "Obligations") evidenced by and secured by the Cross Default, Cross Collateralization and Cross Guaranty Agreement of even date herewith. 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.

6. If any provision or any part of any provision of this Amendment or of any of the Separate 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 Separate 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 Separate 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 Separate Agreements. Further without limiting the generality of the foregoing, Borrower acknowledges that the Note, 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 Separate 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 Separate 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 Separate Agreements as amended hereby and do hereby further covenant and agree that the Note and

Separate 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 Separate Agreements to the extent provided herein and not a replacement of, or substitution for, the Note and Separate 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 Separate 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. Nothing herein contained shall be construed to satisfy or impair any of the obligations, liabilities or indebtedness of the Borrower arising under or by virtue of the Mortgage; to the contrary, the Borrower and the Lender do hereby covenant and agree that the Note and the Mortgage as modified and amended hereby shall be and remain in full force and effect. As an inducement for the Lender to enter into this Amendment Agreement, the Borrower does hereby further covenant, warrant and represent unto the Lender that the Mortgage is and shall be and remain a legal, valid, binding and enforceable first mortgage upon the real estate more particularly described therein, free and clear of any and all liens and encumbrances whatsoever except for ad valorem taxes for the current year which are not yet due and payable and to any other encumbrances which were disclosed to and approved by the Lender in writing as of the date hereof. The Borrower further covenants, warrants and represents unto the Lender that the Borrower has not committed or suffered to exist any default under the terms and provisions of the Mortgage.

11. The parties hereto hereby further agree that any claim, dispute or controversy arising from or relating to this Amendment, the Separate Agreements or the relationships which result from this Amendment or the Separate 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 Separate 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.

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

**BORROWER:**

 L.S.  
Susan S. Schein

ATTEST:

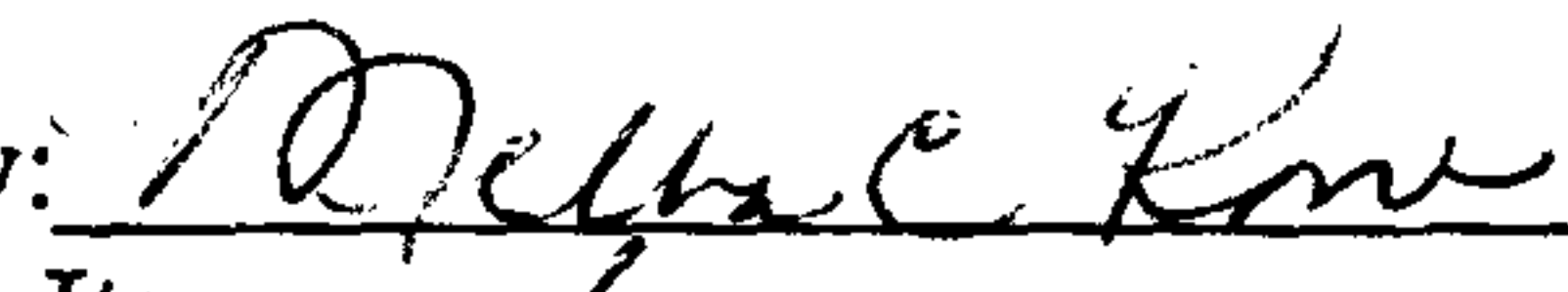

By:   
As Its: 

**GUARANTORS:**

Susan Schein Chevrolet, Inc.  
An Alabama Corporation

By:  L.S.  
As Its: President



ATTEST:

By:   
As Its: 

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

By:  L.S.  
As Its: President

ATTEST:

By:   
As Its: 

Schein Holding Company, Inc.  
An Alabama Corporation

By:  L.S.  
As Its: President

GMAC  
General Motors Acceptance Corporation

By: [Signature] L.S.  
as its Asst Sec

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Susan S. 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 11 day of February, 2004.

(SEAL)

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 2-20-06

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Susan S. 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 11 day of February, 2004.

(SEAL)

[Signature]  
Notary Public  
My commission expires 2-20-06

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 11 day of February, 2004

(SEAL)

  
Notary Public

My commission expires 2-20-06

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County and State, hereby certify that A. B. Stillwell, whose name as Asst. Sect., 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 11 day of February, 2004.

(NOTARIAL SEAL)

  
Notary Public

My commission expires Notary Public, Forsyth County, Georgia  
~~My Commission Expires November 15, 2007~~

THIS INSTRUMENT PREPARED BY:  
Mark A. Franco, Esq.  
Hill, Hill, Carter, Franco, Cole & Black, P.C.  
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Montgomery, AL 36104