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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2021-CP-23-00244

Appellate Case No. 2023-001053

Dealer Financial Holdings, LLC, Steve Lanzl, and Daniel B. Haight,

Appellants,

v.

Penland Automotive, LLC and Charles W. Penland, Jr.,

Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CA# 2021-CP-23-00244
COUNTY OF GREENVILLE	)	
	)	
Penland Automotive, LLC	)	
and Charles W. Penland, Jr.,	)	
	)	ORDER DENYING DEFENDANTS' MOTION
Plaintiffs,	)	TO STRIKE AND DENYING PLAINTIFFS'
	)	MOTION FOR PARTIAL SUMMARY JUDGMENT
v.	)	
	)	
Dealer Financial Holdings, LLC,	)	
Steve Lanzel and Daniel B. Haight,	)	
	)	
Defendants.	)	
_____	)	

The above-captioned matter came before the Court on June 29, 2021, for hearing on the Defendants' Motion to Strike Jury Demand and to Refer and the Plaintiffs' Motion for Partial Summary Judgment. All parties were represented at the hearing by counsel.

The case involves a former lender-borrower relationship between defendant Dealer Financial Holdings, LLC ("Dealer Financial") and the Plaintiffs, who operate a used car dealership in Greer, South Carolina. The dispute before the Court at this time can be narrowed to the present applicability of certain loan documents executed by the parties in 2016.

Certain facts are not in dispute. In November 2016, the parties entered into a written floorplan financing agreement, pursuant to which Dealer Financial made certain cash advances to defendant Penland Automotive, LLC ("Penland Automotive") for the latter's purchase of used car inventory for resale at its dealership. The loan documents executed in 2016, copies of which were attached to the Defendants' Answer and Counterclaims and to the Affidavit of Daniel B. Haight, include a Financing Agreement, Demand Note and a Guaranty Agreement personally executed by defendant Charles Penland (collectively, the "2016 Loan Documents"). On February 20, 2019, Plaintiffs requested that

Dealer Financial “close and deactivate our floorplan” and stated, “We no longer need the services of Dealer Financial.” The parties did not do business together between March 2019 and July of 2020, at which time Plaintiffs requested that Dealer Financial again begin making cash advances for the purchase of used car inventory to be resold. Dealer Financial did so. While the parties agree upon these preliminary facts, they dispute whether the 2016 Loan Documents continue to govern the advances made during and after July 2020.

Plaintiffs filed this lawsuit on January 18, 2021, for various causes of action arising out of or related to the lending relationship and, more specifically, the subsequent repossession and disposition of certain used cars by Dealer Financial in October 2020. Defendants filed an answer and asserted counterclaims against the Plaintiffs for breach of 2016 the Loan Documents. Defendants also filed a Motion to Strike Jury Demand and to Refer, based upon the jury trial waiver contained in the 2016 Loan Documents. Plaintiffs thereafter filed a Motion for Partial Summary Judgment seeking a declaration that the reopened floor plan is not governed by the 2016 Loan Documents and also requesting that the court require the UCC-1 financing statement be terminated.

In connection with the Plaintiffs’ Motion for Partial Summary Judgment and Defendants’ Motion to Strike the Jury Demand and Refer, the parties submitted certain items to the Court:

1. Prior to the hearing, Defendants submitted two affidavits: (1) the Affidavit of Daniel B. Haight referenced above and (2) the Affidavit of Timothy Yarger, who testifies that he was a Penland Automotive partner at the time the parties renewed their lending relationship in 2020, and that the 2016 Loan Documents were the intended terms between the parties for the 2020 cash advances. Defendants also submitted a Memorandum of Law attaching an email dated Thursday, July 9, 2020, from Karen Willis of Penland Automotive requesting that Dealer Financial “re-open” Penland Automotive’s floorplan.

2. At the hearing, Plaintiffs handed up copies of several emails that they allege represent negotiations between the parties regarding new terms, including but not limited to, (1) an email dated February 20, 2019, by Karen Willis of Penland Automotive, LLC, requesting Dealer Financial “close and deactivate our floorplan. We no longer need the services of Dealer Financial” and (2) an email dated July 6, 2020, by defendant Daniel Haight to plaintiff Charles Penland stating, “Thank you for giving Dealer Financial the opportunity to supply your floor planning needs. John and I very much appreciate the opportunity to work with your team previously, and we hope our rekindled relationship is long and productive. Pending execution of acceptable binding documents and additional application information, Dealer Financial is pleased to extend a commitment of \$750,000.00 for a UCC secured floorplan ... Please review the proposed terms and conditions. Given your approval, I can have the appropriate documents prepared and available for your signature by the week of July 13. You will be able to use your floorplan immediately upon execution of the documents.”

II. FINDINGS

Based on the items presented to the Court and the arguments of the parties, the Court finds that a genuine issue of material fact exists relating to the continued applicability of the 2016 Loan Documents to the reopened floorplan financing relationship in 2020 and, therefore, the Court denies both parties’ Motions without prejudice to refiling them in the future as appropriate after further discovery.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendants’ Motion to Strike Jury Demand and to Refer is DENIED, but without prejudice and with leave to renew at a later time, and that the Plaintiffs’ Motion for Partial Summary Judgment is likewise DENIED without prejudice and with leave to renew at a later time.

IT IS SO ORDERED.

The Honorable Alex Kinlaw, Jr.
Presiding Circuit Court Judge

Greenville, South Carolina

July_____, 2021.



Greenville Common Pleas

Case Caption: Penland Automotive LLC , plaintiff, et al vs. Dealer Financial Holdings LLC , defendant, et al

Case Number: 2021CP2300244

Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN CIVIL CASE

CASE NO. 2021-CP-23-00244

PENLAND AUTOMOTIVE, LLC and
Charles W. PENLAND, Jr.,

DEALER FINANCIAL HOLDINGS, LLC,
Steve LANZL and Daniel B. HAIGHT,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the COURT

Attorney for : ☐ Plaintiff ☐
Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order OR formal order to follow ☒ Statement of Judgment by the Court:

This matter came before this court on a renewed **MOTION** of the defendants, Dealer Financial Holdings, LLC, Steve Lanzl, and Daniel B. Haight (collectively "DFH") to **STRIKE** plaintiffs' **JURY DEMAND** pursuant to Rule 12, SCRCP.

Although a party may waive the right to a jury trial by contract, "[s]uch a waiver must be strictly construed as the right to trial by jury is a substantial right." Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002). While jury trial waivers are strictly construed, they are nevertheless construed according to their "plain, ordinary and popular meaning." Fritz-Pontiac-Cadillac-Buick v. Goforth, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994).

Based upon consideration of the record, argument of the parties, any memoranda submitted, the applicable rules, and statutory and case law, this Court finds that the plaintiff has not waived its right to a trial by jury and therefore the defendant's renewed **MOTION** to **STRIKE JURY DEMAND** should be and **IS** therefore **DENIED**.

ORDER INFORMATIONThis order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

j. derham cole**J. DERHAM COLE,**

PRESIDING JUDGE

2053**Judge Code**05/31/2023**Date****For Clerk of Court Office Use Only**

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

JASON MICHAEL IMHOFF, Esq._____
ATTORNEY(S) FOR THE PLAINTIFF(S)**EMILY IRENE BRIDGES, Esq.**_____
ATTORNEY(S) FOR THE DEFENDANT(S)**PAUL B. WICKENSIMER, CLERK OF COURT**Court Reporter: **CHERYL SMITH**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Greenville Common Pleas

Case Caption: Penland Automotive LLC , plaintiff, et al vs. Dealer Financial Holdings LLC , defendant, et al

Case Number: 2021CP2300244

Type: Order/Form 4

IT IS SO ORDERED!

s/J. Derham Cole 2053

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CA# 2021-CP-23-_____
COUNTY OF GREENVILLE	)	
	)	
Penland Automotive, LLC	)	
and Charles W. Penland, Jr.,	)	
	)	SUMMONS
Plaintiffs,	)	
	)	
v.	)	
	)	
Dealer Financial Holdings, LLC,	)	
Steve Lanzel and Daniel B. Haight,	)	
	)	
Defendants.	)	
_____	)	

TO THE ABOVE DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the undersigned at this office located at 233 South Pine Street, Post Office Box 5663, Spartanburg, South Carolina 29304, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated this 18th day of January, 2021.

The Ward Law Firm, PA

s/ Jason M. Imhoff

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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CA# 2021-CP-23-_____
COUNTY OF GREENVILLE	)	
	)	
Penland Automotive, LLC	)	
and Charles W. Penland, Jr.,	)	
	)	COMPLAINT
Plaintiffs,	)	
	)	(JURY TRIAL DEMANDED)
v.	)	
	)	
Dealer Financial Holdings, LLC,	)	
Steve Lanzel and Daniel B. Haight,	)	
	)	
Defendants.	)	
_____	)	

Plaintiffs, Penland Automotive, LLC and Charles W. Penland, Jr., complaining of the Defendants, Dealer Financial Holdings, LLC, Steve Lanzel, and Daniel B. Haight (hereinafter “Defendants”), would respectfully show unto the Court and allege as follows:

1. Plaintiff Penland Automotive, LLC is a limited liability corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in the County of Greenville, South Carolina.

2. Plaintiff Charles W. Penland, Jr. is a citizen and resident of Greenville County, South Carolina.

3. Defendant Dealer Financial Holdings, LLC (hereinafter “Defendant Dealer”) is a corporation organized and existing in North Carolina but conducting business in the State of South Carolina and specifically Spartanburg County.

4. Upon information and belief, Defendant Daniel B. Haight (hereinafter “Defendant Haight”) is a citizen and resident of North Carolina.

5. Upon information and belief, Defendant Steve Lanzel (hereinafter “Defendant Lanzel”) is a citizen and resident of North Carolina.

6. Jurisdiction and venue are proper in this Court based upon the facts below.

7. Plaintiff Penland Automotive, LLC and Defendant entered into a retail installment sales contract or dealer agreement for the financing of used vehicles sold at Penland Automotive at 3406 Wade Hampton Boulevard, Taylors, South Carolina 29687.

8. In approximately February of 2020, Penland Automotive cancelled its relationship with Defendant Dealer, closed its account, and requested its withholding from Defendant Dealer. Upon information and belief, Defendant Dealer complied with the request by Penland Automotive and returned any monies owed to Penland Automotive.

9. Beginning in February 2020 the world was in an international pandemic and the beginnings of a financial collapse.

10. During this time period a representative of Defendant Dealer spoke with representatives of Penland Automotive and asked that Penland Automotive begin using Defendant Dealer again. Upon information and belief, Defendant Dealer agreed to meet the terms of Penland's other floor plan providers such that no interest would be paid until a vehicle was sold and no curtailments were charged.

11. Defendant Dealer and Penland Automotive began business together based upon Defendants' representations. No new agreement was executed despite these Plaintiffs' request for the terms in writing.

12. After demands by Defendants inconsistent with the verbal agreement, Plaintiffs reached out to Defendant Dealer to discuss terms, the legality of using previously executed

documents on a closed account, and to discuss and/or negotiate the terms of the relationship going further.

13. Within hours of that discussion, Defendant Dealer hired a towing company to take eight vehicles off of Penland Automotive's lot under the cover of night. At the time, Penland Automotive was not in default, had paid all it owed to Defendant Dealer, and had simply made an inquiry about the terms of the relationship and documents supporting those terms as well as the failure of Defendant Dealer to comply with terms that it verbally promised.

14. Defendant Dealer paid the tow company to take all eight vehicles from Penland Automotive's lot without notice to Penland Automotive or Mr. Penland.

15. The very next day Defendant Haight and Defendant Lanzel went to a public car auction where Mr. Penland was working bidding on automobiles. Those Defendants stalked, harassed, assaulted, embarrassed, and threatened Mr. Penland.

16. Those Defendants also spread disinformation that Plaintiffs were "out of trust" and have failed on their obligations to Defendant Dealer.

17. In the subsequent days, Defendant Dealer, Defendant Lanzel and Defendant Haight began spreading false information about their conduct, the repossession of the cars, claimed Plaintiffs' were "out of trust", and criticized the financial status and stability of Penland Automotive.

18. Defendants also began offering the vehicles for sale to Plaintiffs' friends, peers, competitors, and other dealers in the area.

19. Mr. Penland was approached by numerous dealers, auctioneers, vendors, lenders, and others asking about the financial status of Penland Automotive, the repossession, the

information provided by these Defendants that Penland Automotive was "out of trust," and that the vehicles have been repossessed.

20. Upon information and belief, the cars were offered and sold for less than their market value and were not offered at a public auction.

21. Upon information and belief, none of the Defendants did any due diligence to determine if Penland Automotive was insolvent, incapable of meeting its debts, or any other investigation in the few hours prior to its decision to take the cars on October 8, 2020.

FOR A FIRST CAUSE OF ACTION
(Breach of Covenant of Good Faith)

22. The foregoing allegations contained in this Complaint are incorporated herein by reference as if fully restated.

23. Defendant breached the covenant of good faith and fair dealing by misleading Plaintiffs in connection with the terms and past business practices of the agreement, its intention to enforce the agreement, and the onerous and one-sided terms of the dealer agreement as set forth above that it would honor its promises of the of similar terms to Penland Automotive's other floor plan lenders.

24. Defendant breached the covenant of good faith and fair dealing by misleading Plaintiffs in connection with the terms of the agreement and requiring Plaintiffs to concede constitutional, statutory, and legal rights.

25. As an approximate result of the breach of covenant of good faith and fair dealing by Defendant, Plaintiffs have and/or will be damaged.

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices)

26. The foregoing allegations contained in this Complaint are incorporated herein by reference as if fully restated.

27. Plaintiffs allege that Defendants have violated the South Carolina Unfair Trade Practices Act § 39-5-20 by engaging in the conduct set forth above and requiring dealerships to agree to a contract which is unconscionable, one-sided, and is against public policy, statutory, and constitutional law. Defendants further violated S.C. Code Ann. § 39-5-20 by refusing to discuss the terms of the agreement between the parties and instead taking immediate action to take Plaintiffs' inventory, humiliate Plaintiffs, and assault, harass, intimidate and embarrass Plaintiffs intentionally. The strong-arm tactics were unfair willful, wanton, intentional, and inappropriate.

28. Subject to the violation set forth above, Plaintiffs believe that they have or will be damaged by Defendant's unfair trade practices as so as set forth above.

29. In closing an account, promising new terms, and then informing the customer that the customer, in this case Plaintiffs, were beholden to a prior written contract and then using that prior written conduct as a basis for otherwise engaging in conduct not allowed without contract.

30. Further, the contract from November 2016 is in itself unfair as it allegedly gives Defendant Dealer the ability to determine arbitrarily and solely whether an automobile dealer is insecure and has defaulted without any limitations, criteria, good faith, or due diligence requirements.

31. If Defendant Dealer deems itself, by any arbitrary standard, to be insecure and finds the dealer in default it may demand immediate payment of every single loan balance on every single car financed by Defendant Dealer.

32. Defendant Dealer's contract is unfair, onerous, and bad faith, illegal, one-sided, a contract of adhesion, and otherwise deceptive, unfair, and unenforceable.

FOR A THIRD CAUSE OF ACTION
(Conversion)

33. The foregoing allegations contained in this complaint are incorporated herein by reference as if fully restated.

34. Plaintiffs allege that it had a business interest in the eight vehicles which it had identified, negotiated for, and purchased at auction. Plaintiffs incurred costs inspecting the cars, transporting the cars, cleaning cars, advertising and marketing the cars and working in the business of attempting to sell the vehicles.

35. Defendants unreasonably, unlawfully, and without any basis in fact or law, intentionally and deceptively attempted to steal the cars from Plaintiffs' lot in the middle of the night without notice, forewarning, or any chance to avoid Defendants' action and converted those vehicles to their own use.

36. Plaintiffs did not consent to the removal of the cars by Defendants and they were taken without Plaintiffs' permission, and without a valid basis in fact, law, or contract.

37. Defendants had no bona fide belief or right to convert the property.

38. Defendants intentional, willful, and reckless actions damaged Plaintiffs, including but not limited to, interest, punitive damages and treble damages.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

39. The foregoing allegations contained in this complaint are incorporated herein by reference as if fully restated.

40. Plaintiffs and Defendants had a verbal agreement which constitutes a valid and binding agreement between the parties.

41. Defendants breached the agreement by failing to honor the terms and charging interest and curtailments in violation of the verbal agreement. Defendants further breached the agreement by attempting to convert the documents signed in 2016, which account was closed in 2019, to support their position that there was a written contract, agreement, and personal guarantee in place in the fall of 2020.

42. As a result of Defendants' breach of the contract, Plaintiffs have suffered actual and consequential damages a result of the breach of the agreement.

FOR A FIFTH CAUSE OF ACTION
(Rescission of the Contract)

43. The foregoing allegations contained in this complaint are incorporated herein by reference as if fully restated.

44. Plaintiffs and Defendants entered into a verbal agreement which was to be consummated by a written agreement regarding the new terms for the relationship between Plaintiffs and Defendants.

45. When the verbal agreement was not converted to a written agreement, nor was it adhered to by Defendants, Plaintiffs requested an explanation of Defendants position, an explanation of how documents on a closed account could be binding, and an explanation for how business would proceed between the two companies going forward.

46. When Plaintiffs learned of Defendants' intent to revert to the terms of a prior written agreement instead of honoring the terms of the newly negotiated agreement, it determined that those changes in terms are substantial, fundamental, and defeated the purpose of the new relationship with Defendants.

47. No due diligence on Plaintiffs' part would allow them to discover this material fact prior to entering into a verbal contract.

48. Plaintiffs are entitled to rescission of any contract based upon mistake as the mistake was induced by fraud, deceit, misrepresentation and/or concealment by Defendants.

FOR A SIXTH CAUSE OF ACTION
(Fraudulent Inducement to Enter a Contract)

49. The foregoing allegations contained in this complaint are incorporated herein by reference as if fully restated.

50. Prior to entering into the agreement, Plaintiff requested the same terms it was receiving from its other floor plan lender. Defendants represented to Plaintiffs that they would grant the same terms without interest until vehicles were sold and without curtailments to Plaintiffs.

51. At the time such representations were made, the representations were false, and Defendants knew that they were made with reckless disregard to the truth or falsity.

52. The representations were material that significantly affected the payments, relationships, and Penland's interest in doing business with Defendants.

53. Plaintiffs were ignorant of the falsity of the representations when they were made.

54. Defendants intended for Plaintiffs to rely on its representations.

55. Plaintiffs have the right to rely on the truth of Defendants' representations and did in fact rely on the truth of those representations and agreeing to into the verbal contract and send business to Defendants.

56. As a direct and proximate result of the false representations by Defendants, Plaintiffs have suffered and will continue to suffer damages as hereto alleged.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation)

57. The foregoing allegations contained in this complaint are incorporated herein by reference as if fully restated.

58. Prior to entering into the agreement Defendants represented to Plaintiffs that it would adhere to the same loan terms as other Penland floor plan lenders.

59. Defendants knew that their representations were not true at the time they were made.

60. Defendants had a pecuniary interest in making those statements to induce Plaintiffs into agreeing to a new relationship with Defendants and sending business to Defendants.

61. Defendants owed a duty to Plaintiffs to see that truthful information was communicated to Plaintiffs and breached the duty owed to Plaintiffs by failing to exercise due care and/or provide correct and truthful information.

62. Plaintiffs justifiably relied on Defendants and their agents' representations to their detriment.

63. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiffs have been damaged.

FOR AN EIGHTH CAUSE OF ACTION
(Defamation Per Se)

64. The foregoing allegations contained in this complaint are incorporated herein by reference as if fully restated.

65. Defendants sought to and did spread false and defamatory information about Plaintiffs.

66. As set forth above, without any due diligence, investigation, research, or discussion Defendants decided to send a tow truck in the middle of the night to take eight vehicles off of Plaintiffs' lot with the intention of embarrassing and humiliating Plaintiffs.

67. Additionally, the very next day the individual Defendants came to Plaintiffs place of business and then followed Plaintiff Charles W. Penland, Jr. to a public auction where he was surrounded by peers, competitors, friends, and other persons in the industry including auctioneers and lenders.

68. At the auction Defendants harassed, humiliated, attempted to intimidate, and defamed Plaintiffs by stating that they had repossessed his cars and he was "out of trust" and insolvent.

69. Plaintiffs intentionally, willfully, and recklessly and/or negligently accused Plaintiffs of impropriety or inadequacy in performing his trade and profession. Such statements are defamatory per se.

70. As a result of Defendant's conduct Plaintiffs were subjected to public contempt, ridicule, embarrassment, injury to his business, occupation, representation and reputation.

71. Since the events dozens of people, including people who Plaintiffs have a business relationship with including customers, vendors, employees, peers, friends, competitors, auctioneers, and lenders have asked Plaintiffs why they defaulted, why the cars were repossessed, how they got out of trust, whether they were closed and insolvent, and whether they could meet their obligations to the other vendors and business providers.

72. The statements, accusations, and implications from Defendants' behavior were false. Defendants did no meaningful investigation, due diligence, or analysis to determine whether

or not Plaintiffs were insolvent or insecure and certainly were not in default as no amounts were owed to Defendant Dealer at the time of the repossession of the cars.

73. The conduct, statements, and actions of Defendants were defamatory per se, false, public, embarrassing, and caused Plaintiffs damages.

WHEREFORE, Plaintiffs Penland Automotive, LLC and Charles Penland pray for judgment regarding the enforceability of the dealership agreement and an order against Defendants herein for actual and compensatory damages, punitive damages, exemplary damages, statutory damages, and other damage to be proven at trial in an amount to be determined by a jury, including attorney's fees and costs in this action and for such other and further relief as this Court deems just and proper.

The Ward Law Firm, PA

s/Jason M. Imhoff

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Attorneys for Plaintiffs

January 18, 2021

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Penland Automotive, LLC and Charles W.)
Penland, Jr.,)

Civil Action No.: 2021-CP-23-00244

Plaintiffs,)

vs.)

**DEFENDANTS' ANSWER AND
COUNTERCLAIM**

Dealer Financial Holdings, LLC, Steve)
Lanzl and Daniel B. Haight,)

Defendants.)

Defendants Dealer Financial Holdings, LLC ("DFH"), Steve Lanzl, incorrectly identified as Steve Lanzl ("Lanzl"), and Daniel B. Haight ("Haight," and collectively with DFH and Lanzl, the "Defendants"), by and through their undersigned counsel, hereby respond to the Complaint filed by Plaintiffs Penland Automotive, LLC ("Penland Automotive") and Charles W. Penland, Jr. ("Penland," and collectively with Penland Automotive, the "Plaintiffs") as follows:

GENERAL RESPONSE

Each and every allegation of Plaintiffs' Complaint that is not hereinafter specifically admitted, modified or explained is denied.

FIRST DEFENSE

1. Upon information and belief, Defendants admit the allegations set forth in Paragraph 1 of the Complaint.

2. Upon information and belief, Defendants admit the allegations set forth in Paragraph 2 of the Complaint.

3. Answering Paragraph 3 of the Complaint, Defendants deny that DFH is a corporation organized and existing in North Carolina and admit only that DFH is authorized to and does conduct business in South Carolina.

4. Defendants admit the allegations set forth in Paragraph 4 of the Complaint.

5. Defendants deny the allegations set forth in Paragraph 5 of the Complaint.

6. Answering Paragraph 6 of the Complaint, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein; however Defendants do not contest the Court's jurisdiction over the parties and the subject matter of this action, and do not contest venue in this Court.

7. Answering Paragraph 7 of the Complaint, Defendants admit only that DFH and Penland Automotive entered into that certain Loan and Security Agreement, dated November 21, 2016, and amended on April 2, 2018, for the financing of used cars sold by Penland Automotive (the "Financing Agreement"). Defendants deny any allegations set forth in Paragraph 7 of the Complaint inconsistent with this limited admission.

8. Answering Paragraph 8 of the Complaint, Defendants admit that Penland Automotive closed its account and requested its reserve balance from DFH; however, this occurred in February 2019, not February 2020. Further answering Paragraph 8 of the Complaint, Defendants admit that DFH did return the cash reserve to Penland Automotive. Defendants deny any allegations set forth in Paragraph 8 of the Complaint inconsistent with these limited admissions.

9. The allegations set forth in Paragraph 9 of the Complaint are not directed at Defendants and, therefore, no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 9 of the Complaint.

10. Answering Paragraph 10 of the Complaint, Defendants admit only that a representative from Penland Automotive approached a representative from DFH regarding renewing the Financing Agreement, and Penland Automotive ultimately agreed to renew the Financing Agreement on its existing terms. DFH denies the remaining allegations set forth in Paragraph 10 of the Complaint inconsistent with this limited admission.

11. Answering Paragraph 11 of the Complaint, Defendants admit only that no new financing agreement was executed by the parties as Penland Automotive's representative indicated his assent that Penland Automotive would be bound by the original terms of the Financing Agreement. Defendants deny the remaining allegations set forth in Paragraph 11 of the Complaint inconsistent with this limited admission.

12. Answering Paragraph 12 of the Complaint, Defendants admit only that Plaintiffs' attorney contacted DFH and challenged the validity of the Financing Agreement. Defendants deny the remaining allegations set forth in Paragraph 12 of the Complaint inconsistent with this limited admission.

13. Answering Paragraph 13 of the Complaint, Defendants admit only that, on or about October 8, 2021, DFH exercised its rights as a secured creditor under the Uniform Commercial Code and the Financing Agreement and recovered six vehicles from Penland Automotive's lot. Further answering Paragraph 13 of the Complaint, Defendants recovered the vehicles during normal business hours (approximately 4:27 p.m.), and the towing company retained by DFH to pick up the vehicles had a discussion with Penland who voluntarily surrendered the keys to said vehicles. Defendants deny the remaining allegations set forth in Paragraph 13 of the Complaint inconsistent with this limited admission.

14. Answering Paragraph 14 of the Complaint, Defendants admit only that, on or about October 8, 2021, DFH exercised its rights as a secured creditor under the Uniform Commercial Code and the Financing Agreement and recovered six vehicles from Penland Automotive's lot. Further answering Paragraph 14 of the Complaint, Defendants recovered the vehicles during normal business hours (approximately 4:27 p.m.), and the towing company retained by DFH to pick up the vehicles had a discussion with Penland who voluntarily surrendered the keys to said vehicles. Defendants deny the remaining allegations set forth in Paragraph 14 of the Complaint inconsistent with this limited admission.

15. Defendants admit that Haight and Lanzl went to Upstate Auto Auction on October 9, 2020. Defendants deny the remaining allegations set forth in Paragraph 15 of the Complaint inconsistent with this limited admission.

16. Defendants deny the allegations set forth in Paragraph 16 of the Complaint.

17. Defendants deny the allegations set forth in Paragraph 17 of the Complaint.

18. Defendants admit that DFH offered the vehicles for sale to multiple parties, including other used car dealers, in an attempt to maximize the sale price and thus minimize the Plaintiffs' liability for a deficiency. Defendants deny the remaining allegations set forth in Paragraph 18 of the Complaint inconsistent with this limited admission.

19. Answering Paragraph 19 of the Complaint, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, deny same and demand strict proof thereof.

20. Answering Paragraph 20 of the Complaint, Defendants admit only that the cars were not offered at a public auction. Defendants deny the remaining allegations set forth in Paragraph 20 of the Complaint inconsistent with this limited admission.

21. Defendants deny the allegations set forth in Paragraph 21 of the Complaint.

22. Answering Paragraph 22 of the Complaint, Defendants repeat and re-allege their answers to the allegations of the Complaint incorporated therein as fully as if said answers were set forth here verbatim.

23. Defendants deny the allegations set forth in Paragraph 23 of the Complaint.

24. Defendants deny the allegations set forth in Paragraph 24 of the Complaint.

25. Defendants deny the allegations set forth in Paragraph 25 of the Complaint.

26. Answering Paragraph 26 of the Complaint, Defendants repeat and re-allege their answers to the allegations of the Complaint incorporated therein as fully as if said answers were set forth here verbatim.

27. Defendants deny the allegations set forth in Paragraph 27 of the Complaint.

28. Defendants deny the allegations set forth in Paragraph 28 of the Complaint.

29. Defendants deny the allegations set forth in Paragraph 29 of the Complaint.

30. Defendants deny the allegations set forth in Paragraph 30 of the Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of the Complaint.

32. Defendants deny the allegations set forth in Paragraph 32 of the Complaint.

33. Answering Paragraph 33 of the Complaint, Defendants repeat and re-allege their answers to the allegations of the Complaint incorporated therein as fully as if said answers were set forth here verbatim.

34. Answering Paragraph 34 of the Complaint, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, deny same and demand strict proof thereof. Further answering Paragraph 34 of the

Complaint, Defendants contend that the allegations set forth therein are ambiguous and vague and, therefore, incapable of being properly answered as currently plead.

35. Defendants deny the allegations set forth in Paragraph 35 of the Complaint.

36. Defendants deny the allegations set forth in Paragraph 36 of the Complaint.

37. Defendants deny the allegations set forth in Paragraph 37 of the Complaint.

38. Defendants deny the allegations set forth in Paragraph 38 of the Complaint.

39. Answering Paragraph 39 of the Complaint, Defendants repeat and re-allege their answers to the allegations of the Complaint incorporated therein as fully as if said answers were set forth here verbatim.

40. Defendants deny the allegations set forth in Paragraph 40 of the Complaint.

41. Defendants deny the allegations set forth in Paragraph 41 of the Complaint.

42. Defendants deny the allegations set forth in Paragraph 42 of the Complaint.

43. Answering Paragraph 43 of the Complaint, Defendants repeat and re-allege their answers to the allegations of the Complaint incorporated therein as fully as if said answers were set forth here verbatim.

44. Defendants deny the allegations set forth in Paragraph 44 of the Complaint.

45. Defendants deny the allegations set forth in Paragraph 45 of the Complaint.

46. Defendants deny the allegations set forth in Paragraph 46 of the Complaint.

47. Defendants deny the allegations set forth in Paragraph 47 of the Complaint.

48. Defendants deny the allegations set forth in Paragraph 48 of the Complaint and deny that Plaintiffs are entitled to the relief requested therein.

49. Answering Paragraph 49 of the Complaint, Defendants repeat and re-allege their answers to the allegations of the Complaint incorporated therein as fully as if said answers were set forth here verbatim.

50. Answering Paragraph 50 of the Complaint, Defendants admit only that Penland Automotive asked DFH to match certain favorable terms offered by one of Penland Automotive's other floor plan lenders, while concealing other, less favorable terms imposed by that lender. As to the remaining allegations set forth in Paragraph 50 of the Complaint, Defendants deny same.

51. Defendants deny the allegations set forth in Paragraph 51 of the Complaint.

52. Defendants deny the allegations set forth in Paragraph 52 of the Complaint.

53. Defendants deny the allegations set forth in Paragraph 53 of the Complaint.

54. Defendants deny the allegations set forth in Paragraph 54 of the Complaint.

55. Defendants deny the allegations set forth in Paragraph 55 of the Complaint.

56. Defendants deny the allegations set forth in Paragraph 56 of the Complaint.

57. Answering Paragraph 57 of the Complaint, Defendants repeat and re-allege their answers to the allegations of the Complaint incorporated therein as fully as if said answers were set forth here verbatim.

58. Defendants deny the allegations set forth in Paragraph 58 of the Complaint.

59. Defendants deny the allegations set forth in Paragraph 59 of the Complaint.

60. Defendants deny the legal conclusions and allegations set forth in Paragraph 60 of the Complaint.

61. Defendants deny the legal conclusions and allegations set forth in Paragraph 61 of the Complaint.

62. Defendants deny the legal conclusions and allegations set forth in Paragraph 62 of the Complaint.

63. Defendants deny the allegations set forth in Paragraph 63 of the Complaint.

64. Answering Paragraph 64 of the Complaint, Defendants repeat and re-allege their answers to the allegations of the Complaint incorporated therein as fully as if said answers were set forth here verbatim.

65. Defendants deny the legal conclusions and allegations set forth in Paragraph 65 of the Complaint.

66. Defendants deny the allegations set forth in Paragraph 66 of the Complaint.

67. Answering Paragraph 67 of the Complaint, Defendants admit that Haight and Lanzl visited Penland Automotive to discuss the business relationship with Penland; however, Haight and Lanzl were informed that Penland was at a public auction. Upon receipt of that information, Haight and Lanzl traveled to the public auction to meet with Penland. Defendants deny the remaining allegations set forth in Paragraph 67 of the Complaint inconsistent with these limited admissions.

68. Defendants deny the allegations set forth in Paragraph 68 of the Complaint.

69. Defendants deny the legal conclusions and allegations set forth in Paragraph 69 of the Complaint.

70. Defendants deny the allegations set forth in Paragraph 70 of the Complaint.

71. Answering Paragraph 71 of the Complaint, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, deny same and demand strict proof thereof.

72. Defendants deny the allegations set forth in Paragraph 72 of the Complaint.

73. Defendants deny the legal conclusions and allegations set forth in Paragraph 73 of the Complaint.

74. Defendants deny that Plaintiffs are entitled to the relief they seek as set forth in the unnumbered WHEREFORE paragraph of the Complaint.

FOR A SECOND DEFENSE

75. The Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

76. Plaintiffs' claims are barred by the doctrine of waiver.

FOR A FOURTH DEFENSE

77. Plaintiffs' claims are barred by the equitable doctrine of laches and estoppel.

FOR A FIFTH DEFENSE

78. Defendants did not engage in any wrongful conduct and, therefore, Plaintiffs' claims are barred.

FOR A SIXTH DEFENSE

79. Plaintiffs' claims are barred by the doctrine of unclean hands and/or *in pari delicto*.

FOR A SEVENTH DEFENSE

80. Plaintiffs' Unfair Trade Practices Act claim is barred because the claims brought by Plaintiffs' against Defendants are the result of a single commercial transaction and, therefore, not capable of repetition.

FOR AN EIGHTH DEFENSE

81. Plaintiffs' Unfair Trade Practices Act claim is barred because the commercial transaction at issue is between two sophisticated commercial entities that resulted in an arms-length arrangement. Thus, Defendants alleged conduct does not affect the public interest.

FOR A NINTH DEFENSE

82. Plaintiffs' ability to recover from Defendants may be limited due to Plaintiffs' failure to mitigate their damages.

FOR A TENTH DEFENSE

83. Plaintiffs' claim for breach of contract is barred by the Lender Statute of Frauds, S.C. Code Ann. § 32-3-10.

FOR AN ELEVENTH DEFENSE

84. Plaintiffs have not suffered any damages as a result of the alleged acts or omissions of Defendants.

FOR A TWELFTH DEFENSE

85. To the extent Plaintiffs suffered any damages or losses, which is expressly denied, such damages or losses were caused in whole or in part by their own acts, omissions or conduct of persons outside of Defendants' control.

FOR A THIRTEENTH DEFENSE

86. Plaintiffs' claims may be barred in whole or in part by the applicable statute of limitations.

FOR A FOURTEENTH DEFENSE

87. Any recovery by Plaintiffs against DFH in this action must be set-off against amounts owed by Plaintiffs to DFH under the Financing Agreement.

FOR A FIFTEENTH DEFENSE

88. Plaintiffs' fail to state any basis upon which punitive damages are recoverable against Defendants, and accordingly, Plaintiffs' prayer for such damages should be dismissed and/or stricken from the Complaint pursuant to Rule 12(b)(6) and/or 12(f) of the South Carolina Rules of Civil Procedure.

FOR A SIXTEENTH DEFENSE

89. Plaintiffs' claims for recovery of punitive damages are barred by the South Carolina Constitution and the Constitution of the United States because no reasonable and well-defined limits are placed on such punitive damages award; because the award and payment of punitive damages would be a windfall and would advance no legitimate stated purpose; and because such punitive damages would constitute an imposition of punishment on Defendants without adequate notice of the substantive rules governing the conduct giving rise to such punitive damages.

FOR AN SEVENTEENTH DEFENSE

90. Plaintiffs' claims may be barred, in whole or in part, by their own conduct to the extent they breached the Financing Agreement or other loan documents that are at issue in this litigation.

FOR A EIGHTEENTH DEFENSE

91. Plaintiffs' claims are barred because Defendants' conduct at all times relevant in this action has been the product of reasonable business judgment and good faith/fair dealing.

FOR A NINETEENTH DEFENSE

92. Plaintiffs have a legal obligation to mitigate any damages they have sustained, which is expressly denied, and to the extent that they have failed to do so, their claims against Defendants may be barred in whole or in part.

FOR A TWENTIETH DEFENSE

93. Plaintiffs' claims for defamation are barred in that the alleged defamatory statements, which Defendants specifically deny any such statements were made, concerning Plaintiffs are true or substantially true.

FOR A TWENTY-FIRST DEFENSE

94. Plaintiffs' claims for defamation are barred in that the alleged defamatory statements, which Defendants specifically deny any such statements were made, concerning Plaintiffs were made on an occasion and under circumstances giving rise to an absolute/qualified privilege.

FOR A TWENTY-SECOND DEFENSE

95. Plaintiffs' claims for defamation are barred to the extent Plaintiffs self-publicized the alleged comments in question, which Defendants specifically deny any such statements were made,.

FOR A TWENTY-THIRD DEFENSE

96. In the event it is determined that any purported statement by Defendants would otherwise be actionable or defamatory, which is expressly denied, Defendants allege that any such statement was made without malice.

FOR A TWENTY-FOURTH DEFENSE

97. Plaintiffs' claim for negligence is barred because the Defendants owed no special duty of care. *See Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003).

FOR A TWENTY-FIFTH DEFENSE

98. Plaintiffs' defamation claim is barred because the alleged publication of the purported statements was privileged.

FOR A TWENTY-SIXTH DEFENSE

99. To the extent that punitive damages are available, which is expressly denied, such damages are limited by S.C. Code Ann. § 15-32-530. Additionally, Defendants requests that the trial of this matter be bifurcated pursuant to S.C. Code Ann. § 15-32-520.

FOR A TWENTY-SEVENTH DEFENSE

100. Plaintiffs jury demand should be rejected because Plaintiffs agreed to waive their right to a jury trial in the Loan Documents.

FOR A TWENTY-EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM

101. DFH repeats and realleges its answers to the Paragraphs of the Complaint incorporated therein by reference as fully as if said answers were set forth herein verbatim.

PARTIES AND JURISDICTION

102. Upon information and belief, Penland Automotive is a South Carolina limited liability company with its principal place of business in Greenville County, South Carolina.

103. Upon information and belief, Penland is a individual person who is a citizen and resident of Greenville County, South Carolina.

104. DFH is a South Carolina limited liability company with its principal place of business in Mecklenburg County, North Carolina.

105. This Court has jurisdiction over the parties and the subject matter of this action, and venue is proper in Greenville County, South Carolina.

FACTUAL BACKGROUND

106. Penland Automotive is a used car dealership located in Taylors, South Carolina and is owned by Penland.

107. On or about November 21, 2016, Penland Automotive, Penland, Penland Properties II, LLC, and DFH entered into that certain Loan and Security Agreement, which was later amended on April 2, 2018, pursuant to which DFH agreed to make cash advances to or for the benefit of Penland Automotive for the purpose of purchasing used car inventory (the “Financing Agreement”). Copies of the Financing Agreement and the amendment thereto are attached hereto, collectively, as **Exhibit A**.

108. Contemporaneously with the Financing Agreement, Penland Automotive signed a Demand Note as further evidence of its obligations to DFH under the Financing Agreement. The Demand Note states that the amounts due and owing to DFH under the Financing Agreement are payable on demand. A copy of the Demand Note is attached hereto as **Exhibit B**.

109. Under the Financing Agreement, DFH agreed to make advances to or for the benefit of Penland Automotive for the purpose of purchasing used car inventory for the dealership, and Penland Automotive was required to repay those advances in accordance with the terms of the Financing Agreement. Those terms required Penland Automotive to make periodic interest payments and principal curtailments to DFH.

110. Penland Automotive’s performance under the Financing Agreement was secured by a lien on all of Penland Automotive’s assets, including (but not limited to) the specific vehicles purchased using DFH funds, as well as all of the assets of Penland and Penland Properties II, LLC.

111. Additionally, the Financing Agreement provides for the recovery of “reasonable attorneys’ fees and collection costs incurred by DFH in enforcing the [Financing Agreement] after an event of default by [Penland Automotive].”

112. Penland Automotive also waived its right to a trial by jury in any action or proceeding brought in connection with the Financing Agreement.

113. In order to induce DFH to entered into the Financing Agreement and to further secure the indebtedness evidenced by the Financing Agreement and the Demand Note, Penland executed and delivered to DFH that certain Unlimited Guaranty (the “Guaranty”) pursuant to which Penland “absolutely and unconditionally” guaranteed the following:

full and punctual payment to DFH of all sums which may be present due and owing and of all sums which shall in the future become due and owing to DFH from [Penland Automotive], including, without limitation, interest, attorneys’ fees and other amounts accruing after the filing of a petition in bankruptcy by or against [Penland Automotive], notwithstanding the discharge of [Penland Automotive] from such obligations, together with all costs and expenses incurred by DFH including attorneys’ fees in connection with such obligations, this Guaranty and the enforcement thereof, and also guarantees the due performance by [Penland Automotive] of all its obligations under all other presents and future contracts and agreements with DFH.

A copy of the Guaranty is attached hereto as **Exhibit C**. The Financing Agreement, the Demand Note, the Guaranty, and the other documents executed in connection therewith are hereafter referred to collectively as the “Loan Documents”.

114. Penland also expressly waived notice of acceptance, presentment and protest of any instrument and notice thereof, notice of default, and all other notices to which Penland might otherwise be entitled. Penland also agreed that DFH shall have no duty as to the collection or protection of any collateral, if any, securing the guaranteed obligations beyond the safe custody thereof.

115. As set forth in the Guaranty, Penland’s obligations are unconditional, primary, and not conditioned upon DFH’s pursuit of any remedy which it has against Penland Automotive or any other person.

116. Penland also waived his right to a trial by jury in any action or proceeding brought in connection with the Guaranty and/or the Financing Agreement.

117. From November 28, 2016, until August 20, 2020, except for a period in 2019-20 when the account was closed and then subsequently reopened by agreement of the parties, DFH advanced funds to or for the benefit of Penland Automotive in accordance with the terms of the Loan Documents.

118. Sometime in late September or early October 2020, DFH discovered that there had been a change in Penland Automotive's ownership and management structure, which constituted an event of default under the Financing Agreement.

119. In addition, on October 8, 2020, Penland Automotive's attorney Jason Imhoff initiated a telephone call to Mr. Haight in which Mr. Imhoff stated that there was no valid contract between DFH and Penland Automotive. That call caused DFH to deem itself insecure, which was also an event of default under the Financing Agreement.

120. Further, Penland refused to return calls made by DFH's representatives regarding the Financing Agreement, and this also caused DFH to deem itself insecure, which was another event of default under the Financing Agreement.

121. As a result of the foregoing events of default, and in accordance with its right to demand payment for any reason, on October 8, 2020, DFH notified Penland Automotive and Penland that the Loan Documents were in default and that the amounts due thereunder were immediately due and payable (the "Default Letter"). A copy of the Default Letter is attached hereto as **Exhibit D**.

122. Penland Automotive and Penland failed and refused, and still have failed and refused, to pay the amounts owed to DFH under the Loan Documents.

123. On or about October 8, 2020, in accordance with its rights under the Loan Documents and S.C. Code Ann. § 36-9-609 and with the cooperation of the Plaintiffs, DFH took possession of six of the vehicles it had financed for Penland Automotive. A seventh vehicle was later recovered by DFH.

124. DFH has now disposed of the vehicles in a commercially reasonable manner in accordance with S.C. Code Ann. § 36-9-610.

125. After applying the proceeds of the disposition of the vehicles net of expenses incurred, there remains a balance due and owing to DFH under the Loan Documents that continues to accrue additional sums via a rate set forth in the Loan Documents for a total amount to be proven at trial.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

126. DFH repeats and realleges its answers to the Paragraphs of the Complaint incorporated therein by reference as fully as if said answers were set forth herein verbatim.

127. The Financing Agreement and the Demand Note created a valid and enforceable contract between DFH and Penland Automotive.

128. Penland Automotive is now, and for a period of time has been, in default under the terms of the Financing Agreement for, among other reasons, (a) a material change in the ownership and management of the dealership, (b) DFH deeming itself insecure as a result of Mr. Imhoff's telephone call to Mr. Haight in which Mr. Imhoff [denied that there was any enforceable agreement between Penland Automotive and DFH], and (c) Plaintiffs' failure to pay the amounts due and owing to DFH under the Loan Documents despite numerous demands by DFH.

129. DFH has notified Penland Automotive of the default and breach, and demanded payment, but Penland Automotive has failed and refused, and continues to fail and refuse, to pay the amounts due and owing to DFH under the Loan Documents.

130. As a result of the aforesaid defaults, DFH has exercised its right to declare the entire balance under the Financing Agreement immediately due and payable in full.

131. After applying the proceeds of the disposition of the vehicles net of expenses incurred, there remains a balance due and owing to DFH under the Loan Documents that continues to accrue additional sums via a rate set forth in the Loan Documents for a total amount to be proven at trial.

132. Penland Automotive has not paid the aforesaid amount due under the Financing Agreement.

133. DFH is therefore entitled to judgment against Penland Automotive in an amount to be proven at trial, plus additional interest accrued, costs and attorneys' fees, and prejudgment interest at the statutory rate.

FOR A SECOND CAUSE OF ACTION
(Suit on Guaranty)

134. Defendant DFH repeats and realleges its answers to the Paragraphs of the Complaint incorporated therein by reference as fully as if said answers were set forth herein verbatim.

135. The Guaranty created a valid and enforceable contract between DFH and Penland.

136. Penland Automotive is now, and for a period of time has been, in default under the terms of the Financing Agreement for, among other reasons, (a) a material change in the ownership and management of the dealership, (b) DFH deeming itself insecure as a result of Mr. Imhoff's telephone call to Mr. Haight in which Mr. Imhoff [denied that there was any

enforceable agreement between Penland Automotive and DFH], and (c) Plaintiffs' failure to pay the amounts due and owing to DFH under the Loan Documents despite numerous demands by DFH.

137. As a result of the aforesaid defaults, DFH has exercised its right to declare the entire balance under the Financing Agreement immediately due and payable in full.

138. After applying the proceeds of the disposition of the vehicles net of expenses incurred, there remains a balance due and owing to DFH under the Loan Documents that continues to accrue additional sums via a rate set forth in the Loan Documents for a total amount to be proven at trial.

139. The Guaranty provides, in part, that Penland guarantees

[F]ull and punctual payment to DFH of all sums which may be present due and owing and of all sums which shall in the future become due and owing to DFH from [Penland Automotive], including, without limitation, interest, attorneys' fees and other amounts accruing after the filing of a petition in bankruptcy by or against [Penland Automotive], notwithstanding the discharge of [Penland Automotive] from such obligations, together with all costs and expenses incurred by DFH including attorneys' fees in connection with such obligations, this Guaranty and the enforcement thereof, and also guarantees the due performance by [Penland Automotive] of all its obligations under all other presents and future contracts and agreements with DFH.

140. Penland has not paid the aforesaid amounts due under the Guaranty.

141. Penland has waived notice of presentment and demand for payment, and has waived notice of dishonor.

142. DFH is therefore entitled to judgment against Penland in an amount to be proven at trial, plus additional interest accrued, costs and attorneys' fees, and prejudgment interest at the statutory rate.

WHEREFORE, having fully answered Plaintiffs' Complaint herein and asserted Counterclaims, Defendants pray this Court enter its Order:

- (a) Denying Plaintiff any relief against Defendants;
- (b) Dismissing the Complaint against Defendants with prejudice;
- (c) Awarding Defendants their costs in the defense of this action;
- (d) Awarding Defendants their attorneys' fees incurred in the defense of this action;
- (e) Entering judgment in favor of DFH and against Penland Automotive on the Financing Agreement and the Demand Note in an amount to be proven at trial;
- (f) Entering judgment in favor of DFH and against Penland on the Guaranty in an amount to be proven at trial;
- (g) Awarding prejudgment interest as to the judgments against Penland Automotive and Penland at the rate provided by law;
- (h) Awarding attorneys' fees and costs incurred by DFH in collecting the amounts due and enforcing the Loan Documents, to include those incurred by bringing this action; and
- (i) Awarding Defendants such other and further relief as may be just and proper.

s/John G. Tamasitis

Lawrence M. Hershon (SC Bar No. 77514)

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Holdings, LLC, Steve Lanzl and Daniel B. Haight*

March 31, 2021
Columbia, South Carolina

LOAN AND SECURITY AGREEMENT

This **LOAN AND SECURITY AGREEMENT** (this "Agreement") is made and entered into as of November 21, 2016 by and between **PENLAND AUTOMOTIVE LLC**, a South Carolina limited liability company ("Borrower"), located at the address listed opposite its name on the signature page to this Agreement, **PENLAND PROPERTIES II, LLC**, a South Carolina limited liability company ("PPII"), located at the address listed opposite its name on the signature page to this Agreement, **CHARLES W. PENLAND, JR.**, a resident of the State of South Carolina ("Penland" and, together with PPII and Borrower, "Grantors"), and **DEALER FINANCIAL HOLDINGS LLC** ("DFH"), located at 310 Arlington Avenue, Suite 303, Charlotte, North Carolina 28203.

A. Borrower has requested that DFH make certain advances (collectively, the "Advances") to or on behalf of Borrower to finance Borrower's acquisition of motor vehicle inventory.

B. Borrower will repay the Advances on the terms set forth in this Agreement and will secure its obligations under this Agreement with a perfected lien on Borrower's interest in the Collateral (as defined below).

C. Borrower is directly or indirectly owned by Penland, and Penland will materially benefit from the Advances made under this Agreement.

D. Borrower is executing and delivering this Agreement and the other documents contemplated by this Agreement, and Penland is executing and delivering his Guaranty (as defined below) and the other documents contemplated by this Agreement and the Guaranty, as a material part of the consideration given in connection with, and as an inducement to, DFH's execution and delivery of this Agreement, and DFH would be unwilling to extend and maintain the Facility (as defined below) established under this Agreement for the benefit of Borrower unless Borrower and Penland executed and delivered this Agreement and Penland executed and delivered his Guaranty.

E. In consideration of the foregoing facts and the mutual covenants and conditions set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

Section 1. Definitions. As used in this Agreement, the following words and terms have the meanings set forth in this Section. Each capitalized term used but not defined in this Agreement has the meaning given to such term in the UCC.

"Account Statement" means any statement that DFH sends or makes available online to Borrower detailing all outstanding Advances and any fees and charges owed by Borrower in accordance with this Agreement.

"Administrative Fee" means any fee (other than a Floorplan Fee) that (a) DFH charges to Borrower for any service or process that Borrower requests, or (b) DFH determines is reasonable or necessary to administer or monitor the Facility or protect DFH's security.

"Advance" means any loan or payment in any amount made pursuant to this Agreement by DFH to Borrower or on Borrower's behalf to any third party.

"Advance Rates" means the limitations on the amount of an Advance for a particular Financed Vehicle as set forth in the Terms Schedule.

“Collateral” has the meaning set forth in Section 4.

“Credit Limit” means the aggregate maximum amount Borrower may borrow at any one time under this Agreement, as set forth in the Terms Schedule.

“Default Floorplan Factor” means the ratio set forth in the Terms Schedule.

“Equipment” means all goods other than Inventory held for sale, lease, or daily rental by Borrower in the ordinary course of business.

“Equity Condition” means any condition or conditions to DFH’s funding of Advances relating to Inventory purchased from Borrower’s own funds as set forth in the Terms Schedule.

“Event of Default” has the meaning set forth in Section 7.

“Facility” means the floorplan line of credit established for Borrower’s benefit pursuant to this Agreement.

“Financed Vehicle” means any Unit now or hereafter acquired or otherwise financed by Borrower with proceeds of an Advance in accordance with this Agreement.

“Floorplan Factor” means the ratio set forth in the Terms Schedule.

“Floorplan Fee” means the fee charged by DFH on each day during the term of this Agreement with respect to each Advance outstanding on such day, which shall equal the unpaid principal amount of such Advance on such day multiplied by the Floorplan Factor; *provided however*, on each day an Event of Default is continuing, the Floorplan Fee with respect to each Advance outstanding on such day shall equal the unpaid principal amount of such Advance on such day multiplied by the Default Floorplan Factor.

“Grantors” means, individually and collectively, Borrower, PPII and Penland.

“Guarantor” means Penland and each other person who executes and delivers a Guaranty from time to time to secure the repayment of the Liabilities under this Agreement.

“Guaranty” means each guaranty executed and delivered from time to time in favor of DFH to secure the repayment of the Liabilities under this Agreement, as the same may be amended, modified or replaced from time to time.

“Inventory” means, collectively, all Units held by Borrower for wholesale or retail sale, lease, or rent or leased by Borrower (including, without limitation, Financed Vehicles).

“Liabilities” means, collectively, any and all Advances, debts, financial obligations, Administrative Fees, Scheduled Fees, interest, late fees and any other duties, charges, costs or expenses (including attorney’ fees) owing, arising, due or payable from Borrower to DFH of any kind or nature, present or future, under any instrument, guaranty, or other document, whether arising under this Agreement or otherwise.

“Maturity Date” means the date an Advance for each Financed Vehicle becomes due and payable, as set forth in the Terms Schedule.

"Note" means the Demand Note executed by Borrower to evidence its repayment obligations under this Agreement, as the same may be amended, modified or replaced from time to time.

"Place of Business" means any or all of the following locations:

- (a) the location where Borrower keeps its books and records;
- (b) the location where Borrower conducts its operations; and
- (c) if applicable, the location of Borrower's registered office.

"Related Agreements" means, collectively, this Agreement, the Note, the Guaranty, and any other document or agreement relating to, securing, or evidencing the Liabilities.

"Reserve Fee" means the amount, if any, set forth in the Terms Schedule to be paid to DFH with respect to each Financed Vehicle as additional security for Borrower's obligations under this Agreement.

"Scheduled Fee" means any fee (other than the Floorplan Fee) charged by DFH to Borrower as set forth in the Terms Schedule.

"Terms Schedule" means the schedule of fees and terms applicable to the Facility that is attached to this Agreement as Exhibit A. EACH TERM SET FORTH IN THE TERMS SCHEDULE MAY BE AMENDED FROM TIME TO TIME BY DFH IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

"Title" means the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.

"UCC" means the Uniform Commercial Code as enacted in the state where the Collateral is located.

"Unit" means a motor vehicle for which a Title exists.

Section 2. *Advances; Advance Procedures.*

(a) DFH will not honor any Advance request unless (1) at the time of such request (and after giving effect to such request), Borrower is in strict compliance with all provisions of this Agreement, and (2) the request complies with the conditions set forth in this Section. Without limiting the foregoing, DFH may decline any such request in its sole discretion. DFH's right to decline to make an Advance is a material term of the Facility and may not be waived, suspended or altered except in a writing signed by DFH. In addition, DFH may at any time, in its sole discretion, (1) establish, rescind or change amounts, limits or the extent to which Advances may be requested by or extended to Borrower, or (2) honor an Advance request that would cause the aggregate principal amount outstanding of all Advances at any given time to exceed the Credit Limit (each, an "Overadvance"). Any Overadvance shall constitute an Advance subject to the terms of this Agreement and the Terms Schedule. DFH's decision to make or refuse to make any Advance (including, without limitation, any Overadvance) shall not limit DFH's right to make or refuse to make any other Advance.

(b) All Borrower requests to DFH for an Advance for the purpose of acquiring Financed Vehicles must include:

- (1) a copy of the bill of sale for any Unit which is the subject of the request, indicating the actual purchase price and vendor;
- (2) a completed Odometer Disclosure Statement;
- (3) the Unit's certificate of title showing that it has been duly assigned to the applicable Borrower; and
- (4) such other information regarding the Unit or the applicable Borrower as DFH may reasonably request.

Each request for an Advance is also subject to any additional terms and procedures set forth in the Terms Schedule, including the Advance Rates and, if applicable, DFH's determination that Borrower is in compliance with the Equity Condition. If DFH elects to make any such Advance, then the Advance will constitute an additional Liability under this Agreement from the date on which the Advance is made.

(c) At any time Borrower is in default under this Agreement, DFH may make an Advance on Borrower's behalf for any Liability to a third party. Any such Advance may be made without notice to Borrower and without regard to the Credit Limit and will constitute an additional Liability under this Agreement from the date on which the Advance is made. Nothing in this paragraph obligates DFH in any way to make any such Advance at any time.

(d) So long as Borrower is not in default under this Agreement, Borrower may sell Financed Vehicles to bona fide buyers in the ordinary and regular course of Borrower's business, but nothing in this Agreement shall be deemed to waive or release any interest DFH may have hereunder or under any other agreement in any proceeds or replacements of the Financed Vehicle. ON THE SALE OR OTHER DISPOSITION OF EACH FINANCED VEHICLE, BORROWER SHALL HOLD THE AMOUNT RECEIVED FROM THE DISPOSITION OF SUCH FINANCED VEHICLE IN TRUST FOR THE BENEFIT OF DFH, AND BORROWER SHALL PAY TO DFH, IN ACCORDANCE WITH THIS AGREEMENT, AN AMOUNT EQUAL TO THE UNPAID BALANCE OF THE LIABILITIES RELATING TO SUCH FINANCED VEHICLE (OR SUCH OTHER AMOUNT AS PROVIDED IN SECTION 3).

(g) Borrower shall grant DFH's officers, employees, agents, attorneys, designees and representatives access to Borrower's books and records at Borrower's Place of Business to conduct an audit of the Financed Vehicles. Borrower shall be responsible for and shall pay all of DFH's expenses in conducting any such audit.

(h) DFH may, in its sole discretion, grant any Borrower request to obtain, for a legitimate business purpose, the Title to a specific Financed Vehicle held by DFH. If DFH grants any such request, then DFH shall provide the applicable Borrower with any terms and conditions relating to such request, and Borrower must deliver to DFH a check or draft which is signed and dated on the date as of which Borrower takes physical custody of the subject Title in an amount equal to the Liability relating to such Financed Vehicle. If Borrower violates any of the terms and conditions established by DFH in connection with such request, then any outstanding Liability relating to any Advance for such Financed Vehicle shall become immediately due and payable, and DFH may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.

(i) Borrower authorizes DFH to obtain from time to time credit information from a credit bureau, and any financial institutions or trade creditor that Borrower has provided, as well as other credit investigation that DFH in DFH's sole discretion deems necessary in connection with the administration of the Facility. Borrower also authorizes DFH to contact any third parties to disclose information, including

information contained in the DFH application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DFH's security interest.

(j) Borrower's account is subject to "NSF" fees in the maximum amount permitted by law for each check or other payment made by Borrower that is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Borrower's and/or DFH's depository institution. Further, Borrower's account is subject to Administrative Fees. Borrower acknowledges and agrees that any such Administrative Fee that DFH charges is permitted under this Agreement, and Borrower consents to the assessment of any such Administrative Fee to Borrower's account. Such Administrative Fees are subject to business and market conditions; DFH may therefore adjust the Administrative Fees unilaterally without notice to Borrower and at DFH's sole discretion.

(k) All terms and conditions set forth in the Terms Schedule are incorporated in this Agreement by this reference. DFH MAY FROM TIME TO TIME, IN ITS SOLE DISCRETION, AMEND ANY TERM SET FORTH IN THE TERMS SCHEDULE, INCLUDING THE FLOORPLAN FACTOR, THE DEFAULT FLOORPLAN FACTOR, THE CREDIT LIMIT, THE ADVANCE RATES, PRINCIPAL REDUCTION REQUIREMENTS AND ALL OTHER RATES, FEES AND TERMS SET FORTH IN THE TERMS SCHEDULE BY PROVIDING WRITTEN NOTICE TO BORROWER OF THE AMENDED TERMS AND THE EFFECTIVE DATE FOR SUCH CHANGES, WHICH DATE MUST BE AT LEAST 30 DAYS AFTER THE DATE OF SUCH NOTICE. DFH MAY PROVIDE THE WRITTEN NOTICE REQUIRED BY THIS SUBSECTION AS PART OF ANY ACCOUNT STATEMENT PROVIDED TO BORROWER.

Section 3. *Floorplan Fee; Repayment of Advances.*

(a) DFH will charge Borrower on a daily basis a Floorplan Fee with respect to each Advance outstanding on such day. As provided in the definition of "Floorplan Fee," the Floorplan Fee will be calculated using the Floorplan Factor set forth in the Terms Schedule unless an Event of Default has occurred and is continuing, in which case the Floorplan Fee will be calculated using the Default Floorplan Factor. Calculating the Floorplan Fee using the Default Floorplan Factor will result in an increase in the Floorplan Fee charged with respect to all Advances outstanding under this Agreement on each day that Borrower remains in default under this Agreement.

DFH will consider an Advance to be outstanding on the day DFH makes the Advance to or on behalf of Borrower but will not consider such Advance to be outstanding on the day such Advance is fully and finally repaid in accordance with this Section.

(b) DFH's internal records shall constitute presumptive evidence of the then-outstanding principal amount of each Advance, as well as the amount of Floorplan Fees and other charges that may be owed to DFH at any time. Absent manifest error, the principal balance and any outstanding fees and charges with respect to the Advances reflected in the Account Statement shall constitute conclusive evidence of such amounts unless Borrower objects in writing within 14 calendar days of the date of the Account Statement.

(c) Borrower shall pay, and Borrower hereby promises to pay, the Floorplan Fees charged with respect to each Advance in accordance with the terms of this Agreement and the Terms Schedule.

(d) Prior to demand, Borrower shall repay, and Borrower hereby promises to repay, each Advance with respect to any unsold Financed Vehicle in the amounts and at the times provided in this Agreement and the Terms Schedule.

(e) Following the sale or other disposition of any Financed Vehicle by Borrower, Borrower shall pay to DFH, without notice or demand, at DFH's principal office or as otherwise set forth in the

Terms Schedule, the amount of the Advance and all other Liabilities owed with respect to such Financed Vehicle on the earlier of:

- (1) ^{168 hours / 7 days} ~~72~~ hours after such sale or disposition, *also*
- (2) 24 hours from the time Borrower receives payment by or on behalf of the purchaser of a Financed Vehicle; or
- (3) the Maturity Date.

Subject to the last sentence of this subsection, Borrower shall pay in full all Liabilities owed with respect to such Financed Vehicle, in cash, regardless of whether the proceeds received by Borrower are in cash or in kind or are less than the full amount of all Liabilities owed with respect to the Financed Vehicle. If an Event of Default has occurred and is continuing at the time of sale or other disposition of the Financed Vehicle, then Borrower shall pay to DFH the greater of (1) all Liabilities owed with respect to the Financed Vehicle, or (2) the full amount of the purchase price of the Financed Vehicle.

(f) DFH may apply any payments received with respect to the Liabilities in any order and method as it may determine in its sole discretion. Payments received by DFH after 3:00 pm, prevailing Eastern time, will be applied the next business day.

(g) If any payment due under this Agreement is unpaid for 15 days or more, Borrower shall pay DFH, in addition to any other sums due under this Agreement (and without limiting any other remedy available to DFH on account of such delinquent payment), a late charge equal to 5.00% of such unpaid amount.

(h) BORROWER EXPRESSLY WAIVES ANY AND ALL DEFENSES NOW OR HEREAFTER ARISING OR ASSERTED BY REASON OF (1) ANY LACK OF VALIDITY, LEGALITY OR ENFORCEABILITY OF ANY RELATED AGREEMENT; (2) ANY ACTION TAKEN UNDER ANY RELATED AGREEMENT OR ANY RIGHT OR REMEDY EXERCISED, DELAYED OR WAIVED UNDER ANY RELATED AGREEMENT; (3) ANY RELEASE, EXCHANGE, LAPSE IN PERFECTION OR OTHER IMPAIRMENT OF ANY SECURITY FOR, OR GUARANTY OF, THE LIABILITIES; (4) ANY DISSOLUTION, COMBINATION OR CONSOLIDATION OF ANY PARTY TO ANY RELATED AGREEMENT; OR (5) ANY OTHER CIRCUMSTANCE WHATSOEVER (WITH OR WITHOUT NOTICE TO OR KNOWLEDGE OF BORROWER) WHICH MIGHT IN ANY WAY OR TO ANY EXTENT VARY THE RISKS OF BORROWER, OR MIGHT OTHERWISE CONSTITUTE A LEGAL OR EQUITABLE DEFENSE AVAILABLE TO, OR DISCHARGE OF, A SURETY OR A GUARANTOR. IT IS THE EXPRESS PURPOSE AND INTENT OF EACH OF THE PARTIES TO THIS AGREEMENT THAT THE OBLIGATIONS OF BORROWER FOR THE LIABILITIES SHALL BE ABSOLUTE AND UNCONDITIONAL UNDER ALL CIRCUMSTANCES AND SHALL NOT BE DISCHARGED EXCEPT BY PAYMENT IN FULL AS PROVIDED IN THIS AGREEMENT. Notwithstanding the foregoing, the liability of Borrower with respect to its Liabilities shall be limited to an aggregate amount equal to the largest amount that would not render its obligations under this Agreement subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of applicable state law.

Section 4. Security Interest; Perfection.

(a) As security for the payment of all Liabilities under this Agreement and any Related Agreement (including, without limitation, Penland's obligations under his Guaranty), each Grantor hereby grants to DFH a continuing security interest in all of such Grantor's assets and properties, wherever located, including without limitation, (1) all Equipment of any kind or nature; (2) all Inventory, including, if applicable, all Financed Vehicles, now owned or hereafter acquired; (3) all additions, accessions, accessories, replacements and proceeds thereof; (4) all documents, accounts, accounts receivable, chattel

paper and general intangibles now owned or hereafter acquired by such Grantor, together with the proceeds thereof; and (5) all of such Grantor's books and records relating to the foregoing (collectively, the "Collateral").

(b) DFH may file financing statements, mark chattel paper, notify account debtors, note liens on documents of title, and the like, in order to establish, confirm, and maintain a perfected security interest in the Collateral. Each Grantor, as applicable, will execute and deliver any documents necessary and appropriate for this purpose and otherwise irrevocably appoints DFH to do so. DFH may require each Grantor, as applicable, to pay any fee, cost, tax, or assessment required by any government entity to perfect and maintain perfection of DFH's security interest in the Collateral.

(c) Unless DFH agrees otherwise in writing, Borrower must immediately turn over to DFH custody or control of all certificates of title, documents of title, bills of sale, invoices, and other records or instruments of ownership by Borrower pertaining to the Financed Vehicles. On DFH's request, each Grantor must protect and defend the Collateral against the claims and demands of all other persons.

(d) Borrower hereby grants a security interest in any Reserve Fees paid to DFH in accordance with the Terms Schedule. DFH shall hold each Reserve Fee in its custody pending payment in full of the applicable Advance. Upon the occurrence and during the continuance of an Event of Default, DFH may apply all or any part of the Reserve Fees against the outstanding Liabilities under this Agreement in any order and in any manner as DFH shall elect in DFH's sole discretion, without adversely affecting its other rights under any Related Agreement. The Reserve Fees shall not constitute trust funds and may be commingled with other monies held by DFH. All interest which accrues on the Reserve Fees shall be at a rate established by DFH, which may or may not be the highest rate then available, shall accrue for the benefit of Borrower and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. On repayment in full of Borrower's Liabilities under this Agreement, DFH shall disburse to Borrower any remaining Reserve Fees in its custody within 15 days.

Section 5. Representations and Warranties. Each Grantor, as applicable, represents and warrants to DFH, as of the date of this Agreement, and, as of each occasion on which an Advance is made pursuant to this Agreement, as follows:

(a) Borrower is principally engaged in the retail sale of motor vehicles and has all necessary licenses, permits, qualifications, franchises and other approvals lawfully necessary to conduct its business.

(b) Each Grantor is the legal owner of its Collateral, free from any lien, security interest or encumbrance except for the security interests granted by this Agreement to DFH and as otherwise described in this Agreement.

(c) All Financed Vehicles, and all of Borrower's records concerning sales, accounts and contract rights, are (or will be) kept at the applicable Borrower's Place of Business, except (1) for Financed Vehicles temporarily removed from such locations in the ordinary course of Borrower's business, or (2) as otherwise disclosed by Borrower and approved by DFH.

(d) All information furnished to DFH concerning the Collateral for the purpose of obtaining credit is, and will be, true and correct in all respects.

(e) Each Grantor has the authority and the legal right to execute, deliver, and perform this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement and any other documents contemplated hereby; and this Agreement has been duly

executed and delivered and constitutes Grantors' legal, valid, and binding obligation enforceable against them in accordance with its terms.

(f) Each Grantor represents and warrants it has title to, rights in and/or the power to transfer its Collateral, and its rights, title and powers with respect to the Collateral are free of all adverse claims, liens, security interests and restrictions on transfer or pledge.

(g) Each Grantor's legal name and address as they appear on its signature page to this Agreement are accurate and complete.

(h) Each Grantor and any other Guarantor is legally competent and has authority to enter into and execute this Agreement and any and all related documents.

Section 6. Covenants of Grantors. For so long as any Liability remains outstanding under this Agreement, each Grantor, as applicable, agrees as follows:

(a) Borrower shall use Advances solely for business purposes and not for personal, family or household purposes. This means, among other things, that Borrower may not use Advances to purchase a vehicle to be used for Borrower's personal, family or household purposes.

(b) Each Grantor shall keep its Collateral in good condition and shall not damage or destroy its Collateral or permit the same to occur. No Grantor shall use its Collateral in violation of any statute, ordinance or governmental rule or regulation.

(c) Each Grantor shall keep the Financed Vehicles (and all proceeds of Financed Vehicles) free from any adverse lien, security interest or encumbrance (other than any such lien, security interest or encumbrance which is permitted in writing by DFH) and shall defend its interests in any Financed Vehicles (and all proceeds of Financed Vehicles) against all other claims and demands of all persons at any time claiming any interest therein. Each Grantor shall promptly pay when due all taxes and assessments upon the Collateral, including the Financed Vehicles.

(d) No Grantor shall (1) make any sales or leases of any Financed Vehicle other than in the ordinary course of business or (2) grant any other security interest in any of its Collateral, whether subordinate or superior to the security interests granted herein, without the prior written consent of DFH.

(e) No Grantor shall change: (1) the location of the Collateral; (2) the state in which any titled Unit is titled; (3) the location of its Place of Business; (4) the state in which it is organized; or (5) its legal name.

(f) Each Grantor shall keep its Collateral, including any Financed Vehicles, in good repair and insured against all physical risks in such amounts and under such policies issued by such insurance company as are deemed necessary and satisfactory by DFH. DFH shall be named "loss payee" to the extent DFH's interests may appear. If any Grantor fails to procure, maintain or provide proof of such insurance coverage, then DFH may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from such Grantor pursuant to the terms of this Agreement. Each Grantor understands and agrees that DFH has an insurable interest in the Collateral, including but not limited to, the Financed Vehicles, by virtue of such Grantor's pledge of its Collateral as security to DFH as defined above, for the repayment of all Liabilities owed to DFH under this Agreement.

(g) Each Grantor shall keep at all times complete and accurate records of its business. Each Grantor shall provide records and financial information regarding its business and financial condition as required by the Terms Schedule or as DFH may reasonably request. Each Grantor authorizes DFH to share such information and any other information relating to its transaction with DFH with any and all persons or parties as DFH deems necessary.

(h) No Grantor shall pay or declare any dividends or distributions, redeem any capital stock, repay subordinate debt or repay any other loans to any principal or guarantor of such Grantor's business.

(i) No Grantor shall disclose to any third party, without the written consent of DFH, any terms and conditions applicable to the Facility.

Section 7. *Events of Default; Acceleration.* The occurrence of any of the following events shall be considered an event of default under this Agreement ("Event of Default"):

(a) Any Grantor fails to perform any of its respective obligations, undertakings or covenants under this Agreement, including, but not limited to, Borrower's failure to make payment of any outstanding Liability as and when due under this Agreement or the Terms Schedule;

(b) Any warranty or representation made by any Grantor proving to have been false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice, or other writing furnished by such Grantor to DFH proving to have been false or misleading in any material respect when made or delivered;

(c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DFH as "Loss Payee" is not in effect;

(d) Any Grantor becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for such Grantor or any of its property, or makes a general assignment for the benefit of creditors; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or a dissolution or liquidation proceeding is commenced in respect of any Grantor;

(e) Any material change in the management, ownership or control of Borrower;

(f) The voluntary or administrative dissolution, death or incompetence of any Grantor or Guarantor;

(g) Any change in the financial condition of Borrower or any Guarantor that DFH deems materially adverse;

(h) DFH in good faith deems itself insecure for any reason; or

(i) Borrower defaults under any other written agreement between DFH and Borrower.

Section 8. *Rights and Remedies on Default.* Upon an event of default, DFH may, at its option and without notice, exercise any of the following rights in a separate, successive or concurrent fashion and such exercise of any right shall not preclude pursuit of other rights and remedies at a later time:

(a) Demand immediate payment of all Liabilities and all other indebtedness owed to DFH by Borrower. DFH shall have all the rights and remedies available hereunder, at law or in equity, including without limitation, the rights and remedies of a secured party under the UCC. These rights and remedies include the right to cancel any unfunded Advances, to enter into any Grantor's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DFH's request and to the extent any Grantor may lawfully do so, Grantor shall assemble, prepare for removal and make available to DFH at a place designated by DFH which is reasonably convenient for DFH and such Grantor, such items of Collateral as DFH may deem sufficient to cover all of Borrower's Liabilities to DFH.

(b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Each Grantor waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DFH to post a bond.

(c) To the extent allowed by law, each Grantor gives consent to DFH to proceed in any action to collect on or execute against any and all bonds that such Grantor has posted with any governmental authorities.

(d) Take control of any funds generated by the Collateral, and in DFH's name or the applicable Grantor's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral.

Each Grantor waives any and all rights it may have to notice prior to seizure by DFH of any Collateral. Each Grantor agrees that private sale of any item financed by DFH at the amount owed to DFH on that item, less costs reasonably incurred by DFH in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral.

Borrower shall be liable to DFH for any deficiency resulting from DFH's disposition of the Collateral. Each Grantor agrees that the Collateral is of the type customarily sold on a recognized market and that DFH therefore has no obligation to notify any Grantor prior to a sale. However, each Grantor agrees that ten days' prior written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DFH shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DFH shall not be required to marshal any assets in favor of any Grantor. DFH has no obligation to pursue any third person for any Liability or obligation owed to any Grantor. Each Grantor further agrees, jointly and severally, to pay reasonable attorneys' fees and collection costs incurred by DFH in enforcing this Agreement after an event of default by Borrower. To the extent not prohibited by law, each Grantor waives all appraisal, valuation, anti-deficiency, homestead, exemption or usury laws now or hereafter in effect and releases all right to appeal after payment in full.

Section 9. Indemnification. Each Grantor agrees to indemnify, defend and hold harmless DFH from and against any claims, liabilities, damages, costs or expenses, of any nature whatsoever, which DFH may suffer or incur as a result of, or arising from or in connection with, any act or omission on the part of any Grantor in respect of any matter referred to in, contemplated by, or otherwise relating to this Agreement.

Section 10. Failure to Exercise Remedies. The exercise of any right or remedy available to any party or the failure of any party to exercise or a delay by any party in exercising any right or remedy shall not operate as a waiver of such right or any other right. All of the parties' rights and remedies shall be cumulative and may be exercised singularly or concurrently.

Section 11. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns; *provided, however* that this Agreement and all rights and obligations under this Agreement may not be assigned or transferred by any Grantor without DFH's prior written consent and any purported assignment or transfer without such consent shall be void and without effect. Any obligation or function to be performed by DFH under this Agreement may, at the option of DFH, be delegated to and performed by any agent of DFH, which agent shall have such power and authority as DFH shall delegate to it.

Section 12. *Termination.* Borrower may terminate this Agreement upon written notice to DFH. DFH may terminate this Agreement at any time upon written notice to Borrower. Any termination of this Agreement shall not affect any obligation of DFH or any Grantor that may exist prior to the effective date of such termination.

Section 13. *Miscellaneous.* Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. This Agreement constitutes the complete understanding between the parties hereto with respect to the subject matter hereof and no alteration, amendment or modification of any of the terms and provisions hereof shall be valid unless made pursuant to an instrument in writing signed by parties hereto. Unless the context of this Agreement otherwise requires, the masculine, feminine or neuter gender each shall include the other genders, and the singular shall include the plural. The section headings contained in this Agreement are for convenience of reference only and shall not limit or define the text hereof.

Section 14. *Governing Law.* This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

Section 15. *Notice.* Except as otherwise provided in this Agreement, all notices and other communications hereunder shall be in writing and shall be deemed duly given if and when personally delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to the applicable party at its address listed in the introductory paragraph of this Agreement or opposite its name on the signature page to this Agreement. Either party may change the address to which each such notice shall be sent by giving notice of such address change in the manner provided herein to the other party.

Section 16. *No Joint Venture or Partnership.* Nothing contained in this Agreement confers on DFH or any Grantor any interest in, or subjects any of them to any liability for, the business, assets, profits, losses or liabilities of the other. This Agreement does not constitute a joint venture or partnership between DFH and any Grantor. Nothing in this Section limits or restricts the respective obligations and undertakings of DFH and any Grantor under this Agreement.

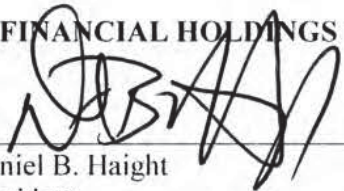
Section 17. *Waiver of Jury Trial.* TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH GRANTOR AND DFH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THIS AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED, AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. EACH GRANTOR CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY

OR OTHERWISE, THAT DFH WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

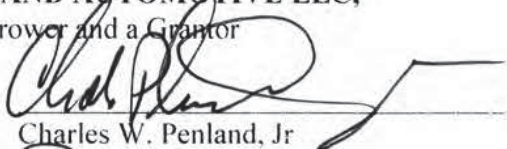
[Signatures Begin on Following Page]

IN WITNESS WHEREOF, each of the parties to this Agreement has caused this Agreement to be executed under seal by its duly authorized representative as of the date first written above.

DEALER FINANCIAL HOLDINGS LLC

By: 
Name: Daniel B. Haight
Title: President

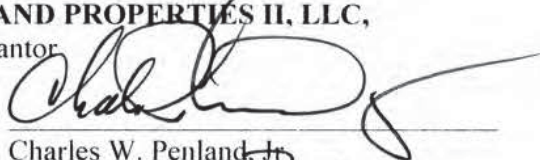
PENLAND AUTOMOTIVE LLC,
as Borrower and a Grantor

By: 
Name: Charles W. Penland, Jr.
Title: Pres

Notice Address:

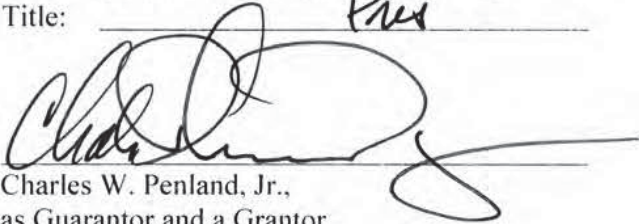
3406 Wade Hampton Blvd
Taylors, SC 29687

PENLAND PROPERTIES II, LLC,
as a Grantor

By: 
Name: Charles W. Penland, Jr.
Title: Pres

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687


Charles W. Penland, Jr.,
as Guarantor and a Grantor

Notice Address:

SAME AS ABOVE

EXHIBIT A

TERMS SCHEDULE

BORROWER

PENLAND AUTOMOTIVE LLC

NOVEMBER 21, 2016

This Terms Schedule is a material part of the Loan and Security Agreement dated November 21, 2016 (as the same may be amended, modified or replaced, the "**Agreement**") between Borrower listed above and Dealer Financial Holdings LLC ("**DFH**"). The terms set forth in this Terms Schedule may be amended by DFH in its sole discretion in accordance with the terms of the Agreement. Each capitalized term used but not defined in this Terms Schedule has the meaning given to such term in the Agreement. The payment information provided in this Terms Schedule in no way limits DFH's right to demand payment as provided in the Agreement. The Account Statements provided to Borrower summarize Borrower's payment obligations with respect to each Advance pursuant to the Agreement and this Terms Schedule. As provided in the Agreement, the Account Statements are binding on Borrower and DFH absent manifest error or Borrower's timely written objection.

CREDIT LIMIT

The **Credit Limit** for this Facility is \$200,000. The aggregate principal amount outstanding of all Advances made to Borrower under the Agreement at any given time may not exceed the Credit Limit.

FLOORPLAN FEES

Floorplan Factor means \$0.08 per \$100.00 borrowed, or 0.0008.

Default Floorplan Factor means \$0.10 per \$100.00 borrowed, or 0.0010.

DFH will charge a daily fee with respect to each outstanding Advance in an amount equal to the principal amount of such Advance multiplied by the Floorplan Factor (or, if an Event of Default is continuing at the time of calculation, the Default Floorplan Factor). For example, if DFH makes an Advance to a Borrower in the amount of \$10,000.00 and no Event of Default has occurred, DFH will charge Borrower \$8.00 for each day the Advance is outstanding (not including the day the Advance is repaid). If the principal amount of the Advance is repaid in full on the 11th day after the Advance is made, Borrower will owe DFH a total Floorplan Fee with respect to such Advance in the amount of \$80.00.

Floorplan Fees will be due by 3:00 pm (1) on each Friday following the date that an Advance has been outstanding for 30, 60 and 90 days, respectively, and (2) on each day Borrower is required to repay all or a portion of such Advance under the Agreement, whether following the sale or disposition of the applicable Financed Vehicle, on the Maturity Date or otherwise.

PRINCIPAL REDUCTION PAYMENTS; MATURITY DATE

Until a Borrower has sold or otherwise disposed of any Financed Vehicle, Borrower must repay the principal amount of the Advance relating to such Financed Vehicle as provided in the table below:

<u>Date</u>	<u>Percentage of Original Principal Amount of Advance Required to be Repaid</u>
Date of Advance + 60 days	10%
Date of Advance + 90 days	10%
Date of Advance + 120 days	100%

Each principal reduction payment will be due by 3:00 pm on the first Friday following each date indicated in the table above.

“**Maturity Date**” means, for each Advance, the first Friday following the date on which 100% of the outstanding principal amount of such Advance is due, as provided in the table above. Unless DFH agrees otherwise in writing, all Liabilities with respect to each Advance must be paid in full by 3:00 pm on the Maturity Date for such Advance.

ADVANCE RATES

DFH will not make an Advance for any Financed Vehicle in excess of the following rates:

<u>Source of Financed Vehicle</u>	<u>Maximum Amount Advanced</u>
Purchased at Auction	100% of the purchase price of the Unit, as verified by the applicable Borrower's invoice
Purchased Outside of Auction	(1) Lesser of (a) 80% of the published wholesale value for such Unit, as set forth in the then-applicable Used Car Guide as published by the National Automobile Dealers Association, assuming good condition, and (b) the actual purchase price of the Unit. Or as agreed in writing; or (2) as otherwise agreed by Borrower and DFH in writing.

EQUITY CONDITION

DFH will not fund any Advance unless Borrower establishes to DFH's satisfaction that Borrower maintains, at the time of such Advance, at least **\$50,000** in used vehicle inventory (based on actual purchase price) purchased from Borrower's own funds.

ADVANCE PROCEDURES

Borrower will provide DFH with a list of auctions from which Borrower intends to purchase Financed Vehicles. DFH will notify each auction specified by Borrower and acceptable to DFH that, subject to DFH's advice of credit availability, such auction may sell motor vehicles to Borrower. DFH will pay the auction for any Financed Vehicle on delivery to DFH of the documents set forth in the Agreement.

If DFH, in its sole discretion, makes an Advance prior to receiving a valid original Title for the Financed Vehicle, and such Title is not delivered within 15 days from the date of the Borrower's purchase, then Borrower

must immediately return the Financed Vehicle to the auction and repay the outstanding Advance with respect to such Financed Vehicle, plus any Floorplan Fees and any other fees or charges due to DFH.

In DFH's sole discretion, DFH may make Advances for the purchase of Financed Vehicles outside of auction. DFH will generally make any such Advance directly to the seller of the Financed Vehicle, though DFH may, in its sole discretion, elect to make Advances directly to Borrower.

FLOOR PLAN AUDITS

Borrower's inventory, other Collateral, records and sales information will be periodically audited by a DFH representative or a third-party contracted by DFH. Borrower must provide the auditor, at the time of audit, with detailed information on the location or disposition of any Financed Vehicle not physically verified by the auditor. Borrower must provide auditor with paperwork for all sold vehicles and contact information for any repair shops holding Inventory. If Borrower is found to be in compliance with the terms of the Agreement, then DFH will not charge Borrower for the audit. If an Event of Default is discovered in connection with an audit of Borrower's inventory, then DFH will charge Borrower the greater of (1) \$2.50 for each vehicle in Borrower's Inventory at the time of such audit and (2) \$100.00. Such audit fees will apply to each audit performed by DFH while the Event of Default is continuing.

FINANCIAL STATEMENTS

Borrower must provide DFH with the following financial information:

- (1) by the 15th day of each month, Borrower's balance sheet, income statement and bank statement for the immediately preceding month;
- (2) annually, no later than 15 days after filing, a signed copy of Borrower's and each Guarantor's federal tax return for the prior year;
- (3) on DFH's request, annual financial statements of Borrower and each Guarantor prepared by an independent accountant acceptable to DFH, with copies of all letters, footnotes and advice from such accountant, such financial statements to be audited, reviewed or compiled, all as DFH may request; and
- (4) such other financial information as DFH may reasonable request.

SCHEDULED FEES

DFH reserves the right to charge Borrower the **Scheduled Fees** listed below, which include fees customarily charged by lenders in connection with floorplan financings similar to the Facility:

<u>Scheduled Fee</u>	<u>Amount Charged Borrower (Absent Event of Default)</u>	<u>Amount Charged Borrower (During Event of Default)</u>
Onboarding Fees	\$0.00	\$100.00 at the time DFH makes each Advance
Curtailment Fees	\$0.00	\$100.00 at the time of each curtailment payment
Administrative Fees	\$15.00 per floor plan advance, title packet, and other as agreed	\$25.00 per floor plan advance, title packet, and other as agreed

Reserve Fee	\$100 per vehicle	\$200 per vehicle
Audit Fee	\$0.00	Greater of \$2.50 per Unit in Borrower's Inventory or \$100

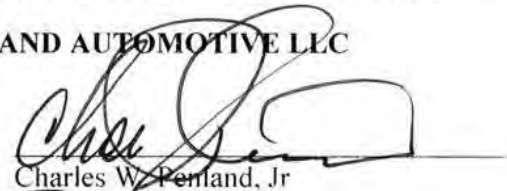
BORROWER'S PLACE(S) OF BUSINESS

<u>Borrower</u>	<u>Address for Location of Books and Records</u>	<u>Address for Location of Operations</u>	<u>Address for Location of Registered Office</u>
Penland Automotive LLC	3406 Wade Hampton Blvd Taylors, SC 29687	3406 Wade Hampton Blvd Taylors, SC 29687	3406 Wade Hampton Blvd Taylors, SC 29687

REQUIRED GUARANTOR

Charles W. Penland, Jr.

Reviewed and agreed as of the date written above.

PENLAND AUTOMOTIVE LLCBy: 

Name: Charles W. Penland, Jr.

Title: 

AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER RELATED AGREEMENTS

This **AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER RELATED AGREEMENTS** (this "*Amendment*") is made as of the 2nd day of April, 2018 (the "*Effective Date*") by and between **Penland Automotive LLC**, a South Carolina limited liability company ("Borrower"), located at the address listed opposite its name on the signature page to this Agreement, **Penland Properties II, LLC**, a South Carolina limited liability company ("PPII"), located at the address listed opposite its name on the signature page to this Agreement, **Charles W. Penland, Jr.**, a resident of the State of South Carolina ("Penland" and, together with PPII and Borrower, "Grantors"), and **DEALER FINANCIAL HOLDINGS LLC** ("DFH").

RECITALS:

A. The Grantors and DFH entered into a Loan and Security Agreement dated as of November 21, 2016 (as previously amended and supplemented, if applicable, the "*Existing Loan Agreement*," and as amended and supplemented by this Amendment, the "*Loan Agreement*").

B. Each capitalized term used but not defined in this Amendment has the meaning given to such term in the Existing Loan Agreement.

C. The parties have agreed to modify the Existing Loan Agreement and the other Related Agreements subject to the terms set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties to this Amendment hereby acknowledge, the undersigned agree to amend the Existing Loan Agreement and the other Related Agreements as follows:

1. ***Amendments to the Existing Loan Agreement.*** The Existing Loan Agreement is amended as set forth in Schedule 1 attached hereto.

2. ***Amendments to Other Related Agreements.*** Any reference to the Loan Agreement in the Note or in any other Related Agreement shall be deemed to refer to the Existing Loan Agreement, as amended by this Amendment.

3. ***Effective Date.*** Notwithstanding anything in the Existing Loan Agreement to the contrary, each provision of this Amendment shall be effective on the Effective Date.

4. ***No Novation; Ratification.*** This Amendment constitutes a modification of the Loan Agreement and is not a novation. The liens and security interests granted under the Loan Agreement and the Related Agreements continue to secure the payment of all Liabilities in accordance with their original priorities. Except as expressly amended by this Amendment, each Related Agreement remains unchanged and in full force and effect. No Grantor has any defenses, setoffs or claims with respect to the Facility, and each Grantor waives and relinquishes any defenses, setoffs or claims, known or unknown, which may exist at this time.

5. ***Reaffirmation of Guaranty.*** By their signatures below, each Guarantor ratifies and reaffirms its obligations under its Guaranty, consents to the execution and delivery of this

Amendment, and acknowledges that its liability under its Guaranty shall not be diminished by the execution and delivery of this Amendment. No Guarantor has any defenses, setoffs or claims with respect to its Guaranty or the Facility, and each Guarantor waives and relinquishes any defenses, setoffs, or claims, known or unknown, which may exist at this time.

6. **Severability.** If any provision of this Amendment is prohibited by or invalid under applicable law, then such provision is ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Amendment.

7. **Execution in Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but which shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties to this Amendment has caused this Amendment to be executed under seal by its duly authorized representative as of the date first written above.

DEALER FINANCIAL HOLDINGS LLC

By: 

Name: Daniel B. Haight

Title: President

PENLAND AUTOMOTIVE LLC,
as Borrower and a Grantor

By: 

Name: Charles W. Penland, Jr

Title: President

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687

PENLAND PROPERTIES II, LLC,
as a Grantor

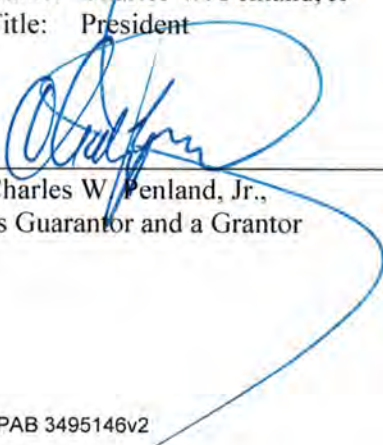
By: 

Name: Charles W. Penland, Jr

Title: President

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687


Charles W. Penland, Jr.,
as Guarantor and a Grantor

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687

Schedule 1
to
Amendment to Loan and Security Agreement and other Related Agreements dated as of
November 21, 2016

1. The Credit Limit for the Facility is increased from \$200,000 to \$500,000.

DEMAND NOTE

November 21, 2016

FOR VALUE RECEIVED, the undersigned ("Borrower") hereby promises to pay to Dealer Financial Holdings LLC or its assigns ("DFH"), on demand and otherwise in accordance with the provisions of a Loan and Security Agreement dated as of November 21, 2016 (as the same may be amended, modified or replaced from time to time, the "Loan Agreement") among Borrower, DFH, Charles W. Penland, Jr., and Penland Properties II, LLC, in such amounts and at such times as provided in the Loan Agreement, (1) the principal amount of each Advance from time to time made by DFH to Borrower under the Loan Agreement and (2) the Floorplan Fee and any other amount due and payable with respect to the unpaid principal amount of each Advance from the date of such Advance until such principal amount is paid in full. Each capitalized term used but not defined herein has the meaning given to such term in the Loan Agreement. The terms of the Loan Agreement are incorporated herein by this reference.

All payments under this Note shall be made to DFH in lawful money of the United States and in immediately available funds at DFH's principal office as provided in the Loan Agreement, or as DFH may otherwise instruct Borrower in writing. Each Advance and any amounts due respect to each such Advance under the Loan Agreement shall be evidenced by (1) records maintained by DFH in the ordinary course of business and (2) the Account Statements that DFH provides to Borrower from time to time. DFH may also attach schedules to this Note and endorse thereon the date, amount and maturity of each Advance and any payments with respect thereto.

This Note is given to evidence the payment obligations of Borrower to DFH in connection with the Loan Agreement and is subject to the terms and conditions of the Loan Agreement. This Note is also entitled to the benefits of any Guaranty and is secured by the Collateral. In the event of any conflict between the provisions of this Note and the Loan Agreement, the provisions of the Loan Agreement shall control.

THIS NOTE IS DUE AND PAYABLE ON DEMAND. Without limiting the foregoing, on the occurrence and continuation of one or more Events of Default specified in the Loan Agreement, all amounts then remaining unpaid on this Note shall (if required by the Loan Agreement) become, or may be declared to be, immediately due and payable all as provided in the Loan Agreement.

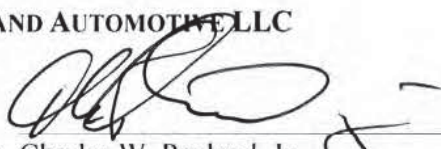
Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina.

BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS NOTE OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THE AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED, AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. BORROWER CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DFH

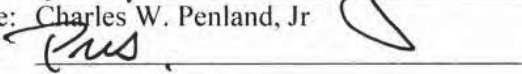
WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, Borrower has caused this Demand Note to be executed under seal by its duly authorized representative as of the date first written above.

PENLAND AUTOMOTIVE LLC

By: 

Name: Charles W. Penland, Jr

Title: 

UNLIMITED GUARANTY

To induce **DEALER FINANCIAL HOLDINGS LLC** ("DFH") to make, continue to make, or at any time in the future make loans, advances, or grant other financial accommodations to **PENLAND AUTOMOTIVE LLC**, a South Carolina limited liability company ("Borrower"), in consideration thereof and for loans, advances or financial accommodations heretofore or hereafter granted by DFH to or for the account of Borrower, the undersigned ("Guarantor") absolutely and unconditionally guarantees the full and punctual payment to DFH of all sums which may be presently due and owing and of all sums which shall in the future become due and owing to DFH from Borrower, including, without limitation, interest, attorneys' fees and other amounts accruing after the filing of a petition in bankruptcy by or against Borrower, notwithstanding the discharge of Borrower from such obligations, together with all costs and expenses incurred by DFH including attorneys' fees in connection with such obligations, this Guaranty and the enforcement thereof, and also guarantees the due performance by Borrower of all its obligations under all other present and future contracts and agreements with DFH. This is a guaranty of payment and not collection.

Each capitalized term used but not defined herein has the meaning given to such term in a Loan and Security Agreement dated November 21, 2016 (as the same may be amended, modified or replaced, the "Loan Agreement") among Borrower, DFH, Guarantor, and Penland Properties II, LLC. Borrower is directly or indirectly owned by Guarantor, and Guarantor will materially benefit from the Advances to be made to the Borrower under the Loan Agreement. DFH is unwilling to extend and maintain the Facility established under the Loan Agreement unless Guarantor executes and delivers this Guaranty.

DFH may enforce this Guaranty on multiple occasions, each time without the necessity of joinder of any other guarantors or any other person. This Guaranty shall remain in full force and effect until all obligations of Borrower are unconditionally paid in full.

Guarantor also agrees that:

- (1) this Guaranty shall not be impaired by any modification, supplement, extension, renewal or amendment of any contract or agreement to which the parties thereto may hereafter agree, nor by any modification, increase, release or other alteration of any of the obligations hereby guaranteed or of any security therefor, nor by any agreements or arrangements whatsoever with Borrower or anyone else, all of which may be done without notice to Guarantor;
- (2) the liability of Guarantor hereunder is direct and unconditional and due immediately upon default of Borrower without demand or notice and without requiring DFH first to resort to any other right, remedy or security;
- (3) Guarantor shall have no right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of Borrower to DFH;
- (4) the liability of Guarantor is unlimited and joint and several with the liabilities of any other guarantors;
- (5) if Borrower, Guarantor or any other guarantor should at any time become insolvent or make a general assignment, or if a petition in bankruptcy or any insolvency or reorganization proceedings shall be filed or commenced by, against or in respect of Borrower, Guarantor or any other guarantor of the obligations guaranteed hereby, any and all obligations of Guarantor shall be immediately due and payable without notice;

(6) DFH's books and records showing the account between DFH and Borrower shall be admissible in any action or proceeding, and shall constitute conclusive proof thereof absent manifest error;

(7) this Guaranty is, as to Guarantor, a continuing Guaranty that shall remain effective under successive transactions until expressly released by DFH;

(8) the death of Guarantor, if applicable, shall not effect the termination of this Guaranty;

(9) nothing shall discharge or satisfy the liability of Guarantor hereunder except the full, indefeasible payment and performance of all of Borrower's debts and obligations to DFH with interest and costs of collection;

(10) this Guaranty shall not be affected by the illegality, invalidity or unenforceability of the Liabilities guaranteed, by any fraudulent, illegal or improper act by Borrower, the legal incapacity or any other defense of Borrower, Guarantor or any other person obligated to DFH consequential to transactions with Borrower nor by the invalidation, by operation of law or otherwise, of all or any part of the obligations guaranteed hereby, including but not limited to any interest accruable on the obligations guaranteed hereby during the pendency of any bankruptcy or receivership proceeding of Borrower;

(11) any and all present and future debts and obligations of Borrower to Guarantor are hereby waived and postponed in favor of and subordinated to the full, indefeasible payment and performance of all present and future debts and obligations of Borrower to DFH, and Guarantor shall accept no payments on any such debts and obligations except to the extent permitted by DFH in writing;

(12) if at any time payment of all or any part of the obligations guaranteed hereunder is rescinded or otherwise must be restored by DFH to Borrower or to the creditors of Borrower or any representative of Borrower or representative of Borrower's creditors as a voidable preference or fraudulent transfer of conveyance upon the insolvency, bankruptcy or reorganization of Borrower or Guarantor, or to the creditors of Guarantor or any representative of Guarantor or representative of the creditors of Guarantor upon the insolvency, bankruptcy or reorganization of Guarantor or otherwise, this Guaranty shall continue to be effective or be reinstated, as the case may be, as though such payments had not been made, and shall survive as an obligation of Guarantor, and shall not be discharged or satisfied by said payment or payments, notwithstanding the return of the original of this Guaranty to Guarantor or to Borrower, or any other apparent termination of Guarantor's obligations hereunder;

(13) DFH's delay or omission in exercising any of DFH's rights and remedies shall not constitute a waiver of these rights and remedies, nor shall DFH's waiver of any right or remedy operate as a waiver of any other right or remedy available to DFH;

(14) Guarantor shall indemnify and hold DFH and DFH's directors, officers, employees, agents and attorneys harmless against all claims, obligations, demands and liabilities, by whomsoever asserted, and against all losses in any way suffered, incurred or paid as a result of or in any way arising out of or following or consequential to transactions with Borrower, except for any claim arising out of the gross negligence or willful misconduct of the DFH, its officers, directors, employees or agents;

(15) this Guaranty incorporates all discussions and negotiations between DFH and Guarantor concerning the guaranty and indemnification provided by the undersigned hereby, and that no such discussions or negotiations shall limit, modify, or otherwise affect the provisions hereof, there are no preconditions to the effectiveness of this Guaranty and that no provision hereof may be altered, amended,

waived, canceled or modified, except by a written instrument executed, sealed and acknowledged by DFH's duly authorized officer;

GUARANTOR EXPRESSLY WAIVES (1) NOTICE OF ACCEPTANCE HEREOF, PRESENTMENT AND PROTEST OF ANY INSTRUMENT AND NOTICE THEREOF, NOTICE OF DEFAULT AND ALL OTHER NOTICES TO WHICH GUARANTOR MIGHT OTHERWISE BE ENTITLED; AND (2) ANY AND ALL DEFENSES, INCLUDING WITHOUT LIMITATION, ANY AND ALL DEFENSES WHICH BORROWER OR ANY OTHER PARTY MAY HAVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY DEFENSE TO THIS GUARANTY BASED ON IMPAIRMENT OF COLLATERAL OR ON SURETYSHIP DEFENSES OF EVERY TYPE, AND ANY RIGHT TO EXONERATION OR MARSHALLING. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, DFH SHALL HAVE NO DUTY AS TO THE COLLECTION OR PROTECTION OF ANY COLLATERAL, IF ANY, SECURING THE GUARANTEED OBLIGATIONS BEYOND THE SAFE CUSTODY THEREOF.

Guarantor will from time to time execute and deliver to the DFH, and take or cause to be taken, all such other further action as the DFH may request in order to effect and confirm or vest more securely in the DFH all the rights contemplated in this Guaranty or respecting any of the obligations guaranteed hereby or to comply with applicable statute or law.

GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS GUARANTY, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS GUARANTY OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THE AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. GUARANTOR CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DFH WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

This Guaranty, all acts and transactions hereunder, and the rights and obligations of the parties hereto shall be governed, construed and interpreted according to the internal laws of the State of South Carolina, shall be binding upon the heirs, executors, administrators, successors and assigns of Guarantor and shall inure to the benefit of DFH's successors and assigns. In addition, if Guarantor is a natural person, then this Guaranty shall be binding against Guarantor's sole and separate property and the property now or hereafter owned by the marital community property of Guarantor.

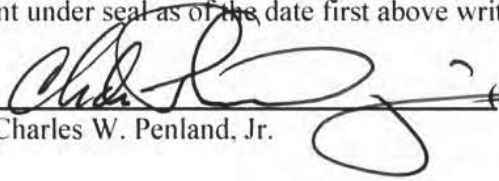
If any provision of this Guaranty is found to be invalid, illegal or unenforceable, the validity of the remainder of the Guaranty shall not be affected.

Guarantor's damages under this Guaranty and for all other relations between the parties are expressly limited to the actual dollar amount of Guarantor's economic or financial loss. DFH shall not be liable for, punitive, exemplary, consequential, or incidental damages.

THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY SHALL BE JOINT AND SEVERAL WITH ALL OTHER GUARANTORS OF BORROWER'S OBLIGATIONS UNDER THE LOAN AGREEMENT, THE NOTE AND ANY RELATED AGREEMENT.

[Signatures Begin on Following Page]

This Guaranty is executed as an instrument under seal as of the date first above written.

 (SEAL)
Charles W. Penland, Jr.



October 8, 2020

DELIVERED BY HAND TO CHARLES W. PENLAND JR.

Mr. Charles W. Penland Jr.
Penland Automotive LLC
3406 Wade Hampton Blvd
Taylors, SC 29687

Dear Billy,

The change in ownership structure, change in management structure and our good faith belief that our position is insecure, without limitation, qualifies as an "Event of Default" under our Loan Documents dated November 21, 2016 (as amended, the "Loan Agreement"). By the terms of our agreement, your Loan is immediately due and payable. Dealer Financial Holdings LLC. (DFH) demands immediate payment of the entire Loan balance.

Your payment obligations under the Loan Agreement are evidenced by a Demand Note dated November 21, 2016 (as amended, the "Note") made by you to the order of DFH, and your obligations under the Loan Agreement and Note are secured by, among other things, an Unlimited Guaranty dated November 21, 2016 (as amended, the "Guaranty"). The Loan Agreement, the Note, the Guaranty and any other documents evidencing, securing or relating to the Loan are collectively referred to herein as the "Loan Documents."

Among other the agreements and obligations contained in the documents, you are not to repay any subordinate debt prior to satisfying your Loan with DFH. This includes any subordinate or unsecured creditor.

Any partial payment(s) that may be made or received on account of the Loan shall not constitute an agreement to waive demand for full payment of all amounts due under the Loan. Nothing contained in this letter constitutes a waiver of, or any agreement to forbear from exercising, any rights and remedies under the Loan Documents, at law or in equity, which such rights and remedies are expressly reserved.

Best Regards

Daniel B. Haight
President

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Penland Automotive, LLC and Charles
W. Penland, Jr.,

Plaintiffs,

vs.

Dealer Financial Holdings, LLC, Steve
Lanzl and Daniel B. Haight,

Defendants.

Civil Action No.: 2021-CP-23-00244

**DEFENDANTS' RENEWED MOTION TO
STRIKE JURY DEMAND**

Defendants Dealer Financial holdings, LLC (“DFH”), Steve Lanzl (“Lanzl”), and Daniel B. Haight (“Haight”), and collectively with DFH and Lanzl, the “Defendants”), by and through their undersigned counsel, hereby move the Court, pursuant to Rules 12 of the South Carolina Rules of Civil Procedure (“SCRCP”), for an Order striking Plaintiffs’ Penland Automotive, LLC (“Penland Automotive”) and Charles W. Penland, Jr. (“Penland,” and collectively with Penland Automotive, the “Plaintiffs”) demand for a jury trial.¹

On or about November 21, 2016, Penland Automotive, Penland, Penland Properties II, LLC, and DFH entered into that certain Loan and Security Agreement, pursuant to which DFH agreed to make cash advances to or for the benefit of Penland Automotive for the purpose of purchasing used car inventory (the “Financing Agreement”). Contemporaneously with the Financing Agreement, Penland Automotive signed a Demand Note as further evidence of its obligations to DFH under the Financing Agreement. The Demand Note states that the amounts due and owing to DFH under the Financing Agreement are payable on demand. Pursuant to the Financing Agreement, DFH agreed to make advances to or for the benefit of Penland Automotive

¹ Defendants previously filed a Motion to Strike the Jury Demand on April 13, 2021. On July 28, 2021, the Court denied the motion without prejudice and with leave to renew. Following discovery on the issues among the parties, Defendants hereby renew this Motion.
PPAB 8043522v1

for the purpose of purchasing used car inventory for the dealership, and Penland Automotive was required to repay those advances in accordance with the terms of the Financing Agreement. Those terms required Penland Automotive to make periodic interest payments and principal curtailments to DFH. Additionally, in order to induce DFH to enter into the Financing Agreement and to further secure the indebtedness evidenced by the Financing Agreement and the Demand Note, Penland executed and delivered to DFH that certain Unlimited Guaranty (the “Guaranty”). The Financing Agreement, the Demand Note, the Guaranty, and the other documents executed in connection therewith are hereafter referred to collectively as the “Loan Documents”.

In 2019, the parties paused the financing relationship, but re-opened it in July 2020. DFH advanced funds to Penland Automotive, but a dispute arose among the parties regarding the terms of the contractual arrangement. This case arises out of the dispute, specifically, whether the parties agreed to abide by the terms of the Loan Documents or whether there were other terms.

First, the Loan Documents included a waiver of rights to a jury trial. *Wachovia Bank, Nat. Ass’n v. Blackburn*, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014) (“A party may waive the right to a jury trial by contract.”); *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (“[A] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it.”). However, the jury trial waiver applies to this dispute regardless of whether the Loan Documents themselves apply to the complaint. Specifically, the following language appears in all capital letters in the Financing Agreement:

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH GRANTOR AND DFH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THIS

AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED, AND (B) AGREE NOT TO SEEK TO CONSOLIDATED ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. EACH GRANTOR CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DFH WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

(emphasis added)

The language of the waiver is broad, including that it applies to any and all causes of action arising from or related to the agreements, or arising from alleged extra-contractual facts prior to, during, or subsequent to the agreement. Even construed in the light most favorable to Plaintiffs, this dispute, at the very least, arises out of extra-contractual facts subsequent to the agreement. Accordingly, the jury demand should be struck and the Plaintiffs right to a jury trial should be denied because the waiver applies to this dispute.

This Renewed Motion is based upon the pleadings herein, the applicable law, and such other materials as may be served upon you before or at the hearing of the Motion.

Respectfully submitted,

s/Robert H. Jordan
Robert H. Jordan – SC Bar No. 0013612
Emily I. Bridges – SC Bar No. 102199
PARKER POE ADAMS & BERNSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
Telephone: (864) 577-6370
Facsimile: (864) 242-9888
robertjordan@parkerpoe.com
emilybridges@parkerpoe.com

September 27, 2022

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Penland Automotive, LLC and Charles W.
Penland, Jr.,

Plaintiffs,

vs.

Dealer Financial Holdings, LLC, Steve
Lanzel and Daniel B. Haight,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-23-00244

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Plaintiffs Penland Automotive, LLC and Charles W. Penland, Jr. (hereinafter referred to as "Plaintiffs"), respectfully move for summary judgment pursuant to South Carolina Rule of Civil Procedure ("SCRCP") 56, on the following basis:

I. SUMMARY

In 2016, Plaintiffs Penland Automotive, LLC ("Penland Automotive") and Charles W. Penland, Jr. ("Charles Penland"), Penland Properties II, LLC ("Penland Properties"), and Defendant Dealer Financial Holdings, LLC ("DFH") entered into a Loan and Security Agreement dated November 21, 2016 (the "2016 Agreement"). The 2016 Agreement included a personal guaranty executed by Charles Penland and a mortgage interest on a separate company, Penland Properties II. Charles Penland signed the 2016 Agreement on behalf of himself and his two companies, Penland Properties and Penland Automotive. The 2016 Agreement was cancelled in 2019 and all of Plaintiffs' reserves were returned.

The parties began doing business again in July 2020. Plaintiffs believed new binding documents setting forth a new Loan and Security Agreement and terms were forthcoming. After disagreements about those documents and the terms of any new agreement, the relationship

ended on October 8, 2020, with DFH claiming that a non-signatory to the 2016 Loan and Security Agreement, Tim Yarger, verbally agreed to the parties reusing the 2016 Agreement. At the time, Mr. Yarger was the General Manager of Penland Automotive. Mr. Yarger was not an owner or representative of Penland Properties II and does not claim to have any authority to bind Charles Penland to a personal guaranty. Additionally, DFH had no knowledge at the time of the alleged verbal agreement that Mr. Yarger claimed an ownership interest in Penland Automotive. Further, no one other than Charles Penland signed the 2016 Agreement or any of the amendments thereof on behalf of himself and his companies. In other words, when faced with the fact that the relationship was deteriorating, DFH's only response and defense in this case is that a person who never signed any of the prior agreements and had no ownership interest bound debtors to the prior agreements and could not bind another person to a personal guaranty verbally performed in July of 2020.

The basis of this motion is: (1) the alleged agreement was required to be in writing pursuant to the Statute of Frauds; (2) the security agreement was required to be in writing pursuant to S.C. Code § 36-9-203; (3) Tim Yarger could not bind Penland Properties II or Charles Penland to any obligation and therefore the 2016 Agreement fails as to them; (4) Tim Yarger lacked apparent or express authority to bind Penland Automotive or the other two obligors; and (5) there was no meeting of the minds as to the essential and material terms of any purported agreement in 2020. Based upon all of these issues, Defendants' entire counterclaim based solely on the alleged renewal of the 2016 Loan and Security Agreement, should be dismissed.

II. STATEMENT OF FACTS

The facts are generally not in dispute. In 2016, Penland Automotive, Charles Penland, Penland Properties, and DFH entered into the 2016 Agreement, pursuant to which Penland Automotive borrowed money from DFH in the form of cash advances to Penland Automotive to purchase used car inventory for resale in its used car business. Contemporaneously with the execution of the 2016 Agreement, Penland Automotive also executed a Demand Note and Charles Penland executed the Personal Guaranty. That loan, security agreement, personal guaranty, and mortgage were cancelled in 2019, and all of Plaintiffs' reserves were returned. *See Exhibit A.*

It is undisputed that the parties began negotiating a new relationship in the summer of 2020. It is also undisputed that a manager for Penland Automotive may have verbally agreed to reusing the 2016 Agreement. It is also undisputed that the 2016 Agreement had three (3) signature lines which required the signatures of the personal guarantor, the owner of Penland Automotive, and the mortgagee, Penland Properties. All of those signatures were and could only be signed by one person: Charles Penland. Even if the Court finds a genuine issue of material fact related to the ownership interest of Tim Yarger in Penland Automotive, Mr. Yarger certainly never had the authority to bind the personal guarantor, Charles Penland, or the property of Penland Properties II. Additionally, the 2016 Loan and Security Agreement was amended at least twice in writing with the same signatories: DFH and Charles Penland. *See Exhibit B.* It was never, and could never be, amended or revived by a non-signatory.

Further, although Defendants claim the 2016 Agreement was revived verbally, Defendants have not stated which of the amended versions of the agreement was allegedly revived. As shown in **Exhibit B**, the 2016 Agreement was amended four times in writing – but

Plaintiffs cannot set forth which of those amendments was allegedly renewed for the 2020 agreement and, again, it is nowhere in writing. Therefore, not only are the parties to the agreement unclear, the terms and conditions are unclear. This is further proven by DFH sending a letter to Plaintiffs that a new contract would be prepared and forwarded to Plaintiffs and by DRH drafting, but never sending to Plaintiffs, a letter informing Plaintiffs of new “proposed terms and conditions” and referenced the “execution of new binding documents.” **Exhibit C.**

III. TIMELINE

Nov. 21, 2016	Penland Automotive, Charles Penland, Penland Properties, and Defendant DFH entered into the 2016 Agreement, pursuant to which DFH agreed to make cash advances to or for the benefit of Penland Automotive for the purpose of purchasing used car inventory. ¹ True and correct copies of the Financing Agreement and the amendment thereto are attached hereto, collectively, as Exhibit D. The agreement was amended several times in writing.
	In addition, the 2016 Agreement set forth obligations between DFH and Charles Penland (a personal guarantor) and Penland Properties II (real estate collateral mortgage) and was signed separately by each of those parties. Those obligations were with separate entities from the automobile dealership (Penland Automotive) and required separate signatures.
April 2, 2018	The 2016 Agreement is amended in writing. Exhibit B.
Feb. 20, 2019	Plaintiffs ended the relationship with Defendants and asked for the account to be closed and deactivated, the UCC-1 collateral filing to be removed, and its reserve fees to be returned. Exhibit A.
June of 2020	The parties begin negotiating renewal of their relationship.
July 6, 2020	Defendant Haight drafted a letter indicating that a new contract would be prepared and forwarded to Plaintiffs. Exhibit C.
	Defendant Haight of DFH drafted proposed new terms for the Loan and Security Agreement which he shared with Defendant

¹ The agreement was amended several times in writing. True and correct copies of the 2016 Agreement and the amendments thereto are attached hereto, collectively, as **Exhibit B.**

Lanzl and independent DFH contractor, John Bethea. **Exhibit C.** However, those new terms and conditions were never shared with Plaintiffs.

Aug. and Sept. 2020 Plaintiffs request clarification of the terms and conditions of the parties' agreement and expresses confusion over invoicing sent from DRH to Penland Automotive. **Exhibit E.**

October 2020 When pressed by Plaintiffs, DFH claims the 2016 Agreement was "renewed" verbally by Penland Automotive employee Tim Yarger. DFH claims the 2020 relationship is ruled by the 2016 Agreement despite no negotiation or discussion with the parties and the signatories to the 2016 Agreement or no written agreement to that effect between Charles Penland, Penland Automotive, or Penland Properties II.

IV. **ARGUMENT**

A. **Applicable Standard**

Rule 56, SCRCP, permits the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*." *Id.* (emphasis in original); *Midland Mutual Life Ins. Co. v. Darrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts "as would be admissible in evidence" to show that a true jury issue exists. Rule 56, SCRCP.

B. Defendants' Counterclaim is Barred by the Statute of Frauds

It is undisputed that Plaintiffs did not sign an agreement in 2020. Because there is no agreement in writing, Defendants' counterclaim is barred by the statute of frauds, S.C. Code Ann. § 32-3-10 (the "Statute of Frauds"). The Statute of Frauds provides, in pertinent part, as follows:

No action shall be brought whereby:

- ...
(2) To charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person;
- ...
(4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or
- (5) To charge any person upon any agreement that is not to be performed within the space of one year from the making thereof;

Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

Defendants' counterclaim includes a claim for Suit on Guaranty against Charles Penland. Clearly, subsection (2) of the Statute of Frauds which provides that agreements for a party to answer for the debt or default of another person must be in writing applies to the Guaranty. As provided by the Statute of Frauds, no action may be brought against Plaintiffs *unless* there is a written agreement signed by the party to be charged. Defendants have brought a counterclaim against Plaintiffs Penland Automotive and Charles Penland. Neither of these parties signed a written agreement renewing the 2016 Agreement in 2020.

Further, the 2016 Loan and Security Agreement included a mortgage, thus invoking

paragraph 4 - To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them. It also contains a demand note and a power of attorney. Therefore, the Statute of Frauds applies, and Plaintiffs' counterclaim is barred as it based entirely upon the existence of an agreement.

C. The Security Agreement was Required to be in Writing Pursuant to S.C. Code § 36-9-203

Pursuant to S.C. Code § 36-9-203:

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:
 - (A) the debtor has *authenticated* a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) the collateral is not a certificated security and is in the possession of the secured party under Section 36-9-313 pursuant to the debtor's security agreement;
 - (C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 36-8-301 pursuant to the debtor's security agreement; or
 - (D) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents and the secured party has control under Section 36-7-106, 36-9-104, 36-9-105, 36-9-106, or 36-9-107 pursuant to the debtor's security agreement.

(Emphasis added).

The statute further provides:

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

- (1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
- (2) another agreement is not necessary to make a security interest in the property enforceable.

S.C. Code § 36-9-203(e).

Because the alleged agreement was not authenticated by the debtors, the 2020 agreement does not satisfy the requirements of S.C. Code § 36-9-203, and thus is unenforceable.

D. Tim Yarger Did Not Have Authority To Bind Any Of The Alleged Obligors

Defendants contend that Tim Yarger, the then-General Manager of Penland Automotive, verbally agreed to reuse the terms of the 2016 agreement. However, Mr. Yarger did not have authority to bind Penland Automotive or the other alleged obligors, Penland Properties II and Charles Penland. The 2016 Agreement and the written amendments were all signed by Plaintiff on behalf of himself and his solely owned companies, Penland Automotive and Penland Properties II. Mr. Yarger did not sign any of these agreements on behalf of the debtors. Further, at the time of the alleged verbal agreement, DFH had no knowledge that Mr. Yarger claimed an ownership interest in Penland Automotive. (**Exhibit F**, excerpts from Deposition of Dan Haight, p. 219 and **Exhibit G**, excerpts from Deposition of William Penland, pp. 167-170)

An agency relationship may be established by evidence of actual or apparent authority. *See Fochtman v. Clanton's Auto Auction Sales*, 233 S.C. 581, 106 S.E.2d 272 (1958); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 566, 813 S.E.2d 292, 304 (Ct. App. 2018). “The existence of an agency relationship is determined by the relation, the situation, the conduct, and the declarations of the party sought to be charged as principal. *Hodge* at 565-566 (quoting *Langdale v. Carpets*, 395 S.C. 194, 201, 717 S.E.2d 80, 83 (Ct. App. 2011)). Further, “[i]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's

authority.” *Id.* (citation omitted). “[A]n agency may not be established solely by the declarations and conduct of an alleged agent.” *Id.* at 566 (Citations omitted).

The elements of apparent agency are: (1) purported principal consciously or impliedly represented another to be his agent; (2) third party reasonably relied on the representation; (3) third party detrimentally changed his or her position in reliance on the representation. *See Graves v. Serbin Farms, Inc.*, 306 S.C. 60, 409 S.E.2d 769 (1991). “The doctrine of apparent authority focuses on the principal’s manifestation to a third party that the agent has certain authority.” *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 468 S.E.2d 292 (1996). Additionally, “[a]pparent authority must be established based upon manifestations by the principal, not the agent.” *Shropshire v. Prahalis*, 309 S.C. 70, 419 S.E.2d 829 (Ct. App. 1992).

Defendants have failed to submit any evidence that the alleged obligors consciously or impliedly represented Mr. Yarger to be their agents with respect to this transaction and that Defendants reasonably relied on the purported representation. As noted above, at the time of the alleged verbal agreement, DFH had no knowledge that Mr. Yarger claimed an ownership interest in Penland Automotive. Further, Charles Penland was the only person who signed the 2016 Agreement and the amendments thereof on behalf of himself, Penland Automotive and Penland Properties. Mr. Yarger did not sign any of the agreements on behalf of the obligors. Because Mr. Yarger lacked actual or apparent authority, his alleged verbal agreement to renew the 2016 Agreement did not bind the obligors.

Even if the court finds Tim Yarger had apparent authority, he could never bind Charles Penland individually or Penland Properties II – therefore the agreement is either completely invalid or invalid as to those two parties.

E. The Essential and Material Terms any Purported 2020 Agreement are so Unclear that there cannot be a Meeting of the Minds

“[I]n order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (citing *Hughes v. Edwards*, 265 S.C. 529, 220 S.E. (2d) 231 (1975)) (emphasis in original). “This ‘meeting of minds’ required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.” *Id.* (citation omitted).

As noted above, the 2016 Agreement was amended multiple times in writing. In 2019, the loan, security agreement, personal guaranty, and mortgage were cancelled in 2019, and all of Plaintiffs’ reserves were returned. Defendants contend that the 2016 Agreement was renewed by verbal agreement in 2020. However, it is unclear whether Defendants contend that the 2016 Agreement or one of the multiple amendments was the agreement that was renewed. It is also unclear if the personal guaranty, mortgage, or other documents were “renewed” and who are the parties bound by the agreement. John Bethea, an independent contractor with DFH, testified that Mr. Haight told him Penland Automotive did not understand what or why they were being charged the prices DFH was charging. (J. Bethea Depo., pp. 101-104).² Additionally, Mr. Bethea testified that it was unclear which contract – the terms of the 2016 Agreement or its multiple amendments – controlled the 2020 agreement. (**Exhibit H**, excerpt from Deposition of John Bethea, pp. 101-104).

² Excerpts of the transcript of the deposition of John Bethea are attached hereto as **Exhibit H**.

It is clear that there was no meeting of the minds as to all of the essential and material terms of the alleged 2020 agreement, including the parties and the contract term. Therefore, the agreement is unenforceable, and Plaintiffs are entitled to summary judgment on Defendants' counterclaims.

V. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that Plaintiffs' Motion for Summary Judgment be granted.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar # 69355)

704 E. McBee Ave.

Greenville, SC 29601

(864) 242-4899

Imhoff@conlaw.com

Attorney for Plaintiffs

October 13, 2022
Greenville, South Carolina

From: Karen Willis <karen@penlandautomotive.com>
Sent: Wednesday, February 20, 2019, 3:44 PM
To: 'Dan Haight' <dhaight@dealerfinancial.com>; John Bethea <johnobethea@gmail.com>;
"krusch@dealerfinancial.com" <krusch@dealerfinancial.com>
Subject: Floor plan

As of 2/20/2019 Penland Automotive requests to close and deactivate our floorplan. We no longer need the services of Dealer Financial. Please forward all reserves fees to Penland Automotive. Please call us if you have any questions. Thank you.

Blessings,
Karen Willis
Comptroller
Penland Automotive/ Penland Asphalt & Paving
O: 864-520-2815 Option 4
F: 864-520-8068





AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER RELATED AGREEMENTS

This **AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER RELATED AGREEMENTS** (this "*Amendment*") is made as of the 2nd day of April, 2018 (the "*Effective Date*") by and between **Penland Automotive LLC**, a South Carolina limited liability company ("Borrower"), located at the address listed opposite its name on the signature page to this Agreement, **Penland Properties II, LLC**, a South Carolina limited liability company ("PPII"), located at the address listed opposite its name on the signature page to this Agreement, **Charles W. Penland, Jr.**, a resident of the State of South Carolina ("Penland" and, together with PPII and Borrower, "Grantors"), and **DEALER FINANCIAL HOLDINGS LLC** ("DFH").

RECITALS:

A. The Grantors and DFH entered into a Loan and Security Agreement dated as of November 21, 2016 (as previously amended and supplemented, if applicable, the "*Existing Loan Agreement*," and as amended and supplemented by this Amendment, the "*Loan Agreement*").

B. Each capitalized term used but not defined in this Amendment has the meaning given to such term in the Existing Loan Agreement.

C. The parties have agreed to modify the Existing Loan Agreement and the other Related Agreements subject to the terms set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties to this Amendment hereby acknowledge, the undersigned agree to amend the Existing Loan Agreement and the other Related Agreements as follows:

1. ***Amendments to the Existing Loan Agreement.*** The Existing Loan Agreement is amended as set forth in Schedule 1 attached hereto.

2. ***Amendments to Other Related Agreements.*** Any reference to the Loan Agreement in the Note or in any other Related Agreement shall be deemed to refer to the Existing Loan Agreement, as amended by this Amendment.

3. ***Effective Date.*** Notwithstanding anything in the Existing Loan Agreement to the contrary, each provision of this Amendment shall be effective on the Effective Date.

4. ***No Novation; Ratification.*** This Amendment constitutes a modification of the Loan Agreement and is not a novation. The liens and security interests granted under the Loan Agreement and the Related Agreements continue to secure the payment of all Liabilities in accordance with their original priorities. Except as expressly amended by this Amendment, each Related Agreement remains unchanged and in full force and effect. No Grantor has any defenses, setoffs or claims with respect to the Facility, and each Grantor waives and relinquishes any defenses, setoffs or claims, known or unknown, which may exist at this time.

5. ***Reaffirmation of Guaranty.*** By their signatures below, each Guarantor ratifies and reaffirms its obligations under its Guaranty, consents to the execution and delivery of this

Amendment, and acknowledges that its liability under its Guaranty shall not be diminished by the execution and delivery of this Amendment. No Guarantor has any defenses, setoffs or claims with respect to its Guaranty or the Facility, and each Guarantor waives and relinquishes any defenses, setoffs, or claims, known or unknown, which may exist at this time.

6. **Severability.** If any provision of this Amendment is prohibited by or invalid under applicable law, then such provision is ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Amendment.

7. **Execution in Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but which shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties to this Amendment has caused this Amendment to be executed under seal by its duly authorized representative as of the date first written above.

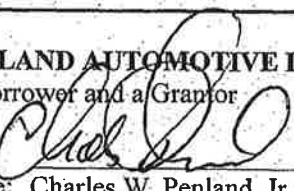
DEALER FINANCIAL HOLDINGS LLC

By: 

Name: Daniel B. Haight

Title: President

PENLAND AUTOMOTIVE LLC,
as Borrower and a Grantor

By: 

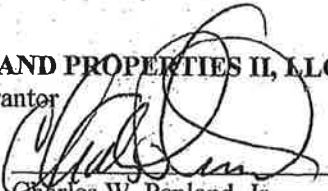
Name: Charles W. Penland, Jr

Title: President

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687

PENLAND PROPERTIES II, LLC,
as a Grantor

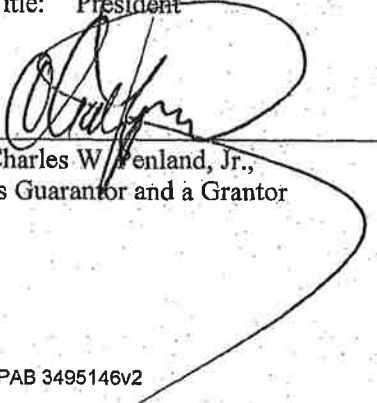
By: 

Name: Charles W. Penland, Jr

Title: President

Notice Address:

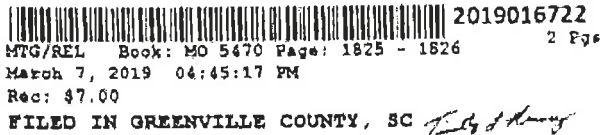
3406 Wade Hampton Blvd
Taylors, SC 29687


Charles W. Penland, Jr.,
as Guarantor and a Grantor

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687

Mortgage Portland Properties II, LLC



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

RELEASE OF MORTGAGE, SECURITY
AGREEMENT, ASSIGNMENT OF LEASES
AND RENTS, AND FIXTURE FILING

For valuable consideration, the receipt of which is hereby acknowledged, Dealer Financial Holdings LLC, as the owner and holder of the above-referenced Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing, does hereby release the real property described on Exhibit A attached hereto and incorporated herein from the lien of that certain Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing dated November 21, 2016 and recorded on October 3, 2018 in the Office of the Register of Deeds for Greenville County, South Carolina in Book 5454 at Page 598.

IN WITNESS WHEREOF, the undersigned has executed this Release of Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing.

WITNESSES:

DEALER FINANCIAL HOLDINGS LLC

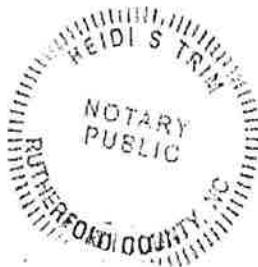
Maryell Og
Gus M. Carter

By: David B. Haight
Name: David B. Haight
Title: Moving Member

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA)
COUNTY OF Polk)

The foregoing written instrument was acknowledged before me this 20th day of February, 2019, by Daniel B. Johnston on behalf of Dealer Financial Holdings LLC.



Notary Public
State of North Carolina
My commission expires: 8/30/22



Schedule 1
to
Amendment to Loan and Security Agreement and other Related Agreements dated as of
November 21, 2016

- 1: The Credit Limit for the Facility is increased from \$200,000 to \$500,000.



Karen Willis

From: Dan Haight <dhaight@dealerfinancial.com>
Sent: Monday, January 22, 2018 6:18 PM
To: Karen Willis
Cc: 'John Bethea'
Subject: Dealer Financial Holdings - Penland Automotive - Amended Commercial Agreement

Bill,

It was great to catch up with Tim today. Sounds like your tax season is kicking off and it goes without saying that we would like to be a part of it with you. While Tim and I had a wide ranging discussion, I will try and be focused when describing what is being changed.

Dealer Financial agrees to amend our current arrangement as follows:

- Cars maybe floored for up to 90 days.
- No principal curtailments will be levied during this 90 day period.
- We will continue to invoice floor plan fees as per our usual, every 30 days (weekly invoice). ✓
- ½ of the weekly invoice will be paid the week it is issued.
- ½ of the weekly invoice will be paid 2 weeks later. ✓

Hopefully this will take care of the majority of your cash flow goals without the need to increase your floorplan costs.

I don't think any of these adjustments require us to sign new documents. If you agree, just print this out, sign it and scan it back to me. You will have my original email, and I will have your response. That should cover us.

Happy to talk through any of those points, or if Tim thinks I didn't capture anything accurately. We value your business and hope that these adjustments demonstrate that!

Please call with any questions.

Dan

Dan Haight
DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
(W) 864-385-7302 | (C) 704-516-8988

Chad Haight
Cup 502

8-10



AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER RELATED AGREEMENTS

This **AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER RELATED AGREEMENTS** (this "*Amendment*") is made as of the 2nd day of April, 2018 (the "*Effective Date*") by and between **Penland Automotive LLC**, a South Carolina limited liability company ("Borrower"), located at the address listed opposite its name on the signature page to this Agreement, **Penland Properties II, LLC**, a South Carolina limited liability company ("PPII"), located at the address listed opposite its name on the signature page to this Agreement, **Charles W. Penland, Jr.**, a resident of the State of South Carolina ("Penland" and, together with PPII and Borrower, "Grantors"), and **DEALER FINANCIAL HOLDINGS LLC** ("*DFH*").

RECITALS:

A. The Grantors and DFH entered into a Loan and Security Agreement dated as of November 21, 2016 (as previously amended and supplemented, if applicable, the "*Existing Loan Agreement*," and as amended and supplemented by this Amendment, the "*Loan Agreement*").

B. Each capitalized term used but not defined in this Amendment has the meaning given to such term in the Existing Loan Agreement.

C. The parties have agreed to modify the Existing Loan Agreement and the other Related Agreements subject to the terms set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties to this Amendment hereby acknowledge, the undersigned agree to amend the Existing Loan Agreement and the other Related Agreements as follows:

1. ***Amendments to the Existing Loan Agreement.*** The Existing Loan Agreement is amended as set forth in Schedule 1 attached hereto.

2. ***Amendments to Other Related Agreements.*** Any reference to the Loan Agreement in the Note or in any other Related Agreement shall be deemed to refer to the Existing Loan Agreement, as amended by this Amendment.

3. ***Effective Date.*** Notwithstanding anything in the Existing Loan Agreement to the contrary, each provision of this Amendment shall be effective on the Effective Date.

4. ***No Novation; Ratification.*** This Amendment constitutes a modification of the Loan Agreement and is not a novation. The liens and security interests granted under the Loan Agreement and the Related Agreements continue to secure the payment of all Liabilities in accordance with their original priorities. Except as expressly amended by this Amendment, each Related Agreement remains unchanged and in full force and effect. No Grantor has any defenses, setoffs or claims with respect to the Facility, and each Grantor waives and relinquishes any defenses, setoffs or claims, known or unknown, which may exist at this time.

5. ***Reaffirmation of Guaranty.*** By their signatures below, each Guarantor ratifies and reaffirms its obligations under its Guaranty, consents to the execution and delivery of this

Amendment, and acknowledges that its liability under its Guaranty shall not be diminished by the execution and delivery of this Amendment. No Guarantor has any defenses, setoffs or claims with respect to its Guaranty or the Facility, and each Guarantor waives and relinquishes any defenses, setoffs, or claims, known or unknown, which may exist at this time.

6. **Severability.** If any provision of this Amendment is prohibited by or invalid under applicable law, then such provision is ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Amendment.

7. **Execution in Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but which shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties to this Amendment has caused this Amendment to be executed under seal by its duly authorized representative as of the date first written above.

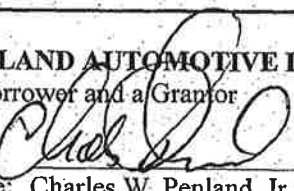
DEALER FINANCIAL HOLDINGS LLC

By: 

Name: Daniel B. Haight

Title: President

PENLAND AUTOMOTIVE LLC,
as Borrower and a Grantor

By: 

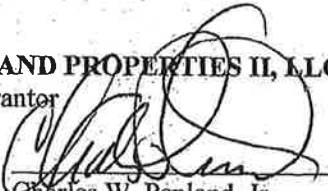
Name: Charles W. Penland, Jr

Title: President

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687

PENLAND PROPERTIES II, LLC,
as a Grantor

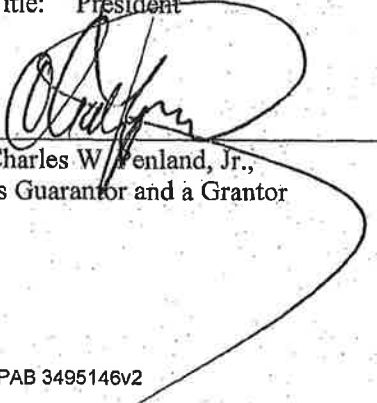
By: 

Name: Charles W. Penland, Jr

Title: President

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687


Charles W. Penland, Jr.,
as Guarantor and a Grantor

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687

Schedule 1
to
Amendment to Loan and Security Agreement and other Related Agreements dated as of
November 21, 2016

- 1: The Credit Limit for the Facility is increased from \$200,000 to \$500,000.

From: Dan Haight <dhaight@dealerfinancial.com>
Sent: Tuesday, November 13, 2018, 5:09 PM
To: krusch@dealerfinancial.com; 'Tim Yarger' <tyarger1212@gmail.com>; 'Karen Willis' <karen@penlandautomotive.com>
Cc: 'John Bethea' <jbethea@dealerfinancial.com>
Subject: Penland Curtailments

Greetings. Tim and I have agreed that curtailments (going forward) will be 7.5% beginning at the 90 day mark, and continuing each month until the vehicle is paid off.

Kim – Tim will coordinate with Karen on open invoices. My desire is not to alter partially paid invoices, but if there is an open invoice that hasn't had any payments, I can support adjusting the curtailments.

Call with questions!

Best Regards

Dan

Dan Haight
DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
(W) 864-385-7302 | (C) 704-516-8988



From: Dan Haight <dhaight@dealerfinancial.com>
Sent: Monday, July 6, 2020, 7:19 PM
To: 'John Bethea' <jbethea@dealerfinancial.com>
Cc: "'Lanzl, Steve'" <slanzl@dealerfinancial.com>
Subject: Commitment Packets - Penland and [REDACTED]
Attachments: [REDACTED] Penland - Commitment Packet
- July 2020.pdf

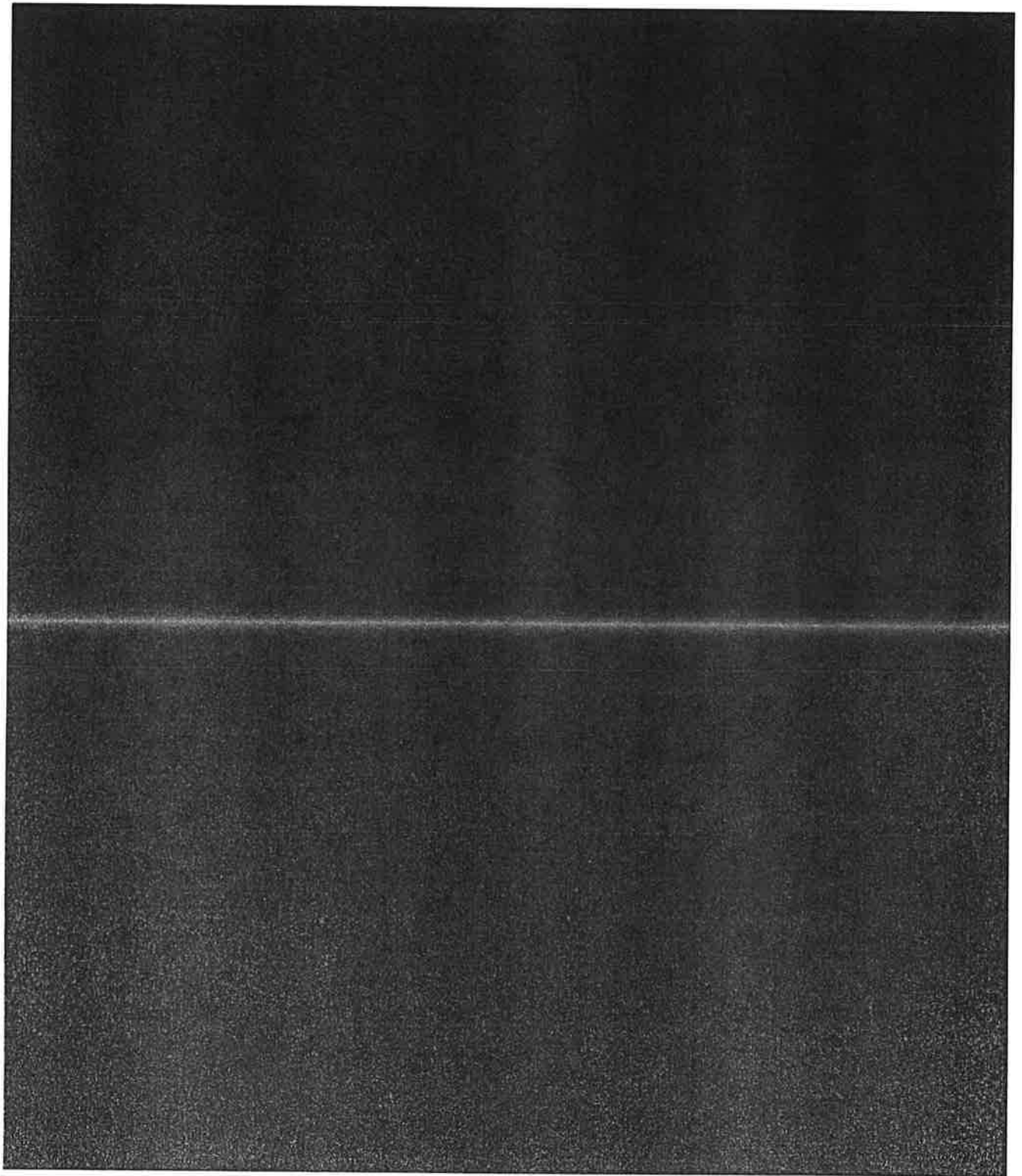
John,

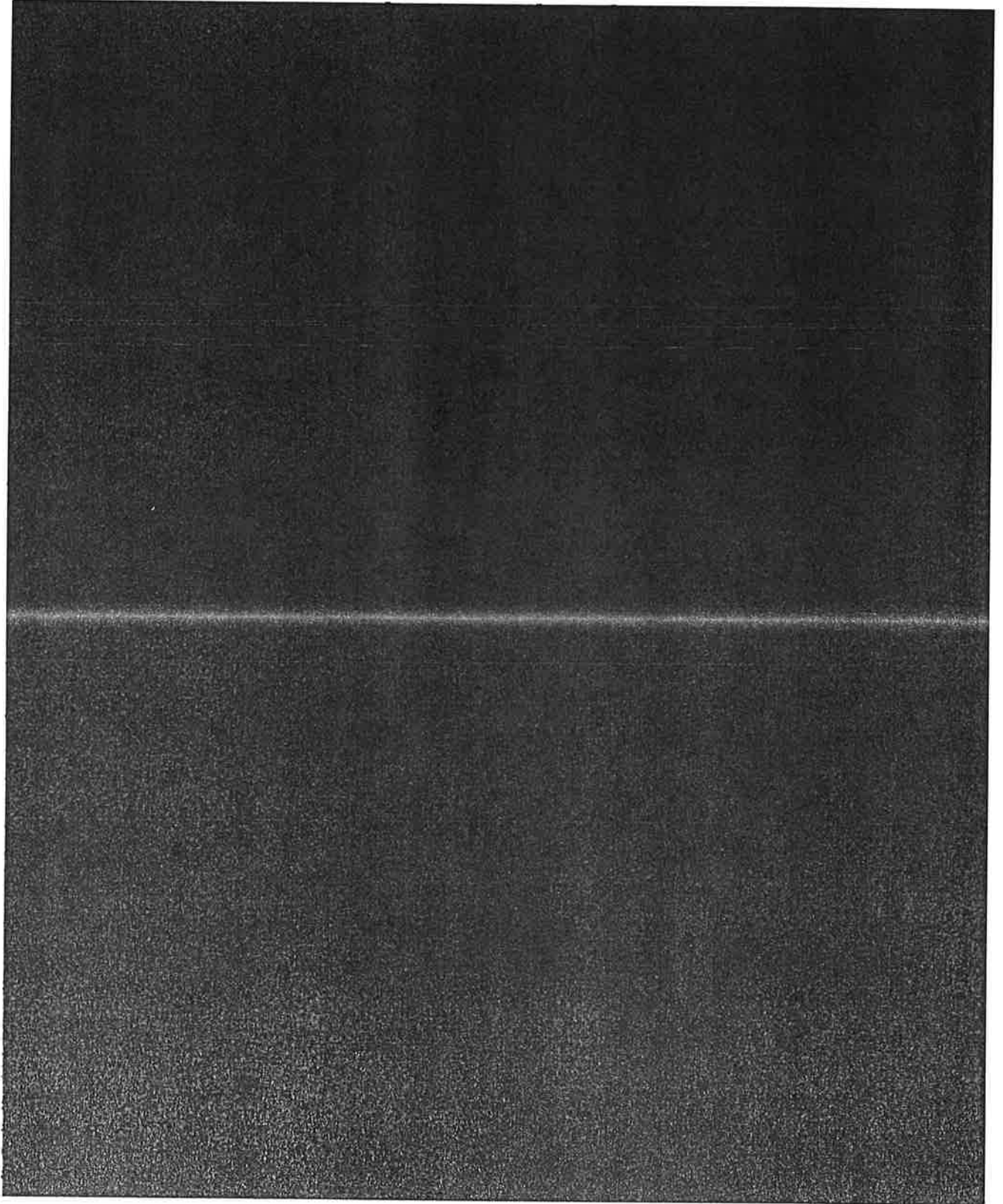
Let's make sure to discuss the intricacies of both letters!

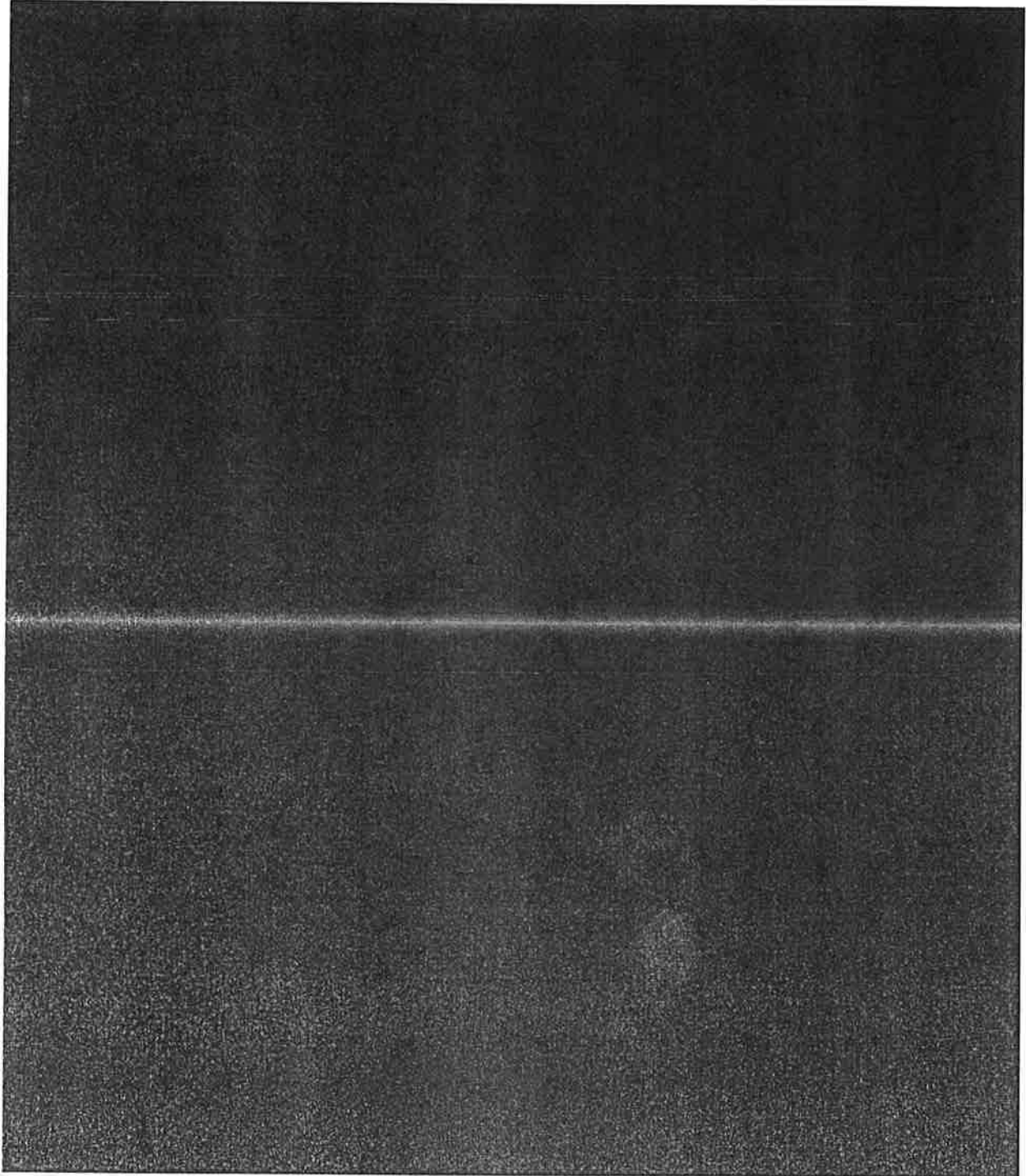
Dan

Dan Haight
DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
(W) 864-385-7302 | (C) 704-516-8988









ELECTRONICALLY FILED - 2022 Oct 13 6:28 PM - GREENVILLE - COMMON PLEAS - CASE#2021CP2300244

Dealer Financial
YOUR VEHICLE FOR SUCCESS

July 6, 2020

Mr. Charles W. Penland Jr.
Penland Automotive LLC
3406 Wade Hampton Blvd
Taylors, SC 29687

Dear Bill,

Thank you for giving Dealer Financial the opportunity to supply your floor planning needs. John and I very much appreciated the opportunity to work with your team previously, and we hope our rekindled relationship is long and productive.

Pending execution of acceptable binding documents and additional application information, Dealer Financial is pleased to extend a commitment of \$750,000 for use as a secured Floorplan.

We understand that Dealer Financial will replace all current floor plans and be your sole floorplan supplier.

Please review the proposed terms and conditions. Given your approval, I can have the appropriate documents prepared and available for signature by the week of July 13. You would be able to use your Floorplan immediately upon execution of the documents.

We will review the plan in 180 days to ensure it was meeting our joint business objectives.

Thank you for giving us this opportunity. I look forward to completing the necessary documents.

Best Regards,



Daniel B. Haight
President



Proposed Terms and Conditions

Date: July 6, 2020

Borrowers: Penland Automotive LLC EIN: 47-1083315
Penland Properties II LLC

Guarantors: Charles W. Penland Jr.

Floorplan Amount: \$750,000 Floorplan Line. Dealer Financial's floorplan will be the only floorplan.

Rate/Fees: \$.078 cents per \$100 per day. Example - A \$6,000 car would incur \$140.40 in floorplan fees every 30 days.

Floorplan Guidelines: See attached "Guidelines"

Wire Transfer Fee: \$15 per transfer.

Title Delivery Fee: \$15 per delivery via USPS, UPS or FedEx overnight delivery. Titles are currently maintained in Charlotte NC.

Collateral: Dealer Financial will obtain a first secured interest in all dealership/corporate assets and personal guaranty of owners. A lien securing the Dealership Property at 3406 Wade Hampton Blvd, Taylors SC 2968.

Working Capital: \$200,000 in working capital/owned vehicles

Term: This credit availability doesn't have a specified maturity date. Assuming no default, at 180 days Dealer Financial will review profitability, cash flow, and liquidity are satisfactory, and at the sole discretion of Dealer Financial the line maybe adjusted.

Covenants: In addition to other agreements, Dealer will maintain at least \$100,000 in vehicle equity or 10% in vehicle equity considering draws against all floor plan commitments, whichever is higher.

Dealer Reserve: \$100 per car will be added to the calculated payoff and maintained by Dealer Financial as a reserve. Any reserve balance will be returned upon termination and satisfaction of all Floorplan liabilities.

Disclaimer: This summary is intended as an expression of the mutual intent of the parties as to certain aspects of a proposed floor plan for the acquisition of used cars for retail sales on dealer's lot. The parties however agree that there are material terms as to which agreement has not been reached. The parties acknowledge and agree that this summary is not to be construed as a definitive contract and is subject to the execution and delivery of definitive agreements and related documents satisfactory to Dealer Financial Holdings LLC. In the event the required formal documents are not executed by all parties within 30 days, then this summary shall have no further force and effect and neither party.



Floorplan Guidelines

Curtailments: Vehicles mature 120 days from the date financed. Typically a principle curtailment of 10% of the original amount financed will be due after 60 days from the date financed, and each additional 30 day period after that. Dealer may request an extension of the 120 day maturity if the dealer continues to make curtailment payments.

Vehicle Payoffs: Payment for floorplan units are due within 24 hours from the date dealer is funded, not to exceed 4 business days from date vehicle is considered sold.

Advance Rates: Maximum advance rate for used vehicles is 100% of the purchase price as verified by the dealer invoice if purchased at auction, or the lesser of 80% of Black Book Rough, Wholesale value or purchase price if purchased outside of an auction.

Floorplan Funding: Payments will be made directly to auto auctions for units purchased through that channel, and directly to sellers when other purchasing channels are used, as possible. Otherwise, payment will be made directly to the dealer.

Floorplan Audits: Dealer Financial personnel will perform vehicle inspections as it deems appropriate. Documentation of sold and unpaid vehicles will be verified. Documentation for any other vehicles not located on the lot at the time of the audit will also be obtained, and those units also inspected as possible. Audit fees will apply if the client is out of compliance with floor plan agreements.

Floorplan Commitments: Used vehicle commitments are generally adjusted on a 30-45 days inventory basis.

Dealer Reserve: A dealer reserve account will be established and funds added as floor planned cars are paid off.

Financial Statements: Client will be required to supply lender periodic updated balance sheet, income statement, and bank statement for review.



LOAN AND SECURITY AGREEMENT

This **LOAN AND SECURITY AGREEMENT** (this "Agreement") is made and entered into as of November 21, 2016 by and between **PENLAND AUTOMOTIVE LLC**, a South Carolina limited liability company ("Borrower"), located at the address listed opposite its name on the signature page to this Agreement, **PENLAND PROPERTIES II, LLC**, a South Carolina limited liability company ("PPII"), located at the address listed opposite its name on the signature page to this Agreement, **CHARLES W. PENLAND, JR.**, a resident of the State of South Carolina ("Penland" and, together with PPII and Borrower, "Grantors"), and **DEALER FINANCIAL HOLDINGS LLC** ("DFH"), located at 310 Arlington Avenue, Suite 303, Charlotte, North Carolina 28203.

A. Borrower has requested that DFH make certain advances (collectively, the "Advances") to or on behalf of Borrower to finance Borrower's acquisition of motor vehicle inventory.

B. Borrower will repay the Advances on the terms set forth in this Agreement and will secure its obligations under this Agreement with a perfected lien on Borrower's interest in the Collateral (as defined below).

C. Borrower is directly or indirectly owned by Penland, and Penland will materially benefit from the Advances made under this Agreement.

D. Borrower is executing and delivering this Agreement and the other documents contemplated by this Agreement, and Penland is executing and delivering his Guaranty (as defined below) and the other documents contemplated by this Agreement and the Guaranty, as a material part of the consideration given in connection with, and as an inducement to, DFH's execution and delivery of this Agreement, and DFH would be unwilling to extend and maintain the Facility (as defined below) established under this Agreement for the benefit of Borrower unless Borrower and Penland executed and delivered this Agreement and Penland executed and delivered his Guaranty.

E. In consideration of the foregoing facts and the mutual covenants and conditions set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

Section 1. Definitions. As used in this Agreement, the following words and terms have the meanings set forth in this Section. Each capitalized term used but not defined in this Agreement has the meaning given to such term in the UCC.

"Account Statement" means any statement that DFH sends or makes available online to Borrower detailing all outstanding Advances and any fees and charges owed by Borrower in accordance with this Agreement.

"Administrative Fee" means any fee (other than a Floorplan Fee) that (a) DFH charges to Borrower for any service or process that Borrower requests, or (b) DFH determines is reasonable or necessary to administer or monitor the Facility or protect DFH's security.

"Advance" means any loan or payment in any amount made pursuant to this Agreement by DFH to Borrower or on Borrower's behalf to any third party.

"Advance Rates" means the limitations on the amount of an Advance for a particular Financed Vehicle as set forth in the Terms Schedule.

"Collateral" has the meaning set forth in Section 4.

"Credit Limit" means the aggregate maximum amount Borrower may borrow at any one time under this Agreement, as set forth in the Terms Schedule.

"Default Floorplan Factor" means the ratio set forth in the Terms Schedule.

"Equipment" means all goods other than Inventory held for sale, lease, or daily rental by Borrower in the ordinary course of business.

"Equity Condition" means any condition or conditions to DFH's funding of Advances relating to Inventory purchased from Borrower's own funds as set forth in the Terms Schedule.

"Event of Default" has the meaning set forth in Section 7.

"Facility" means the floorplan line of credit established for Borrower's benefit pursuant to this Agreement.

"Financed Vehicle" means any Unit now or hereafter acquired or otherwise financed by Borrower with proceeds of an Advance in accordance with this Agreement.

"Floorplan Factor" means the ratio set forth in the Terms Schedule.

"Floorplan Fee" means the fee charged by DFH on each day during the term of this Agreement with respect to each Advance outstanding on such day, which shall equal the unpaid principal amount of such Advance on such day multiplied by the Floorplan Factor; *provided however*, on each day an Event of Default is continuing, the Floorplan Fee with respect to each Advance outstanding on such day shall equal the unpaid principal amount of such Advance on such day multiplied by the Default Floorplan Factor.

"Grantors" means, individually and collectively, Borrower, PPII and Penland.

"Guarantor" means Penland and each other person who executes and delivers a Guaranty from time to time to secure the repayment of the Liabilities under this Agreement.

"Guaranty" means each guaranty executed and delivered from time to time in favor of DFH to secure the repayment of the Liabilities under this Agreement, as the same may be amended, modified or replaced from time to time.

"Inventory" means, collectively, all Units held by Borrower for wholesale or retail sale, lease, or rent or leased by Borrower (including, without limitation, Financed Vehicles).

"Liabilities" means, collectively, any and all Advances, debts, financial obligations, Administrative Fees, Scheduled Fees, interest, late fees and any other duties, charges, costs or expenses (including attorney's fees) owing, arising, due or payable from Borrower to DFH of any kind or nature, present or future, under any instrument, guaranty, or other document, whether arising under this Agreement or otherwise.

"Maturity Date" means the date an Advance for each Financed Vehicle becomes due and payable, as set forth in the Terms Schedule.

"Note" means the Demand Note executed by Borrower to evidence its repayment obligations under this Agreement, as the same may be amended, modified or replaced from time to time.

"Place of Business" means any or all of the following locations:

- (a) the location where Borrower keeps its books and records;
- (b) the location where Borrower conducts its operations; and
- (c) if applicable, the location of Borrower's registered office.

"Related Agreements" means, collectively, this Agreement, the Note, the Guaranty, and any other document or agreement relating to, securing, or evidencing the Liabilities.

"Reserve Fee" means the amount, if any, set forth in the Terms Schedule to be paid to DFH with respect to each Financed Vehicle as additional security for Borrower's obligations under this Agreement.

"Scheduled Fee" means any fee (other than the Floorplan Fee) charged by DFH to Borrower as set forth in the Terms Schedule.

"Terms Schedule" means the schedule of fees and terms applicable to the Facility that is attached to this Agreement as Exhibit A. EACH TERM SET FORTH IN THE TERMS SCHEDULE MAY BE AMENDED FROM TIME TO TIME BY DFH IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

"Title" means the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.

"UCC" means the Uniform Commercial Code as enacted in the state where the Collateral is located.

"Unit" means a motor vehicle for which a Title exists.

Section 2. *Advances; Advance Procedures.*

(a) DFH will not honor any Advance request unless (1) at the time of such request (and after giving effect to such request), Borrower is in strict compliance with all provisions of this Agreement, and (2) the request complies with the conditions set forth in this Section. Without limiting the foregoing, DFH may decline any such request in its sole discretion. DFH's right to decline to make an Advance is a material term of the Facility and may not be waived, suspended or altered except in a writing signed by DFH. In addition, DFH may at any time, in its sole discretion, (1) establish, rescind or change amounts, limits or the extent to which Advances may be requested by or extended to Borrower, or (2) honor an Advance request that would cause the aggregate principal amount outstanding of all Advances at any given time to exceed the Credit Limit (each, an "Overadvance"). Any Overadvance shall constitute an Advance subject to the terms of this Agreement and the Terms Schedule. DFH's decision to make or refuse to make any Advance (including, without limitation, any Overadvance) shall not limit DFH's right to make or refuse to make any other Advance.

(b) All Borrower requests to DFH for an Advance for the purpose of acquiring Financed Vehicles must include:

- (1) a copy of the bill of sale for any Unit which is the subject of the request, indicating the actual purchase price and vendor;
- (2) a completed Odometer Disclosure Statement;
- (3) the Unit's certificate of title showing that it has been duly assigned to the applicable Borrower; and
- (4) such other information regarding the Unit or the applicable Borrower as DFH may reasonably request.

Each request for an Advance is also subject to any additional terms and procedures set forth in the Terms Schedule, including the Advance Rates and, if applicable, DFH's determination that Borrower is in compliance with the Equity Condition. If DFH elects to make any such Advance, then the Advance will constitute an additional Liability under this Agreement from the date on which the Advance is made.

(c) At any time Borrower is in default under this Agreement, DFH may make an Advance on Borrower's behalf for any Liability to a third party. Any such Advance may be made without notice to Borrower and without regard to the Credit Limit and will constitute an additional Liability under this Agreement from the date on which the Advance is made. Nothing in this paragraph obligates DFH in any way to make any such Advance at any time.

(d) So long as Borrower is not in default under this Agreement, Borrower may sell Financed Vehicles to bona fide buyers in the ordinary and regular course of Borrower's business, but nothing in this Agreement shall be deemed to waive or release any interest DFH may have hereunder or under any other agreement in any proceeds or replacements of the Financed Vehicle. ON THE SALE OR OTHER DISPOSITION OF EACH FINANCED VEHICLE, BORROWER SHALL HOLD THE AMOUNT RECEIVED FROM THE DISPOSITION OF SUCH FINANCED VEHICLE IN TRUST FOR THE BENEFIT OF DFH, AND BORROWER SHALL PAY TO DFH, IN ACCORDANCE WITH THIS AGREEMENT, AN AMOUNT EQUAL TO THE UNPAID BALANCE OF THE LIABILITIES RELATING TO SUCH FINANCED VEHICLE (OR SUCH OTHER AMOUNT AS PROVIDED IN SECTION 3).

(g) Borrower shall grant DFH's officers, employees, agents, attorneys, designees and representatives access to Borrower's books and records at Borrower's Place of Business to conduct an audit of the Financed Vehicles. Borrower shall be responsible for and shall pay all of DFH's expenses in conducting any such audit.

(h) DFH may, in its sole discretion, grant any Borrower request to obtain, for a legitimate business purpose, the Title to a specific Financed Vehicle held by DFH. If DFH grants any such request, then DFH shall provide the applicable Borrower with any terms and conditions relating to such request, and Borrower must deliver to DFH a check or draft which is signed and dated on the date as of which Borrower takes physical custody of the subject Title in an amount equal to the Liability relating to such Financed Vehicle. If Borrower violates any of the terms and conditions established by DFH in connection with such request, then any outstanding Liability relating to any Advance for such Financed Vehicle shall become immediately due and payable, and DFH may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.

(i) Borrower authorizes DFH to obtain from time to time credit information from a credit bureau, and any financial institutions or trade creditor that Borrower has provided, as well as other credit investigation that DFH in DFH's sole discretion deems necessary in connection with the administration of the Facility. Borrower also authorizes DFH to contact any third parties to disclose information, including

information contained in the DFH application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DFH's security interest.

(j) Borrower's account is subject to "NSF" fees in the maximum amount permitted by law for each check or other payment made by Borrower that is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Borrower's and/or DFH's depository institution. Further, Borrower's account is subject to Administrative Fees. Borrower acknowledges and agrees that any such Administrative Fee that DFH charges is permitted under this Agreement, and Borrower consents to the assessment of any such Administrative Fee to Borrower's account. Such Administrative Fees are subject to business and market conditions; DFH may therefore adjust the Administrative Fees unilaterally without notice to Borrower and at DFH's sole discretion.

(k) All terms and conditions set forth in the Terms Schedule are incorporated in this Agreement by this reference. DFH MAY FROM TIME TO TIME, IN ITS SOLE DISCRETION, AMEND ANY TERM SET FORTH IN THE TERMS SCHEDULE, INCLUDING THE FLOORPLAN FACTOR, THE DEFAULT FLOORPLAN FACTOR, THE CREDIT LIMIT, THE ADVANCE RATES, PRINCIPAL REDUCTION REQUIREMENTS AND ALL OTHER RATES, FEES AND TERMS SET FORTH IN THE TERMS SCHEDULE BY PROVIDING WRITTEN NOTICE TO BORROWER OF THE AMENDED TERMS AND THE EFFECTIVE DATE FOR SUCH CHANGES, WHICH DATE MUST BE AT LEAST 30 DAYS AFTER THE DATE OF SUCH NOTICE. DFH MAY PROVIDE THE WRITTEN NOTICE REQUIRED BY THIS SUBSECTION AS PART OF ANY ACCOUNT STATEMENT PROVIDED TO BORROWER.

Section 3. *Floorplan Fee; Repayment of Advances.*

(a) DFH will charge Borrower on a daily basis a Floorplan Fee with respect to each Advance outstanding on such day. As provided in the definition of "Floorplan Fee," the Floorplan Fee will be calculated using the Floorplan Factor set forth in the Terms Schedule unless an Event of Default has occurred and is continuing, in which case the Floorplan Fee will be calculated using the Default Floorplan Factor. Calculating the Floorplan Fee using the Default Floorplan Factor will result in an increase in the Floorplan Fee charged with respect to all Advances outstanding under this Agreement on each day that Borrower remains in default under this Agreement.

DFH will consider an Advance to be outstanding on the day DFH makes the Advance to or on behalf of Borrower but will not consider such Advance to be outstanding on the day such Advance is fully and finally repaid in accordance with this Section.

(b) DFH's internal records shall constitute presumptive evidence of the then-outstanding principal amount of each Advance, as well as the amount of Floorplan Fees and other charges that may be owed to DFH at any time. Absent manifest error, the principal balance and any outstanding fees and charges with respect to the Advances reflected in the Account Statement shall constitute conclusive evidence of such amounts unless Borrower objects in writing within 14 calendar days of the date of the Account Statement.

(c) Borrower shall pay, and Borrower hereby promises to pay, the Floorplan Fees charged with respect to each Advance in accordance with the terms of this Agreement and the Terms Schedule.

(d) Prior to demand, Borrower shall repay, and Borrower hereby promises to repay, each Advance with respect to any unsold Financed Vehicle in the amounts and at the times provided in this Agreement and the Terms Schedule.

(e) Following the sale or other disposition of any Financed Vehicle by Borrower, Borrower shall pay to DFH, without notice or demand, at DFH's principal office or as otherwise set forth in the

Terms Schedule, the amount of the Advance and all other Liabilities owed with respect to such Financed Vehicle on the earlier of:

- (1) ~~72~~ ^{168 hours / 7 days} hours after such sale or disposition;
- (2) 24 hours from the time Borrower receives payment by or on behalf of the purchaser of a Financed Vehicle; or
- (3) the Maturity Date.

Subject to the last sentence of this subsection, Borrower shall pay in full all Liabilities owed with respect to such Financed Vehicle, in cash, regardless of whether the proceeds received by Borrower are in cash or in kind or are less than the full amount of all Liabilities owed with respect to the Financed Vehicle. If an Event of Default has occurred and is continuing at the time of sale or other disposition of the Financed Vehicle, then Borrower shall pay to DFH the greater of (1) all Liabilities owed with respect to the Financed Vehicle, or (2) the full amount of the purchase price of the Financed Vehicle.

(f) DFH may apply any payments received with respect to the Liabilities in any order and method as it may determine in its sole discretion. Payments received by DFH after 3:00 pm, prevailing Eastern time, will be applied the next business day.

(g) If any payment due under this Agreement is unpaid for 15 days or more, Borrower shall pay DFH, in addition to any other sums due under this Agreement (and without limiting any other remedy available to DFH on account of such delinquent payment), a late charge equal to 5.00% of such unpaid amount.

(h) BORROWER EXPRESSLY WAIVES ANY AND ALL DEFENSES NOW OR HEREAFTER ARISING OR ASSERTED BY REASON OF (1) ANY LACK OF VALIDITY, LEGALITY OR ENFORCEABILITY OF ANY RELATED AGREEMENT; (2) ANY ACTION TAKEN UNDER ANY RELATED AGREEMENT OR ANY RIGHT OR REMEDY EXERCISED, DELAYED OR WAIVED UNDER ANY RELATED AGREEMENT; (3) ANY RELEASE, EXCHANGE, LAPSE IN PERFECTION OR OTHER IMPAIRMENT OF ANY SECURITY FOR, OR GUARANTY OF, THE LIABILITIES; (4) ANY DISSOLUTION, COMBINATION OR CONSOLIDATION OF ANY PARTY TO ANY RELATED AGREEMENT; OR (5) ANY OTHER CIRCUMSTANCE WHATSOEVER (WITH OR WITHOUT NOTICE TO OR KNOWLEDGE OF BORROWER) WHICH MIGHT IN ANY WAY OR TO ANY EXTENT VARY THE RISKS OF BORROWER, OR MIGHT OTHERWISE CONSTITUTE A LEGAL OR EQUITABLE DEFENSE AVAILABLE TO, OR DISCHARGE OF, A SURETY OR A GUARANTOR. IT IS THE EXPRESS PURPOSE AND INTENT OF EACH OF THE PARTIES TO THIS AGREEMENT THAT THE OBLIGATIONS OF BORROWER FOR THE LIABILITIES SHALL BE ABSOLUTE AND UNCONDITIONAL UNDER ALL CIRCUMSTANCES AND SHALL NOT BE DISCHARGED EXCEPT BY PAYMENT IN FULL AS PROVIDED IN THIS AGREEMENT. Notwithstanding the foregoing, the liability of Borrower with respect to its Liabilities shall be limited to an aggregate amount equal to the largest amount that would not render its obligations under this Agreement subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of applicable state law.

Section 4. Security Interest; Perfection.

(a) As security for the payment of all Liabilities under this Agreement and any Related Agreement (including, without limitation, Penland's obligations under his Guaranty), each Grantor hereby grants to DFH a continuing security interest in all of such Grantor's assets and properties, wherever located, including without limitation, (1) all Equipment of any kind or nature; (2) all Inventory, including, if applicable, all Financed Vehicles, now owned or hereafter acquired; (3) all additions, accessions, accessories, replacements and proceeds thereof; (4) all documents, accounts, accounts receivable, chattel

paper and general intangibles now owned or hereafter acquired by such Grantor, together with the proceeds thereof; and (5) all of such Grantor's books and records relating to the foregoing (collectively, the "Collateral").

(b) DFH may file financing statements, mark chattel paper, notify account debtors, note liens on documents of title, and the like, in order to establish, confirm, and maintain a perfected security interest in the Collateral. Each Grantor, as applicable, will execute and deliver any documents necessary and appropriate for this purpose and otherwise irrevocably appoints DFH to do so. DFH may require each Grantor, as applicable, to pay any fee, cost, tax, or assessment required by any government entity to perfect and maintain perfection of DFH's security interest in the Collateral.

(c) Unless DFH agrees otherwise in writing, Borrower must immediately turn over to DFH custody or control of all certificates of title, documents of title, bills of sale, invoices, and other records or instruments of ownership by Borrower pertaining to the Financed Vehicles. On DFH's request, each Grantor must protect and defend the Collateral against the claims and demands of all other persons.

(d) Borrower hereby grants a security interest in any Reserve Fees paid to DFH in accordance with the Terms Schedule. DFH shall hold each Reserve Fee in its custody pending payment in full of the applicable Advance. Upon the occurrence and during the continuance of an Event of Default, DFH may apply all or any part of the Reserve Fees against the outstanding Liabilities under this Agreement in any order and in any manner as DFH shall elect in DFH's sole discretion, without adversely affecting its other rights under any Related Agreement. The Reserve Fees shall not constitute trust funds and may be commingled with other monies held by DFH. All interest which accrues on the Reserve Fees shall be at a rate established by DFH, which may or may not be the highest rate then available, shall accrue for the benefit of Borrower and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. On repayment in full of Borrower's Liabilities under this Agreement, DFH shall disburse to Borrower any remaining Reserve Fees in its custody within 15 days.

Section 5. Representations and Warranties. Each Grantor, as applicable, represents and warrants to DFH, as of the date of this Agreement, and, as of each occasion on which an Advance is made pursuant to this Agreement, as follows:

(a) Borrower is principally engaged in the retail sale of motor vehicles and has all necessary licenses, permits, qualifications, franchises and other approvals lawfully necessary to conduct its business.

(b) Each Grantor is the legal owner of its Collateral, free from any lien, security interest or encumbrance except for the security interests granted by this Agreement to DFH and as otherwise described in this Agreement.

(c) All Financed Vehicles, and all of Borrower's records concerning sales, accounts and contract rights, are (or will be) kept at the applicable Borrower's Place of Business, except (1) for Financed Vehicles temporarily removed from such locations in the ordinary course of Borrower's business, or (2) as otherwise disclosed by Borrower and approved by DFH.

(d) All information furnished to DFH concerning the Collateral for the purpose of obtaining credit is, and will be, true and correct in all respects.

(e) Each Grantor has the authority and the legal right to execute, deliver, and perform this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement and any other documents contemplated hereby; and this Agreement has been duly

executed and delivered and constitutes Grantors' legal, valid, and binding obligation enforceable against them in accordance with its terms.

(f) Each Grantor represents and warrants it has title to, rights in and/or the power to transfer its Collateral, and its rights, title and powers with respect to the Collateral are free of all adverse claims, liens, security interests and restrictions on transfer or pledge.

(g) Each Grantor's legal name and address as they appear on its signature page to this Agreement are accurate and complete.

(h) Each Grantor and any other Guarantor is legally competent and has authority to enter into and execute this Agreement and any and all related documents.

Section 6. Covenants of Grantors. For so long as any Liability remains outstanding under this Agreement, each Grantor, as applicable, agrees as follows:

(a) Borrower shall use Advances solely for business purposes and not for personal, family or household purposes. This means, among other things, that Borrower may not use Advances to purchase a vehicle to be used for Borrower's personal, family or household purposes.

(b) Each Grantor shall keep its Collateral in good condition and shall not damage or destroy its Collateral or permit the same to occur. No Grantor shall use its Collateral in violation of any statute, ordinance or governmental rule or regulation.

(c) Each Grantor shall keep the Financed Vehicles (and all proceeds of Financed Vehicles) free from any adverse lien, security interest or encumbrance (other than any such lien, security interest or encumbrance which is permitted in writing by DFH) and shall defend its interests in any Financed Vehicles (and all proceeds of Financed Vehicles) against all other claims and demands of all persons at any time claiming any interest therein. Each Grantor shall promptly pay when due all taxes and assessments upon the Collateral, including the Financed Vehicles.

(d) No Grantor shall (1) make any sales or leases of any Financed Vehicle other than in the ordinary course of business or (2) grant any other security interest in any of its Collateral, whether subordinate or superior to the security interests granted herein, without the prior written consent of DFH.

(e) No Grantor shall change: (1) the location of the Collateral; (2) the state in which any titled Unit is titled; (3) the location of its Place of Business; (4) the state in which it is organized; or (5) its legal name.

(f) Each Grantor shall keep its Collateral, including any Financed Vehicles, in good repair and insured against all physical risks in such amounts and under such policies issued by such insurance company as are deemed necessary and satisfactory by DFH. DFH shall be named "loss payee" to the extent DFH's interests may appear. If any Grantor fails to procure, maintain or provide proof of such insurance coverage, then DFH may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from such Grantor pursuant to the terms of this Agreement. Each Grantor understands and agrees that DFH has an insurable interest in the Collateral, including but not limited to, the Financed Vehicles, by virtue of such Grantor's pledge of its Collateral as security to DFH as defined above, for the repayment of all Liabilities owed to DFH under this Agreement.

(g) Each Grantor shall keep at all times complete and accurate records of its business. Each Grantor shall provide records and financial information regarding its business and financial condition as required by the Terms Schedule or as DFH may reasonably request. Each Grantor authorizes DFH to share such information and any other information relating to its transaction with DFH with any and all persons or parties as DFH deems necessary.

(h) No Grantor shall pay or declare any dividends or distributions, redeem any capital stock, repay subordinate debt or repay any other loans to any principal or guarantor of such Grantor's business.

(i) No Grantor shall disclose to any third party, without the written consent of DFH, any terms and conditions applicable to the Facility.

Section 7. *Events of Default; Acceleration.* The occurrence of any of the following events shall be considered an event of default under this Agreement ("Event of Default"):

(a) Any Grantor fails to perform any of its respective obligations, undertakings or covenants under this Agreement, including, but not limited to, Borrower's failure to make payment of any outstanding Liability as and when due under this Agreement or the Terms Schedule;

(b) Any warranty or representation made by any Grantor proving to have been false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice, or other writing furnished by such Grantor to DFH proving to have been false or misleading in any material respect when made or delivered;

(c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DFH as "Loss Payee" is not in effect;

(d) Any Grantor becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for such Grantor or any of its property, or makes a general assignment for the benefit of creditors; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or a dissolution or liquidation proceeding is commenced in respect of any Grantor;

(e) Any material change in the management, ownership or control of Borrower;

(f) The voluntary or administrative dissolution, death or incompetence of any Grantor or Guarantor;

(g) Any change in the financial condition of Borrower or any Guarantor that DFH deems materially adverse;

(h) DFH in good faith deems itself insecure for any reason; or

(i) Borrower defaults under any other written agreement between DFH and Borrower.

Section 8. *Rights and Remedies on Default.* Upon an event of default, DFH may, at its option and without notice, exercise any of the following rights in a separate, successive or concurrent fashion and such exercise of any right shall not preclude pursuit of other rights and remedies at a later time:

(a) Demand immediate payment of all Liabilities and all other indebtedness owed to DFH by Borrower. DFH shall have all the rights and remedies available hereunder, at law or in equity, including without limitation, the rights and remedies of a secured party under the UCC. These rights and remedies include the right to cancel any unfunded Advances, to enter into any Grantor's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DFH's request and to the extent any Grantor may lawfully do so, Grantor shall assemble, prepare for removal and make available to DFH at a place designated by DFH which is reasonably convenient for DFH and such Grantor, such items of Collateral as DFH may deem sufficient to cover all of Borrower's Liabilities to DFH.

(b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Each Grantor waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DFH to post a bond.

(c) To the extent allowed by law, each Grantor gives consent to DFH to proceed in any action to collect on or execute against any and all bonds that such Grantor has posted with any governmental authorities.

(d) Take control of any funds generated by the Collateral, and in DFH's name or the applicable Grantor's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral.

Each Grantor waives any and all rights it may have to notice prior to seizure by DFH of any Collateral. Each Grantor agrees that private sale of any item financed by DFH at the amount owed to DFH on that item, less costs reasonably incurred by DFH in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral.

Borrower shall be liable to DFH for any deficiency resulting from DFH's disposition of the Collateral. Each Grantor agrees that the Collateral is of the type customarily sold on a recognized market and that DFH therefore has no obligation to notify any Grantor prior to a sale. However, each Grantor agrees that ten days' prior written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DFH shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DFH shall not be required to marshal any assets in favor of any Grantor. DFH has no obligation to pursue any third person for any Liability or obligation owed to any Grantor. Each Grantor further agrees, jointly and severally, to pay reasonable attorneys' fees and collection costs incurred by DFH in enforcing this Agreement after an event of default by Borrower. To the extent not prohibited by law, each Grantor waives all appraisal, valuation, anti-deficiency, homestead, exemption or usury laws now or hereafter in effect and releases all right to appeal after payment in full.

Section 9. Indemnification. Each Grantor agrees to indemnify, defend and hold harmless DFH from and against any claims, liabilities, damages, costs or expenses, of any nature whatsoever, which DFH may suffer or incur as a result of, or arising from or in connection with, any act or omission on the part of any Grantor in respect of any matter referred to in, contemplated by, or otherwise relating to this Agreement.

Section 10. Failure to Exercise Remedies. The exercise of any right or remedy available to any party or the failure of any party to exercise or a delay by any party in exercising any right or remedy shall not operate as a waiver of such right or any other right. All of the parties' rights and remedies shall be cumulative and may be exercised singularly or concurrently.

Section 11. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns; *provided, however* that this Agreement and all rights and obligations under this Agreement may not be assigned or transferred by any Grantor without DFH's prior written consent and any purported assignment or transfer without such consent shall be void and without effect. Any obligation or function to be performed by DFH under this Agreement may, at the option of DFH, be delegated to and performed by any agent of DFH, which agent shall have such power and authority as DFH shall delegate to it.

Section 12. *Termination.* Borrower may terminate this Agreement upon written notice to DFH. DFH may terminate this Agreement at any time upon written notice to Borrower. Any termination of this Agreement shall not affect any obligation of DFH or any Grantor that may exist prior to the effective date of such termination.

Section 13. *Miscellaneous.* Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. This Agreement constitutes the complete understanding between the parties hereto with respect to the subject matter hereof and no alteration, amendment or modification of any of the terms and provisions hereof shall be valid unless made pursuant to an instrument in writing signed by parties hereto. Unless the context of this Agreement otherwise requires, the masculine, feminine or neuter gender each shall include the other genders, and the singular shall include the plural. The section headings contained in this Agreement are for convenience of reference only and shall not limit or define the text hereof.

Section 14. *Governing Law.* This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

Section 15. *Notice.* Except as otherwise provided in this Agreement, all notices and other communications hereunder shall be in writing and shall be deemed duly given if and when personally delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to the applicable party at its address listed in the introductory paragraph of this Agreement or opposite its name on the signature page to this Agreement. Either party may change the address to which each such notice shall be sent by giving notice of such address change in the manner provided herein to the other party.

Section 16. *No Joint Venture or Partnership.* Nothing contained in this Agreement confers on DFH or any Grantor any interest in, or subjects any of them to any liability for, the business, assets, profits, losses or liabilities of the other. This Agreement does not constitute a joint venture or partnership between DFH and any Grantor. Nothing in this Section limits or restricts the respective obligations and undertakings of DFH and any Grantor under this Agreement.

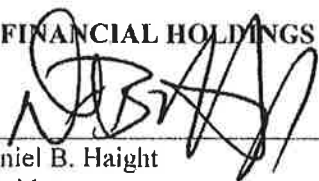
Section 17. *Waiver of Jury Trial.* TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH GRANTOR AND DFH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THIS AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED, AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. EACH GRANTOR CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY

OR OTHERWISE, THAT DFH WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

[Signatures Begin on Following Page]

IN WITNESS WHEREOF, each of the parties to this Agreement has caused this Agreement to be executed under seal by its duly authorized representative as of the date first written above.

DEALER FINANCIAL HOLDINGS LLC

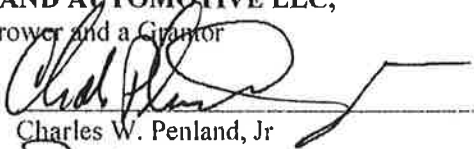
By: 

Name: Daniel B. Haight

Title: President

PENLAND AUTOMOTIVE LLC,

as Borrower and a Grantor

By: 

Name: Charles W. Penland, Jr

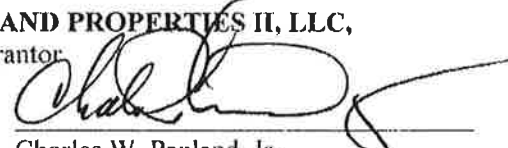
Title: Pres

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687

PENLAND PROPERTIES II, LLC,

as a Grantor

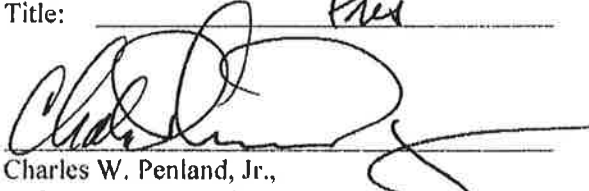
By: 

Name: Charles W. Penland, Jr

Title: Pres

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687


Charles W. Penland, Jr.,
as Guarantor and a Grantor

Notice Address:

SAME AS ABOVE

EXHIBIT A

TERMS SCHEDULE

BORROWER
PENLAND AUTOMOTIVE LLC

NOVEMBER 21, 2016

This Terms Schedule is a material part of the Loan and Security Agreement dated November 21, 2016 (as the same may be amended, modified or replaced, the "**Agreement**") between Borrower listed above and Dealer Financial Holdings LLC ("DFH"). The terms set forth in this Terms Schedule may be amended by DFH in its sole discretion in accordance with the terms of the Agreement. Each capitalized term used but not defined in this Terms Schedule has the meaning given to such term in the Agreement. The payment information provided in this Terms Schedule in no way limits DFH's right to demand payment as provided in the Agreement. The Account Statements provided to Borrower summarize Borrower's payment obligations with respect to each Advance pursuant to the Agreement and this Terms Schedule. As provided in the Agreement, the Account Statements are binding on Borrower and DFH absent manifest error or Borrower's timely written objection.

CREDIT LIMIT

The **Credit Limit** for this Facility is \$200,000. The aggregate principal amount outstanding of all Advances made to Borrower under the Agreement at any given time may not exceed the Credit Limit.

FLOORPLAN FEES

Floorplan Factor means \$0.08 per \$100.00 borrowed, or 0.0008.

Default Floorplan Factor means \$0.10 per \$100.00 borrowed, or 0.0010.

DFH will charge a daily fee with respect to each outstanding Advance in an amount equal to the principal amount of such Advance multiplied by the Floorplan Factor (or, if an Event of Default is continuing at the time of calculation, the Default Floorplan Factor). For example, if DFH makes an Advance to a Borrower in the amount of \$10,000.00 and no Event of Default has occurred, DFH will charge Borrower \$8.00 for each day the Advance is outstanding (not including the day the Advance is repaid). If the principal amount of the Advance is repaid in full on the 11th day after the Advance is made, Borrower will owe DFH a total Floorplan Fee with respect to such Advance in the amount of \$80.00.

Floorplan Fees will be due by 3:00 pm (1) on each Friday following the date that an Advance has been outstanding for 30, 60 and 90 days, respectively, and (2) on each day Borrower is required to repay all or a portion of such Advance under the Agreement, whether following the sale or disposition of the applicable Financed Vehicle, on the Maturity Date or otherwise.

PRINCIPAL REDUCTION PAYMENTS; MATURITY DATE

Until a Borrower has sold or otherwise disposed of any Financed Vehicle, Borrower must repay the principal amount of the Advance relating to such Financed Vehicle as provided in the table below:

<u>Date</u>	<u>Percentage of Original Principal Amount of Advance Required to be Repaid</u>
Date of Advance + 60 days	10%
Date of Advance + 90 days	10%
Date of Advance + 120 days	100%

Each principal reduction payment will be due by 3:00 pm on the first Friday following each date indicated in the table above.

"**Maturity Date**" means, for each Advance, the first Friday following the date on which 100% of the outstanding principal amount of such Advance is due, as provided in the table above. Unless DFH agrees otherwise in writing, all Liabilities with respect to each Advance must be paid in full by 3:00 pm on the Maturity Date for such Advance.

ADVANCE RATES

DFH will not make an Advance for any Financed Vehicle in excess of the following rates:

<u>Source of Financed Vehicle</u>	<u>Maximum Amount Advanced</u>
Purchased at Auction	100% of the purchase price of the Unit, as verified by the applicable Borrower's invoice
Purchased Outside of Auction	(1) Lesser of (a) 80% of the published wholesale value for such Unit, as set forth in the then-applicable Used Car Guide as published by the National Automobile Dealers Association, assuming good condition, and (b) the actual purchase price of the Unit. Or as agreed in writing; or (2) as otherwise agreed by Borrower and DFH in writing.

EQUITY CONDITION

DFH will not fund any Advance unless Borrower establishes to DFH's satisfaction that Borrower maintains, at the time of such Advance, at least **\$50,000** in used vehicle inventory (based on actual purchase price) purchased from Borrower's own funds.

ADVANCE PROCEDURES

Borrower will provide DFH with a list of auctions from which Borrower intends to purchase Financed Vehicles. DFH will notify each auction specified by Borrower and acceptable to DFH that, subject to DFH's advice of credit availability, such auction may sell motor vehicles to Borrower. DFH will pay the auction for any Financed Vehicle on delivery to DFH of the documents set forth in the Agreement.

If DFH, in its sole discretion, makes an Advance prior to receiving a valid original Title for the Financed Vehicle, and such Title is not delivered within 15 days from the date of the Borrower's purchase, then Borrower

must immediately return the Financed Vehicle to the auction and repay the outstanding Advance with respect to such Financed Vehicle, plus any Floorplan Fees and any other fees or charges due to DFH.

In DFH's sole discretion, DFH may make Advances for the purchase of Financed Vehicles outside of auction. DFH will generally make any such Advance directly to the seller of the Financed Vehicle, though DFH may, in its sole discretion, elect to make Advances directly to Borrower.

FLOOR PLAN AUDITS

Borrower's inventory, other Collateral, records and sales information will be periodically audited by a DFH representative or a third-party contracted by DFH. Borrower must provide the auditor, at the time of audit, with detailed information on the location or disposition of any Financed Vehicle not physically verified by the auditor. Borrower must provide auditor with paperwork for all sold vehicles and contact information for any repair shops holding Inventory. If Borrower is found to be in compliance with the terms of the Agreement, then DFH will not charge Borrower for the audit. If an Event of Default is discovered in connection with an audit of Borrower's inventory, then DFH will charge Borrower the greater of (1) \$2.50 for each vehicle in Borrower's Inventory at the time of such audit and (2) \$100.00. Such audit fees will apply to each audit performed by DFH while the Event of Default is continuing.

FINANCIAL STATEMENTS

Borrower must provide DFH with the following financial information:

- (1) by the 15th day of each month, Borrower's balance sheet, income statement and bank statement for the immediately preceding month;
- (2) annually, no later than 15 days after filing, a signed copy of Borrower's and each Guarantor's federal tax return for the prior year;
- (3) on DFH's request, annual financial statements of Borrower and each Guarantor prepared by an independent accountant acceptable to DFH, with copies of all letters, footnotes and advice from such accountant, such financial statements to be audited, reviewed or compiled, all as DFH may request; and
- (4) such other financial information as DFH may reasonable request.

SCHEDULED FEES

DFH reserves the right to charge Borrower the **Scheduled Fees** listed below, which include fees customarily charged by lenders in connection with floorplan financings similar to the Facility:

<u>Scheduled Fee</u>	<u>Amount Charged Borrower (Absent Event of Default)</u>	<u>Amount Charged Borrower (During Event of Default)</u>
Onboarding Fees	\$0.00	\$100.00 at the time DFH makes each Advance
Curtailment Fees	\$0.00	\$100.00 at the time of each curtailment payment
Administrative Fees	\$15.00 per floor plan advance, title packet, and other as agreed	\$25.00 per floor plan advance, title packet, and other as agreed

Reserve Fee	\$100 per vehicle	\$200 per vehicle
Audit Fee	\$0.00	Greater of \$2.50 per Unit in Borrower's Inventory or \$100

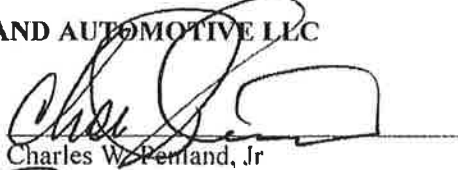
BORROWER'S PLACE(S) OF BUSINESS

<u>Borrower</u>	<u>Address for Location of Books and Records</u>	<u>Address for Location of Operations</u>	<u>Address for Location of Registered Office</u>
Penland Automotive LLC	3406 Wade Hampton Blvd Taylors, SC 29687	3406 Wade Hampton Blvd Taylors, SC 29687	3406 Wade Hampton Blvd Taylors, SC 29687

REQUIRED GUARANTOR

Charles W. Penland, Jr.

Reviewed and agreed as of the date written above.

PENLAND AUTOMOTIVE LLCBy: 

Name: Charles W. Penland, Jr.

Title: 

DEMAND NOTE

November 21, 2016

FOR VALUE RECEIVED, the undersigned ("Borrower") hereby promises to pay to Dealer Financial Holdings LLC or its assigns ("DFH"), on demand and otherwise in accordance with the provisions of a Loan and Security Agreement dated as of November 21, 2016 (as the same may be amended, modified or replaced from time to time, the "Loan Agreement") among Borrower, DFH, Charles W. Penland, Jr., and Penland Properties II, LLC, in such amounts and at such times as provided in the Loan Agreement, (1) the principal amount of each Advance from time to time made by DFH to Borrower under the Loan Agreement and (2) the Floorplan Fee and any other amount due and payable with respect to the unpaid principal amount of each Advance from the date of such Advance until such principal amount is paid in full. Each capitalized term used but not defined herein has the meaning given to such term in the Loan Agreement. The terms of the Loan Agreement are incorporated herein by this reference.

All payments under this Note shall be made to DFH in lawful money of the United States and in immediately available funds at DFH's principal office as provided in the Loan Agreement, or as DFH may otherwise instruct Borrower in writing. Each Advance and any amounts due respect to each such Advance under the Loan Agreement shall be evidenced by (1) records maintained by DFH in the ordinary course of business and (2) the Account Statements that DFH provides to Borrower from time to time. DFH may also attach schedules to this Note and endorse thereon the date, amount and maturity of each Advance and any payments with respect thereto.

This Note is given to evidence the payment obligations of Borrower to DFH in connection with the Loan Agreement and is subject to the terms and conditions of the Loan Agreement. This Note is also entitled to the benefits of any Guaranty and is secured by the Collateral. In the event of any conflict between the provisions of this Note and the Loan Agreement, the provisions of the Loan Agreement shall control.

THIS NOTE IS DUE AND PAYABLE ON DEMAND. Without limiting the foregoing, on the occurrence and continuation of one or more Events of Default specified in the Loan Agreement, all amounts then remaining unpaid on this Note shall (if required by the Loan Agreement) become, or may be declared to be, immediately due and payable all as provided in the Loan Agreement.

Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina.

BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS NOTE OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THE AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED, AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. BORROWER CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DFH

WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, Borrower has caused this Demand Note to be executed under seal by its duly authorized representative as of the date first written above.

PENLAND AUTOMOTIVE LLC

By: 

Name: Charles W. Penland, Jr

Title: 

UNLIMITED GUARANTY

To induce **DEALER FINANCIAL HOLDINGS LLC** ("DFH") to make, continue to make, or at any time in the future make loans, advances, or grant other financial accommodations to **PENLAND AUTOMOTIVE LLC**, a South Carolina limited liability company ("Borrower"), in consideration thereof and for loans, advances or financial accommodations heretofore or hereafter granted by DFH to or for the account of Borrower, the undersigned ("Guarantor") absolutely and unconditionally guarantees the full and punctual payment to DFH of all sums which may be presently due and owing and of all sums which shall in the future become due and owing to DFH from Borrower, including, without limitation, interest, attorneys' fees and other amounts accruing after the filing of a petition in bankruptcy by or against Borrower, notwithstanding the discharge of Borrower from such obligations, together with all costs and expenses incurred by DFH including attorneys' fees in connection with such obligations, this Guaranty and the enforcement thereof, and also guarantees the due performance by Borrower of all its obligations under all other present and future contracts and agreements with DFH. This is a guaranty of payment and not collection.

Each capitalized term used but not defined herein has the meaning given to such term in a Loan and Security Agreement dated November 21, 2016 (as the same may be amended, modified or replaced, the "Loan Agreement") among Borrower, DFH, Guarantor, and Penland Properties II, LLC. Borrower is directly or indirectly owned by Guarantor, and Guarantor will materially benefit from the Advances to be made to the Borrower under the Loan Agreement. DFH is unwilling to extend and maintain the Facility established under the Loan Agreement unless Guarantor executes and delivers this Guaranty.

DFH may enforce this Guaranty on multiple occasions, each time without the necessity of joinder of any other guarantors or any other person. This Guaranty shall remain in full force and effect until all obligations of Borrower are unconditionally paid in full.

Guarantor also agrees that:

(1) this Guaranty shall not be impaired by any modification, supplement, extension, renewal or amendment of any contract or agreement to which the parties thereto may hereafter agree, nor by any modification, increase, release or other alteration of any of the obligations hereby guaranteed or of any security therefor, nor by any agreements or arrangements whatsoever with Borrower or anyone else, all of which may be done without notice to Guarantor;

(2) the liability of Guarantor hereunder is direct and unconditional and due immediately upon default of Borrower without demand or notice and without requiring DFH first to resort to any other right, remedy or security;

(3) Guarantor shall have no right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of Borrower to DFH;

(4) the liability of Guarantor is unlimited and joint and several with the liabilities of any other guarantors;

(5) if Borrower, Guarantor or any other guarantor should at any time become insolvent or make a general assignment, or if a petition in bankruptcy or any insolvency or reorganization proceedings shall be filed or commenced by, against or in respect of Borrower, Guarantor or any other guarantor of the obligations guaranteed hereby, any and all obligations of Guarantor shall be immediately due and payable without notice;

(6) DFH's books and records showing the account between DFH and Borrower shall be admissible in any action or proceeding, and shall constitute conclusive proof thereof absent manifest error;

(7) this Guaranty is, as to Guarantor, a continuing Guaranty that shall remain effective under successive transactions until expressly released by DFH;

(8) the death of Guarantor, if applicable, shall not effect the termination of this Guaranty;

(9) nothing shall discharge or satisfy the liability of Guarantor hereunder except the full, indefeasible payment and performance of all of Borrower's debts and obligations to DFH with interest and costs of collection;

(10) this Guaranty shall not be affected by the illegality, invalidity or unenforceability of the Liabilities guaranteed, by any fraudulent, illegal or improper act by Borrower, the legal incapacity or any other defense of Borrower, Guarantor or any other person obligated to DFH consequential to transactions with Borrower nor by the invalidation, by operation of law or otherwise, of all or any part of the obligations guaranteed hereby, including but not limited to any interest accruable on the obligations guaranteed hereby during the pendency of any bankruptcy or receivership proceeding of Borrower;

(11) any and all present and future debts and obligations of Borrower to Guarantor are hereby waived and postponed in favor of and subordinated to the full, indefeasible payment and performance of all present and future debts and obligations of Borrower to DFH, and Guarantor shall accept no payments on any such debts and obligations except to the extent permitted by DFH in writing;

(12) if at any time payment of all or any part of the obligations guaranteed hereunder is rescinded or otherwise must be restored by DFH to Borrower or to the creditors of Borrower or any representative of Borrower or representative of Borrower's creditors as a voidable preference or fraudulent transfer of conveyance upon the insolvency, bankruptcy or reorganization of Borrower or Guarantor, or to the creditors of Guarantor or any representative of Guarantor or representative of the creditors of Guarantor upon the insolvency, bankruptcy or reorganization of Guarantor or otherwise, this Guaranty shall continue to be effective or be reinstated, as the case may be, as though such payments had not been made, and shall survive as an obligation of Guarantor, and shall not be discharged or satisfied by said payment or payments, notwithstanding the return of the original of this Guaranty to Guarantor or to Borrower, or any other apparent termination of Guarantor's obligations hereunder;

(13) DFH's delay or omission in exercising any of DFH's rights and remedies shall not constitute a waiver of these rights and remedies, nor shall DFH's waiver of any right or remedy operate as a waiver of any other right or remedy available to DFH;

(14) Guarantor shall indemnify and hold DFH and DFH's directors, officers, employees, agents and attorneys harmless against all claims, obligations, demands and liabilities, by whomsoever asserted, and against all losses in any way suffered, incurred or paid as a result of or in any way arising out of or following or consequential to transactions with Borrower, except for any claim arising out of the gross negligence or willful misconduct of the DFH, its officers, directors, employees or agents;

(15) this Guaranty incorporates all discussions and negotiations between DFH and Guarantor concerning the guaranty and indemnification provided by the undersigned hereby, and that no such discussions or negotiations shall limit, modify, or otherwise affect the provisions hereof, there are no preconditions to the effectiveness of this Guaranty and that no provision hereof may be altered, amended,

waived, canceled or modified, except by a written instrument executed, sealed and acknowledged by DFH's duly authorized officer;

GUARANTOR EXPRESSLY WAIVES (1) NOTICE OF ACCEPTANCE HEREOF, PRESENTMENT AND PROTEST OF ANY INSTRUMENT AND NOTICE THEREOF, NOTICE OF DEFAULT AND ALL OTHER NOTICES TO WHICH GUARANTOR MIGHT OTHERWISE BE ENTITLED; AND (2) ANY AND ALL DEFENSES, INCLUDING WITHOUT LIMITATION, ANY AND ALL DEFENSES WHICH BORROWER OR ANY OTHER PARTY MAY HAVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY DEFENSE TO THIS GUARANTY BASED ON IMPAIRMENT OF COLLATERAL OR ON SURETYSHIP DEFENSES OF EVERY TYPE, AND ANY RIGHT TO EXONERATION OR MARSHALLING. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, DFH SHALL HAVE NO DUTY AS TO THE COLLECTION OR PROTECTION OF ANY COLLATERAL, IF ANY, SECURING THE GUARANTEED OBLIGATIONS BEYOND THE SAFE CUSTODY THEREOF.

Guarantor will from time to time execute and deliver to the DFH, and take or cause to be taken, all such other further action as the DFH may request in order to effect and confirm or vest more securely in the DFH all the rights contemplated in this Guaranty or respecting any of the obligations guaranteed hereby or to comply with applicable statute or law.

GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS GUARANTY, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS GUARANTY OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THE AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. GUARANTOR CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DFH WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

This Guaranty, all acts and transactions hereunder, and the rights and obligations of the parties hereto shall be governed, construed and interpreted according to the internal laws of the State of South Carolina, shall be binding upon the heirs, executors, administrators, successors and assigns of Guarantor and shall inure to the benefit of DFH's successors and assigns. In addition, if Guarantor is a natural person, then this Guaranty shall be binding against Guarantor's sole and separate property and the property now or hereafter owned by the marital community property of Guarantor.

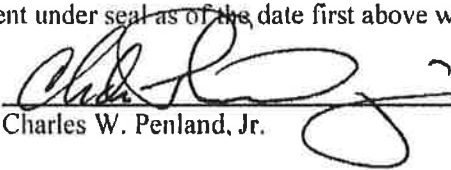
If any provision of this Guaranty is found to be invalid, illegal or unenforceable, the validity of the remainder of the Guaranty shall not be affected.

Guarantor's damages under this Guaranty and for all other relations between the parties are expressly limited to the actual dollar amount of Guarantor's economic or financial loss. DFH shall not be liable for, punitive, exemplary, consequential, or incidental damages.

THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY SHALL BE JOINT AND SEVERAL WITH ALL OTHER GUARANTORS OF BORROWER'S OBLIGATIONS UNDER THE LOAN AGREEMENT, THE NOTE AND ANY RELATED AGREEMENT.

[Signatures Begin on Following Page]

This Guaranty is executed as an instrument under seal as of the date first above written.

 (SEAL)
Charles W. Penland, Jr.

POWER OF ATTORNEY

By executing this Power of Attorney in accordance with a Loan and Security Agreement dated November 21, 2016 (as the same may be amended, modified or replaced from time to time, the "Loan Agreement") among **PENLAND AUTOMOTIVE LLC**, a South Carolina limited liability company ("Borrower"), **PENLAND PROPERTIES II, LLC**, **CHARLES W. PENLAND, JR.**, and **DEALER FINANCIAL HOLDINGS LLC** ("DFH"), Borrower hereby irrevocably appoints DFH and DFH's agents as Borrower's lawful attorney-in-fact for the purposes of accomplishing any and all of the following actions, without notice to Borrower and without regard to whether an Event of Default has occurred and is continuing under the Loan Agreement:

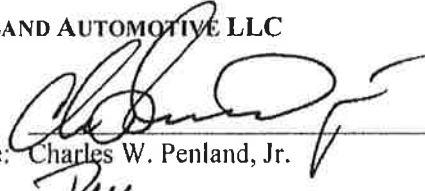
- (a) to sign Borrower's name on any motor vehicle or motorcycle bill of sale, certificate of title, registration, application or form submitted to a public agency or private party;
- (b) to demand collect, receive, receipt for, sue and recover all sums of money or other property which may now and in the future become due, owing and payable from the Collateral;
- (c) to execute, sign and endorse Borrower's name to any and all claims, instruments, receipts, checks, drafts or warrants;
- (d) to settle or compromise any and all claims arising under the Collateral, and in Borrower's name and place, to execute and deliver a release and settlement for the claim;
- (e) to file any claim or claims or to take any action or institute or take part in any proceeding either in DFH's own name or in Borrower's name;
- (f) to sign Borrower's name to any waiver of landlords lien, and in Borrower's name, place and stead, to notify and obtain waivers of any landlord's lien with respect to any facility leased or rented by Borrower, or in or at which any of the Collateral may be kept or stored;
- (g) to sign Borrower's name and, in Borrower's name, place and stead, to notify and obtain the concurrence of manufacturers, distributors, and suppliers of Borrower's Inventory and other Collateral; and
- (h) in Borrower's name, place and stead, to perform such acts as may be required of Borrower under any agreement with DFH, but which Borrower may not fully, or may refuse to perform for any or no reason, or that Borrower may delay in performing.

DFH will not be liable for any acts or omissions or for any error of judgment or mistake of fact or law, absent gross negligence, bad faith or willful misconduct. This power, being coupled with an interest, is irrevocable until the Liabilities have been fully satisfied.

Each capitalized term used but not defined in this Power of Attorney has the meaning given to such term in the Loan Agreement.

Executed this 21st day of November, 2016.

PENLAND AUTOMOTIVE LLC

By: 

Name: Charles W. Penland, Jr.

Title: 



From: Karen Willis <karen@penlandautomotive.com>
 Sent: Wednesday, August 26, 2020, 2:47 PM
 To: Kim Rusch <krusch@dealerfinancial.com>
 Subject: RE: This week's invoice reminder

Thanks! But we were under the belief that we weren't having fees owed until the car sales. I think Tim is reaching out to John and Dan.

Blessings,
 Karen Willis
 Comptroller
 Penland Automotive
 O: 864-520-2815
 F: 864-520-8068



From: Kim Rusch <krusch@dealerfinancial.com>
 Sent: Wednesday, August 26, 2020 2:37 PM
 To: Karen Willis <karen@penlandautomotive.com>
 Subject: Re: This week's invoice reminder

Hi Karen,

That would be a floor plan fee invoice generated by the portal if there is a car that's been on the floor plan 30-day! Must be your first one since getting back onboard. It's in your portal "invoice list" marked "sent."

I attached a pdf here, too.

Does that make sense?

Kim

Kim Rusch
 CLIENT SERVICES

DEALER FINANCIAL
 310 Arlington Avenue, Suite 303
 Charlotte, NC 28203
krusch@dealerfinancial.com
 (T) 864-385-7302 | (F) 864-633-5645

On Aug 26, 2020, at 2:32 PM, Karen Willis <karen@penlandautomotive.com> wrote:

I'm totally confused! What invoice?

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068
<image001.jpg>

From: Kim Rusch <krusch@dealerfinancial.com>

Sent: Wednesday, August 26, 2020 2:32 PM

Subject: This week's invoice reminder

Hello,

Just a reminder that we'll be scheduling the ACH for this week's floor plan invoice tomorrow afternoon (Thursday).

This week's floor plan invoice is available in your portal *invoice list* (<http://portal.dealerfinancial.com>). You are welcome to change the online status from *sent* to *approved* by clicking the "pay invoice" button, however if we don't hear back we will assume that the invoice and ACH are approved and will change it on our end tomorrow afternoon.

Thank you!

Kim

Kim Rusch
CLIENT SERVICES

DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
krusch@dealerfinancial.com
(T) 864-385-7302 | (F) 864-633-5645

From: Karen Willis <karen@penlandautomotive.com>
Sent: Thursday, August 27, 2020, 9:25 AM
To: "krusch@dealerfinancial.com" <krusch@dealerfinancial.com>
Subject: Invoice

Can we please hold off on the ACH until we determine what is supposed to be going on?

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068



From: Karen Willis <karen@penlandautomotive.com>
Sent: Friday, August 28, 2020, 1:03 PM
To: dhaight@dealerfinancial.com
Subject: Floor Plan

Happy Friday! Can you please give me a call so we can work out all these details on the fees! My cell is 864-414-6715. Thanks so much

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068



From: Karen Willis <karen@penlandautomotive.com>
Sent: Thursday, September 3, 2020, 11:08 AM
To: "krusch@dealerfinancial.com" <krusch@dealerfinancial.com>
Subject: ach

Hey, Can we hold off on the interest ach??? I am trying to get in touch with Dan to discuss it.

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068





From: Karen Willis <karen@penlandautomotive.com>
 Sent: Thursday, September 3, 2020, 11:36 AM
 To: Kim Rusch <krusch@dealerfinancial.com>
 Subject: RE: ach

I do need to that but I wanted to talk to him also. I think we are being told misinformation and I just wanted to go straight to the top and hopefully figure things out! I believe it's an internal problem here not anything on your end. But that's just between us girls! Hahahahaha

Blessings,
 Karen Willis
 Comptroller
 Penland Automotive
 O: 864-520-2815
 F: 864-520-8068



From: Kim Rusch <krusch@dealerfinancial.com>
 Sent: Thursday, September 3, 2020 11:33 AM
 To: Karen Willis <karen@penlandautomotive.com>
 Subject: Re: ach

Did you just need to hold on the ACH for a few days . . . like push it to Monday?

I can help with that if that's what it is!

Kim Rusch
 CLIENT SERVICES

DEALER FINANCIAL
 310 Arlington Avenue, Suite 303
 Charlotte, NC 28203
krusch@dealerfinancial.com
 (T) 864-385-7302 | (F) 864-633-5645

On Sep 3, 2020, at 11:29 AM, Karen Willis <karen@penlandautomotive.com> wrote:

If you can please ask him to call me instead of Tim?

Blessings,
 Karen Willis
 Comptroller

Penland Automotive
O: 864-520-2815
F: 864-520-8068
<image001.jpg>

From: Kim Rusch <krusch@dealerfinancial.com>
Sent: Thursday, September 3, 2020 11:28 AM
To: Karen Willis <karen@penlandautomotive.com>
Subject: Re: ach

Hi Karen,

Dan is out of pocket right now but can call around 1:00.

Kim

Kim Rusch
CLIENT SERVICES

DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
krusch@dealerfinancial.com
(T) 864-385-7302 | (F) 864-633-5645

On Sep 3, 2020, at 11:08 AM, Karen Willis
<karen@penlandautomotive.com> wrote:

Hey, Can we hold off on the interest ach??? I am trying to get in touch with Dan to discuss it.

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068
<image001.jpg>

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

C.A. No.: 2021-CP-23-00244

Penland Automotive, LLC

and Charles W. Penland,

Plaintiffs,

v.

Dealer Financial Holdings,

LLC, Steve Lanzl and Daniel

B. Haight,

Defendants

Deposition of

DANIEL B. HAIGHT 30(b)(6)

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 5th of July, 2022 commencing at approximately 10:00 a.m. attended by counsel as follows:

1 A. Not really, he presents.

2 Q. The bottom line is even though you released this, you
3 still believe that Penland Properties II, LLC is obligated
4 to the terms of that 2016 Agreement?

5 A. I believe the 2016 Agreement remains in place.

6 Q. And do you have anything in writing that any signatory of
7 that 2016 agreed to that?

8 A. I have no, nothing in writing asking me to remove it.

9 Q. You hate my questions but you like your own. Do you have
10 anything in writing - - well, actually sir, that's not
11 true; is it? You got an email on February 19th, 2019, go
12 ahead and look at it, Exhibit Number ---

13 A. I don't need to look at it.

14 Q. Okay, do you have something in writing to close it?

15 A. Close and deactivate it ---

16 Q. Sir, yes.

17 A. --- and Tim Yarger who did all the negotiations asked us
18 to leave the documents in place.

19 Q. I asked you if you had anything in writing to close it or
20 that you weren't gonna close it and you said, "I don't
21 have anything in writing to close it" except that you do
22 and ---

23 A. Is there ---

24 Q. --- it's ---

25 A. --- anything in writing asking me to remove the UCC?

1 All's it's asking me to do really is to forward the
2 Reserves.

3 Q. Really, that's how you read that?

4 A. Kinda.

5 Q. You think that says deactivate and close?

6 BY MS. BRIDGES:

7 Object to form.

8 WITNESS ANSWERS:

9 A. Deactivate is an important word.

10 Q. Let me ask my question again.

11 A. Sure.

12 Q. Do you have anything in writing from anyone who actually
13 signed the 2016 Agreement to keep it open?

14 A. I don't believe I spoke with Mr. Penland after this
15 Agreement was signed until I called him after your phone
16 call. So, during that period, he may have been on a phone
17 call with Mr. Yarger, but, you know, so, he wasn't
18 involved before, he was involved to sign, he wasn't
19 involved after. He wasn't copied on the emails, he
20 basically wasn't involved.

21 BY MR. IMHOFF (TO THE COURT REPORTER):

22 Can you read my question back? No?

23 WITNESS CONTINUES:

24 A. I ---

25 Q. Do you have anything in writing ---

1 A. No.

2 Q. Let me finish my question.

3 A. I'm sorry.

4 Q. Do you have anything in writing between February 20th,
5 2019 and June of 2020 from any signatory to the 2016
6 documents that you should keep those documents open and in
7 place?

8 A. I don't have an email from the signator of the documents
9 ever.

10 Q. I will ask my question for the fourth time.

11 A. So, okay, so, no, I thought that - - is that not a
12 responsive answer? I don't have any emails from Billy
13 Penland, and he's the one who signed the documents.

14 Q. I didn't ask you that. Do you have anything in writing
15 ---

16 A. Okay.

17 Q. --- from any of the signators to the 2016 Agreement
18 confirming or asking you to keep those documents open and
19 in place between February 2019 and June of 2020?

20 A. And so, let me just be, since you seem to want a very
21 specific answer, you've used the word "signatories" in
22 plural. There's only one signature, signator to that
23 document, so, if I say no, ---

24 Q. Right.

25 A. --- you know, that's acceptable to you?

1 Q. Yes.

2 A. Okay, no.

3 Q. No. Okay, Billy Penland, on behalf of Penland Automotive,
4 Penland Properties II and himself personally never had a
5 conversation with you or exchanged anything in writing
6 with you to keep those documents in place between February
7 2019 and June of 2020; is that correct?

8 A. That's correct.

9 Q. Tell me again why you left the UCC-1 in place; was that
10 because of Tim?

11 A. Yes, sir. I mean, it's part of the, it's part of the
12 packet; if you will.

13 Q. All right, we're gonna move a little bit faster.

14 A. Okay.

15 Q. I think, I hope.

16 BY MS. BRIDGES:

17 What number are we up to?

18 BY THE COURT REPORTER:

19 This Exhibit 6.

20 BY MS. BRIDGES:

21 Thank you.

22 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 6; ATTACHED TO
23 DEPOSITION)

24 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

25 Q. I've handed you Exhibit Number 6 now.

1 right?

2 A. That's correct.

3 Q. And it starts at 60 days?

4 A. That's correct.

5 Q. Okay, now, that is different than the amendments; isn't
6 it?

7 A. It is.

8 Q. Mr. Haight, which document controls in, on July 22nd,
9 2020, which one?

10 A. The, this document is the largest one in my conversations
11 with Tim Yarger.

12 Q. When you say, "This ---

13 A. So, ---

14 Q. --- document," you're talking about Exhibit Number 2, the
15 actual November 21st, 2016 Loan and Security Agreement;
16 correct?

17 A. Say that one more time, I was reading the date.

18 Q. When you say, "This document controls," and you pointed to
19 Exhibit Number 2 ---

20 A. Um-hum.

21 Q. --- the Loan and Security Agreement November 21st, 2016;
22 correct?

23 A. That's correct.

24 Q. Okay, so, when the, you, when you drafted the email that
25 we don't know if it was sent or not that says, "We're just

1 gonna use the old documents with amendments," did you mean
2 the amendments or just the old documents?

3 BY MS. BRIDGES:

4 Object to form.

5 BY THE WITNESS (TO MS. BRIDGES):

6 I answer? So, got it.

7 WITNESS ANSWERS:

8 A. I believe we used these documents with my discussions with
9 Tim and he asked for the preferential rate, which is 7, in
10 this document, at 8 cents per hundred dollars per day.
11 You know, going forward, or, you know, when we reinstated
12 the line, it was 7.8 cents per hundred dollars per day.

13 Q. Mr. Haight?

14 A. Um-hum.

15 Q. Where is that in writing so that Billy Penland and Karen
16 Willis can see what the actual terms of the agreement are
17 between July and October 8th, 2020?

18 A. It's right there.

19 Q. It's not there, sir, because there are amendments

20 ---

21 A. It's right there.

22 Q. --- to it that changed the curtailments, changed the
23 amounts and changed the interest fees.

24 A. If you look at what was set up on the portal, it matches
25 that except for the Daily Rate.

1 Q. I asked you if it was on the portal, you said yes and then
2 you said no. What's ---

3 A. Well, the curtailments is set so it charges the
4 curtailments; right? So, the person that's not in this
5 room that really needs to be is the guy who negotiated it.

6 Q. All right. What you're saying is that you're billing
7 software, your portal, starts charging at 60 days; is that
8 right?

9 A. It depends on what we put in it, it could be, you know, it
10 could be ---

11 Q. Right.

12 A. --- I guess we could put one day.

13 Q. Right. But, that's done by Dealer Financial; right?

14 A. It is also visible to the dealer; I believe.

15 Q. Right. So, where is the actual agreement in writing, not
16 a place where you're charging your customers and their
17 emailing and calling you going "What in the world are the
18 terms"?

19 A. That's not what ---

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. That's not the call I got.

24 Q. I understand that. Where is it in writing what the
25 specific ---

1 A. It's right there.

2 Q. You're going back Number 2; ---

3 A. Yeah.

4 Q. --- right?

5 A. Yep.

6 Q. Why isn't it - - well, let's just go to it. Why isn't it
7 in Exhibit Number 17, which is a \$400,000 credit limit,
8 not a \$500,000 credit limit?

9 A. So, you know, you know, so, I, you know, in - - I regret
10 not taking, not forcing Tim to take the time and having us
11 produce new documents now, obviously. But that doesn't
12 change the fact that what Tim and I agreed to were to use
13 the existing documents, \$400,000 and 7.85 cents.

14 Q. I hear all that, and I understand that that's your
15 narrative and that's what you want to tell me but that's
16 not my question.

17 A. Okay.

18 Q. How does the company know whether Exhibit Number 2, the
19 2016 Loan and Security Agreement has the Terms and
20 Conditions that are applicable in July of 2020 and going
21 forward, or it's Exhibit 17, or, let me finish, or if you
22 sent the letter that's Exhibit Number 11, the July 16,
23 2020 letter, ---

24 A. Which one is that?

25 Q. --- with the July 6th, 2020 proposed additions, if you

1 sent that, or if it's Exhibit Number 10 where you start
2 charging 7.5 percent beginning at 90 day mark, or if it's
3 Exhibit Number 9 where you changed the credit line, or if
4 it's Exhibit Number 8 where you changed all kinds of
5 different conditions?

6 A. I guess you better get the guy who agreed to it to, in
7 here and that was who I negotiated with at Penland
8 Automotive.

9 Q. Yeah, ---

10 A. So, it was not unclear to him.

11 Q. --- except that guy doesn't own the company; right?

12 A. He never owned ---

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS CONTINUES:

16 A. --- owned the company, but he did all the negotiating.

17 Q. Well, he did all the negotiating for every one of those
18 amendments ---

19 A. He did.

20 Q. --- and changes; didn't he?

21 A. Yes, he did.

22 Q. And every single one of those was emailed to Karen Willis
23 or was signed by Billy Penland; right?

24 A. That's not true.

25 Q. Okay, tell me where that's not true?

1 A. Well, actually I take that back. So, these emails, you're
2 right, would've copied Karen Willis but, and I'll agree to
3 that if you'll agree that Karen wasn't on the phone with
4 Tim Yarger and I, and that you have an Affidavit from Tim
5 that corroborates what I just said.

6 Q. You run a background check on Tim?

7 A. I ran a background check on Mr. Penland.

8 Q. I didn't ask you that.

9 A. It, you know, I'm not sure what a background has to do
10 with daily conversations. Did Mr. Penland run a
11 background check on Tim? He's the one who employed him,
12 and ---

13 Q. Did you ever run a background on Tim Yarger?

14 A. We did not.

15 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 21; ATTACHED TO
16 DEPOSITION)

17 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

18 Q. All right, I'm gonna hand you Exhibit Number 21.

19 A. Thank you.

20 Q. Is this the portal you're talking about?

21 A. Yes, sir.

22 Q. All right, so, it's not till July 22nd that someone asks
23 to give Kim, I'm sorry, yeah, Karen Willis access to the
24 portal; is that right?

25 A. According to this email, yes.

1 Q. Okay, so, you've already given some amount of money for
2 Penland Automotive to go to the auction and buy cars; is
3 that right?

4 A. Yes.

5 Q. And there's nothing in writing other than the 2016
6 Agreement that tells what the Terms and Conditions are
7 gonna be for those new cars that they're buying; is that
8 right?

9 A. Sure.

10 Q. And the first time that Karen at Penland can become aware
11 of when you start charging curtailments and the amounts
12 you charged is after July 22nd, 2020?

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. No, she was already set up in the portal, she just
17 couldn't access it.

18 Q. Well, that's the same thing, she can't access it means she
19 can't look at it; right?

20 A. I mean, she ---

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS CONTINUES:

24 A. --- Can't access it because they were set up in the portal
25 from the day we, they have to be set up for us to floor

1 say that they were, their account was certainly relatively
2 current, you know, it was not about invoices.

3 Q. Okay, when did you find out that Tim Yarger claimed an
4 ownership in Penland Automotive?

5 A. He sent a text to me, which I think we've disclosed, I
6 don't know the exact date, I have notes but I was told I
7 can't have notes, anyway, so, he sent a text to me with
8 four pictures, I believe four pictures, and I texted back
9 to him, I said, "I don't think you really meant for me to
10 get this." And that's when he said, "No." So, sometime,
11 you know, between Karen's email about him leaving and our
12 conversation was when I believe I received that document
13 from Kim.

14 Q. I had the exact pages of what I wanted or whatever, she
15 did good, did fine. These are very, very hard for me to
16 read.

17 A. Yeah.

18 Q. Does October 3rd sound right to you?

19 A. I would not dispute that. I mean, you know ---

20 Q. He sent a text to you?

21 A. That's right. I mean, it ---

22 Q. With four photographs?

23 A. That's correct.

24 Q. Was anyone else in the text string?

25 A. I don't think so, but I'm not sure I can answer that

Page 1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE

PENLAND AUTOMOTIVE, LLC
and CHARLES W. PENLAND, JR.,

Plaintiffs,

vs. CASE NO.: 2021-CP-23-00244

DEALER FINANCIAL HOLDINGS, LLC,
STEVE LANZL and DANIEL B.
HAIGHT,

Defendants.

30(b)(6) and Individually

DEPOSITION OF: CHARLES W. PENLAND, JR.

DATE: July 6, 2022

TIME: 10:00 a.m.

LOCATION: Parker Poe Adams & Bernstein
110 E. Court Street, Suite 200
Greenville, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: Mary K. Stepp, Court Reporter

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1 A. Absolutely.

2 Q. All right. And were you asked to print
3 that out, sign it, and return it?

4 A. Yes. There it is right here. And -- and
5 sign and initial.

6 Q. All right. So my question originally,
7 Mr. Penland -- so my question originally was, were
8 the terms of the 2016 agreement amended and changed
9 over the course of your relationship with Dealer
10 Financial?

11 A. Yes.

12 Q. Okay.

13 A. I didn't understand your question at the
14 time. Yes.

15 Q. Okay. Do you understand it's Dealer
16 Financial's position that the 2016 agreement was
17 renewed and used as the agreement between Penland
18 Automotive, Penland II Properties, and yourself in
19 2020? You understand that's what they allege?

20 A. I understand that's what they allege, yes.

21 Q. Which of the amendments, modifications,
22 and terms do they mean?

23 MS. BRIDGES: Object to form.

24 BY MR. IMHOFF:

25 Q. Which -- which terms in the 2016

1 agreement?

2 A. I have no idea.

3 Q. The amendments to it?

4 A. I --

5 Q. The e-mails, which one of these is the
6 terms that were agreed to in 2020?

7 MS. BRIDGES: Object to form.

8 THE WITNESS: Well, since -- you're
9 talking -- these are all the changes and you can't
10 change a contract without a signature, all right?
11 So -- and I never seen a contract for this 2020 or
12 2021, whenever the -- what was the date on that? The
13 new -- this allegedly new contract that never showed
14 up.

15 BY MR. IMHOFF:

16 Q. Isn't that --

17 A. No, that's right. The '16 contract.

18 Q. Mr. Penland, isn't that the whole problem
19 in the case?

20 A. Well, yes, of course, it is.

21 MS. BRIDGES: Object to form.

22 BY MR. IMHOFF:

23 Q. Did you ever see what terms were going to
24 be used --

25 A. I was waiting for the terms.

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1 Q. -- for curtailments, timing of
2 curtailments, interest on curtailments, fees?

3 A. The fees.

4 MS. BRIDGES: Object to form.

5 BY MR. IMHOFF:

6 Q. Did you -- were any of those ever
7 presented to you or explained to you --

8 A. Never.

9 Q. -- in 2020?

10 MS. BRIDGES: Object to form.

11 THE WITNESS: No.

12 BY MR. IMHOFF:

13 Q. Did you ask for them to be presented to
14 you?

15 A. Yes.

16 Q. Did you ever get anything in writing
17 presented to you, what they were?

18 MS. BRIDGES: Object to form.

19 THE WITNESS: No.

20 BY MR. IMHOFF:

21 Q. Every other change or agreement you had
22 with Dealer Financial --

23 A. Always had to sign it.

24 MS. BRIDGES: Object to form.

25 BY MR. IMHOFF:

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1 Q. Always had to be signed --

2 A. Always had to be signed like crazy.

3 Q. -- or was in writing, right?

4 MS. BRIDGES: Object to form.

5 THE WITNESS: Exactly.

6 MR. IMHOFF: What's your objection to
7 that?

8 MS. BRIDGES: Yeah, I can tell where the
9 end of the question was and then you're assuming
10 different things. And there's assumptions based in
11 there.

12 BY MR. IMHOFF:

13 Q. As we sit here today, and as you sat in
14 your office in September and August of 2020, do you
15 know what the terms were that DFH, Dealer Financial,
16 claimed you agreed to?

17 A. No.

18 Q. When Dealer Financial repossessed your
19 cars on October 8th, were you embarrassed?

20 A. Very much so.

21 Q. Did you suspect it was going to get out?

22 A. Oh, I knew it would.

23 Q. Did you suspect that people would believe
24 that you -- that you were incapable of doing your
25 work and paying your bills in your chosen profession?

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

C.A. No.: 2021-CP-23-00244

Penland Automotive, LLC

and Charles W. Penland,

Plaintiffs,

v.

Dealer Financial Holdings,

LLC, Steve Lanzl and Daniel

B. Haight,

Defendants

Deposition of

JOHN OSCAR BETHEA, JR.

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 28th of July, 2022 commencing at approximately 9:38 a.m. attended by counsel as follows:

DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

Q. Okay, and you think this email went out without your input into it?

BY MS. BRIDGES:

Object to form.

WITNESS ANSWERS:

A. It may have because I don't, I'm not involved in the invoicing of the dealers, I don't do the invoicing, that's an accounting thing that Kim does and Dan does. If somebody complains, I tell them I'll talk to Dan about it and he handles that.

Q. What did Dan tell you, if anything, about Penland Automotive's complaints in early September and August of 2020?

A. That we've agreed to hold the invoices like this email says.

Q. Did he tell you why?

A. Because there was complaints about the invoices, not being able to pay them.

Q. Did he or anyone else tell you, "We don't understand what the agreement is with Dealer Financial, what are the terms"?

A. No.

Q. Nobody ever told you that?

A. No, they always complained about it.

1 Q. About the terms?

2 A. About the prices.

3 Q. Right, did they say because they didn't understand what
4 they were or why they were being charged that?

5 A. Yes, and I told them to contact Dan and Kim to find about
6 it.

7 Q. All right, so, they did say that. Did you talk to Dan
8 about them not understanding what the Terms and Conditions
9 were in the Agreement?

10 A. Yes.

11 Q. And what did he say?

12 A. He said he'd call them.

13 Q. Okay, and we see that, apparently, he talked to Tim. And
14 during that discussion with Mr. Haight, when you conveyed
15 that they were confused about the terms and conditions,
16 did you have any discussion about what had been presented
17 to Penland regarding the Terms and Conditions in writing
18 or an agreement or a contract?

19 A. No.

20 Q. Did you ask him, "What are the Terms and Conditions"?

21 A. He said, "We'll use the original Agreement."

22 Q. Okay, which, well, which Terms and Conditions?

23 A. That was what I was told.

24 Q. Which ones, the ones from 2016, the ones in 2017, the ones
25 in 2018, which Terms and Conditions?

1 A. I was just told the original contract.

2 Q. So, that would revert back to default standards, and we're
3 talking 10 percent right, 60 days, 90 days, all those
4 things; right?

5 A. It was not clear which one he went to, he said the
6 original contract, "We're going back to the contract."

7 Q. He was not clear or it was not clear?

8 A. I was not clear.

9 Q. You were not clear? So, in the fall, I'm sorry, in July
10 and through September of 2020, you weren't clear what the
11 Terms and Conditions were?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. I was not made privy of those Terms and Conditions because
16 it was negotiated, I was not involved in the negotiations.
17 That was between Tim and Dan and I don't know if Bill was
18 involved or not.

19 Q. Okay.

20 A. I did not know what - - I was just told, "We're doing
21 business with Penland again."

22 Q. I'm a little confused by that because you're the
23 relationship guy with Penland; right?

24 A. Right.

25 Q. And you don't know in July, August, September what the

1 Terms and Conditions are?

2 BY MS. BRIDGES:

3 Object to form.

4 WITNESS ANSWERS:

5 A. Yes.

6 Q. Let me say it differently: Did you know what the Terms
7 and Conditions were in August, July and September of 2020
8 between Dealer Financial and Penland Automotive?

9 A. No.

10 BY MS. BRIDGES:

11 Object to form.

12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

13 Q. Why not?

14 A. Because all that was negotiated independent of me being
15 involved in it, I was never told what the Terms and
16 Conditions were. I was told we're back in business with
17 Penland. Tim said, "We're back in business," and that's
18 all I know. I never saw any documents saying what we
19 would do, I never did any of that, I just said we were
20 doing, we're back, we're back in business again.

21 Q. Mr. Bethea, is it unusual for you not to know the Terms
22 and Conditions with your clients and customers?

23 A. Yes.

24 Q. Has that ever happened before in your career?

25 BY MS. BRIDGES:

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE CIRCUIT COURT

Penland Automotive, LLC and Charles)
W. Penland, Jr.,)
Plaintiffs,)

Case No. 2021-CP-23-00244

vs.)

**MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS' MOTION TO STRIKE
JURY DEMAND**

Dealer Financial Holdings, LLC, Steve)
Lanzel and Daniel B. Haight,)
Defendants.)

The Defendants Dealer Financial Holdings, LLC ("DFH"), Steve Lanzl, incorrectly identified as Steve Lanzel ("Lanzl"), and Daniel B. Haight ("Haight," and collectively with DFH and Lanzl, the "Defendants"), by and through their undersigned counsel, respectfully submit this Memorandum of Law in support of their Motion to Strike Jury Demand.

INTRODUCTION

This motion is based on a jury trial waiver found in a contract among DFH and Plaintiffs. The key language states, in part, that the waiver applies to "any and all causes of action in any way relating to any matter between them whether arising from or relating to this Agreement or any Related Agreement, or arising from alleged extra-contractual facts prior to, during, or subsequent to this agreement." It is undisputed that the contract containing this language was executed by the parties in 2016. It is also undisputed that DFH provided funds to Plaintiff in 2020, re-starting a lending arrangement. However, Plaintiffs are now alleging a dispute concerning the lending relationship.

Regardless of any of dispute regarding the performance or other payment terms of the financing arrangement, there is no dispute that any business conducted with DFH would be

bounded by the above language. This language must be given its intended meaning and, therefore, govern the situation that has arisen among the parties. As such, the jury trial waiver should be enforced.

BACKGROUND

In 2016, Penland Automotive, LLC (“Penland Automotive”), Charles W. Penland, Jr. (“Charles Penland”), Penland Properties II, LLC, and DFH entered into that certain Loan and Security Agreement dated November 21, 2016 (the “Financing Agreement”), pursuant to which Penland Automotive borrowed money from DFH in the form of cash advances to Penland Automotive to purchase used car inventory for resale in its used car business. Contemporaneously with the execution of the Financing Agreement, Penland Automotive also executed a Demand Note, which stated that the amounts due and owing to DFH under the Financing Agreement are payable on demand. Additionally, in order to induce DFH to enter into the Financing Agreement and to further secure the indebtedness evidenced by the Financing Agreement and the Demand Note, Charles Penland individually executed a certain Unlimited Guaranty (the “Guaranty”) in which he personally guaranteed to DFH all sums due under the Financing Agreement. True and correct copies of the Financing Agreement, the Demand Note, the Guaranty (collectively, the “Loan Documents”) are attached as Exhibits to the Defendants’ Answer and Counterclaims.

The parties’ lending relationship continued pursuant to the Loan Documents from their inception until on or about February 20, 2019, when the Comptroller for Penland Automotive requested DFH to “close and deactivate” the floorplan financing arrangement. Thereafter, Tim Yarger, a co-owner and the General Manager¹ of Penland Automotive, approached DFH about

¹ It is the contention of DFH that Mr. Yarger was a co-owner of Penland Automotive during the relevant time period, as Mr. Yarger set forth in his Affidavit previously filed with the Court, but this is disputed by Plaintiffs. However, it is not disputed that Mr. Yarger was the General Manager of the business.

reopening the prior credit line. After multiple discussions involving Mr. Yarger and only Mr. Yarger, the Comptroller for Penland Automotive requested in an email to a representative of DFH that DFH “[r]e-open our floor plan.”² DFH again started to make cash advances to Penland Automotive for the latter’s purchase of used car inventory. Specifically, Mr. Yarger, who was involved in the negotiations that resulted in the loaning of new funds to Penland Automotive, testified in his deposition that it Mr. Penland requested the Loan Documents be used in order to satisfy Mr. Penland’s request to more quickly attend an auction and be able to purchase additional cars more quickly as they were short on inventory

In Fall 2020, a dispute arose among the parties regarding their financing arrangement, and Plaintiffs filed this lawsuit.

ARGUMENT

I. The Waiver is Broadly Worded Such That It Applies to the Claims at Issue Regardless of the Enforceability of Loan Documents to Loan Transactions

The jury trial waiver in the Loan Documents applies to the claims at issue, even if the Court were to ultimately conclude that the Loan Documents do not apply to the subsequent loan transactions. Penland Automotive and Charles Penland, individually, expressly waived any right to a jury trial as to any and all causes of action alleged in this case. Moreover, the jury trial waiver applies regardless of whether or not those causes of action arose pursuant to the Loan Documents. Specifically, Section 17 of Financing Agreement, which is titled in bold and italic font “***Waiver of Jury Trial***”, contains the following language in all capital letters:

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH GRANTOR AND DFH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS

² Email dated July 9, 2020 from Karen Willis, a copy of which was previously filed with the Court as an exhibit to Defendants’ Motion for Summary Judgment.

CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THIS AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED, AND (B) AGREE NOT TO SEEK TO CONSOLIDATED ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. EACH GRANTOR CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DFH WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

See Financing Agreement, §17 (emphasis added).

The term “Grantor”, as used in the jury trial waiver, is defined at the beginning of the Financing Agreement to include Penland Automotive and Charles Penland. In addition, both the Demand Note signed by Charles Penland on behalf of Penland Automotive and the Guaranty signed by Charles Penland in his individual capacity likewise contain identical jury trial waivers.

In light of the clear and unambiguous language contained in the Loan Documents, any argument from Plaintiffs that the claims asserted in this case fall outside the scope of the jury waiver is simply unavailing.

The law is well-settled in South Carolina that the right to a jury trial may be waived by contract. *Wachovia Bank, Nat. Ass’n v. Blackburn*, 407 S.C. 321, 333, 755 S.E.2d 437, 443 (2014) (“A party may waive the right to a jury trial by contract.”); *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (“[A] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it.”). Moreover, while jury trial waivers are strictly construed, they are nevertheless construed according to their “plain, ordinary and popular meaning.” *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d

863, 866 (Ct. App. 2002) (citing *Fritz-Pontiac-Cadillac-Buick v. Goforth*, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994)).

Here, the “plain, ordinary and popular meaning” of the jury trial waivers contained in all three of the Loan Documents executed by the Plaintiffs clearly encompasses all causes of action asserted in the Complaint, regardless of whether the Court ultimately concludes that the transactions that are at issue are otherwise governed by the remaining terms of the Loan Documents. By their plain and unambiguous language, the jury trial waivers clearly apply not only to all disputes arising under the Loan Documents, they also apply to: (1) all disputes related to the Loan Documents, (2) any and all causes of action “in any way relating to any matter” involving the parties, and (3) all causes of action arising from or related to “extra-contractual facts ... subsequent to” the Loan Documents.”

Each and every one of the causes of action asserted arose because of the financing arrangement among between Dealer Financial and the Plaintiffs. If not for this relationship, regardless of whether this specific agreement and its terms were applicable in 2020, the dispute “relates to” a matter involving the parties and certain arise out of facts at issue subsequent to the execution of the Loan Documents. As such, the jury trial waiver applies to the present matter before the Court.

II. Any Question of Fact Regarding the Applicability of the Jury Trial Waiver Must be Determined by the Court, Not a Jury.

Furthermore, any question regarding the enforceability of the jury trial waiver must be determined by the court rather than left to a jury. The mode and manner of trial is determined by the judge, not a jury. To allow a jury to first determine whether the Loan Documents were applicable would permit the jury to determine the method of trial, which is improper.

A parallel can be made to circumstances when there is a factual dispute regarding whether there is an actual underlying agreement in the context of a demand for arbitration. In federal arbitration, when there is such a dispute about the enforceability of an agreement that contains an arbitration provision, the judge is required to resolve the factual dispute regarding the existence of an agreement. *See Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99, 107 (3d Cir. 2000) (affirming denial of motion to compel arbitration pending a trial on an agent's authority to enter into an arbitration agreement). Specifically, under federal arbitration law, a court is required to proceed summarily on issues related to the making of an arbitration agreement, with the court making this determination. *See Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707, 713 (4th Cir. 2015) (stating that the court should hold an expeditious and summary hearing to resolve the issue of enforceability).

The circumstances are parallel in the matter before the court. The court is the proper entity to summarily determine whether the jury trial waiver is applicable. The court is responsible for examining the enforceability of the jury trial waiver, not a jury, just as a court is responsible for examining the enforceability of an arbitration provision in a disputed agreement. As such, it is the province of the Court to determine whether the jury waiver applies, not permitting this issue to be held for a jury.

CONCLUSION

All of the causes of action asserted by the Plaintiffs in this action either arise out of or are related to the exact same lending relationship that has existed between the parties since 2016, regardless of whether the same commercial terms are still in effect or different ones apply.

Moreover, the court, not a jury, is the proper entity to make a decision as to the applicability and enforceability of the jury trial waiver. The court has the authority and obligation to determine the mode and manner of trial, not a jury.

Accordingly, the Plaintiffs have no right to a jury trial on any issue in this case, and their demand for a jury trial should be struck and the case referred to the Greenville County Master-in-Equity in accordance with Rule 53(b), SCRCP.

Respectfully submitted,

s/Emily I. Bridges

Robert H. Jordan – SC Bar No. 0013612

Emily I. Bridges – SC Bar No. 102199

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December 29, 2022

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Penland Automotive, LLC and Charles W.
Penland, Jr.,

Plaintiffs,

vs.

Dealer Financial Holdings, LLC, Steve
Lanzel and Daniel B. Haight,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-23-00244

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
RENEWED MOTION TO STRIKE JURY
DEMAND**

Plaintiffs Penland Automotive, LLC and Charles W. Penland, Jr. (hereinafter referred to as "Plaintiffs") file this Memorandum in Opposition to Defendants' Renewed Motion to Strike Jury Demand, respectfully asking the Court to deny Defendants' Motion as follows:

I. STATEMENT OF FACTS

In 2016, Plaintiffs Penland Automotive, LLC ("Penland Automotive") and Charles W. Penland, Jr. ("Charles Penland"), Penland Properties II, LLC ("Penland Properties"), and Defendant Dealer Financial Holdings, LLC ("DFH") entered into a Loan and Security Agreement dated November 21, 2016 (the "2016 Agreement"). The 2016 Agreement included a personal guaranty executed by Charles Penland and a mortgage interest on a separate company, Penland Properties II. Charles Penland signed the 2016 Agreement on behalf of himself and his two companies, Penland Properties and Penland Automotive.¹ In 2019, the 2016 Agreement was cancelled, and all of Plaintiffs' reserves were returned.²

¹ A copy of the 2016 Agreement is attached to Defendants' Answer and Counterclaims as Exhibit A.

² See Exhibit A to Plaintiffs' Memorandum in Support of Motion for Summary Judgment filed on October 13, 2022.

In the summer of 2020, the parties began negotiating a new relationship. Based on assurances by Defendant Haight of Defendant DFH, Plaintiffs believed new binding documents setting forth a new Loan and Security Agreement and terms were forthcoming.³ After disagreements about those documents and the terms of any new agreement, the relationship ended on October 8, 2020, with DFH claiming that a non-signatory to the 2016 Loan and Security Agreement, Tim Yarger, verbally agreed to the parties reusing the 2016 Agreement. At the time, Mr. Yarger was the General Manager of Penland Automotive. Mr. Yarger was not an owner or representative of Penland Properties II and does not claim to have any authority to bind Charles Penland to a personal guaranty. Additionally, DFH had no knowledge at the time of the alleged verbal agreement under which Mr. Yarger claimed an ownership interest in Penland Automotive. Further, no one other than Charles Penland signed the 2016 Agreement or any of the amendments thereof on behalf of himself and his companies.

Plaintiffs Penland Automotive, LLC and Charles W. Penland, Jr. filed this lawsuit against Defendants DFH, LLC, Steve Lanzel and Daniel B. Haight on January 18, 2021. Plaintiffs bring the following causes of action: (1) breach of covenant of good faith and fair dealing; (2) unfair trade practices; (3) conversion; (4) breach of verbal contract; (5) rescission of verbal contract; (6) fraudulent inducement to enter a contract; (7) negligent misrepresentation; and (8) defamation *per se*. In response, Defendants filed their Answer and Counterclaim on March 31, 2021, with counterclaims arising out of the alleged breach of the 2016 Agreement.

³ See Exhibit C to Plaintiffs' Memorandum in Support of Motion for Summary Judgment.

On April 13, 2021, Defendants filed a Motion to Strike Jury Demand alleging that Plaintiffs waived their rights to a jury trial in the Loan Documents. The motion was based on the Waiver of Jury Trial provision contained in the 2016 Agreement which provided as follows:

Section 17. *Wavier of Jury Trial.* TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH GRANTOR AND DFH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO A Y MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THIS AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED ...⁴

The 2016 Agreement also contained a waiver of defenses:

Section 3. *Floorplan Fee; Repayment of Advances.*

...

(h) BORROWER EXPRESSLY WAIVES ANY AND ALL DEFENSES NOW OR HEREAFTER ARISING OR ASSERTED BY REASON OF (1) ANY LACK OF VALIDITY, LEGALITY OR ENFORCEABILITY OF ANY RELATED AGREEMENT; (2) ANY ACTION TAKEN UNDER ANY RELATED AGREEMENT OR ANY RIGHT OR REMEDY EXERCISED, DELAYED OR WAIVED UNDER ANY RELATED AGREEMENT: ...⁵

After the Court heard arguments from the parties at a hearing on June 29, 2021, the Court denied Defendants' Motion to Strike pursuant to an Order filed on July 28, 2021. Specifically, the Court held that there was "a genuine issue of material fact exist[ed] relating to the continued

⁴ See Exhibit A, p. 11 to Defendants' Answer and Counterclaim.

⁵ See Exhibit A, p. 6 to Defendants' Answer and Counterclaim.

applicability of the 2016 Loan Documents to the reopened floor to the reopened floorplan financing relationship in 2020[.]” However, the Motion to Strike was denied without prejudice and with the opportunity to renew at a later time. On September 16, 2022, Plaintiffs filed a Motion for Summary Judgment on Defendants’ Counterclaims. Plaintiffs argued, in part, that since the 2016 Agreement did not apply to the 2020 agreement, the 2020 agreement was barred by the statute of frauds and S.C. Code § 36-9-203 because it was not in writing. Pursuant to an Order filed on October 18, 2022, the Court denied Plaintiffs’ motion finding that issues of material fact precluded summary judgment. On September 27, 2022, Defendants filed their Renewed Motion to Strike Jury Demand.

II. ARGUMENT

Although a party may waive the right to a jury trial by contract, “[s]uch a waiver must be strictly construed as the right to trial by jury is a substantial right.” Beach Co. v. Twillman, Ltd., 351 S.C. 56, 63-64, 566 S.E.2d 863, 866 (Ct. App. 2002) (citing N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc., 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992)). *See also* Wachovia Bank, Nat’l Ass’n v. Blackburn, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014).

Pursuant to two Orders filed on July 28, 2021, and October 18, 2022, the Court found that material issues of fact precluded a finding that the 2016 Agreement applies. Since then, there has been no finding that the 2016 Agreement controls the 2020 arrangement and Plaintiffs’ claims. Therefore, the finder of fact must first determine whether the 2016 Agreement applies to the 2020 arrangement

In the alternative, the jury waiver provision is one-sided and oppressive and therefore unconscionable. Pursuant to S.C. Code § 36-2-302, a contract or any clause of a contract may be

attacked at law if it was unconscionable at the time it was made. S.C. Code § 36-2-302. If the court finds that a contract clause is unconscionable, the court may refuse to enforce the contract clause or limit the application of the unconscionable clause to avoid any unconscionable result. *Id.* “Unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 24-25 (2007) (citing Carolina Care Plan, Inc. v. United HealthCare Servs. Inc., 361 S.C. 544, 554 (2004)). In determining unconscionability of a specific contractual provision, South Carolina Courts may consider “the cumulative effect of a number of oppressive and one-sided provisions.” Smith v. D.R. Horton, Inc., 403 S.C. 10, 15 (Ct. App. 2013), *aff’d* 417 S.C. 42, 790 S.E.2d 1 (2016).

Defendant DFH carefully drafted oppressive, overbroad and one-sided provisions that attempted to abrogate Defendants’ liability while simultaneously ensuring for itself a clear and efficient means of collecting against Plaintiffs. The waiver provisions were unconscionable because they attempted to disclaim DFH’s liability and unconsciously restricted Plaintiffs’ right to bring suit.

V. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court deny Defendants’ Motion to Strike Jury Demand.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

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Attorney for Plaintiffs

January 4, 2023

Greenville, South Carolina

Page 1 STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Penland Automotive, LLC and Charles W. Penland, Plaintiffs, v. Dealer Financial Holdings, LLC, Steve Lanzl and Daniel B. Haight, Defendants Deposition of JOHN OSCAR BETHEA, JR. Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 28th of July, 2022 commencing at approximately 9:38 a.m. attended by counsel as follows:	Page 3 Index Page 11 11 155 158 160
Page 2 Appearances: EMILY BRIDGES, Esquire Parker Poe Adams & Bernstein, LLP 110 East Court Street, Suite 200 Greenville, South Carolina 29601 emilybridges@parkerpoe.com Attorney for the Plaintiffs JASON M. IMHOFF, Esquire Kenison, Dudley & Crawford, LLC 704 East McBee Avenue Greenville, South Carolina 29601 jimhoff@conlaw.com Attorney for the Defendants Also Present: Charles W. Penland, Jr., Plaintiff Karen Willis, Penland Automotive, LLC Daniel B. Haight, Dealer Financial Deposition Reported By: Bebe O. Norris, CR Depositions And., Inc. (864) 235-3518	Page 4 Index of Exhibits Page 118 121 137 139 139

JOHN OSCAR BETHEA, JR.

Page 5			Page 7		
1	Exhibit Number 6	Text Messages	1	Exhibit Number 10	Email from Dan
2		DFH_03067-03068	2		Haight to Kim Rusch,
3		(Two Pages)..... 149	3		Tim Yarger, Karen Willis
4			4		and John Bethea re Penland
5			5		Curtailments dated
6			6		November 13, 2018
7			7		(One Page)..... 46
8			8		
9			9	Exhibit Number 3	Email from Karen Willis
10			10		to Dan Haight re
11			11		Floorplan dated
12			12		2/20/2019 (One Page)..... 50
13			13		
14			14	Exhibit Number 5	Release of Mortgage,
15			15		Security Agreement,
16			16		Assignment of Leases
17			17		and Rents, and Fixture Filing
18			18		(One Page)..... 56
19			19		
20			20	Exhibit Number 13	Email from Karen Willis
21			21		to Kim Rusch and Kim Rusch
22			22		to Dan Haight re UCC
23			23		dated July 20, 2020
24			24		(One Page)..... 58
25			25		

Page 6			Page 8		
1	Index of Plaintiff's Exhibits		1	Exhibit Number 14	Email exchange between
2	Referred To		2		Kim Rusch and Karen
3		Page	3		Willis re UCC
4	Exhibit Number 12	Email from Dan Haight	4		Cancellation dated
5		to John Bethea re Commitment	5		July 6, 2020 (One Page)..... 69
6		Packets dated July 6, 2020	6		
7		(Seven Pages)..... 34,70,89	7		
8			8	Exhibit Number 17	Email Exchange
9	Exhibit Number 2	2016 Loan and	9		Dated July 9, 2020
10		Security Agreement	10		Re Re-Open (One Page)..... 94,154
11		(25 Pages)..... 37	11		
12			12	Exhibit Number 23	Email Exchange between
13	Exhibit Number 8	Email from Dan	13		Karen Willis and Kim
14		Haight to Karen Willis re	14		Rusch re Malibu dated
15		Amended Commercial	15		July 31, 2020 (Two Pages)... 96
16		Agreement dated	16		
17		January 22, 2018	17	Exhibit Number 24	Email Exchange between
18		(One Page)..... 43	18		Kim Rusch and Karen Willis
19			19		Re Invoice Reminder dated
20	Exhibit Number 9	Amendment to Loan and	20		August 26, 2020
21		Security Agreement and	21		(Two Pages)..... 97
22		other Related	22		
23		Agreements dated April	23	Exhibit Number 25	Email from Karen Willis
24		2nd, 2018 (Three Pages)..... 44	24		To Kim Rusch dated August
25			25		27, 2020 re Invoice

JOHN OSCAR BETHEA, JR.

Page 9		Page 11	
1	(One Page)..... 98	1	Pursuant to Notice and/or agreement to take depositions,
2		2	the within deposition was taken by the above reporter, a
3	Exhibit Number 26 Email from Karen Willis	3	Notary Public, as required under the South Carolina Rules of
4	To Dan Haight dated	4	Civil Procedure, Rule 30(b)(6), et al., by consent of all
5	August 28, 2020 re	5	parties at Parker Poe in Greenville, South Carolina.
6	Floor Plan (One Page)..... 98	6	WAIVER:
7		7	Counsel and the deponent agreed that both the reading over
8	Exhibit Number 27 Email Exchange between	8	and signing of the deposition are hereby NOT WAIVED.
9	Kim Rusch and Karen Willis	9	** ** *
10	Dated August 28, 2020	10	The deponent was duly sworn to tell the truth, the whole
11	Re Sold Units (Two Pages).. 99	11	truth, and nothing but the truth concerning the matter herein.
12		12	JOHN OSCAR BETHEA, JR., being duly affirmed, testified as
13	Exhibit Number 28 Email from Karen Willis	13	follows:
14	To Kim Rusch dated	14	DIRECT EXAMINATION BY MR. IMHOFF:
15	September 3, 2020 re	15	Q. Good morning, Mr. Bethea.
16	ACH (One Page)..... 100	16	A. Good morning, how are you?
17		17	Q. I'm good. My name is Jason Imhoff, as you probably
18	Exhibit Number 30 Email from Dan Haight	18	already know. I represent Mr. Penland and Penland
19	To Tim Yarger and	19	Automotive in this case against Dealer Financial. I've
20	Karen Willis dated	20	noticed your deposition for today and I'm gonna ask you
21	September 6, 2020	21	some questions and we're gonna go over some procedural
22	Re Weekly Invoices	22	things first. Before I do that, have you ever had your
23	(One Page)..... 100	23	deposition taken before?
24		24	A. I have not.
25		25	Q. Okay, so this is, this is brand new to you. I will bet
Page 10		Page 12	
1	Exhibit Number 31 Email from Karen Willis	1	that Ms. Bridges has already told you how this is going to
2	to Dan Haight and Kim	2	go today, but I have an obligation to tell you some things
3	Rusch dated September	3	anyway; okay?
4	23, 2020 re Staff Changes	4	A. Okay.
5	(One Page)..... 105	5	Q. So, a couple of things. As you can see, we have a court
6		6	reporter in the room and she's going to record and then
7	Exhibit Number 34 Email from Dan Haight to	7	transcribe everything that's said in here but she can't
8	Steve Lanzl and Peter	8	record head nods and shakes ---
9	Troutman dated October 6,	9	A. Sure.
10	2020 re Penland Audit Status	10	Q. --- so, in response to my questions, try to give a verbal
11	(One Page)..... 108	11	answer, yes, no, whatever the answer to the question is;
12		12	okay?
13	Exhibit Number 36 Dealer Financial October	13	A. Okay.
14	8, 2020 Letter to Charles	14	Q. All right, sometimes I ask bad questions or complicated
15	W. Penland, Jr.	15	questions or compound questions, or sometimes you're
16	(One Page)..... 156	16	thinking about the last question or your last answer or
17		17	are unsure; whatever it is. If you don't understand my
18		18	question or you don't hear my question, please ask me to
19		19	repeat it, rephrase it or explain it, and I'll be happy to
20		20	do that; okay?
21		21	A. Okay.
22		22	Q. All right, if you don't ask me to repeat it or explain it
23		23	or rephrase it, I will assume that you understood my
24		24	question and you're answering that question; is that fair?
25		25	A. That's fair.

3 (Pages 9 to 12)

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Page 13 1 Q. All right. If you have any questions during today's 2 deposition, go ahead and just ask me and then I'll talk to 3 everybody else in the room and we'll come up with a 4 decision. We may have to ask you to leave the room at 5 some point, but go ahead and feel free to ask; okay? 6 A. Okay. 7 Q. And I'll try to clarify or answer your questions; okay? 8 A. Okay. 9 Q. You've probably already been told you can take a break any 10 time you --- 11 A. Yes. 12 Q. --- want to. I would ask that if that if I ask a 13 question, you answer that question before you take the 14 break. But, otherwise, you can take as many breaks for 15 whatever reason you want; okay? 16 A. Okay. 17 Q. All right, do you have any questions before we get 18 started? 19 A. No. 20 Q. I typically start with a background; I want to know who 21 you are, where you came from and why you're here. 22 A. Okay. 23 Q. And then we'll talk about the case and what you know about 24 it; okay? 25 A. Okay.	Page 15 1 Q. --- too tired of the traffic here? 2 A. No, my girlfriend lives there. 3 Q. Is that right? 4 A. Yes. 5 Q. Good for you, I mean, I hope. Good luck. 6 A. It is, it's a great situation. 7 Q. All right, so, are you still working with Dealer 8 Financial? 9 A. Yes. 10 Q. Okay, are you working in South Carolina anymore? 11 A. Yes. 12 Q. Okay, so, are you in the same job you were say three and 13 five years ago? 14 A. Yes. 15 Q. What was the last grade of school you completed? 16 A. I'm sorry, I couldn't hear. 17 Q. I'm sorry, what was the last grade of school you 18 completed? 19 A. I have a Master's Degree. 20 Q. From where? 21 A. Indiana University. 22 Q. All right, in what? 23 A. Recreation and Parks Administration. 24 Q. I think that's the first time I ever in my life someone 25 said they couldn't hear me, I think, but that's okay.
Page 14 1 Q. All right, so, give us, hopefully this part's real easy, 2 give us your full name, please. 3 A. John Oscar Bethea, Jr. 4 Q. What's your date of birth? 5 A. 5/17/52. 6 Q. Where were you born? 7 A. Abbeville, South Carolina. 8 Q. What's your address? 9 A. 2390 Ashton Drive, Roswell, Georgia. 10 Q. You live in Roswell, Georgia? 11 A. (Nods in the affirmative). 12 Q. Is that a yes? 13 A. Yes; I'm sorry. 14 Q. It's okay, --- 15 A. Yes. 16 Q. --- everybody does it. How long have you lived in 17 Roswell, Georgia? 18 A. Since March 1st. 19 Q. Since March 1st, where did you live before March 1st? 20 A. In Greenville, South Carolina. 21 Q. Got ya. What made you move to Roswell? 22 A. My unit that I was renting was sold so I moved. 23 Q. Is there anything in Roswell that brought you, that took 24 you over there or were you just --- 25 A. Yes.	Page 16 1 Where did you go to Undergrad? 2 A. Clemson. 3 Q. What was your major there? 4 A. Recreation and Parks Administration. 5 Q. When did you get your Undergrad and Master's Degree? 6 A. My Undergraduate was in 1974, my Master's was in 1976. 7 Q. Going backwards from today, let's go backwards, tell me 8 what you've done for employment. Let's start with where 9 you are today and what you do and then go to your job 10 prior to that. 11 A. All right, I'm a Relationship Manager with Dealer 12 Financial, and then I was a Relationship Manger with 13 Community First, no, yeah, Community First Bank in, from 14 Seneca, and then before there, I've worked for Penn 15 Warranty Company, I worked as a, I worked for Westlake 16 Financial Company, I worked a short stint with Lil Boyz 17 Toyz in Greenville. Before that I worked for Auto Credit 18 in Greenville, I've worked for Wachovia Dealer Services, 19 I've worked for AmeriCredit, I've worked for Regional 20 Acceptance Corporation, --- 21 Q. Let me stop you there and ask you a question. You said 22 you are Relationship Manager for Dealer Financial, is 23 that, do you work directly for Dealer Financial or are you 24 an independent contractor? 25 A. I'm an independent contractor.

JOHN OSCAR BETHEA, JR.

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1 Q. As an independent contractor for Dealer Financial, are you
2 allowed to take on other clients, other businesses, other
3 employment?
4 A. I don't know.
5 Q. As you've -- when did you start working for Dealer
6 Financial?
7 A. In October of, well, six years ago this coming October,
8 so, ---
9 Q. We're in '22, so, that would've been about 2000 ---
10 A. 16.
11 Q. --- 16?
12 A. Yeah.
13 Q. Well, I guess my question is, do you have an exclusivity
14 clause in your independent contractor agreement, and have
15 you also worked for other companies in the last ---
16 A. I don't, I don't work for anybody else.
17 Q. Okay, so, the last six years, the only employment or
18 income you've gotten was from your relationship with
19 Dealer Financial?
20 A. Yes.
21 Q. And I was gonna ask the same thing, so, all these other
22 ones, all these other companies that you've listed, are
23 those companies that you were working for all at the same
24 time ---
25 A. No.

Page 18

1 Q. --- or one after another ---
2 A. One after ---
3 Q. --- consecutively?
4 A. --- another.
5 Q. Penn Warranty Company, when did you work for them,
6 generally?
7 A. (No verbal response).
8 Q. Did you leave Penn Warranty Company to go to Dealer
9 Financial?
10 A. No, I left Penn Warranty to go to Auto Credit.
11 Q. All right, where did you work right before going to Dealer
12 Financial?
13 A. Community First Bank. And then before there, I was with
14 Penn Warranty, no, I can't remember.
15 Q. Okay. All right, I ask everybody this; okay?
16 A. Sure.
17 Q. Have you ever been convicted of a crime?
18 A. No.
19 Q. Have you ever been in the military?
20 A. No.
21 Q. Have you ever been in a lawsuit as a plaintiff or
22 defendant previously?
23 A. No.
24 Q. Do you go to church here in Greenville, did you go to
25 church here in Greenville?

Page 19

1 A. Yes.
2 Q. Where'd you go?
3 A. Christ Church.
4 Q. Are you a member of that church?
5 A. Yes.
6 Q. How long did you go there?
7 A. Since 2001.
8 Q. Are you a member in the Greenville or Upstate community of
9 any social clubs or community organizations?
10 A. No. Well, that's not true, I was with the Boy Scouts.
11 Q. How long were you with the Boy Scouts?
12 A. About seven years.
13 Q. What, how long ago?
14 A. 2010 was the last year I worked with the Boy Scouts.
15 Q. Are you a member of any professional organizations?
16 A. No.
17 Q. I'm gonna ask you for your Social Security number, but I'm
18 gonna take it off the record so it's not on the
19 transcript; okay?
20 (Off the record at approximately 9:50 a.m.; on the record at
21 approximately 9:50 a.m.)
22 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
23 Q. Where did you live prior to moving to Roswell, what was
24 the address?
25 A. 4 Amherst Avenue, Apartment A, Greenville, 29605.

Page 20

1 Q. How long did you live in Greenville before moving to
2 Roswell?
3 A. Since 2001.
4 Q. Where'd you live before Greenville?
5 A. Black Mountain.
6 Q. North Carolina?
7 A. Yes, I'm sorry, yes, Black Mountain.
8 Q. How long were you in Black Mountain?
9 A. I was there about two years.
10 Q. Where'd you live before that?
11 A. Mount Pleasant, South Carolina.
12 Q. How long were you in Mount Pleasant?
13 A. About four years.
14 Q. That's where I spent last week working. All right, when
15 did you become aware of Dealer Financial and how did you
16 start the relationship with them?
17 A. I met Mr. Haight at a lunch one day, and I don't recall
18 how many years ago, I don't know why I met him there. I
19 was at a lunch, somebody invited me to lunch, and he was
20 there.
21 Q. Okay.
22 A. And that's how I found out about Dealer Financial.
23 Q. Okay, and then did you not work for him or for the company
24 for some period of time, years or months, before you
25 started talking about employment?

5 (Pages 17 to 20)

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Page 21 1 A. Um, --- 2 Q. Let me ask it this way: --- 3 A. Yeah. 4 Q. --- did he contact you about working for Dealer Financial 5 shortly after that lunch or was there some long period of 6 time? 7 A. It was not a long period of time, and I was employed for 8 another company, I was - - I didn't work for him until 9 September of whatever it is, '16, I didn't work for him. 10 We, he didn't talk about hiring me at any point in time 11 'til then. 12 Q. So, did you become friends with Mr. Haight? 13 A. We were friends, yes. 14 Q. For how long were you friends before you began working for 15 them in October of 2016? 16 A. I don't recall. I think - - I don't recall. 17 Q. Did you go to lunch together, did you golf together, what 18 types of things would you do as friends? 19 A. We would eat breakfast periodically. 20 Q. Here in Greenville? 21 A. Yes. 22 Q. Was it a group of friends or just --- 23 A. Just he and I. 24 Q. Just the two of you, how many years did that go on, you 25 think, before 2016?	Page 23 1 A. That means when you go to buy a car and you go to a bank 2 and you buy a car and you'll say, well, Community First is 3 your loan, they would submit the loan to Community First 4 Bank and then we would approve the loan and the Finance 5 Manager would choose who you wanted to go with and would 6 do the contract with Community First. 7 Q. I see, okay. So, you had relationships with dealers that 8 --- 9 A. Right. 10 Q. --- would potentially steer buyers to Community First 11 Bank, if Community First Bank agreed with it, --- 12 A. Right. 13 Q. --- with the correct terms? 14 A. Yes. 15 Q. Okay. All right, so, were you in that automobile 16 financing relationship role the entire time you were at 17 Community First Bank? 18 A. Yes. 19 Q. Okay. You've listed a lot of companies, Penn Warranty, 20 Westlake Financial, Auto Credit. Are those all also in 21 automobile lending or something related to automobile? 22 A. They're something related to automobile, yes. 23 Q. All right, so, what role were you offered at Dealer 24 Financial? 25 A. I was offered a position to be a Relationship Manager to
Page 22 1 A. Before when? 2 Q. Before you started working for Dealer Financial. 3 A. I would, I don't recall, I think it's probably five years. 4 Q. Five years, okay. All right, and when he asked you to 5 come work for Dealer Financial, were you at Community 6 First Bank? 7 A. Yes. 8 Q. What were you doing at Community First Bank? 9 A. I was a Relationship Manager. 10 Q. What does a Relationship Manager do at a bank? My bank 11 doesn't have one, I'm positive of it. 12 A. I bet they do. 13 Q. I'm just not important enough? 14 A. Yeah. It's a sales rep position and I went out and 15 contacted dealers to get them to use our services. And 16 that's basically what a, and manage a relationship you 17 have, the people that are your customers. 18 Q. I got ya. So, is Community First Bank in floorplan 19 lending? 20 A. No. 21 Q. Is it in lending used cars --- 22 A. Right, they did --- 23 Q. --- and new cars? 24 A. --- they did indirect lending. 25 Q. What does that mean?	Page 24 1 secure customers. 2 Q. Had you ever been involved in floorplan lending 3 previously? 4 A. No. 5 Q. When you worked at, I think it's Community First Bank, --- 6 A. Yes. 7 Q. --- were you an employee or an independent contractor? 8 A. An employee. 9 Q. Had you ever been an independent contractor at any of the 10 other companies you'd worked for in the last 10 to 20 11 years? 12 A. No. 13 Q. All right, when you were presented with a job opportunity, 14 were you told you were going to be an independent 15 contractor? 16 A. Yes. 17 Q. All right and tell me how you were to perform your role, 18 what would you do on a day-to-day basis? 19 A. I would identify dealers and investi, and call on them and 20 ask them who their floorplan was with and what we could do 21 to possibly get a dealer agreement from them, a dealer 22 application for them, submit it to the Credit Committee 23 and see if we could, if they could become one of our 24 customers. 25 Q. Okay, and so, did you go to every dealership that you

Page 25 1 could find initially? 2 A. No, we, Dealer Financial deals with independent dealers 3 only, used car dealers, and I would contact independent 4 dealers. 5 Q. All right, and when you would go to those independent 6 dealers, did you know what the terms were for every 7 contract with each dealer or was it negotiable? 8 A. Ask the question again? I'm sorry. 9 Q. Sure. When you started working with Dealer Financial, did 10 they give you a sheet or an outline of what their 11 floorplan lending terms were going to be? 12 A. I was instructed what our floorplan was with dealers. The 13 terms were, most of the time, based on the dealer's credit 14 quality. 15 Q. Okay, so, well, let me ask it this way: Are all of the 16 dealerships that you work with, are all of their terms of 17 the agreements with Dealer Financial the same or, as you 18 just said, does it depend on the dealer? 19 A. I don't understand what you mean by the "terms." 20 Q. Okay, well, let me ask it this way: --- 21 A. Okay. 22 Q. --- How does Dealer Financial make its money on these 23 floorplan loans? 24 A. We charge a fee on the amount of floorplan that a dealer 25 has on a daily rate.	Page 27 1 curtailment. 2 Q. You said 10 percent curtailment? 3 A. At 60 days, we charge 10 percent, and then 10 percent 4 every 30 days afterwards. 5 Q. I'm gonna say it a little bit differently. 6 A. Okay. 7 Q. So, starting at 60 days, you charge a 10 percent 8 curtailment every 30 days; is that right? 9 A. (No verbal response). 10 Q. You get two months --- 11 A. Right. 12 Q. --- of no curtailments? 13 A. Right, and on the 60th day, we get 10 percent. 14 Q. And then on the 90th day --- 15 A. It's 10 percent. 16 Q. --- 10 percent, 120th day 10 percent; is that --- 17 A. Every 30 days, yes. 18 Q. Okay, any other fees or costs or charges for that 19 floorplan lending? 20 A. No. 21 Q. Okay, so, are all of your dealerships that you deal with, 22 are those the terms on all of those relationships and 23 agreements? 24 A. Yes. 25 Q. Okay, they're not negotiable, can't be changed?
Page 26 1 Q. Is that daily rate a percentage? 2 A. It's a factor. 3 Q. Help me understand that. 4 A. The daily rate that we initially offer is a .00085 times 5 the amount floored, and that's what their daily rate is. 6 If they keep the car for one day or for a thousand days, 7 that's the rate. 8 Q. Okay. 9 A. And it never fluctuates. 10 Q. Are there any other fees or charges? 11 A. We charge a \$15 bank fee that the bank charges us to floor 12 the car. 13 Q. Each car? 14 A. Yes. We charge \$15 per envelope when we send a title, so, 15 if a dealer pays off a car and requests a title, it's \$15, 16 if they call and pay off two cars and requests a title, 17 it's \$15, so, it's per envelope not per car. Once the car 18 is sold, we charge a \$200 reserve fee that we put in an 19 account for the dealer, and that's on every car that's 20 sold. We charge a, at 60 days, we charge a 10 percent 21 curtailment fee on the amount that the car's floored for, 22 and that reduces the principle, which means that would 23 reduce what they're paying every month because we're not, 24 have as money on the books, we've reduced it. And then 25 every 30 days after that, we charge a 10 percent	Page 28 1 A. Not those terms. 2 Q. Not those terms, okay. You said earlier that it depended 3 on the credit of the dealership? 4 A. The fee we charge per month, the daily rate fee may be 5 different. 6 Q. Have those terms changed from 2016 to today? 7 A. No. 8 Q. You know a man named Tim Yarger? 9 A. Yes. 10 Q. You're friends with him? 11 A. We're business associates. 12 Q. Business associates. Have you ever done anything socially 13 with him outside of business? 14 A. No. 15 Q. Okay, when did you first begin talking to or dealing with 16 Penland Automotive? 17 A. If I recall, probably in September or October of 2016. 18 Q. Did you know him or did you cold call; how did that 19 relationship start? 20 A. I'd had, had known Tim prior to that, in other positions I 21 was in with the other banks. 22 Q. I got ya, okay. And was he using those other banks for 23 floorplan for lending? 24 A. Yes, some of them he was, some of them he wasn't. 25 Q. All right, so, tell me how it works. Do you come in and

1 present those fees and charges right off the bat, say,
 2 "This is what we can offer you depending on your credit,
 3 we can offer you a lot or some amount of money"?
 4 A. First, I need, I go in and see if there's a need, do they
 5 need a floorplan; there's no need in me taking their time
 6 if they don't need a floorplan. And then I'll go over the
 7 fees, if they want to talk about what the program is, I
 8 outline the fees I just gave you.
 9 Q. Okay. All right, and so, when you, did you do that with
 10 Mr., who did you do that with in 2016?
 11 A. I talked to Tim about it.
 12 Q. Okay, did you ever talk to Billy Penland in 2016?
 13 A. Yes.
 14 Q. Did you go over the fees and what you could offer with him
 15 also?
 16 A. Yes.
 17 Q. And did you ultimately, did they ask for some credit for
 18 the floorplan lending from Dealer Financial?
 19 A. Yes.
 20 Q. And I understand that Dealer Financial does some due
 21 diligence, does some investigation before loaning money;
 22 is that right?
 23 A. Yes.
 24 Q. What types of things does Dealer Financial do?
 25 A. We fill out a dealer application, it has basic information

1 about the dealership and the owners, and then our Credit
 2 Committee does it; I'm not privy to that investigation.
 3 Q. All right, so, you help the dealer fill out the dealer
 4 application?
 5 A. No, I give it to him and let him fill it out.
 6 Q. Okay, and then do they give back to you or ---
 7 A. Yes.
 8 Q. --- do they, they give it to you?
 9 A. Yes.
 10 Q. Okay, and then what do you do with that?
 11 A. I send it to our Credit Committee with Dealer Financial.
 12 Q. Is Mr. Haight on that Credit Committee?
 13 A. Yes.
 14 Q. All right, so, does it go to Mr. Haight when you send each
 15 dealer application up?
 16 A. Yes.
 17 Q. All right, and I understand in 2016 that Penland
 18 Automotive was given some amount of credit for a floorplan
 19 lending relationship with Dealer Financial; is that right?
 20 A. Yes.
 21 Q. Okay, were you privy to the documents and the Terms and
 22 Conditions of the 2016 Agreement?
 23 A. Yes.
 24 Q. Are those documents and those Terms shared with you to
 25 review?

1 A. Yes.
 2 Q. Do you know why they're shared with you to review?
 3 A. Because we have to present them to the dealer when we're
 4 signing the documents.
 5 Q. What Terms and Conditions would be different than what you
 6 had already presented to them in your first or couple of
 7 marketing calls or conferences?
 8 A. Unless they change the money factor, that's the only thing
 9 I know would've changed.
 10 Q. Okay, so, why is it important for you to review it and
 11 then review it with the dealer if they already know what
 12 they're getting into?
 13 A. Because it's a legal contract, it's a property, it's a
 14 secured document like a finance contract, it's my
 15 responsibility to go over so they'll understand the terms
 16 that they're going, that they're signing for, and I
 17 specifically go over that with them, all my dealers.
 18 Q. Okay, so, each time you have one of those contracts or
 19 agreements executed by a dealer, you go over it with them?
 20 A. Yes.
 21 Q. And present it to them for their signature?
 22 A. Yes.
 23 Q. Okay, and did you do that in 2016?
 24 A. Yes.
 25 Q. Okay, who was there?

1 A. Mr. Penland; he had to sign for it.
 2 Q. Why did Mr. Penland have to sign for it?
 3 A. Because he's the dealer, he is the dealer principal, and
 4 the relationship is with the dealer. He was the dealer,
 5 the relationship was with him.
 6 Q. All right, so, did you negotiate with Tim Yarger first
 7 about the need for the dealer floorplan lending and then
 8 those terms were presented to Mr. Penland for his final
 9 approval and signature?
 10 A. I can't recall whether Bill was with us or not.
 11 Q. During the initial ---
 12 A. Right.
 13 Q. --- meetings? Okay, is it unusual for a dealer
 14 representative to talk to you about floorplan lending and
 15 negotiate the terms and talk to you and then the actual
 16 dealer or owner comes to go over the documents, the terms
 17 and ultimately sign it?
 18 A. Could you ask that one more time, I'm unclear of what you
 19 want.
 20 Q. Sure. Do you deal with employees or representatives of
 21 dealerships before you meet with the dealer and owner for
 22 them to sign the documents?
 23 A. Yes.
 24 Q. So, is it unusual for you to negotiate and ask for
 25 interest or need in a floorplan lending to employees of

1 the dealership before ultimately getting the dealer or
2 owner to sign it?
3 A. Say that - - I'm sorry.
4 Q. Sure, sure. Ultimately you have to have the dealer or
5 owner sign the documents; is that right?
6 A. Yes.
7 Q. Is it unusual that you deal with someone other than the
8 owner in your initial discussions, your conference,
9 everything leading up to the final signature?
10 A. No.
11 Q. Not unusual?
12 A. I have done that before but I try, I make sure I talk to
13 the dealer before we get the dealer's approval. He's got
14 to sign the commitment letter to make sure he wants to do
15 business with us.
16 Q. What is a commitment letter?
17 A. It's a letter that's drafted saying that they want to,
18 they would like to secure a floorplan with us.
19 Q. Do you have to get that every time?
20 A. Yes.
21 Q. Is that different than the dealer application?
22 A. Yes.
23 Q. What does that commitment letter say?
24 A. It outlines what our program's gonna be, what they're
25 signing for that we're fixing to do a contract with so

1 they understand the terms and conditions?
2 Q. I'm gonna hand you Exhibit Number 6 from Mr. Haight's
3 deposition. Nope, I'm not. I'm gonna hand you Number 12
4 to Mr. Haight's deposition, and it's actually DFH_722. At
5 the bottom righthand corner, I'm sorry, Mr. Bethea, bottom
6 righthand corner, there is some numbers that start with
7 DFH; do you see that?
8 A. Um-hum.
9 Q. Those are called Bates Numbers, those are put on by the
10 lawyers so that we can identify numerically each document,
11 and so, DFH, I think, is Dealer Financial Holdings ---
12 A. Okay.
13 Q. --- so that came from ---
14 A. Sure.
15 Q. --- Dealer Financial. But the letter that I want you to
16 look at, is that a commitment letter?
17 A. Yes, the package, the whole, all pages of it are.
18 Q. So, that whole package is called a commitment package?
19 A. Right, we call it a commitment letter, but it comes out
20 with, these three pages are given to every dealer before
21 we execute a contract.
22 Q. Okay, and every time?
23 A. Yes.
24 Q. Why?
25 A. Because we want the dealer to understand what he's

1 signing. Before we go through and have lawyers fill out
2 all the documentation, we want to make sure they
3 understand the terms and conditions of the contract before
4 they fill out all the legal documents.
5 Q. Do they have to sign that letter and return it?
6 A. Yes.
7 Q. They have to sign that letter and return it every time?
8 A. Yes.
9 BY MR. IMHOFF (TO MS. BRIDGES):
10 Did you know that she's brought me the exhibits.
11 BY MS. BRIDGES:
12 Yeah, I can see that now.
13 BY MR. IMHOFF:
14 Yeah, so I, I'll try to call them out as we go.
15 BY MS. BRIDGES:
16 Okay.
17 BY THE COURT REPORTER:
18 And I should've brought an index, I'm sorry.
19 BY MR. IMHOFF:
20 No, no, that's fine but I just, I don't have these to give
21 you a copy.
22 BY MS. BRIDGES:
23 Okay.
24 BY MR. IMHOFF:
25 Did - - are they attached ---

1 BY THE COURT REPORTER:
2 They were attached to the E-trans.
3 BY MS. BRIDGES:
4 Okay.
5 MR. IMHOFF CONTINUES:
6 --- the E-trans.
7 BY THE COURT REPORTER:
8 She has it, yeah, marked.
9 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
10 Q. All right, so, when Penland Automotive executed - - well,
11 let me ask you this: Did Penland Automotive, as far as
12 you understand, sign and return a commitment letter in
13 2016?
14 A. I don't recall.
15 Q. Would it be unusual if they did not?
16 A. Yes.
17 Q. All right, and in 2016, were there contracts and
18 agreements executed?
19 A. Yes.
20 Q. And who took those to Penland Automotive?
21 A. I did. I can't recall if I did or Dan did; I really, it -
22 - I don't recall which one of us, I know one of us did. I
23 may have done it or Dan, I don't know whether Dan, Dan may
24 have been there with it, with us, but I can't recall which
25 one of us signed the contract. But there were - - they

Page 37 1 had a document signed. 2 Q. I'm gonna hand you Exhibit Number 2 to Mr. Haight's 3 deposition. Do you recognize that, the 2016, Agreement 4 between Penland Automotive and Dealer Financial Holdings? 5 A. Yes. 6 Q. I'm actually gonna give that back to you. Let's go 7 through the documents; if you would. What is the first 8 document called? 9 A. It's the Loan and Security Agreement. 10 Q. How many pages is that? 11 A. Seventeen. 12 Q. Who signed it? 13 A. Mr. Penland and Mr. Haight. 14 Q. Are there witnesses? 15 A. No. 16 Q. What's the next document? 17 A. It's a Demand Note. 18 Q. Okay, and who signed that? 19 A. Mr. Penland. 20 Q. Okay, what's the next document? 21 A. It's the Unlimited Guaranty. 22 Q. And who signed that? 23 A. Mr. Penland. 24 Q. What does the Unlimited Guaranty cover? 25 A. It says that if the dealership is at default, then Mr.	Page 39 1 Q. And --- 2 A. Well, wait, let me, I may have skipped a page; I'm sorry. 3 The Demand Note is what you want me to look at? 4 Q. Yes, --- 5 A. Okay. 6 Q. --- the next document in the group of documents. 7 A. Right. It's not part of this, there's some amendments, 8 they're attachments to the first page. But this is, the 9 second document is the Demand Note; is that what you want 10 me to --- 11 Q. Yes. 12 A. --- look at? Okay. 13 Q. All right, who signed that? 14 A. Penland, Bill Penland. 15 Q. Okay, how many times did he sign it? 16 A. Once. 17 Q. On behalf of who? 18 A. Penland Automotive, LLC. 19 Q. Okay, do you have an opinion as to whether Billy Penland 20 personally and/or Penland Properties II executed the 21 Demand Note? 22 A. Ask the question again. 23 Q. Sure. Did Billy Penland personally, individually, execute 24 the Demand Note? 25 A. No.
Page 38 1 Penland is guaranteeing that he will cure the default. 2 Q. Personally? 3 A. Personally. 4 Q. Who is the contract, the original agreement, between, is 5 it between Mr. Penland, Penland Automotive and Dealer 6 Financial? 7 A. (No verbal response). 8 Q. Who are the parties? 9 A. Penland Automotive, LLC, Penland Properties II, LLC, 10 Charles W. Penland, Jr. and Dealer Financial Holdings. 11 Q. Okay, go to the last page of that Agreement. 12 A. (Witness complies). 13 Q. How many times did Billy Penland sign that Agreement? 14 A. One, two, three on this first Agreement. 15 Q. Okay, hold on, who did Billy Penland sign on behalf when 16 he signed it three times in 2016? 17 A. He signed it Penland Automotive --- 18 Q. Okay. 19 A. --- Penland Properties. LLC, Penland Properties II, LLC 20 --- 21 Q. Okay. 22 A. --- and Charles W. Penland, Penland as a Guarantor, and as 23 a Grantor. 24 Q. Go to the next document, which you said was the Note? 25 A. Yes.	Page 40 1 Q. Okay, did Penland Properties II execute the Demand Note? 2 A. No. 3 Q. Let's go down to the next document, I think you said it 4 was the Unlimited Guaranty; is that right? 5 A. Yes. 6 Q. Who executed that? 7 A. Mr. Penland. 8 Q. On behalf of? 9 A. Mr. Penland. 10 Q. On behalf of himself individually? 11 A. Yes. 12 Q. Okay, did Penland Automotive execute that Unlimited 13 Guaranty? 14 A. No. 15 Q. Did Penland Properties II execute that? 16 A. No. 17 Q. Where are the terms in these, in this Agreement? 18 A. On this document, where are the terms in this --- 19 Q. Anywhere in there, yep. 20 A. On Exhibit A? 21 Q. Exhibit A to the original Agreement? 22 A. Yes. 23 Q. What is the page number on the bottom of that? 24 A. 1-4-1-6, DFH_1416. 25 Q. So, in 2016, the current limit was \$200,000?

Page 41 1 A. Yes. 2 Q. Floorplan fees, the floorplan factor being .08 per \$100 3 borrowed or .008; is that right? 4 A. Yes. 5 Q. Where is the \$15 Bank fee; is that in there? 6 A. Yes, it's on Page Number DFH_101418. 7 Q. Where is it on that? Where is it, is it an Administrative 8 Fee? 9 A. It's under Scheduled Fees under Administrative Fees. 10 Q. "\$15.00 per floorplan advance, title packet and others as 11 agreed? 12 A. Yes. 13 Q. All right, and under "Curtailment Fees" it says "0," and 14 then "Onboarding Fees" it says --- 15 A. That's right, --- 16 Q. --- "0"? 17 A. --- we do not charge a Curtailment Fee. 18 Q. Just the, just if you go back up, "Principal Reduction 19 Payments"? 20 A. Right. 21 Q. Okay. 22 A. That's the floorplan, what we charge at floorplan. 23 Q. Did Tim Yarger sign that, those documents? 24 A. No. 25 Q. Do you know what Tim Yarger's job title was in 2016?	Page 43 1 Q. Sure. You send it up to the Credit Committee, and I 2 assume they give you yes and no, credit limit --- 3 A. Yes. 4 Q. --- and then these documents are created by whoever. Do 5 you have input into the documents? 6 A. No. 7 Q. They're sent to you fully formed? 8 A. Yes. 9 Q. All right, and then you review them with the dealer or 10 owner? 11 A. Yes. 12 Q. All right, do you know if there were any amendments or 13 changes to the Agreement between 2016 and 2020? 14 A. I don't recall. 15 Q. I want to show you Exhibit 8 to Mr. Haight's deposition. 16 A. Okay, yes. 17 Q. Give me a minute to get there. My computer has never been 18 quite this slow before. Do you see that this is an email 19 from Dan Haight to Karen Willis on January 22nd, 2018? 20 A. Yes. 21 Q. Do you see that you're carbon copied on that email? 22 A. Yes. 23 Q. Do you remember receiving this email? 24 A. I do. 25 Q. Okay, do you remember what prompted that telephone call
Page 42 1 A. No. 2 Q. All right, did you learn - - well, let me ask this: How 3 often would you go by Penland Automotive after that 4 execution of that agreement in 2016? 5 A. I would probably go by there once or twice a week. 6 Q. Okay, once or twice a week, all right, and what would you 7 do while you were there? 8 A. I would go in and see if they had any cars to floor. 9 Billy was always wanting to go to the auction and I wanted 10 to make sure we had enough available credit for him to go 11 to the auction, and ask him, and that was one of the 12 things, and see if there was any, if we had any cars they 13 needed to be floored, they may have gotten in on trade. 14 And I would ask Karen if there's anything she might not 15 understand about our fee structure, the invoices she has 16 gotten, or if there's anything that, if there's any title 17 she may, if paid off, that she hadn't gotten; sometimes 18 that happens. 19 Q. Were there any problems from 2016, 2019 with Penland 20 Automotive paying their loan back or making payments on 21 time? 22 A. I don't recall. 23 Q. Were you involved in the review and revisions of these 24 documents from 2016 at all? 25 A. I don't understand your question.	Page 44 1 and this email? 2 A. No. 3 Q. Do you agree that this changes and modifies the 2016 4 Agreement? 5 A. Yes. 6 Q. Okay, have you ever seen Dealer Financial agree to no 7 principal curtailments levied during a 90-day period? 8 A. I'm sorry, I - - please ask that again. 9 Q. Sure. So, I asked you earlier if Dealer Financial's terms 10 were negotiated or whether they were standard with every 11 dealer, so, my question is, this seems to be a negotiated 12 term, and my question is have you seen terms like this 13 negotiated with other dealerships? 14 A. Yes. 15 Q. Okay, so, are the terms of the agreements between the 16 dealers and Dealer Financial ultimately negotiable? 17 A. Yes. 18 Q. Yeah, you can either keep those or set them up here, but 19 I'm gonna hand you Exhibit Number 9 to Mr. Haight's 20 deposition. Actually, will you go back to Number 8, 21 please? 22 A. (Witness complies). 23 Q. Are you back on Number 8? 24 A. Yes. 25 Q. I want you to go down to one, two, three, the fourth

Page 45 1 paragraph, it starts with "I don't think;" do you see 2 that? 3 A. Yes. 4 Q. Will you read that out loud for me please? 5 A. "I don't think any of these adjustments require us to sign 6 new documents. If you agree, just print out this, sign it 7 and scan it back to me. You have my original email and I 8 will have your response, that should cover us." 9 Q. And if you look down at the bottom, do you see that it's 10 signed? 11 A. Yes. 12 Q. You know whose signature that is? 13 A. I believe it to be Bill Penland's. 14 Q. Okay, Charles Penland? 15 A. Yeah, he goes by Charles, yes. 16 Q. All right, now, let's look at Number 8. 17 A. Number 9? 18 Q. Apologies, yes, 9, thank you, we're on 9. What is this 19 document? 20 A. This is an Amendment to the Loan and Security Agreement. 21 Q. And what was being changed - - or let me stop. Do you 22 know that this happened in 2008[sic]? 23 A. Yes. 24 Q. Were you part of the negotiations and discussion about 25 this document being executed in 2018?	Page 47 1 A. Yes. 2 Q. Will you read that first sentence for me, please? 3 A. "Greetings. Tim and I have agreed that curtailments 4 (going forward) will be 7.5% beginning at the 90 day mark 5 and continuing each month until the vehicle's paid off." 6 Q. Okay, and is that a modification to the original 2016 7 Agreement? 8 A. Yes. 9 Q. Okay, so, instead of 10 percent on curtailments it's now 10 7.5 percent? 11 A. Yes. 12 Q. A reduction in the fees for curtailments; is that right, 13 or the factor? 14 A. Factor, well, the percentage of the fee. 15 Q. That's an amendment and change? 16 A. Yes. 17 Q. All right, and instead of starting at 60 days it starts at 18 90 days; right? 19 A. Yes. 20 Q. All right. 21 A. Can I take a break? 22 Q. Absolutely. 23 A. Thank you. 24 (Off the record at approximately 10:36 a.m.; on the record at 25 approximately 10:44 a.m.)
Page 46 1 A. No. 2 Q. How did you find out that this was happening? 3 A. It was sent to me. 4 Q. After it was created? 5 A. Yes. 6 Q. Were you asked to go have it executed? 7 A. I think so. 8 Q. Okay, do you know who was with you when it was executed? 9 A. No, I don't recall. 10 Q. All right, and how does this amend the Loan and Security 11 Agreement of 2016; if you know? 12 A. What it appears is that we have increased the credit limit 13 from 200,000 to 500,000. 14 Q. Is that the only thing that was changed; if you know? 15 A. I don't, I don't know. 16 Q. All right, I'm gonna hand you an Exhibit, Number 10 to Mr. 17 Haight's deposition. Do you recognize that as an email 18 from Dan Haight to, I guess that's Kim at Dealer 19 Financial, Tim Yarger and Karen Willis; see that? 20 A. Yes. 21 Q. And do you see your name on there copied? 22 A. Yes. 23 Q. Do you believe that you received this email? 24 A. Yes. 25 Q. Subject is, "Penland Curtailments"?	Page 48 1 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 2 Q. Between 2016 and 2019, do you recall anyone at Penland, 3 Billy or Tim, Joey, Karen, anyone else complaining about 4 the charges from Dealer Financial? 5 A. Yes. 6 Q. What did they complain about? 7 A. They said they were too high. 8 Q. Okay, were they specifically complaining about 9 curtailments? 10 A. They were comparing it to other floorplans they were 11 using. 12 Q. So, you recall between 2016 and 2019 that they would say 13 that they had other floorplan lenders who were less 14 expensive than Dealer Financial? 15 A. Yes. 16 Q. Do you know if that's the reason that some of these 17 amendments and concessions were made about the percentage, 18 7.5, and the timing of the curtailments? 19 A. Ask the question again; I'm sorry. 20 Q. Sure. Did you convey that information to Mr. Haight or 21 someone else at Dealer Financial that they were 22 complaining? 23 A. Yes. 24 Q. And that they didn't think that Dealer Financial was 25 competitive with their other floorplan lenders?

Page 49 1 A. Yes. 2 Q. Okay, do you remember the specific complaints or just that 3 that was going on? 4 A. Specifically, we were just too high. 5 Q. And so, who did you have conversations with at Dealer 6 Financial about that? 7 A. Mr. Haight. 8 Q. Is Mr. Haight your main contact? 9 A. Yes. 10 Q. Who else do you talk to at Dealer Financial? 11 A. Steve Lanzl. 12 Q. Okay, what do you talk to Mr. Lanzl about? 13 A. We talk about usually operational questions. 14 Q. What type of operational questions? 15 A. He was an IT guy, we talk about how our IT system works, 16 we would talk about doing follow-ups, we would talk about 17 metrics, he keeps up with metrics for calls, sales calls 18 and how that's, what we can do to improve our metrics. 19 Q. Tell me about metrics, what does that mean? 20 A. How many sales calls we make versus our results in the 21 field --- 22 Q. Okay. 23 A. --- and what we were doing. He does a lot of training for 24 us, he keeps us updated with industry information like 25 what's the used car prices are going, what the sales are,	Page 51 1 Haight's deposition. Were you aware that Penland wanted 2 to close their account with Dealer Financial in February 3 of 2019? 4 A. Yes. 5 Q. What involvement do you have in the closing of a 6 dealership's account with Dealer Financial; --- 7 BY MS. BRIDGES: 8 Object to form. 9 DIRECT EXAMINATION CONTINUED BY MR. IMHOFF: 10 Q. --- if any. 11 A. I inform the dealer that if he closes the account that we 12 need to make sure that all their, all of their invoices 13 are paid in full, we don't have any titles outstanding, 14 don't have any issues that could leave a liability and 15 that, you know, just to make sure that we have everything 16 we need. In other words, if, you know, they could've had 17 a title outstanding and we didn't have it; we need to make 18 sure we have that. If they have had an invoice that's not 19 paid or a car that is sold that they haven't paid us for. 20 Q. Okay. All right, do you, did you know that they were 21 gonna close this account with Dealer Financial in 2019 and 22 before? 23 BY MS. BRIDGES: 24 Object to form. 25 WITNESS ANSWERS:
Page 50 1 what industry, he reads a lot of industry books, industry 2 websites and he gives us information about industry so we 3 can, being in the field, we understand what's going on. 4 Q. Okay, and what do you typically talk to Dan Haight about? 5 And what I mean is separate from what you talk to Mr. 6 Lanzl about. 7 A. Right, right. Dan and I deal more with credit, with 8 dealer performance and how everybody's, how everybody 9 seems to be doing in the field. 10 Q. Okay, and in this case with Penland that they were unhappy 11 with the fees and the costs with Dealer Financial; right? 12 A. Yes. 13 Q. So, do you know if your conversations with Mr. Haight 14 about Penland Automotive being unhappy with the cost of 15 the floorplan lending resulted in some of these amendments 16 and changes to change the fees, the costs and interest 17 rates and timing? 18 A. Yes. 19 Q. All right, and are you, were you involved in those 20 negotiations or did it just go from Dan to Penland or Tim? 21 A. I was not involved in the negotiations. 22 Q. They would just copy you so that you knew that there had 23 been some revision or change? 24 A. Yes. 25 Q. All right, I'm gonna hand you Exhibit Number 3 from Mr.	Page 52 1 A. Yes. 2 Q. They told you they were going to? 3 A. Yes. 4 Q. Okay, did they tell you why? 5 A. I can't recall. 6 Q. Okay, do you believe it was anything different than the 7 fact that it was just more expensive than their other 8 floorplan lenders? 9 A. No. 10 BY MS. BRIDGES: 11 Object to form. 12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 13 Q. Do you believe it was because the other floorplan lenders 14 were cheaper in their mind? 15 A. I believe that, yes. 16 Q. Okay. All right, you are copied on this February 20th, 17 2019 email; is that right? 18 A. Yes. 19 Q. All right, were you directed to try to get the business 20 back in February of 2019 or see if you could match or meet 21 other floorplan lenders? 22 A. I was not directed, I asked to see if we could, what we 23 could do to save it. 24 Q. Who did you ask? 25 A. Me, I did that, I took that on myself to see if we could

Page 53 1 save it. 2 Q. Did you, like did you ask Tim or Billy or Dan or anyone 3 else? 4 A. I talked to Billy and Tim to see if we could save it. 5 Q. Okay, and what did they say? 6 A. They said that, I don't recall, but evidently not. 7 Q. Did you talk to Dan? 8 A. Yes. 9 Q. See if you could meet whatever the demands were from Tim 10 and Billy? 11 A. Yes. 12 Q. But you don't remember what Tim and Billy were saying? 13 A. They were just saying we were too high. 14 Q. They asked for "requests to close and deactivate our 15 floorplan;" what does that mean? 16 A. That means that we make sure all the accounts are paid 17 for, all the outstanding invoices are paid, any title that 18 may be outstanding are handled and then we close the 19 account, we refund their reserve amount if there's any 20 reserve balance. 21 Q. Do you know if that was done? 22 A. My understand - - I believe it was, yes. 23 Q. Okay, their reserve was returned to them? 24 A. Yes. 25 Q. Okay, and was the account still open?	Page 55 1 Q. Does that end their relationship? 2 A. Not always. 3 Q. Okay, what does that mean, "not always"? 4 A. I'll go back and try to rejuvenate the account again at a 5 later date. 6 Q. Okay, but before you rejuvenate it, is there a 7 relationship, a contract, an agreement, an account between 8 the parties? 9 A. I don't know. 10 Q. Did you understand on February 20th, 2019 that Penland 11 Automotive wanted to close and terminate their 12 relationship with Dealer Financial? 13 BY MS. BRIDGES: 14 Object to form. 15 WITNESS ANSWERS: 16 A. I'm sorry? 17 Q. Did you understand on February 20th, 2019 that Penland 18 Automotive wanted to close and end their lending 19 relationship with Dealer Financial Holdings? 20 BY MS. BRIDGES: 21 Object to form. 22 WITNESS ANSWERS: 23 A. Yes. 24 Q. And you understood that the reserves were returned? 25 A. Yes.
Page 54 1 A. I beg your pardon? 2 Q. Was that account still open? 3 A. The reserve account? 4 Q. No, the floorplan account, after February 20th, 2019. 5 A. I didn't know if it was closed or not, I don't handle 6 that. 7 Q. Could they have used Dealer Financial money to buy and 8 floorplan cars after February 2019? 9 A. I don't know. 10 Q. Could they have had, did they have an agreement or an 11 account or a credit limit with Dealer Financial after 12 February of 2019 and before June, July of 2020? 13 A. I'm not privy on how that's done. 14 Q. Do you know if the contract and the requirements in the 15 contract stayed in force between February 2019 and June of 16 2020? 17 A. I didn't hear what you said. 18 Q. Sure. Do you know if the contract, the Agreement and the 19 terms of the contract were still in force between February 20 2019 and June 2020? 21 A. No, I don't know. 22 Q. You don't know? Have you ever had a dealer in all your 23 jobs in your life close and deactivate their account with 24 a company that you worked for? 25 A. Yes.	Page 56 1 Q. All right, and so, Billy Penland called you from an 2 auction and said I need \$35,000 to buy this car, could you 3 approve that? 4 A. I could not approve that. 5 Q. Why not? 6 A. Dan would have to approve that. 7 Q. Okay. I'm going to show you Exhibit Number 5 from Mr. 8 Haight's deposition. Do you know what that document is? 9 A. No, sir. 10 Q. What dates do you see on that document? Well, let me ask 11 it this way: At the top there's a stamp with a barcode; 12 do you see that? 13 A. Yes. 14 Q. What's the date on that stamp with the barcode? 15 A. March 17, 2019. 16 Q. All right, this is a "Release of Mortgage, Security 17 Agreement, Assignment of Leases and Rents, and Fixture 18 Filing." Do you know what that means? 19 A. No, sir. 20 Q. Who is it signed by? 21 A. Dan Haight. 22 Q. Do you recognize the witness names? 23 A. No, sir. 24 Q. You don't have any idea what this is? 25 A. I can speculate. I don't, I've never seen it, so, I don't

Page 57 1 know, I'm not a lawyer, I don't know what it is. 2 Q. All right, what do you think it is? 3 BY MS. BRIDGES: 4 Object to form. 5 WITNESS ANSWERS: 6 A. It says we, we will, that somebody's getting, they're 7 releasing the property that we had on the original Dealer 8 Agreement. 9 Q. With --- 10 A. Dealer and - - yes. 11 Q. What date is it is signed by Mr. Haight? 12 A. The 20th of February 2019. 13 Q. Do you know why that was executed on February 20th? 14 A. No. 15 Q. All right, after February 20th, 2019, did you continue to 16 stop by and visit Penland Automotive? 17 A. Yes. 18 Q. All right, how often? 19 A. Maybe once every couple weeks. 20 Q. Were you still attempting to get business back? 21 A. I was testing the waters to see if there was any 22 opportunity there. 23 Q. All right. 24 A. You know, just see if there was any interest. 25 Q. All right and let me just ask you this - - I'm gonna hand	Page 59 1 Q. Did he ask you why it was still filed after the reserves 2 were returned --- 3 A. I don't recall. 4 Q. --- in 2019? 5 A. I don't recall. 6 Q. Is it unusual for a UCC-1 filing to stay filed after a 7 dealer, a customer cancels their relationship with Dealer 8 Financial? 9 A. No. 10 Q. It's not unusual for it stay filed? 11 A. No. 12 Q. Okay, do you know what the UCC filing is or what it does 13 legally? 14 A. It record - - I, I don't know. I believe it records a 15 lien against the person that's filed it. 16 Q. After February 20th, 2019 and before June of 2020, did 17 Dealer Financial have a right to lien any of Penland or 18 Billy Penland's property? 19 A. I don't know. 20 Q. Can you think of any basis that Dealer Financial would 21 still retain a lien on Penland Automotive between February 22 20th and June of 2020? 23 A. Can you ask that question again? 24 Q. Sure, can you think of any reason why Dealer Financial 25 would continue to have a lien on Penland Automotive
Page 58 1 you Exhibit Number 13. Have you ever seen this email 2 before? 3 A. No. 4 Q. Did you know that it was sent? 5 A. No. 6 Q. It looks like Karen Willis on July 7, 2020 emailed Kim 7 Rusch. 8 A. Rusch, yes. 9 Q. Rusch, "just asked me to get that cancellation of the UCC 10 filing. Billy needs to produce it on Thursday for 11 something. Thanks." Did anyone ask you for a 12 cancellation of the UCC filing? 13 A. Yes. 14 Q. When? 15 A. I don't recall when it was. 16 Q. Was it before July 7th, 2020? 17 A. I don't, I can't remember. 18 Q. Who asked you for it? 19 A. Billy did. 20 Q. Billy Penland? 21 A. (Nods in the affirmative). 22 Q. Is that a yes? 23 A. Yes; I'm sorry. 24 Q. Okay. Did Billy Penland tell you why he needed it? 25 A. I don't recall.	Page 60 1 between February 20th, 2019 and June of 2020? 2 A. I don't know. 3 Q. Is there any basis for it? 4 A. I don't know. 5 BY MS. BRIDGES: 6 Object to form. 7 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 8 Q. Do you know what the law is, regarding --- 9 A. No. 10 Q. --- removing those? 11 A. No. 12 Q. When you say it's not unusual, why isn't it unusual? 13 A. We've run across cases at other dealers that they'll have 14 a UCC, a floorplan come that we'll have a UCC filing on 15 that dealer and that dealer no longer does business with 16 them and it has not been removed, it's still active. 17 Q. Do you ask for it to be removed? 18 A. Yes. 19 Q. So, when you're negotiating with the dealer and enter into 20 a relationship with Dealer Financial, you ask the 21 dealership to contact their last floorplan lender or 22 lenders to remove a UCC-1 lien? 23 A. I have. 24 Q. Why do you do that? 25 A. Because that gets us in a better position with the PNSI

Page 61 1 notification. 2 Q. Did Billy Penland tell you that the UCC-1 lien was 3 creating problems increasing his credit line with his 4 other floorplan lenders? 5 A. I don't recall that. 6 Q. Would it be unusual for a dealership, as you just said a 7 moment ago, to say, "I need this UCC-1 lien removed so 8 that I can have a better relationship or a new 9 relationship with another lender"? 10 A. Could you ask that one more time? I'm sorry. 11 Q. I'll strike it. All right, did Billy Penland ask you to 12 get the UCC-1 lien removed? 13 A. Yes. 14 Q. Did he tell you it was because his other floorplan lenders 15 were asking for it to be removed? 16 A. I don't recall. 17 Q. Do you have any idea why he was asking that the UCC-1 lien 18 be removed? 19 A. No. 20 Q. Is there any policy or procedure that you're aware of at 21 Dealer Financial that when an account is closed the UCC-1 22 lien is removed? 23 A. Ask that again, please. 24 Q. Is there any policy or procedure that when an account is 25 closed the UCC-1 lien is removed?	Page 63 1 A. I think it was in, I believe it was in 2020 or 20, or 2 2021; I believe. 3 Q. Well, they actually applied for another floorplan 4 agreement in June or July of 2020. 5 A. Okay, it could've been that, earlier than that; I don't 6 know. 7 Q. I'll show you these documents. 8 A. That's fine, it could've been, it was either '20 or '21; I 9 don't remember which. 10 Q. All right. The UCC-1 lien okay, did Billy Penland ask you 11 to remove the UCC-1 lien before Tim contacted you about 12 renewing the relationship with Dealer Financial? 13 A. I don't recall the timeline. 14 Q. If Penland Automotive wanted to renew the relationship 15 with Dealer Financial, would they have any reason to be 16 requesting the removal of the UCC-1 lien? 17 BY MS. BRIDGES: 18 Object to form. 19 WITNESS ANSWERS: 20 A. Say - - I'm sorry, I'm --- 21 Q. Sure. 22 A. Thank you. 23 Q. If Penland Automotive wanted to do business with Dealer 24 Financial, --- 25 A. Okay.
Page 62 1 A. I don't know one. 2 Q. You don't know one? Is that part of your job? 3 A. No. 4 Q. Did you communicate the request to remove the UCC-1 lien 5 to Mr. Haight? 6 A. Yes. 7 Q. When? 8 A. After Billy asked me to. 9 Q. Okay, how? 10 A. Verbally. 11 Q. In person? 12 A. On the phone. 13 Q. On the phone. Okay, what did Mr. Haight tell you? 14 A. I don't recall. 15 Q. Did he ask you to go back and try to get the business from 16 Dealer, from Penland? 17 A. I don't recall. 18 Q. Did you start having discussions with Penland about giving 19 them another line of credit? 20 A. I did not initiate that. 21 Q. Who did? 22 A. Penland initiated that. 23 Q. Who at Penland? 24 A. Tim. 25 Q. When did that happen?	Page 64 1 Q. --- would they have any reason to be asking Dealer 2 Financial to remove the UCC-1 lien? 3 BY MS. BRIDGES: 4 Object to form. 5 WITNESS ANSWERS: 6 A. I don't know, I don't think so. 7 Q. Right, why would they want the UCC-1 lien removed if they 8 were going to do business with Dealer Financial; right? 9 BY MS. BRIDGES: 10 Object to form. 11 WITNESS ANSWERS: 12 A. Say that again. 13 Q. Well, it's just common sense. If they're asking for the 14 UCC-1 lien to be removed, then they aren't intending to 15 business with Dealer Financial; right? 16 BY MS. BRIDGES: 17 Object to form. 18 WITNESS ANSWERS: 19 A. I don't, I don't know what they would do. 20 Q. All right, what types of communications do you use with 21 Mr. Haight? 22 A. Our normal communication is via phone. 23 Q. Okay, do you use text with him? 24 A. We have used text, we have used emails over the course of 25 the period.

JOHN OSCAR BETHEA, JR.

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1 Q. What email account do you use?
2 A. Mine is Jbethea@dealerfinancial.com
3 Q. Has it been that since 2016?
4 A. Yes.
5 Q. All right, and what cellphone number do you use?
6 A. 864-982-0111.
7 Q. Okay, and have you used that since you started in 2016?
8 A. Yes.
9 Q. All right, other than telephone calls, emails from Jbethea
10 and texts from that phone number, that mobile phone
11 number, do you communicate with Mr. Haight any other way?
12 A. In person, occasionally we would meet.
13 Q. Anything else?
14 A. No.
15 Q. Have you gone back and looked at your emails to Mr. Haight
16 about Billy Penland, Tim Yarger, Penland Automotive, have
17 you gone back and looked at your emails?
18 A. No.
19 Q. Why not?
20 A. I looked at my - - because every time I, usually I, I just
21 haven't; I've looked at the text messages.
22 Q. You've gone back and looked at the text messages? Have
23 you printed those out for us?
24 A. They were printed out.
25 Q. Why haven't you gone back and looked at your email in

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1 preparation for this deposition?
2 A. Because I normally would, did everything via text.
3 Q. What's "everything"?
4 A. I normally communicate, my normal is to communicate with
5 texts.
6 Q. With who?
7 A. Dan.
8 Q. Well, we've already seen emails between you and Dan ---
9 A. Right.
10 Q. --- at least that you're copied on; right?
11 A. Right.
12 Q. Okay, but you haven't gone and looked to see if you have
13 emails with, between you and Dan?
14 A. No.
15 Q. Okay, all right, and you've looked through all the texts?
16 A. Yes.
17 Q. Do you typically delete your texts?
18 A. No.
19 Q. Never delete your texts?
20 A. Normally I don't.
21 Q. So, did you find text going all the way back to 2019?
22 A. I don't recall how far along they went back, there's a
23 whole lot of them; I don't know.
24 Q. Have you talked to Mr. Haight about your emails and texts?
25 A. Yes.

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1 Q. Did he ask you to get your emails?
2 A. He asked me not to delete any.
3 Q. Okay, did he ask you to go look back and see what
4 communications you had with Mr. Haight ---
5 A. I don't recall.
6 Q. You don't know if he told you that, asked you that or not
7 to go back and - - well, let me ask you this: How did you
8 communicate with Tim Yarger?
9 A. Normally by phone. We text some, but most of the time it
10 was by phone.
11 Q. Email?
12 A. An occasional email.
13 Q. Do you know what his email address is?
14 A. Not offhand. I have his name in my contact and I would
15 call it up there.
16 Q. Do you know if it's a Penland Automotive email?
17 A. I don't know, I don't recall.
18 Q. Did you go back and look at your texts with Mr. Yarger?
19 A. Yes.
20 Q. Did you pull them and print them out?
21 A. I didn't print them out.
22 Q. What did you do with them?
23 A. I looked at them.
24 Q. Okay, did you provide them to Dealer Financial's lawyers?
25 A. Yes, they were provided, my understanding. I didn't

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1 provide them, but I understood they were provided.
2 Q. How? If you didn't do it, how did it get done?
3 A. I did them, saved them, and I did not print them, I saved
4 them in a file and it was done electronically.
5 Q. Okay, all right, who'd you send them to, the lawyer or Mr.
6 Haight?
7 A. Mr. Haight. Actually, I put them in a Dropbox so he
8 could, Mr. Haight could have access to them.
9 Q. Okay. All right, so, I want to go back to the summer of
10 2020; okay?
11 A. Okay. It was a tough summer.
12 Q. Why is that?
13 A. Because of Covid.
14 Q. How was the industry doing?
15 A. It was reeling.
16 Q. When you say "reeling," what does that mean?
17 A. It means a lot of uncertainty in the industry, prices
18 started going up on cars, sales started going down.
19 Q. Were dealerships hurting?
20 A. Some were.
21 Q. I'm gonna ask again, when did Tim Yarger contact you about
22 reopening the floorplan with Dealer Financial?
23 A. It was between 2020, in summer of '20 and February of '21;
24 somewhere along in there. I don't have ---
25 Q. Well, I showed you an Exhibit where Dealer Financial,

17 (Pages 65 to 68)

1 Karen specifically, was asking for the UCC-1 lien to be
2 lifted; you see that?
3 A. Yeah.
4 Q. What's the date of that?
5 A. July 2020.
6 Q. July 2020. Do you believe Mr. Yarger contacted you before
7 July 7th, 2020, about reopening the floorplan lending?
8 A. No, I believe it was later than that.
9 Q. After July 7th?
10 A. Yes.
11 Q. Okay, all right, when you had, after, did you have
12 discussions with Dan Haight to remove the UCC-1 lien
13 before July 7th, 2020?
14 A. I can't recall.
15 Q. Do you know if Mr. Haight ever removed the UCC-1 lien on
16 Dealer Financial, I'm sorry, on Penland Automotive?
17 A. I was not privy to that information.
18 Q. Do you know if it's ever been done through today?
19 A. I'm not privy to that information, I don't know.
20 Q. All right, I want you to look at 14. So, it sure looks
21 like we're missing a page, but the bottom, it's Kim Rusch
22 to Karen Willis, July 6, 2020. Says, "So, looks like
23 we're almost done with the underwriting for Penland. If
24 everything goes through, we'd just use that same UCC. If
25 not, we'll make sure it gets canceled. Does that work?"

1 You ever seen that email before?
2 A. No, sir.
3 Q. All right, let's get that, let's get the timing.
4 A. Sorry.
5 Q. No, that's all right. Let's look back at ---
6 BY MS. BRIDGES:
7 What number Jason?
8 MR. IMHOFF CONTINUES:
9 --- 12.
10 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
11 Q. I'm not sure what happened to it. Do you have 12 in front
12 of you?
13 A. Nope. No, I don't think that's 12. I got 3, 13, 5 and
14 14.
15 Q. All right, I've handed you Exhibit Number 12 from Mr.
16 Haight's deposition. Tell me when you're ready.
17 A. Okay.
18 Q. Okay, I want you to look at the date first of all.
19 A. Okay.
20 Q. July 6th, 2020; you see that?
21 A. Yes.
22 Q. Does that help you remember ---
23 A. Yeah, okay, yeah. I couldn't remember the specific dates,
24 thank you.
25 Q. Right, and it is from Dan Haight to you and Mr. Lanzl is

1 copied, carbon copied; you see that?
2 A. Yes.
3 Q. And it says, "Commitment Packets;" see that?
4 A. Yes.
5 Q. "Penland and" and then it's blacked out.
6 A. Yes.
7 Q. Is that another dealership?
8 A. I don't, probably, I don't know.
9 Q. You don't remember there being two in July of 2020?
10 A. No, I, could've been another one, I don't know.
11 Q. Right. Well, it was sent to you, so, it must've been one
12 of the, somebody you were working with?
13 A. Somebody I was working with but I don't remember two years
14 ago who I'd been working with.
15 Q. All right, it says: "John, let's make sure to discuss the
16 intricacies of both letters. Dan;" see that?
17 A. Yes.
18 Q. Did you receive this email?
19 A. Yes.
20 Q. Did you receive the attachments to the email?
21 A. Yes.
22 Q. Now, the first couple of pages are blacked out and I've
23 been told that's because it's another dealership?
24 A. Could be.
25 Q. But you don't know?

1 A. I don't; it probably was.
2 Q. So, did you read the July 6th, 2020 letter to Charles
3 Penland, Jr.?
4 A. Yes.
5 Q. Okay, and did you understand that there was gonna be a
6 \$750,000 credit?
7 A. Yes.
8 Q. Did you also understand that Dealer, I'm sorry, that
9 Penland Automotive was going to have to cancel their other
10 floorplan lenders and go with Dealer Financial?
11 A. My understanding that Bill was going to cancel that before
12 we did this, he had agreed to cancel them.
13 Q. Who did you hear that from?
14 A. Bill.
15 Q. From Billy Penland?
16 A. Um-hum.
17 Q. Is that a yes?
18 A. Yes.
19 Q. Billy Penland said, "If you give me a \$750,000 credit
20 limit, I'll cancel my two other floorplans?"
21 A. Yes.
22 Q. Okay, was that part of the terms of the agreement?
23 A. I don't know. It's not in here, I don't know.
24 Q. Well, read the paragraph, please.
25 A. Yes, okay, yes.

1 Q. What's it say? Read that, please.
2 A. "We understand Dealer Financial will replace all current
3 floorplans," you'll be the, and we would, "and be your
4 sole provider." Yes.
5 Q. All right, so, the agreement was gonna be \$750,000 in
6 credit ---
7 A. Right.
8 Q. --- if Dealer, I'm sorry, if Penland Automotive only used
9 Dealer Financial for their floorplans?
10 A. Yes.
11 Q. All right, and that was discussed with Mr. Penland?
12 A. Yes.
13 Q. All right, then in the next section, "Please review those
14 terms and conditions. Given your approval, I can have the
15 appropriate documents prepared and available for signature
16 by the week of July 13th;" does it say that?
17 A. Yes.
18 Q. "You would be able to use your floorplan immediately upon
19 execution of the documents;" does it say that?
20 A. Yes.
21 Q. All right, do you know if this letter was ever sent? I'm
22 sorry, do you know if this letter was ever sent to Penland
23 Automotive?
24 A. I don't know.
25 Q. All right, let's look at the Proposed Terms and

1 A. Yes.
2 Q. Okay, and how is that calculated?
3 A. You take the 78, 0-7-8 cents per day per 100 and multiple
4 it by \$6,000, and that's where you would get \$140.
5 Q. All right, and then there's "Floorplan Guidelines," it
6 says, "See attached Guidelines," and "Wire Transfer Fee:
7 \$15 per transfer, Total Delivery, \$15 per delivery of the
8 UPS;" are those all standard?
9 A. Yes.
10 Q. Okay, it says, "Collateral: Dealer Financial will obtain
11 a first secured interest in all dealership/corporate
12 assets and personal guaranty of owners;" did I read that
13 right?
14 A. Yes.
15 Q. So, it's asking for another personal guaranty?
16 A. I'm sorry, I didn't hear what you said.
17 Q. Part of the Terms and Conditions were another personal
18 guaranty ---
19 A. Yes.
20 Q. --- from Billy Penland?
21 A. Yes.
22 Q. Okay, "Working Capital: \$200,000 in working capital/owned
23 vehicles;" is that what it says?
24 A. Yes.
25 Q. What does that mean?

1 Conditions. Did you review these?
2 A. I have reviewed those.
3 Q. Did you review them on July 6th or July 7th, 2020?
4 A. I feel confident I did.
5 Q. All right, so, says, "\$750,000 floorplan and Dealer
6 Financial's floorplan will be the only floorplan;" do you
7 see that?
8 A. Yes.
9 Q. Okay, so, that's part of the Terms and Conditions; right?
10 A. Yes.
11 Q. Okay, rate fees 78 cents per \$100 per day; is that
12 typical?
13 A. No.
14 Q. Okay, how is it different?
15 A. It's lower than our standard rate.
16 Q. Okay, which is what?
17 A. .85, uh, .085 per 100.
18 Q. So, it'd be 85 cents per 100 per day?
19 A. Right.
20 Q. Okay, and then it says, "A \$6,000 car would incur \$140.40
21 in floorplan fees every 30 days;" is that right?
22 A. I don't have my phone, I could calculate it.
23 Q. No, no, no, I want you to read it, ---
24 A. Yes.
25 Q. --- does it say that?

1 A. That means they have assets of \$200,000 in working capital
2 either in cash or cars that they may own outright with a
3 title, so, we could secure it.
4 Q. It says "Covenants," I'm skipping Terms, going down to
5 "Covenants: In addition to other agreements, dealer will
6 maintain at least 100,000 vehicle equity or 10% in vehicle
7 equity, considering draws against all floorplan
8 commitments, whichever is higher;" what does that mean?
9 A. They will have available \$100,000 in cars that they have
10 unencumbered. In other words, they own some of their
11 vehicles, all their vehicles are not floorplanned.
12 Q. And the reserve's \$100 per car?
13 A. Yes.
14 Q. Have you ever read the Disclaimer down here?
15 A. I read it a long time ago.
16 Q. What's it say, in general?
17 BY MS. BRIDGES:
18 Object to form.
19 WITNESS ANSWERS:
20 A. I really haven't read it.
21 Q. Will you read it out loud for us?
22 A. "This summary is intended as an expression of mutual
23 intent of the parties as to the specific aspects of the
24 proposed floorplans for the acquisition of used cars for
25 retail sales on dealer's lot. The parties, however, agree

Page 77 1 that there are material terms as to which agreement has 2 not been reached. The parties acknowledge and agree that 3 this summary is not to be construed as a definitive 4 contract and is subject to execution and delivery of 5 definitive agreements and related documents satisfactory 6 to Dealer Financial Holdings, LLC. In the event the 7 required formal documents are not executed by all parties 8 within 30 days, then this summary shall have no further 9 force or effect on neither party." 10 Q. All right, in your opinion, what does that mean? 11 BY MS. BRIDGES: 12 Object to form. 13 WITNESS ANSWERS: 14 A. That this is not the contract. 15 Q. All right, so, the "Floorplan Guidelines, Curtailments:" 16 vehicles mature at 120 days? 17 A. Yes. 18 Q. What does that mean? 19 A. That means the car should be paid off at 120 days. 20 Q. Okay. "Typically, a principle payment of 10% of the 21 original amount financed will be due after 60 days from 22 the date financed and each additional 30 day period after 23 that." That is what we talked about originally, those are 24 the standard terms; right? 25 A. Yes.	Page 79 1 A. I don't recall. 2 Q. Will you agree that these terms are worse for Penland 3 Automotive than what they had in 2018 and 2019 when they 4 left Dealer Financial? 5 BY MS. BRIDGES: 6 Object to form. 7 WITNESS ANSWERS: 8 A. They were not the same terms. 9 Q. This would cost Penland Automotive more; right? 10 BY MS. BRIDGES: 11 Object to form. 12 WITNESS ANSWERS: 13 A. Ask it again, please. 14 Q. This July 2020 document and Proposed Terms and Conditions 15 had a higher, let me make sure that I have the term right, 16 per day percentage than Penland Automotive had in 2018 and 17 2019; right? 18 A. I don't think so. 19 Q. Well, wasn't it .75 in '18 and '19? 20 A. I knew, I don't know exactly. I thought one was .78 and 21 .75; I don't know exactly what the point was. If it was, 22 yes. I couldn't remember exactly the factor we were at 23 because we had negotiated a different factor. 24 Q. Did you have discussions with Dan Haight or anybody else 25 about these, this email, letter and proposed Terms and
Page 78 1 Q. Those are different than the terms that we looked at in 2 the email --- 3 A. Right. 4 Q. --- that amended the 2016 Agreement; right? 5 BY MS. BRIDGES: 6 Object to form. 7 WITNESS ANSWERS: 8 A. Yes. 9 Q. All right. Did you have discussions with Penland 10 Automotive and Dan Haight about what the terms of the 2020 11 Agreement we're going to be? 12 A. No. 13 Q. So, when you talked to Tim Yarger and he was saying, "We 14 might want to come back to your business," there was no 15 discussion about what the terms were gonna be? 16 A. No; Dan handled all the terms. 17 Q. Did either Billy or Tim or anyone else at Penland ask for 18 any specific terms, like 7.5 factor or percentage, no 19 curtailments or no curtailments for a certain day, or a 20 return to what the agreement was in 2018? 21 A. I don't recall. 22 Q. You don't recall anybody asking you that? 23 A. Ask the question again. 24 Q. Sure. Did anyone at Penland Automotive ask for certain 25 terms, ask?	Page 80 1 Conditions? 2 A. No. 3 Q. Was it ever given to Penland Automotive? 4 A. I don't recall. 5 Q. Did you give it to Penland Automotive? 6 A. I don't recall; I don't think so. 7 Q. Why not? 8 A. I never was part of that particular discussion for this 9 thing, this was all done with Billy and Tim and Dan. I 10 didn't - - I wasn't involved in any of those discussions. 11 Q. Okay, all right. Well, did you have any comments on this 12 letter or these Proposed Terms and Conditions? 13 A. No. 14 Q. No comments at all? 15 A. (Nods in the negative). 16 Q. Is that a no? 17 A. No. 18 Q. Nothing at all? 19 A. No, this was all done, I had nothing to do, I was not 20 involved in any of the negotiation on this particular 21 contract. 22 Q. Okay, well, I'm a little confused because it was sent to 23 you to review. Did you review it? 24 A. Yes. 25 Q. Okay, if you're not involved in any of the negotiations in

1 the contract, why would it be sent to you to review; if
2 you know?
3 A. I guess because I was a rep and he wanted me to see what
4 they changed it to or what the changes were or what the
5 Conditions were of the new Dealer Agreement.
6 Q. You don't know if this was ever sent to Penland
7 Automotive?
8 A. I do not know.
9 Q. Did you ever tell Penland Automotive, Billy or Tim, what
10 the Terms were gonna be?
11 A. No.
12 Q. That was all done by Dan?
13 A. Yes.
14 Q. Okay, did you ever get the documents, the Agreement and
15 the Personal Guaranty and the Note, did you ever get those
16 three?
17 BY MS. BRIDGES:
18 Object to form.
19 WITNESS ANSWERS:
20 A. No.
21 Q. Did you ever get any new documents?
22 A. No.
23 Q. Did you ever take anything over to Penland Automotive that
24 had been executed by Mr. Penland?
25 A. No.

1 Q. Do you know what Tim Yarger's role at Penland Automotive
2 was in July of 2020?
3 A. No.
4 Q. Did he ever tell you?
5 A. Yes, he said he was the general manager but I don't know
6 that as fact; that's what he told me.
7 Q. In July of 2020 ---
8 A. Yeah.
9 Q. --- he told you that?
10 A. Yes.
11 Q. Did he ever tell you that he was an owner?
12 A. No.
13 Q. Did he ever represent to you that he was an owner?
14 A. No.
15 Q. All right, do you know if any documents were ever executed
16 between Dealer Financial and Penland Automotive in July
17 2020 or after?
18 A. No.
19 Q. Did you continue to go to Penland Automotive to visit with
20 Tim and Billy?
21 A. Yes.
22 Q. Did they ever ask you where their documents were?
23 A. No.
24 Q. So, from July to October of 2020, neither Tim nor Billy
25 ever asked you where their contract or where their

1 documents were?
2 A. I don't recall they doing that.
3 Q. You don't recall or they didn't?
4 A. Do not recall.
5 Q. You don't recall?
6 A. No.
7 Q. That's a pretty big part of your job; right?
8 A. Right.
9 Q. I mean, if you have a customer saying, "We don't have a
10 contract yet or agreement with or documents from our
11 lender, where are they," would you remember that?
12 A. Yes.
13 BY MS. BRIDGES:
14 Object to form.
15 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
16 Q. Okay, and you don't remember that happening?
17 A. No.
18 Q. Do you know if documents were ever executed?
19 A. No.
20 Q. Did anybody ever ask you about documents or where they
21 were or were they executed?
22 A. No.
23 Q. Have you ever had a relationship with any dealership or
24 any customer where you didn't execute documents?
25 A. No.

1 Q. Were you having any mental or physical or Covid issues
2 between July and October of 2020?
3 A. No.
4 Q. Okay, would you have expected there to be documents
5 executed ---
6 A. Yes.
7 Q. Let me finish. Would you have expected there to be
8 documents executed between Dealer Financial and Penland
9 Automotive in the fall of 2020?
10 A. Yes.
11 BY MS. BRIDGES:
12 Object to form.
13 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
14 Q. Okay, and that never happened?
15 A. No.
16 BY MS. BRIDGES:
17 Object to form.
18 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
19 Q. And you can't recall if anyone at Penland ever asked you
20 about contracts, agreements or documents between July and
21 October of 2020?
22 A. I can't recall.
23 Q. Did they ever complain about the fees and costs of the
24 plan?
25 A. Yes.

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1 Q. How often?
2 A. It was every so, regularly, Billy would always complain.
3 Q. Billy would complain regularly?
4 A. Yeah, he's always, ever since we started he complained.
5 Q. Okay.
6 A. Ever since he started, he complained.
7 Q. All right, but from July to October or somewhere in there,
8 Billy Penland was complaining about the fees?
9 A. Yes.
10 Q. Did he say, "I don't understand what fees or why we have
11 curtailments or why it's this much;" what would he say?
12 A. He just said, "Your fees are too high."
13 Q. What'd ya say?
14 A. I said, "Well, y'all negotiated it, what do you want me to
15 do? Well, can you talk to Dan about it?" I said, "I
16 will, but y'all negotiated it, it's all new," it was all
17 new contracts, so, I didn't think there was anything - -
18 they'd agreed to it recently so I don't understand why'd
19 it be too high.
20 Q. Well, that's sort of the point of this lawsuit, is what
21 you just said, it's all new contracts. When you talked to
22 Dan, did you say, "What are the Terms and Conditions and
23 where are the new contracts"?
24 A. He said we would use the same filing we had before.
25 Q. He said that to you?

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1 A. (Nods in the affirmative).
2 Q. Is that a yes?
3 A. Yes, he ---
4 Q. Okay, and why did he say that?
5 A. He said we don't need to have a, we already have a UCC
6 filed, we don't have to have another, any new documents
7 signed.
8 Q. Okay, what had you said to him or asked him to prompt that
9 reply from him?
10 A. I asked him if there any new documents coming, were we
11 getting any new documents, he said, "No, we don't need
12 any."
13 Q. So, you did ask if there were new documents.
14 A. Right, from Dan, yes.
15 Q. Okay, why'd you ask that?
16 A. I just wanted to know because I hadn't seen anything so I
17 didn't, that's not my, the legal part of the, my job is
18 not what I do, so, I thought everything was fine.
19 Q. Right, but it's unusual to not have documents, right?
20 BY MS. BRIDGES:
21 Object to form.
22 WITNESS ANSWERS:
23 A. Yes, but I've never had a case where we started a
24 dealership close and started over again, so, I didn't know
25 if there was something different or not.

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1 Q. All right, did you ever talk to Tim Yarger about the
2 documents?
3 A. I don't recall.
4 Q. Did Tim Yarger ever tell you, "We agree to use the 2016
5 Agreement"?
6 A. I'm sorry, what was that?
7 Q. Did Tim Yarger ever tell you, "We agree to use the 2016
8 Agreement, we don't need new documents"?
9 A. I don't recall.
10 Q. Did you ever discuss with Dan Haight whether anyone at
11 Penland, including Tim, Karen, Joey or Billy Penland,
12 agreed to use the 2016 documents?
13 A. No.
14 Q. He never told you if he had an agreement with Penland to
15 use the 2016 Agreement documents?
16 A. He told me we didn't have to file new documents.
17 Q. I understand that.
18 A. That's all.
19 Q. I want to know about every communication, everyone and any
20 one you had with Dan Haight where you discussed anyone
21 agreeing to use the 2016 documents from Penland
22 Automotive, any one at any time.
23 A. Dan said we were using the 2016 documents, we didn't have
24 to redo documents.
25 Q. Did Dan ever say, "Penland Automotive agreed to use the

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1 2016 documents"?
2 A. I don't recall Dan saying that to me.
3 Q. Today is July 28th, 2022. Have you ever had a discussion
4 with Dan Haight where he told you someone at Penland
5 Automotive agreed to use the 2016 documents, in any
6 conversation anytime?
7 A. Yes.
8 Q. When?
9 A. Right after, in, after July of 2020, after they had the
10 discussion about reopening the line when this other
11 document came out, after that. I asked him if there was
12 any other documents, he said, "No, we're gonna use the
13 original documents."
14 Q. Okay, and he said Penland Automotive agreed to those
15 documents?
16 A. I don't recall him saying that at all.
17 Q. Well, that's what my question is. I understand what Dan
18 Haight said okay, about using the 2016 documents. My
19 question is, in preparation for this deposition, in July
20 of 2020 when we filed the lawsuit, has Dan Haight ever
21 said to you that someone at Penland Automotive agreed to
22 use the 2016 documents in 2020?
23 A. No. He said, "We've got an agreement" but I don't know
24 what the terms of the agreement were.
25 Q. Or who it was with?

22 (Pages 85 to 88)

1 A. It was with Penland, but I don't know who it was with at
2 Penland.
3 Q. Do you know if Billy Penland ever saw - - what Exhibit
4 number is that?
5 A. Twelve.
6 Q. Exhibit Number 12?
7 A. I don't know.
8 Q. Is that - - do you know what Terms and Conditions were
9 used in, after July 2020 between Dealer Financial and
10 Penland Automotive?
11 A. No.
12 Q. Was it those Terms and Conditions in front of you?
13 A. I don't know. It looks like it was, but I can't say that
14 I know; I wasn't part that negotiation, I don't know what
15 they discussed.
16 Q. Okay, but Penland, Billy specifically, Billy Penland
17 complained about the fees; right?
18 BY MS. BRIDGES:
19 Object to form.
20 WITNESS ANSWERS:
21 A. Right.
22 Q. The costs of the lending plan?
23 A. Yes.
24 BY MS. BRIDGES:
25 Object to form.

1 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
2 Q. Okay, do you know if Penland Automotive canceled their
3 relationship with their other floorplan lenders?
4 A. I don't know. I don't know that specifically; I don't.
5 Q. When you had conversations with Dan Haight about the
6 general unhappiness of Penland Automotive, what did you
7 tell him?
8 A. I told him Bill was complaining about the fees again.
9 Q. Okay, what'd he say?
10 A. I don't recall what he said.
11 BY MS. BRIDGES:
12 Jason, can we take a quick break, I need to run to the
13 restroom.
14 (Off the record at approximately 11:42 a.m.; on the record at
15 approximately 11:50 a.m.)
16 BY MR. IMHOFF:
17 This is gonna just help us a little with the time.
18 BY MS. BRIDGES:
19 What exhibit again?
20 BY MR. IMHOFF:
21 Eleven. Sorry I missed that earlier, I was looking for
22 it.
23 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
24 Q. That is a Dealer Application, or at least an email
25 ---

1 A. Yeah.
2 Q. --- submitting a Dealer Application from you to Dan
3 Haight; is that right?
4 A. Yes.
5 Q. What's the date of that?
6 A. July, June 23rd, 2020.
7 Q. Okay, does that help you remember when Tim may have
8 contacted you about reopening the line?
9 A. It was probably around - - he called to reopen, to ask to
10 reopen it. I don't remember exactly the date but that
11 could've been right.
12 Q. All right.
13 A. Yeah, that's right. Well, he initiated the conversation,
14 I did not do that.
15 Q. Did he ever say to you, Tim or Billy or anyone at Penland
16 Automotive, "We would like you to match Charna's
17 floorplan"?
18 A. Yes.
19 Q. Okay, did you, what did you say in response?
20 A. I said, "I will have a copy of it." I can't remember if I
21 had a copy or they had a copy, but there was a copy and I
22 sent it to Dan.
23 Q. Who is Charna?
24 A. She is with Spartanburg Auto Auction, and they have a
25 floorplan through the auction. I can't recall the

1 gentleman's name but it's her father.
2 Q. Okay, and you got a copy of their plan?
3 A. Yes.
4 Q. Okay, and you sent it to Dan?
5 A. Yes.
6 Q. How did you send it to Dan?
7 A. I think I sent it via email because I scanned it.
8 Q. I don't believe I've ever seen that email.
9 A. Or I could've, or I could've sent it via text on a copy of
10 a photo, I could've sent it as a photo, but he got a copy
11 of it; I sent it to him. I don't remember how I
12 transmitted it.
13 Q. All right, and what did he say in response to you; if
14 anything?
15 A. He said, "Thank you," and he'd look over it.
16 Q. Did he ever say no?
17 A. No to what?
18 Q. "No, I'm not gonna match this"?
19 A. No.
20 Q. Okay, do you know if, well, does the July 6th Proposed
21 Terms and Condition match Charna's floorplan?
22 A. No.
23 Q. And you don't know if that was ever shared with anybody at
24 Penland Automotive?
25 A. What was shared?

1 Q. The July 6th or 7th Proposed Terms and Conditions.
2 A. No.
3 Q. The commitment packet.
4 A. Oh, I'm sorry, I apologize.
5 Q. You don't know if that was ever given to Penland
6 Automotive?
7 A. No.
8 Q. Did you ever convey to Penland Automotive, anybody there,
9 that Dealer Financial was not gonna match Charna's plan
10 and that these were going to be the Terms and Conditions?
11 BY MS. BRIDGES:
12 Object to form.
13 WITNESS ANSWERS:
14 A. No, I was not involved in that.
15 Q. That was all Dan Haight?
16 A. Yes.
17 Q. I'm gonna hand you Exhibit Number 17. Have you ever seen
18 that email before?
19 A. Yes.
20 Q. Where have you seen it?
21 A. It came on my email.
22 Q. This email came into your email?
23 A. Yes.
24 Q. When?
25 A. I can't recall, I don't see the date on it, so, I don't

1 know.
2 Q. Do you know why there's not a date or a time on it?
3 A. No.
4 Q. Have you gone back and looked at your emails to see if you
5 actually got this and when?
6 A. No.
7 Q. You just remember having gotten it?
8 A. No, it appears that I got it. I don't, I can't say I got
9 it, it appears I got it.
10 Q. Well, that was my question.
11 A. I'm sorry.
12 Q. I know that it appears, ---
13 A. Yeah, I don't ---
14 Q. --- I want to know if you actually got this email.
15 A. I don't know.
16 Q. Because it appears unusual in that it doesn't have a date
17 or time on it; would you agree with that?
18 A. Yes.
19 Q. Okay, and Mr. Penland has testified he has never seen this
20 email, didn't get it.
21 BY MS. BRIDGES:
22 Object to form.
23 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
24 Q. So, my question is do you know if you've ever received
25 this email?

1 A. No.
2 Q. Do you know if it was ever sent by Mr. Haight?
3 A. I don't know.
4 Q. Would you agree with me that if this email arrived
5 sometime around July 9th, 2020, you would have no reason
6 to ask where the documents were to Mr. Haight?
7 BY MS. BRIDGES:
8 Object to form.
9 WITNESS ANSWERS:
10 A. Ask that again, I'm sorry.
11 Q. Sure, read the email from Dan; if you will?
12 A. "Karen, Per our agreement with Billy and Tim, the existing
13 loan and security packet dated November 21st, 2016 as
14 amended remains in place."
15 Q. Okay, so, the email from Karen Willis said reopen the
16 floorplan at 400,000; right?
17 A. Yes.
18 Q. And it was dated July 9th at 3:13 p.m., 2020; ---
19 A. Yes.
20 Q. --- okay? You testified earlier that you asked Mr. Haight
21 where the agreement and documents were; right?
22 A. Yes.
23 Q. Okay, you asked him because you didn't know where the
24 agreement or documents were; right?
25 A. Yes.

1 Q. Okay, so, if you would've received this, would you have
2 had any reason to ask where the agreement and documents
3 were?
4 BY MS. BRIDGES:
5 Object to form.
6 WITNESS ANSWERS:
7 A. No.
8 Q. All right, let's go back to your discussions between July
9 and October of 2020 about the fees and Penland
10 Automotive's complaints. Were you aware that Penland
11 Automotive, specifically Karen, was emailing and calling
12 Mr. Haight and Kim Rusch trying to get clarification of
13 what the agreement was and what the fees and costs were?
14 A. No.
15 Q. You have no idea?
16 A. (No verbal response).
17 Q. Sir?
18 A. No.
19 Q. So, you would go in there what, twice a week, once or
20 twice a week; is that right?
21 A. Yes.
22 Q. Let me show you some of these. I'm gonna hand you Exhibit
23 Number 23, and you know you have to read these from the
24 bottom. Can you tell me what was going on with the Malibu
25 process?

Page 97 1 A. I have no clue. 2 Q. Hand me that one back. 3 A. I'm sorry, I just --- 4 Q. That's all right. 5 BY MS. BRIDGES: 6 What number again? 7 BY THE WITNESS: 8 Twenty-four. 9 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 10 Q. All right, you're not on this email, but have you ever 11 seen this August 26th, 2020 from Karen Willis to Kim 12 Rusch? 13 A. (Reviews Exhibit Number 24). Okay. 14 Q. Have you ever seen this email before? 15 A. No. 16 Q. Okay, I want you to look at the top, at 2:47 p.m. from 17 Karen. 18 A. Yes. 19 Q. "Thanks! But we were under the belief that we weren't 20 having fees owed until the car sells. I think Tim is 21 reaching out to John and Dan." August 26th, 2020, 2:47 22 p.m., "Did Tim ever reach out to you about not having fees 23 owed until the car sells?" 24 A. I don't recall. 25 Q. You don't recall?	Page 99 1 A. No. 2 Q. Okay, did Dan ever tell you that Penland Automotive was 3 reaching out to him to work out all these details on the 4 fees? 5 A. I don't recall that conversation. 6 Q. All right, Penland Automotive is now reaching out to Kim 7 Rusch and reaching out to Dan Haight about confusion over 8 fees; do you disagree with that? 9 A. No. 10 BY MS. BRIDGES: 11 Object to form. 12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 13 Q. But you don't remember them ever saying anything to you 14 who was there once or twice a week? 15 A. If they did, I told them they had to talk to Dan about it. 16 Q. Okay. All right, and here's 27. And you don't have to 17 read all of it, but on the second page there is an email 18 from Karen looks like to Kim. The second or third 19 paragraph starts with, "As for the invoice;" do you see 20 that? 21 A. Okay. 22 Q. Did Karen Willis ever tell you she was reaching out to Dan 23 in August of 2020 about the fees and costs? 24 A. She may have. 25 Q. Okay, and what would you have said or what would you have
Page 98 1 A. No. 2 Q. You were Penland's rep; right? 3 A. (No verbal response). 4 Q. You went in there once, twice a week; right? 5 A. Yes. 6 Q. And you don't remember in August or September, Karen, Tim, 7 Billy, Joey or anyone else saying that they did not 8 understand the fees and charges that Dealer Financial was 9 charging them? 10 A. If they did I told them to contact Dan. 11 Q. But you were their rep; right? 12 A. Right. 13 Q. And you saw them at least once a week, sometimes twice a 14 week; right? 15 A. Yes. 16 Q. Between August, September and into October, you don't 17 remember them ever saying, "We don't understand what the 18 fees and charges are with Dealer Financial"? 19 A. If they did I told them to ask Dan or Karen about it, I 20 mean, Kim about it. 21 Q. All right, I'm gonna hand you Exhibit Number 25. You ever 22 seen this email? 23 A. No. 24 Q. I'm gonna hand you Exhibit Number 26. Have you ever seen 25 that email?	Page 100 1 done? 2 A. I said, "You need to talk to Dan about it." 3 Q. Exhibit 28. 4 A. Okay. 5 Q. Who's Kim Rusch? 6 A. She is our Office Manager, Comptroller, she handles all 7 our invoicing. 8 Q. Does she have regular communication with Dan Haight? 9 A. Yes. 10 Q. Have you seen the September 3rd, 11:08 a.m. email? 11 A. No. 12 Q. All right, here's Exhibit Number 30. You ever see that 13 email? 14 A. Yes. 15 Q. Did you talk to Mr. Haight about it before it was sent? 16 A. I don't recall. 17 Q. You don't remember if you talked to Mr. Haight about this? 18 A. I'm sure there was a discussion. 19 Q. With Mr. Haight? 20 A. Yes. 21 Q. Because obviously there's something going on with your 22 customer, your client; right? 23 A. Right. 24 BY MS. BRIDGES: 25 Object to form.

Page 101 1 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 2 Q. Okay, and you think this email went out without your input 3 into it? 4 BY MS. BRIDGES: 5 Object to form. 6 WITNESS ANSWERS: 7 A. It may have because I don't, I'm not involved in the 8 invoicing of the dealers, I don't do the invoicing, that's 9 an accounting thing that Kim does and Dan does. If 10 somebody complains, I tell them I'll talk to Dan about it 11 and he handles that. 12 Q. What did Dan tell you, if anything, about Penland 13 Automotive's complaints in early September and August of 14 2020? 15 A. That we've agreed to hold the invoices like this email 16 says. 17 Q. Did he tell you why? 18 A. Because there was complaints about the invoices, not being 19 able to pay them. 20 Q. Did he or anyone else tell you, "We don't understand what 21 the agreement is with Dealer Financial, what are the 22 terms"? 23 A. No. 24 Q. Nobody ever told you that? 25 A. No, they always complained about it.	Page 103 1 A. I was just told the original contract. 2 Q. So, that would revert back to default standards, and we're 3 talking 10 percent right, 60 days, 90 days, all those 4 things; right? 5 A. It was not clear which one he went to, he said the 6 original contract, "We're going back to the contract." 7 Q. He was not clear or it was not clear? 8 A. I was not clear. 9 Q. You were not clear? So, in the fall, I'm sorry, in July 10 and through September of 2020, you weren't clear what the 11 Terms and Conditions were? 12 BY MS. BRIDGES: 13 Object to form. 14 WITNESS ANSWERS: 15 A. I was not made privy of those Terms and Conditions because 16 it was negotiated, I was not involved in the negotiations. 17 That was between Tim and Dan and I don't know if Bill was 18 involved or not. 19 Q. Okay. 20 A. I did not know what - - I was just told, "We're doing 21 business with Penland again." 22 Q. I'm a little confused by that because you're the 23 relationship guy with Penland; right? 24 A. Right. 25 Q. And you don't know in July, August, September what the
Page 102 1 Q. About the terms? 2 A. About the prices. 3 Q. Right, did they say because they didn't understand what 4 they were or why they were being charged that? 5 A. Yes, and I told them to contact Dan and Kim to find about 6 it. 7 Q. All right, so, they did say that. Did you talk to Dan 8 about them not understanding what the Terms and Conditions 9 were in the Agreement? 10 A. Yes. 11 Q. And what did he say? 12 A. He said he'd call them. 13 Q. Okay, and we see that, apparently, he talked to Tim. And 14 during that discussion with Mr. Haight, when you conveyed 15 that they were confused about the terms and conditions, 16 did you have any discussion about what had been presented 17 to Penland regarding the Terms and Conditions in writing 18 or an agreement or a contract? 19 A. No. 20 Q. Did you ask him, "What are the Terms and Conditions"? 21 A. He said, "We'll use the original Agreement." 22 Q. Okay, which, well, which Terms and Conditions? 23 A. That was what I was told. 24 Q. Which ones, the ones from 2016, the ones in 2017, the ones 25 in 2018, which Terms and Conditions?	Page 104 1 Terms and Conditions are? 2 BY MS. BRIDGES: 3 Object to form. 4 WITNESS ANSWERS: 5 A. Yes. 6 Q. Let me say it differently: Did you know what the Terms 7 and Conditions were in August, July and September of 2020 8 between Dealer Financial and Penland Automotive? 9 A. No. 10 BY MS. BRIDGES: 11 Object to form. 12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 13 Q. Why not? 14 A. Because all that was negotiated independent of me being 15 involved in it, I was never told what the Terms and 16 Conditions were. I was told we're back in business with 17 Penland. Tim said, "We're back in business," and that's 18 all I know. I never saw any documents saying what we 19 would do, I never did any of that, I just said we were 20 doing, we're back, we're back in business again. 21 Q. Mr. Bethea, is it unusual for you not to know the Terms 22 and Conditions with your clients and customers? 23 A. Yes. 24 Q. Has that ever happened before in your career? 25 BY MS. BRIDGES:

Page 105 1 Object to form. 2 WITNESS ANSWERS: 3 A. Ask the question again. 4 Q. Have you not been able to look at something or determine 5 the Terms and Conditions with any other customer in your 6 career? 7 BY MS. BRIDGES: 8 Object to form. 9 WITNESS ANSWERS: 10 A. No. 11 Q. All right. Hand you 31. 12 BY MS. BRIDGES: 13 What number? 14 BY MR. IMHOFF: 15 Thirty-one. 16 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 17 Q. Okay, all right, did you receive that email? 18 A. Yes. 19 Q. All right, did you know before this email that Mr. Yarger 20 was gonna be leaving Penland Automotive? 21 A. I didn't know he was leaving, I know he was, he left, he 22 said he may leave. 23 Q. Before September 23rd, 2020, he told you that? 24 A. I don't remember when he told me he was gonna leave. 25 Q. Did he tell you why he was gonna leave?	Page 107 1 A. No. 2 Q. And tell me your cellphone again, please? 3 A. 864-982-4011. 4 Q. Do you know whose number is 569-5944? 5 A. No. Could've been an ex-girlfriend. Strike that, please. 6 Q. All right, did you have communications with Dan or Steve 7 about Mr. Yarger leaving September 23rd? 8 A. Yes. 9 Q. All right, what were those discussions? 10 A. I told Dan that Steve, that, I told Steve that Tim was 11 leaving. 12 Q. Before the email? 13 A. When I got the email. 14 Q. When you got the email? 15 A. Yeah, because it was official. 16 Q. Were they not on the email? 17 A. Yep. 18 Q. They were on the email? 19 A. Yeah. 20 Q. Okay, so, you didn't need to tell them. 21 A. But I wanted to let him know that. 22 Q. All right, and what were the discussions, were there 23 concerns, was there questioning, what happened? 24 A. No, he just wanted to know who was our contact there, who 25 will we talk to now.
Page 106 1 A. Got a better opportunity. 2 Q. Did he say anything else about Billy or Penland 3 Automotive? 4 A. I don't recall him saying that, he said he wanted to get a 5 better opportunity. 6 Q. Okay. All right, so, this email on September 23rd wasn't 7 a surprise to you? 8 A. No. 9 Q. Okay, do you know what Tim Yarger's position was on 10 September 23rd, 2020? 11 A. No. 12 Q. Did you ever tell Mr. Haight what Tim Yarger's position 13 was at any time during your relationship with Tim Yarger? 14 A. Yes. 15 Q. What did you tell him? 16 A. I told that he was the General Manager or the General 17 Sales Manager; I didn't which it was. 18 Q. Did you ever tell Mr. Haight that he was an owner or part 19 owner? 20 A. No. 21 Q. Do you know if Mr. Yarger was ever an owner or a part 22 owner of Penland Automotive? 23 A. No. 24 Q. Did Mr. Yarger ever tell you that he was an owner or a 25 part owner of Penland Automotive?	Page 108 1 Q. Okay, what'd you tell him? 2 A. I said according to the email it's gonna be Joey and Karen 3 and Bill. 4 Q. Okay, any other discussions, concerns? 5 A. No. 6 Q. I'm gonna show you Exhibit 34. Can you tell me what 7 prompted that? 8 A. I don't understand your question. 9 Q. All right. 10 A. There are two things on here, there's two emails. 11 Q. Right. All right, well, --- 12 A. Which one do you want to talk about? 13 Q. --- did you ever talk to Dan, Steve or this Peter Troutman 14 about doing an audit on Penland? 15 A. Yeah, I would, I've done audits there before. 16 Q. Yeah, but I'm talking about on October 6th or in October, 17 between September 23rd and October 6th, did you have 18 discussions with anyone at Dealer Financial about auditing 19 Penland? 20 A. I may have. I do audits all, I deal with audits all the 21 time, so, I don't know why that particular day, why that 22 would've been any different. He may have done an audit 23 and there was some cars out of trust and I was, may have 24 followed-up behind the auditor to see if they were, what 25 the status was on them.

Page 109 1 Q. What does out of trust mean? 2 A. Means they sold a car and we didn't get paid for it. 3 Q. They kept the money? 4 A. We did not get paid for it. They have not paid for it. 5 Q. In the industry is that a bad thing? 6 A. It is. 7 Q. All right, you don't remember why they did this audit? 8 A. He may have had some cars that were out of trust. We do 9 audits every two weeks, so, this may have been his regular 10 audit. 11 Q. All right, and how did the audit turn out? 12 A. It looks - - I don't - - says he, Penland paid off the 13 cars that were sold. 14 Q. Was Penland Automotive out of trust on October 6th? 15 A. I don't know, I - - they had sold vehicles and then not 16 paid for them. But our rule of thumb is, it's funded, if 17 it's been funded and hadn't paid for, then you're out of 18 trust because there's a, sometimes a lag between the time 19 the car is sold and the car is funded that we get money 20 and the car could be off the lot; you understand? 21 Q. Sure. 22 A. So. 23 Q. Right. 24 A. So, according to this, based on this here, there was a 25 Dart that was in funding with credit acceptance, there was	Page 111 1 A. Yes. 2 Q. Who told you that? 3 A. Maybe Dan. 4 Q. Do you remember when he told you that? 5 A. No. 6 Q. Do you remember why they were out of trust, according to 7 Dan? 8 A. Well, they had cars that were sold and we hadn't been paid 9 for them and they were in funding, according to this, they 10 were in funding. 11 Q. In funding? 12 A. Um-hum. 13 Q. And if they're being funded but they haven't paid yet, are 14 they still out of trust? 15 A. Our definition of being out of trust is if they are funded 16 and haven't paid for them, they're out of trust. 17 Q. Okay, but were these three cars, the Dodge Dart, the Ford 18 Escape and Toyota Camry, were they out of trust, according 19 to this email that --- 20 A. No. 21 Q. --- Peter drafted? 22 A. No. 23 Q. Okay. All right, do you believe that this audit is why 24 Dan Haight told you that Penland Automotive was out of 25 trust or was it something different?
Page 110 1 a car that was sold, allegedly West Lake was the funder, 2 there was a Hyundai Sonata was back on the lot so it's not 3 out of trust, and there was sold a "True 'something' 4 funder;" I don't know who 5 --- 6 Q. (Inaudible). 7 A. Could've been, I don't know, I didn't do the dealers from 8 my auditor. 9 Q. Well, what is Peter Troutman's job at Dealer Financial? 10 A. He's our auditor, he counts cars all the time; that's all 11 he does. 12 Q. Have you ever had a dealership out of trust? 13 A. Yep. 14 Q. All right, and do they tell you they're out of trust? 15 A. I've had some tell me they were out of trust; they had 16 sold cars that hadn't been for. 17 Q. I'm sorry, does the audit or Peter Troutman or Dan or 18 Steve tell you that your dealership is out of trust? 19 A. Yes. 20 Q. Okay, they use those words? 21 A. Yes. 22 Q. Okay, did anyone at Dealer Financial tell you that Penland 23 Automotive was out of trust on October 6th? 24 A. I'm sure they did. 25 Q. They told you they were out of trust?	Page 112 1 A. It may have been this audit; I don't know for sure. 2 Q. Could it have been on October 8th or 9th? 3 BY MS. BRIDGES: 4 Object to form. 5 WITNESS ANSWERS: 6 A. It could've been along in that time. 7 Q. Okay. Did Dan Haight ever tell you that a lawyer for 8 Penland had called him? 9 A. No. 10 Q. On October 8th or 9th Mr. Haight never contacted you to 11 tell you that a lawyer had called from Penland Automotive? 12 A. No. 13 Q. Did Dan Haight, did you talk to Dan Haight or Steve Lanzl 14 on October 8th or October 9th? 15 A. I don't, I can't recall the date. 16 Q. When did you find out that Dealer Financial had come and 17 taken the cars off of Penland's lot? 18 BY MS. BRIDGES: 19 Object to form. 20 WITNESS ANSWERS: 21 A. Along that period of time. I was on the way to the beach 22 on vacation, and they said, "We're gonna take the cars, 23 we're gonna clear the lot from Penland, and I said, "Do 24 you want me to come back," and he said, "No" and I went to 25 the beach.

Page 113 1 Q. Okay, so, before they had taken the lots, they told you 2 that they were taking the cars off the lot, they told you 3 they were gonna go get the cars off the lot? 4 A. The day they'd gotten them. 5 Q. The day they got them? 6 A. Yes. 7 Q. Did anyone tell you why? 8 A. No. 9 Q. Who were you talking to? 10 A. Dan. 11 Q. Did you talk to anybody else? 12 A. No. 13 Q. So, before the cars were taken off Penland Automotive's 14 lot, you talked to Dan Haight? 15 A. Yes. 16 Q. Did Dan Haight tell you that Penland was out of trust 17 during that conversation? 18 A. I don't recall, he may have, I don't recall. 19 Q. Well, Mr. Bethea, is that a big deal to have one of your 20 dealer's cars taken off their lot? 21 A. Yes. 22 BY MS. BRIDGES: 23 Object to form. 24 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 25 Q. How many times has that happened with you while you were	Page 115 1 told him that we have cars out of trust and we take them 2 but I was not aware that they were out of trust. 3 Q. Could Mr. Haight have told you that day they were out of 4 trust --- 5 BY MS. BRIDGES: 6 Object to form. 7 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF: 8 Q. --- October 8th, 2020? 9 BY MS. BRIDGES: 10 Object to form. 11 WITNESS ANSWERS: 12 A. I don't recall whether he did or not. 13 Q. Do you remember if you talked to Steve or Dan or anyone 14 else at Dealer Financial the next day, on October 9th? 15 A. I can't recall. That was two years ago, I'm - - I was on 16 the way to the beach, so, I don't - - they said, "Don't 17 worry about it, we've got it," I said, "Okay." 18 Q. Have you learned that Steve and Dan went to find Billy the 19 next day? 20 BY MS. BRIDGES: 21 Object to form. 22 WITNESS ANSWERS: 23 A. No. 24 Q. Do you know that Steve and Dan went to an auction where 25 Billy was the next day?
Page 114 1 working with Dealer Financial? 2 A. Specifically, or generally? 3 Q. What does that mean? 4 A. I've got to think back over six years. 5 Q. Yeah, over six years, how many times has Dealer Financial 6 gone to one of your dealerships and taken the cars off the 7 lot? 8 A. I can't call specific, five or six times. I don't know 9 exactly, but five or six; it's happened before. 10 Q. So, about once every year maybe? 11 A. Once every year, twice a year. 12 Q. So, is it a big deal? 13 A. Yes. 14 BY MS. BRIDGES: 15 Object to form. 16 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 17 Q. So, would you ask why? 18 A. Normal reason's they're out of trust, so, I just assumed 19 he was out of trust, but I didn't know that. 20 Q. Well, did you ask? 21 A. No. 22 Q. Would you usually ask? 23 A. No. 24 Q. You just said okay? 25 A. Yeah, I mean, once that decision's made I can't - - I have	Page 116 1 BY MS. BRIDGES: 2 Object to form. 3 WITNESS ANSWERS: 4 A. No. 5 Q. Do you know why they went? 6 A. No. 7 BY MS. BRIDGES: 8 Object to form. 9 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 10 Q. Let me make sure that I understand this. Before I just 11 said this, you had no idea that Steve and Dan went to the 12 auction on October 9th looking for Billy Penland? 13 BY MS. BRIDGES: 14 Object to form. 15 WITNESS ANSWERS: 16 A. No. 17 Q. And talked to Billy Penland? 18 A. No. 19 Q. No one's ever told you that before? 20 A. No. 21 BY MS. BRIDGES: 22 Object to form. 23 WITNESS ANSWERS: 24 A. No. 25 Q. you never read the Complaint in this case?

Page 117 1 A. No. 2 Q. What did you do to prepare for the deposition today? 3 A. I studied my notes I had, that I had available to me. 4 Q. What notes? 5 A. From Zoho, and tried to recall what, tried to clear my 6 mind, rebuild what happened, to the best of my ability; a 7 lot of it I couldn't recall. 8 Q. Do you know if Penland Automotive was out of trust? 9 A. I don't recall; I don't know if they were or not. 10 Q. What is Zoho? 11 A. It's our Contact Management software. 12 Q. You keep notes in that? 13 A. Yes. 14 Q. Okay, and what did your notes say? 15 A. It didn't say anything about that. 16 Q. Did it say anything about the Terms and Conditions in 17 2020, contact with Tim, contact with Dan? 18 A. It would say, it would have notes about when I contacted, 19 if I wrote it in there, a lot of times I wouldn't write my 20 notes in, I didn't do a good job. Going back for the 21 deposition, I looked over my notes and I discovered that I 22 did not do a good job keeping my notes; that's one thing 23 I've learned and I've gotten better about it. 24 Q. You and me both. All right, --- 25 A. Could I take a quick break?	Page 119 1 I'm sorry, was that yes sir? 2 WITNESS ANSWERS: 3 Yes, I'm sorry, yes. 4 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 5 Q. Do you remember talking with him in March of 2020? 6 A. I'm sure I did. 7 Q. Do you remember what it was about? 8 A. No. 9 Q. Do you know if it was about the UCC-1 lien? 10 A. No, it was probably something personal. 11 Q. Okay. All right, and then you talk about, "Happy Easter," 12 "Got me a turkey yet," "Deer hunting." All right, what is 13 this, I'm really struggling with the times and dates, but 14 6/3/2020 it says, "From Dan: Nice job on your end. Let 15 Tim know the office person at" blank "shop still hasn't 16 sent banking info"? 17 BY MS. BRIDGES: 18 Jason, I believe that's July 22nd, I believe looking at 19 mine and drawing a line across. 20 BY MR. IMHOFF: 21 Boy this is terrible. 22 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 23 Q. All right. 24 A. Need my ruler. 25 Q. I got it, July 22nd, she's right. What was that about?
Page 118 1 Q. Oh, yeah, absolutely. 2 (Off the record at approximately 12:28 p.m.; on the record at 3 approximately 12:46 p.m.) 4 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 1 AND ATTACHED 5 TO DEPOSITION) 6 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 7 Q. All right, this is a, it says on this Exhibit Number 1, 8 DFH_3061, looks like there's some text with Billy Penland? 9 A. Yeah. 10 Q. And I have several columns, "Message Date, Delivered Date, 11 Read Date, iMessage, Outgoing, Incoming, Sender ID, Sender 12 Name, Status Delivered, etcetera, etcetera. So, let's go 13 back in time to 3/6/2020. Is that when you first started 14 texting with Mr. Penland? 15 A. I don't know if I text before then or not, I may have 16 texted before then or not. I haven't erased any of them, 17 so, I don't know. 18 Q. It looks like you got a, you texted Mr. Penland on March 19 6th, 2020, "On conference call, will call you soon." 20 Billy said "K;" do you see that? 21 A. Yep. 22 Q. You agree with me that you said, "On conference call, will 23 call you soon"? 24 A. (No verbal response). 25 BY THE COURT REPORTER:	Page 120 1 "Nice job on your end. Let Tim know office person at" 2 something; what is that? 3 A. We were talking, I don't know what we were talking about 4 there, I didn't - - it could be that he wanted, that we 5 were trying to pay off the Hall floorplan. 6 Q. Yeah. 7 A. That's probably what it was talking about when I said we 8 don't have the banking information. I was probably asking 9 him do we need the banking information to pay off the 10 floorplan, to pay off the --- 11 Q. Right. This - - you sent a lot texts in 2020. Did you go 12 back and look at your texts and pull this, did you do 13 this? 14 A. I've looked at it, I don't, it's been, I've looked at it 15 but --- 16 Q. Yeah. 17 A. --- I didn't --- 18 Q. I mean, my question's just, did you do this, did you pull 19 these texts? 20 A. No. Oh, I did. 21 Q. You did? 22 A. Yeah, I mean, I, we have a software program and it pulled 23 them, it took me three hours to do them, and then I put 24 them in a separate file based upon different numbers and 25 that's why they're all separated out.

Page 121 1 Q. All right, does this appear correct about this --- 2 A. Yeah. 3 Q. --- many texts --- 4 A. Yeah. 5 Q. --- in 2020? 6 A. Yeah. 7 Q. This is all of them with Mr. Penland? 8 A. According to what my phone says. 9 Q. Okay. All right, let's go to the next one, it's 3062. 10 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 2; ATTACHED TO 11 DEPOSITION) 12 BY THE WITNESS: 13 A. I'm at a disadvantage, I don't --- 14 Q. Yeah, --- 15 A. --- I don't have that one, I don't have it. 16 Q. You are at a disadvantage. All right, answer my 17 questions. 18 A. All right. 19 Q. All right, obviously this is a discussion with Dan Haight? 20 A. Yes. 21 Q. Are these a discussion with Dan Haight and you? 22 A. Yes, I'm sure it is. 23 Q. All right. I'm a little confused why they start on June 24 30th, 2020; do you have any idea? 25 A. I have no clue.	Page 123 1 Q. Under "Text" --- 2 A. Yeah. 3 Q. --- all the way down --- 4 A. Yeah, I got it, yeah, I got it, yes. 5 Q. Okay, and it says, "I told Tim Yarger it may be Monday 6 before he heard from us, he said okay;" see that? 7 A. Yes. 8 Q. And then the next, it just says, "I agree," but there's 9 nothing, there's no date, there's no, there's nothing next 10 it, it's just kind of out there on its own. 11 A. He may have been responding to that text, I don't know. 12 Q. Who, who wrote that? 13 A. Dan, Dan probably did. 14 Q. You think Dan wrote "I agree"? 15 A. Yeah, because we were, I was texting back and forth to 16 Dan. 17 Q. All right. "No update," what update were you waiting for 18 on July 8th? 19 A. I have no clue. 20 Q. I would tell you that on July 7th and July 8th Karen was 21 asking for the UCC-1 filing to be removed, and you can 22 look back at emails if you'd like to. Does that help you 23 remember why you said, "No update from Tim"? 24 A. I don't know what Tim was sending me an update on; I don't 25 know.
Page 122 1 Q. Did you have texts regarding Penland before June 30th, 2 2020? 3 A. I may have, I don't - - I pulled all my texts off all my 4 phone and this was all that was stored on my phone. 5 Q. Okay. 6 A. This is all that came off my phone. So, some of them may 7 have dropped off; sometimes they don't save texts forever. 8 9 Q. Well, by June 30th, 2020, an application had already been 10 filed by Penland with Dealer Financial; right? 11 A. I think so. 12 Q. So, I'm a little confused, at the top on the right it says 13 a text, "Tim was asking about UCC filings, if it was under 14 \$500k, can you give him a call;" do you see that? 15 A. Yes. 16 Q. What date was that? 17 A. I don't have a clue. 18 Q. I assume you were texting that to Dan Haight? 19 A. Yes. 20 Q. Okay. And then 6/30, Dan Haight to you, "Good chat with 21 Tim;" that's from Dan Haight? 22 A. Yes. 23 Q. All right, if you'll look down, it says on the right, 24 says, "Terrific;" do you see that? 25 A. I did, I saw it one time, now I gotta find it.	Page 124 1 Q. The next day Mr. Haight asked you, "When you get a chance, 2 please send Tim's email;" do you see that? 3 A. Yes. 4 Q. Okay. 5 A. And there's his email right there on the right. Says the 6 "Attachment," that's his email. 7 Q. All right, I'm skipping a little bit, one says Dr "C"? 8 A. That's me. 9 Q. You're Dr "C"? 10 A. Um-hum. 11 Q. What does Dr "C" stand for? 12 A. Dr. Credit. 13 Q. Got ya. 14 A. I actually have a State of South Carolina, I had it filed 15 at one time. That's my nickname with my company, Dr. 16 Credit. 17 Q. All right, so, Dan Haight, it looks like, sent you a text 18 on July 10th saying, "Alls I" --- 19 A. Where --- 20 Q. Sorry? 21 A. The 10th? 22 Q. Yeah. I'm using a piece of paper, if you want to use a 23 piece of paper to keep --- 24 A. No, I've got it, I just didn't --- 25 Q. "Alls I did was talk, you did the hard work, keep the

Page 125 1 momentum going." What was the hard work that you were 2 doing? 3 A. I guess getting dealers. We had two Dealer Applications 4 coming in and I did the work getting the Dealer 5 Applications in; I got the information to them. 6 Q. Were you also negotiating with those two dealers to get 7 them to re-sign? 8 A. Yes, probably because I had sent the Dealer Applications. 9 Q. Okay, and again, here after it says that, there's a missed 10 line, then there's nothing next to "yep," what's "yep"? 11 A. I, I replied, he sent me something and I said okay; 12 instead of saying yes, I just said yep. 13 Q. But it doesn't actually say it's a reply? 14 A. I don't know what it is, I don't know why there's a blank. 15 Q. Then it says, "Glad he did," but it doesn't seem to be in 16 response to anything, I have nothing to the left of it 17 indicating who sent it or why. 18 A. I don't know. 19 Q. All right. 20 A. This was pulled off my phone via computer program, so, I 21 was at the mercy of them. 22 Q. All right. Help me with this one a little bit. It looks 23 like Dan Haight on 7/22, "It will be 60 minutes. That 24 okay? Really need you before then, look at the 25 spreadsheet on my latest email about flooring Penland	Page 127 1 A. No. 2 Q. Okay. 3 A. He wanted to talk - - and I put Tim's phone number so Dan 4 didn't have to look it up; that's why the phone number's 5 there. 6 Q. All right, and then there's nothing in August, and then it 7 says 9/3/2020, "Okay, it will probably be around 1 PM" --- 8 A. Now, where are you at? 9 Q. 9/3/2020. 10 BY MS. BRIDGES: 11 Right there, "1 PM." 12 BY THE WITNESS: 13 Okay. 14 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 15 Q. See where it says, "Okay" --- 16 A. Yeah. 17 Q. --- "It will probably be around 1 PM"? 18 A. Yeah. 19 Q. What's that in reference to, calling Tim Yarger? 20 A. Yeah, calling Tim Yarger. He told me, Dan said, "I'll 21 call him around 1 PM," so, I probably picked up the phone 22 and called Tim and said it'll be 1:00 o'clock. 23 Q. Do you know what this conversation was about? 24 A. No. 25 Q. Why Tim wanted to talk to Dan on 9/3, September 3rd, 2020?
Page 126 1 cars. He wants to do it today." Then it's, "Give me 30 2 minutes." Who wrote, "It will be 60 minutes. That okay?" 3 A. Dan. 4 Q. And you said, "Really need you before then. Look at the 5 spreadsheet on my latest email about flooring Penland 6 cars. He wants to do it today," was from you? 7 A. Yes. 8 Q. Because they were trying to floor their cars that day? 9 A. Yes. 10 Q. Okay. 11 A. Because he wanted to get them off of the other floorplan. 12 Q. Right. 13 BY MS. BRIDGES: 14 Jason, can we go off the record for just a sec? 15 BY MR. IMHOFF: 16 Sure. 17 (Off the record at approximately 1:00 p.m.; on the record at 18 approximately 1:00 p.m.) 19 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 20 Q. All right, let's move down to 7/28/2020. 21 A. Okay. 22 Q. And it says, "Thank you" and then, "Please call Tim 23 Yarger," and a phone number; see that? 24 A. Which one? Okay, yeah. 25 Q. Do you know why Tim wanted to talk to Dan on ---	Page 128 1 A. No, I have no idea why he would talk to Tim. 2 Q. All right, if you go down a little bit it says, "Thanks. 3 Ok. It will probably be around 1 PM. Thank you. Thanks 4 for your help with Penland;" do you see that? 5 A. Yes. 6 Q. Who wrote, "Thanks for your help with Penland"? 7 A. I don't know, either Dan or me, one of the two; I don't 8 know which one. 9 Q. What was the help with Penland? 10 A. That he answered a question or he was handling something; 11 I don't know what he was handling. 12 Q. Well, that's what I'm asking, what was it? 13 A. I don't - - I can't tell from the text. 14 Q. All right, it says, "Tim wanted clarification on when does 15 this quarter end to have invoices paid;" see that? 16 A. Yes. 17 Q. What does that mean? 18 A. I guess we'd agreed, he had some invoices, and he had 19 agreed to pay them by the end of the quarter, and Tim 20 wanted to know when the quarter ended. 21 Q. What invoices? 22 A. Probably some flooring cars. 23 Q. Curtailments and fees and that type --- 24 A. Yeah. 25 Q. --- of thing?

Page 129 1 A. Yeah. 2 Q. Did you write that? 3 A. I probably did. 4 Q. So, you had communications with Penland Automotive and Tim 5 about their confusion over the Terms and Conditions of the 6 agreement? 7 BY MS. BRIDGES: 8 Object to form. 9 WITNESS ANSWERS: 10 A. He wanted to know when they was due, for invoices that 11 were due. 12 Q. Isn't that spelled out in the Terms and Conditions? 13 BY MS. BRIDGES: 14 Object to form. 15 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 16 Q. You want to look back? 17 A. Yes, I --- 18 Q. I'll give you Exhibit Number 12 to Mr. Haight's 19 deposition. 20 A. He wanted to know when to pay the invoices on the end of 21 the quarter. 22 Q. All right, my question to you was in Exhibit Number 12, is 23 that not spelled out? 24 A. No. 25 BY MS. BRIDGES:	Page 131 1 A. That may have been something that Dan and Tim had 2 discussed; I was not privy to that. 3 Q. Did you, obviously you talked to Tim to convey the message 4 to Dan; is that right? 5 A. Yes, Tim said, "I want to know when the end of the 6 quarter," when the, "when are the invoices, when's the end 7 of the quarter." 8 Q. And why didn't you say to him, "Your invoices are due when 9 their published on your portal"? 10 BY MS. BRIDGES: 11 Object to form. 12 WITNESS ANSWERS: 13 A. Because Tim obviously had an agreement with Dan that I was 14 not aware of quarterly. 15 Q. Do you think there was an agreement? 16 BY MS. BRIDGES: 17 Object to form. 18 WITNESS ANSWERS: 19 A. I did not know if there was an agreement. I don't know if 20 there was one, Tim thought there was one. 21 Q. So, he was confused about the billing from Dealer 22 Financial; right? 23 BY MS. BRIDGES: 24 Object to form. 25 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:
Page 130 1 Object to form. 2 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 3 Q. Does it say anywhere in the Terms and Conditions on July 4 6th, 2020 that invoices were to be paid at the end of the 5 quarter? 6 A. No. 7 Q. Has it ever been an agreement between Dealer Financial and 8 any dealership that invoices are paid at end of a quarter? 9 BY MS. BRIDGES: 10 Object to form. 11 WITNESS ANSWERS: 12 A. I don't know, I don't have that information. 13 Q. Have you ever been involved in an agreement with the 14 dealership where invoices are due at the end of a quarter? 15 BY MS. BRIDGES: 16 Object to form. 17 WITNESS ANSWERS: 18 A. No. 19 Q. Why is Tim asking when invoices are due at the end of a 20 quarter if that's not something y'all had ever discussed 21 before; --- 22 BY MS. BRIDGES: 23 Object to form. 24 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF: 25 Q. --- if you know?	Page 132 1 Q. In your discussions with Tim Yarger, was Tim Yarger 2 confused about the billing from Dealer Financial? 3 BY MS. BRIDGES: 4 Object to form. 5 WITNESS ANSWERS: 6 A. Yes. 7 Q. Okay, did Tim Yarger tell you that he was confused about 8 the billing from Dealer Financial? 9 BY MS. BRIDGES: 10 Object to form. 11 WITNESS ANSWERS: 12 A. Yes. 13 Q. Did he ask you to clarify the agreement between Dealer 14 Financial and Penland Automotive in September, hold on, of 15 2020? 16 A. No, --- 17 BY MS. BRIDGES: 18 Object to form. 19 WITNESS CONTINUES: 20 A. --- because he was involved with that discussion, I was 21 not involved in that discussion. 22 Q. Well, why would he bring it up to you and not just call 23 Dan? 24 A. Because I was probably there. 25 Q. So, did he ask you, "What are the Terms of our Agreement

Page 133 1 that I owe because I'm confused what they are?" 2 A. No. 3 BY MS. BRIDGES: 4 Object to form. 5 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 6 Q. Let's move down to 9/23. "Sorry to bother you on 7 vacation. Do you have a cellphone number for Billy 8 Penland;" see that? 9 A. Yes. 10 Q. Were you on vacation 9/23? 11 A. Yes. 12 Q. You know why he, why Mr. Haight wanted a cellphone for 13 Billy Penland? 14 A. No, sir. 15 Q. Do you know if they spoke? 16 A. No, sir. It's not unusual for Dan to ask me for a phone 17 number for a dealer. 18 Q. All right, it says, "Call you in a bit," same day, little 19 while longer; did you talk to him? 20 A. I probably didn't because I was on vacation. 21 Q. Okay, did you go --- 22 A. I don't recall. 23 Q. --- back on vacation about two weeks later? 24 A. Yes. 25 Q. You did?	Page 135 1 Q. I assume that you had text messages with Dan Haight 2 regarding something other than Billy Penland and Penland 3 Automotive; is that fair? 4 A. I'm sure. 5 Q. So, how did you make sure that this only captured your 6 texts with Dan Haight about Billy Penland or Penland 7 Automotive or Tim? 8 A. I just downloaded, I didn't specifically look for anything 9 other than numbers. That's all I looked for when I pulled 10 it, when I ran it. I searched on certain phone numbers. 11 (Side discussion between attorneys) 12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 13 Q. So, I think Counsel has an agreement that we're gonna put 14 on the record, and it appears that there are some 15 documents that we have not gotten from Mr. Bethea that I 16 think Defendants are gonna get and produce to us, 17 including the notes and maybe make sure the emails match 18 what's already been produced. And then as to this last 19 little bit of discussion we've had about Exhibit Number 2, 20 --- 21 A. Um-hum. 22 Q. --- as you can see there are blacked out areas --- 23 A. Yes. 24 Q. --- that were redacted --- 25 A. Yes.
Page 134 1 A. Um-hum. 2 Q. Went on vacation twice? 3 A. Um-hum. 4 Q. Is that a yes? 5 A. Yes. 6 Q. All right, can you tell me why it ends there, why is 7 everything else blacked out? 8 A. I have no idea, I don't, I didn't do this, I just printed 9 the whole thing, I have no idea, I didn't redact it, I did 10 not redact that. 11 Q. All right, give me a minute. Do you remember what it 12 said? 13 A. No. 14 Q. Was it about somebody else? 15 A. I don't recall. I, when I downloaded it, I just 16 downloaded it and sent it, I didn't read it because there 17 was lots of pages. 18 Q. Did you search, how did you come up with texts only with a 19 certain person? 20 A. I was given a program, sent a program --- 21 Q. Okay. 22 A. --- that I could download all my texts, and I ran the 23 program and it looked, searched all of my texts based upon 24 the criteria of phone numbers, and it downloaded them all 25 off my phone onto ---	Page 136 1 Q. --- and there's a privilege log, Dealer Financial's 2 lawyers have asserted a privilege to that --- 3 A. Yes. 4 Q. --- that I've questioned. 5 A. Yes. 6 Q. So, Ms. Bridges is gonna go back, she's gonna look through 7 what's been redacted, she's gonna make her own decision of 8 whether she thinks that's a legitimate privilege, and then 9 we'll go from there. But, we are going to leave the 10 possibility of you coming back and providing more 11 deposition testimony depending on what documents are 12 produced and if I have any other questions about them. 13 A. Only if you're on time. 14 Q. That's fair; I'll get here early. 15 BY THE COURT REPORTER: 16 I need to interject, when you say Exhibit 2, it's Exhibit 17 2 to Mr. Bethea's deposition, not to Mr. Haight's; right? 18 BY MR. IMHOFF: 19 Correct, do I need to put that on the record? 20 BY THE COURT REPORTER: 21 No, I'll put that. 22 BY THE WITNESS: 23 That mean we're through? 24 BY MR. IMHOFF: 25 No.

Page 137 1 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 3; ATTACHED TO 2 DEPOSITION) 3 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 4 Q. All right, I'm gonna hand you Exhibit Number 3. Do those 5 appear to be texts between yourself and Tim Yarger? 6 A. Yes. 7 Q. Okay. Is the Bates label at the bottom DFH_3065? 8 A. Yes. 9 Q. He asks you on 7/7, "We just want to make sure it's gonna 10 be the exact same UCC filing;" do you agree with that? 11 A. Yes. 12 Q. Who says, "Can you call Dan, that's his area"? 13 A. I probably text that to Tim. 14 Q. To talk to Dan about the UCC filing? 15 A. Yes. 16 Q. All right. What is this, I want you to go down, it says, 17 "Because his brother's involved, he wants to make sure all 18 this is done right, so he's got his attorney here advising 19 him how to go forward on doing what he wants to do;" who 20 wrote that? 21 A. Tim. 22 Q. Any idea what that's about? 23 A. Yeah. 24 Q. What's it about? 25 A. We were paying off a floorplan and they wanted to make	Page 139 1 Q. What is, do you remember what it's about? 2 A. I don't recall; it may have been a paying a car off. 3 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 4; ATTACHED TO 4 DEPOSITION) 5 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 6 Q. I'll hand you Exhibit Number 4. Those are text messages 7 between yourself, Dan and Steve; is that right? 8 A. Um-hum. 9 Q. Is that a yes? 10 A. Yes. 11 Q. I'm not gonna ask you questions about that. 12 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 5; ATTACHED TO 13 DEPOSITION) 14 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 15 Q. All right, I'm gonna hand you Exhibit Number 5. Are these 16 your text messages? 17 A. No. 18 Q. Is this Dan? 19 BY MR. HAIGHT: 20 I'm looking. May I take Exhibit? 21 BY MS. BRIDGES: 22 Yeah, could I, Jason, are you cool if I show this to Dan? 23 BY MR. IMHOFF: 24 Yeah. 25 BY MS. BRIDGES:
Page 138 1 sure everything was going to be okay with paying the 2 floorplan off. 3 Q. And whose brother's involved? 4 A. That's interesting. I don't know whose brother, I think 5 that was Billy's brother. 6 Q. All right. 7 A. I don't know whose brother. 8 Q. All right. 9 A. May have been Billy's brother. 10 BY MR. PENLAND: 11 Huh-huh. 12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 13 Q. Who wrote, "Please call Dan"? 14 A. I probably did. 15 Q. Why? 16 A. There was a question Dan needed to answer. 17 Q. Do you remember what it was? 18 A. No. 19 Q. What is this, 9/14/2020, "Billy has 150k to spend this 20 week. Tim, I really hope all went well with your health 21 and got back great results." Then it says, "I never heard 22 from Joey or anyone. So, now we're at a critical stage. 23 Over three weeks since I came in and made you a great 24 offer;" are you writing this? 25 A. Yes, I am. I don't ---	Page 140 1 Okay. 2 BY MR. HAIGHT: 3 It's certainly to Steve, and yes, I believe that they are 4 from me. 5 BY MR. IMHOFF: 6 Don't include John? 7 BY MR. HAIGHT: 8 No, these are text messages between, I believe, Steve 9 Lanzl and myself. 10 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 11 Q. All right, so, in front of you, the Exhibits that we have 12 now are text messages with Tim, text messages with Billy, 13 did we see text messages with Dan; I believe, right? 14 A. Yes, we did. 15 BY JASON IMHOFF: 16 Do you have text messages directly with Steve? 17 BY MS. BRIDGES: 18 I think one of those was with Steven. 19 BY MR. IMHOFF: 20 Will you see if one of those is? You're right, I have 21 five, so Billy, Tim, Dan --- 22 BY MS. BRIDGES: 23 Dan and Steve. 24 BY MR. IMHOFF: 25 Dan and Steve

Page 141 1 BY THE WITNESS: 2 Dan and Steve, yeah. 3 BY MS. BRIDGES: 4 Uh, no, and then Steve, between Steve and Dan. 5 WITNESS ANSWERS: 6 A. I don't think there's any between just Steve and me, I 7 think it would be Dan and Steve and me. 8 Q. You don't text with Steve? 9 A. I do. 10 Q. You don't text with Steve, you didn't text with Steve 11 about Penland; is that what you're telling me? 12 A. That's what I'm saying, I probably didn't text about 13 Penland. 14 Q. I'm gonna jump around because I have notes; okay? Do you 15 know Sylvester Goldman? 16 A. Yes. 17 Q. Who is he? 18 A. He's the dealer at Upstate Little, Xtreme Upstate Lil Boyz 19 Toyz. 20 Q. You used to work for him? 21 A. Yes. 22 Q. Do you have any opinion about him or not, one way or 23 another? 24 A. He's a close personal friend, so, he's a good guy, I mean, 25 so, he ---	Page 143 1 any of these cars they want to buy, and Sylvester 2 contacted me and said, "Are any of these Billy Penland's 3 cars," and I said, "I can't tell you whose cars they are. 4 Well, I'm not gonna buy them if they're Billy Penland's 5 because Billy and I are 6 - - I said, "Well, I can't, I can't tell you who the cars 7 they are because I don't, that's not what I do." I never 8 tell anybody whose cars. 9 Q. Has anyone ever asked you what happened with Penland 10 Automotive and Dealer Financial? 11 A. Not that I can recall. 12 Q. You've never talked to anybody in the car, used car 13 community at auctions, lenders, floorplan lenders, other 14 dealerships, about what happened between Dealer Financial 15 and Billy Penland? 16 BY MS. BRIDGES: 17 Object to form. 18 WITNESS ANSWERS: 19 A. The only thing I would've said is he's, "We don't do 20 business with him anymore." 21 Q. So, people have asked? 22 A. Yeah. 23 Q. How many? 24 A. I don't recall how many. I mean, it's, when a dealer 25 loses his cars off the floorplan, they ask what's
Page 142 1 Q. Do you believe he's honest? 2 A. Yes. 3 Q. Does he work with Dealer Financial? 4 A. Yes. 5 Q. Does he have terms different than Penland Automotive? 6 BY MS. BRIDGES: 7 Object to form. 8 WITNESS ANSWERS: 9 A. Yes. 10 Q. Did you ever talk to Sylvester Goldman about Penland 11 Automotive or Billy Penland? 12 A. No. 13 Q. Never? 14 A. Well, he said, yeah, I did because he said Billy's buying 15 cars at the sale, says he's a great buyer. 16 Q. Okay, did you ever have discussions with Sylvester Goldman 17 about Penland Automotive or Billy Penland being out of 18 trust? 19 A. No. 20 Q. Did you ever have discussions with Sylvester Goldman about 21 Billy Penland, Penland Automotive's vehicles? 22 A. Yes. 23 Q. Tell me about that. 24 A. When we, when the cars were taken, I sent an email to 25 several of my dealers in the Upstate to see if there were	Page 144 1 happened. I say, "Well, I don't know." 2 Q. Is it kind of a small community? 3 A. Yes. 4 BY MS. BRIDGES: 5 Object to form. 6 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 7 Q. People talk? 8 A. Yes. 9 BY MS. BRIDGES: 10 Object to form. 11 DIRECT EXAMINATION BY MR. IMHOFF: 12 Q. Spread gossip? 13 BY MS. BRIDGES: 14 Object to form. 15 WITNESS ANSWERS: 16 A. They've been known to. 17 Q. Do you generally, do you have an opinion as to whether or 18 not what happened to Penland Automotive and Billy Penland 19 is general knowledge in the used automotive community in 20 the Upstate? 21 BY MS. BRIDGES: 22 Object to form. 23 WITNESS ANSWERS: 24 A. I don't know, probably. 25 Q. And of the people that ask you, what's your response to

Page 145 1 them? 2 A. That we don't do, that he's out of business, we're not 3 doing business with him anymore. 4 Q. Which one of those two things? 5 A. We don't do business with him anymore. 6 Q. Has anybody, has anyone asked you if he's out of trust? 7 A. No. 8 Q. Did you ever tell anybody he was out trust? 9 A. No. 10 Q. Has anyone ever suggested that they heard he was out of 11 trust? 12 A. I don't recall. 13 Q. Let me ask it a different way. Has anyone said to you, 14 "Was Billy Penland, Penland Automotive out of trust?" 15 BY MS. BRIDGES: 16 Object to form. 17 WITNESS ANSWERS: 18 A. I've been asked that. 19 Q. How many times? 20 A. I don't know. 21 Q. More than five? 22 A. No. 23 Q. Okay, what do you say to that? 24 A. I'm gonna say, "I can't discuss that because they're our" 25 - - "I can't discuss that with anybody."	Page 147 1 A. Yes. 2 Q. Then why wouldn't you tell people that Billy Penland and 3 Penland Automotive were not out of trust? 4 A. Because --- 5 BY MS. BRIDGES: 6 Object to form. 7 WITNESS CONTINUES: 8 A. --- I didn't want to spread any rumors that may get 9 mistaken wrong. 10 Q. How would that be mistaken? 11 A. I don't know. People talk. 12 Q. Have you been told not to tell anyone who asks that Billy 13 Penland was not out of trust? 14 A. No. 15 BY MS. BRIDGES: 16 Object to form. 17 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 18 Q. Have you been told what to say one way or the other? 19 A. No. 20 Q. Do you have an opinion on Billy Penland as a businessman 21 and as a person? 22 A. Sure. 23 Q. Okay, what's your opinion? 24 A. I think he's a good guy. I think he's a very good car 25 buyer.
Page 146 1 Q. Did you say can't discuss it? 2 A. Yep. 3 Q. Okay. Was Penland Automotive out of trust on October 8th, 4 2020? 5 A. Not to my knowledge. 6 Q. Why don't you tell people that Penland Automotive and 7 Billy Penland were not out of trust? 8 A. Because it's a dealer and I don't want to say anything one 9 way or the other. I say, "I can't say one way or the 10 other." 11 Q. Why not? 12 A. Because I'm not supposed to. 13 Q. Per who? 14 A. Me. 15 Q. It's your own rule? 16 A. Yes. 17 Q. You told me earlier that being out of trust is bad in your 18 profession; right? 19 A. Yes. 20 Q. And you're of the opinion that Penland Automotive and 21 Billy Penland were not out of trust on October 8th, 2020; 22 right? 23 BY MS. BRIDGES: 24 Object to form. 25 WITNESS ANSWERS:	Page 148 1 Q. Okay, do you have a negative opinion of his honesty or 2 integrity? 3 A. No. 4 Q. Do you know if the used car community has a negative 5 opinion of his honesty or integrity? 6 A. I don't know; I haven't heard anything. 7 Q. You haven't heard anything? 8 A. Yeah. 9 Q. Okay. If someone is out of trust, in your opinion, does 10 that diminish their honesty and credibility and ability as 11 a business person in this industry? 12 BY MS. BRIDGES: 13 Object to form. 14 WITNESS ANSWERS: 15 A. Say that again. 16 Q. Sure. 17 A. I'm sorry. 18 Q. If a dealer or dealership is out of trust, does that 19 diminish their reputation in the used car business 20 community? 21 A. Yes. 22 Q. Does having cars taken off your lot by a lender, a 23 floorplan lender, diminish a dealer or dealership's 24 reputation in the used car business? 25 BY MS. BRIDGES:

Page 149 1 Object to form. 2 WITNESS ANSWERS: 3 A. It may. 4 Q. What circumstances wouldn't it? 5 A. Well, if the dealer was out of trust and they came back in 6 trust and the car came back, you don't know why they got 7 the cars back. 8 Q. Do you have a business card? 9 A. I didn't hear what you said. 10 Q. Do you have a business card? 11 A. Yes. 12 Q. May I see? Thank you. May I have it? 13 A. You may. 14 BY MR. IMHOFF (TO THE COURT REPORTER): 15 Can you mark it, please? 16 BY THE COURT REPORTER: 17 It'll be Number 6. 18 (BUSINESS CARD MARKED AS PLAINTIFFS' EXHIBIT NUMBER 6; 19 ATTACHED TO DEPOSITION) 20 BY THE WITNESS: 21 That's a first, I've never given a lawyer a business card. 22 23 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 24 Q. Is Exhibit Number 6 your business card? 25 A. Yes.	Page 151 1 Q. Have you seen Tim Yarger's Affidavit? 2 A. No. 3 Q. And you still talk to Tim? 4 A. On occasion. 5 Q. Do you talk to Tim about this case --- 6 A. No. 7 Q. --- at all? Not a thing? 8 A. Nothing, no. 9 Q. Did you help get the Affidavit or --- 10 A. No, no. 11 Q. Those are very definitive answers. 12 A. Yes. 13 Q. How's Tim doing? 14 A. I don't know, I haven't - - last time I talked to him he 15 was doing fine, he was selling cars; that's all I know. 16 Q. Oh, it's not at a dealership that you work with? 17 A. No. 18 Q. When was the last time you talked to him? 19 A. I don't know, couple weeks ago. 20 Q. In person, text? 21 A. On the phone. 22 Q. On the phone, which phone or did he call you? 23 A. Just check on him. I've been knowing Tim since 2001. 24 Q. Sure. 25 A. So, we've been knowing him for a long time.
Page 150 1 Q. Has it essentially been your business card since 2016? 2 A. Yes. 3 Q. Have you ever communicated to anyone, any one of your 4 dealerships that you work with, that you are an 5 independent contractor and don't work for Dealer 6 Financial? 7 A. No. 8 Q. Why not? 9 A. Because it's not important. 10 Q. Do you tell your dealerships that they have a right to 11 rely on what you say as if you work for and represent 12 Dealer Financial? 13 BY MS. BRIDGES: 14 Object to form. 15 WITNESS ANSWERS: 16 A. Yes. 17 Q. Okay, do you have an opinion as to whether or not the 18 dealerships that you work with believe you are a 19 representative and employee of Dealer Financial? 20 BY MS. BRIDGES: 21 Object to form. 22 WITNESS ANSWERS: 23 A. Yes. 24 Q. They believe that you are? 25 A. Yes.	Page 152 1 Q. What dealership is he at? 2 A. He's at a dealership in Mauldin, and the owner has a 3 large, had sold some property and has a large amount of 4 cash, so, he has no need for a floorplan. 5 Q. Got ya. Did you talk with Dan or Steve in preparation for 6 your deposition? 7 A. Yes. 8 Q. Was the lawyer present? 9 A. No. 10 Q. What were your conversations with Dan and Steve? 11 A. I talked to, I said, they just said, "Tell the truth." We 12 didn't talk about the case, we just said, "Make sure you 13 just tell the truth, that's all we want you to do;" that's 14 all the discussion was. 15 Q. Did they explain the lawsuit to you? 16 A. No, I have no idea what the lawsuit is. 17 Q. How long did you meet with them? 18 A. Meet with them? 19 Q. Yeah. 20 A. I didn't, I talked to them on the phone. 21 Q. Oh, how long was your phone call? 22 A. A minute or two, just long enough to say just, I'd never 23 had a deposition, he said, "If you've never had a 24 deposition, all you need to do is go in and just tell the 25 truth."

Page 153 1 Q. Have you talked to them about the breakup on October 8th 2 and 9th? 3 A. No. 4 Q. You didn't have any discussions with them about what 5 happened or how it went down or anything like that? 6 A. No. 7 Q. Did anybody else who you offered the cars to ask if they 8 were Billy Penland's cars? 9 A. I don't recall. 10 Q. Did you talk to them when the lawsuit was filed? 11 A. Beg your pardon? 12 Q. Did Dan and/or Steve or anyone else tell you that a 13 lawsuit had been filed? 14 A. I believe Dan told me one was filed "and you'll probably 15 be deposed and just, just want you to know your calendar, 16 you may have to, we may have to do that;" that's all he 17 said. 18 Q. Okay, any other discussions about the facts; anything like 19 that? 20 A. Nope, none. 21 Q. And your testimony is that all the negotiations for 22 contracts and agreements and terms and conditions, that 23 was all Dan Haight and you weren't involved in it at all? 24 A. On the October 18th was, that last one I was. 25 Q. October ---	Page 155 1 Answer any questions your attorney may have. 2 (Off the record at approximately 1:46 p.m.; on the record at 3 approximately 1:58 p.m.) 4 CROSS-EXAMINATION BY MS. BRIDGES: 5 Q. All right, Mr. Bethea, I just have a couple of questions 6 for you, as you know. So, earlier in your testimony you 7 stated that you didn't recall if Mr. Penland or anyone 8 else at Penland Automotive asked whether new contract 9 documents were coming in 2020; is that right? 10 A. Yes. 11 Q. Do you think if somebody had asked you 20 times you would 12 recall that? 13 BY MR. IMHOFF: 14 Object to form. 15 WITNESS ANSWERS: 16 A. Yes. 17 Q. And do you recall anyone asking that many times? 18 A. No, not that many times. 19 Q. Did Mr. Penland ever ask you whether the floor plan 20 financing arrangement that was in 2020 was going to be 21 like the previous one with Dealer Financial? 22 A. Yes. 23 Q. And what did he say? 24 A. He said, "Are we gonna have the same floorplan we had in 25 '20 in the original," and I said, "You need to talk to Dan
Page 154 1 A. I mean, whatever the last, the last one we were talking 2 about. 3 Q. So, I think that the application was submitted in June of 4 2020? 5 A. Of June of 2020, that's when it was, I'm sorry. 6 Q. And then there were --- 7 A. That was the June of 2020. 8 Q. You were not involved in negotiations in that at all? 9 A. No. 10 Q. And you don't know what terms and conditions were offered, 11 made or agreed to? 12 A. No. 13 Q. Okay. All right, I'm gonna be real specific about this; 14 okay? The email that came from Dan Haight, excuse me - - 15 I'm not sure where it went. 16 BY MS. BRIDGES: 17 Which email? 18 BY MR. IMHOFF: 19 The one that doesn't have a date or time on it. 20 DIRECT EXAMINATION RESUMED BY MR. IMHOFF: 21 Q. Exhibit Number 17; okay? I'm gonna ask you to go back and 22 personally look in your email account and see if you've 23 ever received that email; okay? 24 A. Okay. 25 Q. All right, I don't have any other questions for you.	Page 156 1 because he was" --- 2 Q. He needed to --- 3 A. --- "because Dan negotiated the contract." 4 Q. Okay. 5 A. And I was not privy to that. 6 Q. I'm gonna show you what was marked in Mr. Haight's 7 deposition as Exhibit 36. 8 BY MS. BRIDGES (TO MR. IMHOFF): 9 And can I show him, do you care if I show him my 10 handwritten version? If you would like to confirm the --- 11 BY MR. IMHOFF: 12 October 8th? 13 BY MS. BRIDGES: 14 Yeah, October 8th. I have it written as Exhibit 36 if you 15 want to confirm that that's --- 16 BY MR. IMHOFF: 17 Oh, no, go ahead. 18 BY MS. BRIDGES: 19 Okay. 20 CROSS-EXAMINATION RESUMED BY MS. BRIDGES: 21 Q. I'll let you read that. Have you seen this before? 22 A. No. 23 Q. I'll let you read through it and then when you're done, 24 I'll ask you a question about it, questions about it. 25 A. (Witness complies). Okay.

Page 157 1 Q. In reviewing that document, was, and you're looking at it, 2 was the phrase "out of trust" used anywhere in that 3 document? 4 A. I'll have to look at it and see, I'm sorry, I didn't read 5 that close. 6 Q. Take your time. 7 A. No, I don't see that term in here. 8 Q. Has there been other occasions, to your knowledge, when 9 Dealer Financial has picked up cars from other 10 dealerships, not specifically Penland? 11 A. Yes. 12 Q. And have you been involved in what to do with those cars 13 on other occasions? 14 A. Yes. 15 Q. When that happens, have people called to ask you why you 16 have those cars or as part of your conversations you have? 17 A. Yes. 18 Q. And what is your response when somebody asks that? 19 A. I'm saying I'm not at liberty to discuss it. 20 Q. So, do you ever either confirm or deny why Dealer 21 Financial has vehicles, the reason for it? 22 A. No. 23 Q. Do you ever confirm or deny with anybody whether any 24 dealer is out of trust and that's why you have the 25 vehicles?	Page 159 1 Q. I don't have any other questions, thank you. 2 3 BY THE COURT REPORTER: 4 (Deponent and his attorney chose not to waive reading and 5 signing of the deposition) 6 7 (There being no further questions, the deposition was 8 concluded at approximately 2:04 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 158 1 A. No. 2 Q. Did you ever tell anyone that Mr. Penland or Penland 3 Automotive was out of trust? 4 A. No. 5 Q. That's all I have. 6 REDIRECT EXAMINATION BY MR. IMHOFF: 7 Q. You were just asked about --- 8 A. Wait a minute, you said you were through. 9 Q. Well. Did you ever discuss with Mr. Haight or Mr. Lanzl 10 or anybody else at Dealer Financial the change in 11 ownership structure, change in, or change in management 12 structure at Penland? 13 A. No. 14 Q. They never asked you about it? 15 A. (Nods in the negative). 16 Q. That a no? 17 A. No. 18 Q. Did they tell you that they were concerned after September 19 23rd when Tim Yarger left about the change in management 20 structure? 21 A. No. 22 Q. Was there a concern that you were aware that Tim Yarger 23 had left Penland Automotive after you became aware in 24 September of 2020? 25 A. No.	Page 160 1 CERTIFICATE 2 3 This is to certify that the foregoing deposition of JOHN 4 OSCAR BETHEA, JR., was taken by the within court reporter, a 5 Notary Public for the State of South Carolina, duly 6 commissioned and qualified as such, on the 28th day of July 7 2022 at Parker Poe, Greenville, South Carolina. 8 That said court reporter is not a relative or employee of 9 any of the parties or the attorneys, and further is not 10 of-counsel or attorney for any of the parties to said action 11 and is not in any manner interested in the cause, financial or 12 otherwise. 13 That the deponent was duly placed under oath and 14 admonished to speak the whole truth; that the oral deposition 15 was duly taken and transcribed as to the questions propounded 16 and the answers given; that the foregoing 159 pages is a true, 17 accurate and correct record of the testimony given by the 18 deponent together with such changes as said deponent may have 19 made, if any, during the reading over and signing procedure. 20 That the court reporter has retained the original 21 deposition in her possession for the purpose of sealing and 22 filing same with the proper official. 23 That all offered exhibits, stipulations and objections, if 24 any, involved in this cause are duly attached or included 25 herein.

1 In witness whereof, I have set my hand and official seal:

2
3 Date: 08/11/2022

4 
5 
6 Bebe O. Norris, Court Reporter
7 Notary Public for South Carolina
8 My Commission Expires 03/02/2028
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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2021-CP-23-00244
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
PENLAND AUTOMOTIVE, LLC, ET	)	
AL,	)	
PLAINTIFFS,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DEALER FINANCIAL HOLDINGS,	)	
LLC, ET AL,	)	
DEFENDANTS.	)	
_____	)	

January 4, 2023
Greenville, South Carolina

B E F O R E:

THE HONORABLE J. DERHAM COLE, JUDGE

A P P E A R A N C E S:

JASON MICHAEL IMHOFF, ESQ
Attorney for the Plaintiffs

ROBERT HOPE JORDAN, ESQ.
EMILY IRENE BRIDGES, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

INDEX

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

PAGE

There were no witnesses called.

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 11:18 AM.)

THE COURT: All right. It appears there are two motions pending. First is the defendant's motion to strike, and the second is the plaintiff's motion to compel.

Motion to strike.

MR. JORDAN: Yes, Your Honor. May it please the Court. Robert Jordan along with my colleague Emily Bridges. We represent the defendants Dealer Financial, Dan Haight, Steve Lanzel in this action. We're here on a motion to strike a jury demand pursuant to a jury waiver in a contract between the parties.

Judge, by way of just a short background, and I will go ahead and let the Court know we filed a memo in support, so we'd like to incorporate that memo for the record.

THE COURT: Well, why are you incorporating it? You've got a hard copy so I can incorporate it with my stuff?

MR. JORDAN: Sure can, Your Honor. May I approach?

THE COURT: Sure. Thank you.

MR. JORDAN: So, Your Honor, just by way of brief background, and this is set forth in the memo, this dispute involves a lending relationship between the

1 parties. My client is the lender. The plaintiff and the
2 individual plaintiff run a preowned car dealership. My
3 client provides what's typically called floor financing to
4 car dealerships. You're probably familiar with that
5 arrangement. Money's advanced, cars are bought, they're
6 paid back with fees and interest. And that's the way the
7 used-car lots are able to finance the purchase of
8 inventory.

9 In 2016 the parties entered into a contractual
10 arrangement, which I call the loan documents, to set up a
11 relationship for my client to lend money for floor
12 financing. That contract contains a jury waiver. We
13 cited that jury waiver in our motion and in the memo on
14 page 3. I think this entire motion is about that clause
15 and the Court's interpretation of the clause and whether
16 it covers the claims that we're now litigating in this
17 case or not. We submit, of course, that the waiver does
18 cover the claims.

19 Judge, the parties did business for three years.
20 That's undisputed. Money was advanced, cars were bought,
21 payments were made back on the loans. In the summer of
22 2020, the -- well, actually, in 2019 the parties stopped
23 doing business. There's a debate between the parties
24 about the circumstances involving that stoppage of loan to
25 client. In 2020, though, it's undisputed they resumed

1 doing business. My client loaned money. The plaintiff
2 took the money, bought cars. And then another dispute
3 arose between the parties which forms the basis of the
4 lawsuit.

5 Judge, what's at issue is the plaintiff contends that
6 the contract was terminated in 2019. We contend whether
7 the contract was terminated in 2019 or not, the jury
8 waiver survives any termination or any interpretation of
9 what parts of the contract survive and what parts don't.

10 So I'll direct the Court's attention to the clause.
11 It's on page 3 of our brief. I think we put it in bold.
12 And it says in operative -- the operative language is,
13 quote, in any and all causes of action in any way relating
14 to any matter between them whether arising from or
15 relating to this agreement or any related agreement, or
16 arising from alleged extracontractual facts prior to,
17 during or subsequent to this agreement. So it's
18 undisputed that this language was agreed to in 2016.

19 And for the Court's benefit and for our argument,
20 what I would highlight is the waiver says "relating to any
21 matter between them." It's broader than just a contract.
22 It also says "relating to any alleged extracontractual
23 facts prior to, during or subsequent to this agreement."
24 So it essentially says if we're going to do business
25 together, we're going to have a relationship, whether it's

1 under this agreement or in the future, you agree to a jury
2 waiver. And so we're asking the Court to enforce this
3 waiver.

4 As set forth in our brief, Judge, and I think the
5 Court knows this, whether a party is entitled to a jury
6 trial is a question of law for the Court. It's not a
7 question of fact for the jury. I would cite Mims
8 Amusement Company, which is 266 SC 141, South Carolina
9 Supreme Court 2005.

10 I would also cite for the Court that in South
11 Carolina it's well-settled that a right to a jury trial
12 may be waived by contract. So the Court gets to determine
13 as a matter of law whether or not a waiver is enforceable,
14 and South Carolina law establishes that a contract term
15 can constitute a waiver if the parties agree to it.

16 Judge, I think what we're going to hear and you will
17 hear and I'll go ahead and address it and address it on
18 rebuttal if the Court wants to hear from me is that the
19 contract was terminated in 2019, and therefore, the waiver
20 was terminated. So as I cite at the outset of the
21 argument, if you look at this language, it's broader than
22 just the 2016 contract. It governs any relationship or
23 any business between the parties. And it's undisputed
24 that what this lawsuit is now about is about a lineal
25 relationship between the parties and a dispute over the

1 rights and obligations of the parties. I don't think
2 there's anything the plaintiff can present factually that
3 takes them outside of this clause. For those reasons, we
4 would ask the Court enforce the clause and strike the jury
5 demand.

6 We'd be happy to answer any questions the Court may
7 have.

8 THE COURT: Mr. Imhoff?

9 MR. IMHOFF: Yes, Your Honor. Jason Imhoff on behalf
10 of the plaintiffs Penland Automotive and Charles W.
11 Penland. And I say that intentionally. There's a couple
12 plaintiffs in this, Your Honor.

13 And I have the loan security agreement. May I
14 approach and also hand our brief to the Court, Your Honor?

15 THE COURT: Sure.

16 MR. IMHOFF: Your Honor, I thank you for coming over
17 here to hear us from Spartanburg. I'm not sure if you
18 have access to this entire file or not.

19 THE COURT: I don't at this moment.

20 MR. IMHOFF: It is well-motioned, well-briefed, huge
21 briefs with lots of exhibits, multiple depositions. Your
22 Honor, this has been going on for years. We've been
23 before this court multiple times.

24 As you see from the defendant's motion, this is
25 either their second or third attempt to have the Court

1 grant this motion. It has already been denied previously,
2 Your Honor.

3 The issue in this case is much larger than just that
4 agreement. But let me give you a thumbnail sketch of what
5 the plaintiff has argued and the evidence that's in the
6 file and in the briefs in this case already.

7 These folks had an agreement in 2016. It's -- in our
8 opinion it is a security agreement which needs to be in
9 writing which is what the document I just handed you is.
10 It has multiple, multiple pages. It also required
11 multiple signatures.

12 My client, Charles Penland, as you can imagine, is an
13 individual. There's a personal guarantee in that
14 agreement that he had to sign in 2016 to get the loan. He
15 also had to sign a different place on behalf of his
16 automobile dealership, Penland Automotive. He had to sign
17 in a third place for Penland Properties too for a mortgage
18 and collateral on property that was owned by a separate
19 company.

20 There's no dispute that in 2019 these parties ended
21 their relationship. Not only did they end their
22 relationship, the reserve money that the loan company had
23 was sent back to my client and they went their separate
24 ways except for one thing. There's a UCC1 filing which
25 tells any other lender out there we still have first

1 priority over the collateral on that car lot that Dealer
2 Financial did not remove.

3 So in the summer of 2020 -- I think it was 2020 --
4 during COVID, my client had to go get another loan and had
5 another lender ready to give him a loan except for the
6 UCC1 filing which was still filed, which there's documents
7 in the file that have been argued to this court before,
8 briefed to this court before, that my client asked Dealer
9 Financial to remove that UCC filing multiple times.
10 Instead of removing the UCC1 filing, they made verbal
11 promises to the general manager of Penland Automotive
12 about what loan they were going to give and when they were
13 going to get new documents. That's all important to say,
14 Your Honor, at that time as they were negotiating a new
15 loan relationship, there was no meeting of the minds on
16 what the terms were, what the amount was, whether or not
17 Charles Penland was going to have to be another personal
18 guarantee, whether he was going to have to mortgage
19 property owned by another company. All of this has been
20 argued to this court and argued between us, depositions,
21 everything else, Your Honor.

22 But the key to this case is Dealer Financial came and
23 took all of the collateral cars off of my client's lot
24 without my client being in arrears at all, and then the
25 principal owners of Dealer Financial followed him to an

1 auction where they followed him around with a piece of
2 paper and demanded that he sign some document is the
3 testimony, Your Honor. So my client, Charles Penland, has
4 a defamation per se cause of action, has a fraud cause of
5 action, has a negligence misrepresentation, inducement of
6 a contract cause of action. All of those causes of action
7 occur because of the behavior in 2020.

8 And what defendants want you to do is go back and
9 enforce the agreement that is the central issue to this
10 case. Is Dealer Financial allowed to renew a 2016
11 security agreement that's got to be 50 pages long, Your
12 Honor, with three different entities and three different
13 people and enforce that when in 2020 they never sent
14 anything in writing to say what the terms or what the
15 agreement or anything else was? Again, this court has
16 heard this twice now, and both times -- I think it was
17 Judge Verdin both times -- has ruled that there's a
18 genuine issue of material fact as to whether or not that
19 2016 agreement can be renewed verbally. And if it is
20 renewed verbally, what are the terms to that agreement?
21 Because they're different from 2016 to 2020. Even
22 Mr. Haight and Dealer Financial admitted that. The terms
23 changed over the years and did in 2020 as well.

24 And so, Your Honor, I don't want to belabor it, but
25 the issue has already been sent to the Court. It's much,

1 much bigger than just, well, here's a document and they
2 started doing business again. Here's a document with
3 parties who never signed, and it can't be argued that a
4 general manager of an automobile -- used automobile shop
5 can personally guarantee an individual and bind a complete
6 different company and their property.

7 And so I would agree with this. I think there's an
8 issue of how we get this factual issue to a jury or to a
9 judge. But this isn't the way. A motion to strike would
10 essentially take away two parties' rights who didn't sign
11 anything in 2020 to agree to that 2016 agreement, Your
12 Honor. And also, we've made an argument which was denied
13 a motion for summary judgment that because it's not in
14 writing, it violates the security agreement provision of
15 the consumer code for the UCC, Your Honor, which requires
16 it to be in writing. All of that will be shared with the
17 jury, will be shared at trial.

18 But we've tried to narrow the case down over the last
19 couple years, Your Honor. And so far every judge that's
20 heard this has found that there's a material issue or
21 genuine issue of material fact, Your Honor.

22 So we would ask that the motion to strike be denied.
23 Because if you find that the motion to strike should be
24 granted, then you found that the 2016, which is the
25 agreement which is the entire dispute in this case, was

1 renewed in 2020 as an enforceable against my client who
2 never signed anything in 2020 including a personal
3 guarantee.

4 Your Honor, I don't want to belabor the whole thing.
5 I mean, we've argued this for hours in this courthouse.
6 But if there are other questions you have, I'm happy to
7 answer them. We've given you the brief. Again, this file
8 is enormous. I mean, there's so many exhibits and
9 depositions in this case. I would ask that the Court just
10 deny the motion to strike, Your Honor.

11 THE COURT: Mr. Jordan.

12 MR. JORDAN: Thank you, Your Honor. Just briefly.

13 Mr. Imhoff is arguing the merits of the case as
14 expected. He's arguing about the factual disputes. Both
15 parties did file cross-motions for summary judgment.
16 Those were both denied. Those are the merits of the case,
17 and the facts and disputes we have. And, of course, we
18 dispute many of the facts he just recited to the Court
19 about what happened in this case. But that's not before
20 the Court today. You don't have to decide the case today.

21 What you have to decide is is this clause, which was
22 signed by both parties -- and, again, these are
23 sophisticated business parties. Penland Automotive, the
24 evidence in the case, is running millions of dollars of
25 business through their dealership. Okay. This is a

1 sophisticated party. They don't get to argue we didn't
2 understand or we didn't know what we were signing. And as
3 I said in my argument, relating to any matter between
4 them, everything Mr. Imhoff just argued, even if we
5 disagree with the facts, is related to business dealings
6 between the parties as to contractual facts subsequent to
7 this agreement, exactly everything he talks about at the
8 auction and about the repossession of the cars, all is
9 extracontractual facts related to subsequent to the
10 agreement. So giving this language its plain and ordinary
11 meaning, which the Court is required to do under our rules
12 of construction, it should be enforced.

13 And so I'm happy to answer any questions, but I think
14 the issue is not today, Judge, please look at the huge
15 file and tell us who's right and wrong. Obviously, that's
16 for another day before a judge or a jury. Today the issue
17 before Your Honor is this clause and what does it mean,
18 and as a matter of law, is it enforceable. We obviously
19 contend it is.

20 THE COURT: Mr. Imhoff says that that clause has
21 already been addressed by one or two other judges. Do you
22 disagree or agree with that?

23 MR. JORDAN: Judge, I agree at the outset of the case
24 a motion to strike was filed. And I have the order. It
25 was argued in front of Judge Kinlaw. I'm happy to pass it

1 up.

2 THE COURT: Well, you might need to. But I'll just
3 ask you, what's changed?

4 MR. JORDAN: Yeah. It was denied without prejudice.
5 It's an order. He filed a motion for summary judgment.
6 We filed a motion to strike. Both motions were heard
7 simultaneously. Judge Kinlaw said you guys go do
8 discovery. I'm denying it without prejudice. You can
9 come back at another time. We've now, as Mr. Imhoff
10 indicated, litigated this case for a year and a half.
11 We're now in a position where no facts have come forward
12 which take him outside of the clause.

13 THE COURT: What was denied without prejudice? Your
14 right to refile a motion for summary judgment after
15 discovery or your right to have a jury trial or not?

16 MR. JORDAN: The right to have the jury trial was
17 denied without prejudice. I have the language right here,
18 Your Honor.

19 THE COURT: Well, let me just look at it. I can read
20 it myself.

21 Is this an extra copy?

22 MR. JORDAN: Yes. You can have that, Your Honor.

23 THE COURT: Okay. Anything else y'all need to tell
24 me?

25 MR. JORDAN: Nothing, Your Honor.

1 MR. IMHOFF: Yeah. Just one thing. And to make an
2 analogy, if you have a Chase credit card, you close your
3 Chase credit card and you call them on the phone and they
4 never send you -- and say, hey, I'd like to get -- it's
5 been a couple years, I'd like to reopen that Chase credit
6 card, what the defendants are arguing is that anything
7 that looks like this in that original signed credit card
8 agreement now controls any relationship you have with that
9 company going forward. And that's not the law. That's
10 not the facts of this case. My client has said absolutely
11 not, Your Honor. I didn't sign anything.

12 And, again, there are other parties that can't be
13 bound by someone who doesn't have the right to bind them.
14 A general manager of one company can't do the other one's.

15 Your Honor, what they're asking you to do is find a
16 closed, ended, rescinded contract now controls a
17 completely new relationship, and all of the conduct we're
18 talking about arises out of that new relationship and what
19 the terms of that new relationship are. There is no basis
20 in law to find an old closed contract controls everything
21 between parties for years and years on end going into the
22 future.

23 THE COURT: All right. What about your motion to
24 compel?

25 MR. IMHOFF: I'm sorry?

1 THE COURT: What about your motion to compel?

2 MR. IMHOFF: Your Honor, I'd prefer to continue it.
3 We're having some issues. Frankly, I've been out of the
4 state for a while and we're having some issues downloading
5 what was sent to use. May I continue it, Your Honor, and
6 we can either figure it out or I could refile it?

7 MS. BRIDGES: Yeah. I didn't realize, Your Honor,
8 opposing counsel was out of state. I tried calling last
9 week, with the holiday I assumed he was out with his
10 family, to try to figure out what was the problem. And I
11 recently learned there does seem to be a technology issue
12 which the downloading, which I'm happy to see if we can
13 work out.

14 THE COURT: All right. So you just want to withdraw
15 it?

16 MR. IMHOFF: I can withdraw it. I'd prefer to
17 continue it, but ---

18 THE COURT: Well, let's just withdraw it. That way
19 I've accomplished my task this week.

20 (WHEREUPON, proceedings concluded at 11:37 AM.)
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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENVILLE)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Greenville County, South Carolina, on the
14 4th day of January, 2023.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17
18 July 14, 2023
19

20
21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

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Dec 28 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2021-CP-23-00244

Appellate Case No. 2023-001053

Dealer Financial Holdings, LLC, Steve Lanzl, and Daniel B. Haight,

Appellants,

v.

Penland Automotive, LLC and Charles W. Penland, Jr.,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/Robert H. Jordan

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December 28, 2023