

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2014-002467

RECEIVED
SEP 16 2015
SC Court of Appeals

Dealer Services Corporation Respondent,

v.

Total, Inc. d/b/a Gault's Used Cars d/b/a Gault's Auto Parts d/b/a Gault's Used Cars and Auto Parts d/b/a Gault's Used Cars and Motormaxx; Edward Keith Potter; Michael Wayne Gault; Christopher Drye d/b/a Drye's Auto Crushing; Ben D. Kochenower, CPA; Automotive Finance Corporation; Grandsouth Bank d/b/a CarBucks; Mason Motors, Inc. d/b/a Mason Ent; American Community Bank, a Division of Yadkin Valley Bank and Trust Company; Quick Capital, LLC d/b/a Quick Capital; and Auto Bank Floor plan, LLC Defendants,

Of whom,

Total, Inc. d/b/a Gault's Used Cars d/b/a Gault's Auto Parts d/b/a Gault's Used Cars and Auto Parts d/b/a Gault's Used Cars and Motormaxx; Edward Keith Potter; Michael Wayne Gault
are the Appellants.

RECORD ON APPEAL

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and Auto Parts d/b/a Gault's Used Cars and Motormaxx; Edward Keith Potter; Michael
Wayne Gault; Christopher Drye d/b/a Drye's Auto Crushing; Ben D. Kochenower, CPA;
Automotive Finance Corporation; Grandsouth Bank d/b/a CarBucks; Mason Motors,
Inc. d/b/a Mason Ent; American Community Bank, a Division of Yadkin Valley Bank
and Trust Company; Quick Capital, LLC d/b/a Quick Capital; and Auto Bank Floor plan,
LLC Defendants,

Of whom,

Total, Inc. d/b/a Gault's Used Cars d/b/a Gault's Auto Parts d/b/a Gault's Used Cars
and Auto Parts d/b/a Gault's Used Cars and Motormaxx; Edward Keith Potter; Michael
Wayne Gault
are the Appellants.

RECORD ON APPEAL

Robert F. Goings
GOINGS LAW FIRM
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Columbia, SC 29202
ATTORNEY FOR RESPONDENT

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Ginger D. Goforth
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Spartanburg, SC 29304
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ATTORNEY FOR APPELLANT

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-11-00002

Dealer Services Corporation,

Total Inc. d/b/a Gault Used Cars, et. al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: 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
- ☐ **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 (*formal order to follow*) ☒ Statement of Judgment by the Court:

This matter came before the Court on motion of the plaintiff for summary judgment pursuant to Rule 56 SCRCP and Motion to Lift Consent Order of Injunction.

Summary judgment is appropriate only when, after discovery is completed, it is perfectly clear that no genuine issue of material fact exists, further inquiry into the facts is not necessary to clarify the application of the law, and the moving party is entitled to judgment as a matter of law. *Folkens v. Hunt*, 290 SC 194 (Ct. App. 1986)

Plaintiff asserts defendants are in default on a demand promissory note and security agreement as obligor and guarantors and money is now owing and due by the terms of the note. The terms of the note and agreement provide that it may not be modified or amended except in writing with consent of the plaintiff. No written modification or amended agreement has been executed by the parties and the defendants have not detrimentally relied upon any representation made or modification offered by the plaintiff. Defendant asserts that plaintiff has breached a valid settlement agreement entered into between the parties. No valid executed written agreement has been submitted.

After consideration of the submissions made, the argument of counsel, and the applicable law, this Court finds that there does not appear to be any genuine issue as to a material fact and the plaintiff is entitled to judgment on the demand promissory note and security agreement and the personal guaranty agreements as a matter of law. The plaintiff's motion for summary judgment should be and is therefore granted. The motion to lift the consent order of injunction is agreed to and is therefore granted.

ORDER INFORMATION

This 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	Judgment Against	Judgment Amount To be Enrolled

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: 12-05055-JW

**ORDER GRANTING RELIEF FROM AUTOMATIC STAY
AS TO DEALER SERVICES CORPORATION**

The relief set forth on the following pages, for a total of 3 pages including this page, is hereby ORDERED.

**FILED BY THE COURT
12/11/2012**



Entered: 12/11/2012

A handwritten signature in cursive script, reading "John E. Waites".

Chief US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	)	
	)	C/A No. 12-05055-JW
TOTAL, INC.,	)	
D/B/A GAULT'S USED CARS AND	)	Chapter 11
AUTO PARTS, D/B/A GAULT'S USED	)	
CARS AND MOTORMAXX, D/B/A	)	ORDER GRANTING RELIEF FROM
GAULT'S AUTO PARTS,	)	AUTOMATIC STAY AS TO DEALER
D/B/A GAULT'S USED CARS,	)	SERVICES CORPORATION
	)	
Debtor.	)	

This matter came before the Court upon application of Creditor Dealer Services Corporation ("DSC") for immediate relief from the automatic stay as a result of Debtor Total, Inc.'s ("Debtor") default of the Consent Order for Use of Cash Collateral and Adequate Protection Payments of Dealer Services Corporation filed on October 22, 2012 [Doc. 89] ("Consent Order").

Pursuant to the Consent Order, Debtor was required to pay DSC adequate protection payments in the amount of \$6,000 per month for six months, beginning October 1, 2012, with the payment amount increasing thereafter as set forth in the order. The Debtor shall be deemed in default for failure to make such payments within 10 days of the due date each month. Pursuant to paragraph 9 of the Consent Order, upon an event of default, Debtor was required to immediately cease using DSC's cash collateral, and upon the filing of an affidavit of default, DSC is entitled to immediately relief from the automatic stay without further court notice or hearing. Based on the Affidavit of Monty Vaughan of DSC filed on December 4, 2012, Debtor has failed and refused to make the November 1, 2012 payment in the amount of \$6,000.00 for adequate protection to DSC. As a result, this Court hereby finds and concludes that the Debtor is breach of the Consent Order.

THEREFORE, IT IS ORDERED:

- (a) Debtor shall immediately cease the use of DSC's cash collateral, as required on date

of the event of default;

- (b) the automatic stay, pursuant to 11 U.S.C Section 362(d), is terminated and lifted as to any property or security interests of DSC, and thereby DSC is allowed to proceed and enforce any and all legal remedies in and to its property or security interests of the Debtor; and
- (c) Fed R. Bankr. P. 4001(a)(3) is inapplicable to this Order, and the Order shall be effective immediately upon entry.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:	)	Case no. 12-05055-jw
TOTAL, INC.	)	
2015 Union Highway	)	
Gaffney, SC 29340	)	Chapter 11
Tax ID/EIN: 20-5604530	)	
Debtor-in-possession	)	

CONSENT ORDER FOR USE OF CASH COLLATERAL
AND ADEQUATE PROTECTION PAYMENTS OF DEALER SERVICES
CORPORATION

This matter came before the Court upon the Motion filed by Debtor Total, Inc. ("Debtor") requesting authority to use cash collateral of creditor Dealer Services Corporation ("Lender") filed on August 20, 2012. Debtor and Lender have reached an agreement authorizing the use of Lender's cash collateral and providing for adequate protection payments to Lender. Based upon the below indicated consent of the parties, and good cause being shown,

IT IS THEREFORE, ORDERED ADJUDGED AND DECREED as follows:

1. This is a core proceeding and this Court has jurisdiction to determine this matter under 28 U.S.C. section 157(b)(2)(G),(M), and Local Civil Rule 83.IX.01, DSC.
2. Notice of the settlement being approved by the Court was provided pursuant to FRBP 4001(d).
3. Debtor executed and delivered a Demand Promissory Note and Security Agreement dated January 3, 2012 (the "Note"), to Lender, thereby promising to pay Lender under the terms and conditions of that Note.
4. In order to secure the repayment of advances made under the Note, Debtor granted Lender a security interest in assets of Debtor described as follows: All of the Debtor's assets and

properties, wherever located, including without limitation, all equipment of any kind, nature, all vehicles, vehicle parts, all inventory now owned or hereafter acquired, without limitation, Lender financed inventory then owned or thereafter acquired, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, accounts receivable, chattel paper, and general intangibles, then owned or thereafter acquired by the Debtor, together with the proceeds thereof; all of the Debtor's books and records relating to the foregoing (collectively, "Collateral"). Lender perfected its security interest in the Collateral by filing a UCC Financing Statement with the South Carolina Secretary of State.

5. The total amount of Lender's claim as of August 15, 2012, the date Debtor filed its petition, was \$152,685.76.

6. Debtor intends to continue operation of its business and retain possession of the Collateral. The parties have agreed that Debtor will pay to Lender adequate protection payments as follows: The sum of \$6,000 per month for six months, beginning October 1, 2012, and continuing through March 1, 2013; thereafter, the sum of \$8,500 per month for six months, beginning April 1, 2013, and continuing through September 1, 2013; thereafter the sum of \$11,000 per month for six months, beginning October 1, 2013, and continuing through March 1, 2014; thereafter one final payment on April 1, 2014, for the full balance due as of the date of final payment made by Debtor. Should Debtor fail to make any adequate protection payment within ten (10) days of the due date for such adequate protection payment as stated above, Debtor shall be in default.

7. In order to provide Lender adequate protection of Lender's lien on the Collateral, Lender is hereby granted a replacement lien on the Collateral to the extent of any post-petition diminution in the value of the Collateral. Lender's replacement lien as provided in this Order

shall be automatically perfected, and Lender will not be required to take any further action to perfect such lien.

8. For purposes of this Order, the following events shall constitute an event of default by Debtor:

- (a) Failing to remit any adequate protection payment to Lender within ten (10) days of its due date as set forth in Paragraph 6 of this Order.

9. Upon an event of default, Debtor must immediately cease using Lender's Cash Collateral, and Lender shall be entitled to immediate relief from the automatic stay, without further court notice or hearing, upon the presentation and filing of an Affidavit detailing the default event(s) and the submission of a proposed order. Further, if Debtor makes any adequate protection payment after the event of default has occurred, such untimely payment will not cure the default, and Lender will remain entitled to relief from the automatic stay.

10. Except as expressly modified by the terms of this Order, all terms and conditions of the Note and Security Agreement shall remain in full force and effect in accordance with the terms contained therein. The entry of this Order shall not constitute a waiver of any pre-petition default or of any remedy Lender may have under applicable non-bankruptcy law.

11. Nothing herein constitutes a finding regarding the value of the Collateral or proposed treatment of the Note under a plan of reorganization. The parties' right to assert and/or dispute valuation and treatment of Lender's claims under a plan of reorganization is hereby preserved.

AND IT IS SO ORDERED.

WE SO CONSENT:

/s/Robert H. Cooper
Robert H. Cooper (DSC # 5670)
The Cooper Law Firm
Attorney for Debtor
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 phone
(864) 232-5236 facsimile
rhcooper@thecooperlawfirm.com

WE SO CONSENT:

/s/Robert F. Goings
Robert F. Goings (DSC # 9838)
Goings Law Firm, LLC
914 Richland Street, Ste A-101
Columbia, SC 29201
(803) 350-9230 phone
(877) 789-6340 facsimile
rgoings@goingslawfirm.com

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Dealer Services Corporation,

Plaintiff

vs.

Total, Inc. d/b/a Gault's Used Cars, d/b/a Gault's Auto Parts, d/b/a Gault's Used Cars and Auto Parts, d/b/a Gault's Used Cars and Motormaxx; Edward Keith Potter; Michael Wayne Gault; Christopher Drye, d/b/a Drye's Auto Crushing; Ben D. Kochenower, CPA; Automotive Finance Corporation; Grandsouth Bank, d/b/a CarBucks; Mason Motors, Inc., d/b/a LC Mason Ent.; American Community Bank, a Division of Yadkin Valley Bank and Trust Company; Quick Capital LLC, d/b/a Quick Capital; and Auto Bank Floorplan, LLC,

Defendants

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

013CP-110002

Civil Action No.: 2013-CP-11-

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 7 AM 9:35
BRANDY W. MOBBE

Submitted By: Robert F. Goings, Esq.
Address: Goings Law Firm, LLC
914 Richland Street, Suite A-101
P.O. Box 436 (29202)
Columbia, South Carolina 29201

SC Bar #: 74855.
Telephone #: (803) 350-9230
Fax #: (877) 789-6340
Other:
E-mail: rgoings@goingslawfirm.com

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☒ Claim & Delivery (400)
☒ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20____-CP-____-	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500)	☐ Reinstatement License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order	☐ Lis Pendens (750)	☐ SCDDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Special/Complex /Other	Pharmaceuticals (630)	☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Unfair Trade Practices (640)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Out-of-State Depositions (650)	☐ Other (799)	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		☐ Other (999)
☐ Other (699)	☐ Sexual Predator (510)		

Submitting Party Signature:

Date: January 4, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Dealer Services Corporation,

Plaintiff,

vs.

Total, Inc. d/b/a Gault's Used Cars, d/b/a
Gault's Auto Parts, d/b/a Gault's Used Cars
and Auto Parts, d/b/a Gault's Used Cars and
Motormaxx; Edward Keith Potter; Michael
Wayne Gault; Christopher Drye, d/b/a Drye's
Auto Crushing; Ben D. Koehenower, CPA;
Automotive Finance Corporation;
Grandsouth Bank, d/b/a CarBucks;
Mason Motors, Inc., d/b/a LC Mason Ent.;
American Community Bank, a Division of
Yadkin Valley Bank and Trust Company;
Quick Capital LLC, d/b/a Quick Capital; and
Auto Bank Floorplan, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

CIVIL ACTION No: 2013-CP-11-_____

013CP-10002

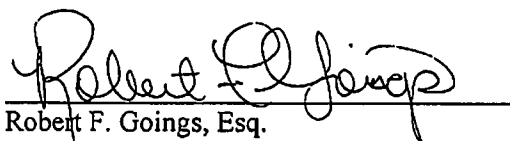
FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JUN 7 AM 9 35
BRANDY MOBEE
SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to file an answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office of the Goings Law Firm, LLC, 914 Richland Street, Suite A-101, Columbia, South Carolina 29201 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, judgment by default will be rendered against you for the relief demanded in the Complaint.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Goings", written over a horizontal line.

Robert F. Goings, Esq.
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rgoings@goingslawfirm.com

Columbia, South Carolina
January 4, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Dealer Services Corporation,

Plaintiff,

vs.

Total, Inc. d/b/a Gault's Used Cars, d/b/a
Gault's Auto Parts, d/b/a Gault's Used Cars
and Auto Parts, d/b/a Gault's Used Cars and
Motormaxx; Edward Keith Potter; Michael
Wayne Gault; Christopher Drye, d/b/a Drye's
Auto Crushing; Ben D. Kochenower, CPA;
Automotive Finance Corporation;
Grandsouth Bank, d/b/a CarBucks;
Mason Motors, Inc., d/b/a LC Mason Ent.;
American Community Bank, a Division of
Yadkin Valley Bank and Trust Company;
Quick Capital LLC, d/b/a Quick Capital; and
Auto Bank Floorplan, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

CIVIL ACTION No: 2013-CP-11-_____

013CP-110002

VERIFIED COMPLAINT FOR
BREACH OF CONTRACT,
BREACH OF GUARANTEE,
REPLEVIN OF COLLATERAL,
FORECLOSURE OF SECURITY
INTERESTS, AND TURNOVER OF
PROPERTY

FILED
OFFICE OF
CLERK OF COURT
CHEROKEE CO. S.C.
JAN 9 2014
J. MOORE

The Plaintiff Dealer Services Corporation ("DSC"), complaining of the above-named Defendants, would respectfully show unto this Honorable Court:

JURISDICTION AND VENUE

1. DSC is a corporation organized and existing pursuant to the laws of a state other than South Carolina and is authorized to transact business within the State of South Carolina, including business out of which this Complaint arises.

2. Total, Inc., d/b/a Gault's Used Cars, d/b/a Gault's Auto Parts, d/b/a Gault's Used Cars and Auto Parts, d/b/a Gault's Used Cars and Motormaxx, is a corporation organized and existing through the laws of the State of South Carolina with a principal place of business at 2015 Union Highway, Gaffney, South Carolina 29340.

3. Edward Keith Potter ("Potter"), upon information and belief, is a citizen and resident of Ellenboro, North Carolina.

4. Michael Wayne Gault ("Gault"), upon information and belief, is a citizen and resident of Cherokee County, South Carolina.

5. Christopher Drye, d/b/a Drye's Auto Crushing, upon information and belief, is a resident of South Carolina.

6. Ben D. Kochenower, CPA, upon information and belief, is a resident of Cherokee County, South Carolina.

7. Automotive Finance Corporation, upon information and belief, is a corporation organized and existing pursuant to the laws of a state other than South Carolina and is doing business within the State of South Carolina.

8. Grandsouth Bank, d/b/a CarBucks, upon information and belief, is a corporation organized and existing pursuant to the laws of the state of South Carolina and is doing business within the State of South Carolina.

9. Mason Motors, Inc., d/b/a LC Mason Ent., upon information and belief, is a corporation organized and existing pursuant to the laws of the state of South Carolina and is doing business within the State of South Carolina.

10. American Community Bank, a Division of Yadkin Valley Bank and Trust Company, upon information and belief, is a corporation organized and existing pursuant to the laws of a state other than South Carolina and is doing business within the State of South Carolina.

11. Quick Capital LLC, d/b/a Quick Capital, upon information and belief, is a limited liability company organized and existing pursuant to the laws of the state of South Carolina and

is doing business within the State of South Carolina.

12. Auto Bank Floorplan, LLC, upon information and belief, is a limited liability company organized and existing pursuant to the laws of the state of South Carolina and is doing business within the State of South Carolina.

13. Jurisdiction and venue are proper in this Court because Cherokee County, South Carolina is where one or more of the defendants reside, the principal place of business of Defendant Total Inc. is located, and where a substantial part of the alleged acts or omissions giving rise to the causes of action occurred.

FACTUAL ALLEGATIONS

14. On or about January 3, 2012, DSC and Total, Inc., d/b/a Gault's Used Cars , d/b/a Gault's Auto Parts, d/b/a Gault's Used Cars and Auto Parts, d/b/a Gault's Used Cars and Motormaxx (hereinafter "Dealer") entered into a Demand Promissory Note and Security Agreement and a Term Sheet (collectively, the "Note") in the principal sum of Two Hundred Thousand and no/100 Dollars (\$200,000.00), together with interest payable and other charges all as stated in the Note.

15. Through Paragraph 2 of the Note, Dealer also granted DSC a security interest in all of its

[...] assets and properties, wherever located, including without limitation, all Equipment of any kind or nature, all vehicles, vehicle parts, all Inventory [then] owned or [thereafter] acquired, without limitation, DSC Financed Inventory [then] owned or [thereafter] acquired, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, accounts receivable, chattel paper, and general intangibles [then] owned or [thereafter] acquired by Dealer together with the proceeds thereof; [and] all of Dealer's books and records relating to the foregoing ("Collateral").

A true and accurate copy of the Note is attached hereto and incorporated herein as Exhibit A.

16. The Note was, by its terms, an amendment and restatement of all prior notes

between Dealer and DSC, including but not limited to a note executed by DSC and Dealer on or about March 16, 2007.

17. DSC perfected its security interest in the Collateral by filing a UCC Financing Statement (the "Financing Statement") with the South Carolina Secretary of State on March 23, 2007. True and accurate copies of the Financing Statement and a continuation statement thereof are attached hereto and incorporated herein collectively as Exhibit B.

18. On or about January 3, 2012, Edward Keith Potter executed an Individual Personal Guaranty (the "Potter Guaranty") in favor of DSC, whereby Potter personally guaranteed prompt and full payment to DSC of all obligations of Dealer pursuant to the Note. A true and accurate copy of the Potter Guaranty is attached hereto and incorporated herein as Exhibit C.

19. On or about January 3, 2012, Michael Wayne Gault executed an Individual Personal Guaranty (the "Gault Guaranty") in favor of DSC, whereby Gault personally guaranteed prompt and full payment to DSC of all obligations of Dealer pursuant to the Note. A true and accurate copy of the Gault Guaranty is attached hereto and incorporated herein as Exhibit D.

20. DSC advanced funds to Dealer and/or to one or more third parties on behalf of Dealer for the purchase of retail inventory as Collateral pursuant to the terms of the Note.

21. The funds advanced by DSC to Dealer and/or on Dealer's behalf have not been fully repaid as agreed.

22. Dealer is insolvent and filed a Petition for Relief under Chapter 11 of the United States Bankruptcy Code on August 15, 2012.

23. Dealer's insolvency constitutes an Event of Default under Paragraph 6(d) of the Note.

24. DSC has obtained relief from the Automatic Stay in Bankruptcy under 11 U.S.C. § 362(d). A true and accurate copy of the Order Granting Relief From Automatic Stay As To Dealer Services Corporation dated December 11, 2012 is attached hereto and incorporated herein as Exhibit E.

25. As a result of the occurrence and continuance of an Event of Default under the Note, DSC has declared and hereby declares all obligations of Dealer to DSC under the Note to be due and owing.

26. DSC has a valid, perfected, and enforceable lien against the Collateral.

27. As of January 2, 2013, the amounts due and owing under the Note total One Hundred Fifty-Six Thousand, Three Hundred Thirty and 62/100 Dollars (\$156,330.62), exclusive of attorneys' fees and costs (the "Indebtedness").

28. As a result of Dealer's default, DSC has incurred and continues to incur expenses under the Note, including, without limitation, attorneys' fees, court costs, and title search fees, all of which amounts are payable by and secured under the Note and which DSC is entitled to recover under the Note.

29. Christopher Drye, d/b/a Drye's Auto Crushing, may claim an interest in certain property of Dealer by virtue of a judgment entered in the Court of Common Pleas in Cherokee County, South Carolina in Case Number 2008-CP-11-1038 (the "Drye Lawsuit"), after DSC filed its Financing Statement.

30. Ben D. Kochenower, CPA, is in possession of certain property of the Debtor in his capacity as a receiver appointed by the judge in the Drye Lawsuit.

31. Automotive Finance Corporation may claim a security interest in certain property of Dealer pursuant to a UCC Financing Statement it filed on July 24, 2007, after DSC filed its

Financing Statement.

32. Grandsouth Bank, d/b/a CarBucks, may claim a security interest in certain property of Dealer pursuant to a UCC Financing Statement it filed on February 9, 2009, after DSC filed its Financing Statement.

33. Mason Motors, Inc., d/b/a LC Mason Ent., may claim a security interest in certain property of Dealer pursuant to a UCC Financing Statement it filed on January 27, 2010, after DSC filed its Financing Statement.

34. American Community Bank, a Division of Yadkin Valley Bank and Trust Company, may claim a security interest in certain property of Dealer pursuant to two (2) UCC Financing Statements it filed on July 1, 2011, after DSC filed its Financing Statement.

35. Quick Capital LLC, d/b/a Quick Capital, may claim a security interest in certain property of Dealer pursuant to a UCC Financing Statement it filed on September 29, 2011, after DSC filed its Financing Statement.

36. Auto Bank Floorplan, LLC, may claim a security interest in certain property of Dealer pursuant to a UCC Financing Statement it filed on April 14, 2012, after DSC filed its Financing Statement.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract Against Dealer)

37. DSC realleges and incorporates by reference the allegations of paragraphs 1 through 36, the same as if set forth verbatim herein.

38. As set forth above, Dealer is in default under the Note.

39. Dealer has failed or refused to pay the amounts due and owing under the Note.

40. DSC owns and holds the Note.

41. DSC has fully performed all terms and conditions required to be performed on its

part under the Note.

42. All conditions precedent to the right of DSC to recover under the Note have occurred or have been waived.

43. By the terms of Paragraph 19 of the Note, Dealer agreed to pay " all reasonable legal fees, expenses and collection costs incurred as a result of Dealer's default or failure of any obligation under [the] Note.

44. DSC has retained the Goings Law Firm, LLC, for the purposes of instituting and prosecuting this action and therefore is entitled to reimbursement for its attorneys' fees and court costs.

FOR A SECOND CAUSE OF ACTION
(Replevin of Collateral / Claim and Delivery)

45. DSC realleges and incorporates by reference the allegations of paragraphs 1 through 44 herein, the same as if set forth verbatim herein.

46. As set forth in more detail above, DSC holds a valid and perfected security interest in all Collateral of Dealer.

47. Pursuant to Paragraph 7(d) of the Note, DSC is entitled to possession of the Collateral upon a default under the Note.

48. As set forth in more detail above, Dealer is in default under the Note.

49. As set forth in more detail above, DSC holds a valid and perfected security interest in all Collateral of Dealer.

50. DSC is entitled to the immediate and exclusive possession of the Collateral.

51. DSC is informed and believes that Dealer is in possession and control of the Collateral and that all or part of the Collateral is situated within the state of South Carolina.

52. Dealer continues to withhold possession of the Collateral from DSC for its benefit in violation of DSC's right to immediate and exclusive possession of the Collateral.

53. DSC has suffered and continues to suffer damages as a result of Dealer's wrongful possession of the Collateral, including but not limited to the continuing depreciation of the Collateral.

54. DSC demands immediate possession of the Collateral, including but not limited to all of Dealer's vehicles, accounts, accounts receivable, chattel paper, general intangibles, books and records, and all other Collateral as that term is defined in Paragraph 2 of the Note.

FOR A THIRD CAUSE OF ACTION
(Foreclosure of Security Interests and Turnover of Property)

55. DSC realleges and incorporates by reference the allegations of paragraphs 1 through 54 herein, the same as if set forth verbatim herein.

56. Defendant Christopher Drye, d/b/a Drye's Auto Crushing ("Drye"), may claim an interest in some or all of the Collateral by virtue of a judgment entered in the Drye Lawsuit.

57. DSC's property interest in the Collateral is superior to Drye's property interest in the Collateral.

58. Ben D. Kochenower, CPA (the "Receiver") is in possession of certain property of the Debtor, including cash and/or accounts, in his capacity as a receiver appointed by the judge in the Drye Lawsuit.

59. DSC's property interest in the Collateral, including cash and accounts, is superior to the Receiver's property interest in the Collateral.

60. Defendants Automotive Finance Corporation; Grandsouth Bank, d/b/a CarBucks; Mason Motors, Inc., d/b/a LC Mason Ent.; American Community Bank, a Division of Yadkin Valley Bank and Trust Company; Quick Capital LLC, d/b/a Quick Capital; and Auto Bank

Floorplan, LLC (collectively, the "Creditors"), may each claim a security interest in certain property of Dealer that DSC seeks to recover from Dealer.

61. DSC's security interest in Dealer's Collateral was perfected prior to the security interests of any of the Creditors.

62. Defendants Automotive Finance Corporation; Grandsouth Bank, d/b/a CarBucks; and Auto Bank Floorplan, LLC, may each hold purchase money security interests (the "PMSI Interests") in certain specific property of Dealer which are superior to DSC's perfected security interests by virtue of notices DSC received from each of these three (3) Creditors.

63. With the exception of the PMSI Interests, DSC's claim to Dealer's personal property is superior to the claims of Drye and the Creditors.

64. DSC is entitled to the turnover of the Collateral currently in the Receiver's possession.

65. DSC is entitled to foreclose its security interest in the Collateral, with the exception of any Collateral that may be subject to the PMSI Interests, and is further entitled to request a sheriff's sale of all Collateral that is not subject to the PMSI Interests.

FOR A FOURTH CAUSE OF ACTION
(Breach of Guaranty by Potter)

66. DSC realleges and incorporates by reference the allegations of paragraphs 1 through 56 herein, the same as if set forth verbatim herein.

67. As a condition of extending credit to Dealer, DSC required Potter to execute the Potter Guaranty in favor of DSC, whereby Potter guaranteed prompt and full payment to DSC of all obligations of Dealer pursuant to the Note (the "Guaranteed Obligations").

68. Under the terms of the Potter Guaranty, Potter waived, *inter alia*, the right to receive notice of demand of any kind.

69. Dealer is in default under the Note, and there are unpaid amounts due and owing by Dealer, all of which constitute Guaranteed Obligations of Potter.

70. The Potter Guaranty provides for the recovery by DSC of all costs of collection and reasonable attorneys' fees.

FOR A FIFTH CAUSE OF ACTION
(Breach of Guaranty by Gault)

71. DSC realleges and incorporates by reference the allegations of paragraphs 1 through 70 herein, the same as if set forth verbatim herein.

72. As a condition of extending credit to Dealer, DSC required Gault to execute the Gault Guaranty in favor of DSC, whereby Gault guaranteed prompt and full payment to DSC of all obligations of Dealer pursuant to the Note (as before, the "Guaranteed Obligations").

73. Under the terms of the Gault Guaranty, Gault waived, *inter alia*, the right to receive notice of demand of any kind.

74. Dealer is in default under the Loan Documents and there are unpaid amounts due and owing by Dealer, all of which constitute Guaranteed Obligations of Gault.

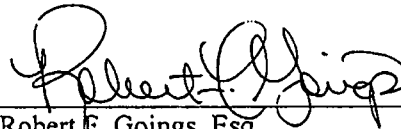
75. The Gault Guaranty provides for the recovery by DSC of all costs of collection and reasonable attorneys' fees.

WHEREFORE, DSC respectfully requests that this Honorable Court:

- (a) Enter a Judgment for actual damages against Dealer on DSC's first cause of action, for breach of contract in the amount of One Hundred Fifty-Six Thousand, Three Hundred Thirty and 62/100 Dollars (\$156,330.62), plus attorneys' fees, interest, costs, any other amounts whatsoever payable under the Note;
- (b) Enter a Judgment of Possession against Dealer on DSC's second cause of action, for replevin and claim and delivery of Collateral, and order that such Collateral be sold to the highest bidder(s) at an auction duly held by the Sheriff of Cherokee County at the Sheriff's earliest opportunity, with the net proceeds of such auction to be paid to DSC and applied towards the Judgment entered on the first cause of action hereunder;

- (c) Enter a Judgment of Foreclosure and Turnover against Drye, the Receiver, and the Creditors on DSC's third cause of action, extinguishing their security interests against and claims to the Collateral, with the exception of Collateral subject to the PMSI Interests;
- (d) Enter a Judgment for actual damages against Edward Keith Potter on DSC's fourth cause of action, for breach of guaranty in the amount of One Hundred Fifty-Six Thousand, Three Hundred Thirty and 62/100 Dollars (\$156,330.62), plus attorneys' fees, interest, costs, any other amounts whatsoever payable under the Note and the Potter Guaranty;
- (e) Enter a Judgment for actual damages against Michael Wayne Gault on DSC's fifth cause of action, for breach of guaranty in the amount of One Hundred Fifty-Six Thousand, Three Hundred Thirty and 62/100 Dollars (\$156,330.62), plus attorneys' fees, interest, costs, any other amounts whatsoever payable under the Note and the Gault Guaranty;
- (f) An Order pursuant to S.C. Code Ann. § 15-60-90 enjoining the Defendants from damaging, concealing, or removing the Collateral of DSC;
- (g) Award pre-judgment and post-judgment interest at the highest rate provided by law until paid, including collection costs;
- (h) Award costs and attorneys' fees; and
- (i) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



Robert F. Goings, Esq.
Goings Law Firm, LLC
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Post Office Box 436 (29202)
Columbia, South Carolina 29201
(803) 350-9230 (ph)
(877) 789-6340 (fax)
rgoings@goingslawfirm.com

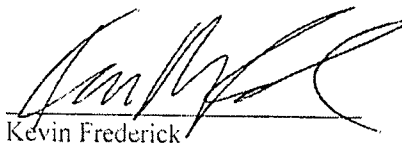
Columbia, South Carolina
January 4, 2013

VERIFICATION

PERSONALLY APPEARED BEFORE ME, KEVIN FREDERICK, who, upon being duly sworn, deposes and states as follows:

I am a Default Risk Account Manager for Plaintiff Dealer Services Corporation with competent authority to make this attestation. I have read the allegations contained in the attached Summons and Complaint, and said allegations are true and correct to the best of my information and belief. The exhibits attached to the Summons and Complaint are true and accurate copies of documents made and kept in the course of the regularly conducted business of Dealer Services Corporation.

This 3 day of January, 2013.


Kevin Frederick

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 7 AM 9:40
BRANDY W. NOBEE

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Kevin Frederick, who acknowledged the execution of the foregoing Verification, and who, having been duly sworn, states that all representations contained therein are true.

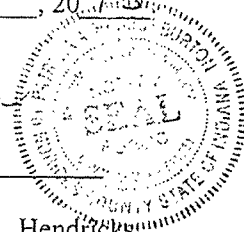
Witness my hand and Notarial Seal this 3rd day of January, 2013.

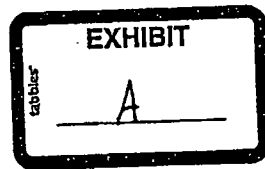
Notary Signature

Notary, Printed Patricia Herbst-Burton

My Commission Expires: 9/8/2017

County of Residence: Hendricks





DEMAND PROMISSORY NOTE
AND SECURITY AGREEMENT

TO: Dealer Services Corporation
1320 City Center Drive
Suite 100
Carmel, IN 46032

FOR VALUE RECEIVED, the undersigned dealer ("Dealer") promises to pay to the order of Dealer Services Corporation, a Delaware corporation ("DSC"), with its principal office at 1320 City Center Drive, Suite 100, Carmel, Indiana 46032 or such other place as DSC may designate in writing, in lawful money of the United States of America, the principal sum of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) (the "Credit Limit") or such greater or lesser sum which may be advanced from time to time, together with all costs, interest, fees, and expenses as provided for under this Note.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, the parties agree as follows:

1. DEFINITIONS: Capitalized terms used in this Note without definition shall have the respective meanings as set forth below. All other terms in this Note shall be defined by the meanings provided for in the Uniform Commercial Code as provided for herein.

- (a) "Advance" shall mean any loan or payment in any amount made pursuant to this Note by DSC to Dealer or on Dealer's behalf to any third party.
- (b) "ACH" shall mean all payments by, or on behalf of, Dealer to DSC made via a nationwide electronic funds transfer network processing electronic debit entries from Dealer's bank accounts.
- (c) "Base Rate" shall mean the greater of that variable rate of interest or that fixed rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 5.00%.
- (d) "Boarding Fee" shall mean that DSC Universal Fee charged by DSC to Dealer and added to the principal amount of the Advance for each individual item of DSC Financed Inventory which is the subject of a DSC Lease Program Advance.
- (e) "Check" shall mean all payments by, or on behalf of, Dealer to DSC not made in cash, via certified funds, wire transfer or ACH.
- (f) "Collateral" shall have the meaning set forth in Paragraph 2 of this Note.
- (g) "Contract Rate" shall mean that rate of interest as stated on Dealer's Term Sheet. Additionally, in the event no Term Sheet is executed and effective, then 4.25%.
- (h) "Credit Limit" shall mean the maximum amount Dealer may borrow at any one time under this Note.
- (i) "Credit Line" shall mean Dealer's DSC floorplan line of credit pursuant to and under this Note.
- (j) "Dealer's Place of Business" shall mean that place where the Collateral and Dealer's books and records are kept, where Dealer's operations are conducted from and/or if Dealer is a legally recognized business entity where Dealer's registered office is located.
- (k) "Dealer's Home Branch" shall mean the DSC branch location for which Dealer's DSC Credit Line is assigned to by DSC for servicing and administration.
- (l) "Default Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 8%.
- (m) "DSC Administrative Fee" shall mean any fee charged by DSC to Dealer for any service or process requested by Dealer or unilaterally undertaken by DSC, reasonable or necessary to administer or monitor the Credit Line, that is not a Floorplan Fee or DSC Universal Fee.
- (n) "DSC Financed Inventory" shall mean any Unit now or hereafter acquired or retained by Dealer pursuant to an Advance under this Note. DSC Financed Inventory includes Purchase Money Inventory.
- (o) "DSC Lease Program" shall mean any DSC program offered to Dealer designed to allow Dealer to obtain an Advance for a Unit which is the subject of a Dealer originated and owned consumer lease transaction.
- (p) "DSC Published Rate, Fee and Term Schedule" shall mean that current schedule of universal interest rates and fees assessed by DSC, including DSC Universal Fees, late fees, fees relating to returned checks or ACH payments due to insufficient funds,

the Base Rate, Risk Rate and Default Rate and notice of amendments to Terms and Conditions published by DSC via posting such schedule of such universal rates and fees and notice of amendment to Terms and Conditions at www.discoverdsc.com and posted at each DSC branch office or location.

- (q) "DSC Universal Fee" shall mean any published fee as stated in the DSC Published Rate, Fee and Term Schedule charged by DSC to Dealer.
- (r) "Equipment" shall mean all goods other than Inventory held for sale, lease, or daily rental by Dealer in the ordinary course of business.
- (s) "Event of Default" shall have the meaning set forth in Paragraph 6 of this Note.
- (t) "Extension" shall mean that grant by DSC to Dealer of additional time that an Advance for an item of DSC Financed Inventory becomes due and payable.
- (u) "Floorplan Fee" shall mean the fee charged by DSC to Dealer set forth on the Term Sheet for each individual item of DSC Financed Inventory. Additionally, in the event no Term Sheet is executed and effective, then the Floorplan Fee shall be equal to One Hundred Fifty Dollars (\$150.00).
- (v) "GPS Fee" shall mean that DSC Universal Fee charged by DSC to Dealer and added to the principal amount of the Advance for the global positioning system supplied for each individual item of DSC Financed Inventory which is the subject of a DSC Lease Program Advance.
- (w) "Interest" shall mean the aggregate rate of interest which accrues on all Liabilities owed by Dealer to DSC under or arising out of this Note by combining the Base Rate plus the applicable Contract Rate, Risk Rate or Default Rate.
- (x) "Inventory" shall mean all Units held by Dealer for wholesale or retail sale, lease, or rent or leased by Dealer. Inventory includes DSC Financed Inventory.
- (y) "Liabilities" shall mean any and all Advances, debts, DSC Financed Inventory Liabilities, financial obligations, DSC Administrative Fees, DSC Universal Fees, Interest, Floorplan Fees, NSF fees, late fees, charges, expenses, attorney fees, costs of collection, covenants, and duties owing, arising, due or payable from Dealer to DSC of any kind or nature, present or future, under any instrument, guaranty, or other document whether arising under this Note or any other agreement, whether directly or indirectly (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising and however acquired.
- (z) "Maturity Date" shall mean the date an Advance for an item of DSC Financed Inventory becomes due and payable. In the event the Maturity Date relating to a specific Advance for an item of DSC Financed Inventory becomes due and payable falls on a federal banking holiday, Saturday or Sunday, the Maturity Date for such specific Advance shall be the next business date subsequent to such federal banking holiday, Saturday or Sunday.
- (aa) "MSO" shall mean the manufacturer's certificate of origin or other document evidencing ownership of a Unit issued by the manufacturer of the Unit.
- (bb) "Note" shall mean this Demand Promissory Note and Security Agreement and all present and future amendments, modifications and addendums referenced herein.
- (cc) "Period" shall mean that number of days set forth in the Term Sheet, beginning on the date of an Advance and ending on the Maturity Date, and any extension thereof, that an item of DSC Financed Inventory will be financed by DSC to Dealer pursuant to the terms of this Note. Additionally, in the event no Term Sheet is executed and effective, then the Period shall be Thirty (30) days.
- (dd) "Purchase Money Inventory" shall mean a Unit acquired by Dealer pursuant to an Advance under this Note.
- (ee) "Risk Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 6%.
- (ff) "Shortage" shall mean the difference between a payment received by DSC and the amount owing, arising, due, or payable from Dealer to DSC with respect to a specific Advance for a specific item of DSC Financed Inventory.
- (gg) "Terms and Conditions" shall mean all provisions of this Note with the exception of terms specifically relating to Dealer's Floorplan Fees and Contract Rate and any other term referenced in Dealer's Term Sheet.
- (hh) "Term Sheet" shall mean the addendum to this Note, as modified from time to time, which indicates specific terms regarding Dealer's Credit Limit, Floorplan Fees, Contract Rate of interest, Period, principal reduction, and Number of Maturity Date Extensions.

- (ii) "Title" shall mean the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.
- (jj) "UCC" shall mean the Uniform Commercial Code as enacted in the State where the Collateral is located.
- (kk) "Unit" shall mean any manufactured item, including vehicles for which a certificate of title or a MSO exists which is the subject of an Advance by DSC to Dealer under this Note.
- (ll) "Vehicle Service Contract Fee" shall mean that DSC Universal Fee charged by DSC to Dealer and added to the principal amount of the Advance for the service contract supplied for each individual item of DSC Financed Inventory which is the subject of a DSC Lease Program Advance.

2. GRANT OF SECURITY INTEREST: In order to secure full and prompt payment of all Liabilities and performance of all obligations of Dealer to DSC, Dealer hereby:

- (a) Grants to DSC, together with its subsidiaries, affiliates and assigns, a continuing security interest in all of Dealer's assets and properties, wherever located, including without limitation, all Equipment of any kind or nature, all vehicles, vehicle parts, all Inventory now owned or hereafter acquired, without limitation, DSC Financed Inventory now owned or hereafter acquired, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, accounts receivable, chattel paper, and general intangibles now owned or hereafter acquired by Dealer together with the proceeds thereof; all of Dealer's books and records relating to the foregoing ("Collateral"). This security interest is given to DSC to secure Dealer's Liabilities to DSC under this Note, as may be amended from time to time, all without relief from valuation or appraisalment laws.
- (b) Agrees to execute and deliver such financing statements and amendments thereto as DSC shall require from time to time.

3. INTEREST RATE. Interest shall accrue on all Dealer Liabilities in accordance with the following:

- (a) All outstanding Liabilities under this Note shall accrue interest (based upon a 360 day year), on a per annum basis and shall be compounded daily at the Base Rate plus the applicable Contract Rate, Risk Rate, or Default Rate until paid in full.
- (b) The Contract Rate stated on Dealer's Term Sheet plus the Base Rate shall be the applicable rate of Interest accruing on all Dealer Liabilities, so long as there has not been a breach by Dealer of any representation or warranty made by Dealer under this Note, a breach by Dealer of any covenant or credit term required under this Note, or an event of default by Dealer under this Note.
- (c) In the event a breach of any representation or warranty made by Dealer under Paragraphs 3 or 4 of this Note occurs, or a breach by Dealer of a covenant or credit term required under Paragraph 4 or Paragraph 5 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Risk Rate.
- (d) In the event that an Event of Default occurs as defined in Paragraph 6 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Default Rate.
- (e) The Base Rate, Risk Rate or Default Rate may be amended or modified by DSC in DSC's sole discretion by posting such amendment or modification on the DSC Published Base Rate and Fee Schedule. However, DSC may only increase the Base Rate, Risk Rate or Default Rate by 100 basis points in any one 30-day period.

4. DEALER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: In order to induce DSC to make Advances hereunder, Dealer hereby represents, covenants and warrants:

- (a) To sell, lease or rent DSC Financed Inventory only in the ordinary course of Dealer's business, and not to dispose of such DSC Financed Inventory, except as herein provided.
- (b) To keep DSC Financed Inventory only at Dealer's Place of Business and not to remove said DSC Financed Inventory from such place for a period exceeding twenty-four (24) hours, unless such item of DSC Financed Inventory is the subject of a DSC Lease Program Advance, or otherwise authorized in writing by DSC.
- (c) To keep DSC Financed Inventory 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 DSC. DSC shall be named "loss payee" to the extent DSC's interest may appear. In the event Dealer fails to procure, maintain or provide proof of such insurance coverage, DSC may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from Dealer pursuant to the terms of this Note. Dealer understands and agrees that DSC has an insurable interest in Dealer's Collateral, including but not limited to, DSC Financed Inventory, by virtue of Dealer's pledge of Dealer's Collateral as security to DSC as defined above, for the repayment of all Liabilities by Dealer to DSC under this Note.
- (d) To keep DSC Financed Inventory which is the subject of DSC Lease Program Advance (i) covered by an adequate service contract or warranty acceptable to DSC and provided by an approved DSC Vendor, DSC Financed Inventory(ii) equipped

with a functioning global positioning and starter interrupt system ("GPS") unit that is acceptable to DSC and provided by an approved DSC vendor; (iii) DSC Financed Inventory covered by a contingent liability insurance policy that is acceptable to DSC and provided by an approved DSC Vendor DSC Financed Inventory; and (iv) covered by Dealer's customer's insurance policy for all physical risks and naming DSC as additional insured and loss payee on the customer's insurance certificate.

- (e) To keep DSC listed as lienholder on the certificate of title for each DSC Financed Inventory which is the subject of DSC Lease Program Advance.
- (f) To keep the lease for each DSC Financed Inventory which is the subject of DSC Lease Program Advance placed with a third party servicer that is acceptable to DSC.
- (g) To keep at all times complete and accurate records of Dealer's business and to provide DSC upon demand copies of such records and financial information regarding Dealer's business and financial condition as DSC may reasonably request. Dealer authorizes DSC to share such information and any other information relating to Dealer's transaction with DSC to any and all persons or parties as DSC deems necessary.
- (h) To allow DSC and its representatives to inspect the DSC Financed Inventory during normal business hours and at other reasonable times and to inspect and make copies of Dealer's books and records. Dealer shall pay DSC upon demand for the costs and expenses incurred by DSC or its representatives with such inspections of Dealer's books and records and audits of Dealer's DSC Financed Inventory.
- (i) To hold all amounts received from the sale of an item of DSC Financed Inventory in the form as received in trust for the sole benefit of and for DSC, and to remit such funds satisfying all amounts due DSC and owing by Dealer for the sold item of DSC Financed Inventory within 24 hours of receipt of such funds.
- (j) That DSC may hold any sums or money belonging to or payable to Dealer and apply the same to any outstanding Liabilities of Dealer.
- (k) That any statement of Dealer's account furnished to Dealer by DSC, to the extent no objection is made in writing by Dealer within 30 days after receipt of such statement, shall constitute a definitive statement of Dealer's Credit Line and Liabilities as of the date of the statement and shall be binding upon Dealer.
- (l) To refrain from paying or declaring any dividends or distributions, redeeming of any capital stock, repaying subordinate debt or other loans to any principal or guarantor of Dealer's Business, during anytime a Liability exists from Dealer to DSC.
- (m) To pay immediately and remain current with all levied taxes, assessments, charges and expenses which may now or hereinafter be levied or assessed against the Collateral and business. DSC may, in its sole discretion, pay such taxes, assessments, charges and expenses to protect its interests and thereafter collect the costs from Dealer pursuant to the terms of this Note.
- (n) That Dealer has obtained all necessary permits and licenses pursuant to local, state and federal law required to operate its business as a wholesale or retail seller, lessor or renter of the DSC Financed Inventory and has complied with all filing requirements to operate as the entity or business type on record with the appropriate governmental office(s).
- (o) That no legal, arbitration, or administrative proceedings are pending or threatened against Dealer which could reasonably affect the Collateral or which materially and adversely affect the properties, business, prospects, or condition, financial or otherwise, of the Dealer or Dealer's ability to honor its obligations hereunder.
- (p) That all payments made by Dealer to DSC via check or ACH, at the time of issuance, are written or drawn upon an account that contains immediately available funds sufficient to cover the dollar amount of the check or ACH.
- (q) That Dealer's legal name and address as they appear in Paragraph 16 of this Note are accurate and complete.
- (r) That Dealer shall immediately notify DSC in writing of any change in Dealer's legal name, address, business type, ownership, management or control and shall execute any documents necessary at DSC's request to bring Dealer into compliance with this Note.
- (s) That Dealer and all guarantors are legally competent and have authority to enter into and execute this Note and any and all other documents.
- (t) That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions applicable to Dealer's DSC Credit Line, whether such terms and conditions are contained in the Term Sheet or this Note.
- (u) That Dealer expressly authorizes and agrees to accept all mailings, facsimile transmissions and telephonic transmissions from DSC including, but not limited to, Credit Line information and promotional materials.
- (v) That Dealer may have an account with DSC where information can be accessed and transmissions can be sent through DSC's website located at www.discoverdsc.com. Dealer shall have the means to control access to the account information by

passwords and a dealer account number in accordance with policies and procedures set forth by DSC. To participate, Dealer shall execute all documents required by DSC to register for such additional service and shall abide by DSC's policies and procedures set forth therein. Dealer agrees such documents shall be incorporated herein by reference and made part of this Note.

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

5. CREDIT TERMS AND PROCEDURES:

- (a) The decision to make an Advance to Dealer is the exclusive right of DSC, and Dealer understands that DSC may refuse to make an Advance at any time, with or without cause and without prior notice to Dealer or any guarantors of such decision. Dealer is not obligated to finance any Inventory through DSC. If Dealer's Place of Business is in California, the amount of the first Advance under this Note must be at least \$5,000.00.
- (b) All Dealer requests to DSC for an Advance for the purpose of acquiring Purchase Money Inventory with DSC funds, or financing previously-acquired Inventory with DSC funds must include a copy of the bill of sale for any Unit which is the subject of the request, indicating the actual purchase price and vendor, a completed Odometer Disclosure Statement, and the Unit's certificate of title showing that it has been duly assigned to Dealer. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (c) DSC is not required but may make, without notice to Dealer and without regard to the Dealer's Credit Limit, Advance on Dealer's behalf, for any Liability to a third party at any time Dealer is in default under the terms of this Note. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (d) Dealer must be in complete compliance with this Note before an Advance request will be approved by DSC. Additionally, DSC may require certain other information from Dealer to be submitted on a certified and sworn affidavit including, but not limited to, a statement that Dealer has not used any Advance for any other purpose than its originally requested and verified purpose.
- (e) Dealer shall pay all liabilities to DSC at the offices of DSC, on demand and without notice, with respect to an item of DSC Financed Inventory on the earlier of: (a) twenty-four (24) hours from the time Dealer receives payment by or on behalf of the purchaser of an item of DSC Financed Inventory; (b) forty-eight (48) hours after the disposition by sale or otherwise of an item of DSC Financed Inventory; or (c) the Maturity Date. DSC shall apply such payments to the DSC Financed Inventory Liabilities incurred from said item of DSC Financed Inventory. Notwithstanding anything herein to the contrary, if, after the disposition by sale or otherwise and subsequent payment to DSC as delineated above, a Shortage exists between any payments received by DSC and the DSC Financed Inventory Liability with respect to an item of DSC Financed Inventory, that Shortage shall be considered a Liability owed by Dealer to DSC and secured with Collateral other than DSC Financed Inventory. Dealer shall pay to DSC at the offices of DSC all other Liabilities, on demand and without notice. The order and method of application of such payments of the Liabilities shall be in the discretion of DSC. Payments received by DSC after 5 pm as measured by Dealer's Home Branch shall be applied the next business day.
- (f) If Dealer is in compliance with all other provisions of this Note, DSC may, in its sole discretion, permit an Extension of the Maturity Date relative to an item of DSC Financed Inventory, upon the payment of Shortage, Interest, Floorplan Fee(s) and a principal reduction of the outstanding Advance relating to such item of DSC Financed Inventory pursuant to this Note and as established in the Term Sheet.
- (g) So long as Dealer is not in default of this Note, Dealer may sell DSC Financed Inventory to bona fide buyers in the ordinary and regular course of Dealer's business, but nothing herein shall be deemed to waive or release any interest DSC may have hereunder or under any other agreement in any proceeds or replacements of the DSC Financed Inventory. Upon the sale of any specific item of DSC Financed Inventory, Dealer shall hold the amount received from the disposition of such DSC Financed Inventory in Trust for the benefit of DSC, and Dealer shall pay to DSC, in accordance with this Note, an amount equal to the unpaid balance of the Liabilities relating to such specific item of DSC Financed Inventory.
- (h) Dealer shall allow DSC's officers, employees, agents, attorneys, designees and representatives access to Dealer's books and records at the Dealer's Place of Business to conduct an audit of Dealer's DSC Financed Inventory. Dealer shall be responsible for and agrees to pay all of DSC's expenses in conducting such audit.
- (i) Upon request by Dealer to obtain, for a legitimate business purpose, the Title to a specific item of DSC Financed Inventory held by DSC, DSC may consider said request and, in DSC's sole discretion, grant such request. In the event DSC grants such request, Dealer must deliver to DSC a check or draft which is signed and dated on the date as of which the Dealer takes physical custody of the subject Title in an amount equal to the Liability relating to such specific item of DSC Financed Inventory. The subject Title must be returned to DSC within the time period established by DSC or any outstanding Liability relating to any such Advance for such specific items of DSC Financed Inventory shall become immediately due and payable, and DSC may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.

- (j) To protect DSC's interest, Dealer authorizes DSC to obtain credit information from a credit bureau, and any financial institutions or trade creditor that Dealer has provided, as well as other credit investigation that DSC in DSC's sole discretion deems necessary. Dealer also authorizes DSC to contact any third parties to disclose information, including information contained in the DSC application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DSC's security interest. Further, if Credit Line is granted, Dealer authorizes DSC to review Dealer's account periodically, which may include obtaining additional credit reports.
- (k) Dealer's account is subject to "NSF" fees in the amount stated in the DSC Published Rate, Fee and Term Schedule or maximum amount permitted by law for each check or ACH issued by Dealer which is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Dealer's and/or DSC's depository institution.
- (l) DSC may process checks electronically, at first presentment and any re-presentments, by transmitting the amount of the check, routing number, account number and check serial number to your financial institution. By submitting a check for payment, you authorize DSC to initiate an electronic debit from your bank account. When DSC processes your check electronically, your payment may be debited from your bank account as soon as the same day we receive your check and you will not receive that cancelled check with your bank account statement.
- (m) Dealer's account is subject to a late fee charge in the amount stated in the DSC Published Rate, Fee and Term Schedule or the maximum amount permitted by law for any item of DSC Financed Inventory that Dealer fails to remit payment under this Note when due. Dealer acknowledges and agrees that the late fee charged by DSC is a reasonable estimate of DSC's probable losses due to the delay, inconvenience, and administrative expenses associated with a late payment. Dealer's account is subject to DSC Administrative Fees. Dealer acknowledges and agrees that any such DSC Administrative Fee charged by DSC is permitted under this Note and consents to the assessment of any such DSC Administrative Fee to Dealer's account. Dealer further acknowledges and agrees that DSC Administrative Fees are subject to business and market conditions and may be adjusted unilaterally by DSC without notice to Dealer and at DSC's sole discretion.
- (n) DSC maintains and publishes the "DSC Published Rate, Fee and Term Schedule" via posting the same on www.discoverdsc.com and in each DSC branch location. All such rates, fees and such amendments to the Terms and Conditions are published therein and incorporated herein by reference and made a part of this Note. With the exception of DSC Administrative Fees and Floorplan Fees, the rates and fees applied to Dealer's Liabilities under this Note and the amended Terms and Conditions stated therein shall be the applicable rates and fees and amendments to the Terms and Conditions most recently published on the DSC Published Rate, Fee and Term Schedule. DSC may amend the rates and fees and amend the Terms and Conditions from time to time at DSC's sole discretion and without additional Notice to Dealer other than the publication of such amendments on www.discoverdsc.com.
- (o) Dealer waives demand, presentment for payment, notice of dishonor, protest and notice of protest, and expressly agrees that this Note and all payments coming due under it may be extended or modified, from time to time without in any way affecting Dealer's liability under this Note. Dealer understands that this Note matures upon issuance, and that DSC may, at any time, and without notice to Dealer, with or without cause, demand that the Note be immediately paid in full. The demand nature of this Note does not limit DSC's election of remedies upon a default by Dealer. At DSC's option, DSC may reference a term of default for the purpose of permitting DSC to receive interest at the Default Rate. It is agreed that DSC may demand partial payments under this Note, and said partial demand shall not change DSC's rights under this Note.

6. EVENT OF DEFAULT: The occurrence of any of the following events shall be considered an event of default under this Note ("Event of Default"):

- (a) The Dealer fails to perform any of its obligations, undertakings or covenants under this Note, fails to adhere to a credit term under this Note, including but not limited to, failure to make payment upon maturity or upon demand of any outstanding Liability under this Note; or
- (b) Any warranty or representation made by the Dealer 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 Dealer to DSC proving to have been false or misleading in any material respect when made or delivered; or
- (c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DSC as "Loss Payee" is not in effect; or
- (d) The Dealer becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for the Dealer or any property thereof, 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 the Dealer; or
- (e) Any material change in the management, ownership or control of Dealer; or
- (f) The voluntary or administrative dissolution, death or incompetence of Dealer or any Guarantor of this Note; or
- (g) Any change in the financial condition of Dealer or Guarantor(s) that DSC in good faith deems adverse; or

- (h) DSC in good faith deems itself insecure for any reason.
- (i) Dealer has failed to maintain compliance with Dealer's obligations in paragraph 4 (c) of this Note relating to any DSC Financed Item of Inventory that is the subject of a lease contract between Dealer and Dealer's customer.
- (j) Dealer has defaulted under any other written agreement entered into by and between DSC and Dealer.

7. **RIGHTS AND REMEDIES:** Upon an event of default, DSC 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 under this Note and all other indebtedness owed to DSC by Dealer. DSC 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 Uniform Commercial Code in effect in the jurisdiction where the Collateral is kept. These rights and remedies include the right to cancel any unfunded Advances, to enter into Dealer's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DSC's request and to the extent Dealer may lawfully do so, Dealer shall assemble, prepare for removal and make available to DSC at a place designated by DSC which is reasonably convenient for DSC and Dealer, such items of Collateral as DSC may deem sufficient to cover all Dealer's Liabilities to DSC; and
- (b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Dealer waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DSC to post a bond; and
- (c) To the extent allowed by law, Dealer gives consent to DSC to proceed in any action to collect on or execute against any and all bonds that Dealer has posted with any governmental authorities; and
- (d) Without limiting the foregoing, DSC may take control of any funds generated by the Collateral, and in DSC's name or Dealer's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral. Dealer waives any and all rights it may have to notice prior to seizure by DSC of any Collateral. Dealer agrees that private sale of any item financed by DSC at the amount owed to DSC on that item, less costs reasonably incurred by DSC in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral. Dealer shall be liable to DSC for any deficiency resulting from DSC's disposition of the Collateral. Dealer agrees that the Collateral is of the type customarily sold on a recognized market and that DSC therefore has no obligation to notify Dealer prior to a sale. However, Dealer agrees that ten (10) days prior written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DSC shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DSC shall not be required to marshal any assets in favor of Dealer. DSC has no obligation to pursue any third person for any Liability or obligation owed to Dealer. Dealer further agrees to pay reasonable attorney fees and collection costs incurred by DSC in enforcing this Note after an event of default by Dealer. To the extent not prohibited by law, Dealer 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.

8. **POWER OF ATTORNEY:** Dealer shall execute an irrevocable Power of Attorney in DSC's favor and such Power of Attorney shall be incorporated herein by reference and made a part of this Note.

9. **GUARANTY(IES):** Dealer shall cause each owner of Dealer to execute an Individual Personal Guaranty. If Dealer is owned in whole or in part by a legally recognized business entity or trust, then Dealer shall cause said entity or trust to execute a Guaranty in addition to all required Individual Personal Guaranties. All such and the same shall be incorporated herein by reference and made a part of this Note.

10. **TERM SHEET(S):** Prior to an Advance under this Note, Dealer shall execute a Term Sheet for each unique set of terms applicable to Dealer, which may be amended from time to time, and the same shall be incorporated herein by reference and made a part of this Note.

11. **ASSIGNMENT:** This Note may be assigned by DSC but Dealer may not assign this Note without the prior written consent of DSC.

12. **INDEMNIFICATION:** Dealer shall indemnify and hold DSC harmless from and against all, loss, damage, costs, or expenses of whatever kind or nature relating to claims of third parties arising out of or in any way connected to this Note or Dealer's business affairs including, without limitation, attorneys' fees and expenses incurred both in the defense of any action against DSC and in any action to enforce these indemnity rights as against the Dealer.

13. **NO JOINT VENTURE OR PARTNERSHIP:** Nothing contained herein shall confer upon DSC or Dealer any interest in, or subject either of them to any liability for, or in respect of the business, assets, profits, losses or liabilities of the other. This Note does not constitute and shall not be characterized as a joint venture or partnership between DSC and Dealer. Nothing in this section shall limit or restrict the respective obligations and undertakings of DSC and Dealer hereunder.

14. **AMENDMENT, MODIFICATION AND MERGER:** This Note and all documents incorporated herein by reference are intended by the parties as an amendment and restatement of any prior Demand Promissory Note and Security Agreement(s) between DSC and Dealer. With

the exception of the amendments and modifications referenced in Paragraphs 3 and 5 above, this Note may not be modified or amended except upon the written consent of DSC and Dealer. However, descriptions of specific items of DSC Financed Inventory, amounts and terms of Advances, Maturity Date Extensions, Interest, Base Rates, Risk Rates, Default Rates, DSC Administrative Fees, DSC Universal Fees, late fees, NSF Fees, Terms and Conditions and other charges allowed by this Note may be proven by ordinary course of business records of DSC.

15. EXECUTION: The parties understand and agree that DSC may execute this Note and all corresponding documents by affixing an authorized DSC Officer's signature via signature stamp. Dealer may only execute this Note by original signature. A facsimile reproduction of such authorized DSC Officer's signature and Dealer's signature on the Note and all corresponding documents shall be deemed original signatures.

16. NOTICES: All notices, requests and demands to or upon the respective parties hereto, including Service of Process of any legal proceeding initiated by either party, shall be deemed to have been duly given or made: if by hand or by facsimile, immediately upon the Business Day of receipt, if received before 5 p.m., recipient's time, otherwise on the next Business Day; if by Federal Express, Express Mail or any other overnight delivery service with proof of next day delivery on a Business Day, one (1) Business Day after dispatch; and if mailed by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the address set forth herein:

To DSC: Dealer Services Corporation, 1320 City Center Drive, Suite 100, Carmel, IN 46032
Telephone (317) 571-3721 Facsimile: (317) 571-3737

To Dealer: Total, Inc. DBA Gault's Used Cars
2015 Union Hwy, Gaffney, SC 29340
Telephone: (864) 489-5008 Facsimile:

17. NO WAIVER: No failure or delay by DSC in exercising any right, power, or privilege under this Note will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

18. TERMINATION: No termination of this Note shall alter Dealer's obligations and Liabilities relating to amounts funded or committed prior to the effective date of such termination, and all rights and remedies, including without limitation, the security interest granted herein and the rights of DSC as a secured party hereunder, shall extend until all Liabilities owed by Dealer to DSC have been satisfied.

19. LEGAL FEES AND COLLECTION COSTS: Dealer shall pay to DSC all reasonable legal fees, expenses and collection costs incurred as a result of Dealer's default or failure of any obligation under this Note.

20. SEVERABILITY: Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement in any other jurisdiction.

21. GOVERNING LAW: The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof. However, in the event Dealer's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

22. JURISDICTION AND VENUE: As evidenced by Dealer's signature below, Dealer submits to the personal jurisdiction and venue of the state or federal courts of Marion and Hamilton County, Indiana and agrees that any and all claims or disputes pertaining to this Note or to any matter arising out of or related to this Note initiated by Dealer against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Dealer expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. DSC reserves the right to initiate and prosecute any action against Dealer in any court of competent jurisdiction, and Dealer consents to such Forum as DSC may elect. However, in the event this Note is made and entered into in the State of California, the state or federal courts located in the State of California shall have jurisdiction to hear and determine any claims or disputes between the parties pertaining to this Note or to any matter arising out of or related to this Note. Each party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such Court, and each party hereby waives any objection which such party may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens, and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such Court.

23. WAIVER OF BOND: Dealer waives, to the extent permitted by law, any bond or surety or security on such bond which might, but for this waiver, be required of DSC.

24. WAIVER OF JURY TRIAL: DEALER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE, OR ANY OTHER LOAN DOCUMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY COURSE OF CONDUCT, STATEMENT, WHETHER ORAL OR WRITTEN, OR ACTIONS OF THE DEALER. THE DEALER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR

OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL HAVE NOT BEEN DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY DSC EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH DEALER AND DSC.

25. JUDICIAL REFERENCE. IF DEALER'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEALER AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER. EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

26. HEADINGS: Paragraph headings used in this Note are for reference only and shall not affect the construction of this Note.

WHEREFORE, the parties have, by their duly authorized representatives, executed this Note on the 3 day of Jan, 2012

Dealer: Total, Inc. DBA Gault's Used Cars

Accepted By: Dealer Services Corporation

By: [Signature]
DSC Officer

By: [Signature] President
Edward Keith Potter, President

GUARANTORS ACKNOWLEDGE AND CONSENT OF AND TO THE FOREGOING:

Guarantor: [Signature]
Edward Keith Potter

Guarantor: Michael Wayne Gault
Michael Wayne Gault

POWER OF ATTORNEY

Total, Inc. DBA Gault's Used Cars, ("Dealer"), hereby irrevocably appoints Dealer Services Corporation ("DSC"), a Delaware corporation with its principal place of business located at 1320 City Center Drive, Suite 100, Carmel, Indiana, 46032, and DSC's agents, as its lawful attorney-in-fact by executing this Power of Attorney in accordance with the Demand Promissory Note and Security Agreement ("Note") contemporaneously entered into by Dealer and DSC, to which all capitalized terms used herein shall have the meanings set forth in the Note, to act with or without the occurrence of an Event of Default and with or without notice to Dealer:

- (a) to act with general authority and delegate such authority with respect to all Dealer's Collateral and all transactions relating thereto;
- (b) to execute security agreements and related documents necessary for Dealer to acquire or sell Collateral;
- (c) to endorse any document, instrument, certificate of title or other evidence of title, state registration documents, or related documents necessary to protect the Collateral in the name of Dealer;
- (d) to endorse notes, checks, drafts, money orders, documents, or other evidences of payment, shipment or storage or any form of Collateral on behalf of and in the name of Dealer and deposit the same in the account of DSC on account of any Liability due DSC from Dealer under the Note;
- (e) to demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Collateral or chattel paper related to the Collateral or any insurance claims thereon in such manner as DSC may determine;
- (f) to endorse in the name of and on behalf of Dealer any chattel paper, invoice, bill of sale, document, instrument or bill of lading relating to the Collateral;
- (g) to sign the Dealer's name to all proofs of claim against any account debtor on behalf of Dealer;
- (h) to notify the post office authorities to change the address for delivery of the Dealer's mail to an address designated by DSC and to receive such mail on behalf of Dealer; and
- (i) to do all things necessary to satisfy Dealer's obligations and Liabilities under the Note.

DSC 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.

Executed this 3 day of Jan, 2012.

Dealer: Total, Inc. DBA Gault's Used Cars

Signature: [Signature] President
Edward Keith Potter, President

STATE OF SC)
COUNTY OF Spartanburg) SS:

Before me, a Notary Public in and for said County and State, personally appeared Edward Keith Potter, who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notarial Seal this 3rd day of Jan, 2012.

Notary Signature [Signature]
Notary, Printed James M. Vaughan

My Commission Expires: 2/5/2020 County of Residence: LEXINGTON

James M. Vaughan
Notary Public - South Carolina
My Commission Expires 02/05/2020

TERM SHEET

Dealer: Total, Inc. DBA Gault's Used Cars

Branch: Columbia

Dealer Number: 28915

Date of Original Note:

Term Plan Type: Retail (Buyer)

The following, as defined in the Demand Promissory Note and Security Agreement, shall apply effective immediately to any Advance made by DSC to Dealer under the Note and pursuant to this Term Sheet.

Floorplan Fee, Period, Principal Reduction: The Floor Plan Fee, Period and Principal Reduction for any one Advance made pursuant to this Term Sheet shall be as follows:

Period	Number of Days in Period	Required Principal Reduction to Extend Maturity Date	Floorplan Fee
1	60	7.50%	\$110.00
2	30	15.00%	\$70.00
3	30	100.00%	\$70.00

Contract Rate: The Contract Rate of interest shall accrue on all Liabilities, including but not limited to, Inventory Advances at the Base Rate plus 4.5% per annum compounded daily unless otherwise provided for pursuant to the Terms and Conditions of the Note.

Dealer may pay the Floorplan Fee at the time of the Advance to avoid incurring interest charges thereon. If Dealer elects not to pay the Floorplan Fee at the time of the Advance, the Interest on the Floorplan Fee will accrue per the terms of this Note. By initialing the box at the end of this sentence, Dealer acknowledges that Interest will accrue on the Floorplan Fee per terms of the Note. LP Dealer shall not be entitled to extend any one Advance made pursuant to this Term Sheet beyond the last defined Period above.

Before DSC will approve directly funding the bank account of Dealer for any Advance, Dealer acknowledges that DSC must hold a first priority security interest in all Dealer's DSC-Financed Inventory. LP

Executed by the undersigned duly authorized representatives effective as of the 7 day of JUN, 2012

Dealer: Total, Inc.

Dealer Services Corporation

DBA: Gault's Used Cars

By: B.D.J.
DSC Officer

DBA:

Signature: Edward Keith Potter
Edward Keith Potter, President

That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions appearing herein and applicable to Dealer's DSC account.

TERM SHEET

Dealer: Total, Inc. DBA Gault's Used Cars

Branch: Columbia

Dealer Number: 28915

Date of Original Note:

Term Plan Type: Salvage

The following, as defined in the Demand Promissory Note and Security Agreement, shall apply effective immediately to any Advance made by DSC to Dealer under the Note and pursuant to this Term Sheet:

Floorplan Fee, Period, Principal Reduction & Extensions: The Floor Plan Fee shall be tiered pursuant to the amount of the Advance for any Unit floored as follows: For an Advance for a Unit up to but not more than \$5,000.00 the Floor Plan Fee shall be \$60.00; For each extension of the Maturity Date, the Floor Plan Fee shall be \$30.00. For an Advance for a Unit equal to or greater than \$5,000.01 but not more than \$10,000.00, the Floor Plan Fee shall be \$80.00; For each extension of the Maturity Date, the Floor Plan Fee shall be \$40.00. For an Advance for a Unit equal to or greater than \$10,000.01 but not more than \$20,000.00, the Floor Plan Fee shall be \$130.00; For each extension of the Maturity Date, the Floor Plan Fee shall be \$65.00. The Period and Principal Reduction for any one Advance made pursuant to this Term Sheet shall be as follows:

Period	Number of Days in Period	Required Principal Reduction to Extend Maturity Date	Floorplan Fee
1	60	2.50%	See Above
2	30	2.50%	See Above
3	30	2.50%	See Above
4	30	2.50%	See Above
5	30	100.00%	See Above

Contract Rate: The Contract Rate of interest shall accrue on all Liabilities, including but not limited to, Inventory Advances at the Base Rate plus 4.5% per annum compounded daily unless otherwise provided for pursuant to the Terms and Conditions of the Note.

Dealer may pay the Floorplan Fee at the time of the Advance to avoid incurring interest charges thereon. If Dealer elects not to pay the Floorplan Fee at the time of the Advance, the Interest on the Floorplan Fee will accrue per the terms of this Note. By initialing the box at the end of this sentence, Dealer acknowledges that Interest will accrue on the Floorplan Fee per terms of the Note. LP Dealer shall not be entitled to extend any one Advance made pursuant to this Term Sheet beyond the last defined Period above.

Before DSC will approve directly funding the bank account of Dealer for any Advance, Dealer acknowledges that DSC must hold a first priority security interest in all Dealer's DSC-Financed Inventory. LP

Executed by the undersigned duly authorized representatives effective as of the 3 day of Feb, 20 12

Dealer: Total, Inc.

Dealer Services Corporation

DBA: Gault's Used Cars

By: B.D.J.

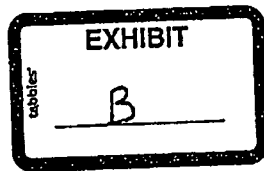
DBA:

DSC Officer

Signature: [Signature]

Edward Keith Potter, President

That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions appearing herein and applicable to Dealer's DSC account.



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional) Phone: (800) 331-3282 Fax: (818) 652-4141	
B. SEND ACKNOWLEDGEMENT TO: (Name and Address) 16554 DEALER SERVICE UCC Direct Services P.O. Box 29071 Glendale, CA 91209-9071	
10688747	SCSC

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (1a or 1b) - do not abbreviate or combine names				
1a. ORGANIZATION'S NAME TOTAL, INC.				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 2015 UNION HWY		CITY GAFFNEY	STATE SC	POSTAL CODE 29340
1d. SEE INSTRUCTIONS	ADDL INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION CORPORATION	1f. JURISDICTION OF ORGANIZATION SC	1g. ORGANIZATIONAL ID #, if any U52217 ☐ NONE
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (2a or 2b) - do not abbreviate or combine names				
2a. ORGANIZATION'S NAME GAULT'S USED CARS				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS 2015 UNION HWY		CITY GAFFNEY	STATE SC	POSTAL CODE 29340
2d. SEE INSTRUCTIONS	ADDL INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION DBA CORP	2f. JURISDICTION OF ORGANIZATION SC	2g. ORGANIZATIONAL ID #, if any ☒ NONE
3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S.P.) - insert only <u>one</u> secured party name (3a or 3b)				
3a. ORGANIZATION'S NAME DEALER SERVICES CORPORATION				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 11555 NORTH MERIDIAN SUITE 220		CITY CARMEL	STATE IN	POSTAL CODE 46032

4. This FINANCING STATEMENT covers the following collateral:

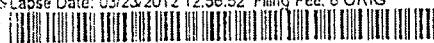
All Debtor's assets and properties wherever located, including without limitation all equipment of any kind or nature, all vehicles, vehicle parts and inventory now owned or hereafter acquired, without limitation, purchase money inventory, the purchase of which was financed or floorplanned by Dealer Services Corporation for Debtor of whatever kind or nature, and all returns, reposessions, exchanges, substitutions, attachments, additions, accessions, accessories, replacements, and proceeds thereof; all accounts receivable, chattel paper, and general intangibles now owned or hereafter acquired by Debtor together with the proceeds thereof; all of Debtor's documents, books and records relating to the foregoing.

5. ALTERNATIVE DESIGNATION (if applicable)	☐ LESSEE/LESSOR	☐ CONSIGNEE/CONSIGNOR	☐ BAILEE/BAILOB	☐ SELLER/BUYER	☐ AG. LIEN	☐ NON-UCC FILING
6. ☐ This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS - Attach Address	7. CHECK TO REQUEST SEARCH REPORT(S) on Debtor(s) (Additional Fee)		☐ All Debtors ☐ Debtor 1 ☐ Debtor 2			
8. OPTIONAL FILER REFERENCE DATA 10586747 28915 160						

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/23/02)

Prepared by UCC Direct Services, P.O. Box 29071, Glendale, CA 91209-9071 Tel: (800) 331-3282

070323-1256529 UCC-1 FINANCING STATEMENT
Lapse Date: 03/23/2012 12:56:52 Filing Fee: 8 ORIG



ROA 000041

FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY.

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

TOTAL, INC.

OR

9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

10. MISCELLANEOUS

10688747-SC-0

16554 DEALER SERVICE

28915

160

File with: South Carolina

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

TOTAL INC.

OR

11b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

11c. MAILING ADDRESS

2015 UNION HWY

CITY

GAFFNEY

STATE

SC

POSTAL CODE

29340

COUNTRY

11d. SEE INSTRUCTION

ADDL INFO RE
ORGANIZATION
DEBTOR

11e. TYPE OF ORGANIZATION
CORPORATION

11f. JURISDICTION OF ORGANIZATION
SC

11g. ORGANIZATIONAL ID #, if any
U52217

☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P's NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

12c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

13. This FINANCING STATEMENT covers: ☐ timber to be cut or ☐ as-extracted
collateral or is filed as a ☐ fixture filing.

14. Additional collateral description:

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate
(if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY
☐ Filed in connection with a Manufactured-Home Transaction - effective 30 years
☐ Filed in connection with a Public-Finance Transaction - effective 30 years

UCC FINANCING STATEMENT AMENDMENT
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional):
Phone (800) 331-3282 Fax (818) 682-4141

B. SEND ACKNOWLEDGEMENT TO: (Name and Mailing Address) 16554 DEALER SERVICE

CT Lien Solutions 32255442
P.O. Box 29071
Glendale, CA 91209-9071 SCSC

SC Secretary of State
File ID: 120319-1105017
Lapse Date: 03/23/2017

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. INITIAL FINANCING STATEMENT FILE #
070323-1256529 23-MAR-2007 SS SC

2. THIS FINANCING STATEMENT AMENDMENT is
to be filed (for record), (or recorded) in the
REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement Identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☒ CONTINUATION: Effectiveness of the Financing Statement Identified above with respect to the security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in 7c and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and 7:

☐ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name: Give record name in item 6a or 6b. ☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. SEE INSTRUCTION DO NOT PROVIDE ADDL INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION 7f. JURISDICTION OF ORGANIZATION 7g. ORGANIZATIONAL ID #, if any ☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): Check only one box.

Describe collateral ☐ deleted or ☐ added, or Give written ☐ revised collateral description, or describe collateral ☐ assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

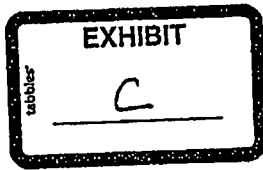
9a. ORGANIZATION'S NAME
DEALER SERVICES CORPORATION

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA

ROA 000043



INDIVIDUAL PERSONAL GUARANTY

WHEREAS, Dealer Services Corporation, a Delaware corporation ("DSC"), in consideration of any present or future loans or other financial advances to Total, Inc. DBA Gault's Used Cars (hereinafter sometimes referred to as "Debtor"); and

WHEREAS, on the 3 day of Jan, 2022 Debtor executed and delivered to DSC its principal Demand Promissory Note and Security Agreement ("Note"); and

WHEREAS, the loan of DSC to Debtor is conditioned upon said indebtedness being personally guaranteed as to the payment thereof by Edward Keith Potter (hereinafter referred to as "Guarantor"); and

WHEREAS, in consideration of the financial and other support that the Debtor has provided, and such financial and other support as the Debtor may in the future provide, to the Guarantor, and in order to induce DSC to provide Credit to Debtor, and because Guarantor has determined that executing this Individual Personal Guaranty (hereinafter referred to as "Guaranty") is in its interest and to its financial benefit, the Guarantor is willing to guarantee the obligations of Debtor under the Note; and

WHEREAS the Guaranty shall be irrevocable, continuing and unconditional as to all Liabilities owed by Debtor at all times;

1. NOW, THEREFORE, the Guarantor, in executing this Guaranty, jointly and severally guarantees that Debtor will promptly pay the full amount of principal and interest, all costs and fees, including but not limited to, reasonable attorneys' fees and collection costs, and any other liabilities arising out of the Note as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as a primary not a secondary liability of Guarantor.

2. Without limiting the generality of the foregoing, the Guarantor agrees that he/she will pay the full amount of principal and interest of the Note now or hereafter due as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as primary and not a secondary liability of Guarantor.

3. The Guarantor hereby waives demand, notice of dishonor, presentment for payment, protest and notice of protest, and of non performance on all of said indebtedness; and if said indebtedness is renewed, or if the time for payment thereof be extended (to which Guarantor hereby expressly consents to any such renewal or extension) either with or without notice to Guarantor, Guarantor unconditionally guarantees the payment of such indebtedness at the time fixed for the payment thereof in and by any such renewal or extension. Guarantor further waives all rights, by statute or otherwise, to require the holder of the Note to institute suit against the original maker of the Note; also to exercise diligence in enforcing this or any other instrument.

4. To the extent permitted by law, Guarantor waives all defenses legally available to Guarantor, Guarantor being bound to the payment of said indebtedness of the original maker of the Note. The holder of the Note may take any new or additional or substituted security from time to time without in any way impairing the obligation of the undersigned; and the impairment of the security, which said holder may from time to time hold as security for said loan, shall in no way operate to discharge the undersigned in whole or in part, it being specifically agreed that the holder is not required to exercise diligence to enforce its rights against the original maker of the Note. The holder is hereby authorized at any time, in its sole discretion and without notice, to take, change, release or in any way deal with the security herein; but the holder of the Note shall be under no obligation to collect or to protect any of such security or said indebtedness, and its neglect or failure to collect or protect the same is excused. Acceptance of the Guaranty is waived.

5. Forbearance on the part of DSC to take steps to enforce payment of said indebtedness arising from Guarantor's default in any respect whatever, or the giving of further time to the original maker of the Note, shall in no way release the undersigned, but the undersigned shall remain jointly and severally liable hereunder for the prompt payment of said indebtedness.

6. This Guaranty is for the use and benefit of the holder of the Note, who in the first instance will be DSC. This Guaranty shall also be for the use and benefit of any subsequent owner of the Note, and each owner of the Note may assign this Guaranty to its successor owner of the Note.

7. All reasonable costs and expenses, including attorneys' fees, incurred by the holder of the Note to enforce this Guaranty, shall be paid by the undersigned.

8. The liability of the Guarantor shall continue until payment is made of every obligation of the Debtor now or hereafter incurred in connection with the Note, and until payment is made of any loss or damage incurred by DSC with respect to any matter covered by this Guaranty.

9. Guarantor consents that, without affecting the Guarantor's liability, DSC may, without notice to or consent of Guarantor on such terms as DSC may deem advisable, extend in whole or in part, by renewal or otherwise, the time of payment of the debt now or hereafter owing by the Debtor to DSC or held by DSC as security for any obligation herein described, or may do or refrain from doing any act whatever. Guarantor also consents that DSC may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the obligations of Debtor to DSC, and may also settle or compromise any claim of DSC against Debtor or against any other person or corporation whose obligation is held by DSC as collateral security for any obligation of Debtor or DSC. Guarantor hereby ratifies and affirms any such actions, and all such actions shall be binding on Guarantor, and Guarantor hereby waives all defenses, counterclaims or offsets which Guarantor may have.

10. Guarantor also waives notice of failure of any person to pay to DSC any debt held by DSC as collateral security for the obligations of Debtor, and all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of DSC against Debtor.

11. Guarantor represents that at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of this Guaranty.

12. Guarantor understands that so long as any indebtedness exists from Debtor to DSC, Debtor is not permitted to repay any loans or obligation owing Guarantor, present or future. Guarantor agrees that any such payments made by Debtor to Guarantor shall be held in trust for the benefit of DSC and shall be immediately delivered to DSC.

13. DSC may, at its option, proceed in the first instance against the Guarantor to collect the obligations covered by this Guaranty without first proceeding against any other person, firm or corporation, and without resorting to any property held by DSC as collateral security.

14. The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof, and Guarantor agrees that any and all claims or disputes pertaining to this Guaranty or to any matter arising out of or related to this Guaranty initiated by Debtor against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Guarantor expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. However, in the event Debtor's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

15. Guarantor understands that the right to trial by jury is an unconditional right afforded by the United States Constitution and understands that right may be waived. Guarantor has consulted with or has had the opportunity to consult with his/her attorney and hereby knowingly, intentionally and voluntarily waives any right to trial by jury regarding any litigation arising out of or in connection with this Guaranty. Guarantor understands that DSC also has waived its right to trial by jury and agrees that such waiver by Guarantor and DSC are for the mutual benefit of the parties. Further, Guarantor understands and agrees that such waiver is a material inducement for both parties in entering into this Guaranty and transactions relating thereto.

16. JUDICIAL REFERENCE. IF DEBTOR'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEBTOR AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY,

PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THE NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

17. Any provision of this Guaranty that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Guaranty or affecting the validity or enforceability of any provision of this Guaranty.

18. Words of "Guaranty" contained herein in no way diminish or impair the absolute liability hereby created.

19. This Guaranty is intended by the Guarantor as an amendment and restatement of any prior Personal Guaranty made by Guarantor related to the Demand Promissory Note and Security Agreement or amendment thereof executed by Debtor.

20. POLICY CONCERNING THE FURNISHING OF NEGATIVE INFORMATION TO CONSUMER REPORTING AGENCIES. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Executed by the undersigned this 3 day of Jan, 2012

Signature: [Signature]
Edward Keith Potter

STATE OF SC)
COUNTY OF Spartanburg) SS

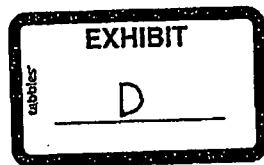
Before me, a Notary Public in and for said County and State, personally appeared Edward Keith Potter, who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notarial Seal this 3rd day of Jan, 2012

Notary Signature: [Signature]
Notary, Printed: James M. Vaughan

James M. Vaughan
Notary Public - South Carolina
My Commission Expires 02/05/2020

My Commission Expires: 2/5/2020 County of Residence: LEWISTON



INDIVIDUAL PERSONAL GUARANTY

WHEREAS, Dealer Services Corporation, a Delaware corporation ("DSC"), in consideration of any present or future loans or other financial advances to Total, Inc. DBA Gault's Used Cars (hereinafter sometimes referred to as "Debtor"); and

WHEREAS, on the 3 day of January, 2012, Debtor executed and delivered to DSC its principal Demand Promissory Note and Security Agreement ("Note"); and

WHEREAS, the loan of DSC to Debtor is conditioned upon said indebtedness being personally guaranteed as to the payment thereof by Michael Wayne Gault (hereinafter referred to as "Guarantor"); and

WHEREAS, in consideration of the financial and other support that the Debtor has provided, and such financial and other support as the Debtor may in the future provide, to the Guarantor, and in order to induce DSC to provide Credit to Debtor, and because Guarantor has determined that executing this Individual Personal Guaranty (hereinafter referred to as "Guaranty") is in its interest and to its financial benefit, the Guarantor is willing to guarantee the obligations of Debtor under the Note; and

WHEREAS the Guaranty shall be irrevocable, continuing and unconditional as to all Liabilities owed by Debtor at all times;

1. NOW, THEREFORE, the Guarantor, in executing this Guaranty, jointly and severally guarantees that Debtor will promptly pay the full amount of principal and interest, all costs and fees, including but not limited to, reasonable attorneys' fees and collection costs, and any other liabilities arising out of the Note as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as a primary not a secondary liability of Guarantor.

2. Without limiting the generality of the foregoing, the Guarantor agrees that he/she will pay the full amount of principal and interest of the Note now or hereafter due as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as primary and not a secondary liability of Guarantor.

3. The Guarantor hereby waives demand, notice of dishonor, presentment for payment, protest and notice of protest, and of non performance on all of said indebtedness; and if said indebtedness is renewed, or if the time for payment thereof be extended (to which Guarantor hereby expressly consents to any such renewal or extension) either with or without notice to Guarantor, Guarantor unconditionally guarantees the payment of such indebtedness at the time fixed for the payment thereof in and by any such renewal or extension. Guarantor further waives all rights, by statute or otherwise, to require the holder of the Note to institute suit against the original maker of the Note; also to exercise diligence in enforcing this or any other instrument.

4. To the extent permitted by law, Guarantor waives all defenses legally available to Guarantor, Guarantor being bound to the payment of said indebtedness of the original maker of the Note. The holder of the Note may take any new or additional or substituted security from time to time without in any way impairing the obligation of the undersigned; and the impairment of the security, which said holder may from time to time hold as security for said loan, shall in no way operate to discharge the undersigned in whole or in part, it being specifically agreed that the holder is not required to exercise diligence to enforce its rights against the original maker of the Note. The holder is hereby authorized at any time, in its sole discretion and without notice, to take, change, release or in any way deal with the security herein; but the holder of the Note shall be under no obligation to collect or to protect any of such security or said indebtedness, and its neglect or failure to collect or protect the same is excused. Acceptance of the Guaranty is waived.

5. Forbearance on the part of DSC to take steps to enforce payment of said indebtedness arising from Guarantor's default in any respect whatever, or the giving of further time to the original maker of the Note, shall in no way release the undersigned, but the undersigned shall remain jointly and severally liable hereunder for the prompt payment of said indebtedness.

6. This Guaranty is for the use and benefit of the holder of the Note, who in the first instance will be DSC. This Guaranty shall also be for the use and benefit of any subsequent owner of the Note, and each owner of the Note may assign this Guaranty to its successor owner of the Note.

7. All reasonable costs and expenses, including attorneys' fees, incurred by the holder of the Note to enforce this Guaranty, shall be paid by the undersigned.

8. The liability of the Guarantor shall continue until payment is made of every obligation of the Debtor now or hereafter incurred in connection with the Note, and until payment is made of any loss or damage incurred by DSC with respect to any matter covered by this Guaranty.

9. Guarantor consents that, without affecting the Guarantor's liability, DSC may, without notice to or consent of Guarantor on such terms as DSC may deem advisable, extend in whole or in part, by renewal or otherwise, the time of payment of the debt now or hereafter owing by the Debtor to DSC or held by DSC as security for any obligation herein described, or may do or refrain from doing any act whatever. Guarantor also consents that DSC may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the obligations of Debtor to DSC, and may also settle or compromise any claim of DSC against Debtor or against any other person or corporation whose obligation is held by DSC as collateral security for any obligation of Debtor or DSC. Guarantor hereby ratifies and affirms any such actions, and all such actions shall be binding on Guarantor, and Guarantor hereby waives all defenses, counterclaims or offsets which Guarantor may have.

10. Guarantor also waives notice of failure of any person to pay to DSC any debt held by DSC as collateral security for the obligations of Debtor, and all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of DSC against Debtor.

11. Guarantor represents that at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of this Guaranty.

12. Guarantor understands that so long as any indebtedness exists from Debtor to DSC, Debtor is not permitted to repay any loans or obligation owing Guarantor, present or future. Guarantor agrees that any such payments made by Debtor to Guarantor shall be held in trust for the benefit of DSC and shall be immediately delivered to DSC.

13. DSC may, at its option, proceed in the first instance against the Guarantor to collect the obligations covered by this Guaranty without first proceeding against any other person, firm or corporation, and without resorting to any property held by DSC as collateral security.

14. The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof, and Guarantor agrees that any and all claims or disputes pertaining to this Guaranty or to any matter arising out of or related to this Guaranty initiated by Debtor against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Guarantor expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. However, in the event Debtor's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

15. Guarantor understands that the right to trial by jury is an unconditional right afforded by the United States Constitution and understands that right may be waived. Guarantor has consulted with or has had the opportunity to consult with his/her attorney and hereby knowingly, intentionally and voluntarily waives any right to trial by jury regarding any litigation arising out of or in connection with this Guaranty. Guarantor understands that DSC also has waived its right to trial by jury and agrees that such waiver by Guarantor and DSC are for the mutual benefit of the parties. Further, Guarantor understands and agrees that such waiver is a material inducement for both parties in entering into this Guaranty and transactions relating thereto.

16. JUDICIAL REFERENCE. IF DEBTOR'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:
IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEBTOR AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY,

PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THE NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

17. Any provision of this Guaranty that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Guaranty or affecting the validity or enforceability of any provision of this Guaranty.

18. Words of "Guaranty" contained herein in no way diminish or impair the absolute liability hereby created.

19. This Guaranty is intended by the Guarantor as an amendment and restatement of any prior Personal Guaranty made by Guarantor related to the Demand Promissory Note and Security Agreement or amendment thereof executed by Debtor.

20. POLICY CONCERNING THE FURNISHING OF NEGATIVE INFORMATION TO CONSUMER REPORTING AGENCIES. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Executed by the undersigned this 3 day of January, 20 12

Signature: Michael Wayne Gault

Michael Wayne Gault

STATE OF SC)
COUNTY OF Spartanburg) SS:

Before me, a Notary Public in and for said County and State, personally appeared Michael Wayne Gault, who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notarial Seal this 3rd day of Jan, 20 12.

Notary Signature: James M. Vaughan

Notary, Printed: James M. Vaughan

My Commission Expires: 2/5/2020

County of Residence: Lexington

James M. Vaughan
Notary Public - South Carolina
My Commission Expires 02/05/2020



**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: 12-05055-JW.

**ORDER GRANTING RELIEF FROM AUTOMATIC STAY
AS TO DEALER SERVICES CORPORATION**

The relief set forth on the following pages, for a total of 3 pages including this page, is hereby ORDERED.

**FILED BY THE COURT
12/11/2012**



Entered: 12/11/2012

Chief US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	)	
	)	C/A No. 12-05055-JW
TOTAL, INC.,	)	
D/B/A GAULT'S USED CARS AND	)	Chapter 11
AUTO PARTS, D/B/A GAULT'S USED	)	
CARS AND MOTORMAXX, D/B/A	)	ORDER GRANTING RELIEF FROM
GAULT'S AUTO PARTS,	)	AUTOMATIC STAY AS TO DEALER
D/B/A GAULT'S USED CARS,	)	SERVICES CORPORATION
	)	
Debtor.	)	

This matter came before the Court upon application of Creditor Dealer Services Corporation ("DSC") for immediate relief from the automatic stay as a result of Debtor Total, Inc.'s ("Debtor") default of the Consent Order for Use of Cash Collateral and Adequate Protection Payments of Dealer Services Corporation filed on October 22, 2012 [Doc. 89] ("Consent Order").

Pursuant to the Consent Order, Debtor was required to pay DSC adequate protection payments in the amount of \$6,000 per month for six months, beginning October 1, 2012, with the payment amount increasing thereafter as set forth in the order. The Debtor shall be deemed in default for failure to make such payments within 10 days of the due date each month. Pursuant to paragraph 9 of the Consent Order, upon an event of default, Debtor was required to immediately cease using DSC's cash collateral, and upon the filing of an affidavit of default, DSC is entitled to immediately relief from the automatic stay without further court notice or hearing. Based on the Affidavit of Monty Vaughan of DSC filed on December 4, 2012, Debtor has failed and refused to make the November 1, 2012 payment in the amount of \$6,000.00 for adequate protection to DSC. As a result, this Court hereby finds and concludes that the Debtor is breach of the Consent Order.

THEREFORE, IT IS ORDERED:

- (a) Debtor shall immediately cease the use of DSC's cash collateral, as required on date

of the event of default;

- (b) the automatic stay, pursuant to 11 U.S.C Section 362(d), is terminated and lifted as to any property or security interests of DSC, and thereby DSC is allowed to proceed and enforce any and all legal remedies in and to its property or security interests of the Debtor; and
- (c) Fed R. Bankr. P. 4001(a)(3) is inapplicable to this Order, and the Order shall be effective immediately upon entry.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Dealer Services Corporation,

Plaintiff,

vs.

Total Inc. d/b/a Gault's Used Cars, d/b/a
Gault's Auto Parts, d/b/a Gault's Used Cars
and Auto Parts, d/b/a Gault's Used Cars and
Motormaxx; Edward Keith Potter; Michael
Wayne Gault; Christopher Drye, d/b/a Drye's
Auto Crushing; Ben D. Kochenower, CPA;
Automotive Finance Corporation; Grandsouth
Bank, d/b/a CarBucks; Mason Motors, Inc.,
d/b/a LC Mason Ent.; American Community
Bank, a division of Yadkin Valley Bank and
Trust Company; Quick Capital, LLC, d/b/a
Quick Capital; and Auto Bank Floorplan,
LLC,

Defendants,

IN THE COURT OF COMMON PLEAS

C.A. No: 2013-CP-11-0002

**ANSWER OF DEFENDANTS TOTAL
INC. D/B/A GAULT'S USED CARS,
D/B/A GAULT'S AUTO PARTS, D/B/A
GAULT'S USED CARS AND
MOTORMAXX, EDWARD KEITH
POTTER, AND MICHAEL WAYNE
GAULT**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 MAR 11 AM 7 55
BRANDY W. MCREE

TO: ROBERT GOINGS, ESQ., ATTORNEY FOR PLAINTIFF:

Defendants Total Inc. d/b/a Gault's Used Cars, d/b/a Gault's Auto Parts, d/b/a Gault's

Used Cars and Auto Parts, d/b/a Gault's Used Cars and Motormaxx; Edward Keith Potter;

Michael Wayne Gault, responding to the allegations contained in the Plaintiff's Complaint,

would respectfully show unto this Court:

FOR A FIRST DEFENSE

Paragraphs 1-75 conform to the Allegations of Plaintiff's Complaint

1. Admitted upon information and belief.
2. Admitted.
3. Admitted.
4. Admitted.

5. Denied.
6. Admitted upon information and belief.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Admitted.
14. Admitted.
15. Answering Paragraph 15, these Defendants generally admit the allegations herein,
but crave reference to the actual note and documents cited therein.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.
21. Admitted.
22. These Defendants admit that Dealer filed a Petition for Relief under the
bankruptcy code. These Defendants deny the remaining allegations of this
paragraph.
23. Denied.
24. Answering Paragraph 15, these Defendants generally admit the allegations herein,
but crave reference to the actual note and documents cited therein.

25. These Defendants are without information sufficient to form a belief as to the truth of this paragraph and hereby deny same.
26. Denied.
27. Denied.
28. Denied.
29. Admitted upon information and belief.
30. Admitted upon information and belief.
31. Admitted upon information and belief.
32. Denied.
33. Admitted upon information and belief.
34. Admitted upon information and belief.
35. Admitted upon information and belief.
36. Admitted upon information and belief.
37. This is a re-allegation paragraph to which no specific response is required. These Defendants hereby reincorporate and re-allege their previous responses.
38. Denied.
39. Denied.
40. Denied.
41. Denied.
42. Denied.
43. Denied.
44. Denied.
45. This is a re-allegation paragraph to which no specific response is required. These Defendants hereby reincorporate and re-allege their previous responses.

- 46. Denied.
- 47. Denied.
- 48. Denied.
- 49. Denied.
- 50. Denied.
- 51. Denied.
- 52. Denied.
- 53. Denied.
- 54. Denied.
- 55. This is a re-allegation paragraph to which no specific response is required. These Defendants hereby reincorporate and re-allege their previous responses.
- 56. Denied.
- 57. Denied.
- 58. Denied.
- 59. Denied.
- 60. Denied.
- 61. Denied.
- 62. Denied.
- 63. Denied.
- 64. Denied.
- 65. Denied.
- 66. This is a re-allegation paragraph to which no specific response is required. These Defendants hereby reincorporate and re-allege their previous responses.
- 67. Denied.

- 68. Denied.
- 69. Denied.
- 70. Denied.
- 71. This is a re-allegation paragraph to which no specific response is required. These Defendants hereby reincorporate and re-allege their previous responses.
- 72. Denied.
- 73. Denied.
- 74. Denied.
- 75. Denied.

FOR A SECOND DEFENSE

- 76. These Defendants hereby re-allege and incorporate by reference previous allegations as if the same were set forth verbatim herein.
- 77. Plaintiff's recovering this matter is barred by the doctrines of laches and estoppel.

FOR A THIRD DEFENSE

- 78. These Defendants hereby re-allege and incorporate by reference previous allegations as if the same were set forth verbatim herein.
- 79. Plaintiffs recovery herein is prohibited by its own breach of contract in this case.

FOR A FOURTH DEFENSE

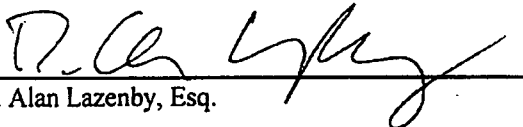
- 80. These Defendants hereby re-allege and incorporate by reference previous allegations as if the same were set forth verbatim herein.
- 81. Plaintiff and these Defendants reached a valid and binding oral enforceable agreement to settle all claims herein for the sum of \$22,500.
- 82. These Defendants attempted to comply with the agreement by making payment;

however, such payment was refused by Plaintiff and therefore Plaintiff is in breach of the settlement agreement.

83. Any recovery of Plaintiff in this action should be limited to \$22,500.

WHEREFORE, these Defendants respectfully asks the Court:

- a) To dismiss Plaintiff's Complaint in whole or in part with prejudice;
- b) As to all matters so triable, for these issues to be heard and decided by a duly jury selected jury; and
- c) For such other and further relief as the Court may deem to be just and proper.


D. Alan Lazenby, Esq.

LAZENBY LAW FIRM, LLC
PO Box 6099
340 E Main St, Suite 240 (29302)
Spartanburg, SC 29304
Phone: 864-804-5050
Fax: 864-804-5051
Email: alan@lazenbylawfirm.com

**ATTORNEY FOR DEFENDANTS TOTAL
INC. D/B/A GAULT'S USED CARS, D/B/A
GAULT'S AUTO PARTS, D/B/A GAULT'S
USED CARS AND MOTORMAXX, EDWARD
KEITH POTTER, AND MICHAEL WAYNE
GAULT**

March 8, 2013

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHEROKEE

) C.A. No: 2013-CP-11-0002

Dealer Services Corporation,

) Plaintiff,

vs.

)
) Total Inc. d/b/a Gault's Used Cars, d/b/a
) Gault's Auto Parts, d/b/a Gault's Used Cars
) and Auto Parts, d/b/a Gault's Used Cars and
) Motormaxx; Edward Keith Potter; Michael
) Wayne Gault; Christopher Drye, d/b/a Drye's
) Auto Crushing; Ben D. Kochenower, CPA;
) Automotive Finance Corporation; Grandsouth
) Bank. d/b/a CarBucks; Mason Motors, Inc.,
) d/b/a LC Mason Ent.; American Community
) Bank, a division of Yadkin Valley Bank and
) Trust Company; Quick Capital, LLC, d/b/a
) Quick Capital; and Auto Bank Floorplan,
) LLC,
)

) Defendants,

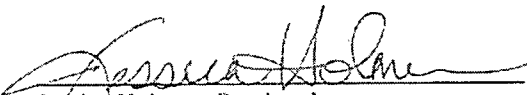
CERTIFICATE OF SERVICE

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 MAR 11 AM 7 55
BRANDY W. MCBEE

I, the undersigned, hereby certify that a true and correct copy of the Answer of Defendants Total Inc. d/b/a Gault's Used Cars, d/b/a Gault's Auto Parts, d/b/a Gault's Used Cars and Auto Parts, d/b/a Gault's Used Cars and Motormaxx; Edward Keith Potter; and Michael Wayne Gault to Complaint was served via US Mail on Plaintiff's Attorney, Robert Goings, Esq., on March 8, 2013 by mailing to:

Robert Goings, Esq.
Goings Law Firm
PO Box 436
Columbia, SC 29202

By:


Jessica Holmen, Paralegal
LAZENBY LAW FIRM, LLC
340 E Main St, Suite 240 (29302)
P.O. Box 6099
Spartanburg, SC 29304
Phone: (864) 804-5050
Fax: (864) 804-5051
Email: Alan@lazenbylawfirm.com
ATTORNEY FOR DEFENDANTS

March 8, 2013

ROA 000062

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Dealer Services Corporation,

Plaintiff,

vs.

Total, Inc., et. al.,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2013 -CP-11-0002

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Robert F. Goings, Esq., Bar No. 74855</u> Address: <u>914 Richland St., Ste., A-101</u> <u>Columbia, SC 29201</u> Phone: <u>803-350-9230</u> Fax <u>877-789-6340</u> E-mail: <u>rgoings@goingslawfirm.com</u> Other: _____		Defendant's Attorney: <u>D. Alan Lazenby, Esq., Bar No. 13906</u> Address: <u>Post Office Box 6099</u> <u>Spartanburg, SC 29304</u> Phone: <u>864-804-5050</u> Fax <u>864-804-5051</u> E-mail: <u>alan@lazenbylawfirm.com</u> Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Plaintiff's Motion for Summary Judgment</u> Estimated Time Needed: <u>30 min</u> Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION		JUDGE CODE _____	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

ROA 000063

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Dealer Services Corporation,

Plaintiff,

vs.

Total, Inc. d/b/a Gault's Used Cars, d/b/a
Gault's Auto Parts, d/b/a Gault's Used Cars
and Auto Parts, d/b/a Gault's Used Cars and
Motormaxx; Edward Keith Potter; Michael
Wayne Gault; Christopher Drye, d/b/a Drye's
Auto Crushing; Ben D. Kochenower, CPA;
Automotive Finance Corporation;
Grandsouth Bank, d/b/a CarBucks; Mason
Motors, Inc., d/b/a LC Mason Ent.; American
Community Bank, a Division of Yadkin
Valley Bank and Trust Company; Quick
Capital LLC, d/b/a Quick Capital; and
Auto Bank Floorplan, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

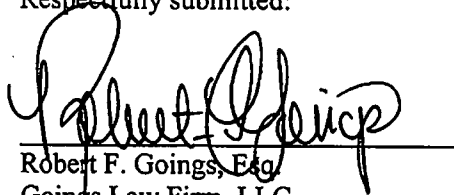
CIVIL ACTION №: 2013-CP-11-0002

**PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff's Dealer Services Corporation, by and through its undersigned counsel, for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment on its First Cause of Action for Breach of Contract, Second Cause of Action for Replevin of Collateral / Claim and Delivery, Third Cause of Action for Foreclosure of Security Interests, Fourth Cause of Action for Breach of Guaranty by Potter, Fifth Cause of Action for Breach of Guaranty by Gault as set forth in the Verified Complaint. Plaintiff will show that no genuine issue of material fact exists for a finder of fact and that Plaintiff is entitled to judgment as a matter of law.

This motion is based on the pleadings, responses to discovery and materials exchanged therein, the deposition testimony of Defendants Total, Inc., Edward Keith Potter, Michael Wayne Gault, the affidavit of Kathy Clark, and any affidavit testimony that is a part of the court record or that may be submitted prior to a hearing in this matter. Plaintiff reserves the right to submit a memorandum in support prior to or at the hearing.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Robert F. Goings", is written over a horizontal line.

Robert F. Goings, Esq.
Goings Law Firm, LLC
914 Richland Street, Suite A-101
Post Office Box 436 (29202)
Columbia, South Carolina 29201
rgoings@goingslawfirm.com
(803) 350-9230 (phone)
(877) 789-6340 (facsimile)

Attorney for Plaintiff

July 17, 2014

Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the following named individual(s) were served with a copy of the pleading(s) indicated below by mailing a copy of same to said person(s) in the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

D. Alan Lazenby, Esq.
Lazenby Law Firm, LLC
Post Office Box 6099
Spartanburg, South Carolina 29302

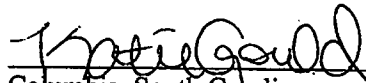
*Attorney for Defendants Total, Inc.
d/b/a Gault's Used Cars, d/b/a
Gault's Auto Parts, d/b/a Gault's
Used Cars and Auto Parts, d/b/a
Gault's Used Cars and Motormaxx;
Edward Keith Potter; and Michael Wayne
Gault*

Wade S. Weatherford, III, Esq.
Post Office Box 2207
Gaffney, SC 29342
Attorney for Christopher Drye, d/b/a Drye's Auto Crushing

Ben D. Kochenower, CPA
1225 W. Floyd Baker Blvd.
Gaffney, South Carolina 29341

PLEADINGS/DOCUMENTS:

- Plaintiff's Motion for Summary Judgment



Columbia, South Carolina
July 17, 2014

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF CHEROKEE } IN THE COMMON PLEAS COURT
3 Dealer Services Corporation,)
4 Plaintiff,)
5 -vs-) TRANSCRIPT OF RECORD
6 Total, Inc., et al) 2013-CP-11-00002
7 Defendant.) October 13, 2014
8 Gaffney, South Carolina
9
10
11 B E F O R E:
12 HONORABLE J. DERHAM COLE, JUDGE
13
14
15 A P P E A R A N C E S:
16 ROBERT FREDRICK GOINGS, ESQUIRE
17 Attorney for the Plaintiff
18 GINGER D. GOFORTH, ESQUIRE
19 Attorney for the Defendants
20
21
22
23 Linda D. Moffitt
24 Circuit Court Reporter
25

INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Dealer Services Corporation vs. Total.

2 MR. GOINGS: Good morning, Your Honor.

3 THE COURT: Good morning. Whose motion?

4 MR. GOINGS: Your Honor, both of these motions are on
5 behalf of the plaintiff, my client, Dealer Services
6 Corporation.

7 THE COURT: Okay.

8 MR. GOINGS: Your Honor, the first motion listed on
9 the roster is a motion to lift a consent order of
10 judgment -- excuse me -- consent order of injunction.

11 Do you have that motion in front of you or do you want
12 me to hand up a copy that I have?

13 THE COURT: Oh, I'm sure it's in here somewhere.

14 MR. GOINGS: Your Honor, by way of some background in
15 this matter, Dealer Services Corporation, the plaintiff, is
16 a used car floorplan financier, and this matter involves a
17 commercial debt collection action.

18 The defendant, Total Inc., is a used car dealership
19 here in Gaffney. That also goes by or used to go by
20 Gault's Used Cars. And the defendant, Mr. Potter, and
21 Mr. Gault, they owned Total Incorporated and personally
22 guaranteed the loan in question.

23 When the case was filed, Judge, we also filed a motion
24 for an order of injunction pursuant to a South Carolina
25 statute, 15-69-90, that allows for a debt-creditor or

1 creditor in this type of circumstances to get an injunction
2 on any type of real property that may be secured by way of
3 a defective lien. That order was granted by the Court by
4 consent in July.

5 I received a letter from opposing counsel, and it's
6 attached to our motion. And it says, among other things,
7 "Please accept this correspondence as immediate demand for
8 our client to remove all property located on the property
9 where the Gault Used Cars used to do business."

10 And, Your Honor, since there's that order in place and
11 it says in that order that nothing should happen to the
12 property except after resolution, a final resolution,
13 of the matter, we filed this motion, Your Honor, for a
14 consent order of judgment and injunction being lifted.

15 I tried to work with opposing counsel to get a
16 proposed order established. I did not. I wasn't
17 successful in that. And so, Your Honor, I just request
18 that the motion be granted as stated and that the consent
19 order of injunction dated October 31st of 2013 be lifted to
20 allow the plaintiff to repossess the property that's
21 located on the subject property. Thank you, Your Honor.

22 THE COURT: All right. Ms. Goforth.

23 MS. GOFORTH: May it please the Court.

24 THE COURT: Yes.

25 MS. GOFORTH: Your Honor, our position on this is that

1 the consent order of injunction restrained all of the
2 defendants, Total, Inc. and Gault and Potter, from doing
3 anything to damage, sell, dispose of the collateral.

4 It didn't prevent D.S.C. from coming in and taking
5 back its own inventory or its own collateral if it so
6 chose. It restrained only the defendants and not the
7 plaintiff.

8 That being said, I notice that Mr. Goings has attached
9 sort of a settlement proposal letter from Mr. Lazenby that
10 he sent back in July. And I believe those are the dealings
11 that he was discussing.

12 Our position on that is that no later than
13 December 11th of 2012 when the bankruptcy court lifted the
14 stay on these vehicles D.S.C. at any point after that time
15 could have come and taken them.

16 Because they didn't, it is the defendant's position
17 that they've been storing these vehicles on their property
18 and are owed storage fees. And since July of last year
19 this property has actually been leased to another, to
20 another party, who also has their own claim.

21 Now, I understand that's not what we're here for
22 today, but that's just kind of the background that we have,
23 that those are claims that are -- that are outstanding and
24 can be brought.

25 But as far as -- as far as lifting the injunction or

1 not lifting the injunction, that injunction if D.S.C. wants
2 it lifted only prevents the plaintiffs from -- I mean the
3 defendants from doing -- doing anything with the vehicles.
4 The plaintiff hasn't been prohibited from coming and
5 getting their stuff.

6 THE COURT: So you don't object to his motion?

7 MS. GOFORTH: I don't object to the motion, no.

8 THE COURT: Okay. Motion is granted.

9 MR. GOINGS: Thank you, Your Honor.

10 THE COURT: All right. Is there another motion?

11 MR. GOINGS: Yes, Your Honor. There's a motion for
12 summary judgment.

13 Again, Your Honor, this is a commercial debt
14 collection action, and I represent the floorplan financier.

15 This motion is supported by the verified complaint
16 that's signed under oath and the affidavit of Kathy Clark,
17 various bankruptcy-court records and the depositions of the
18 defendant Mr. Potter and the defendant Gault.

19 Your Honor, other than the depositions of Mr. Michael
20 Gault and Edward Potter, the personal guarantors,
21 everything else has been submitted to the Court.

22 I got a copy of the related documents I can hand you
23 just for ease of not having to go through the file.

24 THE COURT: Yeah. You better give me a copy because I
25 don't see that.

1 MR. GOINGS: All right.

2 THE COURT: I'm sure it's here, but I don't see it.

3 MR. GOINGS: May I approach, Your Honor?

4 THE COURT: Sure.

5 MR. GOINGS: Your Honor, let the record reflect that I
6 am handing up a copy of the verified complaint with various
7 attachments -- affidavit of Kathy Clark, copies of the
8 deposition of Michael Gault and Edward Potter, various
9 bankruptcy filings, Your Honor. And opposing counsel just
10 handed me a memorandum in opposition of plaintiff's motion
11 for summary judgment that I will also hand up to Your
12 Honor.

13 Your Honor, the plaintiff, Dealer Services
14 Corporation, provided floorplan financing for a number of
15 years to Gault's Used Cars. That's the D/B/A. It's Total,
16 Inc. -- for a number of years.

17 And the most recent note was from January the 3rd of
18 2012. On January 3rd of 2012 Total Incorporated entered a
19 demand promissory note and security agreement for the
20 principal amount of \$200,000.

21 The demand promissory note and the security agreement
22 was guaranteed by Mr. Edward Potter and Mr. Gault. They
23 signed personal guarantees.

24 The demand promissory note was breached. Total, Inc.
25 went out of business and filed for bankruptcy and became

1 insolvent.

2 By way of background -- this is referenced in certain
3 places in the depositions that I handed up -- Total
4 Incorporated was involved in another lawsuit and had a
5 judgment against it and a receiver was appointed, and
6 essentially all of the affairs of this used car dealership
7 based on allegations of fraud, et cetera, were -- were
8 halted by the Court, all bank accounts frozen. Everything
9 went into insolvency.

10 They eventually filed for bankruptcy. This debt which
11 is the first party, first priority, secured debt, was
12 discharged from the bankruptcy court to proceed before Your
13 Honor.

14 But the demand promissory note was breached. And I
15 don't think there's any disagreement on that. They admit
16 that they breached the agreement. They admit that money is
17 owed.

18 Based on the affidavit of Kathy Clark as of
19 March 31st the amount owed is \$167,715.29. And that
20 doesn't include the interest and attorney's fees that
21 continued to accrue.

22 Your Honor, again, there is no genuine issue of
23 material fact in dispute here. There was an agreement.
24 They admit that they signed the agreement. They admit that
25 they had the opportunity to read and review the agreement

1 and the personal guarantee. They admit that it was -- that
2 they breached the agreement. They admit that they failed
3 to pay on the agreement. They admit that they couldn't pay
4 on the agreement.

5 The only -- I haven't read the memorandum in
6 opposition to plaintiff's motion for summary judgment. It
7 was just handed to me as I handed it to you, Your Honor.
8 But what I understand as their defense in this case is that
9 the amount that we claimed is due -- hundred sixty-seven
10 plus thousand dollars is -- is not, you know, due because
11 they claimed that the case or the potential case was
12 settled by a settlement agreement. And the affidavit of
13 Kathy Clark very much highlights the relevant facts and
14 details related to any settlement attempts of the parties.

15 And if I could explain that, Your Honor, first off the
16 demand promissory note requires that any modifications to
17 the loan be done in writing signed by all parties.

18 Before -- before the defendants filed for bankruptcy,
19 like as often is the case, there was settlement
20 negotiations -- settlement discussions between the
21 plaintiff and Total Incorporated.

22 Kathy Clark describes all of those in her affidavit.
23 And attached as Exhibit 1 is a proposed settlement
24 agreement. And Dealer Services sent a proposed settlement
25 agreement to the defendants, and it was never signed by any

1 party, never signed by anyone, not even a counterpart. Not
2 even one of the defendants signed this document.

3 And the defendants didn't pay any of the money set
4 forth in it. And the document states that on or before the
5 close of business on August 15th of 2012 dealership, which
6 is Total Incorporated, shall tender in certified funds the
7 sum of \$22,500 to D.S.C.

8 And then says in the event dealership fails to remit
9 to D.S.C. the stated sum as set forth in herein this
10 agreement shall terminate. And it says that this document
11 provides the expressed language that the obligations of
12 Total, Inc., Edward Potter and Michael Gault under the
13 demand promissory note are not waived unless the terms of
14 this agreement are fully complied with.

15 It says that any breach of this agreement by
16 dealership or either guarantor shall cause the agreement to
17 terminate immediately.

18 So this was sent to them. They never signed it. And
19 it had a date of August 15th of 2012 to pay the money.
20 They never paid the money.

21 You know what they did instead of agreeing to this and
22 paying the \$22,500? They ran to bankruptcy court. That's
23 exactly what they did. They filed Chapter 7 bankruptcy.
24 And that's why I handed up various bankruptcy filings that
25 I've highlighted, Your Honor, the more relevant portions,

1 is because they claim that there was a settlement agreement
2 reached.

3 But in the bankruptcy court they set forth this debt
4 with Dealer Services. They don't say that this debt is
5 worth \$22,500. They say it's worth the amount that we
6 claim it is, because in their own bankruptcy filings --
7 this is the Schedule D to their bankruptcy petition,
8 "Creditors holding secured claims." They list Dealer
9 Services for value then at that time in 2012, \$152,000.

10 So they're representing to the United States
11 Bankruptcy Court that the debt is \$152,000, yet they're
12 coming into this Court, Your Honor, and telling you that,
13 oh, actually we entered into a settlement agreement that we
14 didn't sign and we didn't send any money to and the debt
15 should be \$22,500. But that's not what's represented in
16 federal bankruptcy.

17 There's clear law about judicial estoppel. You can't
18 represent to one tribunal one thing and then come to
19 another tribunal and represent another.

20 Your Honor, there was also -- this is important to
21 understand. In the bankruptcy court there was a cash
22 collateral order entered into, and this is contained in the
23 bankruptcy filings.

24 The Total, Inc. wanted to continue to do business
25 during the -- during the pendency of the bankruptcy matter.

1 so the bankruptcy court said this. If you want to continue
2 to do business, then any money that you receive while you
3 do business has to be separated to certain secured parties.

4 We were in the first place, Your Honor. So there was
5 a -- and they admitted in a cash collateral order that they
6 signed and the judge signed, a consent order, that they
7 owed us at that time, August 15th of 2012, \$152,685.76.
8 And the cash collateral order, consent collateral cash
9 order signed by the defendants, set forth a payment plan to
10 pay off that balance of \$152,000.

11 In the bankruptcy court the Court entered an order and
12 said if you default on this cash collateral order that sets
13 up payments for the hundred fifty-two-plus thousand
14 dollars, then the debt is immediately discharged from
15 bankruptcy court to allow Dealer Services to pursue the
16 full amount and get a judgment in this Court, Your Honor.

17 well, they defaulted on the cash collateral order. It
18 was an automatic order then issued by the bankruptcy court
19 discharging this debt from bankruptcy, and here we stand.

20 And so what you have is the defense to this -- to this
21 case which should be and is a clear-cut commercial debt
22 case, is, well, we signed an agreement and there was a
23 settlement agreement. But they admit under oath they never
24 signed a thing.

25 They didn't return the agreement and they didn't --

1 they didn't sent the money by August 15th, said they filed
2 for bankruptcy, caused Dealer Services to go through and
3 hire lawyers in the bankruptcy and do all of this stuff.

4 And, Your Honor, we believe that the case is
5 absolutely right for summary judgment. There is no genuine
6 issue of material fact.

7 They signed the agreement. They admit they signed the
8 agreement. They admit they defaulted on it. They just
9 claim that there's a settlement agreement in place that's
10 never been signed and never been ratified and never been
11 consummated.

12 And all of their allegations and statements and
13 defenses in this case runs one hundred percent counter to
14 the representations they made to the federal court in this
15 matter in bankruptcy.

16 And for those reasons, Your Honor, we respectfully
17 request that summary judgment be entered for an amount of
18 at least \$167,715.29.

19 If Your Honor does so grant that motion and asks me to
20 prepare an order, I can also provide an updated attorney's
21 fee affidavit and the statement of the correct amount of
22 interest that has accrued during the pendency of this
23 matter.

24 You can see this is an early 2013 case. This was
25 filed January the 7th of 2013. And, Your Honor, we most

1 respectfully request that this motion be granted.

2 THE COURT: Ms. Goforth.

3 MS. GOFORTH: Your Honor, all that the defendants have
4 to show, as Your Honor knows, is a scintilla of evidence
5 that shows a genuine issue of material fact. And based
6 solely on Mr. Goings' arguments that evidence is there.

7 I did hand up a brief summary this morning. It has no
8 new testimony attached to it. The affidavit attached to it
9 is the affidavit of Michael Gault who is the general
10 manager of Total. He gave his affidavit in January, and
11 it's attached to his deposition. So it's all part of the
12 record that counsel has had.

13 What essentially happened is that there was this
14 contract in place, the demand promissory note and security
15 agreement. We do not disagree. We do not disagree
16 Mr. Potter and Mr. Gault signed the guarantee.

17 What we do disagree with is that on July 5th of 2012
18 D.S.C. came and took at least nine of their vehicles back.
19 At that time they could have taken as many as they wanted,
20 but they took nine of them back. And then they sold them
21 before the required ten-day period.

22 So they put themselves in a compromised position
23 because they violated their own contract, and I believe
24 that is what led them to try to deal with Mr. Gault to get
25 the case settled.

1 And, in fact, the affidavit of Kathy Clark, as Mr.
2 Goings said, has a very detailed telephone log about her
3 conversations that their representative, Kevin Fredrick,
4 had with Michael Gault. And it shows that on August 2nd,
5 even though Mr. Goings says there could be no verbal
6 agreement, it says there's a verbal agreement. And this is
7 in D.O.C.'s own records with Mike Gault. It says 22-K, but
8 it was \$22,500, to settle the account in full including the
9 nine units that were taken and that there was some question
10 about the propriety of their sale.

11 The settlement agreement was prepared, and that is in
12 the record that Your Honor has. And the letter was not
13 sent until August 14th, which was the day before it was to
14 be signed and the money remitted.

15 So there was a leeway there where there was an
16 agreement in place. And D.O.C. admits that there was a
17 verbal agreement in place they were going to honor. And
18 they sent the letter following up. This was their course
19 of dealing with Mr. Gault, with Total, the defendants.

20 The record shows that on August 15th, verbatim, Kevin
21 Fredrick, enter, called Mike at (864)490-3282, said that he
22 is still working on the money that -- said something about
23 judgment, that he went to court last week.

24 So at that point what's not in here but what is in the
25 testimony of Mr. Gault is that on that date, on

1 August 15th, he said I don't have the money today, can we
2 do 30 days, can we get this done in 30 days. And Mr.
3 Fredrick agreed to that, and this is reflected in the
4 course of dealing that went on after August 15th. There's
5 no entry that told Mr. Gault the deal with was off.

6 On August 29th Kevin Frederick talked to Mr. Gault and
7 said he advised he is trying to get someone to buy out
8 D.S.C.'s account. So he's still trying to get the money,
9 the twenty-two five.

10 On September 6th, entry by Kevin Fredrick. Spoke with
11 Mike. They're trying to get someone to buy this D.S.C.
12 out, talks about different floor plans on the 12th,
13 September 12th was the date that the new agreement was to
14 be signed. That was -- that's 30 days from August 15th.

15 Mike called on that date and asked for the agreement.
16 Like last time they had a verbal agreement, they sent him
17 the written agreement to sign. They agreed to extend that
18 30 days.

19 He calls on the 12th, 30 days later, and says I need
20 my written agreement to sign, I've got the money in place
21 and I'm ready to pay.

22 At that time and only at that time according to
23 D.S.C.'s own records did they say, oh, I advised him that
24 the twenty-two five offer is no longer on the table. But
25 that was the first that Total had known about that.

1 So we submit, Your Honor, that no matter what up until
2 that point that creates a genuine issue of fact for the
3 jury to decide, whether or not there was an agreement by
4 D.S.C. to compromise this claim.

5 Their own records show that there was a course of
6 dealing here that they established with Mr. Gault. And
7 this is not only a defense but a counterclaim in -- in the
8 case.

9 As far as the impact of any of the bankruptcy records,
10 when D.S.C. filed bankruptcy -- and it's kind of a
11 distinction without a difference -- so Mr. Gault didn't
12 file that. Mr. Potter filed that on behalf of D.S.C. And
13 the claims that were listed were just that. They were
14 required to list what D.S.C. claimed, and D.S.C. claimed
15 that amount against -- against Total, Inc.

16 As far as the adequate protection for the claim, that
17 is all that that was. It was a consent order, and it's a
18 standard thing in bankruptcy court that D.S.C. or Total at
19 that point had wanted to continue to operate its business
20 and thought that it could. So this consent order, all that
21 it required was an adequate protection for D.S.C.'s rights
22 in the collateral that was on the property, and it
23 attached.

24 This didn't do anything to distinguish the parties'
25 rights under either the original agreement, the financing

1 agreement or plan, or the settlement agreement that was
2 reached.

3 It was put in place. And if you look directly at the
4 order by its own terms just to assure adequate protection
5 for D.S.C.'s assets. And the Court has held, bankruptcy
6 court has held, that the adequate protection in the
7 bankruptcy court is not designed or intended to place a
8 creditor in a better position post filing than it was
9 before the stay.

10 It simply tries to maintain the status quo in the
11 order itself in several different places, and Mr. Goings
12 has probably highlighted that. Shows that it doesn't
13 impair the rights of the parties in and to, and the facts
14 surrounding that contract, as they were before the
15 bankruptcy filing.

16 If that stay is lifted, then everything goes back to
17 the way it was before. You can't increase those rights,
18 but you can't decrease those rights either.

19 So we submit that the bankruptcy filings did nothing
20 to extinguish the genuine issue of material fact that was
21 created by not only Mr. Gault's testimony but the testimony
22 of Kathy Clark and the phone log showing the dealings on
23 the settlement agreement between Total and D.S.C. Thank
24 you, Your Honor.

25 MR. GOINGS: Your Honor, just so we're clear, the

1 demand promissory note has a clear provision that any
2 alterations, changes, settlements to the demand promissory
3 note must be in writing signed by the parties. That's
4 clear. There was a settlement proposal. That settlement
5 proposal was never signed by any of the parties.

6 The genuine issue of material fact that they claim is
7 present before this Court is an unsigned document that
8 required their signature, that required payment on or
9 before August the 15th of 2012, which never was made. In
10 the words of Mr. Potter, I never paid those people a dime.
11 That's what he said in his deposition.

12 In the deposition they both admit that they didn't
13 have \$22,000 to pay to settle them. So if you make an
14 offer, an offer is never accepted, and it's rejected
15 because the grievance says, the proposed agreement says, if
16 money's not paid on or before August 15th, then this deal
17 is off, how does that create a genuine issue of material
18 fact?

19 What they did was they thought they'd get a better
20 deal in bankruptcy court, so they ran to the bankruptcy
21 court. And bankruptcy court said no, no, no.

22 If you -- and, you know, in the filings in bankruptcy
23 court, which I was involved in, the debtors themselves,
24 Total, Inc., they state that the amount that is due to
25 Dealer Services is the amount that's over \$150,000. If

1 they truly believed that \$22,500 was the debt that was owed
2 to Dealer Services, then that would be the amount that they
3 would have told the bankruptcy court, but they didn't.

4 She says, Your Honor, that this is -- these are
5 genuine issues of material fact for a jury. This is a
6 bench trial. This case is on the nonjury roster. The
7 agreement clearly has a jury-trial waiver set forth in it.

8 Talking about settlement agreements and is there a
9 settlement agreement in place, when the -- when the
10 bankruptcy action was filed on August 15th -- instead of
11 them paying us the money they filed for bankruptcy.

12 Section 544 of the bankruptcy court sets forth a
13 procedure where if there's any settlement discussions or
14 settlement talks, negotiations, the trustee owns those
15 communications, because any type of settlement that is
16 reached potentially in this matter prior to the bankruptcy
17 action would have been avoidable under the trustees' power
18 under the strong-arm statute.

19 So there was never an agreement. There was never any
20 money paid. They still owe us the amount that's set forth,
21 and we request that summary judgment be entered, Your
22 Honor.

23 THE COURT: All right. I'll review the submissions
24 that have been provided and issue an order.

25 END OF REQUESTED TRANSCRIPT OF RECORD

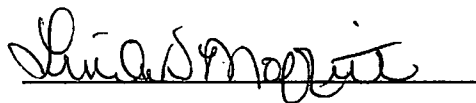
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Cherokee County, South Carolina, on the 13th day of October 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 19, 2015



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Dealer Services Corporation,

Plaintiff,

vs.

Total Inc. d/b/a Gault's Used Cars, d/b/a
Gault's Auto Parts, d/b/a Gault's Used Cars
and Auto Parts, d/b/a Gault's Used Cars and
Motormaxx; Edward Keith Potter; Michael
Wayne Gault; Christopher Drye, d/b/a Drye's
Auto Crushing; Ben D. Kochenower, CPA;
Automotive Finance Corporation; Grandsouth
Bank, d/b/a CarBucks; Mason Motors, Inc.,
d/b/a LC Mason Ent.; American Community
Bank, a division of Yadkin Valley Bank and
Trust Company; Quick Capital, LLC, d/b/a
Quick Capital; and Auto Bank Floorplan,
LLC,

Defendants,

IN THE COURT OF COMMON PLEAS

C.A. No: 2013-CP-11-0002

AFFIDAVIT OF MICHAEL GAULT

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 JUN 17 PM 4 44
BRANDY W. MOBBEE

PERSONALLY APPEARED BEFORE ME MICHAEL GAULT who, being duly
sworn, deposes and say as follows:

1. My name is Michael Gault.
2. I am a resident of Cherokee County, South Carolina.
3. I am a defendant in the above-referenced action.
4. At all times relevant to hereto, I was General Manager of Total, Inc. and had authority to make binding agreements on behalf of myself and Total, Inc.
5. Total Inc. had a contract with Dealer Services Corporation ("DSC"). I executed a personal guaranty for this contract.
6. On July 5, 2012, DSC notified me that it had picked up nine cars from my property. DSC sold some of these vehicles on July 9, 2012. DSC did not comply

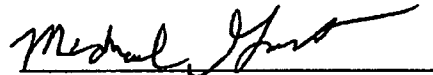
ROA 000088

with the notice requirements of the parties' contract or applicable law, both of which required ten days' notice to Total, Inc. before the sale.

7. During the late summer of 2012, shortly after this violation, I was contacted by Kevin Frederick, an executive with and representative of DCS. Mr. Frederick and I discussed settlement of this dispute, before any action was brought; including any action based on DSC's improper disposition of certain cars.
8. On August 9, 2012, the parties agreed to settle. I would pay \$22,500 to DSC, and DSC could "keep" the nine cars that it had.
9. Mr. Frederick faxed the written agreement to me on August 9, 2012. I called him that same day and accepted the terms. This agreement provided a deadline for payment of August 15, 2012. (Exhibit "A").
10. I contacted Mr. Frederick on August 15 and advised that I needed more time to comply with the agreement. Mr. Frederick, on behalf of DSC, orally agreed to extend the time within which I could comply for an additional 30 days. This extended the deadline from August 15, 2012 until September 12, 2012.
11. I stayed in touch with Mr. Frederick by telephone. I called him on August 29, 2012, and again on September 6, 2012, advising of my progress. Throughout this time, Mr. Frederick and I maintained the oral extension of the written settlement agreement for the amount of \$22,500. At no time did he indicate in any way that this was not a valid, standing offer.
12. I contacted Mr. Frederick on September 12, 2012 to request a copy of the written settlement agreement with the September 12 extended deadline noted. I was prepared and willing to pay the settlement amount of \$22,500, and comply with the other terms, on this date.

13. For the first time, on September 12, 2012, Mr. Frederick said that DSC would no longer accept the amount of \$22,500.
14. DSC thereafter increased its demand to \$50,000, and later \$75,000.
15. These conversations are reflected in DSC's own records. I pleaded this contract as a defense in my Answer to DSC's Complaint.
16. I stand ready to comply with the original agreement upon enforcement of this agreement by the Court.

Further affiant sayeth naught.


Michael Gault

Sworn to and subscribed before me this
17 day of January, 2014

Notary Public for South Carolina
My commission expires 4/23/19

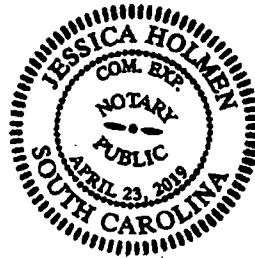


EXHIBIT A

AFFIDAVIT OF MIKE GAULT

Dealer Services Corporation v. Total Inc. et al.
In the Court of Common Pleas for Cherokee County
C.A. No: 2013-CP-11-0002

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 JAN 17 PM 4 44
BRANDY W. MCBEE

08/09/2012 THU 10:32 FAX

001/005



DEALER SERVICES
CORPORATION
DiscoverDSC.com

Innovative Solutions. Outstanding Service. Great People.™

Dealer Services Corporation
1320 City Center Drive Suite 100
Carmel, In 46032
Phone 317-571-3766 | Fax 317-571-3810

fax

TO: <u>Mike Gault</u>	FROM: <u>Kevin Frederick</u>
FAX: <u>864-649-1530</u>	PAGES: <u>5</u>
PHONE: _____	DATE: <u>8/9/12</u>
RE: _____	CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

ROA 000092

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into on the date listed below by Total, Inc. ("Dealership"), Edward Keith Potter, and Michael Wayne Gault (together with Edward Keith Potter, the "Guarantors") and Dealer Services Corporation ("DSC").

Recitals

- A. On or about January 3, 2012, Dealership entered into a Demand Promissory Note and Security Agreement (the "Note") with DSC.
- B. DSC alleges that Dealership has breached the terms of the Note. DSC further alleges that Dealership owes DSC certain unpaid principal, interest, and fees pursuant to the terms of the Note (hereinafter collectively referred to as the "DSC Claim").
- C. On or about January 3, 2012, the Guarantors each executed an Individual Personal Guaranty ("Guaranty"), whereby each of the Guarantors guaranteed payment to DSC of all sums due and owing under the Note. The Guarantors have not, to date, satisfied the balance owing under the DSC Claim.
- D. Dealership, the Guarantors, and DSC mutually desire to settle the DSC Claim in an economically fair and feasible manner.

Agreement

NOW THEREFORE, Dealership, the Guarantors, and DSC mutually agree as follows:

- 1. As of August 8, 2012, the total sum owed to DSC by Dealership under the Note is \$154,707.87 (the "Debt"). An itemization of the Debt, by vehicle, showing the principal balance owed, interest, and other fees is attached hereto as Exhibit A and is incorporated herein by reference.

2. On or before the close of business on August 15, 2012, Dealership shall tender in certified funds the sum of \$22,500.00 to DSC, plus the nine (9) current vehicles that DSC has in its possession :

2003 Niss Alti	226309
2003 Niss Sent	720316
2001 Volv S40	621498
2002 Hyun SONA	580340
2006 Mazd MAZD	M10113
2001 Pont Cran	253387
2006 Mazd MAZD	M62491
1999 Volv S80	052291
2002 Niss Alti	707219
1999 Niss Alti	128477
1993 Mazd MX-3	234210

and DSC shall accept such sum as payment in full by Dealership of the DSC Claim. In the event Dealership fails to remit to DSC the stated sum as set forth herein, this Agreement shall terminate.

3. Dealership and the Guarantors each separately acknowledge that DSC has not waived and is not now waiving any default or Debt owed by Dealership or the Guarantors until such time as Dealership satisfies its obligations under this Agreement, or otherwise until such time as DSC has been paid in full. Upon completion of all obligations of Dealership under this Agreement, DSC shall extinguish and discharge in full any debt or claim of DSC against Dealership and the Guarantors, individually and collectively, as well as any claims against the heirs, successors and/or assigns of Dealership and the Guarantors.
4. The Parties represent that the respective undersigned persons are fully authorized to execute this Agreement. The undersigned hereby declare that each has had an opportunity to consult with an attorney and that the terms of this Agreement have been completely read and are fully understood. Further, the undersigned hereby declare that the terms of this Agreement are voluntarily accepted by the Parties for the purpose of

resolving the DSC Claim and any and all other claims between DSC, Dealership, and the Guarantors, provided that Dealership fulfills its obligations hereunder. Dealership and the Guarantors understand and acknowledge that any breach of this Agreement by Dealership or either Guarantor shall cause this Agreement to terminate immediately.

5. This Agreement may be executed via facsimile and in any number of counterparts, each of which shall be deemed an original, but all of which shall be deemed one and the same instrument.

SIGNATURE PAGE FOLLOWS

(remainder of this page left blank intentionally)

EXECUTED this ____ day of _____, 20 ____.

DEALER SERVICES CORPORATION

BY: _____

ITS: _____

EXECUTED this ____ day of _____, 20 ____.

TOTAL, INC.

BY: _____

ITS: _____

EXECUTED this ____ day of _____, 20 ____.

Edward Keith Potter, Guarantor

EXECUTED this ____ day of _____, 20 ____.

Michael Wayne Gault, Guarantor



DEALER SERVICES CORPORATION
DiscoverDSC.com

Date: July 5, 2012

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

To: Gualt's Used Cars
Edward Potter
2015 Union Hwy
Gaffney, SC 29340

From: Dealer Services Corporation
1320 City Center Dr.
Suite 1000
Carmel, IN 46032

Re: Notification of Private Disposition of Collateral

To All Interested Parties:

Dealer Service Corporation ("DSC") will sell the below described collateral privately sometime after Ten (10) days from the date shown above. The collateral to be sold is as follows:

	1N4AL11D23C226309	2003 Nissan Altima	
76	3N1AB51DX3L720316	2003 Nissan Sentra SE-R	325
	YV1VS29521F621498	2001 Volvo S40	
	JTDDR32T420134108	2002 Toyota Celica GT	
	KMHWF25S72A580340	2002 Hyundai SONATA GL	
16	1YVHP80C565M10113	2006 Mazda MAZDA6I	
	1YVHP80C065M62491	2006 Mazda MAZDA6I	
	WVWMA63B8XE515131	1999 Volkswagen Passat GLS	
	SAJEB51C52WC07509	2002 Jaguar X-TYPE 3.0	
	1G2WK52J51F253387	2001 Pontiac Grand Prix SE	425
	1GCCS1442XK238456	1999 Chevrolet S10 LS Xtreme	

If you are the Debtor or a Guarantor of the Debtor, you are entitled to a written accounting, free of charge, of the unpaid indebtedness secured by the collateral DSC intends to sell. If you are a party other than the Debtor or Guarantor of the Debtor, you are entitled to a written accounting of the same for a charge of Twenty-Five (\$25.00) dollars. All parties may request a written accounting by calling DSC at 317-571-3721, or by writing to DSC at the above address.

DEALER SERVICE CORPORATION
Maui Williams- Clerk

Mike, Here is what I HAVE 803-896-2619

Attr -
Angela

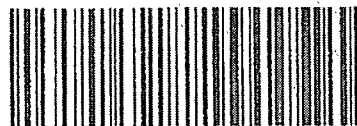
LOT #	LAST 6	
213686	128477 ✓	SOLD
20166822	508527	~~SOLD~~ SOLD
20166742	M06600	Never picked up.
20159962	234210 ✓	SOLD
20159912	732307	Never picked up
20159882	993359	Never picked up
20159852	201690	Never picked up
20159762	M20303	Never picked up
20159482	137712	Never picked up
20159422	272645	Never picked up
20159272	171416	Never picked up
20159182	197297	Never picked up
20159122	052291 ✓	SOLD
20159042	551194 ✓ ✱	Never picked up
20158982	296611	Never picked up
20158852	154474	?
19738532	A10812 ✓	SOLD
19738152	249508	Never picked up.
19737522	266309 ✓	SOLD
19637032	610267	Never picked up
19636562	023586 ✓ ✱	Never picked up
19636142	360710	Never picked up
19635712	626897 ✓	SOLD

LOT#	LAST 6	SOLD
19635432	580340 ✓	SOLD
19635162	213876	Never picked up
19634702	707219 ✓	SOLD
19634272	001657 ✓	SOLD
19633402	720319 ✓	SOLD
~~210 299712~~	~~102432~~	
20039002	007509	SOLD
19737132	621498 ✓	SOLD
19736712	134108 ✓	SOLD
19683002	515131 ✓	SOLD
19637332	238456 ✓	SOLD
19633962	110113	SOLD
19632872	253387 ✓	SOLD

ROA 000100



DEALER SEI
CORPORATI
1320 City Center E
Carmel, IN 46032



7011 2970 0004 1484 4688

DATE: July 3, 2012

VIA CERTIFIED MAIL RETURN RECEIPT REQ

To: Gault's Used Cars
Edward Potter
2015 Union Hwy

WJ
7-12-12
J



DEALER SERVICES CORPORATION
DiscoverDSC.com

Date: July 5, 2012

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

To: LC Mason Ent
7980 Asheville Hwy
Spartanburg, SC 29303

From: Dealer Services Corporation
1320 City Center Dr.
Suite 1000
Carmel, IN 46032

Re: Notification of Private Disposition of Collateral

To All Interested Parties:
Gault's Used Cars 2015 Union Hwy Gaffney, SC 29340

Dealer Service Corporation ("DSC") will sell the below described collateral privately sometime after Ten (10) days from the date shown above. The collateral to be sold is as follows:

1N4AL11D23C226309	2003 Nissan Altima ✓
3N1AB51DX3L720316	2003 Nissan Sentra SE-R ✓
YV1VS29521F621498	2001 Volvo S40 ✓
JTDDR32T420134108	2002 Toyota Celica GT ✓ ✓
KMHWF25S72A580340	2002 Hyundai SONATA GL ✓
1YVHP80C565M10113	2006 Mazda MAZDA6I ✓
1YVHP80C065M62491	2006 Mazda MAZDA6I ✓
WVWMA63B8XE515131	1999 Volkswagen Passat GLS ✓
SAJEB51C52WC07509	2002 Jaguar X-TYPE 3.0
1G2WK52J51F253387	2001 Pontiac Grand Prix SE ✓
1GCCS1442XK238456	1999 Chevrolet S10 LS Xtreme ✓

If you are the Debtor or a Guarantor of the Debtor, you are entitled to a written accounting, free of charge, of the unpaid indebtedness secured by the collateral DSC intends to sell. If you are a party other than the Debtor or Guarantor of the Debtor, you are entitled to a written accounting of the same for a charge of Twenty-Five (\$25.00) dollars. All parties may request a written accounting by calling DSC at 317-571-3721, or by writing to DSC at the above address.

DEALER SERVICE CORPORATION
Maui Williams- Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	SEVENTH JUDICIAL CIRCUIT
Dealer Services Corporation,	)	CIVIL ACTION №: 2013-CP-11-0002
Plaintiff,	)	
vs.	)	
Total, Inc. d/b/a Gault's Used Cars, d/b/a	)	AFFIDAVIT OF KATHY CLARK
Gault's Auto Parts, d/b/a Gault's Used Cars	)	
and Auto Parts, d/b/a Gault's Used Cars and	)	
Motormaxx, Edward Keith Potter, Michael	)	
Wayne Gault, et. al.,	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, KATHY CLARK, who upon being duly sworn deposes and states as follows:

1. I am over eighteen (18) years of age and the facts stated herein are true and accurate to the best of my knowledge and belief and based on information that I believe to be true. I am familiar with the allegations set forth in the pleadings in the above-referenced matter.
2. I am the Director of Risk for NextGear Capital, Inc. ("NextGear Capital"). Through a recent merger, Plaintiff Dealer Services Corporation is now NextGear Capital. During the relevant time regarding the floorplan account with Total, Inc., I was the supervisor for Kevin Frederick.
3. According to the business records of Plaintiff, which are recorded in the ordinary course of regularly conducted business activities of Plaintiff by individuals with knowledge of such information, whose regular business practice is to record such information at the time the information is obtained, Total, Inc. defaulted on the terms of the Demand Promissory Note and Security Agreement. Edward Potter and Michael Gault personally guaranteed the Demand Promissory Note and Security Agreement. Currently, the amount owed to the Plaintiff is in excess of \$167,715.29 with interest.
4. Following the breach of the Demand Promissory Note and Security Agreement, the parties discussed settlement opportunities.
5. During the course of the parties' settlement negotiations, Plaintiff proposed certain repayment terms that would be integrated into a settlement agreement. Under the terms of the Demand Promissory Note and Security Agreement, any modification or amendment to the terms of the Demand Promissory Note and Security Agreement required written mutual consent.

The materials terms of Plaintiff's proposal required payment in the amount of \$22,500.00 on or before August 15, 2012 and the execution of a written agreement with terms acceptable to the Plaintiff.

6. On August 9, 2012, the Plaintiff sent the attached document captioned "Settlement Agreement" to Michael Gault with Total, Inc. as a proposal for consideration for settlement purposes. A copy of the proposed Settlement Agreement is attached hereto as Exhibit 1.

7. The document, in part, stated "On or before the close of business on August 15, 2012, Dealership shall tender in certified funds the sum of \$22,500.00 to DSC." See ¶ 2. The document also states that "In the event Dealership fails to remit the DSC the stated sum as set forth herein, this Agreement shall terminate." See ¶ 2. The document also provides express language that the obligations of Total, Inc., Edward Potter and Michael Gault under the Demand Promissory Note and Security Agreement are not waived unless the terms of the Agreement are fully complied with. See ¶ 3. The document further provides that "any breach of this Agreement by Dealership or either Guarantor shall cause this Agreement to terminate immediately." See ¶ 4.

8. Plaintiff never received an executed "Settlement Agreement" from Total, Inc., Edward Potter, or Michael Gault.

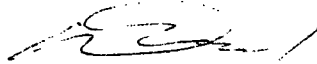
9. Plaintiff never received certified funds from Total, Inc. in the sum of \$22,500.00 on or before August 15, 2012.

10. No person on behalf of the Plaintiff has signed or executed the proposed "Settlement Agreement."

11. To date, Plaintiff has not entered into a settlement, pursuant to the terms set forth in the Settlement Agreement, with Total, Inc., Edward Potter or Michael Gault.

12. The internal notes related to Plaintiff's settlement attempts with Total, Inc., Edward Potter, or Michael Gault are attached hereto as Exhibit 2.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.


KATHY CLARK

SWORN to and SUBSCRIBED before me
This 22nd day of March, 2014
100074 15 (L.S.)
NOTARY PUBLIC for Indiana
My Commission Expires: April 11, 2014

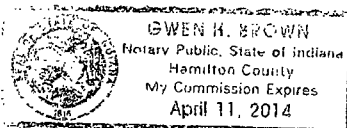


EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into on the date listed below by Total, Inc. ("Dealership"), Edward Keith Potter, and Michael Wayne Gault (together with Edward Keith Potter, the "Guarantors") and Dealer Services Corporation ("DSC").

Recitals

- A. On or about January 3, 2012, Dealership entered into a Demand Promissory Note and Security Agreement (the "Note") with DSC.
- B. DSC alleges that Dealership has breached the terms of the Note. DSC further alleges that Dealership owes DSC certain unpaid principal, interest, and fees pursuant to the terms of the Note (hereinafter collectively referred to as the "DSC Claim").
- C. On or about January 3, 2012, the Guarantors each executed an Individual Personal Guaranty ("Guaranty"), whereby each of the Guarantors guaranteed payment to DSC of all sums due and owing under the Note. The Guarantors have not, to date, satisfied the balance owing under the DSC Claim.
- D. Dealership, the Guarantors, and DSC mutually desire to settle the DSC Claim in an economically fair and feasible manner.

Agreement

NOW THEREFORE, Dealership, the Guarantors, and DSC mutually agree as follows:

- 1. As of August 8, 2012, the total sum owed to DSC by Dealership under the Note is \$154,707.87 (the "Debt"). An itemization of the Debt, by vehicle, showing the principal balance owed, interest, and other fees is attached hereto as Exhibit A and is incorporated herein by reference.

2. On or before the close of business on August 15, 2012, Dealership shall tender in certified funds the sum of \$22,500.00 to DSC, plus the nine (9) current vehicles that DSC has in its possession :

2003 Niss Alti	226309
2003 Niss Sent	720316
2001 Volv S40	621498
2002 Hyun SONA	580340
2006 Mazd MAZD	M10113
2001 Pont Gran	253387
2006 Mazd MAZD	M62491
1999 Volv S80	052291
2002 Niss Alti	707219
1999 Niss Alti	128477
1993 Mazd MX-3	234210

and DSC shall accept such sum as payment in full by Dealership of the DSC Claim. In the event Dealership fails to remit to DSC the stated sum as set forth herein, this Agreement shall terminate.

3. Dealership and the Guarantors each separately acknowledge that DSC has not waived and is not now waiving any default or Debt owed by Dealership or the Guarantors until such time as Dealership satisfies its obligations under this Agreement, or otherwise until such time as DSC has been paid in full. Upon completion of all obligations of Dealership under this Agreement, DSC shall extinguish and discharge in full any debt or claim of DSC against Dealership and the Guarantors, individually and collectively, as well as any claims against the heirs, successors and/or assigns of Dealership and the Guarantors.
4. The Parties represent that the respective undersigned persons are fully authorized to execute this Agreement. The undersigned hereby declare that each has had an opportunity to consult with an attorney and that the terms of this Agreement have been completely read and are fully understood. Further, the undersigned hereby declare that the terms of this Agreement are voluntarily accepted by the Parties for the purpose of

resolving the DSC Claim and any and all other claims between DSC, Dealership, and the Guarantors, provided that Dealership fulfills its obligations hereunder. Dealership and the Guarantors understand and acknowledge that any breach of this Agreement by Dealership or either Guarantor shall cause this Agreement to terminate immediately.

5. This Agreement may be executed via facsimile and in any number of counterparts, each of which shall be deemed an original, but all of which shall be deemed one and the same instrument.

SIGNATURE PAGE FOLLOWS

(remainder of this page left blank intentionally)

EXECUTED this ____ day of _____, 20____.

DEALER SERVICES CORPORATION

BY: _____

ITS: _____

EXECUTED this ____ day of _____, 20____.

TOTAL, INC.

BY: _____

ITS: _____

EXECUTED this ____ day of _____, 20____.

Edward Keith Potter, Guarantor

EXECUTED this ____ day of _____, 20____.

Michael Wayne Gault, Guarantor

EXHIBIT 2

1/3/2013	Dashner, Terry	Bankruptcy	1-3-13 TLD pulled clear report POTTER, EDWARD K 249-57-4813 119 DOBBINSVILLE RD ELLENBORO, NC 28040-9345 828-657-6021 we are in suite as of 1-3-13 per serengeti today notes.
1/2/2013	Dashner, Terry	Bankruptcy	kmf 1/2 no notes added about edward potter since we have not spoken with him nor see him in the field.
1/2/2013	Frederick, Kevin	Bankruptcy	kmf 1/2 no notes added about edward potter since we have not spoken with him nor see him in the field.
1/2/2013	Robinson, Melissa	Bankruptcy	SS 12/27 dlr was sent to KO book on 12/18
12/28/2012	Task, Collections Incide	Bankruptcy	SS 12/27 dlr was sent to KO book on 12/18
12/27/2012	Snyder, Samantha	Bankruptcy	SS 12/27 dlr was sent to KO book on 12/18
12/20/2012	Frederick, Kevin	Bankruptcy	kmf 12/20 we are filing local lawsuit.
12/18/2012	Snyder, Samantha	Bankruptcy	SS 12/18 Gault's Used Cars is a DBA of Total Inc. The registered agent for Total Inc is Martha Thompson, Mike Gaults mother. Mike Gault at one point in time was the owner/operator/registered agent for Neon Amusement Corp/Gaults Amusement however business was dissolved in 09/2000. He was prosecuted for operating electronic gambling machines without proper signage. DOCKET NUMBER: 97-AL-17-0525-CC and 99-AL-17-0105-CC
12/18/2012	Frederick, Kevin	Bankruptcy	SS 12/14 (864) 490-3282 - sw Mike Gault...he said that Mason Motors is really not wanting to buy the line because its a salvage line. Stated they will not go any higher than 30k. I do not believe he has spoken with them in the past month.
12/14/2012	Snyder, Samantha	Bankruptcy	SS 12/14 (864) 490-3282 - sw Mike Gault...he said that Mason Motors is really not wanting to buy the line because its a salvage line. Stated they will not go any higher than 30k. I do not believe he has spoken with them in the past month.
12/6/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
11/30/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
11/28/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
11/28/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
11/21/2012	Frederick, Kevin	Bankruptcy	kmf 11/21 called mike spoke with him he advised that he does not know if he will be able to make the payment this month. advised he wants the settlement that was offered to him from kathy advised that we will not do that since we are getting more money in from the court then that advised him to go back to mason and get me another offer and I will see what I can do.
11/16/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
11/14/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
11/9/2012	Frederick, Kevin	Bankruptcy	kmf 11/9 called mike at 864-490-3282 left message on voice mail.

ROA 000110

11/7/2012	Frederick, Kevin	Bankruptcy	kmf 11/7 mike called in advised need him to go to mason and work out a settlement where they take us out of the picture... he said that he is working on that and with a few other companys he will call me back tomorrow.
11/6/2012	Frederick, Kevin	Bankruptcy	kmf 11/6 called mike spoke with him he advised that he can get \$30k to settle debt asked him if he could get to 50k he said that hr is trying but he knows he can have 30k asap.
11/5/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
11/1/2012	Frederick, Kevin	Bankruptcy	kmf 11/1 we are working with mason to settle the account.
10/29/2012	Frederick, Kevin	Bankruptcy	kmf 10/29 fu lon next months payment.
10/22/2012	Frederick, Kevin	Bankruptcy	kmf 10/22 called mike at 864-490-3282 spoke with him he advised that he is going to call gary hoke and see about settling thr account.
10/15/2012	Frederick, Kevin	Bankruptcy	kmf 10/12 spoke with mike advised min that we will except is 75k to settle account. he said that he will call Gary and talk to him.
10/11/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
10/11/2012	Frederick, Kevin	Bankruptcy	kmf 10/11 mike called in advised that we would look at taking \$75k and walk away. he came back at 50k advised him before i go get that okd i want to knwo when exactluy we will have the money.
10/8/2012	Frederick, Kevin	Bankruptcy	kmf 10/8 called mike at 864-490-3282 mike wants a personal buy out on the account just like we where working on before. advised him i would get with out attorney and see what we could offer as a settlement. i told him it would not be any were close to the 22,500 we offered last time. he sadi see what i can do.
10/2/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/28/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/28/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/26/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/26/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/24/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/21/2012	Frederick, Kevin	Bankruptcy	kmf 9/21 gary hoke is working with our local attorney in bk
9/21/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/19/2012	Frederick, Kevin	Bankruptcy	kmf 9/19 called mike and offered settlement for \$50k
9/13/2012	Frederick, Kevin	Bankruptcy	kmf 9/13 mike called back want to know what we will take to settle the account he kept saying that it was not his fault that we could not do the settlement but now he is able to do it. advised him to come up with an offer and let me know and i will see what we can do.
9/12/2012	Frederick, Kevin	Bankruptcy	kmf 9/12 Mike called in yesterday wanting a new settlement letter advised him that the offer for \$22,500 has expired and is no longer on the table and that we need to run everything thru our attorneys. he said that he will call me back today.

ROA 000111

9/12/2012	Frederick, Kevin	Bankruptcy	kmf 9/12 Mike called in yesterday wanting a new settlement letter advised him that the offer for \$22,500 has expired and is no longer on the table and that we need to run everything thru our attorneys. he said that he will call me back today.
9/11/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/10/2012	Frederick, Kevin	Bankruptcy	kmf 9/10 will wait for hearing on tuesday.
9/7/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/6/2012	Frederick, Kevin	Bankruptcy	kmf 9/6 spoke with mike at 864-490-3282 he advised that they are trying to get someone to buy DSC out and just have 1 floorplan, said the should know something by monday. sadl that he has been out sick for a while...
9/5/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
9/4/2012	Frederick, Kevin	Bankruptcy	kmf 9/4 called mike at 864-490-3282 left message on voice mail.
8/29/2012	Frederick, Kevin	Bankruptcy	kmf 8/29 called mike at 864-490-3282 spoke with him he advised that he is trying to get someone to buy out DSC's account and be done with us. he said that he will know by friday.
8/24/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
8/23/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
8/22/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
8/22/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
8/17/2012	Frederick, Kevin	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
8/17/2012	Hoke, Gary	Bankruptcy	REDACTED - WORK PRODUCT OR ATTORNEY-CLIENT COMMUNICATIONS
8/17/2012	Frederick, Kevin	Bankruptcy	kmf 8/17 called mike at 864-490-3282 voice mail is full can not leave message.
8/17/2012	Herbst, Patricia	Bankruptcy	kmf 8/16 monty is going by dealership this afternoon and get dealer on the phone.
8/16/2012	Frederick, Kevin	Monitor	kmf 8/16 monty is going by dealership this afternoon and get dealer on the phone.
8/16/2012	Frederick, Kevin	Monitor	kmf 8/16 called mike at 864-490-3282 voice mail is full could not leave message.
8/16/2012	Frederick, Kevin	Monitor	kmf 8/16 called mike at 864-490-3282 voice mail is full could not leave message.
8/15/2012	Frederick, Kevin	Monitor	kmf 8/15 called mike at 864-490-3282 said that he is still working on the money said something about judgment that he went to court on last week said that he will call me back in a bit then hung up.
8/14/2012	Frederick, Kevin	Monitor	kmf 8/14 sent over settlement letter to mike at 864-649-1530 on the 9th.
8/9/2012	Frederick, Kevin	Monitor	kmf 8/9 sent over settlement letter to mike at 864-649-1530.
8/8/2012	Frederick, Kevin	Monitor	kmf 8/8 prepared settlement letter and sent to kathy to convert.
8/7/2012	Frederick, Kevin	Monitor	kjc 8/2/12 - verbally agreed to settle this account with Mike Gault for \$22K in 2 weeks plus the units we currently have repo'd.
8/2/2012	Clark, Kathy	Monitor	kjc 8/2/12 - verbally agreed to settle this account with Mike Gault for \$22K in 2 weeks plus the units we currently have repo'd.
8/2/2012	Frederick, Kevin	Monitor	kmf 7/31 spoke with monty he is going out to meet copart at the lot tomorrow and he will see what else they have picked up and to identify the next set of cars to pick up.
8/1/2012	Frederick, Kevin	Monitor	kmf 7/31 spoke with monty he is going out to meet copart at the lot tomorrow and he will see what else they have picked up and to identify the next set of cars to pick up.
7/31/2012	Frederick, Kevin	Monitor	kmf 7/31 spoke with monty he is going out to meet copart at the lot tomorrow and he will see what else they have picked up and to identify the next set of cars to pick up.

ROA 000112

BANKRUPTCY FILINGS

In re: Total, Inc.
Case #: 12-05055-JW

81 (Official Form 1)(12/11)

United States Bankruptcy Court District of South Carolina		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): Total, Inc.		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): DBA Gault's Used Cars and Auto Parts; DBA Gault's Used Cars & Motormaxx; DBA Gault's Used Cars; DBA Gault's Auto Parts		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 20-5604530		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): 2015 Union Highway Gaffney, SC		Street Address of Joint Debtor (No. and Street, City, and State):
ZIP Code 29340		ZIP Code
County of Residence or of the Principal Place of Business: Cherokee		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):
ZIP Code		ZIP Code
Location of Principal Assets of Business Debtor (if different from street address above): 853 Blacksburg Hwy Blacksburg, SC 29702		
Type of Debtor (Form of Organization) (Check one box) ☐ Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> ☒ Corporation (includes LLC and LLP) ☐ Partnership ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box) ☐ Health Care Business ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) ☐ Railroad ☐ Stockbroker ☐ Commodity Broker ☐ Clearing Bank ☒ Other	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) ☐ Chapter 7 ☐ Chapter 9 ☒ Chapter 11 ☐ Chapter 12 ☐ Chapter 13 ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
Chapter 15 Debtors Country of debtor's center of main interests: Each country in which a foreign proceeding by, regarding, or against debtor is pending:	Tax-Exempt Entity (Check box, if applicable) ☐ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	Nature of Debts (Check one box) ☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." ☒ Debts are primarily business debts.
Filing Fee (Check one box) ☒ Full Filing Fee attached ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		Chapter 11 Debtors Check one box: ☒ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 4/01/13 and every three years thereafter). Check all applicable boxes: ☐ A plan is being filed with this petition. ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
Statistical/Administrative Information ☒ Debtor estimates that funds will be available for distribution to unsecured creditors. ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors ☒ 1-49 ☐ 50-99 ☐ 100-199 ☐ 200-999 ☐ 1,000-5,000 ☐ 5,001-10,000 ☐ 10,001-25,000 ☐ 25,001-50,000 ☐ 50,001-100,000 ☐ OVER 100,000		
Estimated Assets ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☒ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☐ More than \$1 billion		
Estimated Liabilities ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☒ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☐ More than \$1 billion		

ROA 000114

B1 (Official Form 1)(12/11)

Page 2

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): Total, Inc.	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)			
Location Where Filed: - None -	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: - None -	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) ☐ Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b). ☒ _____ Signature of Attorney for Debtor(s) (Date)	
Exhibit C Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? ☐ Yes, and Exhibit C is attached and made a part of this petition. ☒ No.			
Exhibit D (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) ☐ Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: ☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box) ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. ☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes) ☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) _____ (Name of landlord that obtained judgment) _____ (Address of landlord) ☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and ☐ Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition. ☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

ROA 000115

B1 (Official Form 1)(12/11)

Page 3

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): Total, Inc.
Signatures		
Signature(s) of Debtor(s) (Individual/Joint) I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b). I request relief in accordance with the chapter of title 11, United States Code, specified in this petition. X _____ Signature of Debtor X _____ Signature of Joint Debtor _____ Telephone Number (If not represented by attorney) _____ Date	Signature of a Foreign Representative I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition. (Check only one box.) ☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached. ☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached. X _____ Signature of Foreign Representative _____ Printed Name of Foreign Representative _____ Date	
Signature of Attorney* X /s/ Robert H. Cooper _____ Signature of Attorney for Debtor(s) Robert H. Cooper #5670 _____ Printed Name of Attorney for Debtor(s) The Cooper Law Firm _____ Firm Name 3523 Pelham Rd., Suite B _____ Greenville, SC 29615 _____ Address thecooperlawfirm@thecooperlawfirm.com 864-271-9911 Fax: 864-232-5236 _____ Telephone Number August 15, 2012 _____ Date *In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.	Signature of Non-Attorney Bankruptcy Petition Preparer I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached. _____ Printed Name and title, if any, of Bankruptcy Petition Preparer _____ Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.) _____ Address X _____ Date Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above. Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual: _____ If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. §110; 18 U.S.C. §156.	
Signature of Debtor (Corporation/Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition. X /s/ Edward Keith Potter _____ Signature of Authorized Individual Edward Keith Potter _____ Printed Name of Authorized Individual President _____ Title of Authorized Individual August 15, 2012 _____ Date		

**United States Bankruptcy Court
District of South Carolina**

In re Total, Inc.

Debtor(s)

Case No.
Chapter

11

STATEMENT REGARDING AUTHORITY TO SIGN AND FILE PETITION

I, **Edward Keith Potter**, declare under penalty of perjury that I am the **President** of **Total, Inc.**, and that the following is a true and correct copy of the resolutions adopted by the Board of Directors of said corporation at a special meeting duly called and held on the 15th day of August, 2012.

"Whereas, it is in the best interest of this corporation to file a voluntary petition in the United States Bankruptcy Court pursuant to Chapter 11 of Title 11 of the United States Code;

Be It Therefore Resolved, that **Edward Keith Potter**, **President** of this Corporation, is authorized and directed to execute and deliver all documents necessary to perfect the filing of a chapter 11 voluntary bankruptcy case on behalf of the corporation; and

Be It Further Resolved, that **Edward Keith Potter**, **President** of this Corporation is authorized and directed to appear in all bankruptcy proceedings on behalf of the corporation, and to otherwise do and perform all acts and deeds and to execute and deliver all necessary documents on behalf of the corporation in connection with such bankruptcy case, and

Be It Further Resolved, that **Edward Keith Potter**, **President** of this Corporation is authorized and directed to employ **Robert H. Cooper**, attorney and the law firm of **The Cooper Law Firm** to represent the corporation in such bankruptcy case."

Date August 15, 2012

Signed /s/ Edward Keith Potter
Edward Keith Potter

Resolution of Board of Directors
of
Total, Inc.

Whereas, it is in the best interest of this corporation to file a voluntary petition in the the United States Bankruptcy Court pursuant to Chapter 11 of Title 11 of the United States Code;

Be It Therefore Resolved, that **Edward Keith Potter, President** of this Corporation, is authorized and directed to execute and deliver all documents necessary to perfect the filing of a chapter 11 voluntary bankruptcy case on behalf of the corporation; and

Be It Further Resolved, that **Edward Keith Potter, President** of this Corporation is authorized and directed to appear in all bankruptcy proceedings on behalf of the corporation, and to otherwise do and perform all acts and deeds and to execute and deliver all necessary documents on behalf of the corporation in connection with such bankruptcy case, and

Be It Further Resolved, that **Edward Keith Potter, President** of this Corporation is authorized and directed to employ **Robert H. Cooper**, attorney and the law firm of **The Cooper Law Firm** to represent the corporation in such bankruptcy case.

Date August 15, 2012

Signed /s/Edward Keith Potter
Edward Keith Potter

United States Bankruptcy Court
District of South Carolina

In re Total, Inc.

Debtor(s)

Case No.

Chapter 11

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	\$ <u>25,000.00</u>
Prior to the filing of this statement I have received	\$ <u>25,000.00</u>
Balance Due	\$ <u>0.00</u>

2. \$ 1,046.00 of the filing fee has been paid.

3. The source of the compensation paid to me was:

☐ Debtor ☒ Other (specify): **Mike Gault, Debtor's Manager**

4. The source of compensation to be paid to me is:

☒ Debtor ☐ Other (specify):

5. ☒ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

6. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
- c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- d. [Other provisions as needed]

Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

7. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: August 15, 2012

/s/ Robert H. Cooper

Robert H. Cooper
The Cooper Law Firm
3523 Pelham Rd., Suite B
Greenville, SC 29615
864-271-9911 Fax: 864-232-5236
thecooperlawfirm@thecooperlawfirm.com

B4 (Official Form 4) (12/07)

**United States Bankruptcy Court
District of South Carolina**

In re Total, Inc.

Debtor(s)

Case No.

Chapter 11

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
Internal Revenue Service Centralized Insolvency Operation PO Box 7346 Philadelphia, PA 19101-7346	Internal Revenue Service Centralized Insolvency Operation PO Box 7346 Philadelphia, PA 19101-7346	941 taxes 12/31/08, 9/30/10, 12/31/10, 3/31/11, 9/30/11		87,000.00
SC Dept of Rev. & Tax PO Box 12265 Columbia, SC 29211	SC Dept of Rev. & Tax PO Box 12265 Columbia, SC 29211	Taxes		40,000.00
SC Dept of Employment and Workforce PO Box 995 Columbia, SC 29202	SC Dept of Employment and Workforce PO Box 995 Columbia, SC 29202	Withholdings		8,063.00
Advance Auto Parts PO Box 17698 Baltimore, MD 21297	Advance Auto Parts PO Box 17698 Baltimore, MD 21297			5,339.00
Mack Fulbright Distributing Co., Inc. PO Box 4305 Spartanburg, SC 29305	Mack Fulbright Distributing Co., Inc. PO Box 4305 Spartanburg, SC 29305			3,959.00
Keeter Ford Lincoln Roush 1775 East Dixon Blvd Shelby, NC 28152	Keeter Ford Lincoln Roush 1775 East Dixon Blvd Shelby, NC 28152			2,526.00
I Wanna/Sophie PO Box 1828 Fayetteville, NC 28302	I Wanna/Sophie PO Box 1828 Fayetteville, NC 28302			1,568.00
Roberts Oxygen Company, Inc. PO Box 5507 Derwood, MD 20855	Roberts Oxygen Company, Inc. PO Box 5507 Derwood, MD 20855			1,509.00
Grace Logistics a/k/a Bluegrass Logistics PO Box 23247 Jacksonville, FL 32241	Grace Logistics a/k/a Bluegrass Logistics PO Box 23247 Jacksonville, FL 32241			1,304.00
Hotlines, Inc. 427 E. Kanesville Blvd #403 Council Bluffs, IA 51503	Hotlines, Inc. 427 E. Kanesville Blvd #403 Council Bluffs, IA 51503			1,060.00

B4 (Official Form 4) (12/07) - Cont.

In re **Total, Inc.**

Case No. _____

Debtor(s) _____

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS
(Continuation Sheet)

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
McCarthy Burgess & Wolfe for Carfax, Inc. The MB&W Building 2600 Cannon Road Cleveland, OH 44146	McCarthy Burgess & Wolfe for Carfax, Inc. The MB&W Building Cleveland, OH 44146			863.00
Car-Part.com PO Box 367 Florence, KY 41022-0367	Car-Part.com PO Box 367 Florence, KY 41022-0367			340.00
Hollander 4221 Solutions Center Chicago, IL 60677	Hollander 4221 Solutions Center Chicago, IL 60677			286.00
Southern Freight Lines PO Box 100104 Columbia, SC 29202	Southern Freight Lines PO Box 100104 Columbia, SC 29202			74.00

**DECLARATION UNDER PENALTY OF PERJURY
ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, the President of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date August 15, 2012

Signature /s/ Edward Keith Potter
Edward Keith Potter
President

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

LOCAL OFFICIAL FORM 1007-1(b) TO SC LBR 1007-1

United States Bankruptcy Court
District of South Carolina

In re Total, Inc.

Debtor(s)

Case No.

Chapter

11

CERTIFICATION VERIFYING CREDITOR MATRIX

The above named debtor, or attorney for the debtor if applicable, hereby certifies pursuant to South Carolina Local Bankruptcy Rule 1007-1 that the master mailing list of creditors submitted either on computer diskette, electronically filed via CM/ECF, or conventionally filed in a typed hard copy scannable format which has been compared to, and contains identical information to, the debtor's schedules, statements and lists which are being filed at this time or as they currently exist in draft form.

Master mailing list of creditors submitted via:

- (a) _____ computer diskette
- (b) _____ scannable hard copy
(number of sheets submitted _____)
- (c) ☒ electronic version filed via CM/ECF

Date: August 15, 2012

/s/ Edward Keith Potter

Edward Keith Potter/President
Signer/Title

Date: August 15, 2012

/s/ Robert H. Cooper

Signature of Attorney

Robert H. Cooper

The Cooper Law Firm

3523 Pelham Rd., Suite B

Greenville, SC 29615

864-271-9911 Fax: 864-232-5236

Typed/Printed Name/Address/Telephone

#5670

District Court I.D. Number

Advance Auto Parts
PO Box 17698
Baltimore MD 21297

American Community Bank
a div of Yadkin Valley Bank
PO Box 888
Elkin NC 28621

American Community Bank
PO Box 1539
Gaffney SC 29341

Autobank Commercial Bank
2518 White Horse Road
Greenville SC 29611

Automotive Finance Corp "ADC"
13085 Hamilton Crossing Blvd
Carmel IN 46032

Ben D. Kochenower
PO Box 848
Gaffney SC 29342

Car-Part.com
PO Box 367
Florence KY 41022-0367

Carl Durham
136 North Rutherford Road
Greer SC 29651

Cherokee County
PO Box 1267
Gaffney SC 29342-1983

Chris Drye
d/b/a Drye's Auto Crushing
c/o Wade S. Weatherford, III
PO Box 2207
Gaffney SC 29342

Dealer Services Corporation "DSC"
1320 City Center Drive #100
Carmel IN 46032

Dowse "Brad" Rustin, IV, Esq.
Nelson Mullins Riley & Scarborough
104 South Main St Ninth Floor
Greenville SC 29601

Edward Keith Potter
119 Dobbinsville Road
Ellenboro NC 28040

Grace Logistics
a/k/a Bluegrass Logistics
PO Box 23247
Jacksonville FL 32241

Greenville County Tax Collector
301 University Ridge
Suite 700
Greenville SC 29601

Hollander
4221 Solutions Center
Chicago IL 60677

Hotlines, Inc.
427 E. Kanesville Blvd #403
Council Bluffs IA 51503

I Wanna/Sophie
PO Box 1828
Fayetteville NC 28302

Internal Revenue Service
Centralized Insolvency Operation
PO Box 7346
Philadelphia PA 19101-7346

Internal Revenue Service
c/o S. Douglas
440 Roper Mountain Rd, Ste E
Greenville SC 29615

IRS MDP 39
1835 Assembly ST RM 469
Columbia SC 29201

Keeter Ford Lincoln Roush
1775 East Dixon Blvd
Shelby NC 28152

Kenneth L. Holland, Esq.
212 E. Floyd Baker Blvd
Gaffney SC 29340

Mack Fulbright Distributing Co., Inc.
PO Box 4305
Spartanburg SC 29305

Mary Gault
2016 Union Hwy
Gaffney SC 29340

Mason Motors, Inc.
7980 Asheville Hwy
Spartanburg SC 29303

McCarthy Burgess & Wolfe
for Carfax, Inc.
The MB&W Building
2600 Cannon Road
Cleveland OH 44146

Mike Gault
199 Speedway Road
Gaffney SC 29340

Quick Captial Lending Corp
630 South Euclid Street
Anaheim CA 92802

Roberts Oxygen Company, Inc.
PO Box 5507
Derwood MD 20855

SC Dept of Employment and Workforce
PO Box 995
Columbia SC 29202

SC Dept of Rev. & Tax
PO Box 12265
Columbia SC 29211

Southern Freight Lines
PO Box 100104
Columbia SC 29202

**United States Bankruptcy Court
District of South Carolina**

In re Total, Inc.

Debtor(s)

Case No.

Chapter 11

CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for Total, Inc. in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

☒ None [Check if applicable]

August 15, 2012

Date

/s/ Robert H. Cooper

Robert H. Cooper

Signature of Attorney or Litigant

Counsel for Total, Inc.

The Cooper Law Firm

3523 Pelham Rd., Suite B

Greenville, SC 29615

864-271-9911 Fax: 864-232-5236

thecooperlawfirm@thecooperlawfirm.com

**CORPORATE RESOLUTION OF
TOTAL, INC.**

The following resolution is adopted by the written consent of all of the officers and shareholders of Total, Inc:

The corporation has adopted the following resolution:

RESOLVED, that the President, Edward Keith Potter, is authorized to file a Petition for Relief with the United States Bankruptcy Court for the District of South Carolina under the provisions of Chapter 11 and to take all action necessary to see that said petition and schedules are promptly filed including the contracting with an attorney for legal services.

FURTHER RESOLVED, that the corporation authorizes the entering of an agreement with The Cooper Law Firm for representation in said Chapter 11 proceeding and to pay a fee of \$25,000.00 plus the filing fee for the filing of the Chapter 11 Bankruptcy Petition and representation of the Debtor at the Meeting of Creditors.

Dated: 8/15/12


Total, Inc.

By: Edward Keith Potter
Its: President

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re: **Total, Inc.**

Case No. 12-05055
Chapter 11

STATEMENT REGARDING AUTHORITY TO SIGN AND FILE PETITION

I, **Edward Keith Potter**, declare under penalty of perjury that I am the **President** of **Total, Inc.**, a South Carolina Corporation and that on **August 15, 2012** the following resolution was duly adopted by the officers of this Corporation:

"Whereas, it is in the best interest of this Corporation to file a voluntary petition in the United States Bankruptcy Court pursuant to Chapter 11 of Title 11 of the United States Code;

Be It Therefore Resolved, that **Edward Keith Potter, President** of this Corporation, is authorized and directed to execute and deliver all documents necessary to perfect the filing of a Chapter 11 voluntary bankruptcy case on behalf of the Corporation; and

Be It Further Resolved, that **Edward Keith Potter, President** of this Corporation, is authorized and directed to appear in all bankruptcy proceedings on behalf of the Corporation, and to otherwise do and perform all acts and deeds and to execute and deliver all necessary documents on behalf of the corporation in connection with such bankruptcy case; and

Be It Further Resolved, that **Edward Keith Potter, President** of this Corporation, is authorized and directed to employ **Robert H. Cooper**, attorney and the law firm of **The Cooper Law Firm** to represent the Corporation in such bankruptcy case."

Dated: 8/15/12


Total, Inc.

By: **Edward Keith Potter, President**
Sole Officer and Sole Shareholder

B6D (Official Form 6D) (12/07) - Cont.

In re **Total, Inc.**

Case No. **12-05055**

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E D E B I T O R	H U S B A N D W I F E J O I N T O R	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No.			Floor Plan					
Autobank Commercial Bank a/k/a Autobank Floor Plan, LLC 2518 White Horse Road Greenville, SC 29611	X	-						
			Value \$ 63,000.00				63,000.00	0.00
Account No.			Floor Plan					
Automotive Finance Corp "AFC" 13085 Hamilton Crossing Blvd Carmel, IN 46032	X	-						
			Value \$ 65,000.00				65,000.00	0.00
Account No.			Judgment in Case Number 2008-CP-11-1038					
Chris Drye d/b/a Drye's Auto Crushing c/o Wade S. Weatherford, III PO Box 2207 Gaffney, SC 29342	X	-						
			Value \$ 50,000.00				50,000.00	0.00
Account No.			ADDITIONAL NOTICE Chris Drye				Notice Only	
Ben D. Kochenower PO Box 848 Gaffney, SC 29342								
			Value \$					
Account No.			Floor Plan					
Dealer Services Corporation "DSC" 1320 City Center Drive #100 Carmel, IN 46032	X	-						
			Value \$ 152,000.00				152,000.00	0.00
Sheet <u>1</u> of <u>2</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims							Subtotal (Total of this page)	330,000.00
								0.00

B6D (Official Form 6D) (12/07) - Cont.

In re Total, Inc.

Case No. 12-05055

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E D E B T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	U N L I Q U A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY	
Account No.			Tax Lien						
Internal Revenue Service Centralized Insolvency Operation PO Box 7346 Philadelphia, PA 19101-7346	X	-	941 taxes 12/31/08, 9/30/10, 12/31/10, 3/31/11, 9/30/11						
			Value \$ 87,000.00				87,000.00	0.00	
Account No.			ADDITIONAL NOTICE Internal Revenue Service				Notice Only		
Internal Revenue Service c/o S. Douglas 440 Roper Mountain Rd, Ste E Greenville, SC 29615			Value \$						
Account No.			ADDITIONAL NOTICE Internal Revenue Service				Notice Only		
IRS MDP 39 1835 Assembly ST RM 469 Columbia, SC 29201			Value \$						
Account No.			Floor Plan						
Mason Motors, Inc. 7980 Asheville Hwy Spartanburg, SC 29303	X	-	Value \$ 20,000.00				20,000.00	0.00	
Account No.			Floor Plan						
Quick Captial Lending Corp 676 Leader Lane Mount Pleasant, SC 29464	X	-	Value \$ 150,000.00				150,000.00	0.00	
Sheet <u>2</u> of <u>2</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims							Subtotal (Total of this page)	257,000.00	0.00
(Report on Summary of Schedules)							Total	695,000.00	21,500.00

B6H (Official Form 6H) (12/07)

In re Total, Inc.

Case No. 12-05055

Debtor

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	J.L. Thompson Construction Co. 1123 Kelly Road Mount Holly, NC 28120
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	Mary Gault 2016 Union Hwy Gaffney, SC 29340
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	SC Dept of Employment and Workforce PO Box 995 Columbia, SC 29202
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	SC Dept of Rev. & Tax PO Box 12265 Columbia, SC 29211
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	American Community Bank a div of Yadkin Valley Bank PO Box 888 Elkin, NC 28621
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	American Community Bank a div of Yadkin Valley Bank PO Box 888 Elkin, NC 28621
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	Automotive Finance Corp "AFC" 13085 Hamilton Crossing Blvd Carmel, IN 46032
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	Chris Drye d/b/a Drye's Auto Crushing c/o Wade S. Weatherford, III PO Box 2207 Gaffney, SC 29342
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	Dealer Services Corporation "DSC" 1320 City Center Drive #100 Carmel, IN 46032
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	Internal Revenue Service Centralized Insolvency Operation PO Box 7346 Philadelphia, PA 19101-7346

1

continuation sheets attached to Schedule of Codebtors

In re Total, Inc.

Case No. 12-05055

Debtor

SCHEDULE H - CODEBTORS
(Continuation Sheet)

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	Mason Motors, Inc. 7980 Asheville Hwy Spartanburg, SC 29303
Edward Keith Potter 119 Dobbinsville Road Ellenboro, NC 28040	Quick Captial Lending Corp 676 Leader Lane Mount Pleasant, SC 29464
Mike Gault 199 Speedway Road Gaffney, SC 29340	J.L. Thompson Construction Co. 1123 Kelly Road Mount Holly, NC 28120
Mike Gault 199 Speedway Road Gaffney, SC 29340	Mary Gault 2016 Union Hwy Gaffney, SC 29340
Mike Gault 199 Speedway Road Gaffney, SC 29340	SC Dept of Employment and Workforce PO Box 995 Columbia, SC 29202
Mike Gault 199 Speedway Road Gaffney, SC 29340	SC Dept of Rev. & Tax PO Box 12265 Columbia, SC 29211
Mike Gault 199 Speedway Road Gaffney, SC 29340	Autobank Commercial Bank 2518 White Horse Road Greenville, SC 29611
Mike Gault 199 Speedway Road Gaffney, SC 29340	Chris Drye d/b/a Drye's Auto Crushing c/o Wade S. Weatherford, III PO Box 2207 Gaffney, SC 29342
Mike Gault 199 Speedway Road Gaffney, SC 29340	Dealer Services Corporation "DSC" 1320 City Center Drive #100 Carmel, IN 46032
Mike Gault 199 Speedway Road Gaffney, SC 29340	Internal Revenue Service Centralized Insolvency Operation PO Box 7346 Philadelphia, PA 19101-7346
Mike Gault 199 Speedway Road Gaffney, SC 29340	Mason Motors, Inc. 7980 Asheville Hwy Spartanburg, SC 29303
Mike Gault 199 Speedway Road Gaffney, SC 29340	Quick Captial Lending Corp 676 Leader Lane Mount Pleasant, SC 29464

Sheet 1 of 1 continuation sheets attached to the Schedule of Codebtors

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

TOTAL, INC.
2015 Union Highway
Gaffney, SC 29340
Tax ID/EIN 20-5604530

CASE NO: 12-05055-jw
CHAPTER 11

NOTICE AND MOTION PURSUANT TO FEDERAL
RULE OF BANKRUPTCY PROCEDURE 4001(d)

DEBTOR(S)

TO: All Creditors and Parties in Interest Entitled to Notice under Federal Rule of Bankruptcy Procedure 4001(d)

Total, Inc. ("Debtor") and Dealer Services Corporation ("DSC") (collectively referred to as the "Parties") hereby move the Court for an order approving the agreement between them which is described below and attached to this notice.

TAKE FURTHER NOTICE that any response, return and/or objection to this application, should be filed with the Court no later than **FOURTEEN (14) days** from service of motion/application and a copy simultaneously served on all parties in interest.

TAKE FURTHER NOTICE that no hearing will be held on this application, except as required by the judge, unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on November 5, 2012, at 9:30 a.m., at the Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, South Carolina. No further notice of this hearing will be given.

(A) TYPE OF AGREEMENT: This consent order resolves Debtor's Motion for an Order Authorizing the Use of Cash Collateral and Adequate Protection (Doc. No. 5,) and DSC's objection thereafter. This consent order enables the Debtor to use DSC's cash collateral for a limited period of time, provided DSC's interests are adequately protected.

(B) The agreement and proposed order are attached as Exhibit "A".

(C) PROVISIONS OF THE AGREEMENT: The agreement is attached hereto as Exhibit "A" in the form of a proposed consent order. All parties in interest should review the order for a complete recitation of the proposed agreement between the parties.

DSC maintains a properly perfected, first priority security interest in certain vehicles and the proceeds thereof, along with a first-filed blanket security interest in all other assets and proceeds of the Debtor. The total amount of DSC's claim as of August 15, 2012, the date Debtor filed its petition, was \$152,685.76.

The Debtor's collateral constitutes cash collateral of the Debtor's bankruptcy estate pursuant to 11 USC § 363. Debtor intends to use DSC's cash collateral to continue the operation of its business. The parties have agreed to the following material terms: Debtor will pay DSC adequate protection payments as follows: The sum of \$6,000 per month for six months, beginning October 1, 2012, and continuing through March 1, 2013; thereafter, the sum of \$8,500 per month for six months, beginning April 1, 2013, and continuing through September 1, 2013; thereafter the sum of \$11,000 per month for six months, beginning October 1, 2013, and continuing through March 1, 2014; thereafter one final payment on April 1, 2014, for the full balance due as of the date of final payment made by Debtor. Should Debtor fail to make any adequate protection payment within ten (10) days of the due date for such

adequate protection payment is due, Debtor shall be in default. Debtor must comply with the terms of the Note and Loan Agreement as amended by this Order.

(D) IMPACT ON PRE-PETITION CLAIMS: As of the Petition Date, the Debtor owed DSC \$152,685.76, plus late fees, collection costs, interest, and reasonable attorney's fees and expenses. If the Debtor is able to use the cash collateral, the realization value of the property presumably will be preserved and will permit Debtor to continue to operate its business.

(E) DEFAULT: Failing the remit any adequate protection payment to Lender within ten (10) days of its due date as set forth in Paragraph 6 of the consent order.

(F) RESULT OF DEFAULT: Upon an event of default, Debtor must immediately cease using Lender's Cash Collateral, and Lender shall be entitled to immediate relief from the automatic stay, without further court notice or hearing, upon the presentation and filing of an Affidavit detailing the default event(s) and the submission of a proposed order. Further, if Debtor makes any adequate protection payment after the event of default has occurred, such untimely payment will not cure the default, and Lender will remain entitled to relief from the automatic stay.

(G) DESCRIPTION OF PROPERTY SUBJECT TO LIEN: All assets and proceeds of the Debtor.

(H) APPRAISED VALUE OF PROPERTY SUBJECT TO LIEN: Approximately \$500,000.00

(I) LIEN AMOUNT: \$152,685.76, plus late fees, collection costs, interest, and reasonable attorney's fees and expenses.

(J) MOVING PARTIES:

Robert H. Cooper (DSC # 5670)
The Cooper Law Firm
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 phone
(864) 232-5236 facsimile
rhcooper@thecooperlawfirm.com
Attorney for the Debtor

Robert F. Goings (DSC # 9838)
Goings Law Firm, LLC
914 Richland Street, Ste A-101
Columbia, SC 29201
(803) 350-9230 phone
(877) 789-6340 facsimile
rgoings@goingslawfirm.com
Attorney for Dealer Services Corporation

(K) LOCAL RULE DISCLOSURE: Not Applicable

[Signature Page to Follow]

Date: September 27, 2012

Respectfully Submitted:

/s/Robert H. Cooper
Robert H. Cooper (DSC # 5670)
The Cooper Law Firm
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 phone
(864) 232-5236 facsimile
rhcooper@thecooperlawfirm.com
Attorney for Debtor

WE SO CONSENT:

/s/Robert F. Goings
Robert F. Goings (DSC # 9838)
Goings Law Firm, LLC
914 Richland Street, Ste A-101
Columbia, SC 29201
(803) 350-9230 phone
(877) 789-6340 facsimile
rgoings@goingslawfirm.com
Attorney for Dealer Services Corporation

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:	)	Case Number: 12-05055
	)	Chapter 11
Total, Inc.	)	
	)	CERTIFICATE OF SERVICE
	)	
Debtor.	)	
_____	)	

I hereby certify that under FRBP 1007(b)(2), I have served a true and accurate copy of the **NOTICE AND MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(d)** and the proposed consent order by U.S. regular mail, electronic mail or fax on the following creditor(s) or parties in interest as listed below:

SEE THE ATTACHED MAILING MATRIX

Dated: 10/1, 2012

In Greenville, South Carolina



/s/ Tonya Usary Pierce
Tonya Usary Pierce, Paralegal for
THE COOPER LAW FIRM
3523 Pelham Road, Ste. B
Greenville South Carolina 29615
(864) 271-9911
(864) 232-5236 Fax

Label Matrix for local noticing
0420-7

Case 12-05055-jw
District of South Carolina
Spartanburg
Mon Oct 1 10:31:05 EDT 2012

(p)AUTOMOTIVE FINANCE CORPORATION
13085 HAMILTON CROSSING BLVD
SUITE 300
CARMEL IN 46032-1445

American Community Bank, A division of Yadki
c/o Nelson Mullins Riley & Scarborough
104 S. Main St. 9th Floor
P.O. Box 10084 (29603)
Greenville, SC 29603-0084

Auto Bank Floorplan, LLC
2518 White Horse Rd
Greenville, SC 29611-6116

Dealer Services Corporation
1320 City Center Drive
Suite 100
Carmel, IN 46032-3816

Mason Motors, Inc.
7980 Asheville Highway
Spartanburg, SC 29303-1636

South Carolina Department of Employment and
R. E. David Building
P.O. Box 8597
Columbia, SC 29202-8597

Total, Inc.
2015 Union Highway
Gaffney, SC 29340-4041

J. Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Advance Auto Parts
PO Box 17698
Baltimore MD 21297-1698

American Community Bank
PO Box 1539
Gaffney SC 29342-1539

American Community Bank
a div of Yadkin Valley Bank
PO Box 888
Elkin NC 28621-0888

Autobank Commercial Bank
2518 White Horse Road
Greenville SC 29611-6116

Automotive Finance Corp 'ADC'
13085 Hamilton Crossing Blvd
Carmel IN 46032-1445

Ben D. Kochenower
PO Box 848
Gaffney SC 29342-0848

Car-Part.com
PO Box 367
Florence KY 41022-0367

Carl Durham
136 North Rutherford Road
Greer SC 29651-5522

Cherokee County
PO Box 1267
Gaffney SC 29342-1267

Chris Drye
d/b/a Drye's Auto Crushing
c/o Wade S. Weatherford, III
PO Box 2207
Gaffney SC 29342-2207

Dealer Services Corporation 'DSC'
1320 City Center Drive #100
Carmel IN 46032-3816

Dowse 'Brad' Rustin, IV, Esq.
Nelson Mullins Riley & Scarborough
104 South Main St Ninth Floor
Greenville SC 29601-2742

Edward Keith Potter
119 Dobbinsville Road
Ellenboro NC 28040-9345

Grace Logistics
a/k/a Bluegrass Logistics
PO Box 23247
Jacksonville FL 32241-3247

Greenville County Tax Collector
301 University Ridge
Suite 700
Greenville SC 29601-3659

Hollander
4221 Solutions Center
Chicago IL 60677-4002

Hotlines, Inc.
427 E. Kanesville Blvd #403
Council Bluffs IA 51503-4403

I Wanna/Sophie
PO Box 1828
Fayetteville NC 28302-1828

IRS MDP 39
1835 Assembly ST RM 469
Columbia SC 29201

Internal Revenue Service
Centralized Insolvency Operation
PO Box 7346
Philadelphia PA 19101-7346

Internal Revenue Service
c/o S. Douglas
440 Roper Mountain Rd, Ste E
Greenville SC 29615-4237

Keeter Ford Lincoln Roush
1775 East Dixon Blvd
Shelby NC 28152-6946

Kenneth L. Holland, Esq.
212 E. Floyd Baker Blvd
Gaffney SC 29340-3118

Mack Fulbright Distributing Co., Inc.
PO Box 4305
Spartanburg SC 29305-4305

Mary Gault
2016 Union Ewy
Gaffney SC 29340-4017

Mason Motors, Inc.
7980 Asheville Hwy
Spartanburg SC 29303-1636

McCarthy Burgess & Wolfe
for Carfax, Inc.
The MB&W Building
2600 Cannon Road
Cleveland OH 44146

Mike Gault
199 Speedway Road
Gaffney SC 29340-4526

Quick Capital
676 Leader Lane
Mount Pleasant, SC 29464-8152

Quick Captial Lending Corp
630 South Euclid Street
Anaheim CA 92802-1234

Roberts Oxygen Company, Inc.
PO Box 5507
Derwood MD 20855-0507

SC Dept of Employment and Workforce
PO Box 995
Columbia SC 29202-0995

SC Dept of Rev. & Tax
PO Box 12265
Columbia SC 29211-2265

Southern Freight Lines
PO Box 100104
Columbia SC 29202-3104

Christopher Drye
Drye's Auto Crushing
c/o Wade S Weatherford
PO Box 2207
Gaffney, SC 29342-2207

Robert H. Cooper
3523 Pelham Road
Suite B
Greenville, SC 29615-4191

US Trustee's Office
Strom Thurmond Federal Building
1835 Assembly St.
Suite 953
Columbia, SC 29201-2448

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Automotive Finance Corporation
13085 Hamilton Crossing Blvd, Su. 300
Carmel, IN 46032

End of Label Matrix
Mailable recipients 45
Bypassed recipients 0
Total 45

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

Case Number: 12-05055

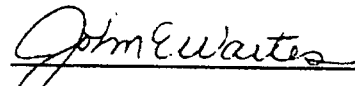
**CONSENT ORDER FOR THE USE OF CASH COLLATERAL
AND ADEQUATE PROTECTION PAYMENTS OF
DEALER SERVICES CORPORATION**

The Relief Set Forth On The Following 5 Pages, Including This Page Is Hereby
ORDERED.

**FILED BY THE COURT
10/22/2012**



Entered: 10/23/2012


Chief US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:	)	Case no. 12-05055-jw
TOTAL, INC.	)	
2015 Union Highway	)	
Gaffney, SC 29340	)	Chapter 11
Tax ID/EIN: 20-5604530	)	
Debtor-in-possession	)	

CONSENT ORDER FOR USE OF CASH COLLATERAL
AND ADEQUATE PROTECTION PAYMENTS OF DEALER SERVICES
CORPORATION

This matter came before the Court upon the Motion filed by Debtor Total, Inc. ("Debtor") requesting authority to use cash collateral of creditor Dealer Services Corporation ("Lender") filed on August 20, 2012. Debtor and Lender have reached an agreement authorizing the use of Lender's cash collateral and providing for adequate protection payments to Lender. Based upon the below indicated consent of the parties, and good cause being shown,

IT IS THEREFORE, ORDERED ADJUDGED AND DECREED as follows:

1. This is a core proceeding and this Court has jurisdiction to determine this matter under 28 U.S.C. section 157(b)(2)(G),(M), and Local Civil Rule 83.IX.01, DSC.
2. Notice of the settlement being approved by the Court was provided pursuant to FRBP 4001(d).
3. Debtor executed and delivered a Demand Promissory Note and Security Agreement dated January 3, 2012 (the "Note"), to Lender, thereby promising to pay Lender under the terms and conditions of that Note.
4. In order to secure the repayment of advances made under the Note, Debtor granted Lender a security interest in assets of Debtor described as follows: All of the Debtor's assets and

properties, wherever located, including without limitation, all equipment of any kind, nature, all vehicles, vehicle parts, all inventory now owned or hereafter acquired, without limitation, Lender financed inventory then owned or thereafter acquired, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, accounts receivable, chattel paper, and general intangibles, then owned or thereafter acquired by the Debtor, together with the proceeds thereof; all of the Debtor's books and records relating to the foregoing (collectively, "Collateral"). Lender perfected its security interest in the Collateral by filing a UCC Financing Statement with the South Carolina Secretary of State.

5. The total amount of Lender's claim as of August 15, 2012, the date Debtor filed its petition, was \$152,685.76.

6. Debtor intends to continue operation of its business and retain possession of the Collateral. The parties have agreed that Debtor will pay to Lender adequate protection payments as follows: The sum of \$6,000 per month for six months, beginning October 1, 2012, and continuing through March 1, 2013; thereafter, the sum of \$8,500 per month for six months, beginning April 1, 2013, and continuing through September 1, 2013; thereafter the sum of \$11,000 per month for six months, beginning October 1, 2013, and continuing through March 1, 2014; thereafter one final payment on April 1, 2014, for the full balance due as of the date of final payment made by Debtor. Should Debtor fail to make any adequate protection payment within ten (10) days of the due date for such adequate protection payment as stated above, Debtor shall be in default.

7. In order to provide Lender adequate protection of Lender's lien on the Collateral, Lender is hereby granted a replacement lien on the Collateral to the extent of any post-petition diminution in the value of the Collateral. Lender's replacement lien as provided in this Order

shall be automatically perfected, and Lender will not be required to take any further action to perfect such lien.

8. For purposes of this Order, the following events shall constitute an event of default by Debtor:

(a) Failing the remit any adequate protection payment to Lender within ten (10) days of its due date as set forth in Paragraph 6 of this Order.

9. Upon an event of default, Debtor must immediately cease using Lender's Cash Collateral, and Lender shall be entitled to immediate relief from the automatic stay, without further court notice or hearing, upon the presentation and filing of an Affidavit detailing the default event(s) and the submission of a proposed order. Further, if Debtor makes any adequate protection payment after the event of default has occurred, such untimely payment will not cure the default, and Lender will remain entitled to relief from the automatic stay.

10. Except as expressly modified by the terms of this Order, all terms and conditions of the Note and Security Agreement shall remain in full force and effect in accordance with the terms contained therein. The entry of this Order shall not constitute a waiver of any pre-petition default or of any remedy Lender may have under applicable non-bankruptcy law.

11. Nothing herein constitutes a finding regarding the value of the Collateral or proposed treatment of the Note under a plan of reorganization. The parties' right to assert and/or dispute valuation and treatment of Lender's claims under a plan of reorganization is hereby preserved.

AND IT IS SO ORDERED.

WE SO CONSENT:

/s/Robert H. Cooper
Robert H. Cooper (DSC # 5670)
The Cooper Law Firm
Attorney for Debtor
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 phone
(864) 232-5236 facsimile
rhcooper@thecooperlawfirm.com

WE SO CONSENT:

/s/Robert F. Goings
Robert F. Goings (DSC # 9838)
Goings Law Firm, LLC
914 Richland Street, Ste A-101
Columbia, SC 29201
(803) 350-9230 phone
(877) 789-6340 facsimile
rgoings@goingslawfirm.com

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

TOTAL, INC.,
D/B/A GAULT'S USED CARS AND
AUTO PARTS,
D/B/A GAULT'S USED CARS AND
MOTORMAXX,
D/B/A GAULT'S AUTO PARTS,
D/B/A GAULT'S USED CARS,

Debtor.

C/A No. 12-05055-JW

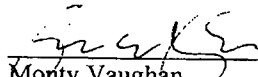
Chapter 11

AFFIDAVIT OF MONTY VAUGHAN

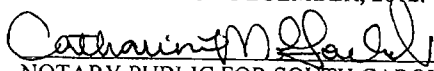
PERSONALLY APPEARED BEFORE ME, the undersigned, Monty Vaughan, who after being duly sworn, deposes and says:

1. I am over eighteen (18) years of age and the facts stated herein are true and accurate to the best of my knowledge and belief and based on information that I believe to be true.
2. I am an account executive for Dealer Services Corp. ("DSC"), a debtor in the above-referenced matter. I am responsible for servicing the account of Total Inc., d/b/a Gault's Used Cars ("Debtor").
3. On August 20, 2012, DSC entered into a Consent Order for Use of Cash Collateral and Adequate Protection Payments of Dealer Services Corporation. Under this Consent Order, the Debtor was required to pay DSC adequate protection payments in the amount of \$6,000 per month for six months, beginning October 1, 2012, with the payment amount increasing thereafter.
4. The Debtor has failed and refused to make the November 2012 payment in the amount of \$6,000, and has further represented that it has no intention of complying with the Consent Order in the future.
5. The Debtor is in breach of the Consent Order for failing to remit adequate protection payments to DSC within ten (10) days of November 1, 2012.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.


Monty Vaughan

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 4TH DAY OF DECEMBER, 2012.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9/15/2022

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: 12-05055-JW

**ORDER GRANTING RELIEF FROM AUTOMATIC STAY
AS TO DEALER SERVICES CORPORATION**

The relief set forth on the following pages, for a total of 3 pages including this page, is hereby ORDERED.

**FILED BY THE COURT
12/11/2012**



Entered: 12/11/2012

A handwritten signature in cursive script, reading "John E. Waites".

Chief US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	)	
	)	C/A No. 12-05055-JW
TOTAL, INC.,	)	
D/B/A GAULT'S USED CARS AND	)	Chapter 11
AUTO PARTS, D/B/A GAULT'S USED	)	
CARS AND MOTORMAXX, D/B/A	)	ORDER GRANTING RELIEF FROM
GAULT'S AUTO PARTS,	)	AUTOMATIC STAY AS TO DEALER
D/B/A GAULT'S USED CARS,	)	SERVICES CORPORATION
	)	
Debtor.	)	

This matter came before the Court upon application of Creditor Dealer Services Corporation ("DSC") for immediate relief from the automatic stay as a result of Debtor Total, Inc.'s ("Debtor") default of the Consent Order for Use of Cash Collateral and Adequate Protection Payments of Dealer Services Corporation filed on October 22, 2012 [Doc. 89] ("Consent Order").

Pursuant to the Consent Order, Debtor was required to pay DSC adequate protection payments in the amount of \$6,000 per month for six months, beginning October 1, 2012, with the payment amount increasing thereafter as set forth in the order. The Debtor shall be deemed in default for failure to make such payments within 10 days of the due date each month. Pursuant to paragraph 9 of the Consent Order, upon an event of default, Debtor was required to immediately cease using DSC's cash collateral, and upon the filing of an affidavit of default, DSC is entitled to immediately relief from the automatic stay without further court notice or hearing. Based on the Affidavit of Monty Vaughan of DSC filed on December 4, 2012, Debtor has failed and refused to make the November 1, 2012 payment in the amount of \$6,000.00 for adequate protection to DSC. As a result, this Court hereby finds and concludes that the Debtor is breach of the Consent Order.

THEREFORE, IT IS ORDERED:

- (a) Debtor shall immediately cease the use of DSC's cash collateral, as required on date

of the event of default;

- (b) the automatic stay, pursuant to 11 U.S.C Section 362(d), is terminated and lifted as to any property or security interests of DSC, and thereby DSC is allowed to proceed and enforce any and all legal remedies in and to its property or security interests of the Debtor; and
- (c) Fed R. Bankr. P. 4001(a)(3) is inapplicable to this Order, and the Order shall be effective immediately upon entry.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHEROKEE) C.A. NO. 2013-CP-11-0002

Dealer Services Corporation,)

PLAINTIFF,)

versus)

Total, Inc. d/b/a Gault's Used Cars,)
d/b/a Gault's Auto Parts, d/b/a Gault's)
Used Cars and Auto Parts, d/b/a Gault's)
Used Cars and Motormaxx; Edward Keith)
Potter; Michael Wayne Gault;)
Christopher Drye, d/b/a Drye's Auto)
Crushing; Ben D. Kochenower, CPA;)
Automotive Finance Corporation;)
Grandsouth Bank, d/b/a CarBucks; Mason)
Motors, Inc., d/b/a LC Mason ENT.;)
American Community Bank, a division of)
Yadkin Valley Bank and Trust Company;)
Quick Capital, LLC, d/b/a/ Quick)
Capital; and Auto Bank Floorplan, LLC,)

DEFENDANTS.)

DEPOSITION OF
MICHAEL GAULT

Pursuant to notice of deposition and/or agreement
in the above-entitled case, the deposition of Michael Gault
was taken on the 22nd day of January, 2014, commencing at
the hour of 11:50 a.m., in the offices of Lazenby Law Firm,
Attorneys at Law, Spartanburg, South Carolina.

FREELANCE REPORTING SERVICES
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REPORTED BY: MARLA J. O'BRIEN, CVR-M, ACR

Deposition of Michael Gault

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Deposition of Michael Gault

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to Rule 30
5 of the South Carolina Rules of Civil Procedure;
6 2. That the deponent reserves his right to read and sign
7 the deposition transcript.

8 *****

9 MICHAEL GAULT, being duly sworn to tell the truth, the
10 whole truth, and nothing but the truth of his own knowledge
11 concerning the matter herein, testified as follows:

12 *****

13 EXAMINATION BY MR. GOINGS:

14 Q. State your full name for the record, sir.

15 A. Michael Wayne Gault.

16 Q. Mr. Gault, for purposes of your deposition, we are
17 going to mark Plaintiff's Exhibit 1 through Plaintiff's
18 Exhibit 5 to be the same exact documents that were used
19 in the deposition of Mr. Potter. You understand that?

20 A. Yes, sir.

21 Q. Okay. And you were present for Mr. Potter's --

22 A. Yes.

23 Q. -- deposition, correct? Are you generally familiar
24 with the documents 1 through 5?

25 A. Yes.

Deposition of Michael Gault

1 Q. Okay. Currently, Mr. Potter has absconded with the
2 original of those exhibits, but I have my copies of the
3 same thing, and your --

4 A. And Ginger's got hers.

5 Q. -- lawyer also has a copy. So until they come back --
6 Ms. Goforth:

7 He can look at mine.

8 Examination resumed by Mr. Goings:

9 Q. -- just refer to hers or mine.

10 A. Okay.

11 Q. Have you ever been in a deposition before?

12 A. Yes, sir.

13 Q. You've been deposed before?

14 A. Yes, sir.

15 Q. And what case was that?

16 A. The Drye versus Total, Incorporated case.

17 Q. Okay. There are some just preliminary instructions to
18 tell you about depositions. I know you sat in Mr.
19 Potter's and been in a deposition before. If you need
20 me to rephrase my question, repeat my question, those
21 requests have to be made to me and not your --

22 A. Yes, sir.

23 Q. -- attorney. Do you understand that?

24 A. Yes, sir.

25 Q. You're doing a good job, but remember, she's taking

- 1 down everything we say. First off, try to --
- 2 A. Say yes and no.
- 3 Q. -- say yes and no, and avoid head gestures, head
- 4 nods --
- 5 A. Okay.
- 6 Q. -- uh-huh of huh-uhs. Another thing to help her out is
- 7 let me finish my question before you answer it. Even
- 8 though you know the answer, it just helps her --
- 9 A. Yes.
- 10 Q. -- if we have an answer, question. I'll try to let you
- 11 finish your answer before I move on to the next
- 12 question.
- 13 A. Okay.
- 14 Q. Is that fair?
- 15 A. Yes, sir.
- 16 Q. If I say on the record, is that a yes, or is that a no,
- 17 please understand, I probably have understood your
- 18 question, I'm just trying to clarify --
- 19 A. Yes.
- 20 Q. -- the record. Is that fair?
- 21 A. Trying to make her job easy. Yes, sir.
- 22 Q. You're trying to make her job easy. If I ask you a
- 23 question and you answer the question, I'm going to
- 24 assume you understood that question. Is that fair?
- 25 A. Yes.

Deposition of Michael Gault

- 1 Q. All right. Hopefully, some of your background
2 questions won't take as long, so we can kind of --
- 3 A. Okay.
- 4 Q. -- we can kind of move on. Please understand, I've got
5 a job to do and --
- 6 A. Yes, sir.
- 7 Q. -- nothing in this is personal, I think you're a good
8 guy.
- 9 A. Yes, sir.
- 10 Q. It's just, I've got a job to do, just like you and your
11 lawyer.
- 12 A. Yes, I understand.
- 13 Q. You understand? What is your address?
- 14 A. 199 Speedway Road, Gaffney, South Carolina, 29340.
- 15 Q. How long have you lived at that address?
- 16 A. Probably ten years.
- 17 Q. Before that address, where did you live?
- 18 A. With my mother and dad.
- 19 Q. Where is that located?
- 20 A. No, I did live at one other place. I lived at 701
21 Cherokee Avenue.
- 22 Q. Is that in --
- 23 A. Gaffney.
- 24 Q. -- Gaffney?
- 25 A. Yes, sir.

Deposition of Michael Gault

- 1 Q. How long had you lived at 701 Cherokee Highway?
- 2 A. I don't remember. Probably --
- 3 Q. Just give me some approximate dates.
- 4 A. -- probably a few years.
- 5 Q. Okay. Have you lived in Cherokee County your whole
- 6 life?
- 7 A. Yes, sir.
- 8 Q. All right. What is your age?
- 9 A. Forty-six.
- 10 Q. Date of birth?
- 11 A. 9/10/67.
- 12 Q. I'll ask you your Social Security number. We'll go off
- 13 the record, and then we'll put just the four digits,
- 14 last digits on it, okay? So let's go off the record.
- 15 (Off the record)
- 16 Examination resumed by Mr. Goings:
- 17 Q. Is the last four digits of your Social Security number
- 18 0572?
- 19 A. Uh-huh (indicates affirmative response).
- 20 Q. Is that a yes?
- 21 A. Yes.
- 22 Q. Doing good. Where do you get your mail?
- 23 A. 199 Speedway Road.
- 24 Q. Do you have a PO box or anything?
- 25 A. No, sir.

Deposition of Michael Gault

- 1 Q. All right. Are you married?
- 2 A. No, sir.
- 3 Q. Have you ever been married?
- 4 A. Yes, sir.
- 5 Q. what is your current marital status?
- 6 A. Single.
- 7 Q. Are you divorced?
- 8 A. Yes, sir.
- 9 Q. when did you get divorced?
- 10 A. I think it was 2000.
- 11 Q. And what was your ex-wife's name?
- 12 A. Lisa.
- 13 Q. what's Lisa's last name?
- 14 A. Gault.
- 15 Q. what was her --
- 16 A. Peeler.
- 17 Q. Lisa Peeler?
- 18 A. Uh-huh (indicates affirmative response).
- 19 Q. Gault. Peeler's a big name in Gaffney. Do you have
- 20 any children?
- 21 A. One son.
- 22 Q. what's his name?
- 23 A. Chase McNeilly.
- 24 Q. Spell that for the record.
- 25 A. C-h-a-s-e M-c-N-e-i-l-l-y.

- 1 Q. How old is he?
- 2 A. Sixteen.
- 3 Q. All right. Does he go to school?
- 4 A. Yeah.
- 5 Q. Where does he go to school?
- 6 A. Oh, god. I don't know the name of the school, but it's
- 7 up there in Polk County.
- 8 Q. He doesn't live in --
- 9 A. No, he lives with his mother. He lives in North
- 10 Carolina.
- 11 Q. He lives in North Carolina, okay. Is he a high school
- 12 student?
- 13 A. Yes.
- 14 Q. Sixteen, yeah. Okay. Are you currently dating
- 15 anybody?
- 16 A. Yes.
- 17 Q. What's her name?
- 18 A. Darlene.
- 19 Q. D-a-r-l --
- 20 A. -- e-n-e.
- 21 Q. -e-n-e. What's her last name?
- 22 A. Shaw.
- 23 Q. Can you spell that?
- 24 A. S-h-a-w.
- 25 Q. How long have you dated Darlene Shaw?

- 1 A. Probably about three years.
- 2 Q. Does anybody currently live with you?
- 3 A. Do what, now?
- 4 Q. Does anybody live with you?
- 5 A. No.
- 6 Q. Do you reside with anyone other than yourself?
- 7 A. She stays with me sometimes.
- 8 Q. Okay. She hasn't moved in or y'all don't live
- 9 together?
- 10 A. You can look at that 50/50.
- 11 Q. It's a floating question?
- 12 A. Yeah, floating question.
- 13 Q. I hear you.
- 14 A. Depends on what day it is.
- 15 Q. I hear you. I can respect that. So you're not legally
- 16 married, but you do --
- 17 A. No.
- 18 Q. -- have a --
- 19 A. Girlfriend.
- 20 Q. Girlfriend, okay. She's been your girlfriend for three
- 21 years?
- 22 A. (Indicates affirmative response)
- 23 Q. Is that a yes?
- 24 A. Yes.
- 25 Q. What does she do?

- 1 A. She works in finance.
- 2 Q. Where?
- 3 A. I don't know the name of the company.
- 4 Q. Is it in Cherokee County?
- 5 A. No, it's in Greenville.
- 6 Q. Where does she live? Where's her residence when it's
- 7 not at your house?
- 8 A. She got apartment.
- 9 Q. Where?
- 10 A. In Greenville.
- 11 Q. Okay, does she live in Greenville? When she's not
- 12 in --
- 13 A. Yeah.
- 14 Q. -- your house?
- 15 A. Yeah.
- 16 Q. Okay. Do you know if she's considered a resident of
- 17 Greenville?
- 18 A. Yeah.
- 19 Q. She's not a resident of Cherokee County, then, is she?
- 20 A. I mean, she's back and forth.
- 21 Q. I understand. Tell me about your education.
- 22 A. I graduated high school, '85, Gaffney High.
- 23 Q. So you're an Indian as well.
- 24 A. I'm an Indian. I played football.
- 25 Q. What position did you play?

- 1 A. Goaler. 8.46. Iiiiiiiiiiiiiiii
- 2 Q. Did Union High School ever beat you, during your years?
- 3 A. Probably once, maybe.
- 4 Q. Once.
- 5 A. Maybe.
- 6 Q. Maybe. You're not going to commit to that completely,
- 7 right?
- 8 A. No, I won't commit to it.
- 9 Q. I hear you.
- 10 A. Y'all might have got lucky.
- 11 Q. One or two games, maybe. When did you graduate?
- 12 A. '85.
- 13 Q. And did you receive any education after high school?
- 14 A. No, sir.
- 15 Q. Did you go to tech school?
- 16 A. No, sir.
- 17 Q. Did you receive any technical training of any nature?
- 18 A. Just when I went to the vocational school during high
- 19 school.
- 20 Q. Okay. In what?
- 21 A. We done woodworking and some mechanics.
- 22 Q. Okay. Give me your employment history, if you will,
- 23 starting with high school and move forward to present.
- 24 A. Oh, lord.
- 25 Q. And if you could, just to kind of make it faster, just

1 give me some approximate dates, and what you did for
2 each employer.

3 A. Oh, that's going to be hard. I can't hardly remember
4 yesterday, let alone then. I mainly just used to help
5 my dad.

6 Q. Okay.

7 A. He run the racetracks.

8 Q. What's the name of the racetrack?

9 A. He run Lavonia Speedway, Cherokee Speedway, Buffalo
10 Speedway. Just several racetracks.

11 Q. Buffalo Speedway is in Union?

12 A. Yeah.

13 Q. All right.

14 A. We used to own it. He did.

15 Q. What's his name?

16 A. It was Edgar Rock Gault. He's dead now. He passed
17 away.

18 Q. When did he pass away?

19 A. Back in October 30th, '06.

20 Q. Did he have a company?

21 A. He had the --

22 (Off the record)

23 (Court reporter marks document as
24 Defendant's Exhibits Numbers 1-5)

25 Examination resumed by Mr. Goings:

1 Q. Mr. Gault, I've marked all of Mr. Potter's exhibits
2 with a sticker that has exhibit number with your name
3 on it, is that correct?

4 A. Yes, sir.

5 Q. All right. What was your dad's company?

6 A. He just run Gault's Used Cars and Auto Parts, and run
7 the racetracks. He didn't have -- I mean, you know,
8 back in them days, it -- you know, it was just mostly
9 individual.

10 Q. He just ran the racetracks?

11 A. Yeah.

12 Q. Okay. And what did you do for him for purposes of his
13 racetracks?

14 A. Pick up rocks, sell a hotdog, turn the water on on the
15 water truck. Just a little bit of anything.

16 Q. Okay. Were these dirt tracks?

17 A. Yes.

18 Q. All dirt tracks?

19 A. Uh-huh (indicates affirmative response).

20 Q. Is that a yes?

21 A. Yes. Sorry.

22 Q. Did there come a time when you began to work for Total,
23 Incorporated?

24 A. Yes. I started helping -- I don't recollect the date,
25 but you know, my dad had been around it all his life.

1 He bought and sold cars and stuff, so I've been around
2 it since I was two years old. So, you know.

3 Q. I think Mr. Potter said he started Total, Incorporated
4 in 2006. Did you hear that?

5 A. Uh-huh (indicates affirmative response).

6 Q. Is that a yes?

7 A. Yes.

8 Q. Is it fair to say that occurred in 2006, when you began
9 to work for Total, Incorporated? Or was it 2007?

10 A. I think it was around 2007. I'm not sure, but I think
11 it was somewhere along in there.

12 Q. Okay. How did you begin working with Mr. Potter?

13 A. He just asked me would I help him. He'd got that good
14 job with UPS then, and quit that other one, and he
15 couldn't be there. So he asked me would I help. And I
16 said sure. I mean, I enjoyed it. I mean, I just kind
17 of -- I done it in the beginning for more of a hobby
18 than I did a work. You know what I'm saying?

19 Q. How did you know Mr. Potter?

20 A. We grewed up as kids.

21 Q. Did y'all go to high school together?

22 A. Yes.

23 Q. Did he play football?

24 A. No.

25 Q. So you're the athlete of the two?

1 A. Yeah.

2 Q. All right. Now, I understand that Total, Incorporated
3 did business as Gault Used Cars.

4 A. Right.

5 Q. And you said your dad also did business as Gault Used
6 Cars.

7 A. Yeah, but --

8 Q. Just help me understand --

9 A. Okay.

10 Q. -- how that worked.

11 A. What happened is my dad sold the used car and parts
12 business to his brother in '81 when he bought the
13 racetrack.

14 Q. And who's his brother?

15 A. Otis Gault, which is passed away now, too.

16 Q. Okay.

17 A. So in '05, Otis passed away, and my dad was still
18 living, so he bought it back. But he wasn't able to
19 open it back up. And I was trying to take care of him,
20 because you know, him and my mother's elderly. But so,
21 Keith come to him and wanted to rent the place and open
22 up a car lot. So that's how it all started. Keith
23 went to him and they worked it out and they rented it.

24 Q. Okay. I didn't understand that from Mr. Potter's
25 deposition.

Deposition of Michael Gault

- 1 A. Yeah.
- 2 Q. But Keith Potter ended up renting the same location
- 3 that your dad and your uncle --
- 4 A. Yes.
- 5 Q. -- sold cars as --
- 6 A. Yes.
- 7 Q. -- Gault Used Cars.
- 8 A. Yes, sir.
- 9 Q. So that's been an established location as a car
- 10 dealership for awhile in Gaffney, right?
- 11 A. Since the '60's.
- 12 Q. Okay. Where is it located?
- 13 A. It's on Union Highway.
- 14 Q. Give me an example. Just kind of --
- 15 A. You know where McDonald's is?
- 16 Q. Yeah.
- 17 A. Like you're going towards Union, down there at the red
- 18 light on the left.
- 19 Q. All right.
- 20 A. You've had to pass it a million times.
- 21 Q. Yeah, absolutely. I haven't bought a car from you,
- 22 but...
- 23 A. Huh-uh (indicates negative response).
- 24 Q. Coming from Gaffney towards Union on that road --
- 25 A. Yes.

- 1 Q. -- what's -- on Union Highway --
2 A. Union Highway.
3 Q. -- is it on the right or the left?
4 A. Left.
5 Q. It's on the left-hand side --
6 A. Uh-huh (indicates affirmative response).
7 Q. -- coming from Gaffney to Union?
8 A. Yes.
9 Q. How far is it down from that McDonald's?
10 A. Half mile, mile.
11 Q. Okay. The property that Total, Incorporated did
12 business out of in Gaffney, did Total, Incorporated own
13 that or --
14 A. No.
15 Q. -- did it lease it?
16 A. It leased it.
17 Q. Who owns that property now?
18 A. My dad owned it. Now, my mom owns it.
19 Q. Your mom owns it. Do you have any ownership in that
20 property?
21 A. No.
22 Q. Okay. Is it fair to say you worked with your dad in
23 his used car dealership and his speedway --
24 A. Yes.
25 Q. -- up until the time he passed away, and then you

1 helped Mr. Potter sell cars at that same very location?

2 A. Yeah.

3 Q. Is that right?

4 A. (Indicates affirmative response)

5 Q. Did you have any employment in between working for
6 your --

7 A. Yeah, I helped my uncle. I don't remember when it was,
8 but I helped him build some swimming pools somewhere
9 along in there, but I don't remember exactly when it
10 was.

11 Q. Okay. What do you currently do?

12 A. Buying and selling a car here or there, just piddling.
13 Nothing major. Just taking care of my mother. She's
14 -- she ain't in good health.

15 Q. Where's your mother live?

16 A. At 2016 Union Highway.

17 Q. How far is that from your house?

18 A. My house? Probably two miles, three miles.

19 Q. Okay. Do you have a location which you are selling
20 cars out of?

21 A. No.

22 Q. You're just doing it kind of on the side?

23 A. Yeah.

24 Q. Do you have a dealer's license?

25 A. No.

- 1 Q. So you --
- 2 A. No, I just, you know, I bought one or two a year, you
- 3 know.
- 4 Q. I understand.
- 5 A. Just piddling.
- 6 Q. Other than selling one or two cars a year, what are you
- 7 doing?
- 8 A. Taking care of my mother.
- 9 Q. Any other type of employment?
- 10 A. No. I ain't employed nowhere else.
- 11 Q. Have you tried to seek employment anywhere?
- 12 A. Not really.
- 13 Q. What are you doing to take care of your day-to-day
- 14 affairs, if you're only selling one or two cars a year?
- 15 A. Like I said, I'm taking care of my mother. She's in
- 16 pretty bad health.
- 17 Q. I understand, but from an income standpoint.
- 18 A. I mean, that's about it.
- 19 Q. Do you own any businesses, have any business interests?
- 20 A. Any business? I mean --
- 21 Q. Or interest in any business, I'm sorry.
- 22 A. No, huh-uh (indicates negative response).
- 23 Q. Do you attend church?
- 24 A. Sometimes.
- 25 Q. And when you do attend church, what church do you

1 attend?

2 A. I go to the -- it's my mama's. I can't even think of
3 the name of it. Brain locked on that, and I don't
4 remember the name of it.

5 Q. When was the last time you went to that church?

6 A. It's probably a year.

7 Q. Okay. Are you a member of any social organizations?

8 A. No.

9 Q. You're not a member of Kiwanis, Rotary? You're not a
10 Mason or any of those?

11 A. No, sir.

12 Q. Are you a member of any trade organizations for selling
13 cars or used cars?

14 A. No.

15 Q. Have you tried to apply for a job at any car
16 dealership?

17 A. No.

18 Q. Why not?

19 A. As -- I can't be tied down, because I've got to take
20 care of my mother.

21 Q. I understand. How old is your mama?

22 A. Seventy.

23 Q. Who completes your tax returns?

24 A. I can't think of the name of them.

25 Q. Where are they located?

1 A. In Greer.

2 Q. Have you used the same person to complete your tax
3 returns over the last five years?

4 A. Yeah, they've done the last five years.

5 Q. And did they also do the tax returns for Total,
6 Incorporated?

7 A. No.

8 Q. What do you need to be able to refresh your
9 recollection as to the name of the person or entity
10 that has prepared your tax returns?

11 A. I need to look at one of my returns. I can't -- I'm
12 brain locked. I can't think of -- I even had trouble
13 finding their number one day trying to call them.

14 Q. And you have your tax returns at the house, though,
15 right?

16 A. Somewhere around there.

17 Q. Can you read?

18 A. Yes.

19 Q. Can you write?

20 A. Yes.

21 Q. Have you ever been arrested?

22 A. Yes.

23 Q. For what?

24 A. I got arrested for failure to stop for a blue light
25 when I was, like, 18. And they had me -- I got -- I

1 don't know what they call it arrest for, for -- it was,
2 let's see. what do they call that? I forgot to list
3 something, or something, and they got me for contempt
4 of court. Something crazy.

5 Q. You forgot to list what?

6 A. A generator that I owned.

7 Q. what did that relate to? what kind of matter did that
8 relate to?

9 A. To that Drye case.

10 Q. Okay. So you were held in contempt of court --

11 A. Yeah.

12 Q. -- in the Drye case? Did you go to jail for it?

13 A. Yeah.

14 Q. How long?

15 A. Five days.

16 Q. Okay.

17 Ms. Goforth:

18 It's on appeal.

19 The witness:

20 Yeah.

21 Examination resumed by Mr. Goings:

22 Q. who's your lawyer in that case?

23 A. Alan.

24 Q. So let me understand. So you failed to list a
25 generator on a document, and the Court held you in

1 contempt of court.

2 A. Uh-huh (indicates affirmative response).

3 Q. And you were in jail for five days.

4 A. Five days, yeah.

5 Q. What type of document did you --

6 A. What would you call that, irrogatory (phonetic) or
7 something? I don't really know.

8 Q. Do you know the name of the judge that held you in
9 contempt?

10 A. Yeah, Judge Hayes.

11 Q. Judge Mark Hayes?

12 A. Yes.

13 Q. Okay. Was that in something called a supplemental
14 proceeding? Do you know?

15 A. I don't understand that. I don't know.

16 Q. Have you ever been convicted of anything else?

17 A. Not as I remember.

18 Q. Have you ever been arrested for anything?

19 A. Not as I remember.

20 Q. Okay. Have you ever been involved in any poker
21 machines or illegal gambling?

22 Ms. Goforth:

23 Object to the form.

24 Examination resumed by Mr. Goings:

25 Q. You can answer.

- 1 A. Explain your question.
- 2 Q. Have you ever been arrested, convicted, or accused of a
- 3 crime related to --
- 4 A. I got arrested --
- 5 Q. -- illegal gambling?
- 6 A. -- I got arrested for two poker machines that didn't
- 7 even belong to me.
- 8 Q. Okay. So you were arrested --
- 9 A. Yes.
- 10 Q. -- in addition to the --
- 11 A. Yeah.
- 12 Q. -- two things you told me? When was that arrest?
- 13 A. Sometime last year.
- 14 Q. And were you found guilty?
- 15 A. No, it ain't even when to court yet.
- 16 Q. You have an attorney in that matter?
- 17 A. Yes.
- 18 Q. Okay. Who's your lawyer for that matter?
- 19 A. God, if you hadn't asked me, I could have told you. I
- 20 can't remember his name. He's out of Gaffney, though.
- 21 Q. All right. Have you ever filed for bankruptcy?
- 22 A. Yes.
- 23 Q. When?
- 24 A. Back in, I think it was '99, when they outlawed poker
- 25 machines.

1 Q. Why did you file for bankruptcy in '99 when they
2 outlawed poker machines?

3 A. Because that was my business. I was in video poker.

4 Q. Okay. Well, when I asked you about your employment
5 history, you didn't say anything about poker.

6 A. I didn't even -- it didn't even register until you
7 brought it up.

8 Q. I understand. So explain how that was your business.

9 A. I started there for a few years, I run -- you know,
10 when gaming was illegal [sic] in South Carolina. I
11 had, I run some video poker machines.

12 Q. Where?

13 A. On Cherokee Avenue there, a couple different spots.

14 Q. Okay.

15 A. Like, if you had a location, I'd come put them in your
16 store and we'd split it 50/50.

17 Q. I gotcha. And this was when video poker was legal
18 or --

19 A. Legal.

20 Q. -- illegal?

21 A. Legal.

22 Q. Legal.

23 A. Yeah.

24 Q. And did you ever operate video poker out of any place
25 that did business as Gault Used Cars or Total,

1 Incorporated?

2 A. No.

3 Q. How many poker machines did you have at one time?

4 A. I don't remember.

5 Q. Explain to me how the outlawing of video poker led to
6 you having to file for personal bankruptcy.

7 A. well, I mean, we had, you know, just like a bank loan
8 on the machines. And when they outlawed them, you
9 couldn't pay for them.

10 Q. And how much was your bank loan at that time, for those
11 machines?

12 A. I don't remember. It's been so long ago.

13 Q. Was it Chapter 7 you filed, 13, or 11?

14 A. I don't remember. I know it went to a -- I think it
15 was a 7.

16 Q. Provide the names of the people in Cherokee County that
17 you're related to by blood and marriage with a last
18 name other than Gault.

19 A. Martha Thompson. That's my aunt.

20 Q. Okay.

21 A. That's the only one I can think of.

22 Q. Anybody else?

23 A. I can't think of nobody else in Cherokee County.

24 Q. All right. You have a set of documents in front of
25 you.

- 1 A. Yes, sir.
- 2 Q. Were you the general manager for Total, Incorporated?
- 3 A. Yes, sir.
- 4 Q. What years were you serving as general manager for
- 5 Total, Incorporated?
- 6 A. It was a few years there.
- 7 Q. At all times when you worked for --
- 8 A. Yes, sir.
- 9 Q. -- for Keith Potter, you served as the manager for
- 10 Total, Incorporated?
- 11 A. Yes, sir.
- 12 Q. Okay. Is Total, Inc. still in business today?
- 13 A. No, sir.
- 14 Q. All right. Did you have any ownership interest in
- 15 Total, Incorporated?
- 16 A. No, sir.
- 17 Q. How were you compensated by that company?
- 18 A. I got -- Keith furnished all the gas and a nice vehicle
- 19 to drive all the time. And mainly, what I done was
- 20 went to the sales and bought the cars and made sure
- 21 they got fixed and got put on the lot and stuff.
- 22 Q. Okay. How were you compensated? Were you paid by the
- 23 hour, paid by the transaction?
- 24 A. No, like I said, in the beginning, it was kind of just
- 25 like more of a "I'll help you out" deal, until you get

1 somebody. And it was like a hobby for me. I mean, it
2 kind of -- a lot of people like to -- enjoy going out
3 and playing 18 rounds of golf. Well, I like going to a
4 car sale and buying cars. I mean, it was kind of --
5 you know what I'm saying?

6 Q. Uh-huh (indicates affirmative response). So it started
7 out as you were just volunteering to help him out, and
8 then it became a job for you, right?

9 A. Well, there in the end, it became a job. But in the
10 beginning, it wasn't a job. It was kind of...

11 Q. How were you paid by Total, Incorporated?

12 A. I mean, like I was saying, in the beginning, I never
13 was paid. I just -- they furnished me a car and
14 expenses, you know, like if I was out at the sale, they
15 bought my meals and bought all the gas and stuff like
16 that. But I mean, as far as -- in the beginning, as
17 far as a paycheck, it wasn't one in the beginning.

18 Q. Did it ever become --

19 A. Yes, later on --

20 Q. -- a situation where you --

21 A. -- it did.

22 Q. When did you start getting a paycheck?

23 A. I don't recall the date. I'll have to look back and
24 see.

25 Q. Was it a year or so after, or the first year you were

1 working?

2 A. No, it was a little bit later on than that.

3 Q. How were you paid, though, when you were paid? By the
4 hour, or by the car transaction?

5 A. No, I was just paid by salary.

6 Q. What was your salary?

7 A. Oh, lord, I don't even remember. I don't recollect
8 without looking at my stuff. I don't know. I don't
9 remember what I got paid. It wasn't enough.

10 Q. More than 30,000 or less than 30,000?

11 A. I think it was less.

12 Q. Well --

13 A. But like I say, they did pay my insurance and provided
14 a car and stuff, and you know, stuff like that.

15 Q. So you got benefits on top of the salary?

16 A. Yeah.

17 Q. Were you paid a commission at any time?

18 A. No.

19 Q. Who else was employed at Total, Inc., other than
20 yourself?

21 A. I don't remember. There was a bunch of them at one
22 time, in and out.

23 Q. Car dealers, or car salesmen?

24 A. Yeah, salesmen and stuff, yeah.

25 Q. Other than salesmen, who were the type of people that

1 were employed by Total, Inc.?

2 A. I mean, he had, like, you know, office help, mechanics.
3 Just different stuff, you know, to work on the cars and
4 stuff.

5 Q. How often did Mr. Potter come in and supervise his
6 business?

7 A. He was usually there every Saturday. And sometimes
8 during the week, if he didn't have to work, he was
9 there. And he did come by sometimes in the evenings.
10 His deal was he liked to come on Saturdays. He liked
11 to sell cars and haul them. He liked to drive the
12 truck and hauling cars.

13 Q. And what did you like to do?

14 A. I just liked to go to sales and buy.

15 Q. Were you a salesman there?

16 A. No. I mean, I have sold. But I mean, I wasn't
17 considered a salesman, you know.

18 Q. But as a general manager, you approved the sales?

19 A. Oh, yeah. Yeah. I could approve a sale, yeah.

20 Q. How many cars did Total, Incorporated have at one time?

21 A. A bunch. I don't know the numbers, but like I said, we
22 used to be one of DSC's best customers. We'd turn more
23 cars a month for them than, they said, any other dealer
24 there.

25 Q. When you say a bunch, are you talking about ten cars,

- 1 or more than ten cars?
- 2 A. No, more than ten.
- 3 Q. More than 20?
- 4 A. Yes.
- 5 Q. More than 30?
- 6 A. Yes.
- 7 Q. More than 40 a month?
- 8 A. Some months, yes.
- 9 Q. So you had on the lot, at times, 40 cars?
- 10 A. Oh, we had on the lot sometimes a hundred.
- 11 Q. These were all used cars, correct?
- 12 A. Yes, sir.
- 13 Q. Now, I understand that there were two locations, one in
- 14 Greer.
- 15 A. Yes.
- 16 Q. And then there was one in --
- 17 A. Gaffney.
- 18 Q. -- Gaffney on Union Highway.
- 19 A. Yes, sir.
- 20 Q. Which location did you work at?
- 21 A. Neither one. I floated. I was all over.
- 22 Q. You would go to both locations on any given day,
- 23 sometimes?
- 24 A. Yes.
- 25 Q. Okay. Was there another general manager other than

1 yourself?

2 A. Yes, they had one at the Greer lot, yes.

3 Q. which lot were you working at the most, the Greer
4 lot --

5 A. I didn't work at the lot.

6 Q. where'd you work?

7 A. I just floated on the road. Like I said, I hit all the
8 auctions. I looked for the stuff to buy. I wasn't one
9 that just went in and sat behind a desk, you know?

10 Q. who ran the day-to-day operations of Total,
11 Incorporated?

12 A. Ever who the sales people was at the time that was
13 there.

14 Q. Okay. Mr. Potter said you ran the day-to-day
15 operations.

16 A. Yeah, I run --

17 Q. Is that --

18 A. -- the day-to-day, yes. Yes.

19 Q. Okay.

20 A. But I'm talking about that was at that store that day.
21 You know what I'm saying?

22 Q. When did you recall first doing business with Dealer
23 Services Corporation?

24 A. I don't remember when he signed up with them. I was
25 thinking it was '07, but I'm not sure.

- 1 Q. Okay. You look at Plaintiff's Exhibit 2, that's a
2 Dealer Services Demand Promissory Note and Security
3 Agreement from 2007, right?
- 4 A. Yes, sir.
- 5 Q. All right. And it could have been before that date?
- 6 A. Could have been. I don't -- I don't know, to be honest
7 with you, Mr. Goings.
- 8 Q. Is it your recollection, though, that over the years,
9 your credit limit increased?
- 10 A. Oh, yes. Yes.
- 11 Q. And every time the credit limit would increase, you
12 would sign, or the company would execute a brand new
13 Demand Promissory Note and Security Agreement?
- 14 A. I don't remember how that went.
- 15 Q. Okay.
- 16 A. I know usually, Monty would call Keith, and whatever.
- 17 Q. And who's Monty?
- 18 A. He was their rep.
- 19 Q. Monty Vaughan?
- 20 A. Yes.
- 21 Q. Okay. And did you ever have any dealings --
- 22 A. Oh, yeah.
- 23 Q. -- with Monty Vaughan?
- 24 A. Yeah, I talked to him a bunch.
- 25 Q. For purposes of the Demand Promissory Note and Security

1 Agreements that were signed, did you sign those
2 agreements on behalf of Total, Incorporated?

3 A. Yes. They -- I never -- I never remembered signing any
4 in the beginning, but in the end there, I reckon they'd
5 got the limit so high, and I run everything, that they
6 wanted me to sign one. I don't know why, you know.

7 Q. Who kept the books and records of Total, Incorporated?

8 A. They was kept at the office.

9 Q. And you had access to them, correct?

10 A. Yeah, I had access to them.

11 Q. And if you ever had any questions about what the credit
12 limit was, or any problems with a line of credit from
13 any of your financiers, you could go to those loan
14 documents, or notes, for review, correct?

15 A. A lot of that stuff was online. I mean, and I knowed
16 what our limits was, so I never really went and had to
17 look at nothing. You know what I'm saying?

18 Q. I understand. Let's look at Plaintiff's Exhibit 1.

19 A. Yeah.

20 Q. This is what I'm going to represent to you as the
21 latest Demand Promissory Note --

22 A. Yes, sir.

23 Q. -- and Security Agreement that was entered into between
24 Dealer Services Corporation and Total, Incorporated.
25 Are you aware of any one other than this one that was

1 completed in 2012 to present?

2 A. What do you mean? Oh, do I remember another DSC?

3 Q. Yeah.

4 A. I don't --

5 Q. I'm just trying to figure out what -- is this your
6 recollection, the latest one?

7 A. I think it was, because I think our line was 200,000.
8 This must have been the latest one. I'm not a hundred
9 percent sure, but I think so.

10 Q. Okay. And did you sign this document?

11 A. I think they made me sign this one. Yes, I did sign
12 it.

13 Q. And does that appear to be your signature --

14 A. Yes, it is.

15 Q. -- on page 10 --

16 A. Yes, sir.

17 Q. -- of 11?

18 A. Yes, sir.

19 Q. And you signed under the statement, if you flip over to
20 the next page, it says, guarantor is acknowledging
21 consent of and to the foregoing.

22 A. Yes.

23 Q. And you understood that you were acknowledging and
24 consenting to the terms of the Demand Promissory Note
25 and Security Agreement, correct, when you signed this

1 document?

2 A. I guess. I mean, like I said, I wasn't -- you know, I
3 probably never read it. But they needed me to sign it,
4 and I signed it, you know?

5 Q. I understand. But you signed it freely and
6 voluntarily --

7 A. Yeah.

8 Q. -- correct?

9 A. Yeah. Ain't nobody twisted my arm, yeah.

10 Q. Nobody twisted your arm, you didn't have a gun to your
11 head --

12 A. Yeah.

13 Q. -- to sign, right?

14 A. No.

15 Q. And this line of credit was used for purposes of --

16 A. Buying and selling cars.

17 Q. -- buying and selling cars --

18 A. Yes.

19 Q. -- for Total, Incorporated, correct?

20 A. Yes.

21 Q. I mean, y'all needed the money --

22 A. Oh, yeah.

23 Q. -- and without the money, you can't buy and sell cars,
24 can you?

25 A. Well, we couldn't buy and sell as many.

1 Q. That's right. And volume's important for a --

2 A. Volume's important.

3 Q. -- car dealer, correct? Because the more cars you can
4 sell each month, the more money you can make.

5 A. Right.

6 Q. Correct?

7 A. Right.

8 Q. And in order to buy the cars, you've got, generally, a
9 used car dealer has to get a financier or a line of
10 credit --

11 A. Yes, sir.

12 Q. -- correct?

13 A. Yes, sir.

14 Q. And up until there was a dispute in 2012, to the best
15 of your knowledge, Total, Incorporated and Dealer
16 Services had a fine working relationship, correct?

17 A. It's like Keith told you, we was their best customer.

18 Q. Okay.

19 A. The vice president called him and told him that.

20 Q. Did you overhear that conversation?

21 A. No, he called me right after it and told me.

22 Q. I gotcha. Well, up until there was a dispute over
23 amounts of money owed and all that stuff happening with
24 Drye Crushing, there was no problem with Dealer
25 Services, was there?

1 A. There was never, ever a problem with Dealer Services
2 'til Ben Kochenower shut down the company and stopped
3 -- and closed the bank account.

4 Q. Okay. And that was wholly unrelated to anything Dealer
5 Services was doing, correct?

6 A. Correct.

7 Q. Okay. Dealer Services didn't shut down the bank
8 accounts, did they?

9 A. No, sir.

10 Q. Okay. Now, do you actually recall reading and
11 reviewing the Demand Promissory Note and Security
12 Agreement prior to your execution of this document?

13 A. No, sir.

14 Q. Okay. But you had the opportunity to read and review
15 it, correct?

16 A. I could. But I think the day we signed this, Monty met
17 us out somewhere on the road and me and Keith met him
18 and just signed it and went on, you know?

19 Q. I understand. But nothing prevented you from reading
20 it, though, did --

21 A. Nothing prevented me. I mean, I could have took time
22 to read it, but I didn't.

23 Q. Okay. And this was in 2012. You had signed --

24 A. Yes.

25 Q. Let me finish. I know you know where I'm going. You

1 had signed previous Demand Promissory Notes and
2 Security Agreements for other lines, for previous lines
3 of credit with Dealer Services, correct?

4 A. I don't remember. I know at the end there, they made
5 me sign. But I don't remember, to be honest with you.
6 I don't see another one in these five exhibits that I
7 signed besides that one.

8 Q. And I'll represent to you that I didn't bring all the
9 documents in this case. But let me just show you
10 something --

11 A. Okay.

12 Q. -- we'll mark as Plaintiff's Exhibit 6, for purposes of
13 your deposition.

14 (Court reporter marks document as
15 Plaintiff's Exhibit Number 6)

16 Examination resumed by Mr. Goings:

17 Q. All the documents start looking the same after awhile.

18 A. Yeah, buddy.

19 Q. Plaintiff's Exhibit 6, would you agree with me that
20 this is an Individual Personal Guarantee that you
21 signed on or about March 5th, 2009 for Dealer Services
22 Corporation?

23 A. Yes.

24 Q. Does that appear to be your signature?

25 A. It appears to be, yeah.

1 Q. And the date of it is 2009?

2 A. Yeah.

3 Q. I'll show you what is marked as Plaintiff's Exhibit 7.

4 (Court reporter marks document as

5 Defendant's Exhibit Number 7)

6 Examination resumed by Mr. Goings:

7 Q. Does this document appear to be an Individual Personal
8 Guarantee dated August 28, 2010 bearing your signature
9 as well?

10 A. Do what, now? What date?

11 Q. What's the date on that?

12 A. I got September 14th, 2010.

13 Q. It's handwritten on the back page September --

14 A. September 14.

15 Q. You're right. Go to the first page. What date is on
16 it?

17 A. That must have been when they first printed it and
18 didn't get it to us to sign it on time or something.

19 Q. I gotcha.

20 A. Yeah.

21 Q. I'm just going this to help refresh your recollection.
22 At least back --

23 A. Yeah.

24 Q. -- until 2009, it may be even earlier, you were signing
25 personal guarantees guaranteeing the terms and

1 conditions of the Demand Promissory Note and Security
2 Agreement, correct?

3 A. I didn't remember it being that long, but yeah, that is
4 my signature.

5 Q. Okay. I'm not trying to hold you to any dates.

6 A. No, that's fine.

7 Q. I'm just trying to understand. And prior to signing
8 the Demand Promissory Note and Security Agreement which
9 is marked Exhibit 1 in 2012, in previous years, you had
10 signed --

11 A. I had signed a couple, yeah.

12 Q. -- signed those as well. Now, you signed Plaintiff's
13 Exhibit 1 --

14 A. Uh-huh (indicates affirmative response).

15 Q. -- the Demand Promissory Note and Security Agreement.
16 Did you ever ask anybody at Dealer Services to explain
17 the terms --

18 A. No.

19 Q. -- of this document? Did you ask anybody at Dealer
20 Services to amend or change or alter or revise the
21 terms of this agreement?

22 A. No.

23 Q. Okay. And you agreed and consented to the terms and
24 conditions set forth in this document when you signed
25 it, isn't that right?

1 A. Yes.

2 Q. Okay. And you don't dispute the validity of the terms
3 and conditions --

4 A. No.

5 Q. -- of this document, do you? Okay. Did you consult
6 with an attorney at any time prior to executing and
7 signing the Demand Promissory Note and Security
8 Agreement?

9 A. No.

10 Q. Okay. You had the opportunity to do it if you needed
11 to, right?

12 A. Yes.

13 Q. Okay. And at least in 2012, based on the date of the
14 document you signed on this, you agreed to abide by
15 those terms and conditions, correct?

16 A. Yes.

17 Q. Okay. And you also signed a personal guarantee as it
18 related to Plaintiff's Exhibit 1, which is the Demand
19 Promissory Note and Security Agreement, correct?

20 A. Yes.

21 Q. Let me find that for you. Because it is not marked as
22 an exhibit. I'm going to show you what's marked as
23 Plaintiff's Exhibit 8.

24 (Court reporter marks document as
25 Defendant's Exhibit Number 8)

1 Examination resumed by Mr. Goings:

2 Q. If you could identify this document for the record,
3 sir.

4 A. This is an Individual Personal Guarantee on January
5 3rd, 2012, signed by Mike Gault.

6 Q. Does this appear to be a true and accurate copy of the
7 personal guarantee that you did sign?

8 A. As far as I know, yes, sir.

9 Q. Okay. Is that, in fact, your signature on page three
10 of this document?

11 A. Yes, sis, it appears to be.

12 Q. Same questions related to this document as I asked you
13 about Plaintiff's Exhibit 1. You signed this document
14 freely and voluntarily, correct?

15 A. Yes, sir.

16 Q. You had the opportunity to fully read this document,
17 correct?

18 A. Yes, sir.

19 Q. Did you read the Individual Personal Guarantee?

20 A. I don't think I did, no, sir.

21 Q. Okay. You had the opportunity to read it, correct?

22 A. Yes, sir.

23 Q. Nothing prevented you from reading it --

24 A. No.

25 Q. -- is that correct? And if you'd read it, you'd have

1 been fully informed as to the terms and conditions of
2 this document, correct?

3 A. Yes, sir.

4 Q. But you understood by signing it, you were agreeing
5 personally to guarantee all the terms and conditions of
6 Plaintiff's Exhibit 1, correct?

7 A. Yes, sir.

8 Q. I mean, you understand what a personal guarantee is,
9 correct?

10 A. Yes, sir.

11 Q. All right. So without actually reading every word and
12 every sentence to the personal guarantee, you knew what
13 it was legally obligating you to do, correct?

14 A. Yes, sir.

15 Q. All right. Did you ask for any provisions of the
16 individual personal guarantee marked as Plaintiff's
17 Exhibit 8 to be edited, amended, or changed prior to
18 signing?

19 A. Not as I remember.

20 Q. Did you consult with an attorney prior to signing this
21 document?

22 A. No, sir.

23 Q. Did you have the opportunity to consult with an
24 attorney?

25 A. I'm sure I did, but I didn't.

1 Q. Okay. Did it come a time when Total, Incorporated
2 defaulted on the terms of the Demand Promissory Note
3 and Security Agreement?

4 A. Yes, sir.

5 Q. Okay. And so it came a time when that Demand
6 Promissory Note and Security Agreement, which is marked
7 as Plaintiff's Exhibit 1, was breached or defaulted on
8 by Total, Incorporated, correct?

9 A. Yes.

10 Q. And as I understand it, what led to that breach of the
11 Demand Promissory Note and Security Agreement was the
12 litigation between Total, Incorporated and the --

13 A. Drye Crusher.

14 Q. -- and the Drye Crusher.

15 A. Yes, sir.

16 Q. Okay. And Dealer Services, Incorporated, didn't cause
17 you or your company to violate these documents, did
18 they?

19 A. No. They didn't cause Keith or his company to, no.

20 Q. Okay. So Keith, you, or Total, Incorporated.

21 A. Yeah. No.

22 Q. All right. Explain to me how the -- you kind of
23 already did, but just explain to me a little more fully
24 how the litigation with Drye Crushing lead to the
25 breach of this document and the -- this document, which

1 is the Demand Promissory Note and Security Agreement,
2 and the Personal Guarantee.

3 A. Drye's Crushing sued Total, Incorporated.

4 Q. Okay.

5 A. And they put a judgment against the company for 49,000
6 dollars. Which they was offered a settlement check for
7 50,000 dollars, and they refused to take it. They said
8 with the fees and all, it was like 82,5. And -- but --
9 and I don't know how all that works, but they appointed
10 Ben Kochenower as a receiver. And he -- Ben Kochenower
11 went in and froze the bank accounts, shut down the
12 company, and that's how all this domino effect.

13 Q. Okay. Because when the bank accounts were frozen,
14 Total, Incorporated was unable to repay Dealer Services
15 Corporation for what the line of credit was
16 outstanding, correct?

17 A. Correct.

18 Q. And this is what I'm trying to understand. What was
19 the amount outstanding owed to Dealer Services
20 Corporation at the time the receiver seized the bank
21 accounts?

22 A. Mr. Goings, I don't know that.

23 Q. Okay. Do you agree with me that that amount is more
24 than 150,000 dollars?

25 A. No, sir, I didn't think it was.

1 Q. Do you have any documentation to show what the amount
2 was owed?

3 A. I mean, we had paperwork, like, every week. So I'm
4 sure in the paperwork somewhere, there was amounts that
5 was owed and what had been paid off and what hadn't.
6 So...

7 Q. Okay. And that paperwork was paperwork that was
8 generated by Dealer Services Corporation, correct?

9 A. Correct.

10 Q. And they shared with you those documents, the payment
11 history and the balance --

12 A. Yes.

13 Q. -- outstanding, correct?

14 A. You could get that, yes.

15 Q. All right. And do you have any reason to dispute the
16 figures that are on Dealer Services' paperwork as to
17 the principal interest, fees, and costs that were owed
18 and dueing at the time that the agreements were
19 breached?

20 A. Like I said, I don't know the figures.

21 Q. Okay. I understand that you don't know the figures --

22 A. Yeah.

23 Q. -- cold in this deposition --

24 A. Yeah.

25 Q. -- but do you have any reason to doubt or dispute the

1 figures that Dealer Services says was owed?

2 A. Well, I think at the time that the company filed
3 bankruptcy, they inserted something in the papers that
4 was like -- I'm not sure, but I think it was around
5 115,000. I think now it's showing, like, 167,000. So
6 I don't know.

7 Q. And thank you for that. I'm limiting my question to
8 when the default occurred --

9 A. Yes.

10 Q. -- how much was outstanding when the default occurred?

11 A. I don't know.

12 Q. Okay. Would you defer that question to what the Dealer
13 Services paperwork showed?

14 Ms. Goforth:

15 Object to the form.

16 Witness answers:

17 A. I don't know. I mean, I -- like I said, I don't know
18 without looking back, I have no idea.

19 Q. Okay.

20 A. I mean, I don't know if it's 20,000 or if it's 80,000.
21 I don't know.

22 Q. Was there two lines of credit?

23 A. Well, it was one line, but we had a salvage line and
24 retail line, they called it.

25 Q. I gotcha.

- 1 A. It was still all included in that 200.
- 2 Q. 200,000. And y'all went to a 200,000 credit limit
- 3 because 150,000 wasn't enough, correct?
- 4 A. No. Because we turned so many cars.
- 5 Q. Right, turned so many cars --
- 6 A. Uh-huh (indicates affirmative response).
- 7 Q. -- but y'all needed a higher limit, correct?
- 8 A. Well, it goes back to what we talked about earlier.
- 9 The more money, the more volume.
- 10 Q. Right.
- 11 A. You could buy ten cars instead of five.
- 12 Q. Sitting here today, you don't know how much money
- 13 Total, Incorporated received from DSC, Dealer Services
- 14 Corporation, that has not been repaid, do you?
- 15 A. No, sir.
- 16 Q. Okay. Do you understand there is a balance
- 17 outstanding?
- 18 A. I know there's a balance outstanding, yes, sir.
- 19 Q. You just don't know what that amount is, correct?
- 20 A. Well, the amount agreed upon was 22,5.
- 21 Q. And you're referring to settlement discussions --
- 22 A. Yes.
- 23 Q. -- and negotiations that went on, correct?
- 24 A. Yes.
- 25 Q. And I'm going to ask you about those.

- 1 A. Okay.
- 2 Q. But as it relates to the amount of money that was lent
- 3 to Total, Incorporated --
- 4 A. Uh-huh (indicates affirmative response).
- 5 Q. -- do you know how much money was outstanding that --
- 6 A. I don't.
- 7 Q. You see what I mean?
- 8 A. Yeah, I see what you mean. But I don't know.
- 9 Q. You don't know.
- 10 A. Huh-uh (indicates negative response).
- 11 Q. But there was a balance, correct?
- 12 A. There was a balance, yes.
- 13 Q. Okay. But do you have any paperwork or documentation
- 14 to show a different balance than what Dealer Services
- 15 says on the date of default?
- 16 A. I mean, I'm sure we could come up with the paperwork,
- 17 but I don't know -- I don't know what the amounts are.
- 18 I mean, at the time all this happened, I don't even
- 19 know how many cars we had -- that the company had
- 20 floored with y'all.
- 21 Q. I understand.
- 22 A. You understand? Because like I said, it fluctuated
- 23 every day.
- 24 Q. Depending on how many cars you sold --
- 25 A. Right.

- 1 Q. -- and how many cars you bought.
- 2 A. Right.
- 3 Q. And I understand that.
- 4 A. Yes.
- 5 Q. When did the receiver seize these bank accounts?
- 6 A. I think it was February the 28th -- I'm not sure on the
- 7 date -- 2012.
- 8 Q. February 28th, 2012?
- 9 A. I think so.
- 10 Q. To your knowledge, when was the last time -- what's the
- 11 date that Total, Incorporated sold the last car?
- 12 A. I don't know. I don't remember.
- 13 Q. Did you sell any vehicles after the bank accounts were
- 14 frozen?
- 15 A. I don't think so, no.
- 16 Q. Okay. Do you know who represents Drye's Crushing?
- 17 A. Weatherford, whatever his name is.
- 18 Q. And it's your understanding that the Drye's Crushing
- 19 litigation is still continuing, right?
- 20 A. To a certain point. It ain't with the company, because
- 21 like I said, the company's filed Chapter 7.
- 22 Q. Okay. And let's talk about that. When did Total,
- 23 Incorporated file for bankruptcy the first time?
- 24 A. I think it was August the 15th, 2012.
- 25 Q. Why do you believe it was August 15th, 2012?

1 A. I just -- I think that's the date. Because I think --
2 I think that's the day that Ben Kochenower come out
3 with the Sheriff's Department and picked up a bunch of
4 equipment and stuff.

5 Q. And y'all filed for bankruptcy on the date that the
6 receiver came and picked up --

7 A. Yeah.

8 Q. -- collateral of financiers or equipment that was there
9 on the property?

10 A. Right.

11 Q. Okay. What was filed, is it a 7, 13, or 11?

12 A. I think 11 was filed first, and then it got converted
13 to a 7.

14 Q. Okay. Who was your lawyer during that time period?

15 A. The company lawyer was Cooper.

16 Q. Bob Cooper?

17 A. Bob Cooper. And I think Mr. Potter got that wrong
18 earlier, because I think he told you Holland. But he
19 probably wasn't thinking what you was asking.

20 Q. Who's Mr. Holland?

21 A. He was the company's attorney that fought the case with
22 Drye's Auto Crushing.

23 Q. Okay. And the attorney in the bankruptcy action for
24 Total, Incorporated was Bob Cooper, correct?

25 A. Yes, sir.

- 1 Q. And were you involved in that bankruptcy matter?
- 2 A. Yes, sir.
- 3 Q. Between you and Mr. Potter, who was most involved in
- 4 the day-to-day affairs of the bankruptcy?
- 5 A. I was.
- 6 Q. He said you were.
- 7 A. Yeah.
- 8 Q. And Mr. Cooper worked on your behalf, correct? On
- 9 behalf of Total, Incorporated?
- 10 A. Yes, on Total, Incorporated, yes, sir.
- 11 Q. Okay. And did he send you documentation related to the
- 12 case?
- 13 A. Yes, sir.
- 14 Q. And did you consult with him before he made certain
- 15 filings?
- 16 A. Yeah. Me and Keith talked and consulted with him, yes.
- 17 Q. All right. And in the bankruptcy action, did Total,
- 18 Incorporated ever contest the amount that was owed or
- 19 outstanding?
- 20 A. To who?
- 21 Q. To Dealer Services.
- 22 A. Yes.
- 23 Q. Y'all did? when?
- 24 A. I remember a couple times we talked to Bob, and it was
- 25 -- and we contested it.

1 Q. What did y'all contest?

2 A. I done forgot what the amount was.

3 Q. Did you ever state in the bankruptcy proceeding that
4 the amount owed was 22,500 dollars?

5 A. At the what, now?

6 Q. The bankruptcy proceeding. In any bankruptcy
7 proceeding, bankruptcy filing, or any notice of claim
8 or anything that related to the bankruptcy action, did
9 Total, Incorporated take the position that only 22,500
10 dollars was owe and dueing to Dealer Services
11 Corporation?

12 A. Bob was informed that that was the settlement offer.

13 Q. So you said you informed Bob of that, correct?

14 A. Yes.

15 Q. But did --

16 A. And I -- he got a copy of the paperwork, too.

17 Q. Right. Let's talk about the settlement that you're
18 referring to. Did it come a time when you entered into
19 negotiations to settle or to compromise the outstanding
20 amount that was due and owing pursuant to the Demand
21 Promissory Note and the individual guarantees?

22 A. Did there come a time that I what, now?

23 Q. Discussed or had settlement conversation with --

24 A. Yes. Yes.

25 Q. -- with Dealer Services --

- 1 A. Yes, sir.
- 2 Q. -- over this line of credit that's marked as
- 3 Plaintiff's Exhibit 1?
- 4 A. Yes, sir.
- 5 Q. Okay. When did you start having these discussions?
- 6 A. I think it was around August the 12th.
- 7 Q. Okay. And --
- 8 A. I'm thinking. I know it's somewhere along in that time
- 9 period, somewhere along in there.
- 10 Q. And tell me what happened.
- 11 A. I mean, we was ready to settle it and pay it off and be
- 12 done with it, and then Kochenower come in and done what
- 13 he did and shut down the company.
- 14 Q. And you were unable to make the payments that were
- 15 agreed upon in the settlement agreement because of what
- 16 the receiver did, correct?
- 17 A. No. I was still going to be able to make the payment,
- 18 but by him having the company locked down, they
- 19 couldn't do nothing with the assets, because they
- 20 belonged to DSC and belonged to, you know, Total, Inc.
- 21 Q. Did you understand that the settlement proposal that
- 22 was offered to you by Dealer Services Corporation had a
- 23 time limitation on it?
- 24 A. No. They had agreed to extend that.
- 25 Q. All right. How did you first begin having settlement

1 discussions, offers to compromise with Dealer Services
2 Corporation?

3 A. They had -- they had called me up, I think, and -- I'm
4 pretty sure they initiated the call and wanted to do a
5 settlement deal.

6 Q. This is after your company had defaulted, or Total,
7 Incorporated had defaulted on the note, right?

8 A. Do what, now?

9 Q. After the default occurred, you said they contacted you
10 to try to settle the case, correct?

11 A. Yes.

12 Q. And who did you talk to?

13 A. I think one lady was named Kathy, and some guy named
14 Kevin. And I think there was another one or two. I
15 mean, it was, like, several people got involved in it.

16 Q. And what did they tell you?

17 A. They would settle it for 22,500 dollars.

18 Q. And what did you tell them?

19 A. We agreed with it. And they kept nine cars, because
20 they had -- they had sold -- they had picked up more
21 cars, and sold them before their ten-day right to cure
22 was -- you know. They violated the ten-day South
23 Carolina law to right to cure, you know.

24 Q. But at this point, you couldn't cure because all your
25 accounts were on lock-down, right?

- 1 A. Yeah, I could have. I could have borrowed the money.
- 2 Q. From who?
- 3 A. My mother.
- 4 Q. Okay. But you didn't, did you?
- 5 A. I mean, we couldn't get it together.
- 6 Q. Okay. Now, did you receive a proposed settlement
- 7 agreement --
- 8 A. Yes.
- 9 Q. -- from Dealer Services? Did you sign that agreement?
- 10 A. I don't remember if I signed it or not. But I never --
- 11 we never sent it back in because everything was, you
- 12 know, got locked down and they was trying to move
- 13 forward.
- 14 Q. Okay. So the settlement agreement that you received,
- 15 the proposed settlement agreement you received, was it
- 16 in writing?
- 17 A. Yes.
- 18 Q. How did you receive it?
- 19 A. I think they faxed it over and mailed a copy. I'm not
- 20 -- not real sure. But -- I don't remember how we got
- 21 it, but we got a copy of it.
- 22 Q. And you never signed that document, the proposed
- 23 settlement agreement. You never signed it, did you?
- 24 A. I don't remember if I signed it or not.
- 25 Q. And you never signed it on behalf of Total,

1 Incorporated, did you?

2 A. I don't remember if I signed it or not. I don't -- I
3 don't recall.

4 Q. And you never received a signed copy of this agreement
5 from Dealer Services, did you?

6 A. I don't remember if they signed it before they sent it,
7 or just sent a blank copy. I'd have to pull that out
8 and see. I don't remember.

9 Q. Sitting here today, though, you have no knowledge
10 whether or not Dealer Services signed the agreement or
11 not?

12 A. I don't remember, Mr. Goings, if they signed it before
13 they sent it to me or not. I don't recollect. I don't
14 remember. I know we got the document, but I don't
15 remember if it was already signed or not.

16 Q. You never sent a document signed by you, Mr. Potter, or
17 Total, Incorporated back to Dealer Services, though,
18 did you?

19 A. No.

20 Q. Okay. And did you ever --

21 A. Let me rephrase on this. I don't -- I don't recollect,
22 but I'm -- I don't remember 100 percent, but I'm almost
23 thinking that I did sign it and fax it back over to
24 them.

25 Q. Do you have a signed copy of it?

1 A. I don't know. I'd have to dig through all that
2 paperwork and find out. But I don't remember 100
3 percent.

4 Q. Do you recall being served with interrogatories and
5 request to produce in this case?

6 A. Is that what your dad brought me that day?

7 Q. No. That's summons and complaint. I'm talking about
8 discovery. Interrogatories and request to produce.

9 A. I don't remember.

10 Q. Have you ever looked at any document entitled
11 interrogatories or request to produce?

12 A. Might be a letter I got. I don't remember. I don't
13 remember. Let's see. This here's about the
14 deposition. I don't remember.

15 Q. Do you recall reviewing documents bearing the case
16 caption here today that asked you to answer certain
17 questions?

18 A. No, sir.

19 Q. Do you recall looking at documents bearing the case
20 caption that requested you to produce documents in this
21 case?

22 A. No, sir.

23 Q. And do you recall ever producing any documents in this
24 case?

25 A. No, sir, not so far. I don't remember.

1 Q. Have you, to this day, ever seen any settlement
2 agreement signed and executed related to the dispute
3 between you, Mr. Potter, Total, Incorporated, and
4 Dealer Services Corporation?

5 A. Are you asking me have I seen the 22,500-dollar thing
6 signed?

7 Q. Yes.

8 A. I seen it, but I don't remember if it was signed.

9 Q. Okay. That's all I'm asking. I mean --

10 A. Yeah.

11 Q. -- I know you've seen --

12 A. Yeah.

13 Q. -- the written proposed settlement agreement, but
14 you've never seen that document fully executed or
15 signed, have you?

16 A. I don't remember if it was signed or not.

17 Q. All right. You don't remember if it was signed or not,
18 but have you ever witnessed or seen a signed copy of
19 that document?

20 A. That's what I'm saying, I don't remember.

21 Q. Okay. And your communications with Dealer Services
22 about the amount outstanding, the breach of these
23 documents, and trying to compromise for a lesser amount
24 than what's owed, those are all settlement
25 negotiations, weren't they?

1 A. Correct, yes.

2 Q. Okay. I'm going to hand you what we'll mark as
3 Plaintiff's Exhibit 9.

4 (Court reporter marks document as
5 Defendant's Exhibit Number 9)

6 (Off the record)

7 Examination resumed by Mr. Goings:

8 Q. All right, Mr. Gault, I'm going to hand you what's
9 marked as Plaintiff's Exhibit 9.

10 A. Okay.

11 Q. I'm going to represent to you this is your affidavit
12 that has been filed in this case.

13 A. Oh, is this what you was asking me about awhile ago?

14 Q. Yes, sir.

15 A. Okay, yes. Yes, I got it. See how my brain is.

16 Q. In this affidavit, you attach as Exhibit A the
17 settlement agreement that you were discussing.

18 A. Yes, sir.

19 Q. In finalizing this affidavit, Mr. Gault, did you
20 provide your attorney with any and all copies of any
21 proposed written settlement agreement?

22 A. I know I gave him a copy of it, but I don't know if it
23 was the only copy I had. It was one I found, the 22,5,
24 I don't remember if it was a signed copy or not.

25 Q. All right. Well, let's go through this document.

1 A. Okay.

2 Q. This document that you signed, affidavit of Michael
3 Gault marked as Exhibit 9, isn't it true that this
4 document contains an unsigned proposed settlement
5 agreement?

6 A. Yeah, this copy here is unsigned. It is.

7 Q. Is there any other copy in your possession that is
8 signed by any person or entity?

9 A. I don't remember. That's what I was telling you
10 earlier. I don't remember. I was thinking that we had
11 faxed a copy back and forth that was signed and agreed
12 to settle on, but I don't remember, to be honest with
13 you.

14 Q. Well, you didn't attach to your affidavit any signed
15 copy, did you?

16 A. No, I didn't attach no signed copy, no.

17 Q. And sitting here today, you don't know for certain that
18 there was a signed copy, do you?

19 A. I don't know for certain, no, sir, I don't.

20 Q. Okay.

21 A. I don't remember, to be honest with you.

22 Q. All right.

23 A. We had faxed and sent so much stuff, Mr. Goings, I
24 don't remember, to be honest with you.

25 Q. Now look at page one of the settlement agreement. Now,

1 you testified earlier that you agreed with this
2 document, correct?

3 A. Agreed with what, now?

4 Q. Settlement agreement. That you agreed with this
5 document.

6 Ms. Goforth:

7 Object to the form.

8 Examination resumed by Mr. Goings:

9 Q. Keep turning. You're not there, yet. You have in
10 front of you now what's entitled Settlement Agreement,
11 which is attached to your affidavit?

12 A. Yes, sir.

13 Q. All right. Just so the record's clear, this settlement
14 agreement does not bear any signatures, does it?

15 A. This one here doesn't, no, sir.

16 Q. Now, didn't you say that you agreed to --

17 A. what I agreed to --

18 Q. -- the terms and conditions of the settlement
19 agreement?

20 A. what I agreed to on this agreement was them keeping
21 nine cars and me paying them 22,500 dollars and this
22 deal be wiped out between Total, Incorporated, me, and
23 Keith Potter.

24 Q. All right. Look on the first page. Do you disagree
25 with this statement? As of August 8th, 2012, the total

1 sum owed to dealer -- DSC -- you understand that means
2 Dealer Services Corporation?

3 A. Yes.

4 Q. -- by Dealership under the note is 154,707.87, in
5 paren, the debt. Do you agree with that statement?

6 A. I don't -- I don't -- I don't know about the amount.
7 And like I said, I didn't care if they had 500,000 on
8 there, as long as they agreed to settle for the nine
9 cars and 22,5. That did not affect me.

10 Q. But in order to settle for the 22,500 dollars, you had
11 to provide certified funds in that amount to Dealer
12 Services Corporation on or before the close of
13 business, August 15th, 2012, correct?

14 A. No, sir.

15 Q. That's not what this agreement says?

16 A. They agreed to extend all that.

17 Q. When?

18 A. Verbally. Oh, we had several phone conversations.

19 Q. Did they ever put that in writing to you?

20 A. I don't -- I don't remember. I'm thinking -- I'm
21 thinking that they sent us another agreement, but I
22 don't remember.

23 Q. You can't say for certain that Dealer Services
24 Corporation did send you another agreement that changed
25 the date from August 15th to a date in September, can

1 you?

2 A. I know that there was, but I don't remember if they
3 ever got it sent. I think the guy named Kevin or
4 Kathy, either one, was sending out another one with a
5 different date on it.

6 Q. Do you have a copy of that document?

7 A. I don't remember, Mr. Goings.

8 Q. Well --

9 A. Like I said, all this --

10 Q. Let me ask you this. Sitting here today, 22nd day of
11 January, 2014, you have not sent or tendered certified
12 funds in the amount of 22,500 dollars to Dealer
13 Services Corporation, have you?

14 A. No, sir. We have not sent the funds.

15 Q. Okay. I'm going to hand you what is being marked as
16 Plaintiff's Exhibit 10.

17 (Court reporter marks document as
18 Defendant's Exhibit Number 10)

19 Examination resumed by Mr. Goings:

20 Q. You recognize this document, sir?

21 A. No, sir, not really.

22 Q. This is a document that was filed in the United States
23 Bankruptcy Court for the District of South Carolina,
24 and it bears, in regards, Total, Incorporated. Is that
25 right, as a debtor?

1 A. Yes, sir.

2 Q. And it says, under the "To" line -- tell me if I'm
3 reading this incorrectly -- Total, Inc., in paren,
4 debtor, and Dealer Services Corporation, in paren, DSC,
5 collectively referred to as the Parties, in quote,
6 hereby move the Court for an order approving the
7 agreement between them, which is described below and
8 attached to this notice. Did I read that correctly?

9 A. Uh-huh (indicates affirmative response).

10 Q. Do you remember entering into an agreement for purposes
11 of the cash collateral?

12 A. I remember Mr. Cooper did.

13 Q. And Mr. Cooper was your lawyer, right, for Total, Inc.?

14 A. He was the company lawyer, yes, sir.

15 Q. All right. And then, let's go down. Subsection B, it
16 says, the agreement and proposed order are attached as
17 Exhibit A. Do you see that?

18 A. Yes, sir.

19 Q. Did I read that correctly?

20 A. Yes, sir.

21 Q. And does it appear that a proposed consent order is
22 attached to this document?

23 A. Yes, sir. As I remember, though, you and Mr. Cooper
24 met right before we walked in the courtroom, and I seen
25 this document when we was sitting in the courtroom.

1 That's the first time I seen it.

2 Q. Okay, so you saw the document.

3 A. If this is the one that he handed me in the courtroom,
4 that's the first time I seen it, yes, sir.

5 Q. Okay. You saw it before it was filed, didn't you?

6 A. I don't know when it was filed or how it got filed or
7 the deal, but like I said, I know y'all had tried to
8 work out something, and he handed it to -- he handed me
9 some paperwork. I don't remember if this is it or not,
10 but when -- when we got into the courtroom that day.

11 Q. Under subsection C, Provisions of the Agreement. The
12 next paragraph says, DSC -- you understand that to mean
13 Dealer Services Corporation --

14 A. Yeah, I do.

15 Q. -- right?

16 A. Yes, sir.

17 Q. -- maintains a properly perfected, first priority
18 security interest in certain vehicles and proceeds
19 thereof, along with a first-filed blanket security
20 interest in all other assets and proceeds of the
21 debtor. The total amount of DSC's claim as of August
22 15th, 2012, the date debtor files this petition, was
23 152,685, 76. Did I read that correctly?

24 A. You read that correctly.

25 Q. All right.

1 A. That's a different amount, though, than is on that
2 settlement agreement.

3 Q. In the next paragraph, it says, the debtors collateral
4 constitutes cash collateral of the debtor's bankruptcy
5 estate pursuant to 11 USC Section 363, period. Debtor
6 intends to use DSC's cash collateral to continue the
7 operation of its business. Did I read that correctly?

8 A. Yes, sir.

9 Q. Then it says, the parties have agreed to the following
10 material terms. Did I read that correctly?

11 A. Yes, sir.

12 Q. Debtor -- who's the debtor?

13 A. Total, Inc.

14 Q. -- will pay DSC adequate protection payments as
15 follows. The first, the sum of six thousand dollars
16 per month for six months, beginning October 1st, 2012,
17 and continuing through March 1st, 2013. Did I read
18 that correctly?

19 A. Yes.

20 Q. Thereafter, the sum of 8,500 dollars per month for six
21 months, beginning April 1st, 2013, and continuing
22 through September 1st, 2013. Did I read that
23 correctly?

24 A. Uh-huh (indicates affirmative response). Yes.

25 Q. Thereafter, the sum of eleven thousand dollars per

1 month for six months, beginning October 1st, 2013 and
2 continuing through March 1st, 2014. Did I read that
3 correctly?

4 A. Yes.

5 Q. Thereafter, one final payment on April 1st, 2014, for
6 the full balance due as of the date of final payment
7 made by debtor. Do you see that?

8 A. Yes.

9 Q. Did I read all that correctly?

10 A. Yeah.

11 Q. And isn't it true, Mr. Gault, that Total, Incorporated
12 agreed in the bankruptcy court, for payments to be made
13 as set forth in this document?

14 A. Mr. Cooper agreed for it.

15 Q. And Mr. Cooper represented the debtor, correct?

16 A. Yes.

17 Q. And the debtor was Total, Incorporated, is that right?

18 A. Yes.

19 Q. And Total, Incorporated hired Mr. Cooper to act as his
20 agent and attorney, correct?

21 A. Yes.

22 Q. And Total, Incorporated attempted to make payments
23 under this, didn't they?

24 A. I don't remember.

25 Q. The first month, beginning October 1st, 2012, six

1 thousand dollars was paid, wasn't it?

2 A. I don't remember.

3 Q. You don't know? The way this agreed upon payment
4 schedule is in this document, that's a whole lot more
5 than 22,500 dollars, isn't it?

6 A. Yes.

7 Q. I mean, six thousand dollars for six months, do the
8 math. How much is that?

9 A. That'd be 36,000.

10 Q. Okay. That's more than 22,500, isn't it?

11 A. Uh-huh (indicates affirmative response).

12 Q. And then, 8,500 per month for six months beginning
13 April 1st, 2013 through September 1st, 2014 [sic] is
14 more than 22,500 dollars, isn't it?

15 A. Well, according to that, yes.

16 Q. Okay. And if you look at the next page, if you can
17 turn the page --

18 A. Mr. Cooper was advised that the company couldn't afford
19 that.

20 Q. But the company entered in this agreement, right?

21 A. He entered it that day. Like I say, we -- the first
22 time we seen that document, we was already in court.
23 Y'all met -- y'all met out in the hallway that morning,
24 and that's the first time I ever met you, I didn't
25 know...

1 Q. Go to the next page. Under item J, who does it show
2 the moving parties are? Attorney for debtor and
3 attorney for DSC, correct?

4 A. Uh-huh (indicates affirmative response).

5 Q. Is that right?

6 A. Yes.

7 Q. And the lien amount at the top, it's 152,685.76 plus
8 late fees, collection costs, interest, and reasonable
9 attorney's fees and expenses. Do you see that?

10 A. Yes.

11 Q. And this was submitted by -- turn to the third page, by
12 Robert H. Cooper as the attorney for Total,
13 Incorporated. Is that right?

14 A. I guess, yes.

15 Q. I mean, it was submitted, right? This agreement was
16 submitted?

17 A. Yeah, I think it was submitted, yes.

18 Q. And he submitted it on behalf of Total, Incorporated,
19 correct?

20 A. Yes, he submitted it on behalf of the company, yes.

21 Q. And are you aware, sir, that Dealer Services -- excuse
22 me. Are you aware that Total, Incorporated failed to
23 comply with the terms and conditions of --

24 A. Yes, sir.

25 Q. -- of this settlement agreement that was entered into

1 with the Bankruptcy Court?

2 A. Yes, sir.

3 Q. And as a result, the secured debt of Total,
4 Incorporated related to Dealer Services Corporation was
5 granted an automatic stay?

6 A. Yes.

7 Q. All right. And that allowed Dealer Services
8 Corporation to force any and all legal remedies that it
9 had, correct? Is that right?

10 A. Yes, sir.

11 Q. And look at Exhibit 10, that's in front of you. On
12 page two, very top, does it say, debtor, which is
13 Total, Incorporated --

14 A. Yes.

15 Q. -- must comply with the terms of the note and loan
16 agreement as amended by this order? You see that?

17 A. Yes.

18 Q. It doesn't say debtor must comply, debtor and Dealer
19 Services Corporation must comply with any previous
20 settlement agreement that the parties allege was
21 entered into prior to filing for bankruptcy, does it?

22 A. No.

23 Q. And turn to page three of the consent order entered by
24 the Bankruptcy Court. Paragraph ten. Tell me if I'm
25 reading this correctly. Except as expressly modified

1 by the terms of this order, all terms and conditions of
2 the note and security agreement shall remain in full
3 force and effect in accordance with the terms contained
4 therein. Do you see that?

5 A. Yes, sir.

6 Q. And that's what was agreed to by Total, Inc. by its
7 lawyer and Dealer Services, isn't that correct?

8 A. That's what Cooper agreed to, yeah.

9 Q. Well, Cooper was the lawyer for --

10 A. Yeah.

11 Q. -- Total, Incorporated, right?

12 A. Correct.

13 Q. Do you own any businesses, corporated or incorporated?

14 A. No.

15 Q. Do you have any ownership interest in any companies or
16 LLC's?

17 A. No.

18 Q. Who owns the property where you live?

19 A. My mother.

20 Q. How long has that property been in your mother's name?

21 A. Since my daddy died.

22 Q. Do you own any real property in whole or part?

23 A. No, sir.

24 Q. Is your name on any deed to real property in whole or
25 part?

- 1 A. No, sir.
- 2 Q. Have you transferred by way of a sale, a gift, or deed
- 3 of any nature any real property from your name since
- 4 2008?
- 5 A. Not as I know of, no, sir.
- 6 Q. Have you owned any property since 2008?
- 7 A. No, sir.
- 8 Q. How many children does your mother have?
- 9 A. Me and a handicapped sister.
- 10 Q. How old is your sister?
- 11 A. Forty-eight.
- 12 Q. Other than the property where you live, does your
- 13 mother own any other real property?
- 14 A. Yeah, she owns a bunch.
- 15 Q. Okay. Do you have any checking accounts?
- 16 A. Yes, sir.
- 17 Q. And who are those with? What banking or financial
- 18 institution?
- 19 A. Wells Fargo.
- 20 Q. Do you have a checking account, savings account, trust
- 21 account, IRA account, retirement account, or any
- 22 financial account whatsoever, in whole or part, at any
- 23 entity, banking, or financial institution other than
- 24 Wells Fargo?
- 25 A. Founders Credit Union.

1 Q. What kind of account is at Founders Credit Union?

2 A. It's a little savings account. And a checking account.

3 Q. How much is in your savings account at Founders Credit
4 Union?

5 A. I think it's 95 dollars.

6 Q. Other than Wells Fargo, Founders Credit Union, any
7 other accounts at any banking or financial institution?

8 A. Not as I remember.

9 Q. What does that mean?

10 A. I don't remember no more.

11 Q. If you had accounts, you would remember, wouldn't you?

12 A. I mean, like I said, I don't -- far as I know, that's
13 the only ones I got. I got a checking account at
14 wells, and that savings and checking at Founders.

15 Q. Have you had to apply for a loan within the past three
16 years?

17 A. I don't remember.

18 Q. You don't remember if you've applied for a loan in the
19 last three years?

20 A. I don't remember. I think I did try to buy a car or
21 something. But I don't remember.

22 Q. What kind of car do you drive today?

23 A. I drive a little Ranger.

24 Q. What year?

25 A. '02.

1 Q. where did you try to buy a car?

2 A. I don't remember. I don't remember where I was at. I
3 don't remember.

4 Q. Do you have problems with memory?

5 A. Yeah.

6 Q. Have you ever been diagnosed with a memory problem?

7 A. I never been diagnosed with it, but I have -- my memory
8 ain't good sometimes, especially since I got to be a
9 diabetic. I think that's got a lot to do with it.

10 Q. Have you submitted a financial statement to anyone
11 within the past three years?

12 A. Not as I remember.

13 Q. Has Mr. Potter told you that he has the financial
14 wherewithal to pay the amount that Dealer Services
15 claims is outstanding?

16 A. Does he have what, now?

17 Q. The wherewithal, the financial capabilities to pay the
18 outstanding amount that is owe and dueing to Dealer
19 Services.

20 A. You're asking me can he pay it?

21 Q. Yes, sir.

22 A. No, sir.

23 Q. Okay. Can you?

24 A. No, sir.

25 Q. Could you pay the 22,500 dollars?

1 A. I could probably borrow that.

2 Q. And who would you borrow it from?

3 A. My mother. I ain't saying I could, but there's a
4 probably 75 percent chance I could.

5 Q. But sitting here today, you don't have 22,500 dollars
6 to your name, do you?

7 A. No, sir.

8 Q. Have you answered all my questions fully and truthfully
9 here today?

10 A. To the best of my knowledge, yes, sir.

11 Q. why did Total, Incorporated breach the cash collateral
12 order that was entered into in the bankruptcy court?

13 A. Because they couldn't afford it.

14 Q. And in the bankruptcy court, Total, Incorporated
15 recognized that the note was in full for and effect,
16 didn't it?

17 A. Did what, now?

18 Ms. Goforth:

19 Object to the form.

20 Examination resumed by Mr. Goings:

21 Q. In the bankruptcy proceedings, Total, Incorporated
22 recognized, in filings with the court, that the Demand
23 Promissory Note and Security Agreement was in full
24 force and effect, didn't it?

25 A. Yes, as far as I know, yes, sir.

1 Q. All right. No further questions.

2 Ms. Goforth:

3 For the record, Mr. Goings and I have agreed for both
4 of these depositions that the Defendants had asked to
5 postpone these depositions because Plaintiff has a
6 motion to compel that's scheduled for February 18th.
7 We have notified Defendants that we're going to
8 supplement the responses to discovery and that this is
9 a one-shot deal on deposing these Defendants. That's
10 our position for the record.

11 Mr. Goings:

12 Okay. That was your position. I obviously disagree
13 with that position.

14 Ms. Goforth:

15 Yes.

16 Mr. Goings:

17 For the record, I do believe I'm entitled to notice the
18 depositions to the extent necessary based on
19 supplementing discovery. Hopefully we will not have to
20 do that exercise, but I certainly respect your
21 position, and I understand you respect mine.

22 Ms. Goforth:

23 We'd just hoped maybe we could do it the one time.

24 Mr. Goings:

25 I understand.

1 Ms. Goforth:

2 And it would be easier to get through it that way.

3 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED
4 AT 1:26 P.M.)

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CERTIFICATE OF REPORTER

I, Marla J. O'Brien, a Notary Public in and for the state of South Carolina, do hereby certify that the foregoing 81 pages represents a true and accurate transcript of the deposition of MICHAEL GAULT, which was taken by me on the 22nd day of January, 2014.

That the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

MARLA J. O'BRIEN, CVR-M, ACR

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 8/12/2021

**DEMAND PROMISSORY NOTE
AND SECURITY AGREEMENT**

TO: Dealer Services Corporation
1320 City Center Drive
Suite 100
Carmel, IN 46032

FOR VALUE RECEIVED, the undersigned dealer ("Dealer") promises to pay to the order of Dealer Services Corporation, a Delaware corporation ("DSC"), with its principal office at 1320 City Center Drive, Suite 100, Carmel, Indiana 46032 or such other place as DSC may designate in writing, in lawful money of the United States of America, the principal sum of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) (the "Credit Limit") or such greater or lesser sum which may be advanced from time to time, together with all costs, interest, fees, and expenses as provided for under this Note.

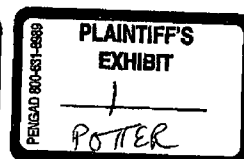
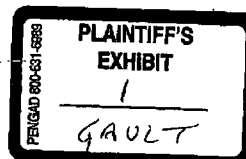
NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, the parties agree as follows:

1. **DEFINITIONS:** Capitalized terms used in this Note without definition shall have the respective meanings as set forth below. All other terms in this Note shall be defined by the meanings provided for in the Uniform Commercial Code as provided for herein.

- (a) "Advance" shall mean any loan or payment in any amount made pursuant to this Note by DSC to Dealer or on Dealer's behalf to any third party.
- (b) "ACH" shall mean all payments by, or on behalf of, Dealer to DSC made via a nationwide electronic funds transfer network processing electronic debit entries from Dealer's bank accounts.
- (c) "Base Rate" shall mean the greater of that variable rate of interest or that fixed rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 5.00%.
- (d) "Boarding Fee" shall mean that DSC Universal Fee charged by DSC to Dealer and added to the principal amount of the Advance for each individual item of DSC Financed Inventory which is the subject of a DSC Lease Program Advance.
- (e) "Check" shall mean all payments by, or on behalf of, Dealer to DSC not made in cash, via certified funds, wire transfer or ACH.
- (f) "Collateral" shall have the meaning set forth in Paragraph 2 of this Note.
- (g) "Contract Rate" shall mean that rate of interest as stated on Dealer's Term Sheet. Additionally, in the event no Term Sheet is executed and effective, then 4.25%.
- (h) "Credit Limit" shall mean the maximum amount Dealer may borrow at any one time under this Note.
- (i) "Credit Line" shall mean Dealer's DSC floorplan line of credit pursuant to and under this Note.
- (j) "Dealer's Place of Business" shall mean that place where the Collateral and Dealer's books and records are kept, where Dealer's operations are conducted from and/or if Dealer is a legally recognized business entity where Dealer's registered office is located.
- (k) "Dealer's Home Branch" shall mean the DSC branch location for which Dealer's DSC Credit Line is assigned to by DSC for servicing and administration.
- (l) "Default Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 8%.
- (m) "DSC Administrative Fee" shall mean any fee charged by DSC to Dealer for any service or process requested by Dealer or unilaterally undertaken by DSC, reasonable or necessary to administer or monitor the Credit Line, that is not a Floorplan Fee or DSC Universal Fee.
- (n) "DSC Financed Inventory" shall mean any Unit now or hereafter acquired or retained by Dealer pursuant to an Advance under this Note. DSC Financed Inventory includes Purchase Money Inventory.
- (o) "DSC Lease Program" shall mean any DSC program offered to Dealer designed to allow Dealer to obtain an Advance for a Unit which is the subject of a Dealer originated and owned consumer lease transaction.
- (p) "DSC Published Rate, Fee and Term Schedule" shall mean that current schedule of universal interest rates and fees assessed by DSC, including DSC Universal Fees, late fees, fees relating to returned checks or ACH payments due to insufficient funds,

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DSC Account # 28915



ROA 000231

the Base Rate, Risk Rate and Default Rate and notice of amendments to Terms and Conditions published by DSC via posting such schedule of such universal rates and fees and notice of amendment to Terms and Conditions at www.discoverdsc.com and posted at each DSC branch office or location.

- (q) "DSC Universal Fee" shall mean any published fee as stated in the DSC Published Rate, Fee and Term Schedule charged by DSC to Dealer.
- (r) "Equipment" shall mean all goods other than Inventory held for sale, lease, or daily rental by Dealer in the ordinary course of business.
- (s) "Event of Default" shall have the meaning set forth in Paragraph 6 of this Note.
- (t) "Extension" shall mean that grant by DSC to Dealer of additional time that an Advance for an item of DSC Financed Inventory becomes due and payable.
- (u) "Floorplan Fee" shall mean the fee charged by DSC to Dealer set forth on the Term Sheet for each individual item of DSC Financed Inventory. Additionally, in the event no Term Sheet is executed and effective, then the Floorplan Fee shall be equal to One Hundred Fifty Dollars (\$150.00).
- (v) "GPS Fee" shall mean that DSC Universal Fee charged by DSC to Dealer and added to the principal amount of the Advance for the global positioning system supplied for each individual item of DSC Financed Inventory which is the subject of a DSC Lease Program Advance.
- (w) "Interest" shall mean the aggregate rate of interest which accrues on all Liabilities owed by Dealer to DSC under or arising out of this Note by combining the Base Rate plus the applicable Contract Rate, Risk Rate or Default Rate.
- (x) "Inventory" shall mean all Units held by Dealer for wholesale or retail sale, lease, or rent or leased by Dealer. Inventory includes DSC Financed Inventory.
- (y) "Liabilities" shall mean any and all Advances, debts, DSC Financed Inventory Liabilities, financial obligations, DSC Administrative Fees, DSC Universal Fees, Interest, Floorplan Fees, NSF fees, late fees, charges, expenses, attorney fees, costs of collection, covenants, and duties owing, arising, due or payable from Dealer to DSC of any kind or nature, present or future, under any instrument, guaranty, or other document whether arising under this Note or any other agreement, whether directly or indirectly (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising and however acquired.
- (z) "Maturity Date" shall mean the date an Advance for an item of DSC Financed Inventory becomes due and payable. In the event the Maturity Date relating to a specific Advance for an item of DSC Financed Inventory becomes due and payable falls on a federal banking holiday, Saturday or Sunday, the Maturity Date for such specific Advance shall be the next business date subsequent to such federal banking holiday, Saturday or Sunday.
- (aa) "MSO" shall mean the manufacturer's certificate of origin or other document evidencing ownership of a Unit issued by the manufacturer of the Unit.
- (bb) "Note" shall mean this Demand Promissory Note and Security Agreement and all present and future amendments, modifications and addendums referenced herein.
- (cc) "Period" shall mean that number of days set forth in the Term Sheet, beginning on the date of an Advance and ending on the Maturity Date, and any extension thereto, that an item of DSC Financed Inventory will be financed by DSC to Dealer pursuant to the terms of this Note. Additionally, in the event no Term Sheet is executed and effective, then the Period shall be Thirty (30) days.
- (dd) "Purchase Money Inventory" shall mean a Unit acquired by Dealer pursuant to an Advance under this Note.
- (ee) "Risk Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 6%.
- (ff) "Shortage" shall mean the difference between a payment received by DSC and the amount owing, arising, due, or payable from Dealer to DSC with respect to a specific Advance for a specific item of DSC Financed Inventory.
- (gg) "Terms and Conditions" shall mean all provisions of this Note with the exception of terms specifically relating to Dealer's Floorplan Fees and Contract Rate and any other term referenced in Dealer's Term Sheet.
- (hh) "Term Sheet" shall mean the addendum to this Note, as modified from time to time, which indicates specific terms regarding Dealer's Credit Limit, Floorplan Fees, Contract Rate of interest, Period, principal reduction, and Number of Maturity Date Extensions.

- (ii) "Title" shall mean the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.
- (jj) "UCC" shall mean the Uniform Commercial Code as enacted in the State where the Collateral is located.
- (kk) "Unit" shall mean any manufactured item, including vehicles for which a certificate of title or a MSO exists which is the subject of an Advance by DSC to Dealer under this Note.
- (ll) "Vehicle Service Contract Fee" shall mean that DSC Universal Fee charged by DSC to Dealer and added to the principal amount of the Advance for the service contract supplied for each individual item of DSC Financed Inventory which is the subject of a DSC Lease Program Advance.

2. GRANT OF SECURITY INTEREST: In order to secure full and prompt payment of all Liabilities and performance of all obligations of Dealer to DSC, Dealer hereby:

- (a) Grants to DSC, together with its subsidiaries, affiliates and assigns, a continuing security interest in all of Dealer's assets and properties, wherever located, including without limitation, all Equipment of any kind or nature, all vehicles, vehicle parts, all Inventory now owned or hereafter acquired, without limitation, DSC Financed Inventory now owned or hereafter acquired, and all additions, accessions, accessories, replacements, and proceeds thereof, all documents, accounts, accounts receivable, chattel paper, and general intangibles now owned or hereafter acquired by Dealer together with the proceeds thereof, all of Dealer's books and records relating to the foregoing ("Collateral"). This security interest is given to DSC to secure Dealer's Liabilities to DSC under this Note, as may be amended from time to time, all without relief from valuation or appraisal laws.
- (b) Agrees to execute and deliver such financing statements and amendments thereto as DSC shall require from time to time.

3. INTEREST RATE. Interest shall accrue on all Dealer Liabilities in accordance with the following:

- (a) All outstanding Liabilities under this Note shall accrue interest (based upon a 360 day year), on a per annum basis and shall be compounded daily at the Base Rate plus the applicable Contract Rate, Risk Rate, or Default Rate until paid in full.
- (b) The Contract Rate stated on Dealer's Term Sheet plus the Base Rate shall be the applicable rate of Interest accruing on all Dealer Liabilities, so long as there has not been a breach by Dealer of any representation or warranty made by Dealer under this Note, a breach by Dealer of any covenant or credit term required under this Note, or an event of default by Dealer under this Note.
- (c) In the event a breach of any representation or warranty made by Dealer under Paragraphs 3 or 4 of this Note occurs, or a breach by Dealer of a covenant or credit term required under Paragraph 4 or Paragraph 5 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Risk Rate.
- (d) In the event that an Event of Default occurs as defined in Paragraph 6 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Default Rate.
- (e) The Base Rate, Risk Rate or Default Rate may be amended or modified by DSC in DSC's sole discretion by posting such amendment or modification on the DSC Published Base Rate and Fee Schedule. However, DSC may only increase the Base Rate, Risk Rate or Default Rate by 100 basis points in any one 30-day period.

4. DEALER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: In order to induce DSC to make Advances hereunder, Dealer hereby represents, covenants and warrants:

- (a) To sell, lease or rent DSC Financed Inventory only in the ordinary course of Dealer's business, and not to dispose of such DSC Financed Inventory, except as herein provided.
- (b) To keep DSC Financed Inventory only at Dealer's Place of Business and not to remove said DSC Financed Inventory from such place for a period exceeding twenty-four (24) hours, unless such item of DSC Financed Inventory is the subject of a DSC Lease Program Advance, or otherwise authorized in writing by DSC.
- (c) To keep DSC Financed Inventory 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 DSC. DSC shall be named "loss payee" to the extent DSC's interest may appear. In the event Dealer fails to procure, maintain or provide proof of such insurance coverage, DSC may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from Dealer pursuant to the terms of this Note. Dealer understands and agrees that DSC has an insurable interest in Dealer's Collateral, including but not limited to, DSC Financed Inventory, by virtue of Dealer's pledge of Dealer's Collateral as security to DSC as defined above, for the repayment of all Liabilities by Dealer to DSC under this Note.
- (d) To keep DSC Financed Inventory which is the subject of DSC Lease Program Advance (i) covered by an adequate service contract or warranty acceptable to DSC and provided by an approved DSC Vendor, DSC Financed Inventory(ii) equipped

with a functioning global positioning and starter interrupt system ("GPS") unit that is acceptable to DSC and provided by an approved DSC vendor; (iii) DSC Financed Inventory covered by a contingent liability insurance policy that is acceptable to DSC and provided by an approved DSC Vendor DSC Financed Inventory; and (iv) covered by Dealer's customer's insurance policy for all physical risks and naming DSC as additional insured and loss payee on the customer's insurance certificate.

- (e) To keep DSC listed as lienholder on the certificate of title for each DSC Financed Inventory which is the subject of DSC Lease Program Advance.
- (f) To keep the lease for each DSC Financed Inventory which is the subject of DSC Lease Program Advance placed with a third party servicer that is acceptable to DSC.
- (g) To keep at all times complete and accurate records of Dealer's business and to provide DSC upon demand copies of such records and financial information regarding Dealer's business and financial condition as DSC may reasonably request. Dealer authorizes DSC to share such information and any other information relating to Dealer's transaction with DSC to any and all persons or parties as DSC deems necessary.
- (h) To allow DSC and its representatives to inspect the DSC Financed Inventory during normal business hours and at other reasonable times and to inspect and make copies of Dealer's books and records. Dealer shall pay DSC upon demand for the costs and expenses incurred by DSC or its representatives with such inspections of Dealer's books and records and audits of Dealer's DSC Financed Inventory.
- (i) To hold all amounts received from the sale of an item of DSC Financed Inventory in the form as received in trust for the sole benefit of and for DSC, and to remit such funds satisfying all amounts due DSC and owing by Dealer for the sold item of DSC Financed Inventory within 24 hours of receipt of such funds.
- (j) That DSC may hold any sums or money belonging to or payable to Dealer and apply the same to any outstanding Liabilities of Dealer.
- (k) That any statement of Dealer's account furnished to Dealer by DSC, to the extent no objection is made in writing by Dealer within 30 days after receipt of such statement, shall constitute a definitive statement of Dealer's Credit Line and Liabilities as of the date of the statement and shall be binding upon Dealer.
- (l) To refrain from paying or declaring any dividends or distributions, redeeming of any capital stock, repaying subordinate debt or other loans to any principal or guarantor of Dealer's Business, during anytime a Liability exists from Dealer to DSC.
- (m) To pay immediately and remain current with all levied taxes, assessments, charges and expenses which may now or hereinafter be levied or assessed against the Collateral and business. DSC may, in its sole discretion, pay such taxes, assessments, charges and expenses to protect its interests and thereafter collect the costs from Dealer pursuant to the terms of this Note.
- (n) That Dealer has obtained all necessary permits and licenses pursuant to local, state and federal law required to operate its business as a wholesale or retail seller, lessor or renter of the DSC Financed Inventory and has complied with all filing requirements to operate as the entity or business type on record with the appropriate governmental office(s).
- (o) That no legal, arbitration, or administrative proceedings are pending or threatened against Dealer which could reasonably affect the Collateral or which materially and adversely affect the properties, business, prospects, or condition, financial or otherwise, of the Dealer or Dealer's ability to honor its obligations hereunder.
- (p) That all payments made by Dealer to DSC via check or ACH, at the time of issuance, are written or drawn upon an account that contains immediately available funds sufficient to cover the dollar amount of the check or ACH.
- (q) That Dealer's legal name and address as they appear in Paragraph 16 of this Note are accurate and complete.
- (r) That Dealer shall immediately notify DSC in writing of any change in Dealer's legal name, address, business type, ownership, management or control and shall execute any documents necessary at DSC's request to bring Dealer into compliance with this Note.
- (s) That Dealer and all guarantors are legally competent and have authority to enter into and execute this Note and any and all other documents.
- (t) That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions applicable to Dealer's DSC Credit Line, whether such terms and conditions are contained in the Term Sheet or this Note.
- (u) That Dealer expressly authorizes and agrees to accept all mailings, facsimile transmissions and telephonic transmissions from DSC including, but not limited to, Credit Line information and promotional materials.
- (v) That Dealer may have an account with DSC where information can be accessed and transmissions can be sent through DSC's website located at www.discoverdsc.com. Dealer shall have the means to control access to the account information by

passwords and a dealer account number in accordance with policies and procedures set forth by DSC. To participate, Dealer shall execute all documents required by DSC to register for such additional service and shall abide by DSC's policies and procedures set forth therein. Dealer agrees such documents shall be incorporated herein by reference and made part of this Note.

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

3. CREDIT TERMS AND PROCEDURES:

- (a) The decision to make an Advance to Dealer is the exclusive right of DSC, and Dealer understands that DSC may refuse to make an Advance at any time, with or without cause and without prior notice to Dealer or any guarantors of such decision. Dealer is not obligated to finance any Inventory through DSC. If Dealer's Place of Business is in California, the amount of the first Advance under this Note must be at least \$5,000.00.
- (b) All Dealer requests to DSC for an Advance for the purpose of acquiring Purchase Money Inventory with DSC funds, or financing previously-acquired Inventory with DSC funds must include a copy of the bill of sale for any Unit which is the subject of the request, indicating the actual purchase price and vendor, a completed Odometer Disclosure Statement, and the Unit's certificate of title showing that it has been duly assigned to Dealer. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (c) DSC is not required but may make, without notice to Dealer and without regard to the Dealer's Credit Limit, Advance on Dealer's behalf, for any Liability to a third party at any time Dealer is in default under the terms of this Note. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (d) Dealer must be in complete compliance with this Note before an Advance request will be approved by DSC. Additionally, DSC may require certain other information from Dealer to be submitted on a certified and sworn affidavit including, but not limited to, a statement that Dealer has not used any Advance for any other purpose than its originally requested and verified purpose.
- (e) Dealer shall pay all liabilities to DSC at the offices of DSC, on demand and without notice, with respect to an item of DSC Financed Inventory on the earlier of: (a) twenty-four (24) hours from the time Dealer receives payment by or on behalf of the purchaser of an item of DSC Financed Inventory; (b) forty-eight (48) hours after the disposition by sale or otherwise of an item of DSC Financed Inventory; or (c) the Maturity Date. DSC shall apply such payments to the DSC Financed Inventory Liabilities incurred from said item of DSC Financed Inventory. Notwithstanding anything herein to the contrary, if, after the disposition by sale or otherwise and subsequent payment to DSC as delineated above, a Shortage exists between any payments received by DSC and the DSC Financed Inventory Liability with respect to an item of DSC Financed Inventory, that Shortage shall be considered a Liability owed by Dealer to DSC and secured with Collateral other than DSC Financed Inventory. Dealer shall pay to DSC at the offices of DSC all other Liabilities, on demand and without notice. The order and method of application of such payments of the Liabilities shall be in the discretion of DSC. Payments received by DSC after 5 pm as measured by Dealer's Home Branch shall be applied the next business day.
- (f) If Dealer is in compliance with all other provisions of this Note, DSC may, in its sole discretion, permit an Extension of the Maturity Date relative to an item of DSC Financed Inventory, upon the payment of Shortage, Interest, Floorplan Fee(s) and a principal reduction of the outstanding Advance relating to such item of DSC Financed Inventory pursuant to this Note and as established in the Term Sheet.
- (g) So long as Dealer is not in default of this Note, Dealer may sell DSC Financed Inventory to bona fide buyers in the ordinary and regular course of Dealer's business, but nothing herein shall be deemed to waive or release any interest DSC may have hereunder or under any other agreement in any proceeds or replacements of the DSC Financed Inventory. Upon the sale of any specific item of DSC Financed Inventory, Dealer shall hold the amount received from the disposition of such DSC Financed Inventory in Trust for the benefit of DSC, and Dealer shall pay to DSC, in accordance with this Note, an amount equal to the unpaid balance of the Liabilities relating to such specific item of DSC Financed Inventory.
- (h) Dealer shall allow DSC's officers, employees, agents, attorneys, designees and representatives access to Dealer's books and records at the Dealer's Place of Business to conduct an audit of Dealer's DSC Financed Inventory. Dealer shall be responsible for and agrees to pay all of DSC's expenses in conducting such audit.
- (i) Upon request by Dealer to obtain, for a legitimate business purpose, the Title to a specific item of DSC Financed Inventory held by DSC, DSC may consider said request and, in DSC's sole discretion, grant such request. In the event DSC grants such request, Dealer must deliver to DSC a check or draft which is signed and dated on the date as of which the Dealer takes physical custody of the subject Title in an amount equal to the Liability relating to such specific item of DSC Financed Inventory. The subject Title must be returned to DSC within the time period established by DSC or any outstanding Liability relating to any such Advance for such specific items of DSC Financed Inventory shall become immediately due and payable, and DSC may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.

- (j) To protect DSC's interest, Dealer authorizes DSC to obtain credit information from a credit bureau, and any financial institutions or trade creditor that Dealer has provided, as well as other credit investigation that DSC in DSC's sole discretion deems necessary. Dealer also authorizes DSC to contact any third parties to disclose information, including information contained in the DSC application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DSC's security interest. Further, if Credit Line is granted, Dealer authorizes DSC to review Dealer's account periodically, which may include obtaining additional credit reports.
- (k) Dealer's account is subject to "NSF" fees in the amount stated in the DSC Published Rate, Fee and Term Schedule or maximum amount permitted by law for each check or ACH issued by Dealer which is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Dealer's and/or DSC's depository institution.
- (l) DSC may process checks electronically, at first presentment and any re-presentments, by transmitting the amount of the check, routing number, account number and check serial number to your financial institution. By submitting a check for payment, you authorize DSC to initiate an electronic debit from your bank account. When DSC processes your check electronically, your payment may be debited from your bank account as soon as the same day we receive your check and you will not receive that cancelled check with your bank account statement.
- (m) Dealer's account is subject to a late fee charge in the amount stated in the DSC Published Rate, Fee and Term Schedule or the maximum amount permitted by law for any item of DSC Financed Inventory that Dealer fails to remit payment under this Note when due. Dealer acknowledges and agrees that the late fee charged by DSC is a reasonable estimate of DSC's probable losses due to the delay, inconvenience, and administrative expenses associated with a late payment. Dealer's account is subject to DSC Administrative Fees. Dealer acknowledges and agrees that any such DSC Administrative Fee charged by DSC is permitted under this Note and consents to the assessment of any such DSC Administrative Fee to Dealer's account. Dealer further acknowledges and agrees that DSC Administrative Fees are subject to business and market conditions and may be adjusted unilaterally by DSC without notice to Dealer and at DSC's sole discretion.
- (n) DSC maintains and publishes the "DSC Published Rate, Fee and Term Schedule" via posting the same on www.discoverdsc.com and in each DSC branch location. All such rates, fees and such amendments to the Terms and Conditions are published therein and incorporated herein by reference and made a part of this Note. With the exception of DSC Administrative Fees and Floorplan Fees, the rates and fees applied to Dealer's Liabilities under this Note and the amended Terms and Conditions stated therein shall be the applicable rates and fees and amendments to the Terms and Conditions most recently published on the DSC Published Rate, Fee and Term Schedule. DSC may amend the rates and fees and amend the Terms and Conditions from time to time at DSC's sole discretion and without additional Notice to Dealer other than the publication of such amendments on www.discoverdsc.com.
- (o) Dealer waives demand, presentment for payment, notice of dishonor, protest and notice of protest, and expressly agrees that this Note and all payments coming due under it may be extended or modified, from time to time without in any way affecting Dealer's liability under this Note. Dealer understands that this Note matures upon issuance, and that DSC may, at any time, and without notice to Dealer, with or without cause, demand that the Note be immediately paid in full. The demand nature of this Note does not limit DSC's election of remedies upon a default by Dealer. At DSC's option, DSC may reference a term of default for the purpose of permitting DSC to receive interest at the Default Rate. It is agreed that DSC may demand partial payments under this Note, and said partial demand shall not change DSC's rights under this Note.

6. EVENT OF DEFAULT: The occurrence of any of the following events shall be considered an event of default under this Note ("Event of Default"):

- (a) The Dealer fails to perform any of its obligations, undertakings or covenants under this Note, fails to adhere to a credit term under this Note, including but not limited to, failure to make payment upon maturity or upon demand of any outstanding Liability under this Note; or
- (b) Any warranty or representation made by the Dealer 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 Dealer to DSC proving to have been false or misleading in any material respect when made or delivered; or
- (c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DSC as "Loss Payee" is not in effect; or
- (d) The Dealer becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for the Dealer or any property thereof, 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 the Dealer; or
- (e) Any material change in the management, ownership or control of Dealer; or
- (f) The voluntary or administrative dissolution, death or incompetence of Dealer or any Guarantor of this Note; or
- (g) Any change in the financial condition of Dealer or Guarantor(s) that DSC in good faith deems adverse; or

- (h) DSC in good faith deems itself insecure for any reason.
- (i) Dealer has failed to maintain compliance with Dealer's obligations in paragraph 4 (c) of this Note relating to any DSC Financed Item of Inventory that is the subject of a lease contract between Dealer and Dealer's customer.
- (j) Dealer has defaulted under any other written agreement entered into by and between DSC and Dealer.

7. **RIGHTS AND REMEDIES:** Upon an event of default, DSC 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 under this Note and all other indebtedness owed to DSC by Dealer. DSC 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 Uniform Commercial Code in effect in the jurisdiction where the Collateral is kept. These rights and remedies include the right to cancel any unfunded Advances, to enter into Dealer's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DSC's request and to the extent Dealer may lawfully do so, Dealer shall assemble, prepare for removal and make available to DSC at a place designated by DSC which is reasonably convenient for DSC and Dealer, such items of Collateral as DSC may deem sufficient to cover all Dealer's Liabilities to DSC; and
- (b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Dealer waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DSC to post a bond; and
- (c) To the extent allowed by law, Dealer gives consent to DSC to proceed in any action to collect on or execute against any and all bonds that Dealer has posted with any governmental authorities; and
- (d) Without limiting the foregoing, DSC may take control of any funds generated by the Collateral, and in DSC's name or Dealer's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral. Dealer waives any and all rights it may have to notice prior to seizure by DSC of any Collateral. Dealer agrees that private sale of any item financed by DSC at the amount owed to DSC on that item, less costs reasonably incurred by DSC in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral. Dealer shall be liable to DSC for any deficiency resulting from DSC's disposition of the Collateral. Dealer agrees that the Collateral is of the type customarily sold on a recognized market and that DSC therefore has no obligation to notify Dealer prior to a sale. However, Dealer agrees that ten (10) days prior written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DSC shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DSC shall not be required to marshal any assets in favor of Dealer. DSC has no obligation to pursue any third person for any Liability or obligation owed to Dealer. Dealer further agrees to pay reasonable attorney fees and collection costs incurred by DSC in enforcing this Note after an event of default by Dealer. To the extent not prohibited by law, Dealer 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.

8. **POWER OF ATTORNEY:** Dealer shall execute an irrevocable Power of Attorney in DSC's favor and such Power of Attorney shall be incorporated herein by reference and made a part of this Note.

9. **GUARANTY(IES):** Dealer shall cause each owner of Dealer to execute an Individual Personal Guaranty. If Dealer is owned in whole or in part by a legally recognized business entity or trust, then Dealer shall cause said entity or trust to execute a Guaranty in addition to all required Individual Personal Guaranties. All such and the same shall be incorporated herein by reference and made a part of this Note.

10. **TERM SHEET(S):** Prior to an Advance under this Note, Dealer shall execute a Term Sheet for each unique set of terms applicable to Dealer, which may be amended from time to time, and the same shall be incorporated herein by reference and made a part of this Note.

11. **ASSIGNMENT:** This Note may be assigned by DSC but Dealer may not assign this Note without the prior written consent of DSC.

12. **INDEMNIFICATION:** Dealer shall indemnify and hold DSC harmless from and against all, loss, damage, costs, or expenses of whatever kind or nature relating to claims of third parties arising out of or in any way connected to this Note or Dealer's business affairs including, without limitation, attorneys' fees and expenses incurred both in the defense of any action against DSC and in any action to enforce these indemnity rights as against the Dealer.

13. **NO JOINT VENTURE OR PARTNERSHIP:** Nothing contained herein shall confer upon DSC or Dealer any interest in, or subject either of them to any liability for, or in respect of the business, assets, profits, losses or liabilities of the other. This Note does not constitute and shall not be characterized as a joint venture or partnership between DSC and Dealer. Nothing in this section shall limit or restrict the respective obligations and undertakings of DSC and Dealer hereunder.

14. **AMENDMENT, MODIFICATION AND MERGER:** This Note and all documents incorporated herein by reference are intended by the parties as an amendment and restatement of any prior Demand Promissory Note and Security Agreement(s) between DSC and Dealer. With

the exception of the amendments and modifications referenced in Paragraphs 3 and 5 above, this Note may not be modified or amended except upon the written consent of DSC and Dealer. However, descriptions of specific items of DSC Financed Inventory, amounts and terms of Advances, Maturity Date Extensions, Interest, Base Rates, Risk Rates, Default Rates, DSC Administrative Fees, DSC Universal Fees, late fees, NSF Fees, Terms and Conditions and other charges allowed by this Note may be proven by ordinary course of business records of DSC.

15. EXECUTION: The parties understand and agree that DSC may execute this Note and all corresponding documents by affixing an authorized DSC Officer's signature via signature stamp. Dealer may only execute this Note by original signature. A facsimile reproduction of such authorized DSC Officer's signature and Dealer's signature on the Note and all corresponding documents shall be deemed original signatures.

16. NOTICES: All notices, requests and demands to or upon the respective parties hereto, including Service of Process of any legal proceeding initiated by either party, shall be deemed to have been duly given or made: if by hand or by facsimile, immediately upon the Business Day of receipt, if received before 5 p.m., recipient's time, otherwise on the next Business Day; if by Federal Express, Express Mail or any other overnight delivery service with proof of next day delivery on a Business Day, one (1) Business Day after dispatch; and if mailed by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the address set forth herein:

To DSC: Dealer Services Corporation, 1320 City Center Drive, Suite 100, Carmel, IN 46032
Telephone (317) 571-3721 Facsimile: (317) 571-3737

To Dealer: Total, Inc. DBA Gault's Used Cars
2015 Union Hwy, Gaffney, SC 29340
Telephone: (864) 489-5008 Facsimile:

17. NO WAIVER: No failure or delay by DSC in exercising any right, power, or privilege under this Note will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

18. TERMINATION: No termination of this Note shall alter Dealer's obligations and Liabilities relating to amounts funded or committed prior to the effective date of such termination, and all rights and remedies, including without limitation, the security interest granted herein and the rights of DSC as a secured party hereunder, shall extend until all Liabilities owed by Dealer to DSC have been satisfied.

19. LEGAL FEES AND COLLECTION COSTS: Dealer shall pay to DSC all reasonable legal fees, expenses and collection costs incurred as a result of Dealer's default or failure of any obligation under this Note.

20. SEVERABILITY: Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement in any other jurisdiction.

21. GOVERNING LAW: The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof. However, in the event Dealer's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

22. JURISDICTION AND VENUE: As evidenced by Dealer's signature below, Dealer submits to the personal jurisdiction and venue of the state or federal courts of Marion and Hamilton County, Indiana and agrees that any and all claims or disputes pertaining to this Note or to any matter arising out of or related to this Note initiated by Dealer against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Dealer expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. DSC reserves the right to initiate and prosecute any action against Dealer in any court of competent jurisdiction, and Dealer consents to such Forum as DSC may elect. However, in the event this Note is made and entered into in the State of California, the state or federal courts located in the State of California shall have jurisdiction to hear and determine any claims or disputes between the parties pertaining to this Note or to any matter arising out of or related to this Note. Each party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such Court, and each party hereby waives any objection which such party may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens, and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such Court.

23. WAIVER OF BOND: Dealer waives, to the extent permitted by law, any bond or surety or security on such bond which might, but for this waiver, be required of DSC.

24. WAIVER OF JURY TRIAL: DEALER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE, OR ANY OTHER LOAN DOCUMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY COURSE OF CONDUCT, STATEMENT, WHETHER ORAL OR WRITTEN, OR ACTIONS OF THE DEALER. THE DEALER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR

OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL HAVE NOT BEEN DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY DSC EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH DEALER AND DSC.

25. JUDICIAL REFERENCE, IF DEALER'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEALER AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

26. HEADINGS: Paragraph headings used in this Note are for reference only and shall not affect the construction of this Note.

WHEREFORE, the parties have, by their duly authorized representatives, executed this Note on the 5th day of Sept, 2012

Dealer: Total, Inc. DBA Gault's Used Cars

Accepted By: Dealer Services Corporation

By: [Signature]

DSC Officer

By: [Signature]

Edward Keith Potter, President

GUARANTORS ACKNOWLEDGE AND CONSENT OF AND TO THE FOREGOING:

Guarantor: [Signature]

Edward Keith Potter

Quarantor: Michael Wayne Gault
Michael Wayne Gault

10/11

DSC Account # 28916

ROA 000240

ENDORSEMENT

FOR VALUE RECEIVED, the undersigned, the original or successor payee under the promissory note issued by Total, Inc. DBA Gault's Used Cars dated as of (12/27/2011) in the amount of Two Hundred Thousand Dollars and Zero Cents US Dollars (\$200,000.00) to which this Endorsement is affixed (the "Note"), absolutely assigns, transfers, endorses, negotiates, and sets over to and makes payable to the order of _____ the Note, all interest, principal, and other sums due or to become due under the Note, and all other rights of any nature accrued or to accrue under the Note.

DEALER SERVICES CORPORATION

By: _____

Name:

Title:

Date: _____

**DEMAND PROMISSORY NOTE
AND SECURITY AGREEMENT**

TO: Dealer Services Corporation
11555 N. Meridian St.
Suite 220
Carmel, IN 46032

FOR VALUE RECEIVED, the undersigned dealer ("Dealer") promises to pay to the order of Dealer Services Corporation, a Delaware corporation ("DSC"), with its principal office at 11555 N. Meridian Street, Suite 220, Carmel, Indiana 46032 or such other place as DSC may designate in writing, in lawful money of the United States of America, the principal sum of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) (the "Credit Limit") or such greater or lesser sum which may be advanced from time to time, together with all costs, interest and fees and expenses as provided for under this Note and all accrued interest which shall accrue at a variable rate (based upon a 360 day year), adjusted each business day, based upon the most recent prime rate published in The Wall Street Journal plus an additional interest factor per Dealer's Term Sheet on a per annum basis and shall be compounded daily.

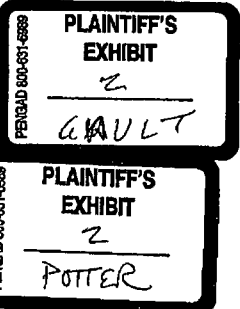
In the event that Dealer is in Default under the terms of this Note, interest shall accrue at a variable rate, adjusted each business day, based upon the most recent prime rate published in The Wall Street Journal plus eight percent (8%) per annum, with such interest compounded daily and accruing from the date on which the Event of Default first occurred. Upon demand by DSC or upon an Event of Default, Dealer shall pay the Liabilities as provided herein.

The undersigned Dealer waives demand, presentment for payment, notice of dishonor, protest and notice of protest, and expressly agrees that that this Note and all payments coming due under it may be extended or modified, from time to time without in any way affecting Dealer's liability hereunder. Dealer understands that this Note matures upon issuance, and that DSC may, at any time, and without notice to Dealer, with or without cause, demand that the Note be immediately paid in full. The demand nature of this Note does not limit DSC's election of remedies upon a default by Dealer. At DSC's option, DSC may reference a term of default for the purpose of permitting DSC to receive interest at the Default Rate. It is agreed that DSC may demand partial payments under this Note and said partial demand shall not change DSC's rights under this Note.

NOW, THEREFORE in consideration of the mutual covenants, agreements and conditions contained herein, the parties agree as follows:

1. DEFINITIONS: Capitalized terms used in this Note without definition shall have the respective meanings as set forth below. All other terms in this Note shall be defined by the meanings provided for in the Uniform Commercial Code as enacted in the State of Indiana where applicable.

- (a) "Advance" shall mean all loans or payments pursuant to this Note made by DSC to Dealer or on Dealer's behalf to any third party.
- (b) "Check" shall mean all payments by, or on behalf of, Dealer to DSC not made in cash or via certified funds.
- (c) "Collateral" shall mean all Dealer's assets and properties wherever located, including without limitation all Equipment of any kind or nature, all vehicles, vehicle parts and other Inventory now owned or hereafter acquired, without limitation, the Purchase Money Inventory as hereinafter defined, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, chattel paper, and general intangible now owned or hereafter acquired by Dealer together with the proceeds thereof; all of Dealer's books and records relating to the foregoing.
- (d) "Collateral Audit Fee" shall mean the non-refundable fee payable to DSC by Dealer in the amount set forth on the Term Sheet that relates to audits of Dealer's Inventory that may be conducted from time to time by DSC or its representatives.
- (e) "Credit Limit" shall mean the maximum amount Dealer may borrow at any one time under this Note.
- (f) "Dealer's Place of Business" shall mean that place where the Collateral and Dealer's books and record are kept, where Dealer's operations are conducted from and/or if Dealer is a legally recognized business entity where Dealer's registered office is located.
- (g) "Default Rate" shall mean the rate of interest allowed under this Note which shall accrue on all Dealer's liabilities while any uncured event of default by Dealer exists.



THIS IS A COPY OF THE DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT; THE SOLE ORIGINAL COUNTERPART OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT HAS BEEN DELIVERED TO TEXTRON FINANCIAL CORPORATION, AS AGENT, UNDER THAT CERTAIN AMENDED AND RESTATED PARTICIPATION AGREEMENT DATED AS OF MAY 31, 2006; EXCEPT AS EXPRESSLY PERMITTED IN SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT, ANY PURCHASE OR OTHER TRANSFER OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT FROM DEALER SERVICES CORPORATION WILL VIOLATE THE RIGHTS OF THE PARTICIPANTS UNDER SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT.

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- (h) "Equipment" shall mean all goods other than Inventory held for sale, lease or daily rental by Dealer in the ordinary course of business.
- (i) "Extension" shall mean that grant by DSC to Dealer of additional time an Advance for an item of Inventory becomes due and payable.
- (j) "Floorplan Fee" shall mean the fee charged by DSC to Dealer set forth on the Term Sheet for each individual item of Inventory. Additionally, in the event no Term Sheet is executed and effective, then the Floorplan Fee shall be equal to One hundred Fifty Dollars (\$150.00).
- (k) "Interest" shall mean that finance charge which accrues on all Liabilities owed by Dealer to DSC under or arising out of this Note.
- (l) "Late Fee" shall mean the fee charged by DSC to Dealer for each item of Inventory that Dealer fails to remit payment under this Note when due.
- (m) "Liabilities" shall mean all Advances, debts, Inventory Liabilities, financial obligations, charges, expenses, fees, attorney fees, costs of collection, covenants, and duties owing, arising, due or payable from Dealer to DSC of any kind or nature, present or future, under any instrument, guaranty, or other document whether arising under this Note or any other agreement, whether directly or indirectly (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising and however acquired including, without limitation, all interest, Floorplan Fees, Collateral Audit Fees, NSF Fees, Late Fees and other expenses, costs or fees provided by this Agreement.
- (n) "Maturity Date" shall mean the date an Advance for an item of Inventory becomes due and payable.
- (o) "MSO" shall mean the manufacturer's certificate of origin or other document evidencing ownership of a Unit issued by the manufacturer of the Unit.
- (p) "Note" shall mean this Demand Promissory Note and Security Agreement and all present and future Addendums referenced herein.
- (q) "Period" shall mean that number of days set forth in the Term Sheet, beginning on the date of an Advance and ending on the Maturity Date, and any extension thereto, that an item of Inventory will be financed by DSC to Dealer pursuant to the terms of this Note. Additionally, in the event no Term Sheet is executed and effective, then the Period shall be Thirty (30) days.
- (r) "Inventory" shall mean all items of inventory held for sale, lease or daily rental, including but not limited to, Purchase Money Inventory.
- (s) "Purchase Money Inventory" shall mean a Unit acquired by Dealer with funds Advanced by DSC for the purpose of acquiring said Unit.
- (t) "Retail Installment Contract" shall mean a contract entered into between Dealer and Dealer's customer in the ordinary course of business where DSC Inventory is the item sold under the contract.
- (u) "Shortage" shall mean the difference between a payment received by DSC and the amount owing arising, due, or payable from Dealer to DSC with respect to specific Advances for specific items of Inventory.
- (v) "Terms and Conditions" shall mean all provisions of this Note.
- (w) "Term Sheet" shall mean the addendum to this Note, as modified from time to time, which indicates specific binding terms, including but not limited to, Credit limits, Floorplan Fees, Collateral Audit Fees, Late Fees Interest and Number of Maturity Date Extensions.
- (x) "Title" shall mean the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.
- (y) "UCC" shall mean the Uniform Commercial Code as enacted in the State of Indiana.
- (z) "Unit" shall mean any manufactured item, including vehicles for which a certificate of title which is the subject of an Advance by DSC to Dealer.

2. GRANT OF SECURITY INTEREST: In order to secure full and prompt payment of all Liabilities and performance of all obligations of Dealer to DSC, Dealer hereby:

- (a) Grants to DSC, together with its subsidiaries, affiliates and assigns, a continuing security interest in all Collateral, including but not limited to, Inventory. This security interest is given to DSC to secure Dealer's Liabilities to DSC under this Note, as may be amended from time to time, all without relief from valuation or appraisal laws.
- (b) Agrees to execute and deliver such financing statements and amendments thereto as DSC shall require from time to time.

3. DEALER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: In order to induce DSC to make Advances hereunder, Dealer hereby represents, covenants and warrants:

- (a) To sell, lease or rent Inventory acquired by Dealer with an Advance from DSC only in the ordinary course of Dealer's business, and not to dispose of such Inventory, except as herein provided.
- (b) To keep Inventory acquired or retained by Dealer with an Advance from DSC only at Dealer's Place of Business and not to remove said Inventory from such place for a period exceeding twenty-four (24) hours, unless such item of Inventory is the subject of a Unit Lease Agreement, Rent To Own Agreement, Retail Installment Sales Contract or otherwise authorized in writing by DSC.
- (c) To keep Inventory 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 DSC. DSC shall be named "loss payee" to the extent DSC's interest may appear. In the event Dealer fails to procure, maintain or provide proof of such insurance coverage, DSC may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from Dealer pursuant to the terms of this Note. Dealer understands and agrees that DSC has an insurable interest in Dealer's Collateral, including but not limited to, Inventory, by virtue of Dealer's pledge of Dealer's Collateral as security to DSC as defined above, for the repayment of all Liabilities by Dealer to DSC under this Note.
- (d) To keep at all times complete and accurate records of Dealer's business and provide DSC upon demand copies of such records and financial information regarding Dealer's business and financial condition as DSC may reasonably request. Dealer authorizes DSC to share such information and any other information relating to Dealer's transaction with DSC to any and all persons or parties as DSC deems necessary.
- (e) To allow DSC and its representatives to inspect the Inventory during normal business hours and at other reasonable times and to inspect and make copies of Dealer's books and records. Dealer shall pay DSC upon demand for the costs and expenses incurred by DSC or its representatives with such inspections of Dealer's books and records and audits of Dealer's Inventory.
- (f) To hold all amounts received from the sale of an item of Inventory financed by DSC in trust for the sole benefit of and for DSC and remit a sum to DSC sufficient to satisfy all amounts due DSC and owing by Dealer for the sold item of Inventory.
- (g) That DSC may hold any sums or money belonging or payable to Dealer and apply the same to any outstanding Liabilities of Dealer.
- (h) That any statement of Dealer's account furnished to Dealer by DSC shall, to the extent no objection is made in writing by Dealer within 30 days after receipt of such statement, shall constitute a definitive statement of Dealer's account as of the date of the statement and shall be binding upon Dealer.
- (i) To refrain from paying or declaring any dividends or distributions, redeeming of any capital stock, repaying subordinate debt or other loans to any principal or guarantor of Dealer's Business, during anytime a Liability exists from Dealer to DSC.
- (j) To pay immediately and remain current with all levied taxes, assessments, charges and expenses which may now or hereinafter be levied or assessed against the Collateral and business. DSC may, in its sole discretion, pay such taxes, assessments, charges and expenses to protect its interests and collect the costs from Dealer pursuant to the terms of this Note.
- (k) That Dealer has obtained all necessary permits and licenses pursuant to local, state and federal law required to

operate its business as a wholesale or retail seller or lessor of the Inventory and has complied with all filing requirements to operate as the entity or business type on record with the appropriate governmental office of Dealer's State.

- (l) That no legal, arbitration, or administrative proceedings are pending or threatened against Dealer which could reasonably affect the Collateral or which materially and adversely affect the properties, business, prospects, or condition, financial or otherwise, of the Dealer or Dealer's ability to honor its obligations hereunder.
- (m) That all payments made by Dealer to DSC via check or automated clearing house payment ("ACH"), at the time of issuance, are written or drawn upon an account that contains immediately available funds sufficient to cover the dollar amount of the check or ACH.
- (n) That Dealer's legal name and address as appears on the last page of this Note is accurate and complete.
- (o) That Dealer shall immediately notify DSC in writing of any change in Dealer's legal name, address, business type, ownership, management or control and shall execute any documents necessary at DSC's request to bring Dealer into compliance with this Note.
- (p) That Dealer and all guarantors are legally competent and have authority to enter into and execute this Note and any and all other documents.
- (q) That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions applicable to Dealer's DSC account, whether such terms and conditions are contained in the Term Sheet or this Note.
- (r) That Dealer expressly authorizes and agrees to accept all facsimile transmissions from DSC including, but not limited to, account information and promotional materials.
- (s) That Dealer may have an account with DSC where information can be accessed and transmissions can be sent through DSC's website located at www.discoverdsc.com. Dealer shall have the means to control access to the account information by passwords and a dealer account number in accordance with policies and procedures set forth by DSC. To participate, Dealer shall execute all documents required by DSC to register for such additional service and shall abide by DSC's policies and procedures set forth therein. Dealer agrees such documents shall be incorporated herein by reference and made part of this Note.

4. CREDIT TERMS AND PROCEDURES:

- (a) The decision to make an Advance to Dealer is the exclusive right of DSC and Dealer understands that DSC may refuse to make an Advance at any time, with or without cause. Dealer is not obligated to finance any Inventory through DSC.
- (b) All Dealer requests to DSC for an Advance for the purpose of acquiring Purchase Money Inventory must include a copy of the bill of sale for any Purchase Money Inventory, indicating the actual purchase price and vendor, a completed Odometer Disclosure Statement and the Unit's certificate of title showing that it has been duly assigned to Dealer. All Other Dealer requests to DSC for an Advance for purposes of financing or refinancing Inventory Dealer has previously acquired an interest in must include the Unit's certificate of title showing that it has been duly assigned to Dealer and such information that DSC may require. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (c) DSC is not required but may make, without notice to Dealer and without regard to the Dealer's Credit Limit, Advance on Dealer's behalf, for any liability to a third party at any time Dealer is in default under the terms of this Note. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (d) Dealer must be in complete compliance with this Note before an Advance request will be approved by DSC. Additionally, DSC may require certain other information from Dealer to be submitted on a certified and sworn affidavit including, but not limited to, a statement that Dealer has not used any Advance for other than its originally requested and verified purpose.
- (e) Dealer shall pay to DSC at the offices of DSC Inventory and Purchase Money Inventory Liabilities, on demand and without notice, with respect to an item of Inventory or Purchase Money Inventory on the earlier of: (a) forty-eight (48) hours after the disposition by sale or otherwise of an item of Inventory or Purchase Money

Inventory; or (b) the Maturity Date. DSC shall apply such payments to the Inventory or Purchase Money Inventory Liabilities incurred from said item of Inventory or Purchase Money Inventory. Notwithstanding anything herein to the contrary, after the disposition by sale or otherwise and subsequent payment to DSC as delineated above, a Shortage exists between any payments received by DSC and the Inventory or Purchase Money Inventory Liability with respect to an item of Inventory or Purchase Money Inventory, that Shortage shall be considered a Liability owed by Dealer to DSC and secured with Collateral other than Inventory or Purchase Money Inventory. Dealer shall pay to DSC at the offices of DSC all other Liabilities, on demand and without notice. The order and method of application of such payments of the Liabilities shall be in the discretion of DSC.

- (f) If Dealer is in compliance with all other provisions of this Note, DSC may, in its sole discretion, permit an Extension of the Maturity Date relative to an item of Inventory, upon the payment of Shortage, Interest, Floorplan Fee(s) and a principal reduction of the outstanding Advance relating to such item of Inventory pursuant to this Note as established in the Term Sheet.
- (g) So long as Dealer is not in default of this Note, Dealer may sell Inventory to bona fide buyers in the ordinary and regular course of Dealer's business, but nothing herein shall be deemed to waive or release any interest DSC may have hereunder or under any other agreement in any proceeds or replacements of the Inventory. Upon the sale of any item of Inventory, Dealer shall hold the amount received from the disposition of Inventory in Trust for the benefit of DSC and Dealer shall pay to DSC, in accordance with this Note an amount equal to the unpaid balance of the Inventory Liabilities and Liabilities relating to such Inventory.
- (h) Dealer shall allow DSC's officers, employees, agents, attorneys, designees and representatives, including but not limited to representatives of Textron Financial Corporation, access to Dealer's books and records and the Dealer's Place of Business to conduct an audit of Dealer's inventory. Dealer shall be responsible for and agrees to pay all of DSC's expenses in conducting such audit.
- (i) Upon request by Dealer to obtain, for a legitimate business purpose, the certificate of title to a Unit or Units held by DSC, DSC shall consider said request and, in DSC's sole discretion, may grant such request. In the event DSC grants such request, Dealer must deliver to DSC a check or draft in an amount equal to the Advance(s) relating to such Unit(s). Title(s) must be returned to DSC within the time period established by DSC or any outstanding Liabilities(s), Floorplan Fee(s) or accrued interest relating to Advance(s) for such Unit(s) shall become immediately due and payable and DSC may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.
- (j) To protect DSC's interest, Dealer authorizes DSC to obtain credit information from a credit bureau, and any financial institutions or trade creditor that Dealer has provided as well as other credit investigation that DSC in DSC's sole discretion deems necessary. Dealer also authorizes DSC to contact any third parties to disclose information, including information contained in the DSC application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DSC's security interest. Further, if credit line is granted, Dealer authorizes DSC to review Dealer's account periodically, which may include obtaining additional credit reports.
- (k) Dealer's account is subject to "NSF" fees in the amount equal to or greater of \$25 dollars or the maximum amount permitted by law for each check or automated clearing house payment ("ACH") issued by Dealer which is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Dealer's and/or DSC's depository institution. Dealer's account is also subject to a Late Fee charge in the amount equal to or the greater of \$45 dollars or the maximum amount permitted by law for any item of Inventory that Dealer fails to remit payment under this Note when due. Dealer agrees that Late Fee charged by DSC is a reasonable estimate of DSC's probable losses due to the delay, inconvenience, and administrative expenses associated with a late payment. Dealer agrees that "NSF" fees and Late Fees are administrative expenses incurred by DSC subject to business and market conditions and may be adjusted by DSC without notice to Dealer at DSC's sole discretion.

5. EVENT OF DEFAULT: The occurrence of any of the following events shall be considered an "Event of Default" under this Note:

- (a) The Dealer fails to perform any of its obligations, undertakings or covenants hereunder, including but not limited to, failure to make payment upon maturity or upon demand of any outstanding Liability under this Note; or
- (b) Any warranty or representation made by the Dealer 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 Dealer to DSC proving to have been false or misleading in any material respect when made or delivered; or

- (c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DSC as "Loss Payee" is not in effect; or
- (d) The Dealer becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for the Dealer or any property thereof, 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 proceedings is commenced in respect of the Dealer; or
- (e) Any material change in the management, ownership or control of Dealer; or
- (f) The death or incompetence of Dealer or any Guarantor of this Note; or
- (g) Any change in the financial condition of Dealer or Guarantor(s) that DSC deems adverse; or
- (h) DSC deems itself insecure for any reason.

6. RIGHTS AND REMEDIES: Upon an event of default, DSC 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 under this Note and all other indebtedness owed to DSC by Dealer. DSC 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 Uniform Commercial Code in effect in the jurisdiction where the Collateral is kept. These rights and remedies include the right to cancel any unfunded Advances, to enter into Dealer's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DSC's request and to the extent Dealer may lawfully do so, Dealer shall assemble, prepare for removal and make available to DSC at a place designated by DSC which is reasonably convenient for DSC and Dealer, such items of Collateral as DSC may deem sufficient to cover all Dealer's Liabilities to DSC; and
- (b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Dealer waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DSC to post a bond; and
- (c) To the extent allowed by law, Dealer gives consent to DSC to proceed in any action to collect on or execute against any and all bonds that Dealer has posted with any governmental authorities.
- (d) Without limiting the foregoing, DSC may take control of any funds generated by the Collateral, and in DSC's name or Dealer's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral. Dealer waives any and all rights it may have to notice prior to seizure by DSC of any Collateral. Dealer agrees that private sale of any item financed by DSC at the amount owed to DSC on that item, less costs reasonably incurred by DSC in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral. Dealer shall be liable to DSC for any deficiency resulting from DSC's disposition of the Collateral. Dealer agrees that the Collateral is of the type customarily sold on a recognized market and that DSC therefore has no obligation to notify Dealer prior to a sale. However, Dealer agrees that ten (10) days written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DSC shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DSC shall not be required to marshal any assets in favor of Dealer. DSC has no obligation to pursue any third person for any Liability to obligation owed to Dealer. Dealer further agrees to pay reasonable attorney fees and collection costs incurred by DSC in enforcing this Note after an event of default by Dealer. To the extent not prohibited by law, Dealer 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.

7. POWER OF ATTORNEY: Dealer shall execute an irrevocable Power of Attorney in DSC's Favor and such Power of Attorney shall be incorporated herein by reference and made a part of this Note.

8. GUARANTEE(S): Dealer shall cause all owners of Dealer to execute an Individual Personal Guarantee. If Dealer is owned in whole or in part by a legally recognized business entity, then Dealer shall cause said entity to execute a Corporate Guarantee in addition to all required Individual Personal Guarantees. All such and the same shall be incorporated herein by reference and made a part of this Note.

9. **TERM SHEET(S):** Prior to an Advance under this Note, Dealer shall execute a Term Sheet for each unique set of terms applicable to Dealer, which may be amended from time to time, and the same shall be incorporated herein by reference and made a part of this Note.

10. **ASSIGNMENT:** This Note may be assigned by DSC but Dealer may not assign this Note without the prior written consent of DSC.

11. **INDEMNIFICATION:** Dealer shall indemnify and hold DSC harmless from and against all, loss, damage, costs, or expenses of whatever kind or nature relating to claims of third parties arising out of or in any way connected to this Note or Dealer's business affairs including, without limitation, attorneys' fees and expenses incurred both in the defense of any action against DSC and in any action to enforce these indemnity rights as against the Dealer.

12. **NO JOINT VENTURE OR PARTNERSHIP:** Nothing contained herein shall confer upon DSC or Dealer any interest in, or subject either of them to any liability for, or in respect of the business, assets, profits, losses or liabilities of the other. This Note does not constitute and shall not be characterized as a joint venture or partnership between DSC and Dealer. Nothing in this section shall limit or restrict the respective obligations and undertakings of DSC and Dealer hereunder.

13. **AMENDMENT, MODIFICATION AND MERGER:** This Note and all documents incorporated herein by reference are intended by the parties as an amendment and restatement of any prior Demand Promissory Note and Security Agreement between the parties. With the exception of the modifications referenced in paragraph 4(k) above, this Note may not be modified or amended except upon the written consent of DSC and Dealer. However, descriptions of specific items of Inventory, amounts and terms of Advances, Maturity Date Extensions and rates, and finance, service, late and other charges allowed by this Note may be proven by ordinary course of business records of DSC.

14. **EXECUTION:** The parties understand and agree that DSC may execute this Note and all corresponding documents by affixing an authorized DSC Officer's signature via signature stamp and a facsimile reproduction of such authorized DSC Officer's signature on the Note and all corresponding documents shall be deemed original signatures. Dealer may only execute this Note by original signature.

15. **NOTICES:** All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been duly given or made: if by hand or by facsimile, immediately upon the Business Day of receipt, if received before 5 p.m., recipient's time, otherwise on the next Business Day; if by Federal Express, Express Mail or any other overnight delivery service with proof of next day delivery on a Business Day, one (1) Business Day after dispatch; and if mailed by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the address set forth herein:

To DSC: Dealer Services Corporation, 11555 N. Meridian St., Suite 220, Carmel, IN 46032
Telephone: (317) 571-3721 Facsimile: (317) 571-3737

To Dealer: Total Inc. DBA Gault's Used Cars
2015 Union Hwy, Gaffney, SC 29340
Telephone: (864)489-5008 Facsimile: (864)489-5025

16. **NO WAIVER:** No failure or delay by DSC in exercising any right, power, or privilege under this Note will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

17. **TERMINATION:** No termination of this Note shall alter Dealer's obligations and Liabilities relating to amounts funded or committed prior to the effective date of such termination, and all rights and remedies, including without limitation, the security interest granted herein and the rights of DSC as a secured party hereunder, shall extend until all Liabilities owed by Dealer to DSC have been satisfied.

18. **LEGAL FEES AND COLLECTION COSTS:** Dealer shall pay to DSC all reasonable legal fees, expenses and collection costs incurred as a result of Dealer's default or failure of any obligation under this Note.

19. **SEVERABILITY:** Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement in any other jurisdiction.

20. **GOVERNING LAW:** The validity, enforceability and interpretation of this Note shall be governed by the laws of the State

of Indiana without regard to conflicts of laws provisions thereof.

21. JURISDICTION AND VENUE: As evidenced by Dealer's signature below, Dealer submits to the personal jurisdiction and venue of the state or federal courts of Marion County, Indiana and agrees that any and all claims or disputes pertaining to this Note initiated by Dealer shall be brought in the state or federal courts of Marion County, Indiana. Further, Dealer expressly consents to such jurisdiction and venue of the state or federal courts in Marion County, Indiana to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. DSC reserves the right to initiate and prosecute any action against Dealer in any court of competent jurisdiction and Dealer consents to such Forum as DSC may elect.

22. WAIVER OF BOND: Dealer waives, to the extent permitted by law, any bond or surety or security on such bond which might, but for this waiver, be required of DSC.

23. WAIVER OF JURY TRIAL: DEALER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY OTHER LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY COURSE OF CONDUCT, STATEMENT, WHETHER ORAL OR WRITTEN, OR ACTIONS OF THE DEALER. THE DEALER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL HAVE NOT BEEN DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY DSC EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH DEALER AND DSC.

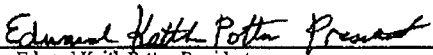
24. HEADINGS: Paragraph headings used in this Note are for reference only and shall not affect the construction of this Note.

WHEREFORE, the parties have, by their duly authorized representatives, executed this Note on the 15 day of March, 2007.

Dealer: Total Inc. DBA Gault's Used Cars

Accepted by Dealer Services Corporation

By: 
DSC Officer

Signatures: 
Edward Keith Potter, President

THIS IS A COPY OF THE DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT; THE SOLE ORIGINAL COUNTERPART OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT HAS BEEN DELIVERED TO TEXTRON FINANCIAL CORPORATION, AS AGENT, UNDER THAT CERTAIN AMENDED AND RESTATED PARTICIPATION AGREEMENT DATED AS OF MAY 31, 2006; EXCEPT AS EXPRESSLY PERMITTED IN SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT, ANY PURCHASE OR OTHER TRANSFER OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT FROM DEALER SERVICES CORPORATION WILL VIOLATE THE RIGHTS OF THE PARTICIPANTS UNDER SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT.

INDIVIDUAL PERSONAL GUARANTY

WHEREAS, Dealer Services Corporation, a Delaware corporation ("DSC"), in consideration of any present or future loans or other financial advances to TOTAL, INC. DBA GAULT'S USED CARS (hereinafter sometimes referred to as "Debtor"); and

WHEREAS, on the 15th day of March, 2008, Debtor executed and delivered to DSC its principal Demand Promissory Note and Security Agreement ("Note"); and

WHEREAS, the loan of DSC to Debtor is conditioned upon said indebtedness being personally guaranteed as to the payment thereof by DAVID L. POTTER (hereinafter referred to as "Guarantor"); and

WHEREAS, in consideration of the financial and other support that the Debtor has provided, and such financial and other support as the Debtor may in the future provide, to the Guarantor, and in order to induce DSC to provide Credit to Debtor, and because Guarantor has determined that executing this Individual Personal Guaranty (hereinafter referred to as "Guaranty") is in its interest and to its financial benefit, the Guarantor is willing to guarantee the obligations of Debtor under the Note; and

WHEREAS the Guaranty shall be irrevocable, continuing and unconditional as to all Liabilities owed by Debtor at all times;

1. NOW, THEREFORE, the Guarantor, in executing this Guaranty, jointly and severally guarantees that Debtor will promptly pay the full amount of principal and interest, all costs and fees, including but not limited to, reasonable attorneys' fees and collection costs, and any other liabilities arising out of the Note as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as a primary not a secondary liability of Guarantor.

2. Without limiting the generality of the foregoing, the Guarantor agrees that he/she will pay the full amount of principal and interest of the Note now or hereafter due as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as primary and not a secondary liability of Guarantor.

3. The Guarantor hereby waives demand, notice of dishonor, presentment for payment, protest and notice of protest, and of non-performance on all of said indebtedness; and if said indebtedness is renewed, or if the time for payment thereof be extended (to which Guarantor hereby expressly consents to any such renewal or extension) either with or without notice to Guarantor, Guarantor unconditionally guarantees the payment of such indebtedness at the time fixed for the payment thereof in and by any such renewal or extension. Guarantor further waives all rights, by statute or otherwise, to require the holder of the Note to institute suit against the original maker of the Note; also to exercise diligence in enforcing this or any other instrument.

4. To the extent permitted by law, Guarantor waives all defenses legally available to Guarantor, Guarantor being bound to the payment of said indebtedness of the original maker of the Note. The holder of the Note may take any new or additional or substituted security from time to time without in any way impairing the obligation of the undersigned; and the impairment of the security, which said holder may from time to time hold as security for said loan, shall in no way operate to discharge the undersigned in whole or in part, it being specifically agreed that the holder is not required to exercise diligence to enforce its rights against the original maker of the Note. The holder is hereby authorized at any time, in its sole discretion and without notice, to take, change, release or in any way deal with the security herein; but the holder of the Note shall be under no obligation to collect or to protect any of such security or said indebtedness, and its neglect or failure to collect or protect the same is excused. Acceptance of the Guaranty is waived.

5. Forbearance on the part of DSC to take steps to enforce payment of said indebtedness arising from Guarantor's default in any respect whatever, or the giving of further time to the original maker of the Note, shall in no way release the undersigned, but the undersigned shall remain jointly and severally liable hereunder for the prompt payment of said indebtedness.

6. This Guaranty is for the use and benefit of the holder of the Note, who in the first instance will be DSC. This Guaranty shall also be for the use and benefit of any subsequent owner of the Note, and each owner of the Note may assign this Guaranty to its successor owner of the Note.

7. All reasonable costs and expenses, including attorneys' fees, incurred by the holder of the Note to enforce this Guaranty, shall be paid by the undersigned.

8. The liability of the Guarantor shall continue until payment is made of every obligation of the Debtor now or hereafter incurred in connection with the Note, and until payment is made of any loss or damage incurred by DSC with respect to any matter covered by this Guaranty.

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9. Guarantor consents that, without affecting the Guarantor's liability, DSC may, without notice to or consent of Guarantor on such terms as DSC may deem advisable, extend in whole or in part, by renewal or otherwise, the time of payment of the debt now or hereafter owing by the Debtor to DSC or held by DSC as security for any obligation herein described, or may do or refrain from doing any act whatever. Guarantor also consents that DSC may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the obligations of Debtor to DSC, and may also settle or compromise any claim of DSC against Debtor or against any other person or corporation whose obligation is held by DSC as collateral security for any obligation of Debtor or DSC. Guarantor hereby ratifies and affirms any such actions, and all such actions shall be binding on Guarantor, and Guarantor hereby waives all defenses, counterclaims or offsets which Guarantor may have.

10. Guarantor also waives notice of failure of any person to pay to DSC any debt held by DSC as collateral security for the obligations of Debtor, and all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of DSC against Debtor.

11. Guarantor represents that at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of this Guaranty.

12. Guarantor understands that so long as any indebtedness exists from Debtor to DSC, Debtor is not permitted to repay any loans or obligation owing Guarantor, present or future. Guarantor agrees that any such payments made by Debtor to Guarantor shall be held in trust for the benefit of DSC and shall be immediately delivered to DSC.

13. DSC may, at its option, proceed in the first instance against the Guarantor to collect the obligations covered by this Guaranty without first proceeding against any other person, firm or corporation, and without resorting to any property held by DSC as collateral security.

14. The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof, and Guarantor agrees that any and all claims or disputes pertaining to this Guaranty or to any matter arising out of or related to this Guaranty initiated by Debtor against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Guarantor expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. However, in the event Debtor's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

15. Guarantor understands that the right to trial by jury is an unconditional right afforded by the United States Constitution and understands that right may be waived. Guarantor has consulted with or has had the opportunity to consult with his/her attorney and hereby knowingly, intentionally and voluntarily waives any right to trial by jury regarding any litigation arising out of or in connection with this Guaranty. Guarantor understands that DSC also has waived its right to trial by jury and agrees that such waiver by Guarantor and DSC are for the mutual benefit of the parties. Further, Guarantor understands and agrees that such waiver is a material inducement for both parties in entering into this Guaranty and transactions relating thereto.

16. JUDICIAL REFERENCE. IF DEBTOR'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEBTOR AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THE NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

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(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

17. Any provision of this Guaranty that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Guaranty or affecting the validity or enforceability of any provision of this Guaranty.

18. Words of "Guaranty" contained herein in no way diminish or impair the absolute liability hereby created.

19. This Guaranty is intended by the Guarantor as an amendment and restatement of any prior Personal Guaranty made by Guarantor related to the Demand Promissory Note and Security Agreement or amendment thereof executed by Debtor.

20. POLICY CONCERNING THE FURNISHING OF NEGATIVE INFORMATION TO CONSUMER REPORTING AGENCIES. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Executed by the undersigned this 24 day of Dec, 2008

Edward Keith Potter
Address
119 Dehainsville Rd
Address
Ellenboro N.C. 28040

STATE OF SC)
COUNTY OF Lexington)

) SS:

Before me, a Notary Public in and for said County and State, personally appeared Edward Keith Potter who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notarial Seal this 26th day of Dec, 2008

Notary Signature [Signature]

Notary, Printed B. Leighton Best Sr

My Commission Expires: Aug 26, 2018

County of Residence: Lexington

**DEMAND PROMISSORY NOTE
AND SECURITY AGREEMENT**

TO: Dealer Services Corporation
1320 City Center Drive
Suite 100
Carmel, Indiana 46032

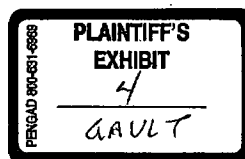
FOR VALUE RECEIVED, the undersigned dealer ("Dealer") promises to pay to the order of Dealer Services Corporation, a Delaware corporation ("DSC"), with its principal office at 1320 City Center Drive, Suite 100, Carmel, Indiana 46032 or such other place as DSC may designate in writing, in lawful money of the United States of America, the principal sum of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00)** (the "Credit Limit") or such greater or lesser sum which may be advanced from time to time, together with all costs, interest, fees, and expenses as provided for under this Note.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, the parties agree as follows:

1. **DEFINITIONS:** Capitalized terms used in this Note without definition shall have the respective meanings as set forth below. All other terms in this Note shall be defined by the meanings provided for in the Uniform Commercial Code as provided for herein.

- (a) "Advance" shall mean any loan or payment in any amount made pursuant to this Note by DSC to Dealer or on Dealer's behalf to any third party.
- (b) "ACH" shall mean all payments by, or on behalf of, Dealer to DSC made via a nationwide electronic funds transfer network processing electronic debit entries from Dealer's bank accounts.
- (c) "Base Rate" shall mean the greater of that variable rate of interest or that fixed rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 5.00%.
- (d) "Check" shall mean all payments by, or on behalf of, Dealer to DSC not made in cash, via certified funds, wire transfer or ACH.
- (e) "Collateral" shall have the meaning set forth in Paragraph 2 of this Note.
- (f) "Contract Rate" shall mean that rate of interest as stated on Dealer's Term Sheet. Additionally, in the event no Term Sheet is executed and effective, then 4.25%.
- (g) "Credit Limit" shall mean the maximum amount Dealer may borrow at any one time under this Note.
- (h) "Credit Line" shall mean Dealer's DSC floorplan line of credit pursuant to and under this Note.
- (i) "Dealer's Place of Business" shall mean that place where the Collateral and Dealer's books and records are kept, where Dealer's operations are conducted from and/or if Dealer is a legally recognized business entity where Dealer's registered office is located.
- (j) "Dealer's Home Branch" shall mean the DSC branch location for which Dealer's DSC Credit Line is assigned to by DSC for servicing and administration.
- (k) "Default Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 8%.
- (l) "DSC-Financed Inventory" shall mean any Unit now or hereafter acquired or retained by Dealer pursuant to an Advance under this Note.
- (m) "DSC Administrative Fee" shall mean any fee charged by DSC to Dealer for any service or process requested by Dealer or unilaterally undertaken by DSC, reasonable or necessary to administer or monitor the Credit Line, that is not a Floorplan Fee or DSC Universal Fee.
- (n) "DSC Published Rate, Fee and Term Schedule" shall mean that current schedule of universal interest rates and fees assessed by DSC, including DSC Universal Fees, late fees, fees relating to returned checks or ACH payments due to insufficient funds, the Base Rate, Risk Rate and Default Rate and notice of amendments to Terms and Conditions published by DSC via posting such schedule of such universal rates and fees and notice of amendment to Terms and Conditions at www.discoverdsc.com and posted at each DSC branch office or location.
- (o) "DSC Universal Fee" shall mean any published fee as stated in the DSC Published Rate, Fee and Term Schedule charged by DSC to Dealer.

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- (p) "Equipment" shall mean all goods other than Inventory held for sale, lease, or daily rental by Dealer in the ordinary course of business.
- (q) "Event of Default" shall have the meaning set forth in Paragraph 6 of this Note.
- (r) "Extension" shall mean that grant by DSC to Dealer of additional time that an Advance for an item of DSC-Financed Inventory becomes due and payable.
- (s) "Floorplan Fee" shall mean the fee charged by DSC to Dealer set forth on the Term Sheet for each individual item of DSC-Financed Inventory. Additionally, in the event no Term Sheet is executed and effective, then the Floorplan Fee shall be equal to One Hundred Fifty Dollars (\$150.00).
- (t) "Interest" shall mean the aggregate rate of interest which accrues on all Liabilities owed by Dealer to DSC under or arising out of this Note by combining the Base Rate plus the applicable Contract Rate, Risk Rate or Default Rate.
- (u) "Inventory" shall mean all Units held by Dealer for wholesale or retail sale, lease, or rent.
- (v) "Liabilities" shall mean any and all Advances, debts, DSC-Financed Inventory Liabilities, financial obligations, DSC Administrative Fees, DSC Universal Fees, Interest, Floorplan Fees, NSF fees, late fees, charges, expenses, attorney fees, costs of collection, covenants, and duties owing, arising, due or payable from Dealer to DSC of any kind or nature, present of future, under any instrument, guaranty, or other document whether arising under this Note or any other agreement, whether directly or indirectly (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising and however acquired.
- (w) "Maturity Date" shall mean the date an Advance for an item of DSC-Financed Inventory becomes due and payable. In the event the Maturity Date relating to a specific Advance for an item of DSC-Financed Inventory becomes due and payable falls on a federal banking holiday, Saturday or Sunday, the Maturity Date for such specific Advance shall be the next business date subsequent to such federal banking holiday, Saturday or Sunday.
- (x) "MSO" shall mean the manufacturer's certificate of origin or other document evidencing ownership of a Unit issued by the manufacturer of the Unit.
- (y) "Note" shall mean this Demand Promissory Note and Security Agreement and all present and future amendments, modifications and addendums referenced herein.
- (z) "Period" shall mean that number of days set forth in the Term Sheet, beginning on the date of an Advance and ending on the Maturity Date, and any extension thereto, that an item of DSC-Financed Inventory will be financed by DSC to Dealer pursuant to the terms of this Note. Additionally, in the event no Term Sheet is executed and effective, then the Period shall be Thirty (30) days.
- (aa) "Purchase Money Inventory" shall mean a Unit acquired by Dealer pursuant to an Advance under this Note.
- (bb) "Risk Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 6%.
- (cc) "Shortage" shall mean the difference between a payment received by DSC and the amount owing, arising, due, or payable from Dealer to DSC with respect to a specific Advance for a specific item of DSC-Financed Inventory.
- (dd) "Terms and Conditions" shall mean all provisions of this Note with the exception of terms specifically relating to Dealer's Floorplan Fees and Contract Rate and any other term referenced in Dealer's Term Sheet.
- (ee) "Term Sheet" shall mean the addendum to this Note, as modified from time to time, which indicates specific terms regarding Dealer's Credit Limit, Floorplan Fees, Contract Rate of interest, Period, principal reduction, and Number of Maturity Date Extensions.
- (ff) "Title" shall mean the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.
- (gg) "UCC" shall mean the Uniform Commercial Code as enacted in the State where the Collateral is located and the version in effect as of the date of this Note.
- (hh) "Unit" shall mean any manufactured item, including vehicles for which a certificate of title or a MSO exists which is the subject of an Advance by DSC to Dealer under this Note.

2. **GRANT OF SECURITY INTEREST:** In order to secure full and prompt payment of all Liabilities and performance of all obligations of Dealer to DSC, Dealer hereby:
- (a) Grants to DSC, together with its subsidiaries, affiliates and assigns, a continuing security interest in all of Dealer's assets and properties, wherever located, including without limitation, all Equipment of any kind or nature, all vehicles, vehicle parts, all Inventory now owned or hereafter acquired, without limitation, Purchase Money Inventory now owned or hereafter acquired, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, accounts receivable, chattel paper, and general intangibles now owned or hereafter acquired by Dealer together with the proceeds thereof; all of Dealer's books and records relating to the foregoing ("Collateral"). This security interest is given to DSC to secure Dealer's Liabilities to DSC under this Note, as may be amended from time to time, all without relief from valuation or appraisal laws.
 - (b) Agrees to execute and deliver such financing statements and amendments thereto as DSC shall require from time to time.
3. **INTEREST RATE.** Interest shall accrue on all Dealer Liabilities in accordance with the following:
- (a) All outstanding Liabilities under this Note shall accrue interest (based upon a 360 day year), on a per annum basis and shall be compounded daily at the Base Rate plus the applicable Contract Rate, Risk Rate, or Default Rate until paid in full.
 - (b) The Contract Rate stated on Dealer's Term Sheet plus the Base Rate shall be the applicable rate of Interest accruing on all Dealer Liabilities, so long as there has not been a breach by Dealer of any representation or warranty made by Dealer under this Note, a breach by Dealer of any covenant or credit term required under this Note, or an event of default by Dealer under this Note.
 - (c) In the event a breach of any representation or warranty made by Dealer under Paragraphs 3 or 4 of this Note occurs, or a breach by Dealer of a covenant or credit term required under Paragraph 4 or Paragraph 5 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Risk Rate.
 - (d) In the event that an Event of Default occurs as defined in Paragraph 6 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Default Rate.
 - (e) The Base Rate, Risk Rate or Default Rate may be amended or modified by DSC in DSC's sole discretion by posting such amendment or modification on the DSC Published Base Rate and Fee Schedule. However, DSC may only increase the Base Rate, Risk Rate or Default Rate by 50 basis points in any one 30-day period.
4. **DEALER'S REPRESENTATIONS, WARRANTIES AND COVENANTS:** In order to induce DSC to make Advances hereunder, Dealer hereby represents, covenants and warrants:
- (a) To sell, lease or rent DSC-Financed Inventory only in the ordinary course of Dealer's business, and not to dispose of such DSC-Financed Inventory, except as herein provided.
 - (b) To keep DSC-Financed Inventory only at Dealer's Place of Business and not to remove said DSC-Financed Inventory from such place for a period exceeding twenty-four (24) hours, unless such item of DSC-Financed Inventory is the subject of a daily rental agreement, rent to own agreement, lease here pay here agreement, retail installment sales contract, or otherwise authorized in writing by DSC.
 - (c) To keep DSC-Financed Inventory 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 DSC. DSC shall be named "loss payee" to the extent DSC's interest may appear. In the event Dealer fails to procure, maintain or provide proof of such insurance coverage, DSC may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from Dealer pursuant to the terms of this Note. Dealer understands and agrees that DSC has an insurable interest in Dealer's Collateral, including but not limited to, DSC-Financed Inventory, by virtue of Dealer's pledge of Dealer's Collateral as security to DSC as defined above, for the repayment of all Liabilities by Dealer to DSC under this Note. Additionally, to keep DSC-Financed Inventory held for rent to own or lease here pay here covered by an adequate service contract or warranty acceptable to DSC, and to keep such DSC-Financed Inventory equipped with a global positioning system ("GPS") unit that is acceptable to DSC and is in working condition at all times.
 - (d) To keep at all times complete and accurate records of Dealer's business and to provide DSC upon demand copies of such records and financial information regarding Dealer's business and financial condition as DSC may reasonably request. Dealer authorizes DSC to share such information and any other information relating to Dealer's transaction with DSC to any and all persons or parties as DSC deems necessary.

- (e) To allow DSC and its representatives to inspect the DSC-Financed Inventory during normal business hours and at other reasonable times and to inspect and make copies of Dealer's books and records. Dealer shall pay DSC upon demand for the costs and expenses incurred by DSC or its representatives with such inspections of Dealer's books and records and audits of Dealer's DSC-Financed Inventory.
- (f) To hold all amounts received from the sale of an item of DSC-Financed Inventory in the form as received in trust for the sole benefit of and for DSC, and to remit such funds satisfying all amounts due DSC and owing by Dealer for the sold item of DSC-Financed Inventory within 24 hours of receipt of such funds.
- (g) That DSC may hold any sums or money belonging to or payable to Dealer and apply the same to any outstanding Liabilities of Dealer.
- (h) That any statement of Dealer's account furnished to Dealer by DSC, to the extent no objection is made in writing by Dealer within 30 days after receipt of such statement, shall constitute a definitive statement of Dealer's Credit Line and Liabilities as of the date of the statement and shall be binding upon Dealer.
- (i) To refrain from paying or declaring any dividends or distributions, redeeming of any capital stock, repaying subordinate debt or other loans to any principal or guarantor of Dealer's Business, during anytime a Liability exists from Dealer to DSC.
- (j) To pay immediately and remain current with all levied taxes, assessments, charges and expenses which may now or hereinafter be levied or assessed against the Collateral and business. DSC may, in its sole discretion, pay such taxes, assessments, charges and expenses to protect its interests and thereafter collect the costs from Dealer pursuant to the terms of this Note.
- (k) That Dealer has obtained all necessary permits and licenses pursuant to local, state and federal law required to operate its business as a wholesale or retail seller, lessor or renter of the DSC-Financed Inventory and has complied with all filing requirements to operate as the entity or business type on record with the appropriate governmental office(s).
- (l) That no legal, arbitration, or administrative proceedings are pending or threatened against Dealer which could reasonably affect the Collateral or which materially and adversely affect the properties, business, prospects, or condition, financial or otherwise, of the Dealer or Dealer's ability to honor its obligations hereunder.
- (m) That all payments made by Dealer to DSC via check or ACH, at the time of issuance, are written or drawn upon an account that contains immediately available funds sufficient to cover the dollar amount of the check or ACH.
- (n) That Dealer's legal name and address as they appear in Paragraph 16 of this Note are accurate and complete.
- (o) That Dealer shall immediately notify DSC in writing of any change in Dealer's legal name, address, business type, ownership, management or control and shall execute any documents necessary at DSC's request to bring Dealer into compliance with this Note.
- (p) That Dealer and all guarantors are legally competent and have authority to enter into and execute this Note and any and all other documents.
- (q) That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions applicable to Dealer's DSC Credit Line, whether such terms and conditions are contained in the Term Sheet or this Note.
- (r) That Dealer expressly authorizes and agrees to accept all mailings, facsimile transmissions and telephonic transmissions from DSC including, but not limited to, Credit Line information and promotional materials.
- (s) That Dealer may have an account with DSC where information can be accessed and transmissions can be sent through DSC's website located at www.discoverdsc.com. Dealer shall have the means to control access to the account information by passwords and a dealer account number in accordance with policies and procedures set forth by DSC. To participate, Dealer shall execute all documents required by DSC to register for such additional service and shall abide by DSC's policies and procedures set forth therein. Dealer agrees such documents shall be incorporated herein by reference and made part of this Note.
- (t) That Dealer shall use Advances solely for business purposes and not for personal, family or household purposes. This means, among other things, that Dealer may not use Advances to purchase a vehicle to be used for Dealer's personal, family or household purposes.

5. CREDIT TERMS AND PROCEDURES:

- (a) The decision to make an Advance to Dealer is the exclusive right of DSC, and Dealer understands that DSC may refuse to make an Advance at any time, with or without cause and without prior notice to Dealer or any guarantors of such decision. Dealer is not obligated to finance any Inventory through DSC. If Dealer's Place of Business is in California, the amount of the first Advance under this Note must be at least \$5,000.00.

- (b) All Dealer requests to DSC for an Advance for the purpose of acquiring Purchase Money Inventory with DSC funds, or financing previously-acquired Inventory with DSC funds must include a copy of the bill of sale for any Unit which is the subject of the request, indicating the actual purchase price and vendor, a completed Odometer Disclosure Statement, and the Unit's certificate of title showing that it has been duly assigned to Dealer. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (c) DSC is not required but may make, without notice to Dealer and without regard to the Dealer's Credit Limit, Advance on Dealer's behalf, for any Liability to a third party at any time Dealer is in default under the terms of this Note. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (d) Dealer must be in complete compliance with this Note before an Advance request will be approved by DSC. Additionally, DSC may require certain other information from Dealer to be submitted on a certified and sworn affidavit including, but not limited to, a statement that Dealer has not used any Advance for any other purpose than its originally requested and verified purpose.
- (e) Dealer shall pay all liabilities to DSC at the offices of DSC, on demand and without notice, with respect to an item of DSC-Financed Inventory on the earlier of: (a) twenty-four (24) hours from the time Dealer receives payment by or on behalf of the purchaser of an item of DSC-Financed Inventory; (b) forty-eight (48) hours after the disposition by sale or otherwise of an item of DSC-Financed Inventory; or (c) the Maturity Date. DSC shall apply such payments to the DSC-Financed Inventory Liabilities incurred from said item of DSC-Financed Inventory. Notwithstanding anything herein to the contrary, if, after the disposition by sale or otherwise and subsequent payment to DSC as delineated above, a Shortage exists between any payments received by DSC and the DSC-Financed Inventory Liability with respect to an item of DSC-Financed Inventory, that Shortage shall be considered a Liability owed by Dealer to DSC and secured with Collateral other than DSC-Financed Inventory. Dealer shall pay to DSC at the offices of DSC all other Liabilities, on demand and without notice. The order and method of application of such payments of the Liabilities shall be in the discretion of DSC. Payments received by DSC after 5 pm as measured by Dealer's Home Branch shall be applied the next business day.
- (f) If Dealer is in compliance with all other provisions of this Note, DSC may, in its sole discretion, permit an Extension of the Maturity Date relative to an item of DSC-Financed Inventory, upon the payment of Shortage, Interest, Floorplan Fee(s) and a principal reduction of the outstanding Advance relating to such item of DSC-Financed Inventory pursuant to this Note and as established in the Term Sheet.
- (g) So long as Dealer is not in default of this Note, Dealer may sell DSC-Financed Inventory to bona fide buyers in the ordinary and regular course of Dealer's business, but nothing herein shall be deemed to waive or release any interest DSC may have hereunder or under any other agreement in any proceeds or replacements of the DSC-Financed Inventory. Upon the sale of any specific item of DSC-Financed Inventory, Dealer shall hold the amount received from the disposition of such DSC-Financed Inventory in Trust for the benefit of DSC, and Dealer shall pay to DSC, in accordance with this Note, an amount equal to the unpaid balance of the Liabilities relating to such specific item of DSC-Financed Inventory.
- (h) Dealer shall allow DSC's officers, employees, agents, attorneys, designees and representatives access to Dealer's books and records at the Dealer's Place of Business to conduct an audit of Dealer's DSC-Financed Inventory. Dealer shall be responsible for and agrees to pay all of DSC's expenses in conducting such audit.
- (i) Upon request by Dealer to obtain, for a legitimate business purpose, the Title to a specific item of DSC-Financed Inventory held by DSC, DSC may consider said request and, in DSC's sole discretion, grant such request. In the event DSC grants such request, Dealer must deliver to DSC a check or draft which is signed and dated on the date as of which the Dealer takes physical custody of the subject Title in an amount equal to the Liability relating to such specific item of DSC-Financed Inventory. The subject Title must be returned to DSC within the time period established by DSC or any outstanding Liability relating to any such Advance for such specific items of DSC-Financed Inventory shall become immediately due and payable, and DSC may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.
- (j) To protect DSC's interest, Dealer authorizes DSC to obtain credit information from a credit bureau, and any financial institutions or trade creditor that Dealer has provided, as well as other credit investigation that DSC in DSC's sole discretion deems necessary. Dealer also authorizes DSC to contact any third parties to disclose information, including information contained in the DSC application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DSC's security interest. Further, if Credit Line is granted, Dealer authorizes DSC to review Dealer's account periodically, which may include obtaining additional credit reports.
- (k) Dealer's account is subject to "NSF" fees in the amount stated in the DSC Published Rate, Fee and Term Schedule or maximum amount permitted by law for each check or ACH issued by Dealer which is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Dealer's and/or DSC's depository institution.
- (l) DSC may process checks electronically, at first presentment and any re-presentments, by transmitting the amount of the check, routing number, account number and check serial number to your financial institution. By submitting a check for payment, you authorize DSC to initiate an electronic debit from your bank account. When DSC processes your check electronically, your payment may be debited from your bank account as soon as the same day we receive your check and you will not receive that cancelled check with your bank account statement.

- (m) Dealer's account is subject to a late fee charge in the amount stated in the DSC Published Rate, Fee and Term Schedule or the maximum amount permitted by law for any item of DSC-Financed Inventory that Dealer fails to remit payment under this Note when due. Dealer acknowledges and agrees that the late fee charged by DSC is a reasonable estimate of DSC's probable losses due to the delay, inconvenience, and administrative expenses associated with a late payment. Dealer's account is subject to DSC Administrative Fees. Dealer acknowledges and agrees that any such DSC Administrative Fee charged by DSC is permitted under this Note and consents to the assessment of any such DSC Administrative Fee to Dealer's account. Dealer further acknowledges and agrees that DSC Administrative Fees are subject to business and market conditions and may be adjusted unilaterally by DSC without notice to Dealer and at DSC's sole discretion.
- (n) DSC maintains and publishes the "DSC Published Rate, Fee and Term Schedule" via posting the same on www.discoverdsc.com and in each DSC branch location. All such rates, fees and such amendments to the Terms and Conditions are published therein and incorporated herein by reference and made a part of this Note. With the exception of DSC Administrative Fees and Floorplan Fees, the rates and fees applied to Dealer's Liabilities under this Note and the amended Terms and Conditions stated therein shall be the applicable rates and fees and amendments to the Terms and Conditions most recently published on the DSC Published Rate, Fee and Term Schedule. DSC may amend the rates and fees and amend the Terms and Conditions from time to time at DSC's sole discretion and without additional Notice to Dealer other than the publication of such amendments on www.discoverdsc.com and in each DSC branch location.
- (o) Dealer waives demand, presentment for payment, notice of dishonor, protest and notice of protest, and expressly agrees that this Note and all payments coming due under it may be extended or modified, from time to time without in any way affecting Dealer's liability under this Note. Dealer understands that this Note matures upon issuance, and that DSC may, at any time, and without notice to Dealer, with or without cause, demand that the Note be immediately paid in full. The demand nature of this Note does not limit DSC's election of remedies upon a default by Dealer. At DSC's option, DSC may reference a term of default for the purpose of permitting DSC to receive interest at the Default Rate. It is agreed that DSC may demand partial payments under this Note, and said partial demand shall not change DSC's rights under this Note.

6. EVENT OF DEFAULT: The occurrence of any of the following events shall be considered an event of default under this Note ("Event of Default"):

- (a) The Dealer fails to perform any of its obligations, undertakings or covenants under this Note, fails to adhere to a credit term under this Note, including but not limited to, failure to make payment upon maturity or upon demand of any outstanding Liability under this Note; or
- (b) Any warranty or representation made by the Dealer 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 Dealer to DSC proving to have been false or misleading in any material respect when made or delivered; or
- (c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DSC as "Loss Payee" is not in effect; or
- (d) The Dealer becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for the Dealer or any property thereof, 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 the Dealer; or
- (e) Any material change in the management, ownership or control of Dealer; or
- (f) The voluntary or administrative dissolution, death or incompetence of Dealer or any Guarantor of this Note; or
- (g) Any change in the financial condition of Dealer or Guarantor(s) that DSC in good faith deems adverse; or
- (h) DSC in good faith deems itself insecure for any reason.

7. RIGHTS AND REMEDIES: Upon an event of default, DSC 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 under this Note and all other indebtedness owed to DSC by Dealer. DSC 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 Uniform Commercial Code in effect in the jurisdiction where the Collateral is kept. These rights and remedies include the right to cancel any unfunded Advances, to enter into Dealer's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DSC's request and to the extent Dealer may lawfully do so, Dealer shall assemble, prepare for removal and make available to DSC at a place designated by DSC which is reasonably convenient for DSC and Dealer, such items of Collateral as DSC may deem sufficient to cover all Dealer's Liabilities to DSC; and
- (b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Dealer waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DSC to post a bond; and

- (c) To the extent allowed by law, Dealer gives consent to DSC to proceed in any action to collect on or execute against any and all bonds that Dealer has posted with any governmental authorities; and
- (d) Without limiting the foregoing, DSC may take control of any funds generated by the Collateral, and in DSC's name or Dealer's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral. Dealer waives any and all rights it may have to notice prior to seizure by DSC of any Collateral. Dealer agrees that private sale of any item financed by DSC at the amount owed to DSC on that item, less costs reasonably incurred by DSC in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral. Dealer shall be liable to DSC for any deficiency resulting from DSC's disposition of the Collateral. Dealer agrees that the Collateral is of the type customarily sold on a recognized market and that DSC therefore has no obligation to notify Dealer prior to a sale. However, Dealer agrees that ten (10) days prior written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DSC shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DSC shall not be required to marshal any assets in favor of Dealer. DSC has no obligation to pursue any third person for any Liability or obligation owed to Dealer. Dealer further agrees to pay reasonable attorney fees and collection costs incurred by DSC in enforcing this Note after an event of default by Dealer. To the extent not prohibited by law, Dealer 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.

8. POWER OF ATTORNEY: Dealer shall execute an irrevocable Power of Attorney in DSC's favor and such Power of Attorney shall be incorporated herein by reference and made a part of this Note.

9. GUARANTY(IES): Dealer shall cause each owner of Dealer to execute an Individual Personal Guaranty. If Dealer is owned in whole or in part by a legally recognized business entity or trust, then Dealer shall cause said entity or trust to execute a Guaranty in addition to all required Individual Personal Guaranties. All such and the same shall be incorporated herein by reference and made a part of this Note.

10. TERM SHEET(S): Prior to an Advance under this Note, Dealer shall execute a Term Sheet for each unique set of terms applicable to Dealer, which may be amended from time to time, and the same shall be incorporated herein by reference and made a part of this Note.

11. ASSIGNMENT: This Note may be assigned by DSC but Dealer may not assign this Note without the prior written consent of DSC.

12. INDEMNIFICATION: Dealer shall indemnify and hold DSC harmless from and against all, loss, damage, costs, or expenses of whatever kind or nature relating to claims of third parties arising out of or in any way connected to this Note or Dealer's business affairs including, without limitation, attorneys' fees and expenses incurred both in the defense of any action against DSC and in any action to enforce these indemnity rights as against the Dealer.

13. NO JOINT VENTURE OR PARTNERSHIP: Nothing contained herein shall confer upon DSC or Dealer any interest in, or subject either of them to any liability for, or in respect of the business, assets, profits, losses or liabilities of the other. This Note does not constitute and shall not be characterized as a joint venture or partnership between DSC and Dealer. Nothing in this section shall limit or restrict the respective obligations and undertakings of DSC and Dealer hereunder.

14. AMENDMENT, MODIFICATION AND MERGER: This Note and all documents incorporated herein by reference are intended by the parties as an amendment and restatement of any prior Demand Promissory Note and Security Agreement(s) between DSC and Dealer. With the exception of the amendments and modifications referenced in Paragraphs 3 and 5 above, this Note may not be modified or amended except upon the written consent of DSC and Dealer. However, descriptions of specific items of DSC-Financed Inventory, amounts and terms of Advances, Maturity Date Extensions, Interest, Base Rates, Risk Rates, Default Rates, DSC Administrative Fees, DSC Universal Fees, late fees, NSF Fees, Terms and Conditions and other charges allowed by this Note may be proven by ordinary course of business records of DSC.

15. EXECUTION: The parties understand and agree that DSC may execute this Note and all corresponding documents by affixing an authorized DSC Officer's signature via signature stamp. Dealer may only execute this Note by original signature. A facsimile reproduction of such authorized DSC Officer's signature and Dealer's signature on the Note and all corresponding documents shall be deemed original signatures.

16. NOTICES: All notices, requests and demands to or upon the respective parties hereto, including Service of Process of any legal proceeding initiated by either party, shall be deemed to have been duly given or made: if by hand or by facsimile, immediately upon the Business Day of receipt, if received before 5 p.m., recipient's time, otherwise on the next Business Day; if by Federal Express, Express Mail or any other overnight delivery service with proof of next day delivery on a Business Day, one (1) Business Day after dispatch; and if mailed by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the address set forth herein:

To DSC:

Dealer Services Corporation, 1320 City Center Drive, Suite 100, Carmel, IN 46032
Telephone (317) 571-3721 Facsimile: (317) 571-3737

To Dealer:

TOTAL, INC. DBA GAULT'S USED CARS
2015 UNION HIGHWAY, GAFFNEY, SC 29340
864-489-5008

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17. NO WAIVER: No failure or delay by DSC in exercising any right, power, or privilege under this Note will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

18. TERMINATION: No termination of this Note shall alter Dealer's obligations and Liabilities relating to amounts funded or committed prior to the effective date of such termination, and all rights and remedies, including without limitation, the security interest granted herein and the rights of DSC as a secured party hereunder, shall extend until all Liabilities owed by Dealer to DSC have been satisfied.

19. LEGAL FEES AND COLLECTION COSTS: Dealer shall pay to DSC all reasonable legal fees, expenses and collection costs incurred as a result of Dealer's default or failure of any obligation under this Note.

20. SEVERABILITY: Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement in any other jurisdiction.

21. GOVERNING LAW: The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof. However, in the event Dealer's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

22. JURISDICTION AND VENUE: As evidenced by Dealer's signature below, Dealer submits to the personal jurisdiction and venue of the state or federal courts of Marion and Hamilton County, Indiana and agrees that any and all claims or disputes pertaining to this Note or to any matter arising out of or related to this Note initiated by Dealer against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Dealer expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. DSC reserves the right to initiate and prosecute any action against Dealer in any court of competent jurisdiction, and Dealer consents to such Forum as DSC may elect. However, in the in the event this Note is made and entered into in the State of California, the state or federal courts located in the State of California shall have jurisdiction to hear and determine any claims or disputes between the parties pertaining to this Note or to any matter arising out of or related to this Note. Each party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such Court, and each party hereby waives any objection which such party may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens, and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such Court.

23. WAIVER OF BOND: Dealer waives, to the extent permitted by law, any bond or surety or security on such bond which might, but for this waiver, be required of DSC.

24. WAIVER OF JURY TRIAL: DEALER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE, OR ANY OTHER LOAN DOCUMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY COURSE OF CONDUCT, STATEMENT, WHETHER ORAL OR WRITTEN, OR ACTIONS OF THE DEALER. THE DEALER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL HAVE NOT BEEN DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY DSC EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH DEALER AND DSC.

25. JUDICIAL REFERENCE. IF DEALER'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEALER AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS NOTE.

EXHIBIT

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

26. HEADINGS: Paragraph headings used in this Note are for reference only and shall not affect the construction of this Note.

WHEREFORE, the parties have, by their duly authorized representatives, executed this Note on the 24 day of Dec, 2008

Dealer: TOTAL, INC. DBA GAULT'S USED CARS

By: Edward Keith Potter
EDWARD KEITH POTTER

Its: PRESIDENT

Accepted By:

Dealer Services Corporation

By: John E. Fuller

INDIVIDUAL PERSONAL GUARANTY

WHEREAS, Dealer Services Corporation, a Delaware corporation ("DSC"). In consideration of any present or future loans or other financial advances to Total, Inc. DBA Gault's Used Cars (hereinafter sometimes referred to as "Debtor"); and

WHEREAS, on the 3 day of Jan, 202, Debtor executed and delivered to DSC its principal Demand Promissory Note and Security Agreement ("Note"); and

WHEREAS, the loan of DSC to Debtor is conditioned upon said indebtedness being personally guaranteed as to the payment thereof by Edward Keith Potter (hereinafter referred to as "Guarantor"); and

WHEREAS, in consideration of the financial and other support that the Debtor has provided, and such financial and other support as the Debtor may in the future provide, to the Guarantor, and in order to induce DSC to provide Credit to Debtor, and because Guarantor has determined that executing this Individual Personal Guaranty (hereinafter referred to as "Guaranty") is in its interest and to its financial benefit, the Guarantor is willing to guarantee the obligations of Debtor under the Note; and

WHEREAS the Guaranty shall be irrevocable, continuing and unconditional as to all Liabilities owed by Debtor at all times;

1. NOW, THEREFORE, the Guarantor, in executing this Guaranty, jointly and severally guarantees that Debtor will promptly pay the full amount of principal and interest, all costs and fees, including but not limited to, reasonable attorneys' fees and collection costs, and any other liabilities arising out of the Note as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as a primary not a secondary liability of Guarantor.

2. Without limiting the generality of the foregoing, the Guarantor agrees that he/she will pay the full amount of principal and interest of the Note now or hereafter due as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as primary and not a secondary liability of Guarantor.

3. The Guarantor hereby waives demand, notice of dishonor, presentment for payment, protest and notice of protest, and of non performance on all of said indebtedness; and if said indebtedness is renewed, or if the time for payment thereof be extended (to which Guarantor hereby expressly consents to any such renewal or extension) either with or without notice to Guarantor, Guarantor unconditionally guarantees the payment of such indebtedness at the time fixed for the payment thereof in and by any such renewal or extension. Guarantor further waives all rights, by statute or otherwise, to require the holder of the Note to institute suit against the original maker of the Note; also to exercise diligence in enforcing this or any other instrument.

4. To the extent permitted by law, Guarantor waives all defenses legally available to Guarantor, Guarantor being bound to the payment of said indebtedness of the original maker of the Note. The holder of the Note may take any new or additional or substituted security from time to time without in any way impairing the obligation of the undersigned; and the impairment of the security, which said holder may from time to time hold as security for said loan, shall in no way operate to discharge the undersigned in whole or in part, it being specifically agreed that the holder is not required to exercise diligence to enforce its rights against the original maker of the Note. The holder is hereby authorized at any time, in its sole discretion and without notice, to take, change, release or in any way deal with the security herein; but the holder of the Note shall be under no obligation to collect or to protect any of such security or said indebtedness, and its neglect or failure to collect or protect the same is excused. Acceptance of the Guaranty is waived.

5. Forbearance on the part of DSC to take steps to enforce payment of said indebtedness arising from Guarantor's default in any respect whatever, or the giving of further time to the original maker of the Note, shall in no way release the undersigned, but the undersigned shall remain jointly and severally liable hereunder for the prompt payment of said indebtedness.

6. This Guaranty is for the use and benefit of the holder of the Note, who in the first instance will be DSC. This Guaranty shall also be for the use and benefit of any subsequent owner of the Note, and each owner of the Note may assign this Guaranty to its successor owner of the Note.

7. All reasonable costs and expenses, including attorneys' fees, incurred by the holder of the Note to enforce this Guaranty, shall be paid by the undersigned.



8. The liability of the Guarantor shall continue until payment is made of every obligation of the Debtor now or hereafter incurred in connection with the Note, and until payment is made of any loss or damage incurred by DSC with respect to any matter covered by this Guaranty.

9. Guarantor consents that, without affecting the Guarantor's liability, DSC may, without notice to or consent of Guarantor on such terms as DSC may deem advisable, extend in whole or in part, by renewal or otherwise, the time of payment of the debt now or hereafter owing by the Debtor to DSC or held by DSC as security for any obligation herein described, or may do or refrain from doing any act whatever. Guarantor also consents that DSC may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the obligations of Debtor to DSC, and may also settle or compromise any claim of DSC against Debtor or against any other person or corporation whose obligation is held by DSC as collateral security for any obligation of Debtor or DSC. Guarantor hereby ratifies and affirms any such actions, and all such actions shall be binding on Guarantor, and Guarantor hereby waives all defenses, counterclaims or offsets which Guarantor may have.

10. Guarantor also waives notice of failure of any person to pay to DSC any debt held by DSC as collateral security for the obligations of Debtor, and all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of DSC against Debtor.

11. Guarantor represents that at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of this Guaranty.

12. Guarantor understands that so long as any indebtedness exists from Debtor to DSC, Debtor is not permitted to repay any loans or obligation owing Guarantor, present or future. Guarantor agrees that any such payments made by Debtor to Guarantor shall be held in trust for the benefit of DSC and shall be immediately delivered to DSC.

13. DSC may, at its option, proceed in the first instance against the Guarantor to collect the obligations covered by this Guaranty without first proceeding against any other person, firm or corporation, and without resorting to any property held by DSC as collateral security.

14. The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof, and Guarantor agrees that any and all claims or disputes pertaining to this Guaranty or to any matter arising out of or related to this Guaranty initiated by Debtor against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Guarantor expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. However, in the event Debtor's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

15. Guarantor understands that the right to trial by jury is an unconditional right afforded by the United States Constitution and understands that right may be waived. Guarantor has consulted with or has had the opportunity to consult with his/her attorney and hereby knowingly, intentionally and voluntarily waives any right to trial by jury regarding any litigation arising out of or in connection with this Guaranty. Guarantor understands that DSC also has waived its right to trial by jury and agrees that such waiver by Guarantor and DSC are for the mutual benefit of the parties. Further, Guarantor understands and agrees that such waiver is a material inducement for both parties in entering into this Guaranty and transactions relating thereto.

16. JUDICIAL REFERENCE. IF DEBTOR'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:
IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEBTOR AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY,

PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THE NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE. (E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

17. Any provision of this Guaranty that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Guaranty or affecting the validity or enforceability of any provision of this Guaranty.

18. Words of "Guaranty" contained herein in no way diminish or impair the absolute liability hereby created.

19. This Guaranty is intended by the Guarantor as an amendment and restatement of any prior Personal Guaranty made by Guarantor related to the Demand Promissory Note and Security Agreement or amendment thereof executed by Debtor.

20. POLICY CONCERNING THE FURNISHING OF NEGATIVE INFORMATION TO CONSUMER REPORTING AGENCIES. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Executed by the undersigned this 3 day of Jan, 2012.

Signature: [Signature]

Edward Keith Potter

STATE OF SC)
COUNTY OF Spartanburg) SS:

Before me, a Notary Public in and for said County and State, personally appeared Edward Keith Potter, who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notarial Seal this 3rd day of Jan, 2012.

Notary Signature [Signature]

Notary, Printed James M. Vaughan

My Commission Expires: 2/5/2020

County of Residence: Lexington

James M. Vaughan
Notary Public - South Carolina
My Commission Expires 02/05/2020

INDIVIDUAL PERSONAL GUARANTY

WHEREAS, Dealer Services Corporation, a Delaware Corporation ("DSC"), in consideration of any present or future loans or other financial advances to Total, Inc. DBA Gaults Used Cars (hereinafter sometimes referred to as "Debtor"); and

WHEREAS, on the 5 day of ~~March~~ 2002, Debtor executed and delivered to DSC its principal Demand Note and Security Agreement; and

WHEREAS, all present and future loans by DSC to Debtor is conditioned upon said indebtedness being personally guaranteed as to the payment thereof by ~~XXXXXXXXXX~~ (hereinafter referred to as "Guarantor"); and

WHEREAS, in consideration of the financial and other support that the Debtor has provided, and such financial and other support as the Debtor may in the future provide, to the Guarantor, and in order to induce DSC to provide Credit to Debtor, and because Guarantor has determined that executing this Guaranty is in its interest and to its financial benefit, the Guarantor is willing to guarantee the obligations of Debtor under the Note; and

WHEREAS the Guaranty shall be irrevocable, continuing and unconditional as to all Liabilities owed by Debtor at all times;

1. NOW, THEREFORE, the Guarantor, in executing this Individual Person Guaranty (hereinafter referred to as "Guaranty"), jointly and severally guarantees that Debtor will promptly pay the full amount of principal and interest, all costs and fees including but not limited to reasonable attorney fees and collection costs and any other liabilities arising out of the Note as and when the same shall in any manner be or become due, either according to the terms and conditions provided in said Note or upon acceleration of the payment thereof by reason of a default, as a primary not a secondary liability of Guarantor.

2. Without limiting the generality of the foregoing, the Guarantor agrees that he will pay the full amount of principal and interest of said Note now or hereafter due as, and when the same shall in any manner be or become due, either according to the terms and conditions provided in said Note or upon acceleration of the payment thereof by reason of a default, as primary and not a secondary liability of Guarantor.

3. The Guarantor hereby waives demand, notice of dishonor, presentment for payment, protest and notice of protest and of non-performance on all of said indebtedness; and if said indebtedness is renewed, or if the time for payment thereof be extended (to which Guarantor hereby expressly consents to any such renewal or extension) either with or without notice to Guarantor, Guarantor unconditionally guarantees the payment of such indebtedness at the time fixed for the payment thereof in and by any such renewal or extension. Guarantor further waives all rights, by statute or otherwise, to require the holder of the note to institute suit against the original maker of said note; also to exercise diligence in enforcing this or any other instrument.

To the extent permitted by law, Guarantor waives all defenses legally available to Guarantor, Guarantor being bound to the payment of said indebtedness of the original maker of said note. The holder of the note may take any new or additional or substituted security from time to time without in any way impairing the obligation of the undersigned; and the impairment of the security, which said holder may from time to time hold as security for said loan, shall in no way operate to discharge the undersigned in whole or in part, it being specifically agreed that the holder is not required to exercise diligence to enforce its rights against the original maker of said note. The holder is hereby authorized at any time, in its sole discretion and without notice, to take, change, release or in any way deal with the security herein; but the holder of the note shall be under no obligation to collect or to protect any of such security or said indebtedness, and its neglect or failure to collect or protect the same is excused. Acceptance of the Guaranty is waived.

4. Forbearance on the part of DSC to take steps to enforce payment of said indebtedness arising from Guarantor default in any respect whatever, or the giving of further time to the original maker of said Note, shall in no way release the undersigned, but the undersigned shall remain jointly and severally liable hereunder for the prompt payment of said indebtedness.

5. This Guaranty is for the use and benefit of the holder of said note, who in the first instance will be DSC. This Guaranty shall also be for the use and benefit of any subsequent owner of said Note, and each owner of said Note may assign this Guaranty to his successor owner of said Note.

6. All reasonable costs and expenses, including attorney's fees, incurred by the holder of said Note to enforce this Guaranty, shall be paid by the undersigned.

7. The liability of the Guarantor shall continue until payment is made of every obligation of the Debtor now or hereafter incurred in connection with said Note, and until payment is made of any loss or damage incurred by the DSC with respect to any matter covered by this Guaranty.

8. Guarantor consents that, without affecting the Guarantor's liability, the DSC may, without notice to or consent of Guarantor on such terms as DSC may deem advisable, extend in whole or in part, by renewal or otherwise, the time of payment of the debt now or hereafter owing by the Debtor to the DSC or held by the DSC as security for any obligation herein described, or may do or refrain from doing any act whatever. Guarantor also consents that DSC may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the obligations of Debtor to DSC, and may also settle or compromise any claim of DSC against Debtor or against any other person or corporation whose obligation is held by DSC as collateral security for any obligation of Debtor or DSC. Guarantor hereby ratifies and affirms any such actions, and all such actions shall be binding on Guarantor, and Guarantor hereby waives all defenses, counterclaims or offsets which Guarantor may have.

9. Guarantor also waives notice of failure of any person to pay to DSC any debt held by DSC as collateral security for the obligations of Debtor, and all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of DSC against Debtor.

10. Guarantor represents that at the time of the execution and delivery of this Guaranty nothing exists to impair the effectiveness of this Guaranty.

11. Guarantor understands that so long as any indebtedness exists from Debtor to DSC, Debtor is not permitted to repay any loans or obligation owing Guarantor, present or future. Guarantor agrees that any such payments made by Debtor to Guarantor shall be held in trust for the benefit of DSC and shall be immediately delivered to DSC.

12. DSC may, at its option, proceed in the first instance against the Guarantor to collect the obligations covered by this Guaranty without first proceeding against any other person, firm or corporation, and without resorting to any property held by DSC as collateral security.



13. This Guaranty shall be governed by the laws of the State of Indiana and Guarantor submits to the personal jurisdiction and venue of the state or federal courts of Marion County, Indiana and agrees that any and all claims or disputes pertaining to the Note or this Guarantee initiated by Guarantor shall be brought in the state or federal courts of Marion County, Indiana. Further, Guarantor expressly consents to such jurisdiction and venue of the state or federal courts in Marion County, Indiana to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. DSC reserves the right to initiate and prosecute any action against Guarantor in any court of competent jurisdiction and Guarantor consents to such Forum as DSC may elect.

14. Guarantor understands that the right to trial by jury is an unconditional right afforded by the United States Constitution and understands that right may be waived. Guarantor has consulted with or has had the opportunity to consult with his/her attorney and hereby knowingly, intentionally and voluntarily waives any right to trial by jury regarding any litigation arising out of or in connection with this Guaranty. Guarantor understands that DSC also has waived its right to trial by jury and agrees that such waiver by Guarantor and DSC are for the mutual benefit of the parties. Further, Guarantor understands and agrees that such waiver is a material inducement for both parties in entering into this Guaranty and transactions relating thereto.

15. Any provision of this Guaranty that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement.

16. Words of "Guarantee" contained herein in no way diminish or impair the absolute liability hereby created.

Executed by the undersigned this 5 day of MARCH, 2009

Michael Wayne Gault
Guarantor

██████████

██████████

Address

██████████

Social Security Number

STATE OF SC)
) SS:
COUNTY OF Lexington)

Before me, a Notary Public in and for said County and State, personally appeared Michael Wayne Gault, who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notary Seal this 5th day of March, 2009.

Notary Signature B. Leighton Best

B. Leighton Best Sr.

My Commission Expires: Aug 26, 2018

INDIVIDUAL PERSONAL GUARANTY

WHEREAS, Dealer Services Corporation, a Delaware corporation ("DSC"), in consideration of any present or future loans or other financial advances to Total, Inc. DBA Gault's Used Cars (hereinafter sometimes referred to as "Debtor"); and

WHEREAS, on the 28TH day of August, 20 10, Debtor executed and delivered to DSC its principal Demand Promissory Note and Security Agreement ("Note"); and

WHEREAS, the loan of DSC to Debtor is conditioned upon said indebtedness being personally guaranteed as to the payment thereof by Michael Wayne Gault (hereinafter referred to as "Guarantor"); and

WHEREAS, in consideration of the financial and other support that the Debtor has provided, and such financial and other support as the Debtor may in the future provide, to the Guarantor, and in order to induce DSC to provide Credit to Debtor, and because Guarantor has determined that executing this Individual Personal Guaranty (hereinafter referred to as "Guaranty") is in its interest and to its financial benefit, the Guarantor is willing to guarantee the obligations of Debtor under the Note; and

WHEREAS the Guaranty shall be irrevocable, continuing and unconditional as to all Liabilities owed by Debtor at all times;

NOW, THEREFORE, the Guarantor, in executing this Guaranty, jointly and severally guarantees that Debtor will promptly pay the full amount of principal and interest, all costs and fees, including but not limited to, reasonable attorneys' fees and collection costs, and any other liabilities arising out of the Note as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as a primary not a secondary liability of Guarantor.

Without limiting the generality of the foregoing, the Guarantor agrees that he/she will pay the full amount of principal and interest of the Note now or hereafter due as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as primary and not a secondary liability of Guarantor.

The Guarantor hereby waives demand, notice of dishonor, presentment for payment, protest and notice of protest, and of non-performance on all of said indebtedness; and if said indebtedness is renewed, or if the time for payment thereof be extended (to which Guarantor hereby expressly consents to any such renewal or extension) either with or without notice to Guarantor, Guarantor unconditionally guarantees the payment of such indebtedness at the time fixed for the payment thereof in and by any such renewal or extension. Guarantor further waives all rights, by statute or otherwise, to require the holder of the Note to institute suit against the original maker of the Note; also to exercise diligence in enforcing this or any other instrument.

To the extent permitted by law, Guarantor waives all defenses legally available to Guarantor, Guarantor being bound to the payment of said indebtedness of the original maker of the Note. The holder of the Note may take any new or additional or substituted security from time to time without in any way impairing the obligation of the undersigned; and the impairment of the security, which said holder may from time to time hold as security for said loan, shall in no way operate to discharge the undersigned in whole or in part, it being specifically agreed that the holder is not required to exercise diligence to enforce its rights against the original maker of the Note. The holder is hereby authorized at any time, in its sole discretion and without notice, to take, change, release or in any way deal with the security herein; but the holder of the Note shall be under no obligation to collect or to protect any of such security or said indebtedness, and its neglect or failure to collect or protect the same is excused. Acceptance of the Guaranty is waived.

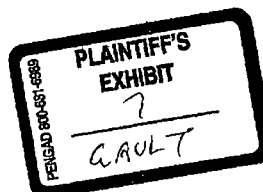
Forbearance on the part of DSC to take steps to enforce payment of said indebtedness arising from Guarantor's default in any respect whatever, or the giving of further time to the original maker of the Note, shall in no way release the undersigned, but the undersigned shall remain jointly and severally liable hereunder for the prompt payment of said indebtedness.

This Guaranty is for the use and benefit of the holder of the Note, who in the first instance will be DSC. This Guaranty shall also be for the use and benefit of any subsequent owner of the Note, and each owner of the Note may assign this Guaranty to its successor owner of the Note.

All reasonable costs and expenses, including attorneys' fees, incurred by the holder of the Note to enforce this Guaranty, shall be paid by the undersigned.

The liability of the Guarantor shall continue until payment is made of every obligation of the Debtor now or hereafter incurred in connection with the Note, and until payment is made of any loss or damage incurred by DSC with respect to any matter covered by this Guaranty.

Guarantor consents that, without affecting the Guarantor's liability, DSC may, without notice to or consent of Guarantor on such terms as DSC may deem advisable, extend in whole or in part, by renewal or otherwise, the time of payment of the debt now or hereafter owing by the Debtor to DSC or held by DSC as security for any obligation herein described, or may do or refrain from doing any act whatever. Guarantor also consents that DSC may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the obligations of Debtor to DSC, and may also settle or compromise any claim of DSC against Debtor or against any other person or corporation whose obligation is held by DSC as collateral security for any obligation of Debtor or DSC. Guarantor hereby ratifies and affirms any such actions, and all such actions shall be binding on Guarantor, and Guarantor hereby waives all defenses, counterclaims or offsets which Guarantor may have.



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Guarantor also waives notice of failure of any person to pay to DSC any debt held by DSC as collateral security for the obligations of Debtor, and all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of DSC against Debtor.

Guarantor represents that at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of this Guaranty.

Guarantor understands that so long as any indebtedness exists from Debtor to DSC, Debtor is not permitted to repay any loans or obligation owing Guarantor, present or future. Guarantor agrees that any such payments made by Debtor to Guarantor shall be held in trust for the benefit of DSC and shall be immediately delivered to DSC.

DSC may, at its option, proceed in the first instance against the Guarantor to collect the obligations covered by this Guaranty without first proceeding against any other person, firm or corporation, and without resorting to any property held by DSC as collateral security.

The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof, and Guarantor agrees that any and all claims or disputes pertaining to this Guaranty or to any matter arising out of or related to this Guaranty initiated by Debtor against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Guarantor expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. However, in the event Debtor's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

Guarantor understands that the right to trial by jury is an unconditional right afforded by the United States Constitution and understands that right may be waived. Guarantor has consulted with or has had the opportunity to consult with his/her attorney and hereby knowingly, intentionally and voluntarily waives any right to trial by jury regarding any litigation arising out of or in connection with this Guaranty. Guarantor understands that DSC also has waived its right to trial by jury and agrees that such waiver by Guarantor and DSC are for the mutual benefit of the parties. Further, Guarantor understands and agrees that such waiver is a material inducement for both parties in entering into this Guaranty and transactions relating thereto.

JUDICIAL REFERENCE. IF DEBTOR'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEBTOR AND DSC HEREBY AGREE AS FOLLOWS:

WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THE NOTE.

UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Any provision of this Guaranty that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Guaranty or affecting the validity or enforceability of any provision of this Guaranty.

Words of "Guaranty" contained herein in no way diminish or impair the absolute liability hereby created.

This Guaranty is intended by the Guarantor as an amendment and restatement of any prior Personal Guaranty made by Guarantor related to the Demand Promissory Note and Security Agreement or amendment thereof executed by Debtor.

POLICY CONCERNING THE FURNISHING OF NEGATIVE INFORMATION TO CONSUMER REPORTING AGENCIES. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Executed by the undersigned this 14 day of Sept, 20 10.

Michael Wayne Gault
Guarantor
199 Spruceville
GAFFNEY SC 29340
Address

STATE OF SC)
COUNTY OF GREENVILLE) SS:

Before me, a Notary Public in and for said County and State, personally appeared Michael Wayne Gault, who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notarial Seal this 14th day of Sept, 20 10.

Notary Signature James M. Vaughan
Notary, Printed JAMES M. VAUGHAN

My Commission Expires: 2/8/2020 County of Residence: LEXINGTON

James M. Vaughan
Notary Public - South Carolina
My Commission Expires 02/08/2020

INDIVIDUAL PERSONAL GUARANTY

WHEREAS, Dealer Services Corporation, a Delaware corporation ("DSC"), in consideration of any present or future loans or other financial advances to Total, Inc. DBA Gault's Used Cars (hereinafter sometimes referred to as "Debtor"); and

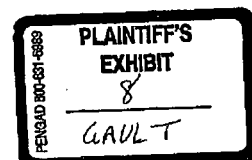
WHEREAS, on the 3 day of JANUARY, 2012, Debtor executed and delivered to DSC its principal Demand Promissory Note and Security Agreement ("Note"); and

WHEREAS, the loan of DSC to Debtor is conditioned upon said indebtedness being personally guaranteed as to the payment thereof by Michael Wayne Gault (hereinafter referred to as "Guarantor"); and

WHEREAS, in consideration of the financial and other support that the Debtor has provided, and such financial and other support as the Debtor may in the future provide, to the Guarantor, and in order to induce DSC to provide Credit to Debtor, and because Guarantor has determined that executing this Individual Personal Guaranty (hereinafter referred to as "Guaranty") is in its interest and to its financial benefit, the Guarantor is willing to guarantee the obligations of Debtor under the Note; and

WHEREAS the Guaranty shall be irrevocable, continuing and unconditional as to all Liabilities owed by Debtor at all times;

1. NOW, THEREFORE, the Guarantor, in executing this Guaranty, jointly and severally guarantees that Debtor will promptly pay the full amount of principal and interest, all costs and fees, including but not limited to, reasonable attorneys' fees and collection costs, and any other liabilities arising out of the Note as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as a primary not a secondary liability of Guarantor.
2. Without limiting the generality of the foregoing, the Guarantor agrees that he/she will pay the full amount of principal and interest of the Note now or hereafter due as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as primary and not a secondary liability of Guarantor.
3. The Guarantor hereby waives demand, notice of dishonor, presentment for payment, protest and notice of protest, and of non performance on all of said indebtedness; and if said indebtedness is renewed, or if the time for payment thereof be extended (to which Guarantor hereby expressly consents to any such renewal or extension) either with or without notice to Guarantor, Guarantor unconditionally guarantees the payment of such indebtedness at the time fixed for the payment thereof in and by any such renewal or extension. Guarantor further waives all rights, by statute or otherwise, to require the holder of the Note to institute suit against the original maker of the Note; also to exercise diligence in enforcing this or any other instrument.
4. To the extent permitted by law, Guarantor waives all defenses legally available to Guarantor, Guarantor being bound to the payment of said indebtedness of the original maker of the Note. The holder of the Note may take any new or additional or substituted security from time to time without in any way impairing the obligation of the undersigned; and the impairment of the security, which said holder may from time to time hold as security for said loan, shall in no way operate to discharge the undersigned in whole or in part, it being specifically agreed that the holder is not required to exercise diligence to enforce its rights against the original maker of the Note. The holder is hereby authorized at any time, in its sole discretion and without notice, to take, change, release or in any way deal with the security herein; but the holder of the Note shall be under no obligation to collect or to protect any of such security or said indebtedness, and its neglect or failure to collect or protect the same is excused. Acceptance of the Guaranty is waived.
5. Forbearance on the part of DSC to take steps to enforce payment of said indebtedness arising from Guarantor's default in any respect whatever, or the giving of further time to the original maker of the Note, shall in no way release the undersigned, but the undersigned shall remain jointly and severally liable hereunder for the prompt payment of said indebtedness.
6. This Guaranty is for the use and benefit of the holder of the Note, who in the first instance will be DSC. This Guaranty shall also be for the use and benefit of any subsequent owner of the Note, and each owner of the Note may assign this Guaranty to its successor owner of the Note.
7. All reasonable costs and expenses, including attorneys' fees, incurred by the holder of the Note to enforce this Guaranty, shall be paid by the undersigned.



8. The liability of the Guarantor shall continue until payment is made of every obligation of the Debtor now or hereafter incurred in connection with the Note, and until payment is made of any loss or damage incurred by DSC with respect to any matter covered by this Guaranty.

9. Guarantor consents that, without affecting the Guarantor's liability, DSC may, without notice to or consent of Guarantor on such terms as DSC may deem advisable, extend in whole or in part, by renewal or otherwise, the time of payment of the debt now or hereafter owing by the Debtor to DSC or held by DSC as security for any obligation herein described, or may do or refrain from doing any act whatever. Guarantor also consents that DSC may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the obligations of Debtor to DSC, and may also settle or compromise any claim of DSC against Debtor or against any other person or corporation whose obligation is held by DSC as collateral security for any obligation of Debtor or DSC. Guarantor hereby ratifies and affirms any such actions, and all such actions shall be binding on Guarantor, and Guarantor hereby waives all defenses, counterclaims or offsets which Guarantor may have.

10. Guarantor also waives notice of failure of any person to pay to DSC any debt held by DSC as collateral security for the obligations of Debtor, and all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of DSC against Debtor.

11. Guarantor represents that at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of this Guaranty.

12. Guarantor understands that so long as any indebtedness exists from Debtor to DSC, Debtor is not permitted to repay any loans or obligation owing Guarantor, present or future. Guarantor agrees that any such payments made by Debtor to Guarantor shall be held in trust for the benefit of DSC and shall be immediately delivered to DSC.

13. DSC may, at its option, proceed in the first instance against the Guarantor to collect the obligations covered by this Guaranty without first proceeding against any other person, firm or corporation, and without resorting to any property held by DSC as collateral security.

14. The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof, and Guarantor agrees that any and all claims or disputes pertaining to this Guaranty or to any matter arising out of or related to this Guaranty initiated by Debtor against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Guarantor expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. However, in the event Debtor's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

15. Guarantor understands that the right to trial by jury is an unconditional right afforded by the United States Constitution and understands that right may be waived. Guarantor has consulted with or has had the opportunity to consult with his/her attorney and hereby knowingly, intentionally and voluntarily waives any right to trial by jury regarding any litigation arising out of or in connection with this Guaranty. Guarantor understands that DSC also has waived its right to trial by jury and agrees that such waiver by Guarantor and DSC are for the mutual benefit of the parties. Further, Guarantor understands and agrees that such waiver is a material inducement for both parties in entering into this Guaranty and transactions relating thereto.

16. JUDICIAL REFERENCE. IF DEBTOR'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:
IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEBTOR AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY,

PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THE NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

17. Any provision of this Guaranty that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Guaranty or affecting the validity or enforceability of any provision of this Guaranty.

18. Words of "Guaranty" contained herein in no way diminish or impair the absolute liability hereby created.

19. This Guaranty is intended by the Guarantor as an amendment and restatement of any prior Personal Guaranty made by Guarantor related to the Demand Promissory Note and Security Agreement or amendment thereof executed by Debtor.

20. POLICY CONCERNING THE FURNISHING OF NEGATIVE INFORMATION TO CONSUMER REPORTING AGENCIES. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Executed by the undersigned this 3 day of January, 20 12

Signature: Michael Wayne Gaul

Michael Wayne Gaul

STATE OF SC)
COUNTY OF Spartanburg) SS:

Before me, a Notary Public in and for said County and State, personally appeared Michael Wayne Gaul, who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notarial Seal this 3rd day of Jan, 20 12.

Notary Signature: James M. Vaughan

Notary, Printed: James M. Vaughan

My Commission Expires: 2/5/2020

County of Residence: Lexington

James M. Vaughan
Notary Public - South Carolina
My Commission Expires 02/05/2020

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Dealer Services Corporation,

Plaintiff,

vs.

Total Inc. d/b/a Gault's Used Cars, d/b/a
Gault's Auto Parts, d/b/a Gault's Used Cars
and Auto Parts, d/b/a Gault's Used Cars and
Motormaxx; Edward Keith Potter; Michael
Wayne Gault; Christopher Drye, d/b/a Drye's
Auto Crushing; Ben D. Kochenower, CPA;
Automotive Finance Corporation; Grandsouth
Bank, d/b/a CarBucks; Mason Motors, Inc.,
d/b/a LC Mason Ent.; American Community
Bank, a division of Yadkin Valley Bank and
Trust Company; Quick Capital, LLC, d/b/a
Quick Capital; and Auto Bank Floorplan,
LLC,

Defendants,

IN THE COURT OF COMMON PLEAS

C.A. No: 2013-CP-11-0002

AFFIDAVIT OF MICHAEL GAULT

PERSONALLY APPEARED BEFORE ME MICHAEL GAULT who, being duly
sworn, deposes and say as follows:

1. My name is Michael Gault.
2. I am a resident of Cherokee County, South Carolina.
3. I am a defendant in the above-referenced action.
4. At all times relevant to hereto, I was General Manager of Total, Inc. and had authority to make binding agreements on behalf of myself and Total, Inc.
5. Total Inc. had a contract with Dealer Services Corporation ("DSC"). I executed a personal guaranty for this contract.
6. On July 5, 2012, DSC notified me that it had picked up nine cars from my property. DSC sold some of these vehicles on July 9, 2012. DSC did not comply



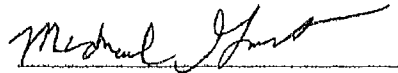
ROA 000273

with the notice requirements of the parties' contract or applicable law, both of which required ten days' notice to Total, Inc. before the sale.

7. During the late summer of 2012, shortly after this violation, I was contacted by Kevin Frederick, an executive with and representative of DCS. Mr. Frederick and I discussed settlement of this dispute, before any action was brought; including any action based on DSC's improper disposition of certain cars.
8. On August 9, 2012, the parties agreed to settle. I would pay \$22,500 to DSC, and DSC could "keep" the nine cars that it had.
9. Mr. Frederick faxed the written agreement to me on August 9, 2012. I called him that same day and accepted the terms. This agreement provided a deadline for payment of August 15, 2012. (Exhibit "A").
10. I contacted Mr. Frederick on August 15 and advised that I needed more time to comply with the agreement. Mr. Frederick, on behalf of DSC, orally agreed to extend the time within which I could comply for an additional 30 days. This extended the deadline from August 15, 2012 until September 12, 2012.
11. I stayed in touch with Mr. Frederick by telephone. I called him on August 29, 2012, and again on September 6, 2012, advising of my progress. Throughout this time, Mr. Frederick and I maintained the oral extension of the written settlement agreement for the amount of \$22,500. At no time did he indicate in any way that this was not a valid, standing offer.
12. I contacted Mr. Frederick on September 12, 2012 to request a copy of the written settlement agreement with the September 12 extended deadline noted. I was prepared and willing to pay the settlement amount of \$22,500, and comply with the other terms, on this date.

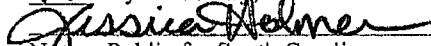
13. For the first time, on September 12, 2012, Mr. Frederick said that DSC would no longer accept the amount of \$22,500.
14. DSC thereafter increased its demand to \$50,000, and later \$75,000.
15. These conversations are reflected in DSC's own records. I pleaded this contract as a defense in my Answer to DSC's Complaint.
16. I stand ready to comply with the original agreement upon enforcement of this agreement by the Court.

Further affiant sayeth naught.


Michael Gault

Sworn to and subscribed before me this

17 day of January, 2014



Notary Public for South Carolina

My commission expires 4/23/19



EXHIBIT A

AFFIDAVIT OF MIKE GAULT

Dealer Services Corporation v. Total Inc. et al.
In the Court of Common Pleas for Cherokee County
C.A. No: 2013-CP-11-0002



DEALER SERVICES
CORPORATION
DiscoverDSC.com

Innovative Solutions. Outstanding Service. Great People.™

Dealer Services Corporation
1320 City Center Drive Suite 100
Carmel, IN 46032
Phone 317-571-3766 | Fax 317-571-3810

fax

TO: Mike Gault	FROM: Kevin Frederick
FAX: 864-649-1530	PAGES: 5
PHONE:	DATE: 8/9/12
RE:	CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into on the date listed below by Total, Inc. ("Dealership"), Edward Keith Potter, and Michael Wayne Gault (together with Edward Keith Potter, the "Guarantors") and Dealer Services Corporation ("DSC").

Recitals

- A. On or about January 3, 2012, Dealership entered into a Demand Promissory Note and Security Agreement (the "Note") with DSC.
- B. DSC alleges that Dealership has breached the terms of the Note. DSC further alleges that Dealership owes DSC certain unpaid principal, interest, and fees pursuant to the terms of the Note (hereinafter collectively referred to as the "DSC Claim").
- C. On or about January 3, 2012, the Guarantors each executed an Individual Personal Guaranty ("Guaranty"), whereby each of the Guarantors guaranteed payment to DSC of all sums due and owing under the Note. The Guarantors have not, to date, satisfied the balance owing under the DSC Claim.
- D. Dealership, the Guarantors, and DSC mutually desire to settle the DSC Claim in an economically fair and feasible manner.

Agreement

NOW THEREFORE, Dealership, the Guarantors, and DSC mutually agree as follows:

- 1. As of August 8, 2012, the total sum owed to DSC by Dealership under the Note is \$154,707.87 (the "Debt"). An itemization of the Debt, by vehicle, showing the principal balance owed, interest, and other fees is attached hereto as Exhibit A and is incorporated herein by reference.

2. On or before the close of business on August 15, 2012, Dealership shall tender in certified funds the sum of \$22,500.00 to DSC, plus the nine (9) current vehicles that DSC has in its possession :

2003 Niss Alt	226309
2003 Niss Sent	720316
2001 Volv S40	621498
2002 Hyun SONA	580340
2006 Mazd MAZD	M10113
2001 Pont Cran	253387
2006 Mazd MAZD	M62491
1999 Volv S80	052291
2002 Niss Alt	707219
1999 Niss Alt	128477
1993 Mazd MX-3	234210

and DSC shall accept such sum as payment in full by Dealership of the DSC Claim. In the event Dealership fails to remit to DSC the stated sum as set forth herein, this Agreement shall terminate.

3. Dealership and the Guarantors each separately acknowledge that DSC has not waived and is not now waiving any default or Debt owed by Dealership or the Guarantors until such time as Dealership satisfies its obligations under this Agreement, or otherwise until such time as DSC has been paid in full. Upon completion of all obligations of Dealership under this Agreement, DSC shall extinguish and discharge in full any debt or claim of DSC against Dealership and the Guarantors, individually and collectively, as well as any claims against the heirs, successors and/or assigns of Dealership and the Guarantors.
4. The Parties represent that the respective undersigned persons are fully authorized to execute this Agreement. The undersigned hereby declare that each has had an opportunity to consult with an attorney and that the terms of this Agreement have been completely read and are fully understood. Further, the undersigned hereby declare that the terms of this Agreement are voluntarily accepted by the Parties for the purpose of

resolving the DSC Claim and any and all other claims between DSC, Dealership, and the Guarantors, provided that Dealership fulfills its obligations hereunder. Dealership and the Guarantors understand and acknowledge that any breach of this Agreement by Dealership or either Guarantor shall cause this Agreement to terminate immediately.

5. This Agreement may be executed via facsimile and in any number of counterparts, each of which shall be deemed an original, but all of which shall be deemed one and the same instrument.

SIGNATURE PAGE FOLLOWS

(remainder of this page left blank intentionally)

EXECUTED this ____ day of _____, 20 ____.

DEALER SERVICES CORPORATION

BY: _____

ITS: _____

EXECUTED this ____ day of _____, 20 ____.

TOTAL, INC.

BY: _____

ITS: _____

EXECUTED this ____ day of _____, 20 ____.

Edward Keith Potter, Guarantor

EXECUTED this ____ day of _____, 20 ____.

Michael Wayne Gault, Guarantor



DEALER SERVICES CORPORATION
DiscoverDSC.com

Date: July 5, 2012

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

To: Gualt's Used Cars
Edward Potter
2015 Union Hwy
Gaffney, SC 29340

From: Dealer Services Corporation
1320 City Center Dr.
Suite 1000
Carmel, IN 46032

Re: Notification of Private Disposition of Collateral
To All Interested Parties:

Dealer Service Corporation ("DSC") will sell the below described collateral privately sometime after Ten (10) days from the date shown above. The collateral to be sold is as follows:

	1N4AL11D23C226309	2003 Nissan Altima	
16	3NIAB51DX3L720316	2003 Nissan Sentra SE-R	325
	YV1VS29521F621498	2001 Volvo S40	
	JTDDR32T420134108	2002 Toyota Celica GT	
	KMHWF25S72A580340	2002 Hyundai SONATA GL	
16	1YVHP80C565M10113	2006 Mazda MAZDA6I	
	1YVHP80C065M62491	2006 Mazda MAZDA6I	
	WVWMA63B8XE515131	1999 Volkswagen Passat GLS	
	SAJEB51C52WC07509	2002 Jaguar X-TYPE 3.0	
	1G2WK52J51F253387	2001 Pontiac Grand Prix SE	425
	1GCCS1442XK238456	1999 Chevrolet S10 LS Xtreme	

If you are the Debtor or a Guarantor of the Debtor, you are entitled to a written accounting, free of charge, of the unpaid indebtedness secured by the collateral DSC intends to sell. If you are a party other than the Debtor or Guarantor of the Debtor, you are entitled to a written accounting of the same for a charge of Twenty-Five (\$25.00) dollars. All parties may request a written accounting by calling DSC at 317-571-3721, or by writing to DSC at the above address.

DEALER SERVICE CORPORATION
Maui Williams- Clerk

Mike, Here's what I HAVE ⁸⁰³⁻⁸⁹⁶⁻ 2619

Attr -
Angela

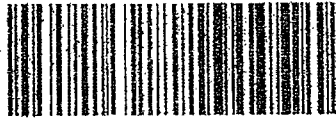
LOT #1	LAST 6	SOLD
213686	128477 ✓	~~SOLD~~ SOLD
20166822	308527	Never picked up.
20166742	M06600	Never picked up
20159962	234210 ✓	SOLD
20159912	732307	Never picked up
20159882	993359	Never picked up
20159852	201690	Never picked up
20159762	M20303	Never picked up
20159482	137712	Never picked up
20159422	272645	Never picked up
20159272	171416	Never picked up
20159182	197297	Never picked up
20159122	052291 ✓	SOLD
20159042	551194 ✓	Never picked up
20158982	296611	Never picked up
20158852	154474	?
19738532	A10812 ✓	SOLD
19738152	249508	Never picked up.
19737522	266309 ✓	SOLD
9637032	610267	Never picked up
19636562	023586 ✓	Never picked up
19636142	360710	Never picked up
19635712	626897 ✓	SOLD

LOT#	LAST 6	SOLD
19635432	580340 ✓	SOLD
19635162	213876	Never picked up
19634702	707219 ✓	SOLD
19634272	001657 ✓	SOLD
19633402	720319 ✓	SOLD
~~210 29772~~	~~128122~~	
20039002	007509	SOLD
19737132	621498 ✓	SOLD
19736712	139108 ✓	SOLD
19683002	515131 ✓	SOLD
19637332	238456 ✓	SOLD
19633967	110113	SOLD
19632872	253387 ✓	SOLD

ROA 000285



DEALER SERVICE
CORPORATION
1320 City Center C
Carmel, IN 46032



7011 2970 0004 1484 4688

POSTNET
0000000000
0000000000
0000000000
0000000000
0000000000
0000000000

Date July 3, 2012

VIA CERTIFIED MAIL RETURN RECEIPT REQ

To: Gualt's Used Cars
Edward Potter
2015 Union Hwy

WJ
7-12-12
Z



DEALER SERVICES CORPORATION
DiscoverDSC.com

Date: July 5, 2012

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

To: LC Mason Ent
7980 Asheville Hwy
Spartanburg, SC 29303

From: Dealer Services Corporation
1320 City Center Dr.
Suite 1000
Carmel, IN 46032

Re: Notification of Private Disposition of Collateral

To All Interested Parties:
Gualt's Used Cars 2015 Union Hwy Gaffney, SC 29340

Dealer Service Corporation ("DSC") will sell the below described collateral privately sometime after Ten (10) days from the date shown above. The collateral to be sold is as follows:

1N4AL11D23C226309	2003 Nissan Altima ✓
3N1AB51DX3L720316	2003 Nissan Sentra SE-R ✓
YV1VS29521F621498	2001 Volvo S40 ✓
JTDDR32T420134108	2002 Toyota Celica GT ✓ ✓
KMHWF25S72A580340	2002 Hyundai SONATA GL ✓
1YVHP80C565M10113	2006 Mazda MAZDA6I ✓
1YVHP80C065M62491	2006 Mazda MAZDA6I ✓
WVWMA63B8XE515131	1999 Volkswagen Passat GLS ✓
SAJEB51C52WC07509	2002 Jaguar X-TYPE 3.0
1G2WK52J51F253387	2001 Pontiac Grand Prix SE ✓
1GCCS1442XK238456	1999 Chevrolet S10 LS Xtreme ✓

If you are the Debtor or a Guarantor of the Debtor, you are entitled to a written accounting, free of charge, of the unpaid indebtedness secured by the collateral DSC intends to sell. If you are a party other than the Debtor or Guarantor of the Debtor, you are entitled to a written accounting of the same for a charge of Twenty-Five (\$25.00) dollars. All parties may request a written accounting by calling DSC at 317-571-3721, or by writing to DSC at the above address.

DEALER SERVICE CORPORATION
Maui Williams- Clerk

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

TOTAL, INC.
2015 Union Highway
Gaffney, SC 29340
Tax ID/EIN 20-5604530

CASE NO: 12-05055-jw
CHAPTER 11

NOTICE AND MOTION PURSUANT TO FEDERAL
RULE OF BANKRUPTCY PROCEDURE 4001(d)

DEBTOR(S)

TO: All Creditors and Parties in Interest Entitled to Notice under Federal Rule of Bankruptcy Procedure 4001(d)

Total, Inc. ("Debtor") and Dealer Services Corporation ("DSC") (collectively referred to as the "Parties") hereby move the Court for an order approving the agreement between them which is described below and attached to this notice.

TAKE FURTHER NOTICE that any response, return and/or objection to this application, should be filed with the Court no later than **FOURTEEN (14) days** from service of motion/application and a copy simultaneously served on all parties in interest.

TAKE FURTHER NOTICE that no hearing will be held on this application, except as required by the judge, unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on November 5, 2012, at 9:30 a.m., at the Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, South Carolina. No further notice of this hearing will be given.

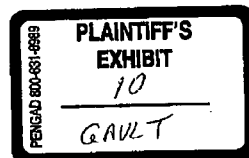
(A) **TYPE OF AGREEMENT:** This consent order resolves Debtor's Motion for an Order Authorizing the Use of Cash Collateral and Adequate Protection (Doc. No. 5,) and DSC's objection thereafter. This consent order enables the Debtor to use DSC's cash collateral for a limited period of time, provided DSC's interests are adequately protected.

(B) The agreement and proposed order are attached as Exhibit "A".

(C) **PROVISIONS OF THE AGREEMENT:** The agreement is attached hereto as Exhibit "A" in the form of a proposed consent order. All parties in interest should review the order for a complete recitation of the proposed agreement between the parties.

DSC maintains a properly perfected, first priority security interest in certain vehicles and the proceeds thereof, along with a first-filed blanket security interest in all other assets and proceeds of the Debtor. The total amount of DSC's claim as of August 15, 2012, the date Debtor filed its petition, was \$152,685.76.

The Debtor's collateral constitutes cash collateral of the Debtor's bankruptcy estate pursuant to 11 USC § 363. Debtor intends to use DSC's cash collateral to continue the operation of its business. The parties have agreed to the following material terms: Debtor will pay DSC adequate protection payments as follows: The sum of \$6,000 per month for six months, beginning October 1, 2012, and continuing through March 1, 2013; thereafter, the sum of \$8,500 per month for six months, beginning April 1, 2013, and continuing through September 1, 2013; thereafter the sum of \$11,000 per month for six months, beginning October 1, 2013, and continuing through March 1, 2014; thereafter one final payment on April 1, 2014, for the full balance due as of the date of final payment made by Debtor. Should Debtor fail to make any adequate protection payment within ten (10) days of the due date for such



adequate protection payment is due, Debtor shall be in default. Debtor must comply with the terms of the Note and Loan Agreement as amended by this Order.

(D) **IMPACT ON PRE-PETITION CLAIMS:** As of the Petition Date, the Debtor owed DSC \$152,685.76, plus late fees, collection costs, interest, and reasonable attorney's fees and expenses. If the Debtor is able to use the cash collateral, the realization value of the property presumably will be preserved and will permit Debtor to continue to operate its business.

(E) **DEFAULT:** Failing the remit any adequate protection payment to Lender within ten (10) days of its due date as set forth in Paragraph 6 of the consent order.

(F) **RESULT OF DEFAULT:** Upon an event of default, Debtor must immediately cease using Lender's Cash Collateral, and Lender shall be entitled to immediate relief from the automatic stay, without further court notice or hearing, upon the presentation and filing of an Affidavit detailing the default event(s) and the submission of a proposed order. Further, if Debtor makes any adequate protection payment after the event of default has occurred, such untimely payment will not cure the default, and Lender will remain entitled to relief from the automatic stay.

(G) **DESCRIPTION OF PROPERTY SUBJECT TO LIEN:** All assets and proceeds of the Debtor.

(H) **APPRAISED VALUE OF PROPERTY SUBJECT TO LIEN:** Approximately \$500,000.00

(I) **LIEN AMOUNT:** \$152,685.76, plus late fees, collection costs, interest, and reasonable attorney's fees and expenses.

(J) **MOVING PARTIES:**

Robert H. Cooper (DSC # 5670)
The Cooper Law Firm
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 phone
(864) 232-5236 facsimile
rhcooper@thecooperlawfirm.com
Attorney for the Debtor

Robert F. Goings (DSC # 9838)
Goings Law Firm, LLC
914 Richland Street, Ste A-101
Columbia, SC 29201
(803) 350-9230 phone
(877) 789-6340 facsimile
rgoings@goingslawfirm.com
Attorney for Dealer Services Corporation

(K) **LOCAL RULE DISCLOSURE:** Not Applicable

[Signature Page to Follow]

Date: September 27, 2012

Respectfully Submitted:

/s/Robert H. Cooper
Robert H. Cooper (DSC # 5670)
The Cooper Law Firm
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 phone
(864) 232-5236 facsimile
rhcooper@thecooperlawfirm.com
Attorney for Debtor

WE SO CONSENT:

/s/Robert F. Goings
Robert F. Goings (DSC # 9838)
Goings Law Firm, LLC
914 Richland Street, Ste A-101
Columbia, SC 29201
(803) 350-9230 phone
(877) 789-6340 facsimile
rgoings@goingslawfirm.com
Attorney for Dealer Services Corporation

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:	)	Case no. 12-05055-jw
TOTAL, INC.	)	
2015 Union Highway	)	
Gaffney, SC 29340	)	Chapter 11
Tax ID/EIN: 20-5604530	)	
Debtor-in-possession	)	

**CONSENT ORDER FOR USE OF CASH COLLATERAL
AND ADEQUATE PROTECTION PAYMENTS OF DEALER SERVICES
CORPORATION**

This matter came before the Court upon the Motion filed by Debtor Total, Inc. ("Debtor") requesting authority to use cash collateral of creditor Dealer Services Corporation ("Lender") filed on August 20, 2012. Debtor and Lender have reached an agreement authorizing the use of Lender's cash collateral and providing for adequate protection payments to Lender. Based upon the below indicated consent of the parties, and good cause being shown,

IT IS THEREFORE, ORDERED ADJUDGED AND DECREED as follows:

1. This is a core proceeding and this Court has jurisdiction to determine this matter under 28 U.S.C. section 157(b)(2)(G),(M), and Local Civil Rule 83.IX.01, DSC.
2. Notice of the settlement being approved by the Court was provided pursuant to FRBP 4001(d).
3. Debtor executed and delivered a Demand Promissory Note and Security Agreement dated January 3, 2012 (the "Note"), to Lender, thereby promising to pay Lender under the terms and conditions of that Note.
4. In order to secure the repayment of advances made under the Note, Debtor granted Lender a security interest in assets of Debtor described as follows: All of the Debtor's assets and

properties, wherever located, including without limitation, all equipment of any kind, nature, all vehicles, vehicle parts, all inventory now owned or hereafter acquired, without limitation, Lender financed inventory then owned or thereafter acquired, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, accounts receivable, chattel paper, and general intangibles, then owned or thereafter acquired by the Debtor, together with the proceeds thereof; all of the Debtor's books and records relating to the foregoing (collectively, "Collateral"). Lender perfected its security interest in the Collateral by filing a UCC Financing Statement with the South Carolina Secretary of State.

5. The total amount of Lender's claim as of August 15, 2012, the date Debtor filed its petition, was \$152,685.76.

6. Debtor intends to continue operation of its business and retain possession of the Collateral. The parties have agreed that Debtor will pay to Lender adequate protection payments as follows: The sum of \$6,000 per month for six months, beginning October 1, 2012, and continuing through March 1, 2013; thereafter, the sum of \$8,500 per month for six months, beginning April 1, 2013, and continuing through September 1, 2013; thereafter the sum of \$11,000 per month for six months, beginning October 1, 2013, and continuing through March 1, 2014; thereafter one final payment on April 1, 2014, for the full balance due as of the date of final payment made by Debtor. Should Debtor fail to make any adequate protection payment within ten (10) days of the due date for such adequate protection payment as stated above, Debtor shall be in default.

7. In order to provide Lender adequate protection of Lender's lien on the Collateral, Lender is hereby granted a replacement lien on the Collateral to the extent of any post-petition diminution in the value of the Collateral. Lender's replacement lien as provided in this Order

shall be automatically perfected, and Lender will not be required to take any further action to perfect such lien.

8. For purposes of this Order, the following events shall constitute an event of default by Debtor:

- (a) Failing to remit any adequate protection payment to Lender within ten (10) days of its due date as set forth in Paragraph 6 of this Order.

9. Upon an event of default, Debtor must immediately cease using Lender's Cash Collateral, and Lender shall be entitled to immediate relief from the automatic stay, without further court notice or hearing, upon the presentation and filing of an Affidavit detailing the default event(s) and the submission of a proposed order. Further, if Debtor makes any adequate protection payment after the event of default has occurred, such untimely payment will not cure the default, and Lender will remain entitled to relief from the automatic stay.

10. Except as expressly modified by the terms of this Order, all terms and conditions of the Note and Security Agreement shall remain in full force and effect in accordance with the terms contained therein. The entry of this Order shall not constitute a waiver of any pre-petition default or of any remedy Lender may have under applicable non-bankruptcy law.

11. Nothing herein constitutes a finding regarding the value of the Collateral or proposed treatment of the Note under a plan of reorganization. The parties' right to assert and/or dispute valuation and treatment of Lender's claims under a plan of reorganization is hereby preserved.

AND IT IS SO ORDERED.

WE SO CONSENT:

/s/Robert H. Cooper
Robert H. Cooper (DSC # 5670)
The Cooper Law Firm
Attorney for Debtor
3523 Pelham Rd., Ste B
Greenville, SC 29615
(864) 271-9911 phone
(864) 232-5236 facsimile
rhcooper@thecooperlawfirm.com

WE SO CONSENT:

/s/Robert F. Goings
Robert F. Goings (DSC # 9838)
Goings Law Firm, LLC
914 Richland Street, Ste A-101
Columbia, SC 29201
(803) 350-9230 phone
(877) 789-6340 facsimile
rgoings@goingslawfirm.com

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE) C.A. NO. 2013-CP-11-0002

Dealer Services Corporation,

PLAINTIFF,

versus

Total, Inc. d/b/a Gault's Used Cars,
d/b/a Gault's Auto Parts, d/b/a Gault's
Used Cars and Auto Parts, d/b/a Gault's
Used Cars and Motormaxx; Edward Keith
Potter; Michael Wayne Gault;
Christopher Drye, d/b/a Drye's Auto
Crushing; Ben D. Kochenower, CPA;
Automotive Finance Corporation;
GrandSouth Bank, d/b/a CarBucks; Mason
Motors, Inc., d/b/a LC Mason ENT.;
American Community Bank, a division of
Yadkin Valley Bank and Trust Company;
Quick Capital, LLC, d/b/a/ Quick
Capital; and Auto Bank Floorplan, LLC,

DEFENDANTS.

DEPOSITION OF
EDWARD KEITH POTTER

Pursuant to notice of deposition and/or agreement
in the above-entitled case, the deposition of Edward Keith
Potter was taken on the 22nd day of January, 2014,
commencing at the hour of 10:06 a.m., in the offices of
Lazenby Law Firm, Attorneys at Law, Spartanburg, South
Carolina.

FREELANCE REPORTING SERVICES
Certified Verbatim Reporters
Post Office Box 170637
Spartanburg, South Carolina 29301
(864) 587-7050 or (864) 706-1241
FreelanceRpt@charter.net

APPEARANCES:

ROBERT F. GOINGS, ESQUIRE
GOINGS LAW FIRM
914 Richland Street
Suite a-101
Post Office Box 436
Columbia, South Carolina 29201,
ATTORNEY FOR PLAINTIFF,

GINGER D. GOFORTH, ESQUIRE
LAZENBY LAW FIRM
340 East Main Street
Post Office Box 6099
Spartanburg, South Carolina 29304
ATTORNEY FOR DEFENDANTS.

ALSO ATTENDING: MIKE GAULT

REPORTED BY: MARLA J. O'BRIEN, CVR-M, ACR

INDEX

STIPULATIONS, WAIVER AND OATH	4
EXAMINATION BY MR. GOINGS	4
CERTIFICATE OF REPORTER	74

EXHIBITS: (ATTACHED HERETO)

PLAINTIFF'S EXHIBIT 1 MARKED	23
PLAINTIFF'S EXHIBIT 2 MARKED	24
PLAINTIFF'S EXHIBIT 3 MARKED	32
PLAINTIFF'S EXHIBIT 4 MARKED	34
PLAINTIFF'S EXHIBIT 5 MARKED	43

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Deposition of Edward Keith Potter

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to Rule 30
5 of the South Carolina Rules of Civil Procedure;
6 2. That the deponent reserves his right to read and sign
7 the deposition transcript.

8 *****

9 EDWARD KEITH POTTER, being duly sworn to tell the truth,
10 the whole truth, and nothing but the truth of his own
11 knowledge concerning the matter herein, testified as
12 follows:

13 *****

14 EXAMINATION BY MR. GOINGS:

15 Q. Mr. Potter, my name is Robert Goings, and I represent
16 Dealer Services Corporation in a case presently pending
17 in the Court of Common Pleas in Cherokee County. Have
18 you ever given a deposition before?

19 A. I have.

20 Q. You said you have given a deposition before?

21 A. I have.

22 Q. In what kind of case?

23 A. Civil.

24 Q. What did the case involve?

25 A. This.

1 Q. So you've given a deposition in a case that's involving
2 this. What are you referring to?

3 A. Not to this, but it was a lawsuit case.

4 Q. Okay. I'm going to ask you some questions about that
5 in a second. But you understand you're under oath here
6 today to testify truthfully and accurately, correct?

7 A. (Indicates affirmative response)

8 Q. Is that a yes?

9 A. That's a yes.

10 Q. All right. You're a lot like myself, and sometime we
11 answer with head nods and uh-huhs --

12 A. I wasn't talking with my hands.

13 Q. -- and huh-uhs. Using your hands. See, we have a
14 court reporter here, and she's got the hardest job of
15 all of us. She has to take down everything that
16 happens in here. And I'd ask that you try to keep your
17 answers audible for purposes of the deposition.
18 Refrain from huh-uhs and huh-uhs. Try to say yes or
19 no. If I ask you, is that a yes, I'm not being rude, I
20 just want to clarify your response for the record. Do
21 you understand?

22 A. I do.

23 Q. If I ask you a question and you need me to repeat or
24 rephrase that question, the rules for a deposition
25 require that you ask me and not your attorney here

1 today. Do you understand?

2 A. I do.

3 Q. Okay. If you answer my question, is it fair to
4 understand that you've understood my question?

5 A. Yes.

6 Q. Okay. Let's talk about any prior depositions that
7 you've been involved in. You said you've given
8 deposition before in a civil lawsuit.

9 A. Yes.

10 Q. What did that civil lawsuit relate to?

11 A. Drye's. Drye's Auto Crushing.

12 Q. I understand there was some prior litigation. I don't
13 know if that litigation is still going on with Drye's
14 Auto Crushing. Explain to me what the allegations were
15 in that case.

16 A. I don't understand the question.

17 Q. You were a party to that lawsuit?

18 A. I was.

19 Q. Okay. What were the allegations made against you or
20 your company as it related to Drye's Auto Crushing?

21 A. We owed them money on cars, that they gave us money to
22 crush on, buy crush cars.

23 Q. Okay, how much money did you owe them?

24 A. I didn't owe them anything.

25 Q. Okay. How much did Total, Incorporated, owe them? Or

- 1 any companies that you may be related to?
- 2 A. I don't feel I owe them nothing.
- 3 Q. Okay. How much did they claim you owed them?
- 4 A. 49,960 dollars and 20 cents.
- 5 Q. So you know the number to a T, right?
- 6 A. Yes, sir.
- 7 Q. They claimed you owed them that amount, correct?
- 8 A. Yes, sir.
- 9 Q. And you claimed you didn't owe them anything?
- 10 A. Yes, sir.
- 11 Q. What was the ultimate disposition of that case? What
- 12 happened in that case?
- 13 A. We went to court.
- 14 Q. And what was the outcome of that proceeding?
- 15 A. We owed them 49,960 dollars and 20 cents.
- 16 Q. Okay. So a court determined you did owe that amount?
- 17 A. Uh-huh (indicates affirmative response).
- 18 Q. And have you paid that amount to Drye?
- 19 A. No.
- 20 Q. What's the current status of that litigation?
- 21 A. It doesn't exist.
- 22 Q. Okay. Why is that?
- 23 A. Because we're bankrupt.
- 24 Q. Who is "we"?
- 25 A. Total, Inc.

Deposition of Edward Keith Potter

- 1 Q. Not you, though, right?
- 2 A. Not yet.
- 3 Q. All right. What is your full name?
- 4 A. Edward Keith Potter.
- 5 Q. Are you currently married?
- 6 A. I am.
- 7 Q. How long have you been married?
- 8 A. Nine and a half years.
- 9 Q. What's your wife's name?
- 10 A. Donna.
- 11 Q. What's her last name?
- 12 A. Same as mine.
- 13 Q. Potter?
- 14 A. That's correct.
- 15 Q. What is her maiden name, or her last name prior to --
- 16 A. Rhom.
- 17 Q. -- you getting married?
- 18 A. Rhom.
- 19 Q. Can you spell that for the court reporter?
- 20 A. R-h-o-m.
- 21 Q. What is your address?
- 22 A. 119 Dobbinsville Road, Ellenboro.
- 23 Q. Can you spell that for the court reporter?
- 24 A. She's cool.
- 25 Q. All right.

Deposition of Edward Keith Potter

1 A. North Carolina, 28040.

2 Q. And how old are you?

3 A. Forty-five.

4 Q. Your date of birth?

5 A. 4/26/68.

6 Q. And your social security number?

7 A. Excuse me?

8 Q. Your social security number?

9 A. For what purpose?

10 Q. For the purpose of the deposition. If we can -- we can
11 go off the record, if you want to do that.

12 Ms. Goforth:

13 Yeah, if you'll agree he can provide it to counsel, and
14 we won't put it on the record.

15 Mr. Goings:

16 Yeah, he can just put, like, the last four digits on
17 the record, and then he can just --

18 Ms. Goforth:

19 Okay.

20 Mr. Goings:

21 So let's go off the record.

22 (Off the record)

23 Examination resumed by Mr. Goings:

24 Q. Mr. Potter, you provided me your social security number
25 off the record, and I'm asking you what is the last

1 four digits of your Social Security --

2 A. 4813.

3 Q. Okay. And how long have you lived at this address, you
4 said Dobbinsville Road?

5 A. About -- probably about 11 years, 11 and a half years.

6 Q. Before living at that address, where did you live?

7 A. Gaffney.

8 Q. Where are you from, originally?

9 A. Gaffney.

10 Q. Where'd you go to high school.

11 A. Gaffney.

12 Q. You a Gaffney Indian?

13 A. All day long.

14 Q. Like I told you before the deposition, I'm from Union,
15 and you Gaffney folks threw rocks at our busses before
16 every football game. And that's why I like Gaffney
17 people.

18 A. It's just tradition.

19 Q. It is tradition. We can have at least that in common,
20 despite the case and all. When did you graduate from
21 Gaffney High?

22 A. '87.

23 Q. 1987?

24 A. Uh-huh (indicates affirmative response).

25 Q. Okay. And where was the school located at that point?

- 1 A. On Union Highway.
- 2 Q. On Union Highway?
- 3 A. Yeah.
- 4 Q. I gotcha. It's at a new location now, though, right?
- 5 A. I think so.
- 6 Q. Yeah. Do you have a PO box or any other location where
- 7 you receive mail --
- 8 A. I don't.
- 9 Q. -- other than the address you previously provided?
- 10 A. I don't.
- 11 Q. You said you're married. Do you have any children?
- 12 A. Uh-huh (indicates affirmative response).
- 13 Q. And how many children do you have?
- 14 A. One.
- 15 Q. And what is the child's name?
- 16 A. Kellie. I-e.
- 17 Q. Kellie?
- 18 A. She'd prefer I-e.
- 19 Q. I hear you. And how old is she?
- 20 A. She's 25.
- 21 Q. Twenty-five. And was this a child from a previous
- 22 marriage?
- 23 A. She's my stepchild, by law.
- 24 Q. She's your stepchild?
- 25 A. Yeah.

1 Q. So --

2 A. Me personally, no.

3 Q. You personally do not have any biological children, but
4 you have a stepchild, and her name is Kellie, correct?

5 A. Uh-huh (indicates affirmative response).

6 Q. Kellie's last name is?

7 A. Parker.

8 Q. Parker. Does Kellie live in Cherokee County?

9 A. No.

10 Q. Where does she live?

11 A. She lives with me.

12 Q. Okay. Describe to me, Mr. Potter, your education
13 history, if you could.

14 A. High school.

15 Q. Gaffney High?

16 A. Uh-huh (indicates affirmative response).

17 Q. Is that a yes?

18 A. Yes.

19 Q. I'm not being rude, I'm just trying to clear the record
20 for you. Did you receive any post-high school
21 education or any tech classes or anything?

22 A. Greenville Tech.

23 Q. How long did you go to Greenville Tech?

24 A. Very short. I don't recall.

25 Q. Did you get a degree, or were you attempting to get a

1 degree in anything?

2 A. Uh-huh (indicates affirmative response).

3 Q. What was that?

4 A. I got a degree in driving, truck driving.

5 Q. You got a degree in truck driving. And who did you get
6 that degree from?

7 A. Greenville Tech.

8 Q. Okay, so you did get a degree --

9 A. Uh-huh (indicates affirmative response).

10 Q. -- from Greenville Tech. Is that a yes?

11 A. Yes.

12 Q. What type of truck driving degree is this? Explain
13 that for me.

14 A. CDL.

15 Q. Okay. In order to get your CDL license, do you have
16 to --

17 A. No.

18 Q. You do not have a CDL license?

19 A. I do.

20 Q. Okay. Let me finish my question, then you can answer,
21 even though you may know where I'm going. It helps the
22 court reporter for me to finish my question, then you
23 answer. And I'll try to let you finish your answer
24 before I move on to the next question. Is that
25 understood?

1 A. Yes.

2 Q. Okay. In order to receive your CDL license, do you
3 have to pass certain tests for reading and writing?

4 A. Yes.

5 Q. Okay. And did you pass those tests?

6 A. I did.

7 Q. All right. What types of tests are required to get
8 your CDL license, or a degree in truck driving?

9 A. Written.

10 Q. Okay. Provide for me your employment history in a
11 chronological order from when you graduated from
12 Gaffney High up 'til present day.

13 A. I can't give you that at this time.

14 Q. Is there a reason why you can't provide your employment
15 history?

16 A. Yeah. I don't have it in front of me.

17 Q. Okay. Well, to the best of your recollection, where
18 was the first place you worked following high school?
19 After you graduated from high school, what was your
20 first job?

21 A. TNS.

22 Q. Say that again?

23 A. TNS.

24 Q. Is that TNS Brass and Bronze Works?

25 A. No. TNS Mills.

1 Q. TNS Mills. where is that located?

2 A. It was in Blacksburg.

3 Q. Okay. what did you do for TNS Mills?

4 A. I worked in the card room.

5 Q. Doing what?

6 A. Running cards.

7 Q. How long did you work there?

8 A. I don't recall.

9 Q. One year, or more than one year.

10 A. Not a year.

11 Q. Okay. After that job at TNS Mills, where did you go?
12 where were you employed?

13 A. I don't recall. I don't recall.

14 Q. where is the next place of employment that you do
15 recall? whether you were employed by somebody or you
16 were self-employed.

17 A. Shelby Paving is the next thing I remember.

18 Q. Okay. where is Shelby Paving located?

19 A. Shelby, North Carolina.

20 Q. How long did you work for Shelby Paving?

21 A. I don't recall.

22 Q. More than a year or less than a year?

23 A. I don't recall.

24 Q. Was it a long employment, you would consider, or a
25 short employment? Let me ask you this: Is it more

1 than five years you worked for Shelby?

2 A. No.

3 Q. Okay.

4 A. Less than.

5 Q. Less than five years, okay. And for purposes of these
6 questions related to your employment history, if you
7 can give me just some -- you don't have to give me the
8 exact dates, that's not what I'm looking for. I'm just
9 looking for some approximate time periods based on your
10 employment. Do you understand?

11 A. Yeah.

12 Q. Where is the next place you recall either being
13 employed or being self-employed?

14 A. Cherokee Finishing.

15 Q. How long did you work for Cherokee Finishing?

16 A. Less than five.

17 Q. Less than five years?

18 A. Yeah.

19 Q. Where's Cherokee Finishing located?

20 A. It was in Gaffney.

21 Q. What did you do for Cherokee Finishing?

22 A. Worked in the finishing department.

23 Q. Okay. Where's the next place of employment?

24 A. I think Hamrick's.

25 Q. Hamrick's in Gaffney?

- 1 A. Uh-huh (indicates affirmative response).
- 2 Q. How long did you work for Hamrick's?
- 3 A. It was less -- it wasn't long.
- 4 Q. Less than a year?
- 5 A. Maybe.
- 6 Q. What'd you do for Hamrick's?
- 7 A. Worked in the cutting room.
- 8 Q. After Hamrick's, where do you recall working?
- 9 A. Progressive Screens.
- 10 Q. Where is that located and --
- 11 A. In Gaffney.
- 12 Q. -- what was your job description?
- 13 A. I made screen, run the laser.
- 14 Q. After Progressive Screens, where did you work?
- 15 A. Swift.
- 16 Q. Who is Swift?
- 17 A. Transportation.
- 18 Q. How long did you work for Swift Transportation?
- 19 A. I don't recall.
- 20 Q. More than a year or less than a year?
- 21 A. I don't recall.
- 22 Q. Do you recall if it was more than five years?
- 23 A. It was less than five.
- 24 Q. It was less than five. And what did you do for Swift
- 25 Transportation?

1 A. Drove a truck. Drove a truck.

2 Q. After Swift Transportation, where were next employed?

3 A. Pepsi.

4 Q. What'd you do for Pepsi?

5 A. Delivered drinks.

6 Q. And what was the time period for that?

7 A. Less than five.

8 Q. All right. After Pepsi --

9 A. Coke.

10 Q. Coke.

11 A. Less than five.

12 Q. All right.

13 A. UPS, working on it now.

14 Q. All right, so you're currently employed?

15 A. I am.

16 Q. Good. And where are you located?

17 A. Can we take a break?

18 Ms. Goforth:

19 Do you need --

20 The witness:

21 I need to pee.

22 Ms. Goforth:

23 -- five minutes? Okay.

24 (Off the record)

25 Examination resumed by Mr. Goings:

1 Q. Mr. Potter, you testified that you currently are
2 employed with UPS, is that correct?

3 A. That is.

4 Q. When did you become employed by UPS?

5 A. '06, I think it was.

6 Q. And have you worked with UPS continuously since 2006?

7 A. Uh-huh (indicates affirmative response).

8 Q. Is that a yes?

9 A. Yes.

10 Q. Okay. And what has been your job description and job
11 title at UPS, and your job description?

12 A. P and D.

13 Q. Describe that for me.

14 A. It's -- the initials stand for exactly what it is, pick
15 up and delivery.

16 Q. Okay. You've been doing that since 2006?

17 A. Uh-huh (indicates affirmative response).

18 Q. Is that yes?

19 A. Yes.

20 Q. Do you currently have any other employment? Did you
21 have any other employment at any time between 2006 to
22 present?

23 A. I own Total, Inc. I opened Total, Inc. in '06 between
24 Coke and UPS.

25 Q. Okay. That's what I was getting at. I'm going to ask

1 you some more questions about your ownership in Total,
2 Inc. and what it did in a second. Have you owned any
3 other businesses in your life other than Total, Inc.?

4 A. No.

5 Q. Do you currently attend church?

6 A. I do.

7 Q. And where do you go to church?

8 A. The Barn Christian Fellowship.

9 Q. Where is that located?

10 A. I believe it's an Ellenboro address.

11 Q. Okay. Are you a member of any social organizations?

12 A. Such as?

13 Q. Just for example, Rotary, Lions Club --

14 A. No.

15 Q. -- Kiwanis, you're a Mason, those types of entities.

16 A. No, sir.

17 Q. Okay. Who completes your tax returns?

18 A. I don't recall.

19 Q. Who completed your tax returns last year?

20 A. I don't recall his name.

21 Q. Is he an accountant?

22 A. He is.

23 Q. Located where?

24 A. I'm not sure. Forest City, probably, would be...

25 Q. What's the name of the practice or the accountant who

1 prepared your tax returns --

2 A. I don't --

3 Q. -- last year?

4 A. I don't know.

5 Q. Are you going to use the same accountant for this
6 year's tax returns?

7 A. I don't know.

8 Q. And how much do you currently earn with UPS?

9 A. Yearly?

10 Q. Yes, sir.

11 A. Around 70.

12 Q. Are you on salary, or are you paid by the hour or the
13 job?

14 A. Hour.

15 Q. What's your hourly rate?

16 A. I'm not sure.

17 Q. Can you read?

18 A. Yes.

19 Q. Can you write?

20 A. Yes.

21 Q. Have you ever been arrested?

22 A. I have.

23 Q. And for what?

24 A. Vandalism.

25 Q. When was that?

1 A. When I was 18 years old.

2 Q. Were you convicted of the crime, or found guilty?

3 A. Uh-huh (indicates affirmative response). Yes.

4 Q. Is that a yes?

5 A. Yes.

6 Q. I'm not trying to be rude, you know, I'm just trying to
7 help our court reporter, who's actually got the hardest
8 job of all of us. Any other arrests or convictions
9 other than vandalism when you were 18?

10 A. No.

11 Q. Have you ever been cited by any regulatory agency or an
12 agency in South Carolina for any business that you may
13 have operated?

14 A. Explain the question.

15 Q. Has, for example, DHEC or Labor License and Regulation
16 or Department of Revenue or any governmental entity --

17 A. No.

18 Q. -- had an investigation against you or cited you or
19 filed a complaint against you for any reason
20 whatsoever?

21 A. Not to my knowledge.

22 Q. Have you ever filed for individual bankruptcy?

23 A. No.

24 Q. Do you have anyone in Cherokee County that you're
25 related to by blood or marriage?

1 A. Not to my knowledge.

2 Q. You're not related to anyone at all that live in
3 Gaffney or Cherokee County?

4 A. I have an uncle.

5 Q. What's your uncle's name?

6 A. Bud.

7 Q. What's Bud's last name?

8 A. Potter.

9 Q. Are there any other Potters in Cherokee County that
10 you're related to other than Bud Potter?

11 A. Not that I know of.

12 Q. How old is Bud Potter?

13 A. I don't know.

14 Q. Does Bud Potter work?

15 A. I don't know.

16 Q. Do you know where Bud Potter lives in Cherokee County?

17 A. No.

18 Q. Okay. I'm going to hand you a document we'll mark as
19 Plaintiff's Exhibit 1, for the record.

20 (Court reporter marks document as
21 Plaintiff's Exhibit Number 1)

22 Examination resumed by Mr. Goings:

23 Q. I'll hand this to you right here (indicating). If you
24 could identify this document, sir.

25 A. Promissory Note Security Agreement.

1 Q. Have you seen this document before? Take your time to
2 look at it.

3 A. Yes.

4 Q. Okay. Does this appear to be a true and accurate copy
5 of the Demand Promissory Note and Security Agreement
6 between Dealer Services Corporation and Total,
7 Incorporated?

8 A. Yes.

9 Q. Okay. Did you sign this document?

10 A. I did.

11 Q. And what page is your signature located on?

12 A. Nine, 11.

13 Q. Page nine of 11?

14 A. Uh-huh (indicates affirmative response).

15 Q. Okay. And you signed as president of Total,
16 Incorporated?

17 A. Yes.

18 Q. Did you also sign below your name as president,
19 individually acknowledging and consenting to the terms
20 and conditions of this document?

21 A. Yes.

22 Q. And you signed this document freely and voluntarily,
23 correct?

24 A. I did.

25 Q. And before signing the document, you had the

1 opportunity to fully read it, correct?

2 A. I did.

3 Q. Did you read the document, which is referred to as
4 Plaintiff's Exhibit 1, the Demand Promissory Note and
5 Security Agreement?

6 A. No.

7 Q. Okay. But you had the opportunity to read it if you
8 wanted to, correct?

9 A. Yes.

10 Q. And you had the opportunity to hire and consult a
11 lawyer regarding the terms and conditions of this
12 agreement, correct?

13 A. Yes.

14 Q. Throughout the deposition, if I refer to this as the
15 loan agreement, do you understand I'm talking about
16 what's entitled the Demand Promissory Note and Security
17 Agreement?

18 A. Yes.

19 Q. Okay. Total, Incorporated, when was it established?

20 A. It was in '06. I don't recall the month.

21 Q. Who owned this entity?

22 A. Total, Inc.?

23 Q. Yes, sir.

24 A. I did.

25 Q. Did anyone other than yourself own the entity?

1 A. No.

2 Q. And why was it formed?

3 A. To try to get a child through college.

4 Q. And what type of business was Total, Incorporated
5 involved in?

6 A. Used cars.

7 Q. Did it sell cars?

8 A. Uh-huh (indicates affirmative response).

9 Q. Anything else other than cars?

10 A. No.

11 Q. Did it sell any auto parts or salvage parts?

12 A. Eventually, yes.

13 Q. Okay. Describe for me the business activities of
14 Total, Incorporated, how it got started, and the type
15 of business that it routinely transacted on a day-to-
16 day basis.

17 A. I wasn't there on a day-to-day basis.

18 Q. Who was?

19 A. Mike Gault.

20 Q. Is he present in your deposition?

21 A. He is.

22 Q. Why weren't you there on a day-to-day basis?

23 A. Because I got a job at UPS right after I opened it, and
24 couldn't be there.

25 Q. Did you ever work at Total, Incorporated on a day-to-

1 day basis?

2 A. Not on a day-to-day.

3 Q. Okay. Explain your involvement in Total, Incorporated.
4 You weren't on a day-to-day basis; when did you go
5 there?

6 A. Saturdays.

7 Q. Okay, you worked on Saturdays?

8 A. Uh-huh (indicates affirmative response).

9 Q. Did you work any other days other than Saturdays?

10 A. Very rarely. If I -- unless I was on vacation from my
11 job.

12 Q. Did you ever work on the weekends, other than on
13 Saturdays, like, on Sunday?

14 A. No.

15 Q. No Sundays?

16 A. (Indicates negative response)

17 Q. What about any afternoons during the work week?

18 A. No.

19 Q. How did you manage the business activities of Total,
20 Incorporated if you only were there just one day a
21 week?

22 A. I didn't.

23 Q. Okay. And did Mike Gault have a job title at Total,
24 Incorporated?

25 A. Yes.

1 Q. What was he?

2 A. GM. GM.

3 Q. That stands for general manager?

4 A. General, yeah.

5 Q. Okay. When did your company start doing business with
6 Dealer Services Corporation?

7 A. I don't recall.

8 Q. But it was back in 2006, 2007, correct?

9 A. I don't recall without having it in front of me.

10 Q. Okay. Would you agree with me that this promissory
11 note that's marked as Plaintiff's Exhibit 1 was not the
12 first Demand Promissory Note and Security Agreement
13 that you entered into with Dealer Services Corporation?

14 A. Yes, I would.

15 Q. Okay, so this wasn't the first one, correct?

16 A. No, sir.

17 Q. And your company previously had other lines of credit
18 or other loans through Dealer Services prior to the one
19 that's marked as Plaintiff's Exhibit 1; correct?

20 A. That is correct.

21 Q. All right. And not to take you through all the
22 documents that relate to this matter, would you agree
23 with me that the records of Dealer Services Corporation
24 showing when you signed other demand promissory notes
25 and security agreements are true and accurate?

1 A. Yes.

2 Q. Okay. So if Dealer Services has a document that says
3 Demand Promissory Note and Security Agreement,
4 guarantee agreement for other lines of credit that pre-
5 date the one that's marked as Plaintiff's Exhibit 1,
6 you would agree with me that those documents are that
7 true and accurate documents, correct?

8 Ms. Goforth:

9 Object to the form. You can answer.

10 Witness answers:

11 Witness answers:

12 A. I don't -- I can't answer that because I don't know
13 what it entitles, or...

14 Q. I've got a whole stack of them here. I guess we could
15 go through them. I hand you what's going to be marked
16 as Plaintiff's Exhibit 2.

17 (Court reporter marks document as
18 Plaintiff's Exhibit Number 2)

19 Examination resumed by Mr. Goings:

20 Q. If you could identify this document for the record
21 after fully reviewing it. Can you identify Plaintiff's
22 Exhibit 2 for the record?

23 A. Uh-huh (indicates affirmative response). Yes.

24 Q. What is this?

25 A. The contract. It looks like it's probably the first

1 one.

2 Q. Okay. What does it say at the top?

3 A. Demand Promissory Note and Security Agreement.

4 Q. What is the date of this document? It'll be -- go to
5 page eight of eight.

6 A. 3/15/07.

7 Q. Do you see your signature? And by the way, is that
8 your signature, Edward Keith Potter, President?

9 A. Seems to be.

10 Q. Do you have any reason to dispute or doubt that that is
11 your signature?

12 A. No.

13 Q. Okay. It's got somebody signing on behalf of Dealer
14 Services Corporation? Do you see that?

15 A. I do.

16 Q. And right above it, it says, wherefore, the parties
17 have by their duly authorized representative executed
18 this note on the 15th day of March, 2007?

19 A. Correct.

20 Q. Okay. Indicate to you that this document was executed
21 on March 15th, 2007?

22 A. Yes.

23 Q. Okay. Does this document appear to be -- by the way,
24 what's the line of credit or the credit limit on this
25 note, is 100,000 dollars, is that correct?

1 A. Yes.

2 Q. And the one that's been marked as Plaintiff's Exhibit 1
3 is for 200,000 dollars.

4 A. Yes.

5 Q. Can you explain to me how your company went from
6 100,000 dollars as to credit limit up to, at least by
7 January 2012, a credit limit of 200,000 dollars?

8 A. And what was the question?

9 Q. Can you explain how your company, Total, Incorporated,
10 went from 100,000 dollars as early as March 15, 2007 as
11 reflected on Plaintiff's Exhibit 2 to 200,000 dollars
12 as to credit limit as reflected on Plaintiff's Exhibit
13 1 in 2012?

14 A. We got a more -- extension on a line of credit, a
15 higher line of credit.

16 Q. And why did you or your company need a higher line of
17 credit?

18 A. To buy more cars.

19 Q. And why did you have to buy more cars?

20 A. That's the nature of the business.

21 Q. And this credit line was for purposes of the business
22 activity of Total, Incorporated, correct?

23 A. That all it -- yes.

24 Q. I'm going to hand you what is going to be marked as
25 Exhibit 3. If you could identify this document for the

1 record.

2 (Court reporter marks document as
3 Defendant's Exhibit Number 3)

4 Examination resumed by Mr. Goings:

5 Q. Can you identify this document for the record?

6 A. Individual Personal Guarantee.

7 Q. And is this a Individual Personal Guarantee bearing
8 your name as Edward Keith Potter?

9 A. Yes.

10 Q. And it appears that on the first page, it says, on
11 March 15th, 2007, the debtor, which is Total,
12 Incorporated, executed and delivered to DSC its
13 principle a Demand Promissory Note and Security
14 Agreement. Do you see that?

15 A. Yes.

16 Q. And then you signed a Individual Personal Guarantee
17 guaranteeing the terms of the Promissory Note Security
18 Agreement with and between Total, Incorporated and
19 Dealer Services Corporation. Is that correct?

20 A. Yes.

21 Q. Now, I'm showed you Exhibit 2 and Exhibit 3. And these
22 go back to 2007. And it kind of gets back to my
23 previous question. Were there other demand promissory
24 notes and security agreements that you entered into on
25 behalf of Total, Incorporated other than the one that's

1 marked as Plaintiff's Exhibit 1 for a 200,000-dollar
2 credit limit in 2012?

3 A. I don't recall.

4 Q. All right. Well, I showed you at least one from 2007.

5 A. Yeah.

6 Q. And I showed you one from 2012, correct?

7 A. Okay.

8 Q. In between this time period, 2007 and 2012, were there
9 other demand promissory notes or security agreements or
10 personal guarantees that were entered into with Dealer
11 Services Corporation?

12 A. I don't recall.

13 Q. Could there have been?

14 A. I'm sure there could have been. Probably so, but I
15 don't recall.

16 Q. Okay.

17 Ms. Goforth:

18 Robert, how many more do you have? It might be helpful
19 if we, since we didn't have them two days prior, if
20 you'd be willing to take a break and let me talk to Mr.
21 Potter about them individually.

22 Mr. Goings:

23 Yeah, these were all produced about a month and a half,
24 two months ago. These were all produced in the
25 discovery request.

1 Ms. Goforth:

2 I just didn't know if that would shorten things.

3 Mr. Goings:

4 Yeah --

5 The witness:

6 Every six months.

7 Mr. Goings:

8 There are a number of them. I can show him one or two
9 more.

10 Ms. Goforth:

11 Okay.

12 Mr. Goings:

13 I mean, I'm just trying to --

14 Ms. Goforth:

15 That's fine.

16 Mr. Goings:

17 I didn't want to have to do this, but since he doesn't
18 recall, I'm going to have to show him at least a couple
19 more.

20 (Court reporter marks document as
21 Defendant's Exhibit Number 4)

22 Examination resumed by Mr. Goings:

23 Q. I'm going to show you what's marked as Plaintiff's
24 Exhibit 4. If you could just identify this document
25 for the record, sir.

- 1 A. Demand Promissory Note and Security Agreement.
- 2 Q. And who is this document between? Or who is this
- 3 Demand Promissory Note and Security Agreement between?
- 4 A. DSC and Total, Inc.
- 5 Q. And what is the date of this document?
- 6 A. December the 8th. December '08, 26th.
- 7 Q. December 26th, 2008?
- 8 A. Yes.
- 9 Q. Does that appear to have your signature under the
- 10 dealer, Total, Inc., doing business as Gault Used Cars?
- 11 A. Yes, it does.
- 12 Q. It lists you as the president?
- 13 A. It does.
- 14 Q. Appear to be your signature?
- 15 A. It does.
- 16 Q. And if you go to the first page, it looks like the
- 17 credit limit is for 150,000 dollars at this point,
- 18 correct?
- 19 A. Uh-huh (indicates affirmative response).
- 20 Q. Is that a yes?
- 21 A. Yes.
- 22 Q. Is it your understanding that you signed and executed a
- 23 Individual Personal Guarantee as it related to this
- 24 Demand Promissory Note that's marked as Plaintiff's
- 25 Exhibit 4?

1 A. Yes.

2 Q. And with every Demand Promissory Note and Security
3 Agreement, you, as well, always signed an Individual
4 Personal Guarantee, correct?

5 A. Yes.

6 Q. Okay. And you understood that in order to receive the
7 line of credit as additional security for that line of
8 credit, you had to also provide a personal guarantee,
9 is that correct?

10 A. Yes.

11 Q. That was essentially a condition precedent to the
12 credit going into place, correct?

13 A. Correct.

14 Q. Okay. And you've been in business awhile, you
15 understand that, that is customary in this type of
16 situation, correct?

17 A. Yes.

18 Q. Let's go back to Plaintiff's Exhibit 1. Did you ever
19 ask Dealer Services Corporation before entering into
20 the Demand Promissory Note and Security Agreement
21 marked as Plaintiff's Exhibit 1 to alter, change, edit,
22 or revise any of the terms and conditions set forth in
23 this document?

24 A. No.

25 Q. Okay. And as it relates to any of the previous demand

1 promissory notes that you entered into, did you ever
2 ask Dealer Services to edit, change, alter, or revise
3 any of the terms and conditions of those documents?

4 A. I did not.

5 Q. Okay. I notice on some of the documents that Total,
6 Incorporated did business as other names, other than
7 Total, Incorporated, correct?

8 A. Yes.

9 Q. What were those names?

10 A. Total, Inc., Gault's Used Cars, Gault's Used Cars and
11 Auto Parts, Motormaxx, and Gault's Auto Parts.

12 Q. Okay. For purposes of the record, you were holding up
13 your deposition notice for today, correct?

14 A. Yes.

15 Q. And it's got the case caption?

16 A. Yes.

17 Q. Is the case caption correct to the extent that it lists
18 the names of any doing business as for --

19 A. Total, Inc.

20 Q. -- Total, Incorporated?

21 A. Yes.

22 Q. Any other doing business as entities other than the
23 ones listed in the case caption in this case, sir?

24 A. No. Not that I can think of.

25 Q. Explain to me why there was so many doing business as

1 unincorporated entities for Total, Incorporated.

2 A. Keeping money separate.

3 Q. Okay. So you had multiple bank accounts for Total,
4 Incorporated?

5 A. Yes.

6 Q. And each bank account related to a separate doing
7 business as?

8 A. Yes.

9 Q. Okay. But they were all under the --

10 A. Under --

11 Q. -- Total, Incorporated umbrella, correct?

12 A. Yes.

13 Q. All right. Let's see this real quick, I'm sorry. Some
14 of these questions will have a self-explanatory answer.
15 But just for purposes of the record, what did Gault
16 Used Cars do?

17 A. It was the car lot on Union Highway.

18 Q. Okay. What type of business was Gault's Auto Parts
19 involved in?

20 A. It's used auto parts.

21 Q. Give me an example.

22 A. Like a junkyard. Used auto parts.

23 Q. Gotcha.

24 A. Yeah.

25 Q. So if I needed a new bedliner for my truck and there

Deposition of Edward Keith Potter

- 1 was one on --
- 2 A. Yes.
- 3 Q. That could be an example?
- 4 A. Yes. You said new. Yeah. New to you, yeah.
- 5 Q. I gotcha.
- 6 A. Used auto parts.
- 7 Q. Perfect. And then it says Gault's Used Cars and Auto
- 8 Parts. Is that another entity?
- 9 A. It was just -- yes.
- 10 Q. It was another entity?
- 11 A. Yeah.
- 12 Q. And what did that entity do? Or what did that doing
- 13 business as name do?
- 14 A. Both.
- 15 Q. Okay. The next one says, Gault's Used Cars and
- 16 Motormaxx. What business was that --
- 17 A. Used cars.
- 18 Q. Used cars.
- 19 A. Yes.
- 20 Q. So there were multiple doing business as -- I can't say
- 21 entities, it's really not an entity, but divisions --
- 22 A. Subsidiaries.
- 23 Q. -- subsidiaries, whatever you want to call it, that
- 24 sold cars?
- 25 A. Two.

1 Q. Two? Why do you have two separate?

2 A. I had two lots.

3 Q. You had two lots. Where were the two lots?

4 A. One was on Union Highway, another one was in Wade
5 Hampton, on Wade Hampton in Greer, in Greenville.

6 Q. Explain to me, I just don't know how the business was
7 set up. Which ones were in Cherokee County, which ones
8 were in Greer?

9 A. Gault's Used Cars was in Cherokee County. Motormaxx
10 was in Greer.

11 Q. And did both Gault's Used Cars and Motormaxx
12 essentially both sell used auto parts and also used
13 cars?

14 A. No.

15 Q. Okay. Which ones sold used cars versus used auto
16 parts?

17 A. Motormaxx, strictly used cars.

18 Q. Okay.

19 A. Gault's Auto Parts and used cars, was used cars and
20 auto parts.

21 Q. And then there were two locations, correct?

22 A. Correct.

23 Q. Okay. So no auto parts were sold in the Greer
24 location?

25 A. No.

1 Q. Auto parts were only sold in Cherokee County?

2 A. Cherokee County.

3 Q. On Union Highway? On Union Highway?

4 A. Yes.

5 Q. Okay. I think I may have asked this question, but I
6 don't know. Did you ever consult with an attorney to
7 review the terms and conditions of the Demand
8 Promissory Note and Security Agreement that's marked as
9 Plaintiff's Exhibit 1 or any of the other ones that you
10 may have signed?

11 A. No.

12 Q. And why not?

13 A. I just didn't.

14 Q. Okay. But you needed this line of credit in order to
15 do business, correct?

16 A. Correct.

17 Q. Did you have any other lines of credit from other
18 entities other than Dealer Services Corporation?

19 A. Yes, I did.

20 Q. Who were those?

21 A. Okay. You've got CarBucks, Mason Motors, Quick
22 Capital. And I think that's all.

23 Q. Who was the first entity that you ended up taking a
24 line of credit out for for Total, Incorporated?

25 A. I don't recall.

1 Q. Okay.

2 A. I don't recall.

3 Q. Could Dealer Services have been the first one?

4 A. It could, but without me having my books here --

5 Q. I understand. But sitting right here today, you don't
6 know of any other financier that provided financing to
7 Total, Incorporated before Dealer Services, do you?

8 A. I don't recall.

9 Q. Okay. That's what I'm saying, you don't recall anybody
10 else at this point? There may have been, may not have
11 been, you just don't know because you don't have the
12 books in front of you.

13 A. Thank you. Exactly.

14 Q. I understand.

15 A. Yes.

16 Q. And Exhibit 1, Plaintiff's Exhibit 1, which is the
17 Demand Promissory Note and Security Agreement, you
18 agreed to abide by the terms and conditions of it,
19 correct?

20 A. I did.

21 Q. And you don't dispute the validity of the terms and
22 conditions --

23 A. No.

24 Q. -- in it, do you? And you needed to abide by the
25 terms, or you promised to abide by these terms and

1 conditions because you needed the line of credit,
2 correct?

3 A. Exactly.

4 Q. And without that line of credit, you would not have
5 been able to operate. Is that correct?

6 A. At that capacity.

7 Q. That's right. I mean, you wouldn't have taken out the
8 line of credit if you didn't need the line of credit --

9 A. Right.

10 Q. -- correct? And did you sign a personal guarantee, Mr.
11 Potter, as it relates to Plaintiff's Exhibit 1, the
12 Demand Promissory Note and Security Agreement for the
13 200,000-dollar line of credit?

14 A. Yes.

15 Q. Okay. Do you know if Mr. Michael Wayne Gault also --

16 A. Yes.

17 Q. -- completed an individual personal guarantee? Is that
18 a yes?

19 A. Yes.

20 Q. Okay. You're doing a good job. I'm just trying to
21 help her out. You certainly know where my questions
22 are going, and that's good.

23 (Court reporter marks document as
24 Plaintiff's Exhibit Number 5)

25 Examination resumed by Mr. Goings:

1 Q. I'm going to hand you what is marked as --

2 A. Five.

3 Q. -- Exhibit 5. I bet you know what I'm going to hand
4 you, right?

5 A. It's kind of like ESPN.

6 Q. After reviewing this document, if you can identify it
7 for the record, sir.

8 A. Individual Personal Guarantee.

9 Q. Does this Individual Personal Guarantee relate to the
10 Demand Promissory Note and Security Agreement that you
11 executed with Dealer Services Corporation?

12 A. It does.

13 Q. Okay. What is the date of this document?

14 A. January 3rd, 2012.

15 Q. Does this document bear your signature?

16 A. It does.

17 Q. And did you, in fact, sign this document, sir?

18 A. Yes.

19 Q. And did you sign this document freely and voluntarily?

20 A. Yes.

21 Q. Did you have the opportunity to fully read the
22 Individual Personal Guarantee marked as Exhibit 5?

23 A. Yes.

24 Q. Did you read the document fully before signing it?

25 A. No.

1 Q. Well, did anything prevent you from reading this
2 document?

3 A. No.

4 Q. Okay.

5 A. No.

6 Q. You could have read it, correct?

7 A. Yes.

8 Q. All right. And you've probably seen documents very
9 similar to this in a lot of your other transactions as
10 a businessman, correct?

11 A. Yes.

12 Q. And the terms and conditions of this appear very
13 similar to all other personal guarantees that you
14 signed, correct?

15 A. Yes.

16 Q. And you understood that the nature and purpose of the
17 personal guarantee was to guarantee and secure all the
18 conditions and terms of the Demand Promissory Note and
19 Security Agreement that Dealer Services entered into
20 with Total, Incorporated, correct?

21 A. Yes.

22 Q. All right. And if you had read this document, you
23 could have been fully informed as to the terms and
24 conditions of it, correct?

25 A. Yes.

1 Q. Did you ask for any provisions of the agreement to be
2 edited, amended, changed in any nature prior to signing
3 this document?

4 A. I did not.

5 Q. Okay. Did you consult with an attorney?

6 A. I did not.

7 Q. And nothing prevented you from consulting with an
8 attorney, correct?

9 A. No.

10 Q. Okay. And you don't question the validity of the terms
11 and conditions of this document, correct?

12 A. No.

13 Q. And you agreed to fully abide by them, correct?

14 A. Yes.

15 Q. Did Total, Incorporated default on the terms and
16 conditions of the Demand Promissory Note and Security
17 Agreement?

18 A. Yes.

19 Q. Okay. And did Total, Incorporated and yourself owe
20 money to Dealer Services Corporation?

21 A. Yes.

22 Q. In what amount?

23 A. I don't recall without my papers here.

24 Q. I understand. Did Total, Incorporated ever sell
25 vehicles out of trust?

1 A. Not to my knowledge.

2 Q. What was the nature of the default of the terms and
3 conditions of the Demand Promissory Note and Security
4 Agreement, as you understand them to be?

5 A. They locked our checking account down and shut us down.

6 Q. And why did they do that?

7 A. Because they have a law they can do whatever they think
8 they want to do.

9 Q. Okay. Why did they shut down your checking accounts?

10 A. Previous answer. Because they're the law.

11 Q. I don't understand. Could you explain your answer to
12 me?

13 A. They went in and seized our account. My company had
14 never defaulted to the company that you're
15 representing, never, until that day.

16 Q. Okay.

17 A. Never did I miss a payment to you, your company that
18 you're representing, to that day.

19 Q. But you did, in fact, miss a payment on that day,
20 correct?

21 A. Yes.

22 Q. Okay. And what was the date of that?

23 A. I don't recall.

24 Q. Okay. Was there an outstanding balance owed to Dealer
25 Services Corporation at the time that you missed the

1 payment?

2 A. There was always a balance.

3 Q. Of course, there's a line of credit, correct?

4 A. Exactly.

5 Q. Well, what was that line of credit amount? What was
6 the balance outstanding that was owed to Dealer
7 Services Corporation at the time --

8 A. I don't recall.

9 Q. -- that you missed a payment?

10 A. I don't recall.

11 Q. Okay. Was it more than 150,000 dollars?

12 A. I don't recall.

13 Q. Do you dispute, Mr. Potter, the amount that Dealer
14 Services claims that was outstanding on the account?

15 A. Yes.

16 Q. Okay. Now, I understand that it is y'all's position,
17 or your position in this case, that there was a
18 settlement agreement reached?

19 A. Yes.

20 Q. Okay. Put that issue aside. Okay, put the settlement
21 agreement issue aside for purposes of answering these
22 questions. We'll get into the settlement agreement, I
23 promise, you, okay? As it relates to the amount of
24 money that was outstanding, that was owed, that you
25 took from Dealer Services that has not been repaid, do

1 you know what that amount was?

2 A. I don't.

3 Q. Okay. Do you have any evidence to dispute the amount
4 that Dealer Services claims was lent to you and not
5 repaid?

6 A. I can't answer that.

7 Q. Okay. Was there a retail line of credit and a salvage
8 line of credit?

9 A. Yes.

10 Q. And there was a principal balance due on the retail
11 line, correct?

12 A. I don't recall.

13 Q. Okay.

14 A. Again, that's the day-to-day.

15 Q. And that kind of changes from day-to-day, based on the
16 cars that are sold or the security that was sold,
17 correct?

18 A. Yes.

19 Q. And so the line of credit is a fluctuating amount, it
20 depends on what kind of sales y'all make, right?

21 A. Yes.

22 Q. Okay. At the time that the loan went into default,
23 when this note went into default, do you know what
24 amount was outstanding?

25 A. I don't.

1 Q. Okay. Do you have any evidence to dispute the amount
2 that Dealer Services claims was outstanding?

3 A. I probably do.

4 Q. Okay, what is that?

5 A. I don't have it with me.

6 Q. Where would those documents be located?

7 A. Probably at the office.

8 Q. Have those documents been produced in discovery in this
9 case?

10 A. I don't know.

11 Q. Who, other than yourself, would know the answer to how
12 much money was outstanding at the time?

13 A. The general manager.

14 Q. And what's his name?

15 A. Mike Gault.

16 Q. Okay. Would that be a question that Mike Gault would
17 be most prepared to answer instead of yourself?

18 A. Before me, yes.

19 Q. Okay. Would you defer to Mike Gault to be the person
20 that could answer those questions?

21 A. Before I could.

22 Q. Why is that?

23 A. Because he ran the day-to-day operations.

24 Q. Okay. What was the principal balance on the retail
25 line?

1 A. I don't know.

2 Q. Okay. What was the principal balance due on the
3 salvage line?

4 A. I don't know that without it being here in front of me.

5 Q. Okay. What are the amount of fees and costs that
6 Dealer Services claims was owed to them under these
7 agreements?

8 A. I don't know.

9 Q. Do you know the amount of interest that Dealer Services
10 is claiming is outstanding?

11 A. I don't.

12 Q. Are you challenging the amount of interest in this case
13 that's owed?

14 A. I can't answer that right now.

15 Q. Why not?

16 A. Because I don't have my papers in front of me.

17 Q. What papers do you need in front of you to fully answer
18 these questions?

19 A. To see what they're saying.

20 Q. Where are these papers located that could help you
21 answer these questions?

22 A. At the office.

23 Q. And have they been produced in discovery in this case?

24 A. I don't know.

25 Q. Okay. Now, I understand based on the answer that was

1 filed in this case, sir, that it's the position of
2 Total, Incorporated and yourself that there was
3 settlement discussions between your company and dealer
4 services related to the amount outstanding on the
5 Demand Promissory Note and Security Agreement and
6 guarantee, is that correct?

7 A. Yes.

8 Q. Okay. When did those settlement discussions begin?

9 A. I don't recall.

10 Q. Did you have any settlement discussions with anyone at
11 Dealer Services?

12 A. No, I did not.

13 Q. Okay. So anything that you would know would be coming
14 from somebody else, correct?

15 A. Yes.

16 Q. But you personally have no knowledge of any settlement
17 discussions, correct?

18 A. I did not talk to DSC.

19 Q. Okay. Did you talk to anyone on behalf of Dealer
20 Services Corporation?

21 A. Yes, I did.

22 Q. Who did you talk to?

23 A. Monty --

24 Q. Vaughan.

25 A. There you go.

1 Q. When did you talk to Monty Vaughan?

2 A. I don't recall the date.

3 Q. What did you say to Monty Vaughan, and what did Monty
4 Vaughan say to you?

5 A. He wanted to know if I could come up with half of the
6 22,000.

7 Q. What did you say?

8 A. That I could -- I'd have to get back in touch with him.
9 And then I didn't ever talk to him again.

10 Q. Did you try to get back in touch with him?

11 A. No.

12 Q. Okay. Did you come up with half of the 22?

13 A. No.

14 Q. Okay. When did this discussion take place?

15 A. I don't recall the date.

16 Q. Was it some time in 2012?

17 A. I don't recall.

18 Q. Other than that one conversation with Monty Vaughan of
19 Dealer Services Corporation, did you have any other
20 communication with anyone at Dealer Services regarding
21 settlement or compromise of the amount that was
22 outstanding under these agreements?

23 A. No.

24 Q. Did you ever receive a written proposed settlement
25 agreement from Dealer Services Corporation?

1 A. I didn't.

2 Q. You didn't? To this day, you never received one, did
3 you, from Dealer Services?

4 A. I haven't.

5 Q. Okay. Did you ever receive one from Mr. Gault? Did
6 you ever receive a proposed settlement from Mr. Gault?

7 A. I haven't.

8 Q. Okay. Have you ever seen a signed settlement agreement
9 from Dealer Services Corporation?

10 A. I haven't.

11 Q. Have you ever signed a settlement agreement with Dealer
12 Services Corporation?

13 A. No, not to my knowledge.

14 Q. Have you ever been asked to sign a settlement agreement
15 on behalf of Total, Incorporated and yourself related
16 to these agreements with Dealer Services Corporation?

17 A. Not to sign one, no.

18 Q. Has anyone on behalf of your company, Total,
19 Incorporated, signed a settlement agreement?

20 A. I don't know.

21 Q. Have you seen, to this day, a signed settlement
22 agreement with Dealer Services Corporation?

23 A. I have not seen.

24 Q. Have you asked to see one?

25 A. No.

1 Q. Have you ever paid Dealer Services Corporation 22,500
2 dollars to settle this case?

3 A. I've never paid Dealer Services a penny.

4 Q. Okay. What do you understand about the proposed
5 settlement between Dealer Services Corporation,
6 yourself, Mr. Gault, and Total, Incorporated?

7 A. Rephrase the question.

8 Q. What do you understand the terms of the proposed
9 settlement agreement between you, Mr. Gault, and Total,
10 Incorporated with Dealer Services Corporation? What
11 were those terms?

12 A. That we'd pay them 22,5.

13 Q. And to this day, have you ever paid them 22,500
14 dollars?

15 A. No.

16 Q. Did you understand that there was a time limit on when
17 Dealer Services Corporation would accept that
18 settlement?

19 A. I didn't.

20 Q. Okay. And other than your conversation with Monty
21 Vaughan, you never had any conversations with anybody
22 on behalf of Dealer Services Corporation?

23 A. Yes, sir. Yes, sir, I've talked to the vice president
24 of DSC.

25 Q. About settlement?

- 1 A. That I was the number one customer he had.
- 2 Q. I'm talking about settlement or compromise of the
- 3 amounts that are --
- 4 A. No.
- 5 Q. -- outstanding.
- 6 A. No.
- 7 Q. What did the -- you said the vice present?
- 8 A. Yes.
- 9 Q. What'd he tell you?
- 10 A. That I was the best customer he had.
- 11 Q. When did he tell you this?
- 12 A. Probably about four weeks before all this happened.
- 13 Q. What did he tell you?
- 14 A. Excuse me?
- 15 Q. What did he tell you, that you were just the best
- 16 customer?
- 17 A. That we'd done more business with them than anybody,
- 18 period.
- 19 Q. And what's his name?
- 20 A. I don't recall.
- 21 Q. When did this conversation take place? Over the phone?
- 22 A. Yes.
- 23 Q. What prompted him to say that?
- 24 A. They had bought another company, and he wanted me to be
- 25 the first to know it before it got out on the street,

1 so rumors wouldn't get started, is the reason he was
2 calling me, at a auto auction. And went on to tell me
3 that, you know, I was one of the best customers that
4 they had.

5 Q. Do you know if Dealer Services to this day still thinks
6 that?

7 A. I haven't talked to anybody since. well, I haven't
8 talked to him since.

9 Q. well, as it relates to attempts to settle the dispute
10 for the amounts that were outstanding on the line of
11 credit, you only had one conversation, that was with
12 Monty Vaughan, correct?

13 A. Uh-huh (indicates affirmative response).

14 Q. Is that a yes?

15 A. Yes.

16 Q. Are you aware of any other communications in an attempt
17 to settle outstanding debt under the note and the
18 guarantee?

19 A. I'm not.

20 Q. You're not?

21 A. No.

22 Q. Did Total, Incorporated ever file bankruptcy?

23 A. Yes, they did.

24 Q. When did they file bankruptcy?

25 A. I don't recall the date.

1 Q. Why did Total, Incorporated file for bankruptcy?

2 A. Because they shut us down.

3 Q. Who's "they"?

4 A. Ben D. Kochenower seized the accounts, and it's hard to
5 run a business when you don't have a checking account.

6 Q. I can understand that. When you said "they" shut you,
7 you're not talking about Dealer Services shutting you
8 down.

9 A. No.

10 Q. And Dealer Services didn't shut you down, did they?

11 A. No, sir.

12 Q. They had an outstanding line of credit of at least
13 200,000 dollars max --

14 A. Yes, sir.

15 Q. -- right? So Total, Incorporated filed for bankruptcy
16 based on --

17 A. They locked us down.

18 Q. -- just so we're clear on the date, you say "they" is
19 Ben D. K-o-c-h-e-n-o --

20 A. Kochenower.

21 Q. -- w-e-r, CPA, correct?

22 A. Yes.

23 Q. And I don't understand what kind of happened in that
24 situation. Could you explain that? I mean, how did he
25 shut you down, why did he shut you down, and what

1 circumstances --

2 A. I don't know.

3 Q. -- related to it? Did it have to do with the car
4 crushing case?

5 A. Yes.

6 Q. So that 49,000-dollar, I guess judgment, that was
7 against your company for crushing the cars resulted in
8 this gentleman seizing your bank accounts?

9 A. Yes.

10 Q. And that incidence or situation was totally separate
11 and distinct from anything Dealer Services did, right?

12 A. Yes.

13 Q. Okay. And that caused the company to quit doing
14 business, then it filed for bankruptcy, correct?

15 A. The lines of credit ceased and existed. You go from a
16 million-dollar line of credit to I don't know who you
17 are, it's hard to open your doors.

18 Q. So as I understand your testimony it was the 49,000-
19 plus-dollar judgment involving the car crushing
20 incident that disrupted the business operations?

21 A. Yes.

22 Q. Okay. What type of bankruptcy was filed?

23 A. Originally?

24 Q. Yes, sir.

25 A. Eleven, I think.

1 Q. Did it get converted at any point in time?

2 A. Yes.

3 Q. Who represented Total, Incorporated in the bankruptcy?

4 A. Ken Holland.

5 Q. Who?

6 A. Ken Holland.

7 Q. Was he the only lawyer you had in that incident?

8 A. I don't recall.

9 Q. Ken Holland was the attorney?

10 A. Holland.

11 Q. H-o-l-l-a-n-d?

12 A. -a-n-d, yeah.

13 Q. Who was the person at Total, Incorporated that
14 interacted with the bankruptcy lawyer the most? Was it
15 you or Mr. Gault?

16 A. Gault.

17 Q. Okay. And did Mr. Gault have the authority to
18 negotiate with the creditors in the bankruptcy
19 proceeding?

20 A. Yes.

21 Q. And Total, Incorporated hired a lawyer, correct?

22 A. Yes.

23 Q. And that lawyer was the agent of Total, Incorporated,
24 correct?

25 A. Yes.

1 Q. All right. Is that bankruptcy action for Total,
2 Incorporated still pending or still --

3 A. No.

4 Q. -- active? What happened to that?

5 A. Settled.

6 Q. Chapter 7, and it completely dissolved?

7 A. Yes.

8 Q. In the bankruptcy action, did you or anybody on behalf
9 of Total, Incorporated ever contest the amount that was
10 owed and outstanding to Dealer Services Corporation?

11 A. I don't recall.

12 Q. Did you receive documentation related to filings that
13 were made in the bankruptcy court action --

14 A. Yes.

15 Q. -- from your attorneys?

16 A. Yes.

17 Q. You routinely received that from your lawyer, correct?

18 A. Yes.

19 Q. And before documents were filed with the bankruptcy
20 court, you would consult with your attorney on those,
21 correct?

22 A. I didn't.

23 Q. Who did?

24 A. Mike Gault.

25 Q. Mike Gault.

1 A. I was still working.

2 Q. Okay. But you delegated those duties and tasks --

3 A. Yes.

4 Q. -- to Mr. Gault, correct?

5 A. Yes.

6 Q. And it was your understanding that Mr. Gault consulted
7 with the attorney regarding any filings or agreements
8 that were made --

9 A. Cooper.

10 Q. -- in the bankruptcy action, correct?

11 A. Yes. Yes.

12 Q. All right. In the bankruptcy action, did Total,
13 Incorporated take the position that a previous
14 settlement agreement was reached between Dealer
15 Services Corporation, Total, Incorporated, you, and Mr.
16 Gault in the amount of 22,500 dollars?

17 A. I don't know.

18 Q. Why wouldn't you know?

19 A. Because you're asking me something that I don't know.

20 Q. Okay. You just weren't involved in that aspect?

21 A. Exactly, yes.

22 Q. It's fair to say you kind of turned over those duties
23 and responsibilities to Mr. Gault?

24 A. He ran the day-to-days.

25 Q. And in running the day-to-day operations of Total,

1 Incorporated, that also meant he ran, I guess, the day-
2 to-day activities of what was going on in the
3 bankruptcy action --

4 A. Yes.

5 Q. -- correct?

6 A. Yes.

7 Q. Okay. Then I guess I'll ask Mr. Gault some of those
8 questions --

9 A. Okay.

10 Q. -- since you don't know. Do you have any ownership
11 interest in any unincorporated partnerships?

12 A. No.

13 Q. Do you have any ownership interest in any companies?

14 A. No.

15 Q. Do you have any ownership interest in any LLC's or
16 corporations?

17 A. No.

18 Q. Do you have any ownership in whole or part in any real
19 property?

20 A. No.

21 Q. What about your residence?

22 A. What about it?

23 Q. Who owns your residence?

24 A. The bank.

25 Q. The bank? And how much is owed or outstanding on that?

Deposition of Edward Keith Potter

- 1 A. I don't know.
- 2 Q. Do you have a mortgage?
- 3 A. Yes.
- 4 Q. How many mortgages do you have?
- 5 A. I don't know.
- 6 Q. Do you have one?
- 7 A. I don't know.
- 8 Q. But that property is in your name, correct?
- 9 A. No.
- 10 Q. Who's name is it in?
- 11 A. My -- I'm not sure.
- 12 Q. Did ownership change recently --
- 13 A. No.
- 14 Q. -- according to -- your property?
- 15 A. No.
- 16 Q. So you don't know who's name is on the deed, or who has
- 17 ownership to the residence in which you reside?
- 18 A. The deed --
- 19 Q. Yes, sir.
- 20 A. -- is in my wife's name.
- 21 Q. How long has the deed been in your wife's name?
- 22 A. I don't know. I don't know.
- 23 Q. Has it been in your wife's name during the times in
- 24 which you've been indebted to Dealer Services
- 25 Corporation?

1 A. Say it again, now.

2 Q. Has the deed to your wife's -- let me back up. You
3 said the property, your house is in your wife's name,
4 correct?

5 A. The deed.

6 Q. The deed is.

7 A. Yes.

8 Q. How many years has the deed been in your wife's name?

9 A. Probably 12 or 14 years.

10 Q. Okay. Has the deed changed, ownership in the house
11 changed within the last five years, to your knowledge?

12 A. No. Not to my knowledge.

13 Q. Do you have any interest or use of any other property
14 other than your residence?

15 A. No.

16 Q. What about any vacation homes, lake houses, beach
17 houses, mountain houses, or any such?

18 A. No.

19 Q. Okay. Have you applied for a loan or a line of credit
20 in the last three years?

21 A. Probably so.

22 Q. Personally?

23 A. Personally, no.

24 Q. Okay.

25 A. Not to my knowledge.

1 Q. Have you completed a personal financial statement
2 within the last three years?

3 A. No, not to my knowledge.

4 Q. Do you have any lines of credit currently, you
5 personally?

6 A. Yes.

7 Q. Okay, and who are those lines of credit with?

8 A. Bank of America. And I'm not sure on the other one.

9 Q. Who's your line -- explain to me the nature of the line
10 of credit with Bank of America.

11 A. It's a loan, car loan.

12 Q. Car loan? When did you take that credit out?

13 A. I don't recall.

14 Q. What kind of car do you have?

15 A. On that one?

16 Q. Yes, sir.

17 A. It's Camry, Toyota.

18 Q. What year?

19 A. '09.

20 Q. When did you purchase that Camry?

21 A. I don't recall.

22 Q. It had to be after 2009, right? It had to be after
23 2009, if it's a 2009.

24 A. No.

25 Q. Oh, was it 2008 when you purchased it?

- 1 A. No, it was 2009.
- 2 Q. Did you purchase it in 2009?
- 3 A. I don't recall.
- 4 Q. Who did you purchase it from?
- 5 A. Toyota of Greer.
- 6 Q. Toyota of Greer?
- 7 A. Yes.
- 8 Q. Any other vehicles other than Toyota Camry do you own?
- 9 A. I don't own it.
- 10 Q. Okay, who owns the Toyota Camry?
- 11 A. Bank of America.
- 12 Q. I understand. How much is due and outstanding on that?
- 13 A. I don't know.
- 14 Q. Any other vehicles other than the Camry?
- 15 A. No.
- 16 Q. No trucks?
- 17 A. No.
- 18 Q. Boats?
- 19 A. No.
- 20 Q. Where do you maintain an account at any banking or
- 21 financial institution?
- 22 A. BB&T.
- 23 Q. How long have you had that account at BB&T?
- 24 A. I'm not sure.
- 25 Q. Any other accounts other than at BB&T?

Deposition of Edward Keith Potter

- 1 A. No.
- 2 Q. This includes a checking account, savings account, trust
3 account, IRA, retirement account.
- 4 A. No.
- 5 Q. Is your check direct deposited --
- 6 A. Yes.
- 7 Q. -- into the BB&T account?
- 8 A. Yes.
- 9 Q. In your name, correct?
- 10 A. Yes.
- 11 Q. All right. What is your net worth?
- 12 A. I don't know.
- 13 Q. Have you completed a financial statement within the
14 last three to five years?
- 15 A. No. You just asked that.
- 16 Q. Have you provided anyone what your net worth is?
- 17 A. No.
- 18 Q. Any third party? And as I understand your testimony,
19 the only loan that you have is a car loan?
- 20 A. That loan, and another personal loan.
- 21 Q. And who is that personal loan with?
- 22 A. I don't know the name of the company. I don't recall
23 it.
- 24 Q. Why don't you know the name of that?
- 25 A. Pardon me?

1 Q. Why don't you know the name?

2 A. Because I don't know the name.

3 Q. When did you get this personal loan?

4 A. I don't recall.

5 Q. Do you receive a statement each month from this entity?

6 A. I'm not sure.

7 Q. Well, what prevents you from knowing the answer to that
8 question?

9 A. The secretary.

10 Q. Who's that?

11 A. My secretary.

12 Q. Who's your secretary?

13 A. My wife.

14 Q. Your wife would know that answer?

15 A. Yes.

16 Q. So I need to ask her where --

17 A. Yeah.

18 Q. -- the loan's from?

19 A. Yeah.

20 Q. You said your wife's name is?

21 A. Donna.

22 Q. Donna? You said she's your secretary. Why do you say
23 she's your secretary?

24 A. Because she pays the bills. I work. I provide. She
25 writes checks.

1 Q. Where does she work?

2 A. She's an office manager.

3 Q. Where's that?

4 A. Rutherford County Memorial Cemetery. You need to buy
5 some property? And cheap. They're going cheap right
6 now.

7 Q. Mr. Potter, what are your defenses to this case, if
8 any?

9 A. Pardon me?

10 Q. Do you have any defenses to this case?

11 Ms. Goforth:

12 Object to the form.

13 Witness answers:

14 A. Rephrase it.

15 Q. Are you asserting any defenses to this case that's been
16 brought against you by Dealer Services Corporation?

17 A. Uh-huh (indicates affirmative response).

18 Q. Is that a yes?

19 A. Yes. Yes.

20 Q. And what are those defenses?

21 A. I don't feel like I owe them as much as they say.

22 Q. Why is that?

23 A. Because they said that they would settle it for 22, and
24 then they went to 100 and whatever they come up with.

25 Q. You understand that settlement offer was never

1 finalized, right?

2 A. No.

3 Q. It was finalized?

4 A. I don't know.

5 Q. You don't know if it was finalized, do you?

6 A. I don't know.

7 Q. Okay. You didn't sign anything to that effect, did
8 you?

9 A. No.

10 Q. You never signed any documentation whatsoever?

11 A. I don't -- I don't recall that I did, how about that?

12 Q. Okay. Sitting here today --

13 A. Have you dug it out of your briefcase? No.

14 Q. Okay. And you haven't come in here with it, have you?

15 A. No.

16 Q. What amount do you believe you do owe to Dealer
17 Services Corporation?

18 A. I don't have an amount.

19 Q. Why do you contest the amount that Dealer Services
20 Corporation claims you owe them?

21 A. I can't answer that.

22 Q. Why not?

23 A. I just can't.

24 Q. Do you currently maintain a dealer's license?

25 A. No.

1 Q. What happened to your dealer's license?

2 A. It left with the 7.

3 Q. Why is that?

4 A. Because Total, Incorporated was -- it's gone. It
5 doesn't exist anymore.

6 Q. Does the license to sell cars attache to the entity, or
7 to a certain person?

8 A. I'm not sure. I'd have to look. I'm not sure.

9 Q. Mr. Potter, I have no further questions. Thank you for
10 your time today.

11 A. Thank you.

12 Ms. Goforth:

13 For the record, Mr. Goings and I have agreed for both
14 of these depositions that the Defendants had asked to
15 postpone these depositions because Plaintiff has a
16 motion to compel that's scheduled for February 18th.
17 We have notified Defendants that we're going to
18 supplement the responses to discovery and that this is
19 a one-shot deal on deposing these Defendants. That's
20 our position for the record.

21 Mr. Goings:

22 Okay. That was your position. I obviously disagree
23 with that position.

24 Ms. Goforth:

25 Yes.

1 Mr. Goings:

2 For the record, I do believe I'm entitled to notice the
3 depositions to the extent necessary based on
4 supplementing discovery. Hopefully we will not have to
5 do that exercise, but I certainly respect your
6 position, and I understand you respect mine.

7 Ms. Goforth:

8 We'd just hoped maybe we could do it the one time.

9 Mr. Goings:

10 I understand.

11 Ms. Goforth:

12 And it would be easier to get through it that way.

13 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED
14 AT 11:33 A.M.)

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CERTIFICATE OF REPORTER

I, Marla J. O'Brien, a Notary Public in and for the state of South Carolina, do hereby certify that the foregoing 73 pages represents a true and accurate transcript of the deposition of EDWARD KEITH POTTER, which was taken by me on the 22nd day of January, 2014.

That the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

MARLA J. O'BRIEN, CVR-M, ACR
NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 8/12/2021

**DEMAND PROMISSORY NOTE
AND SECURITY AGREEMENT**

TO: Dealer Services Corporation
1320 City Center Drive
Suite 100
Carmel, IN 46032

FOR VALUE RECEIVED, the undersigned dealer ("Dealer") promises to pay to the order of Dealer Services Corporation, a Delaware corporation ("DSC"), with its principal office at 1320 City Center Drive, Suite 100, Carmel, Indiana 46032 or such other place as DSC may designate in writing, in lawful money of the United States of America, the principal sum of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) (the "Credit Limit") or such greater or lesser sum which may be advanced from time to time, together with all costs, interest, fees, and expenses as provided for under this Note.

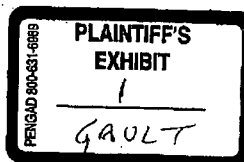
NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, the parties agree as follows:

1. DEFINITIONS: Capitalized terms used in this Note without definition shall have the respective meanings as set forth below. All other terms in this Note shall be defined by the meanings provided for in the Uniform Commercial Code as provided for herein.

- (a) "Advance" shall mean any loan or payment in any amount made pursuant to this Note by DSC to Dealer or on Dealer's behalf to any third party.
- (b) "ACH" shall mean all payments by, or on behalf of, Dealer to DSC made via a nationwide electronic funds transfer network processing electronic debit entries from Dealer's bank accounts.
- (c) "Base Rate" shall mean the greater of that variable rate of interest or that fixed rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 5.00%.
- (d) "Boarding Fee" shall mean that DSC Universal Fee charged by DSC to Dealer and added to the principal amount of the Advance for each individual item of DSC Financed Inventory which is the subject of a DSC Lease Program Advance.
- (e) "Check" shall mean all payments by, or on behalf of, Dealer to DSC not made in cash, via certified funds, wire transfer or ACH.
- (f) "Collateral" shall have the meaning set forth in Paragraph 2 of this Note.
- (g) "Contract Rate" shall mean that rate of interest as stated on Dealer's Term Sheet. Additionally, in the event no Term Sheet is executed and effective, then 4.25%.
- (h) "Credit Limit" shall mean the maximum amount Dealer may borrow at any one time under this Note.
- (i) "Credit Line" shall mean Dealer's DSC floorplan line of credit pursuant to and under this Note.
- (j) "Dealer's Place of Business" shall mean that place where the Collateral and Dealer's books and records are kept, where Dealer's operations are conducted from and/or if Dealer is a legally recognized business entity where Dealer's registered office is located.
- (k) "Dealer's Home Branch" shall mean the DSC branch location for which Dealer's DSC Credit Line is assigned to by DSC for servicing and administration.
- (l) "Default Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 8%.
- (m) "DSC Administrative Fee" shall mean any fee charged by DSC to Dealer for any service or process requested by Dealer or unilaterally undertaken by DSC, reasonable or necessary to administer or monitor the Credit Line, that is not a Floorplan Fee or DSC Universal Fee.
- (n) "DSC Financed Inventory" shall mean any Unit now or hereafter acquired or retained by Dealer pursuant to an Advance under this Note. DSC Financed Inventory includes Purchase Money Inventory.
- (o) "DSC Lease Program" shall mean any DSC program offered to Dealer designed to allow Dealer to obtain an Advance for a Unit which is the subject of a Dealer originated and owned consumer lease transaction.
- (p) "DSC Published Rate, Fee and Term Schedule" shall mean that current schedule of universal interest rates and fees assessed by DSC, including DSC Universal Fees, late fees, fees relating to returned checks or ACH payments due to insufficient funds,

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DSC Account # 28915



ROA 000368

the Base Rate, Risk Rate and Default Rate and notice of amendments to Terms and Conditions published by DSC via posting such schedule of such universal rates and fees and notice of amendment to Terms and Conditions at www.discoverdsc.com and posted at each DSC branch office or location.

- (g) "DSC Universal Fee" shall mean any published fee as stated in the DSC Published Rate, Fee and Term Schedule charged by DSC to Dealer.
- (r) "Equipment" shall mean all goods other than Inventory held for sale, lease, or daily rental by Dealer in the ordinary course of business.
- (s) "Event of Default" shall have the meaning set forth in Paragraph 6 of this Note.
- (t) "Extension" shall mean that grant by DSC to Dealer of additional time that an Advance for an item of DSC Financed Inventory becomes due and payable.
- (u) "Floorplan Fee" shall mean the fee charged by DSC to Dealer set forth on the Term Sheet for each individual item of DSC Financed Inventory. Additionally, in the event no Term Sheet is executed and effective, then the Floorplan Fee shall be equal to One Hundred Fifty Dollars (\$150.00).
- (v) "GPS Fee" shall mean that DSC Universal Fee charged by DSC to Dealer and added to the principal amount of the Advance for the global positioning system supplied for each individual item of DSC Financed Inventory which is the subject of a DSC Lease Program Advance.
- (w) "Interest" shall mean the aggregate rate of interest which accrues on all Liabilities owed by Dealer to DSC under or arising out of this Note by combining the Base Rate plus the applicable Contract Rate, Risk Rate or Default Rate.
- (x) "Inventory" shall mean all Units held by Dealer for wholesale or retail sale, lease, or rent or leased by Dealer. Inventory includes DSC Financed Inventory.
- (y) "Liabilities" shall mean any and all Advances, debts, DSC Financed Inventory Liabilities, financial obligations, DSC Administrative Fees, DSC Universal Fees, Interest, Floorplan Fees, NSF fees, late fees, charges, expenses, attorney fees, costs of collection, covenants, and duties owing, arising, due or payable from Dealer to DSC of any kind or nature, present or future, under any instrument, guaranty, or other document whether arising under this Note or any other agreement, whether directly or indirectly (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising and however acquired.
- (z) "Maturity Date" shall mean the date an Advance for an item of DSC Financed Inventory becomes due and payable. In the event the Maturity Date relating to a specific Advance for an item of DSC Financed Inventory becomes due and payable falls on a federal banking holiday, Saturday or Sunday, the Maturity Date for such specific Advance shall be the next business date subsequent to such federal banking holiday, Saturday or Sunday.
- (aa) "MSO" shall mean the manufacturer's certificate of origin or other document evidencing ownership of a Unit issued by the manufacturer of the Unit.
- (bb) "Note" shall mean this Demand Promissory Note and Security Agreement and all present and future amendments, modifications and addendums referenced herein.
- (cc) "Period" shall mean that number of days set forth in the Term Sheet, beginning on the date of an Advance and ending on the Maturity Date, and any extension thereto, that an item of DSC Financed Inventory will be financed by DSC to Dealer pursuant to the terms of this Note. Additionally, in the event no Term Sheet is executed and effective, then the Period shall be Thirty (30) days.
- (dd) "Purchase Money Inventory" shall mean a Unit acquired by Dealer pursuant to an Advance under this Note.
- (ee) "Risk Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 6%.
- (ff) "Shortage" shall mean the difference between a payment received by DSC and the amount owing, arising, due, or payable from Dealer to DSC with respect to a specific Advance for a specific item of DSC Financed Inventory.
- (gg) "Terms and Conditions" shall mean all provisions of this Note with the exception of terms specifically relating to Dealer's Floorplan Fees and Contract Rate and any other term referenced in Dealer's Term Sheet.
- (hh) "Term Sheet" shall mean the addendum to this Note, as modified from time to time, which indicates specific terms regarding Dealer's Credit Limit, Floorplan Fees, Contract Rate of interest, Period, principal reduction, and Number of Maturity Date Extensions.

- (ii) "Title" shall mean the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.
- (jj) "UCC" shall mean the Uniform Commercial Code as enacted in the State where the Collateral is located.
- (kk) "Unit" shall mean any manufactured item, including vehicles for which a certificate of title or a MSO exists which is the subject of an Advance by DSC to Dealer under this Note.
- (ll) "Vehicle Service Contract Fee" shall mean that DSC Universal Fee charged by DSC to Dealer and added to the principal amount of the Advance for the service contract supplied for each individual item of DSC Financed Inventory which is the subject of a DSC Lease Program Advance.

2. GRANT OF SECURITY INTEREST: In order to secure full and prompt payment of all Liabilities and performance of all obligations of Dealer to DSC, Dealer hereby:

- (a) Grants to DSC, together with its subsidiaries, affiliates and assigns, a continuing security interest in all of Dealer's assets and properties, wherever located, including without limitation, all Equipment of any kind or nature, all vehicles, vehicle parts, all Inventory now owned or hereafter acquired, without limitation, DSC Financed Inventory now owned or hereafter acquired, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, accounts receivable, chattel paper, and general intangibles now owned or hereafter acquired by Dealer together with the proceeds thereof; all of Dealer's books and records relating to the foregoing ("Collateral"). This security interest is given to DSC to secure Dealer's Liabilities to DSC under this Note, as may be amended from time to time, all without relief from valuation or appraisal laws.
- (b) Agrees to execute and deliver such financing statements and amendments thereto as DSC shall require from time to time.

3. INTEREST RATE. Interest shall accrue on all Dealer Liabilities in accordance with the following:

- (a) All outstanding Liabilities under this Note shall accrue interest (based upon a 360 day year), on a per annum basis and shall be compounded daily at the Base Rate plus the applicable Contract Rate, Risk Rate, or Default Rate until paid in full.
- (b) The Contract Rate stated on Dealer's Term Sheet plus the Base Rate shall be the applicable rate of Interest accruing on all Dealer Liabilities, so long as there has not been a breach by Dealer of any representation or warranty made by Dealer under this Note, a breach by Dealer of any covenant or credit term required under this Note, or an event of default by Dealer under this Note.
- (c) In the event a breach of any representation or warranty made by Dealer under Paragraphs 3 or 4 of this Note occurs, or a breach by Dealer of a covenant or credit term required under Paragraph 4 or Paragraph 5 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Risk Rate.
- (d) In the event that an Event of Default occurs as defined in Paragraph 6 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Default Rate.
- (e) The Base Rate, Risk Rate or Default Rate may be amended or modified by DSC in DSC's sole discretion by posting such amendment or modification on the DSC Published Base Rate and Fee Schedule. However, DSC may only increase the Base Rate, Risk Rate or Default Rate by 100 basis points in any one 30-day period.

4. DEALER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: In order to induce DSC to make Advances hereunder, Dealer hereby represents, covenants and warrants:

- (a) To sell, lease or rent DSC Financed Inventory only in the ordinary course of Dealer's business, and not to dispose of such DSC Financed Inventory, except as herein provided.
- (b) To keep DSC Financed Inventory only at Dealer's Place of Business and not to remove said DSC Financed Inventory from such place for a period exceeding twenty-four (24) hours, unless such item of DSC Financed Inventory is the subject of a DSC Lease Program Advance, or otherwise authorized in writing by DSC.
- (c) To keep DSC Financed Inventory 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 DSC. DSC shall be named "loss payee" to the extent DSC's interest may appear. In the event Dealer fails to procure, maintain or provide proof of such insurance coverage, DSC may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from Dealer pursuant to the terms of this Note. Dealer understands and agrees that DSC has an insurable interest in Dealer's Collateral, including but not limited to, DSC Financed Inventory, by virtue of Dealer's pledge of Dealer's Collateral as security to DSC as defined above, for the repayment of all Liabilities by Dealer to DSC under this Note.
- (d) To keep DSC Financed Inventory which is the subject of DSC Lease Program Advance (i) covered by an adequate service contract or warranty acceptable to DSC and provided by an approved DSC Vendor, DSC Financed Inventory (ii) equipped

with a functioning global positioning and starter interrupt system ("GPS") unit that is acceptable to DSC and provided by an approved DSC vendor, (iii) DSC Financed Inventory covered by a contingent liability insurance policy that is acceptable to DSC and provided by an approved DSC Vendor DSC Financed Inventory; and (iv) covered by Dealer's customer's insurance policy for all physical risks and naming DSC as additional insured and loss payee on the customer's insurance certificate.

- (e) To keep DSC listed as lienholder on the certificate of title for each DSC Financed Inventory which is the subject of DSC Lease Program Advance.
- (f) To keep the lease for each DSC Financed Inventory which is the subject of DSC Lease Program Advance placed with a third party servicer that is acceptable to DSC.
- (g) To keep at all times complete and accurate records of Dealer's business and to provide DSC upon demand copies of such records and financial information regarding Dealer's business and financial condition as DSC may reasonably request. Dealer authorizes DSC to share such information and any other information relating to Dealer's transaction with DSC to any and all persons or parties as DSC deems necessary.
- (h) To allow DSC and its representatives to inspect the DSC Financed Inventory during normal business hours and at other reasonable times and to inspect and make copies of Dealer's books and records. Dealer shall pay DSC upon demand for the costs and expenses incurred by DSC or its representatives with such inspections of Dealer's books and records and audits of Dealer's DSC Financed Inventory.
- (i) To hold all amounts received from the sale of an item of DSC Financed Inventory in the form as received in trust for the sole benefit of and for DSC, and to remit such funds satisfying all amounts due DSC and owing by Dealer for the sold item of DSC Financed Inventory within 24 hours of receipt of such funds.
- (j) That DSC may hold any sums or money belonging to or payable to Dealer and apply the same to any outstanding Liabilities of Dealer.
- (k) That any statement of Dealer's account furnished to Dealer by DSC, to the extent no objection is made in writing by Dealer within 30 days after receipt of such statement, shall constitute a definitive statement of Dealer's Credit Line and Liabilities as of the date of the statement and shall be binding upon Dealer.
- (l) To refrain from paying or declaring any dividends or distributions, redeeming of any capital stock, repaying subordinate debt or other loans to any principal or guarantor of Dealer's Business, during anytime a Liability exists from Dealer to DSC.
- (m) To pay immediately and remain current with all levied taxes, assessments, charges and expenses which may now or hereinafter be levied or assessed against the Collateral and business. DSC may, in its sole discretion, pay such taxes, assessments, charges and expenses to protect its interests and thereafter collect the costs from Dealer pursuant to the terms of this Note.
- (n) That Dealer has obtained all necessary permits and licenses pursuant to local, state and federal law required to operate its business as a wholesale or retail seller, lessor or renter of the DSC Financed Inventory and has complied with all filing requirements to operate as the entity or business type on record with the appropriate governmental office(s).
- (o) That no legal, arbitration, or administrative proceedings are pending or threatened against Dealer which could reasonably affect the Collateral or which materially and adversely affect the properties, business, prospects, or condition, financial or otherwise, of the Dealer or Dealer's ability to honor its obligations hereunder.
- (p) That all payments made by Dealer to DSC via check or ACH, at the time of issuance, are written or drawn upon an account that contains immediately available funds sufficient to cover the dollar amount of the check or ACH.
- (q) That Dealer's legal name and address as they appear in Paragraph 16 of this Note are accurate and complete.
- (r) That Dealer shall immediately notify DSC in writing of any change in Dealer's legal name, address, business type, ownership, management or control and shall execute any documents necessary at DSC's request to bring Dealer into compliance with this Note.
- (s) That Dealer and all guarantors are legally competent and have authority to enter into and execute this Note and any and all other documents.
- (t) That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions applicable to Dealer's DSC Credit Line, whether such terms and conditions are contained in the Term Sheet or this Note.
- (u) That Dealer expressly authorizes and agrees to accept all mailings, facsimile transmissions and telephonic transmissions from DSC including, but not limited to, Credit Line information and promotional materials.
- (v) That Dealer may have an account with DSC where information can be accessed and transmissions can be sent through DSC's website located at www.discoverdsc.com. Dealer shall have the means to control access to the account information by

passwords and a dealer account number in accordance with policies and procedures set forth by DSC. To participate, Dealer shall execute all documents required by DSC to register for such additional service and shall abide by DSC's policies and procedures set forth therein. Dealer agrees such documents shall be incorporated herein by reference and made part of this Note.

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

5. CREDIT TERMS AND PROCEDURES:

- (a) The decision to make an Advance to Dealer is the exclusive right of DSC, and Dealer understands that DSC may refuse to make an Advance at any time, with or without cause and without prior notice to Dealer or any guarantors of such decision. Dealer is not obligated to finance any Inventory through DSC. If Dealer's Place of Business is in California, the amount of the first Advance under this Note must be at least \$5,000.00.
- (b) All Dealer requests to DSC for an Advance for the purpose of acquiring Purchase Money Inventory with DSC funds, or financing previously-acquired Inventory with DSC funds must include a copy of the bill of sale for any Unit which is the subject of the request, indicating the actual purchase price and vendor, a completed Odometer Disclosure Statement, and the Unit's certificate of title showing that it has been duly assigned to Dealer. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (c) DSC is not required but may make, without notice to Dealer and without regard to the Dealer's Credit Limit, Advance on Dealer's behalf, for any Liability to a third party at any time Dealer is in default under the terms of this Note. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (d) Dealer must be in complete compliance with this Note before an Advance request will be approved by DSC. Additionally, DSC may require certain other information from Dealer to be submitted on a certified and sworn affidavit including, but not limited to, a statement that Dealer has not used any Advances for any other purpose than its originally requested and verified purpose.
- (e) Dealer shall pay all liabilities to DSC at the offices of DSC, on demand and without notice, with respect to an item of DSC Financed Inventory on the earlier of: (a) twenty-four (24) hours from the time Dealer receives payment by or on behalf of the purchaser of an item of DSC Financed Inventory; (b) forty-eight (48) hours after the disposition by sale or otherwise of an item of DSC Financed Inventory; or (c) the Maturity Date. DSC shall apply such payments to the DSC Financed Inventory Liabilities incurred from said item of DSC Financed Inventory. Notwithstanding anything herein to the contrary, if, after the disposition by sale or otherwise and subsequent payment to DSC as delineated above, a Shortage exists between any payments received by DSC and the DSC Financed Inventory Liability with respect to an item of DSC Financed Inventory, that Shortage shall be considered a Liability owed by Dealer to DSC and secured with Collateral other than DSC Financed Inventory. Dealer shall pay to DSC at the offices of DSC all other Liabilities, on demand and without notice. The order and method of application of such payments of the Liabilities shall be in the discretion of DSC. Payments received by DSC after 5 pm as measured by Dealer's Home Branch shall be applied the next business day.
- (f) If Dealer is in compliance with all other provisions of this Note, DSC may, in its sole discretion, permit an Extension of the Maturity Date relative to an item of DSC Financed Inventory, upon the payment of Shortage, Interest, Floorplan Fee(s) and a principal reduction of the outstanding Advance relating to such item of DSC Financed Inventory pursuant to this Note and as established in the Term Sheet.
- (g) So long as Dealer is not in default of this Note, Dealer may sell DSC Financed Inventory to bona fide buyers in the ordinary and regular course of Dealer's business, but nothing herein shall be deemed to waive or release any interest DSC may have hereunder or under any other agreement in any proceeds or replacements of the DSC Financed Inventory. Upon the sale of any specific item of DSC Financed Inventory, Dealer shall hold the amount received from the disposition of such DSC Financed Inventory in Trust for the benefit of DSC, and Dealer shall pay to DSC, in accordance with this Note, an amount equal to the unpaid balance of the Liabilities relating to such specific item of DSC Financed Inventory.
- (h) Dealer shall allow DSC's officers, employees, agents, attorneys, designees and representatives access to Dealer's books and records at the Dealer's Place of Business to conduct an audit of Dealer's DSC Financed Inventory. Dealer shall be responsible for and agrees to pay all of DSC's expenses in conducting such audit.
- (i) Upon request by Dealer to obtain, for a legitimate business purpose, the Title to a specific item of DSC Financed Inventory held by DSC, DSC may consider said request and, in DSC's sole discretion, grant such request. In the event DSC grants such request, Dealer must deliver to DSC a check or draft which is signed and dated on the date as of which the Dealer takes physical custody of the subject Title in an amount equal to the Liability relating to such specific item of DSC Financed Inventory. The subject Title must be returned to DSC within the time period established by DSC or any outstanding Liability relating to any such Advance for such specific items of DSC Financed Inventory shall become immediately due and payable, and DSC may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.

- (j) To protect DSC's interest, Dealer authorizes DSC to obtain credit information from a credit bureau, and any financial institutions or trade creditor that Dealer has provided, as well as other credit investigation that DSC in DSC's sole discretion deems necessary. Dealer also authorizes DSC to contact any third parties to disclose information, including information contained in the DSC application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DSC's security interest. Further, if Credit Line is granted, Dealer authorizes DSC to review Dealer's account periodically, which may include obtaining additional credit reports.
 - (k) Dealer's account is subject to "NSF" fees in the amount stated in the DSC Published Rate, Fee and Term Schedule or maximum amount permitted by law for each check or ACH issued by Dealer which is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Dealer's and/or DSC's depository institution.
 - (l) DSC may process checks electronically, at first presentment and any re-presentments, by transmitting the amount of the check, routing number, account number and check serial number to your financial institution. By submitting a check for payment, you authorize DSC to initiate an electronic debit from your bank account. When DSC processes your check electronically, your payment may be debited from your bank account as soon as the same day we receive your check and you will not receive that cancelled check with your bank account statement.
 - (m) Dealer's account is subject to a late fee charge in the amount stated in the DSC Published Rate, Fee and Term Schedule or the maximum amount permitted by law for any item of DSC Financed Inventory that Dealer fails to remit payment under this Note when due. Dealer acknowledges and agrees that the late fee charged by DSC is a reasonable estimate of DSC's probable losses due to the delay, inconvenience, and administrative expenses associated with a late payment. Dealer's account is subject to DSC Administrative Fees. Dealer acknowledges and agrees that any such DSC Administrative Fee charged by DSC is permitted under this Note and consents to the assessment of any such DSC Administrative Fee to Dealer's account. Dealer further acknowledges and agrees that DSC Administrative Fees are subject to business and market conditions and may be adjusted unilaterally by DSC without notice to Dealer and at DSC's sole discretion.
 - (n) DSC maintains and publishes the "DSC Published Rate, Fee and Term Schedule" via posting the same on www.discoverdsc.com and in each DSC branch location. All such rates, fees and such amendments to the Terms and Conditions are published therein and incorporated herein by reference and made a part of this Note. With the exception of DSC Administrative Fees and Floorplan Fees, the rates and fees applied to Dealer's Liabilities under this Note and the amended Terms and Conditions stated therein shall be the applicable rates and fees and amendments to the Terms and Conditions most recently published on the DSC Published Rate, Fee and Term Schedule. DSC may amend the rates and fees and amend the Terms and Conditions from time to time at DSC's sole discretion and without additional Notice to Dealer other than the publication of such amendments on www.discoverdsc.com.
 - (o) Dealer waives demand, presentment for payment, notice of dishonor, protest and notice of protest, and expressly agrees that this Note and all payments coming due under it may be extended or modified, from time to time without in any way affecting Dealer's liability under this Note. Dealer understands that this Note matures upon issuance, and that DSC may, at any time, and without notice to Dealer, with or without cause, demand that the Note be immediately paid in full. The demand nature of this Note does not limit DSC's election of remedies upon a default by Dealer. At DSC's option, DSC may reference a term of default for the purpose of permitting DSC to receive interest at the Default Rate. It is agreed that DSC may demand partial payments under this Note, and said partial demand shall not change DSC's rights under this Note.
6. EVENT OF DEFAULT: The occurrence of any of the following events shall be considered an event of default under this Note ("Event of Default"):
- (a) The Dealer fails to perform any of its obligations, undertakings or covenants under this Note, fails to adhere to a credit term under this Note, including but not limited to, failure to make payment upon maturity or upon demand of any outstanding Liability under this Note; or
 - (b) Any warranty or representation made by the Dealer 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 Dealer to DSC proving to have been false or misleading in any material respect when made or delivered; or
 - (c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DSC as "Loss Payee" is not in effect; or
 - (d) The Dealer becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for the Dealer or any property thereof, 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 the Dealer; or
 - (e) Any material change in the management, ownership or control of Dealer; or
 - (f) The voluntary or administrative dissolution, death or incompetence of Dealer or any Guarantor of this Note; or
 - (g) Any change in the financial condition of Dealer or Guarantor(s) that DSC in good faith deems adverse; or

- (h) DSC in good faith deems itself insecure for any reason.
- (i) Dealer has failed to maintain compliance with Dealer's obligations in paragraph 4 (c) of this Note relating to any DSC Financed Item of Inventory that is the subject of a lease contract between Dealer and Dealer's customer.
- (j) Dealer has defaulted under any other written agreement entered into by and between DSC and Dealer.

7. **RIGHTS AND REMEDIES:** Upon an event of default, DSC 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 under this Note and all other indebtedness owed to DSC by Dealer. DSC 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 Uniform Commercial Code in effect in the jurisdiction where the Collateral is kept. Those rights and remedies include the right to cancel any unfunded Advances, to enter into Dealer's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DSC's request and to the extent Dealer may lawfully do so, Dealer shall assemble, prepare for removal and make available to DSC at a place designated by DSC which is reasonably convenient for DSC and Dealer, such items of Collateral as DSC may deem sufficient to cover all Dealer's Liabilities to DSC; and
- (b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Dealer waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DSC to post a bond; and
- (c) To the extent allowed by law, Dealer gives consent to DSC to proceed in any action to collect on or execute against any and all bonds that Dealer has posted with any governmental authorities; and
- (d) Without limiting the foregoing, DSC may take control of any funds generated by the Collateral, and in DSC's name or Dealer's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral. Dealer waives any and all rights it may have to notice prior to seizure by DSC of any Collateral. Dealer agrees that private sale of any item financed by DSC at the amount owed to DSC on that item, less costs reasonably incurred by DSC in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral. Dealer shall be liable to DSC for any deficiency resulting from DSC's disposition of the Collateral. Dealer agrees that the Collateral is of the type customarily sold on a recognized market and that DSC therefore has no obligation to notify Dealer prior to a sale. However, Dealer agrees that ten (10) days prior written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DSC shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DSC shall not be required to marshal any assets in favor of Dealer. DSC has no obligation to pursue any third person for any Liability or obligation owed to Dealer. Dealer further agrees to pay reasonable attorney fees and collection costs incurred by DSC in enforcing this Note after an event of default by Dealer. To the extent not prohibited by law, Dealer 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.

8. **POWER OF ATTORNEY:** Dealer shall execute an irrevocable Power of Attorney in DSC's favor and such Power of Attorney shall be incorporated herein by reference and made a part of this Note.

9. **GUARANTY(IES):** Dealer shall cause each owner of Dealer to execute an Individual Personal Guaranty. If Dealer is owned in whole or in part by a legally recognized business entity or trust, then Dealer shall cause said entity or trust to execute a Guaranty in addition to all required Individual Personal Guaranties. All such and the same shall be incorporated herein by reference and made a part of this Note.

10. **TERM SHEET(S):** Prior to an Advance under this Note, Dealer shall execute a Term Sheet for each unique set of terms applicable to Dealer, which may be amended from time to time, and the same shall be incorporated herein by reference and made a part of this Note.

11. **ASSIGNMENT:** This Note may be assigned by DSC but Dealer may not assign this Note without the prior written consent of DSC.

12. **INDEMNIFICATION:** Dealer shall indemnify and hold DSC harmless from and against all, loss, damage, costs, or expenses of whatever kind or nature relating to claims of third parties arising out of or in any way connected to this Note or Dealer's business affairs including, without limitation, attorneys' fees and expenses incurred both in the defense of any action against DSC and in any action to enforce these indemnity rights as against the Dealer.

13. **NO JOINT VENTURE OR PARTNERSHIP:** Nothing contained herein shall confer upon DSC or Dealer any interest in, or subject either of them to any liability for, or in respect of the business, assets, profits, losses or liabilities of the other. This Note does not constitute and shall not be characterized as a joint venture or partnership between DSC and Dealer. Nothing in this section shall limit or restrict the respective obligations and undertakings of DSC and Dealer hereunder.

14. **AMENDMENT, MODIFICATION AND MERGER:** This Note and all documents incorporated herein by reference are intended by the parties as an amendment and restatement of any prior Demand Promissory Note and Security Agreement(s) between DSC and Dealer. With

the exception of the amendments and modifications referenced in Paragraphs 3 and 5 above, this Note may not be modified or amended except upon the written consent of DSC and Dealer. However, descriptions of specific items of DSC Financed Inventory, amounts and terms of Advances, Maturity Date Extensions, Interest, Base Rates, Risk Rates, Default Rates, DSC Administrative Fees, DSC Universal Fees, late fees, NSF Fees, Terms and Conditions and other charges allowed by this Note may be proven by ordinary course of business records of DSC.

15. EXECUTION: The parties understand and agree that DSC may execute this Note and all corresponding documents by affixing an authorized DSC Officer's signature via signature stamp. Dealer may only execute this Note by original signature. A facsimile reproduction of such authorized DSC Officer's signature and Dealer's signature on the Note and all corresponding documents shall be deemed original signatures.

16. NOTICES: All notices, requests and demands to or upon the respective parties hereto, including Service of Process of any legal proceeding initiated by either party, shall be deemed to have been duly given or made: if by hand or by facsimile, immediately upon the Business Day of receipt, if received before 5 p.m., recipient's time, otherwise on the next Business Day; if by Federal Express, Express Mail or any other overnight delivery service with proof of next day delivery on a Business Day, one (1) Business Day after dispatch; and if mailed by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the address set forth herein:

To DSC:

Dealer Services Corporation, 1320 City Center Drive, Suite 100, Carmel, IN 46032
Telephone (317) 571-3721 Facsimile: (317) 571-3737

To Dealer:

Total, Inc. DBA Gault's Used Cars
2015 Union Hwy., Gaffney, SC 29340
Telephone: (864) 489-5008 Facsimile:

17. NO WAIVER: No failure or delay by DSC in exercising any right, power, or privilege under this Note will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

18. TERMINATION: No termination of this Note shall alter Dealer's obligations and Liabilities relating to amounts funded or committed prior to the effective date of such termination, and all rights and remedies, including without limitation, the security interest granted herein and the rights of DSC as a secured party hereunder, shall extend until all Liabilities owed by Dealer to DSC have been satisfied.

19. LEGAL FEES AND COLLECTION COSTS: Dealer shall pay to DSC all reasonable legal fees, expenses and collection costs incurred as a result of Dealer's default or failure of any obligation under this Note.

20. SEVERABILITY: Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement in any other jurisdiction.

21. GOVERNING LAW: The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof. However, in the event Dealer's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

22. JURISDICTION AND VENUE: As evidenced by Dealer's signature below, Dealer submits to the personal jurisdiction and venue of the state or federal courts of Marion and Hamilton County, Indiana and agrees that any and all claims or disputes pertaining to this Note or to any matter arising out of or related to this Note initiated by Dealer against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Dealer expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. DSC reserves the right to initiate and prosecute any action against Dealer in any court of competent jurisdiction, and Dealer consents to such Forum as DSC may elect. However, in the event this Note is made and entered into in the State of California, the state or federal courts located in the State of California shall have jurisdiction to hear and determine any claims or disputes between the parties pertaining to this Note or to any matter arising out of or related to this Note. Each party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such Court, and each party hereby waives any objection which such party may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens, and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such Court.

23. WAIVER OF BOND: Dealer waives, to the extent permitted by law, any bond or surety or security on such bond which might, but for this waiver, be required of DSC.

24. WAIVER OF JURY TRIAL: DEALER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE, OR ANY OTHER LOAN DOCUMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY COURSE OF CONDUCT, STATEMENT, WHETHER ORAL OR WRITTEN, OR ACTIONS OF THE DEALER. THE DEALER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR

OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL HAVE NOT BEEN DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY DSC EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH DEALER AND DSC.

25. JUDICIAL REFERENCE. IF DEALER'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEALER AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS. A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

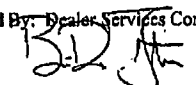
(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

26. HEADINGS: Paragraph headings used in this Note are for reference only and shall not affect the construction of this Note.

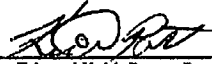
WHEREFORE, the parties have, by their duly authorized representatives, executed this Note on the 3 day of Feb, 2012

Dealer: Total, Inc. DBA Gault's Used Cars

Accepted By: Dealer Services Corporation

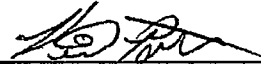
By: 

DSC Officer

By: 

Edward Keith Potter, President

GUARANTORS ACKNOWLEDGE AND CONSENT OF AND TO THE FOREGOING:

Guarantor: 

Edward Keith Potter

Guarantor: Michael Wayne Gault
Michael Wayne Gault

10/11

DSC Account # 28915

ROA 000377

ENDORSEMENT

FOR VALUE RECEIVED, the undersigned, the original or successor payee under the promissory note issued by Total, Inc. DBA Gault's Used Cars dated as of 12/27/2011 in the amount of Two Hundred Thousand Dollars and Zero Cents US Dollars (\$200,000.00) to which this Endorsement is affixed (the "Note"), absolutely assigns, transfers, endorses, negotiates, and sets over to and makes payable to the order of _____ the Note, all interest, principal, and other sums due or to become due under the Note, and all other rights of any nature accrued or to accrue under the Note.

DEALER SERVICES CORPORATION

By: BDJ

Name:

Title:

Date: 1/3/12

11/11.

DSC Account # 28916

ROA 000378

**DEMAND PROMISSORY NOTE
AND SECURITY AGREEMENT**

TO: Dealer Services Corporation
11555 N. Meridian St.
Suite 220
Carmel, IN 46032

FOR VALUE RECEIVED, the undersigned dealer ("Dealer") promises to pay to the order of Dealer Services Corporation, a Delaware corporation ("DSC"), with its principal office at 11555 N. Meridian Street, Suite 220, Carmel, Indiana 46032 or such other place as DSC may designate in writing, in lawful money of the United States of America, the principal sum of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) (the "Credit Limit") or such greater or lesser sum which may be advanced from time to time, together with all costs, interest and fees and expenses as provided for under this Note and all accrued interest which shall accrue at a variable rate (based upon a 360 day year), adjusted each business day, based upon the most recent prime rate published in The Wall Street Journal plus an additional interest factor per Dealer's Term Sheet on a per annum basis and shall be compounded daily.

In the event that Dealer is in Default under the terms of this Note, interest shall accrue at a variable rate, adjusted each business day, based upon the most recent prime rate published in The Wall Street Journal plus eight percent (8%) per annum, with such interest compounded daily and accruing from the date on which the Event of Default first occurred. Upon demand by DSC or upon an Event of Default, Dealer shall pay the Liabilities as provided herein.

The undersigned Dealer waives demand, presentment for payment, notice of dishonor, protest and notice of protest, and expressly agrees that that this Note and all payments coming due under it may be extended or modified, from time to time without in any way affecting Dealer's liability hereunder. Dealer understands that this Note matures upon issuance, and that DSC may, at any time, and without notice to Dealer, with or without cause, demand that the Note be immediately paid in full. The demand nature of this Note does not limit DSC's election of remedies upon a default by Dealer. At DSC's option, DSC may reference a term of default for the purpose of permitting DSC to receive interest at the Default Rate. It is agreed that DSC may demand partial payments under this Note and said partial demand shall not change DSC's rights under this Note.

NOW, THEREFORE in consideration of the mutual covenants, agreements and conditions contained herein, the parties agree as follows:

1. DEFINITIONS: Capitalized terms used in this Note without definition shall have the respective meanings as set forth below. All other terms in this Note shall be defined by the meanings provided for in the Uniform Commercial Code as enacted in the State of Indiana where applicable.

- (a) "Advances" shall mean all loans or payments pursuant to this Note made by DSC to Dealer or on Dealer's behalf to any third party.
- (b) "Check" shall mean all payments by, or on behalf of, Dealer to DSC not made in cash or via certified funds.
- (c) "Collateral" shall mean all Dealer's assets and properties wherever located, including without limitation all Equipment of any kind or nature, all vehicles, vehicle parts and other Inventory now owned or hereafter acquired, without limitation, the Purchase Money Inventory as hereinafter defined, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, chattel paper, and general intangible now owned or hereafter acquired by Dealer together with the proceeds thereof; all of Dealer's books and records relating to the foregoing.
- (d) "Collateral Audit Fee" shall mean the non-refundable fee payable to DSC by Dealer in the amount set forth on the Term Sheet that relates to audits of Dealer's Inventory that may be conducted from time to time by DSC or its representatives.
- (e) "Credit Limit" shall mean the maximum amount Dealer may borrow at any one time under this Note.
- (f) "Dealer's Place of Business" shall mean that place where the Collateral and Dealer's books and record are kept, where Dealer's operations are conducted from and/or if Dealer is a legally recognized business entity where Dealer's registered office is located.
- (g) "Default Rate" shall mean the rate of interest allowed under this Note which shall accrue on all Dealer's liabilities while any uncured event of default by Dealer exists.



THIS IS A COPY OF THE DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT; THE SOLE ORIGINAL COUNTERPART OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT HAS BEEN DELIVERED TO TEXTRON FINANCIAL CORPORATION, AS AGENT, UNDER THAT CERTAIN AMENDED AND RESTATED PARTICIPATION AGREEMENT DATED AS OF MAY 01, 2006; EXCEPT AS EXPRESSLY PERMITTED IN SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT, ANY PURCHASE OR OTHER TRANSFER OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT FROM DEALER SERVICES CORPORATION WILL VIOLATE THE RIGHTS OF THE PARTICIPANTS UNDER SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT.

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- (h) "Equipment" shall mean all goods other than Inventory held for sale, lease or daily rental by Dealer in the ordinary course of business.
- (i) "Extension" shall mean that grant by DSC to Dealer of additional time an Advance for an item of Inventory becomes due and payable.
- (j) "Floorplan Fee" shall mean the fee charged by DSC to Dealer set forth on the Term Sheet for each individual item of Inventory. Additionally, in the event no Term Sheet is executed and effective, then the Floorplan Fee shall be equal to One hundred Fifty Dollars (\$150.00).
- (k) "Interest" shall mean that finance charge which accrues on all Liabilities owed by Dealer to DSC under or arising out of this Note.
- (l) "Late Fee" shall mean the fee charged by DSC to Dealer for each item of Inventory that Dealer fails to remit payment under this Note when due.
- (m) "Liabilities" shall mean all Advances, debts, Inventory Liabilities, financial obligations, charges, expenses, fees, attorney fees, costs of collection, covenants, and duties owing, arising, due or payable from Dealer to DSC of any kind or nature, present or future, under any instrument, guaranty, or other document whether arising under this Note or any other agreement, whether directly or indirectly (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising and however acquired including, without limitation, all interest, Floorplan Fees, Collateral Audit Fees, NSF Fees, Late Fees and other expenses, costs or fees provided by this Agreement.
- (n) "Maturity Date" shall mean the date an Advance for an item of Inventory becomes due and payable.
- (o) "MSO" shall mean the manufacturer's certificate of origin or other document evidencing ownership of a Unit issued by the manufacturer of the Unit.
- (p) "Note" shall mean this Demand Promissory Note and Security Agreement and all present and future Addendums referenced herein.
- (q) "Period" shall mean that number of days set forth in the Term Sheet, beginning on the date of an Advance and ending on the Maturity Date, and any extension thereto, that an item of Inventory will be financed by DSC to Dealer pursuant to the terms of this Note. Additionally, in the event no Term Sheet is executed and effective, then the Period shall be Thirty (30) days.
- (r) "Inventory" shall mean all items of inventory held for sale, lease or daily rental, including but not limited to, Purchase Money Inventory.
- (s) "Purchase Money Inventory" shall mean a Unit acquired by Dealer with funds Advanced by DSC for the purpose of acquiring said Unit.
- (t) "Retail Installment Contract" shall mean a contract entered into between Dealer and Dealer's customer in the ordinary course of business where DSC Inventory is the item sold under the contract.
- (u) "Shortage" shall mean the difference between a payment received by DSC and the amount owing arising, due, or payable from Dealer to DSC with respect to specific Advances for specific items of Inventory.
- (v) "Terms and Conditions" shall mean all provisions of this Note.
- (w) "Term Sheet" shall mean the addendum to this Note, as modified from time to time, which indicates specific binding terms, including but not limited to, Credit limits, Floorplan Fees, Collateral Audit Fees, Late Fees Interest and Number of Maturity Date Extensions.
- (x) "Title" shall mean the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.
- (y) "UCC" shall mean the Uniform Commercial Code as enacted in the State of Indiana.
- (z) "Unit" shall mean any manufactured item, including vehicles for which a certificate of title which is the subject of an Advance by DSC to Dealer.

2. GRANT OF SECURITY INTEREST: In order to secure full and prompt payment of all Liabilities and performance of all obligations of Dealer to DSC, Dealer hereby:

- (a) Grants to DSC, together with its subsidiaries, affiliates and assigns, a continuing security interest in all Collateral, including but not limited to, Inventory. This security interest is given to DSC to secure Dealer's Liabilities to DSC under this Note, as may be amended from time to time, all without relief from valuation or appraisal laws.
- (b) Agrees to execute and deliver such financing statements and amendments thereto as DSC shall require from time to time.

3. DEALER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: In order to induce DSC to make Advances hereunder, Dealer hereby represents, covenants and warrants:

- (a) To sell, lease or rent Inventory acquired by Dealer with an Advance from DSC only in the ordinary course of Dealer's business, and not to dispose of such Inventory, except as herein provided.
- (b) To keep Inventory acquired or retained by Dealer with an Advance from DSC only at Dealer's Place of Business and not to remove said Inventory from such place for a period exceeding twenty-four (24) hours, unless such item of Inventory is the subject of a Unit Lease Agreement, Rent To Own Agreement, Retail Installment Sales Contract or otherwise authorized in writing by DSC.
- (c) To keep Inventory 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 DSC. DSC shall be named "loss payee" to the extent DSC's interest may appear. In the event Dealer fails to procure, maintain or provide proof of such insurance coverage, DSC may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from Dealer pursuant to the terms of this Note. Dealer understands and agrees that DSC has an insurable interest in Dealer's Collateral, including but not limited to, Inventory, by virtue of Dealer's pledge of Dealer's Collateral as security to DSC as defined above, for the repayment of all Liabilities by Dealer to DSC under this Note.
- (d) To keep at all times complete and accurate records of Dealer's business and provide DSC upon demand copies of such records and financial information regarding Dealer's business and financial condition as DSC may reasonably request. Dealer authorizes DSC to share such information and any other information relating to Dealer's transaction with DSC to any and all persons or parties as DSC deems necessary.
- (e) To allow DSC and its representatives to inspect the Inventory during normal business hours and at other reasonable times and to inspect and make copies of Dealer's books and records. Dealer shall pay DSC upon demand for the costs and expenses incurred by DSC or its representatives with such inspections of Dealer's books and records and audits of Dealer's Inventory.
- (f) To hold all amounts received from the sale of an item of Inventory financed by DSC in trust for the sole benefit of and for DSC and remit a sum to DSC sufficient to satisfy all amounts due DSC and owing by Dealer for the sold item of Inventory.
- (g) That DSC may hold any sums or money belonging or payable to Dealer and apply the same to any outstanding Liabilities of Dealer.
- (h) That any statement of Dealer's account furnished to Dealer by DSC shall, to the extent no objection is made in writing by Dealer within 30 days after receipt of such statement, shall constitute a definitive statement of Dealer's account as of the date of the statement and shall be binding upon Dealer.
- (i) To refrain from paying or declaring any dividends or distributions, redeeming of any capital stock, repaying subordinate debt or other loans to any principal or guarantor of Dealer's Business, during anytime a Liability exists from Dealer to DSC.
- (j) To pay immediately and remain current with all levied taxes, assessments, charges and expenses which may now or hereinafter be levied or assessed against the Collateral and business. DSC may, in its sole discretion, pay such taxes, assessments, charges and expenses to protect its interests and collect the costs from Dealer pursuant to the terms of this Note.
- (k) That Dealer has obtained all necessary permits and licenses pursuant to local, state and federal law required to

operate its business as a wholesale or retail seller or lessor of the Inventory and has complied with all filing requirements to operate as the entity or business type on record with the appropriate governmental office of Dealer's State.

- (l) That no legal, arbitration, or administrative proceedings are pending or threatened against Dealer which could reasonably affect the Collateral or which materially and adversely affect the properties, business, prospects, or condition, financial or otherwise, of the Dealer or Dealer's ability to honor its obligations hereunder.
- (m) That all payments made by Dealer to DSC via check or automated clearing house payment ("ACH"), at the time of issuance, are written or drawn upon an account that contains immediately available funds sufficient to cover the dollar amount of the check or ACH.
- (n) That Dealer's legal name and address as appears on the last page of this Note is accurate and complete.
- (o) That Dealer shall immediately notify DSC in writing of any change in Dealer's legal name, address, business type, ownership, management or control and shall execute any documents necessary at DSC's request to bring Dealer into compliance with this Note.
- (p) That Dealer and all guarantors are legally competent and have authority to enter into and execute this Note and any and all other documents.
- (q) That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions applicable to Dealer's DSC account, whether such terms and conditions are contained in the Term Sheet or this Note.
- (r) That Dealer expressly authorizes and agrees to accept all facsimile transmissions from DSC including, but not limited to, account information and promotional materials.
- (s) That Dealer may have an account with DSC where information can be accessed and transmissions can be sent through DSC's website located at www.discoverdsc.com. Dealer shall have the means to control access to the account information by passwords and a dealer account number in accordance with policies and procedures set forth by DSC. To participate, Dealer shall execute all documents required by DSC to register for such additional service and shall abide by DSC's policies and procedures set forth therein. Dealer agrees such documents shall be incorporated herein by reference and made part of this Note.

4. CREDIT TERMS AND PROCEDURES:

- (a) The decision to make an Advance to Dealer is the exclusive right of DSC and Dealer understands that DSC may refuse to make an Advance at any time, with or without cause. Dealer is not obligated to finance any Inventory through DSC.
- (b) All Dealer requests to DSC for an Advance for the purpose of acquiring Purchase Money Inventory must include a copy of the bill of sale for any Purchase Money Inventory, indicating the actual purchase price and vendor, a completed Odometer Disclosure Statement and the Unit's certificate of title showing that it has been duly assigned to Dealer. All Other Dealer requests to DSC for an Advance for purposes of financing or refinancing Inventory Dealer has previously acquired an interest in must include the Unit's certificate of title showing that it has been duly assigned to Dealer and such information that DSC may require. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (c) DSC is not required but may make, without notice to Dealer and without regard to the Dealer's Credit Limit, Advance on Dealer's behalf, for any liability to a third party at any time Dealer is in default under the terms of this Note. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (d) Dealer must be in complete compliance with this Note before an Advance request will be approved by DSC. Additionally, DSC may require certain other information from Dealer to be submitted on a certified and sworn affidavit including, but not limited to, a statement that Dealer has not used any Advance for other than its originally requested and verified purpose.
- (e) Dealer shall pay to DSC at the offices of DSC Inventory and Purchase Money Inventory Liabilities, on demand and without notice, with respect to an item of Inventory or Purchase Money Inventory on the earlier of: (a) forty-eight (48) hours after the disposition by sale or otherwise of an item of Inventory or Purchase Money

Inventory, or (b) the Maturity Date. DSC shall apply such payments to the Inventory or Purchase Money Inventory Liabilities incurred from said item of Inventory or Purchase Money Inventory. Notwithstanding anything herein to the contrary, after the disposition by sale or otherwise and subsequent payment to DSC as delineated above, a Shortage exists between any payments received by DSC and the Inventory or Purchase Money Inventory Liability with respect to an item of Inventory or Purchase Money Inventory, that Shortage shall be considered a Liability owed by Dealer to DSC and secured with Collateral other than Inventory or Purchase Money Inventory. Dealer shall pay to DSC at the offices of DSC all other Liabilities, on demand and without notice. The order and method of application of such payments of the Liabilities shall be in the discretion of DSC.

- (f) If Dealer is in compliance with all other provisions of this Note, DSC may, in its sole discretion, permit an Extension of the Maturity Date relative to an item of Inventory, upon the payment of Shortage, Interest, Floorplan Fee(s) and a principal reduction of the outstanding Advance relating to such item of Inventory pursuant to this Note as established in the Term Sheet.
- (g) So long as Dealer is not in default of this Note, Dealer may sell Inventory to bona fide buyers in the ordinary and regular course of Dealer's business, but nothing herein shall be deemed to waive or release any interest DSC may have hereunder or under any other agreement in any proceeds or replacements of the Inventory. Upon the sale of any item of Inventory, Dealer shall hold the amount received from the disposition of Inventory in Trust for the benefit of DSC and Dealer shall pay to DSC, in accordance with this Note an amount equal to the unpaid balance of the Inventory Liabilities and Liabilities relating to such Inventory.
- (h) Dealer shall allow DSC's officers, employees, agents, attorneys, designees and representatives, including but not limited to representatives of Textron Financial Corporation, access to Dealer's books and records and the Dealer's Place of Business to conduct an audit of Dealer's inventory. Dealer shall be responsible for and agrees to pay all of DSC's expenses in conducting such audit.
- (i) Upon request by Dealer to obtain, for a legitimate business purpose, the certificate of title to a Unit or Units held by DSC, DSC shall consider said request and, in DSC's sole discretion, may grant such request. In the event DSC grants such request, Dealer must deliver to DSC a check or draft in an amount equal to the Advance(s) relating to such Unit(s). Title(s) must be returned to DSC within the time period established by DSC or any outstanding Liabilities(s), Floorplan Fee(s) or accrued interest relating to Advance(s) for such Unit(s) shall become immediately due and payable and DSC may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.
- (j) To protect DSC's interest, Dealer authorizes DSC to obtain credit information from a credit bureau, and any financial institutions or trade creditor that Dealer has provided as well as other credit investigation that DSC in DSC's sole discretion deems necessary. Dealer also authorizes DSC to contact any third parties to disclose information, including information contained in the DSC application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DSC's security interest. Further, if credit line is granted, Dealer authorizes DSC to review Dealer's account periodically, which may include obtaining additional credit reports.
- (k) Dealer's account is subject to "NSF" fees in the amount equal to or greater of \$25 dollars or the maximum amount permitted by law for each check or automated clearing house payment ("ACH") issued by Dealer which is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Dealer's and/or DSC's depository institution. Dealer's account is also subject to a Late Fee charge in the amount equal to or the greater of \$45 dollars or the maximum amount permitted by law for any item of Inventory that Dealer fails to remit payment under this Note when due. Dealer agrees that Late Fee charged by DSC is a reasonable estimate of DSC's probable losses due to the delay, inconvenience, and administrative expenses associated with a late payment. Dealer agrees that "NSF" fees and Late Fees are administrative expenses incurred by DSC subject to business and market conditions and may be adjusted by DSC without notice to Dealer at DSC's sole discretion.

5. EVENT OF DEFAULT: The occurrence of any of the following events shall be considered an "Event of Default" under this Note:

- (a) The Dealer fails to perform any of its obligations, undertakings or covenants hereunder, including but not limited to, failure to make payment upon maturity or upon demand of any outstanding Liability under this Note; or
- (b) Any warranty or representation made by the Dealer 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 Dealer to DSC proving to have been false or misleading in any material respect when made or delivered; or

- (c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DSC as "Loss Payee" is not in effect; or
- (d) The Dealer becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for the Dealer or any property thereof, 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 proceedings is commenced in respect of the Dealer; or
- (e) Any material change in the management, ownership or control of Dealer; or
- (f) The death or incompetence of Dealer or any Guarantor of this Note; or
- (g) Any change in the financial condition of Dealer or Guarantor(s) that DSC deems adverse; or
- (h) DSC deems itself insecure for any reason.

6. RIGHTS AND REMEDIES: Upon an event of default, DSC 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 under this Note and all other indebtedness owed to DSC by Dealer. DSC 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 Uniform Commercial Code in effect in the jurisdiction where the Collateral is kept. These rights and remedies include the right to cancel any unfunded Advances, to enter into Dealer's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DSC's request and to the extent Dealer may lawfully do so, Dealer shall assemble, prepare for removal and make available to DSC at a place designated by DSC which is reasonably convenient for DSC and Dealer, such items of Collateral as DSC may deem sufficient to cover all Dealer's Liabilities to DSC; and
- (b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Dealer waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DSC to post a bond; and
- (c) To the extent allowed by law, Dealer gives consent to DSC to proceed in any action to collect on or execute against any and all bonds that Dealer has posted with any governmental authorities.
- (d) Without limiting the foregoing, DSC may take control of any funds generated by the Collateral, and in DSC's name or Dealer's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral. Dealer waives any and all rights it may have to notice prior to seizure by DSC of any Collateral. Dealer agrees that private sale of any item financed by DSC at the amount owed to DSC on that item, less costs reasonably incurred by DSC in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral. Dealer shall be liable to DSC for any deficiency resulting from DSC's disposition of the Collateral. Dealer agrees that the Collateral is of the type customarily sold on a recognized market and that DSC therefore has no obligation to notify Dealer prior to a sale. However, Dealer agrees that ten (10) days written notice of public sale date or this date after which a private sale may occur shall be reasonable notice. DSC shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DSC shall not be required to marshal any assets in favor of Dealer. DSC has no obligation to pursue any third person for any Liability to obligation owed to Dealer. Dealer further agrees to pay reasonable attorney fees and collection costs incurred by DSC in enforcing this Note after an event of default by Dealer. To the extent not prohibited by law, Dealer 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.

7. POWER OF ATTORNEY: Dealer shall execute an irrevocable Power of Attorney in DSC's Favor and such Power of Attorney shall be incorporated herein by reference and made a part of this Note.

8. GUARANTEE(S): Dealer shall cause all owners of Dealer to execute an Individual Personal Guarantee. If Dealer is owned in whole or in part by a legally recognized business entity, then Dealer shall cause said entity to execute a Corporate Guarantee in addition to all required Individual Personal Guarantees. All such and the same shall be incorporated herein by reference and made a part of this Note.

9. TERM SHEET(S): Prior to an Advance under this Note, Dealer shall execute a Term Sheet for each unique set of terms applicable to Dealer, which may be amended from time to time, and the same shall be incorporated herein by reference and made a part of this Note.

10. ASSIGNMENT: This Note may be assigned by DSC but Dealer may not assign this Note without the prior written consent of DSC.

11. INDEMNIFICATION: Dealer shall indemnify and hold DSC harmless from and against all, loss, damage, costs, or expenses of whatever kind or nature relating to claims of third parties arising out of or in any way connected to this Note or Dealer's business affairs including, without limitation, attorneys' fees and expenses incurred both in the defense of any action against DSC and in any action to enforce these indemnity rights as against the Dealer.

12. NO JOINT VENTURE OR PARTNERSHIP: Nothing contained herein shall confer upon DSC or Dealer any interest in, or subject either of them to any liability for, or in respect of the business, assets, profits, losses or liabilities of the other. This Note does not constitute and shall not be characterized as a joint venture or partnership between DSC and Dealer. Nothing in this section shall limit or restrict the respective obligations and undertakings of DSC and Dealer hereunder.

13. AMENDMENT, MODIFICATION AND MERGER: This Note and all documents incorporated herein by reference are intended by the parties as an amendment and restatement of any prior Demand Promissory Note and Security Agreement between the parties. With the exception of the modifications referenced in paragraph 4(k) above, this Note may not be modified or amended except upon the written consent of DSC and Dealer. However, descriptions of specific items of Inventory, amounts and terms of Advances, Maturity Date Extensions and rates, and finance, service, late and other charges allowed by this Note may be proven by ordinary course of business records of DSC.

14. EXECUTION: The parties understand and agree that DSC may execute this Note and all corresponding documents by affixing an authorized DSC Officer's signature via signature stamp and a facsimile reproduction of such authorized DSC Officer's signature on the Note and all corresponding documents shall be deemed original signatures. Dealer may only execute this Note by original signature.

15. NOTICES: All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been duly given or made: if by hand or by facsimile, immediately upon the Business Day of receipt, if received before 5 p.m., recipient's time, otherwise on the next Business Day; if by Federal Express, Express Mail or any other overnight delivery service with proof of next day delivery on a Business Day, one (1) Business Day after dispatch; and if mailed by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the address set forth herein:

To DSC: Dealer Services Corporation, 11555 N. Meridian St., Suite 220, Carmel, IN 46032
Telephone: (317) 571-3721 Facsimile: (317) 571-3737

To Dealer: Total Inc. DBA Gault's Used Cars
2015 Union Hwy, Gaffney, SC 29340
Telephone: (864)489-5008 Facsimile: (864)489-5025

16. NO WAIVER: No failure or delay by DSC in exercising any right, power, or privilege under this Note will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

17. TERMINATION: No termination of this Note shall alter Dealer's obligations and Liabilities relating to amounts funded or committed prior to the effective date of such termination, and all rights and remedies, including without limitation, the security interest granted herein and the rights of DSC as a secured party hereunder, shall extend until all Liabilities owed by Dealer to DSC have been satisfied.

18. LEGAL FEES AND COLLECTION COSTS: Dealer shall pay to DSC all reasonable legal fees, expenses and collection costs incurred as a result of Dealer's default or failure of any obligation under this Note.

19. SEVERABILITY: Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement in any other jurisdiction.

20. GOVERNING LAW: The validity, enforceability and interpretation of this Note shall be governed by the laws of the State

of Indiana without regard to conflicts of laws provisions thereof.

21. JURISDICTION AND VENUE: As evidenced by Dealer's signature below, Dealer submits to the personal jurisdiction and venue of the state or federal courts of Marion County, Indiana and agrees that any and all claims or disputes pertaining to this Note initiated by Dealer shall be brought in the state or federal courts of Marion County, Indiana. Further, Dealer expressly consents to such jurisdiction and venue of the state or federal courts in Marion County, Indiana to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. DSC reserves the right to initiate and prosecute any action against Dealer in any court of competent jurisdiction and Dealer consents to such Forum as DSC may elect.

22. WAIVER OF BOND: Dealer waives, to the extent permitted by law, any bond or surety or security on such bond which might, but for this waiver, be required of DSC.

23. WAIVER OF JURY TRIAL: DEALER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY OTHER LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY COURSE OF CONDUCT, STATEMENT, WHETHER ORAL OR WRITTEN, OR ACTIONS OF THE DEALER. THE DEALER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL HAVE NOT BEEN DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY DSC EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH DEALER AND DSC.

24. HEADINGS: Paragraph headings used in this Note are for reference only and shall not affect the construction of this Note.

WHEREFORE, the parties have, by their duly authorized representatives, executed this Note on the 15 day of March, 2007.

Dealer: Total Inc. DBA Gault's Used Cars

Accepted by Dealer Services Corporation

By: _____
DSC Officer

Signatures: _____

Edward Keith Potter, President

THIS IS A COPY OF THE DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT; THE SOLE ORIGINAL COUNTERPART OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT HAS BEEN DELIVERED TO TEXTRON FINANCIAL CORPORATION, AS AGENT, UNDER THAT CERTAIN AMENDED AND RESTATED PARTICIPATION AGREEMENT DATED AS OF MAY 31, 2006; EXCEPT AS EXPRESSLY PERMITTED IN SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT, ANY PURCHASE OR OTHER TRANSFER OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT FROM DEALER SERVICES CORPORATION WILL VIOLATE THE RIGHTS OF THE PARTICIPANTS UNDER SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT.

INDIVIDUAL PERSONAL GUARANTY

WHEREAS, Dealer Services Corporation, a Delaware corporation ("DSC"), in consideration of any present or future loans or other financial advances to TOTAL, INC. DBA GAULT'S USED CARS (hereinafter sometimes referred to as "Debtor"); and

WHEREAS, on the 15th day of March, 20 08, Debtor executed and delivered to DSC its principal Demand Promissory Note and Security Agreement ("Note"); and

WHEREAS, the loan of DSC to Debtor is conditioned upon said indebtedness being personally guaranteed as to the payment thereof by [REDACTED] (hereinafter referred to as "Guarantor"); and

WHEREAS, in consideration of the financial and other support that the Debtor has provided, and such financial and other support as the Debtor may in the future provide, to the Guarantor, and in order to induce DSC to provide Credit to Debtor, and because Guarantor has determined that executing this Individual Personal Guaranty (hereinafter referred to as "Guaranty") is in its interest and to its financial benefit, the Guarantor is willing to guarantee the obligations of Debtor under the Note; and

WHEREAS the Guaranty shall be irrevocable, continuing and unconditional as to all Liabilities owed by Debtor at all times;

1. NOW, THEREFORE, the Guarantor, in executing this Guaranty, jointly and severally guarantees that Debtor will promptly pay the full amount of principal and interest, all costs and fees, including but not limited to, reasonable attorneys' fees and collection costs, and any other liabilities arising out of the Note as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as a primary not a secondary liability of Guarantor.

2. Without limiting the generality of the foregoing, the Guarantor agrees that he/she will pay the full amount of principal and interest of the Note now or hereafter due as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as primary and not a secondary liability of Guarantor.

3. The Guarantor hereby waives demand, notice of dishonor, presentment for payment, protest and notice of protest, and of non-performance on all of said indebtedness; and if said indebtedness is renewed, or if the time for payment thereof be extended (to which Guarantor hereby expressly consents to any such renewal or extension) either with or without notice to Guarantor, Guarantor unconditionally guarantees the payment of such indebtedness at the time fixed for the payment thereof in and by any such renewal or extension. Guarantor further waives all rights, by statute or otherwise, to require the holder of the Note to institute suit against the original maker of the Note; also to exercise diligence in enforcing this or any other instrument.

4. To the extent permitted by law, Guarantor waives all defenses legally available to Guarantor, Guarantor being bound to the payment of said indebtedness of the original maker of the Note. The holder of the Note may take any now or additional or substituted security from time to time without in any way impairing the obligation of the undersigned; and the impairment of the security, which said holder may from time to time hold as security for said loan, shall in no way operate to discharge the undersigned in whole or in part, it being specifically agreed that the holder is not required to exercise diligence to enforce its rights against the original maker of the Note. The holder is hereby authorized at any time, in its sole discretion and without notice, to take, change, release or in any way deal with the security herein; but the holder of the Note shall be under no obligation to collect or to protect any of such security or said indebtedness, and its neglect or failure to collect or protect the same is excused. Acceptance of the Guaranty is waived.

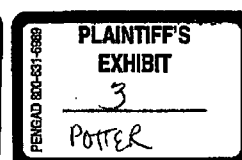
5. Forbearance on the part of DSC to take steps to enforce payment of said indebtedness arising from Guarantor's default in any respect whatever, or the giving of further time to the original maker of the Note, shall in no way release the undersigned, but the undersigned shall remain jointly and severally liable hereunder for the prompt payment of said indebtedness.

6. This Guaranty is for the use and benefit of the holder of the Note, who in the first instance will be DSC. This Guaranty shall also be for the use and benefit of any subsequent owner of the Note, and each owner of the Note may assign this Guaranty to its successor owner of the Note.

7. All reasonable costs and expenses, including attorneys' fees, incurred by the holder of the Note to enforce this Guaranty, shall be paid by the undersigned.

8. The liability of the Guarantor shall continue until payment is made of every obligation of the Debtor now or hereafter incurred in connection with the Note, and until payment is made of any loss or damage incurred by DSC with respect to any matter covered by this Guaranty.

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9. Guarantor consents that, without affecting the Guarantor's liability, DSC may, without notice to or consent of Guarantor on such terms as DSC may deem advisable, extend in whole or in part, by renewal or otherwise, the time of payment of the debt now or hereafter owing by the Debtor to DSC or held by DSC as security for any obligation herein described, or may do or refrain from doing any act whatever. Guarantor also consents that DSC may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the obligations of Debtor to DSC, and may also settle or compromise any claim of DSC against Debtor or against any other person or corporation whose obligation is held by DSC as collateral security for any obligation of Debtor or DSC. Guarantor hereby ratifies and affirms any such actions, and all such actions shall be binding on Guarantor, and Guarantor hereby waives all defenses, counterclaims or offsets which Guarantor may have.

10. Guarantor also waives notice of failure of any person to pay to DSC any debt held by DSC as collateral security for the obligations of Debtor, and all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of DSC against Debtor.

11. Guarantor represents that at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of this Guaranty.

12. Guarantor understands that so long as any indebtedness exists from Debtor to DSC, Debtor is not permitted to repay any loans or obligation owing Guarantor, present or future. Guarantor agrees that any such payments made by Debtor to Guarantor shall be held in trust for the benefit of DSC and shall be immediately delivered to DSC.

13. DSC may, at its option, proceed in the first instance against the Guarantor to collect the obligations covered by this Guaranty without first proceeding against any other person, firm or corporation, and without resorting to any property held by DSC as collateral security.

14. The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof, and Guarantor agrees that any and all claims or disputes pertaining to this Guaranty or to any matter arising out of or related to this Guaranty initiated by Debtor against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Guarantor expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. However, in the event Debtor's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

15. Guarantor understands that the right to trial by jury is an unconditional right afforded by the United States Constitution and understands that right may be waived. Guarantor has consulted with or has had the opportunity to consult with his/her attorney and hereby knowingly, intentionally and voluntarily waives any right to trial by jury regarding any litigation arising out of or in connection with this Guaranty. Guarantor understands that DSC also has waived its right to trial by jury and agrees that such waiver by Guarantor and DSC are for the mutual benefit of the parties. Further, Guarantor understands and agrees that such waiver is a material inducement for both parties in entering into this Guaranty and transactions relating thereto.

16. JUDICIAL REFERENCE. IF DEBTOR'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEBTOR AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THE NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

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(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

17. Any provision of this Guaranty that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Guaranty or affecting the validity or enforceability of any provision of this Guaranty.

18. Words of "Guaranty" contained herein in no way diminish or impair the absolute liability hereby created.

19. This Guaranty is intended by the Guarantor as an amendment and restatement of any prior Personal Guaranty made by Guarantor related to the Demand Promissory Note and Security Agreement or amendment thereof executed by Debtor.

20. POLICY CONCERNING THE FURNISHING OF NEGATIVE INFORMATION TO CONSUMER REPORTING AGENCIES. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Executed by the undersigned this 24 day of Dec, 2008

Edward Keith Potter
119 Dobbinville Rd
Address
Ellenboro N.C. 28040
Address

STATE OF NC)
COUNTY OF Lexington)

) SS:

Before me, a Notary Public in and for said County and State, personally appeared Edward Keith Potter, who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notarial Seal this 26th day of Dec, 2008.

Notary Signature [Signature]
Notary, Printed B. Leighton Best Sr.

My Commission Expires: Aug 26, 2018 County of Residence: Lexington

**DEMAND PROMISSORY NOTE
AND SECURITY AGREEMENT**

TO: Dealer Services Corporation
1320 City Center Drive
Suite 100
Carmel, Indiana 46032

FOR VALUE RECEIVED, the undersigned dealer ("Dealer") promises to pay to the order of Dealer Services Corporation, a Delaware corporation ("DSC"), with its principal office at 1320 City Center Drive, Suite 100, Carmel, Indiana 46032 or such other place as DSC may designate in writing, in lawful money of the United States of America, the principal sum of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00)** (the "Credit Limit") or such greater or lesser sum which may be advanced from time to time, together with all costs, interest, fees, and expenses as provided for under this Note.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, the parties agree as follows:

1. **DEFINITIONS:** Capitalized terms used in this Note without definition shall have the respective meanings as set forth below. All other terms in this Note shall be defined by the meanings provided for in the Uniform Commercial Code as provided for herein.

- (a) "Advance" shall mean any loan or payment in any amount made pursuant to this Note by DSC to Dealer or on Dealer's behalf to any third party.
- (b) "ACH" shall mean all payments by, or on behalf of, Dealer to DSC made via a nationwide electronic funds transfer network processing electronic debit entries from Dealer's bank accounts.
- (c) "Base Rate" shall mean the greater of that variable rate of interest or that fixed rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 5.00%.
- (d) "Check" shall mean all payments by, or on behalf of, Dealer to DSC not made in cash, via certified funds, wire transfer or ACH.
- (e) "Collateral" shall have the meaning set forth in Paragraph 2 of this Note.
- (f) "Contract Rate" shall mean that rate of interest as stated on Dealer's Term Sheet. Additionally, in the event no Term Sheet is executed and effective, then 4.25%.
- (g) "Credit Limit" shall mean the maximum amount Dealer may borrow at any one time under this Note.
- (h) "Credit Line" shall mean Dealer's DSC floorplan line of credit pursuant to and under this Note.
- (i) "Dealer's Place of Business" shall mean that place where the Collateral and Dealer's books and records are kept, where Dealer's operations are conducted from and/or if Dealer is a legally recognized business entity where Dealer's registered office is located.
- (j) "Dealer's Home Branch" shall mean the DSC branch location for which Dealer's DSC Credit Line is assigned to by DSC for servicing and administration.
- (k) "Default Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 8%.
- (l) "DSC-Financed Inventory" shall mean any Unit now or hereafter acquired or retained by Dealer pursuant to an Advance under this Note.
- (m) "DSC Administrative Fee" shall mean any fee charged by DSC to Dealer for any service or process requested by Dealer or unilaterally undertaken by DSC, reasonable or necessary to administer or monitor the Credit Line, that is not a Floorplan Fee or DSC Universal Fee.
- (n) "DSC Published Rate, Fee and Term Schedule" shall mean that current schedule of universal interest rates and fees assessed by DSC, including DSC Universal Fees, late fees, fees relating to returned checks or ACH payments due to insufficient funds, the Base Rate, Risk Rate and Default Rate and notice of amendments to Terms and Conditions published by DSC via posting such schedule of such universal rates and fees and notice of amendment to Terms and Conditions at www.discoverdsc.com and posted at each DSC branch office or location.
- (o) "DSC Universal Fee" shall mean any published fee as stated in the DSC Published Rate, Fee and Term Schedule charged by DSC to Dealer.

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- (p) "Equipment" shall mean all goods other than Inventory held for sale, lease, or daily rental by Dealer in the ordinary course of business.
- (q) "Event of Default" shall have the meaning set forth in Paragraph 6 of this Note.
- (r) "Extension" shall mean that grant by DSC to Dealer of additional time that an Advance for an item of DSC-Financed Inventory becomes due and payable.
- (s) "Floorplan Fee" shall mean the fee charged by DSC to Dealer set forth on the Term Sheet for each individual item of DSC-Financed Inventory. Additionally, in the event no Term Sheet is executed and effective, then the Floorplan Fee shall be equal to One Hundred Fifty Dollars (\$150.00).
- (t) "Interest" shall mean the aggregate rate of interest which accrues on all Liabilities owed by Dealer to DSC under or arising out of this Note by combining the Base Rate plus the applicable Contract Rate, Risk Rate or Default Rate.
- (u) "Inventory" shall mean all Units held by Dealer for wholesale or retail sale, lease, or rent.
- (v) "Liabilities" shall mean any and all Advances, debts, DSC-Financed Inventory Liabilities, financial obligations, DSC Administrative Fees, DSC Universal Fees, Interest, Floorplan Fees, NSF fees, late fees, charges, expenses, attorney fees, costs of collection, covenants, and duties owing, arising, due or payable from Dealer to DSC of any kind or nature, present or future, under any instrument, guaranty, or other document whether arising under this Note or any other agreement, whether directly or indirectly (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising and however acquired.
- (w) "Maturity Date" shall mean the date an Advance for an item of DSC-Financed Inventory becomes due and payable. In the event the Maturity Date relating to a specific Advance for an item of DSC-Financed Inventory becomes due and payable falls on a federal banking holiday, Saturday or Sunday, the Maturity Date for such specific Advance shall be the next business date subsequent to such federal banking holiday, Saturday or Sunday.
- (x) "MSO" shall mean the manufacturer's certificate of origin or other document evidencing ownership of a Unit issued by the manufacturer of the Unit.
- (y) "Note" shall mean this Demand Promissory Note and Security Agreement and all present and future amendments, modifications and addendums referenced herein.
- (z) "Period" shall mean that number of days set forth in the Term Sheet, beginning on the date of an Advance and ending on the Maturity Date, and any extension thereto, that an item of DSC-Financed Inventory will be financed by DSC to Dealer pursuant to the terms of this Note. Additionally, in the event no Term Sheet is executed and effective, then the Period shall be Thirty (30) days.
- (aa) "Purchase Money Inventory" shall mean a Unit acquired by Dealer pursuant to an Advance under this Note.
- (bb) "Risk Rate" shall mean that rate of interest as stated in the DSC Published Rate, Fee and Term Schedule, or in the event no DSC Published Rate, Fee and Term Schedule is published and effective, then 6%.
- (cc) "Shortage" shall mean the difference between a payment received by DSC and the amount owing, arising, due, or payable from Dealer to DSC with respect to a specific Advance for a specific item of DSC-Financed Inventory.
- (dd) "Terms and Conditions" shall mean all provisions of this Note with the exception of terms specifically relating to Dealer's Floorplan Fees and Contract Rate and any other term referenced in Dealer's Term Sheet.
- (ee) "Term Sheet" shall mean the addendum to this Note, as modified from time to time, which indicates specific terms regarding Dealer's Credit Limit, Floorplan Fees, Contract Rate of interest, Period, principal reduction, and Number of Maturity Date Extensions.
- (ff) "Title" shall mean the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.
- (gg) "UCC" shall mean the Uniform Commercial Code as enacted in the State where the Collateral is located and the version in effect as of the date of this Note.
- (hh) "Unit" shall mean any manufactured item, including vehicles for which a certificate of title or a MSO exists which is the subject of an Advance by DSC to Dealer under this Note.

2. **GRANT OF SECURITY INTEREST:** In order to secure full and prompt payment of all Liabilities and performance of all obligations of Dealer to DSC, Dealer hereby:

- (a) Grants to DSC, together with its subsidiaries, affiliates and assigns, a continuing security interest in all of Dealer's assets and properties, wherever located, including without limitation, all Equipment of any kind or nature, all vehicles, vehicle parts, all inventory now owned or hereafter acquired, without limitation, Purchase Money Inventory now owned or hereafter acquired, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, accounts receivable, chattel paper, and general intangibles now owned or hereafter acquired by Dealer together with the proceeds thereof; all of Dealer's books and records relating to the foregoing ("Collateral"). This security interest is given to DSC to secure Dealer's Liabilities to DSC under this Note, as may be amended from time to time, all without relief from valuation or appraisal laws.
- (b) Agrees to execute and deliver such financing statements and amendments thereto as DSC shall require from time to time.

3. **INTEREST RATE.** Interest shall accrue on all Dealer Liabilities in accordance with the following:

- (a) All outstanding Liabilities under this Note shall accrue interest (based upon a 360 day year), on a per annum basis and shall be compounded daily at the Base Rate plus the applicable Contract Rate, Risk Rate, or Default Rate until paid in full.
- (b) The Contract Rate stated on Dealer's Term Sheet plus the Base Rate shall be the applicable rate of Interest accruing on all Dealer Liabilities, so long as there has not been a breach by Dealer of any representation or warranty made by Dealer under this Note, a breach by Dealer of any covenant or credit term required under this Note, or an event of default by Dealer under this Note.
- (c) In the event a breach of any representation or warranty made by Dealer under Paragraphs 3 or 4 of this Note occurs, or a breach by Dealer of a covenant or credit term required under Paragraph 4 or Paragraph 5 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Risk Rate.
- (d) In the event that an Event of Default occurs as defined in Paragraph 6 of this Note, the applicable rate of Interest accruing on all Dealer Liabilities shall be the Base Rate plus the Default Rate.
- (e) The Base Rate, Risk Rate or Default Rate may be amended or modified by DSC in DSC's sole discretion by posting such amendment or modification on the DSC Published Base Rate and Fee Schedule. However, DSC may only increase the Base Rate, Risk Rate or Default Rate by 50 basis points in any one 30-day period.

4. **DEALER'S REPRESENTATIONS, WARRANTIES AND COVENANTS:** In order to induce DSC to make Advances hereunder, Dealer hereby represents, covenants and warrants:

- (a) To sell, lease or rent DSC-Financed Inventory only in the ordinary course of Dealer's business, and not to dispose of such DSC-Financed Inventory, except as herein provided.
- (b) To keep DSC-Financed Inventory only at Dealer's Place of Business and not to remove said DSC-Financed Inventory from such place for a period exceeding twenty-four (24) hours, unless such item of DSC-Financed Inventory is the subject of a daily rental agreement, rent to own agreement, lease here pay here agreement, retail installment sales contract, or otherwise authorized in writing by DSC.
- (c) To keep DSC-Financed Inventory 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 DSC. DSC shall be named "loss payee" to the extent DSC's interest may appear. In the event Dealer fails to procure, maintain or provide proof of such insurance coverage, DSC may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from Dealer pursuant to the terms of this Note. Dealer understands and agrees that DSC has an insurable interest in Dealer's Collateral, including but not limited to, DSC-Financed Inventory, by virtue of Dealer's pledge of Dealer's Collateral as security to DSC as defined above, for the repayment of all Liabilities by Dealer to DSC under this Note. Additionally, to keep DSC-Financed Inventory held for rent to own or lease here pay here covered by an adequate service contract or warranty acceptable to DSC, and to keep such DSC-Financed Inventory equipped with a global positioning system ("GPS") unit that is acceptable to DSC and is in working condition at all times.
- (d) To keep at all times complete and accurate records of Dealer's business and to provide DSC upon demand copies of such records and financial information regarding Dealer's business and financial condition as DSC may reasonably request. Dealer authorizes DSC to share such information and any other information relating to Dealer's transaction with DSC to any and all persons or parties as DSC deems necessary.

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- (e) To allow DSC and its representatives to inspect the DSC-Financed Inventory during normal business hours and at other reasonable times and to inspect and make copies of Dealer's books and records. Dealer shall pay DSC upon demand for the costs and expenses incurred by DSC or its representatives with such inspections of Dealer's books and records and audits of Dealer's DSC-Financed Inventory.
- (f) To hold all amounts received from the sale of an item of DSC-Financed Inventory in the form as received in trust for the sole benefit of and for DSC, and to remit such funds satisfying all amounts due DSC and owing by Dealer for the sold item of DSC-Financed Inventory within 24 hours of receipt of such funds.
- (g) That DSC may hold any sums or money belonging to or payable to Dealer and apply the same to any outstanding Liabilities of Dealer.
- (h) That any statement of Dealer's account furnished to Dealer by DSC, to the extent no objection is made in writing by Dealer within 30 days after receipt of such statement, shall constitute a definitive statement of Dealer's Credit Line and Liabilities as of the date of the statement and shall be binding upon Dealer.
- (i) To refrain from paying or declaring any dividends or distributions, redeeming of any capital stock, repaying subordinate debt or other loans to any principal or guarantor of Dealer's Business, during anytime a Liability exists from Dealer to DSC.
- (j) To pay immediately and remain current with all levied taxes, assessments, charges and expenses which may now or hereinafter be levied or assessed against the Collateral and business. DSC may, in its sole discretion, pay such taxes, assessments, charges and expenses to protect its interests and thereafter collect the costs from Dealer pursuant to the terms of this Note.
- (k) That Dealer has obtained all necessary permits and licenses pursuant to local, state and federal law required to operate its business as a wholesale or retail seller, lessor or renter of the DSC-Financed Inventory and has complied with all filing requirements to operate as the entity or business type on record with the appropriate governmental office(s).
- (l) That no legal, arbitration, or administrative proceedings are pending or threatened against Dealer which could reasonably affect the Collateral or which materially and adversely affect the properties, business, prospects, or condition, financial or otherwise, of the Dealer or Dealer's ability to honor its obligations hereunder.
- (m) That all payments made by Dealer to DSC via check or ACH, at the time of issuance, are written or drawn upon an account that contains immediately available funds sufficient to cover the dollar amount of the check or ACH.
- (n) That Dealer's legal name and address as they appear in Paragraph 16 of this Note are accurate and complete.
- (o) That Dealer shall immediately notify DSC in writing of any change in Dealer's legal name, address, business type, ownership, management or control and shall execute any documents necessary at DSC's request to bring Dealer into compliance with this Note.
- (p) That Dealer and all guarantors are legally competent and have authority to enter into and execute this Note and any and all other documents.
- (q) That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions applicable to Dealer's DSC Credit Line, whether such terms and conditions are contained in the Term Sheet or this Note.
- (r) That Dealer expressly authorizes and agrees to accept all mailings, facsimile transmissions and telephonic transmissions from DSC including, but not limited to, Credit Line information and promotional materials.
- (s) That Dealer may have an account with DSC where information can be accessed and transmissions can be sent through DSC's website located at www.discoverdsc.com. Dealer shall have the means to control access to the account information by passwords and a dealer account number in accordance with policies and procedures set forth by DSC. To participate, Dealer shall execute all documents required by DSC to register for such additional service and shall abide by DSC's policies and procedures set forth therein. Dealer agrees such documents shall be incorporated herein by reference and made part of this Note.
- (t) That Dealer shall use Advances solely for business purposes and not for personal, family or household purposes. This means, among other things, that Dealer may not use Advances to purchase a vehicle to be used for Dealer's personal, family or household purposes.

5. CREDIT TERMS AND PROCEDURES:

- (a) The decision to make an Advance to Dealer is the exclusive right of DSC, and Dealer understands that DSC may refuse to make an Advance at any time, with or without cause and without prior notice to Dealer or any guarantors of such decision. Dealer is not obligated to finance any Inventory through DSC. If Dealer's Place of Business is in California, the amount of the first Advance under this Note must be at least \$5,000.00.

- (b) All Dealer requests to DSC for an Advance for the purpose of acquiring Purchase Money Inventory with DSC funds, or financing previously-acquired Inventory with DSC funds must include a copy of the bill of sale for any Unit which is the subject of the request, indicating the actual purchase price and vendor, a completed Odometer Disclosure Statement, and the Unit's certificate of title showing that it has been duly assigned to Dealer. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (c) DSC is not required but may make, without notice to Dealer and without regard to the Dealer's Credit Limit, Advance on Dealer's behalf, for any Liability to a third party at any time Dealer is in default under the terms of this Note. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (d) Dealer must be in complete compliance with this Note before an Advance request will be approved by DSC. Additionally, DSC may require certain other information from Dealer to be submitted on a certified and sworn affidavit including, but not limited to, a statement that Dealer has not used any Advance for any other purpose than its originally requested and verified purpose.
- (e) Dealer shall pay all liabilities to DSC at the offices of DSC, on demand and without notice, with respect to an item of DSC-Financed Inventory on the earlier of: (a) twenty-four (24) hours from the time Dealer receives payment by or on behalf of the purchaser of an item of DSC-Financed Inventory; (b) forty-eight (48) hours after the disposition by sale or otherwise of an item of DSC-Financed Inventory; or (b) the Maturity Date. DSC shall apply such payments to the DSC-Financed Inventory Liabilities incurred from said item of DSC-Financed Inventory. Notwithstanding anything herein to the contrary, if, after the disposition by sale or otherwise and subsequent payment to DSC as delineated above, a Shortage exists between any payments received by DSC and the DSC-Financed Inventory Liability with respect to an item of DSC-Financed Inventory, that Shortage shall be considered a Liability owed by Dealer to DSC and secured with Collateral other than DSC-Financed Inventory. Dealer shall pay to DSC at the offices of DSC all other Liabilities, on demand and without notice. The order and method of application of such payments of the Liabilities shall be in the discretion of DSC. Payments received by DSC after 5 pm as measured by Dealer's Home Branch shall be applied the next business day.
- (f) If Dealer is in compliance with all other provisions of this Note, DSC may, in its sole discretion, permit an Extension of the Maturity Date relative to an item of DSC-Financed Inventory, upon the payment of Shortage, Interest, Floorplan Fee(s) and a principal reduction of the outstanding Advance relating to such item of DSC-Financed Inventory pursuant to this Note and as established in the Term Sheet.
- (g) So long as Dealer is not in default of this Note, Dealer may sell DSC-Financed Inventory to bona fide buyers in the ordinary and regular course of Dealer's business, but nothing herein shall be deemed to waive or release any interest DSC may have hereunder or under any other agreement in any proceeds or replacements of the DSC-Financed Inventory. Upon the sale of any specific item of DSC-Financed Inventory, Dealer shall hold the amount received from the disposition of such DSC-Financed Inventory in Trust for the benefit of DSC, and Dealer shall pay to DSC, in accordance with this Note, an amount equal to the unpaid balance of the Liabilities relating to such specific item of DSC-Financed Inventory.
- (h) Dealer shall allow DSC's officers, employees, agents, attorneys, designees and representatives access to Dealer's books and records at the Dealer's Place of Business to conduct an audit of Dealer's DSC-Financed Inventory. Dealer shall be responsible for and agrees to pay all of DSC's expenses in conducting such audit.
- (i) Upon request by Dealer to obtain, for a legitimate business purpose, the Title to a specific item of DSC-Financed Inventory held by DSC, DSC may consider said request and, in DSC's sole discretion, grant such request. In the event DSC grants such request, Dealer must deliver to DSC a check or draft which is signed and dated on the date as of which the Dealer takes physical custody of the subject Title in an amount equal to the Liability relating to such specific item of DSC-Financed Inventory. The subject Title must be returned to DSC within the time period established by DSC or any outstanding Liability relating to any such Advance for such specific items of DSC-Financed Inventory shall become immediately due and payable, and DSC may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.
- (j) To protect DSC's interest, Dealer authorizes DSC to obtain credit information from a credit bureau, and any financial institutions or trade creditor that Dealer has provided, as well as other credit investigation that DSC in DSC's sole discretion deems necessary. Dealer also authorizes DSC to contact any third parties to disclose information, including information contained in the DSC application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DSC's security interest. Further, if Credit Line is granted, Dealer authorizes DSC to review Dealer's account periodically, which may include obtaining additional credit reports.
- (k) Dealer's account is subject to "NSF" fees in the amount stated in the DSC Published Rate, Fee and Term Schedule or maximum amount permitted by law for each check or ACH issued by Dealer which is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Dealer's and/or DSC's depository institution.
- (l) DSC may process checks electronically, at first presentment and any re-presentments, by transmitting the amount of the check, routing number, account number and check serial number to your financial institution. By submitting a check for payment, you authorize DSC to initiate an electronic debit from your bank account. When DSC processes your check electronically, your payment may be debited from your bank account as soon as the same day we receive your check and you will not receive that cancelled check with your bank account statement.

- (m) Dealer's account is subject to a late fee charge in the amount stated in the DSC Published Rate, Fee and Term Schedule or the maximum amount permitted by law for any item of DSC-Financed Inventory that Dealer fails to remit payment under this Note when due. Dealer acknowledges and agrees that the late fee charged by DSC is a reasonable estimate of DSC's probable losses due to the delay, inconvenience, and administrative expenses associated with a late payment. Dealer's account is subject to DSC Administrative Fees. Dealer acknowledges and agrees that any such DSC Administrative Fee charged by DSC is permitted under this Note and consents to the assessment of any such DSC Administrative Fee to Dealer's account. Dealer further acknowledges and agrees that DSC Administrative Fees are subject to business and market conditions and may be adjusted unilaterally by DSC without notice to Dealer and at DSC's sole discretion.
- (n) DSC maintains and publishes the "DSC Published Rate, Fee and Term Schedule" via posting the same on www.discoverdsc.com and in each DSC branch location. All such rates, fees and such amendments to the Terms and Conditions are published therein and incorporated herein by reference and made a part of this Note. With the exception of DSC Administrative Fees and Floorplan Fees, the rates and fees applied to Dealer's Liabilities under this Note and the amended Terms and Conditions stated therein shall be the applicable rates and fees and amendments to the Terms and Conditions most recently published on the DSC Published Rate, Fee and Term Schedule. DSC may amend the rates and fees and amend the Terms and Conditions from time to time at DSC's sole discretion and without additional Notice to Dealer other than the publication of such amendments on www.discoverdsc.com and in each DSC branch location.
- (o) Dealer waives demand, presentment for payment, notice of dishonor, protest and notice of protest, and expressly agrees that this Note and all payments coming due under it may be extended or modified, from time to time without in any way affecting Dealer's liability under this Note. Dealer understands that this Note matures upon issuance, and that DSC may, at any time, and without notice to Dealer, with or without cause, demand that the Note be immediately paid in full. The demand nature of this Note does not limit DSC's election of remedies upon a default by Dealer. At DSC's option, DSC may reference a term of default for the purpose of permitting DSC to receive interest at the Default Rate. It is agreed that DSC may demand partial payments under this Note, and said partial demand shall not change DSC's rights under this Note.

6. EVENT OF DEFAULT: The occurrence of any of the following events shall be considered an event of default under this Note ("Event of Default"):

- (a) The Dealer fails to perform any of its obligations, undertakings or covenants under this Note, fails to adhere to a credit term under this Note, including but not limited to, failure to make payment upon maturity or upon demand of any outstanding Liability under this Note; or
- (b) Any warranty or representation made by the Dealer 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 Dealer to DSC proving to have been false or misleading in any material respect when made or delivered; or
- (c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DSC as "Loss Payee" is not in effect; or
- (d) The Dealer becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for the Dealer or any property thereof, 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 the Dealer; or
- (e) Any material change in the management, ownership or control of Dealer; or
- (f) The voluntary or administrative dissolution, death or incompetence of Dealer or any Guarantor of this Note; or
- (g) Any change in the financial condition of Dealer or Guarantor(s) that DSC in good faith deems adverse; or
- (h) DSC in good faith deems itself insecure for any reason.

7. RIGHTS AND REMEDIES: Upon an event of default, DSC 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 under this Note and all other indebtedness owed to DSC by Dealer. DSC 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 Uniform Commercial Code in effect in the jurisdiction where the Collateral is kept. These rights and remedies include the right to cancel any unfunded Advances, to enter into Dealer's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DSC's request and to the extent Dealer may lawfully do so, Dealer shall assemble, prepare for removal and make available to DSC at a place designated by DSC which is reasonably convenient for DSC and Dealer, such items of Collateral as DSC may deem sufficient to cover all Dealer's Liabilities to DSC; and
- (b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Dealer waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DSC to post a bond; and

- (c) To the extent allowed by law, Dealer gives consent to DSC to proceed in any action to collect on or execute against any and all bonds that Dealer has posted with any governmental authorities; and
- (d) Without limiting the foregoing, DSC may take control of any funds generated by the Collateral, and in DSC's name or Dealer's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral. Dealer waives any and all rights it may have to notice prior to seizure by DSC of any Collateral. Dealer agrees that private sale of any item financed by DSC at the amount owed to DSC on that item, less costs reasonably incurred by DSC in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral. Dealer shall be liable to DSC for any deficiency resulting from DSC's disposition of the Collateral. Dealer agrees that the Collateral is of the type customarily sold on a recognized market and that DSC therefore has no obligation to notify Dealer prior to a sale. However, Dealer agrees that ten (10) days prior written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DSC shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DSC shall not be required to marshal any assets in favor of Dealer. DSC has no obligation to pursue any third person for any Liability or obligation owed to Dealer. Dealer further agrees to pay reasonable attorney fees and collection costs incurred by DSC in enforcing this Note after an event of default by Dealer. To the extent not prohibited by law, Dealer 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.

8. POWER OF ATTORNEY: Dealer shall execute an irrevocable Power of Attorney in DSC's favor and such Power of Attorney shall be incorporated herein by reference and made a part of this Note.

9. GUARANTY(IES): Dealer shall cause each owner of Dealer to execute an Individual Personal Guaranty. If Dealer is owned in whole or in part by a legally recognized business entity or trust, then Dealer shall cause said entity or trust to execute a Guaranty in addition to all required Individual Personal Guaranties. All such and the same shall be incorporated herein by reference and made a part of this Note.

10. TERM SHEET(S): Prior to an Advance under this Note, Dealer shall execute a Term Sheet for each unique set of terms applicable to Dealer, which may be amended from time to time, and the same shall be incorporated herein by reference and made a part of this Note.

11. ASSIGNMENT: This Note may be assigned by DSC but Dealer may not assign this Note without the prior written consent of DSC.

12. INDEMNIFICATION: Dealer shall indemnify and hold DSC harmless from and against all, loss, damage, costs, or expenses of whatever kind or nature relating to claims of third parties arising out of or in any way connected to this Note or Dealer's business affairs including, without limitation, attorneys' fees and expenses incurred both in the defense of any action against DSC and in any action to enforce these indemnity rights as against the Dealer.

13. NO JOINT VENTURE OR PARTNERSHIP: Nothing contained herein shall confer upon DSC or Dealer any interest in, or subject either of them to any liability for, or in respect of the business, assets, profits, losses or liabilities of the other. This Note does not constitute and shall not be characterized as a joint venture or partnership between DSC and Dealer. Nothing in this section shall limit or restrict the respective obligations and undertakings of DSC and Dealer hereunder.

14. AMENDMENT, MODIFICATION AND MERGER: This Note and all documents incorporated herein by reference are intended by the parties as an amendment and restatement of any prior Demand Promissory Note and Security Agreement(s) between DSC and Dealer. With the exception of the amendments and modifications referenced in Paragraphs 3 and 5 above, this Note may not be modified or amended except upon the written consent of DSC and Dealer. However, descriptions of specific items of DSC-Financed Inventory, amounts and terms of Advances, Maturity Date Extensions, Interest, Base Rates, Risk Rates, Default Rates, DSC Administrative Fees, DSC Universal Fees, late fees, NSF Fees, Terms and Conditions and other charges allowed by this Note may be proven by ordinary course of business records of DSC.

15. EXECUTION: The parties understand and agree that DSC may execute this Note and all corresponding documents by affixing an authorized DSC Officer's signature via signature stamp. Dealer may only execute this Note by original signature. A facsimile reproduction of such authorized DSC Officer's signature and Dealer's signature on the Note and all corresponding documents shall be deemed original signatures.

16. NOTICES: All notices, requests and demands to or upon the respective parties hereto, including Service of Process of any legal proceeding initiated by either party, shall be deemed to have been duly given or made: if by hand or by facsimile, immediately upon the Business Day of receipt, if received before 5 p.m., recipient's time, otherwise on the next Business Day; if by Federal Express, Express Mail or any other overnight delivery service with proof of next day delivery on a Business Day, one (1) Business Day after dispatch; and if mailed by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the address set forth herein:

To DSC:

Dealer Services Corporation, 1320 City Center Drive, Suite 100, Carmel, IN 46032
Telephone (317) 571-3721 Facsimile: (317) 571-3737

To Dealer:

TOTAL, INC. DBA GAULT'S USED CARS
2015 UNION HIGHWAY, GAFFNEY, SC 29340
864-489-5008



17. NO WAIVER: No failure or delay by DSC in exercising any right, power, or privilege under this Note will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

18. TERMINATION: No termination of this Note shall alter Dealer's obligations and Liabilities relating to amounts funded or committed prior to the effective date of such termination, and all rights and remedies, including without limitation, the security interest granted herein and the rights of DSC as a secured party hereunder, shall extend until all Liabilities owed by Dealer to DSC have been satisfied.

19. LEGAL FEES AND COLLECTION COSTS: Dealer shall pay to DSC all reasonable legal fees, expenses and collection costs incurred as a result of Dealer's default or failure of any obligation under this Note.

20. SEVERABILITY: Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement in any other jurisdiction.

21. GOVERNING LAW: The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof. However, in the event Dealer's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

22. JURISDICTION AND VENUE: As evidenced by Dealer's signature below, Dealer submits to the personal jurisdiction and venue of the state or federal courts of Marion and Hamilton County, Indiana and agrees that any and all claims or disputes pertaining to this Note or to any matter arising out of or related to this Note initiated by Dealer against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Dealer expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. DSC reserves the right to initiate and prosecute any action against Dealer in any court of competent jurisdiction, and Dealer consents to such Forum as DSC may elect. However, in the in the event this Note is made and entered into in the State of California, the state or federal courts located in the State of California shall have jurisdiction to hear and determine any claims or disputes between the parties pertaining to this Note or to any matter arising out of or related to this Note. Each party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such Court, and each party hereby waives any objection which such party may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens, and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such Court.

23. WAIVER OF BOND: Dealer waives, to the extent permitted by law, any bond or surety or security on such bond which might, but for this waiver, be required of DSC.

24. WAIVER OF JURY TRIAL: DEALER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE, OR ANY OTHER LOAN DOCUMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY COURSE OF CONDUCT, STATEMENT, WHETHER ORAL OR WRITTEN, OR ACTIONS OF THE DEALER. THE DEALER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL HAVE NOT BEEN DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY DSC EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH DEALER AND DSC.

25. JUDICIAL REFERENCE. IF DEALER'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEALER AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS NOTE.

END

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

26. HEADINGS: Paragraph headings used in this Note are for reference only and shall not affect the construction of this Note.

WHEREFORE, the parties have, by their duly authorized representatives, executed this Note on the 24 day of Dec, 2000

Dealer: TOTAL INC. DBA GAULT'S USED CARS

By: Edward Keith Potter
EDWARD KEITH POTTER

Its: PRESIDENT

Accepted By:

Dealer Services Corporation

By: John E. Fuller

INDIVIDUAL PERSONAL GUARANTY

WHEREAS, Dealer Services Corporation, a Delaware corporation ("DSC"), in consideration of any present or future loans or other financial advances to Total, Inc. DBA Gault's Used Cars (hereinafter sometimes referred to as "Debtor"); and

WHEREAS, on the 3 day of Jan, 2022 Debtor executed and delivered to DSC its principal Demand Promissory Note and Security Agreement ("Note"); and

WHEREAS, the loan of DSC to Debtor is conditioned upon said indebtedness being personally guaranteed as to the payment thereof by Edward Keith Potter (hereinafter referred to as "Guarantor"); and

WHEREAS, in consideration of the financial and other support that the Debtor has provided, and such financial and other support as the Debtor may in the future provide, to the Guarantor, and in order to induce DSC to provide Credit to Debtor, and because Guarantor has determined that executing this Individual Personal Guaranty (hereinafter referred to as "Guaranty") is in its interest and to its financial benefit, the Guarantor is willing to guarantee the obligations of Debtor under the Note; and

WHEREAS the Guaranty shall be irrevocable, continuing and unconditional as to all Liabilities owed by Debtor at all times;

1. NOW, THEREFORE, the Guarantor, in executing this Guaranty, jointly and severally guarantees that Debtor will promptly pay the full amount of principal and interest, all costs and fees, including but not limited to, reasonable attorneys' fees and collection costs, and any other liabilities arising out of the Note as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as a primary not a secondary liability of Guarantor.

2. Without limiting the generality of the foregoing, the Guarantor agrees that he/she will pay the full amount of principal and interest of the Note now or hereafter due as and when the same shall in any manner be or become due, either according to the Terms and Conditions provided in the Note or upon acceleration of the payment thereof by reason of a default, as primary and not a secondary liability of Guarantor.

3. The Guarantor hereby waives demand, notice of dishonor, presentment for payment, protest and notice of protest, and of non performance on all of said indebtedness; and if said indebtedness is renewed, or if the time for payment thereof be extended (to which Guarantor hereby expressly consents to any such renewal or extension) either with or without notice to Guarantor, Guarantor unconditionally guarantees the payment of such indebtedness at the time fixed for the payment thereof in and by any such renewal or extension. Guarantor further waives all rights, by statute or otherwise, to require the holder of the Note to institute suit against the original maker of the Note; also to exercise diligence in enforcing this or any other instrument.

4. To the extent permitted by law, Guarantor waives all defenses legally available to Guarantor, Guarantor being bound to the payment of said indebtedness of the original maker of the Note. The holder of the Note may take any new or additional or substituted security from time to time without in any way impairing the obligation of the undersigned; and the impairment of the security, which said holder may from time to time hold as security for said loan, shall in no way operate to discharge the undersigned in whole or in part, it being specifically agreed that the holder is not required to exercise diligence to enforce its rights against the original maker of the Note. The holder is hereby authorized at any time, in its sole discretion and without notice, to take, change, release or in any way deal with the security herein; but the holder of the Note shall be under no obligation to collect or to protect any of such security or said indebtedness, and its neglect or failure to collect or protect the same is excused. Acceptance of the Guaranty is waived.

5. Forbearance on the part of DSC to take steps to enforce payment of said indebtedness arising from Guarantor's default in any respect whatever, or the giving of further time to the original maker of the Note, shall in no way release the undersigned, but the undersigned shall remain jointly and severally liable hereunder for the prompt payment of said indebtedness.

6. This Guaranty is for the use and benefit of the holder of the Note, who in the first instance will be DSC. This Guaranty shall also be for the use and benefit of any subsequent owner of the Note, and each owner of the Note may assign this Guaranty to its successor owner of the Note.

7. All reasonable costs and expenses, including attorneys' fees, incurred by the holder of the Note to enforce this Guaranty, shall be paid by the undersigned.



8. The liability of the Guarantor shall continue until payment is made of every obligation of the Debtor now or hereafter incurred in connection with the Note, and until payment is made of any loss or damage incurred by DSC with respect to any matter covered by this Guaranty.

9. Guarantor consents that, without affecting the Guarantor's liability, DSC may, without notice to or consent of Guarantor on such terms as DSC may deem advisable, extend in whole or in part, by renewal or otherwise, the time of payment of the debt now or hereafter owing by the Debtor to DSC or held by DSC as security for any obligation herein described, or may do or refrain from doing any act whatever. Guarantor also consents that DSC may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the obligations of Debtor to DSC, and may also settle or compromise any claim of DSC against Debtor or against any other person or corporation whose obligation is held by DSC as collateral security for any obligation of Debtor or DSC. Guarantor hereby ratifies and affirms any such actions, and all such actions shall be binding on Guarantor, and Guarantor hereby waives all defenses, counterclaims or offsets which Guarantor may have.

10. Guarantor also waives notice of failure of any person to pay to DSC any debt held by DSC as collateral security for the obligations of Debtor, and all defenses, offsets and counterclaims which Guarantor may at any time have to any claim of DSC against Debtor.

11. Guarantor represents that at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of this Guaranty.

12. Guarantor understands that so long as any indebtedness exists from Debtor to DSC, Debtor is not permitted to repay any loans or obligation owing Guarantor, present or future. Guarantor agrees that any such payments made by Debtor to Guarantor shall be held in trust for the benefit of DSC and shall be immediately delivered to DSC.

13. DSC may, at its option, proceed in the first instance against the Guarantor to collect the obligations covered by this Guaranty without first proceeding against any other person, firm or corporation, and without resorting to any property held by DSC as collateral security.

14. The validity, enforceability and interpretation of this Note shall be governed by the laws of the State of Indiana without regard to conflicts of laws provisions thereof, and Guarantor agrees that any and all claims or disputes pertaining to this Guaranty or to any matter arising out of or related to this Guaranty initiated by Debtor against DSC shall be brought in the state or federal courts of Marion or Hamilton County, Indiana. Further, Guarantor expressly consents to such jurisdiction and venue of the state or federal courts in Marion and Hamilton County, Indiana as to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. However, in the event Debtor's Place of Business is in the State of California, the validity, enforceability and interpretation of this Note shall be governed by the laws of the State of California without regard to conflicts of laws provisions thereof, and each Advance made under this Note shall be deemed made pursuant to and under the authority of a license issued under the California Finance Lenders Laws.

15. Guarantor understands that the right to trial by jury is an unconditional right afforded by the United States Constitution and understands that right may be waived. Guarantor has consulted with or has had the opportunity to consult with his/her attorney and hereby knowingly, intentionally and voluntarily waives any right to trial by jury regarding any litigation arising out of or in connection with this Guaranty. Guarantor understands that DSC also has waived its right to trial by jury and agrees that such waiver by Guarantor and DSC are for the mutual benefit of the parties. Further, Guarantor understands and agrees that such waiver is a material inducement for both parties in entering into this Guaranty and transactions relating thereto.

16. JUDICIAL REFERENCE. IF DEBTOR'S PLACE OF BUSINESS IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY:

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEBTOR AND DSC HEREBY AGREE AS FOLLOWS:

(A) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1.

(B) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A REFERENCE PROCEEDING: (1) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF), (2) APPOINTMENT OF A RECEIVER AND (3) TEMPORARY,

PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS NOTE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (1) - (3) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THE NOTE.

(C) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(D) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(E) THE REFEREE SHALL APPLY THE RULES OF DISCOVERY AND EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA TO THE REFERENCE PROCEEDING AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

17. Any provision of this Guaranty that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Guaranty or affecting the validity or enforceability of any provision of this Guaranty.

18. Words of "Guaranty" contained herein in no way diminish or impair the absolute liability hereby created.

19. This Guaranty is intended by the Guarantor as an amendment and restatement of any prior Personal Guaranty made by Guarantor related to the Demand Promissory Note and Security Agreement or amendment thereof executed by Debtor.

20. POLICY CONCERNING THE FURNISHING OF NEGATIVE INFORMATION TO CONSUMER REPORTING AGENCIES. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Executed by the undersigned this 3 day of JAN, 2012.

Signature: [Signature]
Edward Keith Potter

STATE OF SC)
COUNTY OF Spartanburg) SS:

Before me, a Notary Public in and for said County and State, personally appeared Edward Keith Potter, who acknowledged the execution of the foregoing, and who, having been duly sworn states that any representations contained therein are true.

Witness my hand and Notarial Seal this 3rd day of Jan, 2012.

Notary Signature [Signature]
Notary, Printed James M. Vaughan

My Commission Expires: 2/5/2020

County of Residence: Lexington

James M. Vaughan
Notary Public - South Carolina
My Commission Expires 02/05/2020



DEALER SERVICES
CORPORATION
DiscoverDSC.com

Innovative Solutions. Outstanding Service. Great People.™

Dealer Services Corporation
1320 City Center Drive Suite 100
Carmel, In 46032
Phone 317-571-3766 | Fax 317-571-3810

fax

TO: Mike Gault FROM: Kevin Frederick
FAX: 864-649-1530 PAGES: 5
PHONE: DATE: 8/9/12
RE: CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into on the date listed below by Total, Inc. ("Dealership"), Edward Keith Potter, and Michael Wayne Gault (together with Edward Keith Potter, the "Guarantors") and Dealer Services Corporation ("DSC").

Recitals

- A. On or about January 3, 2012, Dealership entered into a Demand Promissory Note and Security Agreement (the "Note") with DSC.
- B. DSC alleges that Dealership has breached the terms of the Note. DSC further alleges that Dealership owes DSC certain unpaid principal, interest, and fees pursuant to the terms of the Note (hereinafter collectively referred to as the "DSC Claim").
- C. On or about January 3, 2012, the Guarantors each executed an Individual Personal Guaranty ("Guaranty"), whereby each of the Guarantors guaranteed payment to DSC of all sums due and owing under the Note. The Guarantors have not, to date, satisfied the balance owing under the DSC Claim.
- D. Dealership, the Guarantors, and DSC mutually desire to settle the DSC Claim in an economically fair and feasible manner.

Agreement

NOW THEREFORE, Dealership, the Guarantors, and DSC mutually agree as follows:

1. As of August 8, 2012, the total sum owed to DSC by Dealership under the Note is \$154,707.87 (the "Debt"). An itemization of the Debt, by vehicle, showing the principal balance owed, interest, and other fees is attached hereto as Exhibit A and is incorporated herein by reference.

2. On or before the close of business on August 15, 2012, Dealership shall tender in certified funds the sum of \$22,500.00 to DSC, plus the nine (9) current vehicles that DSC has in its possession:

2003 Niss Alti	226309
2003 Niss Sent	720316
2001 Volv S40	621498
2002 Hyun SONA	580340
2006 Mazd MAZD	M10113
2001 Pont Gran	253387
2006 Mazd MAZD	M62491
1999 Volv S80	052291
2002 Niss Alti	707219
1999 Niss Alti	128477
1993 Mazd MX-3	234210

and DSC shall accept such sum as payment in full by Dealership of the DSC Claim. In the event Dealership fails to remit to DSC the stated sum as set forth herein, this Agreement shall terminate.

3. Dealership and the Guarantors each separately acknowledge that DSC has not waived and is not now waiving any default or Debt owed by Dealership or the Guarantors until such time as Dealership satisfies its obligations under this Agreement, or otherwise until such time as DSC has been paid in full. Upon completion of all obligations of Dealership under this Agreement, DSC shall extinguish and discharge in full any debt or claim of DSC against Dealership and the Guarantors, individually and collectively, as well as any claims against the heirs, successors and/or assigns of Dealership and the Guarantors.
4. The Parties represent that the respective undersigned persons are fully authorized to execute this Agreement. The undersigned hereby declare that each has had an opportunity to consult with an attorney and that the terms of this Agreement have been completely read and are fully understood. Further, the undersigned hereby declare that the terms of this Agreement are voluntarily accepted by the Parties for the purpose of

resolving the DSC Claim and any and all other claims between DSC, Dealership, and the Guarantors, provided that Dealership fulfills its obligations hereunder. Dealership and the Guarantors understand and acknowledge that any breach of this Agreement by Dealership or either Guarantor shall cause this Agreement to terminate immediately.

5. This Agreement may be executed via facsimile and in any number of counterparts, each of which shall be deemed an original, but all of which shall be deemed one and the same instrument.

SIGNATURE PAGE FOLLOWS

(remainder of this page left blank intentionally)

EXECUTED this ____ day of _____, 20 ____

DEALER SERVICES CORPORATION

BY: _____

ITS: _____

EXECUTED this ____ day of _____, 20 ____

TOTAL, INC.

BY: _____

ITS: _____

EXECUTED this ____ day of _____, 20 ____

Edward Keith Potter, Guarantor

EXECUTED this ____ day of _____, 20 ____

Michael Wayne Gault, Guarantor



DEALER SERVICES CORPORATION
DiscoverDSC.com

Date: July 5, 2012

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

To: Gualt's Used Cars
Edward Potter
2015 Union Hwy
Gaffney, SC 29340

From: Dealer Services Corporation
1320 City Center Dr.
Suite 1000
Carmel, IN 46032

Re: Notification of Private Disposition of Collateral

To All Interested Parties:

Dealer Service Corporation ("DSC") will sell the below described collateral privately sometime after Ten (10) days from the date shown above. The collateral to be sold is as follows:

IN4AL11D23C226309	2003 Nissan Altima
3NIAB51DX3L720316	2003 Nissan Sentra SE-R 3.2.5
YV1VS29521F621498	2001 Volvo S40
JTDDR32T420134108	2002 Toyota Celica GT
KMHWF25S72A580340	2002 Hyundai SONATA GL
1YVHP80C565M10113	2006 Mazda MAZDA6I
1YVHP80C065M62491	2006 Mazda MAZDA6I
WVWMA63B8XE515131	1999 Volkswagen Passat GLS
SAJEB51C52WC07509	2002 Jaguar X-TYPE 3.0
1G2WK52J51F253387	2001 Pontiac Grand Prix SE 4.25
1GCCS1442XK238456	1999 Chevrolet S10 LS Xtreme

If you are the Debtor or a Guarantor of the Debtor, you are entitled to a written accounting, free of charge, of the unpaid indebtedness secured by the collateral DSC intends to sell. If you are a party other than the Debtor or Guarantor of the Debtor, you are entitled to a written accounting of the same for a charge of Twenty-Five (\$25.00) dollars. All parties may request a written accounting by calling DSC at 317-571-3721, or by writing to DSC at the above address.

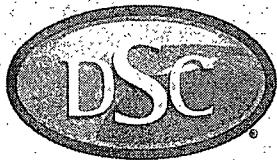
DEALER SERVICE CORPORATION
Maui Williams- Clerk

Mike, Here is what I HAVE ⁸⁰³⁻⁸⁹⁶⁻²⁶¹⁹

Att. Angela

LOT #1	LAST 6	SOLD
213686	128477 ✓	~~SOLD~~ SOLD
20166822	508527	Never picked up
20166742	M06600	Never picked up
20159962	234210 ✓	SOLD
20159912	732307	Never picked up
20159882	993359	Never picked up
20159852	201690	Never picked up
20159762	M20303	Never picked up
20159482	137712	Never picked up
20159422	272645	Never picked up
20159272	171416	Never picked up
20159182	197297	Never picked up
20159122	052291 ✓	SOLD
20159042	551194 ✓	Never picked up
20158982	296611	Never picked up
20158852	154474	?
19738532	A10812 ✓	SOLD
19738152	249508	Never picked up
19737522	266309 ✓	SOLD
19637032	610267	Never picked up
19636562	023586 ✓	Never picked up
19636142	360710	Never picked up
19635712	626897 ✓	SOLD

LOT#	LAST 6	SOLD
19635432	580340 ✓	SOLD
19635162	213876	Never picked up
19634702	707219 ✓	SOLD
19634272	001657 ✓	SOLD
19633402	720310 ✓	SOLD
~~210 29912~~	~~108477~~	
20039002	007509	SOLD
19737132	621498 ✓	SOLD
19736712	134108 ✓	SOLD
19683002	515131 ✓	SOLD
19637332	238456 ✓	SOLD
19633962	110113	SOLD
19632872	253387 ✓	SOLD



**DEALER SEI
CORPORATI**

1320 City Center C
Carmel, IN 46032



7011 2970 0004 1484 4688

FIRST-CLASS MAIL

07/03/2012

46032

7011 2970

07/03/2012

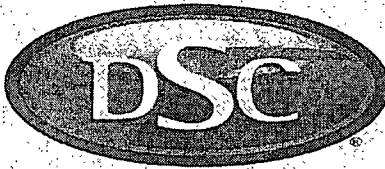
Date: July 3, 2012

VIA CERTIFIED MAIL RETURN RECEIPT REQ

To: Gault's Used Cars
Edward Potter
2015 Union Hwy

WJ
7-12-12
Z

ROA 000410



DEALER SERVICES CORPORATION
DiscoverDSC.com

Date: July 5, 2012

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

To: LC Mason Ent
7980 Asheville Hwy
Spartanburg, SC 29303

From: Dealer Services Corporation
1320 City Center Dr.
Suite 1000
Carmel, IN 46032

Re: Notification of Private Disposition of Collateral

To All Interested Parties:
Gualt's Used Cars 2015 Union Hwy Gaffney, SC 29340

Dealer Service Corporation ("DSC") will sell the below described collateral privately sometime after Ten (10) days from the date shown above. The collateral to be sold is as follows:

1N4AL11D23C226309	2003 Nissan Altima ✓
3N1AB51DX3L720316	2003 Nissan Sentra SE-R ✓
YV1VS29521F621498	2001 Volvo S40 ✓
JTDDR32T420134108	2002 Toyota Celica GT ✓ ✓
KMHWF25S72A580340	2002 Hyundai SONATA GL ✓
1YVHP80C565M10113	2006 Mazda MAZDA6I ✓
1YVHP80C065M62491	2006 Mazda MAZDA6I ✓
WVWMA63B8XE515131	1999 Volkswagen Passat GLS ✓
SAJEB51C52WC07509	2002 Jaguar X-TYPE 3.0
1G2WK52J51F253387	2001 Pontiac Grand Prix SE ✓
1GCCS1442XK238456	1999 Chevrolet S10 LS Xtreme ✓

If you are the Debtor or a Guarantor of the Debtor, you are entitled to a written accounting, free of charge, of the unpaid indebtedness secured by the collateral DSC intends to sell. If you are a party other than the Debtor or Guarantor of the Debtor, you are entitled to a written accounting of the same for a charge of Twenty-Five (\$25.00) dollars. All parties may request a written accounting by calling DSC at 317-571-3721, or by writing to DSC at the above address.

DEALER SERVICE CORPORATION
Maui Williams- Clerk

**DEMAND PROMISSORY NOTE
AND SECURITY AGREEMENT**

TO: Dealer Services Corporation
11555 N. Meridian St.
Suite 220
Carmel, IN 46032

FOR VALUE RECEIVED, the undersigned dealer ("Dealer") promises to pay to the order of Dealer Services Corporation, a Delaware corporation ("DSC"), with its principal office at 11555 N. Meridian Street, Suite 220, Carmel, Indiana 46032 or such other place as DSC may designate in writing, in lawful money of the United States of America, the principal sum of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) (the "Credit Limit") or such greater or lesser sum which may be advanced from time to time, together with all costs, interest and fees and expenses as provided for under this Note and all accrued interest which shall accrue at a variable rate (based upon a 360 day year), adjusted each business day, based upon the most recent prime rate published in The Wall Street Journal plus an additional interest factor per Dealer's Term Sheet on a per annum basis and shall be compounded daily.

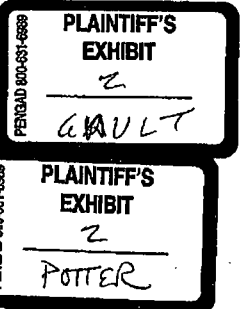
In the event that Dealer is in Default under the terms of this Note, interest shall accrue at a variable rate, adjusted each business day, based upon the most recent prime rate published in The Wall Street Journal plus eight percent (8%) per annum, with such interest compounded daily and accruing from the date on which the Event of Default first occurred. Upon demand by DSC or upon an Event of Default, Dealer shall pay the Liabilities as provided herein.

The undersigned Dealer waives demand, presentment for payment, notice of dishonor, protest and notice of protest, and expressly agrees that that this Note and all payments coming due under it may be extended or modified, from time to time without in any way affecting Dealer's liability hereunder. Dealer understands that this Note matures upon issuance, and that DSC may, at any time, and without notice to Dealer, with or without cause, demand that the Note be immediately paid in full. The demand nature of this Note does not limit DSC's election of remedies upon a default by Dealer. At DSC's option, DSC may reference a term of default for the purpose of permitting DSC to receive interest at the Default Rate. It is agreed that DSC may demand partial payments under this Note and said partial demand shall not change DSC's rights under this Note.

NOW, THEREFORE in consideration of the mutual covenants, agreements and conditions contained herein, the parties agree as follows:

1. DEFINITIONS: Capitalized terms used in this Note without definition shall have the respective meanings as set forth below. All other terms in this Note shall be defined by the meanings provided for in the Uniform Commercial Code as enacted in the State of Indiana where applicable.

- (a) "Advance" shall mean all loans or payments pursuant to this Note made by DSC to Dealer or on Dealer's behalf to any third party.
- (b) "Check" shall mean all payments by, or on behalf of, Dealer to DSC not made in cash or via certified funds.
- (c) "Collateral" shall mean all Dealer's assets and properties wherever located, including without limitation all Equipment of any kind or nature, all vehicles, vehicle parts and other Inventory now owned or hereafter acquired, without limitation, the Purchase Money Inventory as hereinafter defined, and all additions, accessions, accessories, replacements, and proceeds thereof; all documents, accounts, chattel paper, and general intangible now owned or hereafter acquired by Dealer together with the proceeds thereof; all of Dealer's books and records relating to the foregoing.
- (d) "Collateral Audit Fee" shall mean the non-refundable fee payable to DSC by Dealer in the amount set forth on the Term Sheet that relates to audits of Dealer's Inventory that may be conducted from time to time by DSC or its representatives.
- (e) "Credit Limit" shall mean the maximum amount Dealer may borrow at any one time under this Note.
- (f) "Dealer's Place of Business" shall mean that place where the Collateral and Dealer's books and record are kept, where Dealer's operations are conducted from and/or if Dealer is a legally recognized business entity where Dealer's registered office is located.
- (g) "Default Rate" shall mean the rate of interest allowed under this Note which shall accrue on all Dealer's liabilities while any uncured event of default by Dealer exists.



THIS IS A COPY OF THE DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT; THE SOLE ORIGINAL COUNTERPART OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT HAS BEEN DELIVERED TO TEXTRON FINANCIAL CORPORATION, AS AGENT, UNDER THAT CERTAIN AMENDED AND RESTATED PARTICIPATION AGREEMENT DATED AS OF MAY 31, 2006; EXCEPT AS EXPRESSLY PERMITTED IN SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT, ANY PURCHASE OR OTHER TRANSFER OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT FROM DEALER SERVICES CORPORATION WILL VIOLATE THE RIGHTS OF THE PARTICIPANTS UNDER SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT.

ROA 000412

- (h) "Equipment" shall mean all goods other than Inventory held for sale, lease or daily rental by Dealer in the ordinary course of business.
- (i) "Extension" shall mean that grant by DSC to Dealer of additional time an Advance for an item of Inventory becomes due and payable.
- (j) "Floorplan Fee" shall mean the fee charged by DSC to Dealer set forth on the Term Sheet for each individual item of Inventory. Additionally, in the event no Term Sheet is executed and effective, then the Floorplan Fee shall be equal to One hundred Fifty Dollars (\$150.00).
- (k) "Interest" shall mean that finance charge which accrues on all Liabilities owed by Dealer to DSC under or arising out of this Note.
- (l) "Late Fee" shall mean the fee charged by DSC to Dealer for each item of Inventory that Dealer fails to remit payment under this Note when due.
- (m) "Liabilities" shall mean all Advances, debts, Inventory Liabilities, financial obligations, charges, expenses, fees, attorney fees, costs of collection, covenants, and duties owing, arising, due or payable from Dealer to DSC of any kind or nature, present or future, under any instrument, guaranty, or other document whether arising under this Note or any other agreement, whether directly or indirectly (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising and however acquired including, without limitation, all interest, Floorplan Fees, Collateral Audit Fees, NSF Fees, Late Fees and other expenses, costs or fees provided by this Agreement.
- (n) "Maturity Date" shall mean the date an Advance for an item of Inventory becomes due and payable.
- (o) "MSO" shall mean the manufacturer's certificate of origin or other document evidencing ownership of a Unit issued by the manufacturer of the Unit.
- (p) "Note" shall mean this Demand Promissory Note and Security Agreement and all present and future Addendums referenced herein.
- (q) "Period" shall mean that number of days set forth in the Term Sheet, beginning on the date of an Advance and ending on the Maturity Date, and any extension thereto, that an item of Inventory will be financed by DSC to Dealer pursuant to the terms of this Note. Additionally, in the event no Term Sheet is executed and effective, then the Period shall be Thirty (30) days.
- (r) "Inventory" shall mean all items of inventory held for sale, lease or daily rental, including but not limited to, Purchase Money Inventory.
- (s) "Purchase Money Inventory" shall mean a Unit acquired by Dealer with funds Advanced by DSC for the purpose of acquiring said Unit.
- (t) "Retail Installment Contract" shall mean a contract entered into between Dealer and Dealer's customer in the ordinary course of business where DSC Inventory is the item sold under the contract.
- (u) "Shortage" shall mean the difference between a payment received by DSC and the amount owing arising, due, or payable from Dealer to DSC with respect to specific Advances for specific items of Inventory.
- (v) "Terms and Conditions" shall mean all provisions of this Note.
- (w) "Term Sheet" shall mean the addendum to this Note, as modified from time to time, which indicates specific binding terms, including but not limited to, Credit limits, Floorplan Fees, Collateral Audit Fees, Late Fees Interest and Number of Maturity Date Extensions.
- (x) "Title" shall mean the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.
- (y) "UCC" shall mean the Uniform Commercial Code as enacted in the State of Indiana.
- (z) "Unit" shall mean any manufactured item, including vehicles for which a certificate of title which is the subject of an Advance by DSC to Dealer.

2. GRANT OF SECURITY INTEREST: In order to secure full and prompt payment of all Liabilities and performance of all obligations of Dealer to DSC, Dealer hereby:

- (a) Grants to DSC, together with its subsidiaries, affiliates and assigns, a continuing security interest in all Collateral, including but not limited to, Inventory. This security interest is given to DSC to secure Dealer's Liabilities to DSC under this Note, as may be amended from time to time, all without relief from valuation or appraisement laws.
- (b) Agrees to execute and deliver such financing statements and amendments thereto as DSC shall require from time to time.

3. DEALER'S REPRESENTATIONS, WARRANTIES AND COVENANTS: In order to induce DSC to make Advances hereunder, Dealer hereby represents, covenants and warrants:

- (a) To sell, lease or rent Inventory acquired by Dealer with an Advance from DSC only in the ordinary course of Dealer's business, and not to dispose of such Inventory, except as herein provided.
- (b) To keep Inventory acquired or retained by Dealer with an Advance from DSC only at Dealer's Place of Business and not to remove said Inventory from such place for a period exceeding twenty-four (24) hours, unless such item of Inventory is the subject of a Unit Lease Agreement, Rent To Own Agreement, Retail Installment Sales Contract or otherwise authorized in writing by DSC.
- (c) To keep Inventory 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 DSC. DSC shall be named "loss payee" to the extent DSC's interest may appear. In the event Dealer fails to procure, maintain or provide proof of such insurance coverage, DSC may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from Dealer pursuant to the terms of this Note. Dealer understands and agrees that DSC has an insurable interest in Dealer's Collateral, including but not limited to, Inventory, by virtue of Dealer's pledge of Dealer's Collateral as security to DSC as defined above, for the repayment of all Liabilities by Dealer to DSC under this Note.
- (d) To keep at all times complete and accurate records of Dealer's business and provide DSC upon demand copies of such records and financial information regarding Dealer's business and financial condition as DSC may reasonably request. Dealer authorizes DSC to share such information and any other information relating to Dealer's transaction with DSC to any and all persons or parties as DSC deems necessary.
- (e) To allow DSC and its representatives to inspect the Inventory during normal business hours and at other reasonable times and to inspect and make copies of Dealer's books and records. Dealer shall pay DSC upon demand for the costs and expenses incurred by DSC or its representatives with such inspections of Dealer's books and records and audits of Dealer's Inventory.
- (f) To hold all amounts received from the sale of an item of Inventory financed by DSC in trust for the sole benefit of and for DSC and remit a sum to DSC sufficient to satisfy all amounts due DSC and owing by Dealer for the sold item of Inventory.
- (g) That DSC may hold any sums or money belonging or payable to Dealer and apply the same to any outstanding Liabilities of Dealer.
- (h) That any statement of Dealer's account furnished to Dealer by DSC shall, to the extent no objection is made in writing by Dealer within 30 days after receipt of such statement, shall constitute a definitive statement of Dealer's account as of the date of the statement and shall be binding upon Dealer.
- (i) To refrain from paying or declaring any dividends or distributions, redeeming of any capital stock, repaying subordinate debt or other loans to any principal or guarantor of Dealer's Business, during anytime a Liability exists from Dealer to DSC.
- (j) To pay immediately and remain current with all levied taxes, assessments, charges and expenses which may now or hereinafter be levied or assessed against the Collateral and business. DSC may, in its sole discretion, pay such taxes, assessments, charges and expenses to protect its interests and collect the costs from Dealer pursuant to the terms of this Note.
- (k) That Dealer has obtained all necessary permits and licenses pursuant to local, state and federal law required to

operate its business as a wholesale or retail seller or lessor of the Inventory and has complied with all filing requirements to operate as the entity or business type on record with the appropriate governmental office of Dealer's State.

- (l) That no legal, arbitration, or administrative proceedings are pending or threatened against Dealer which could reasonably affect the Collateral or which materially and adversely affect the properties, business, prospects, or condition, financial or otherwise, of the Dealer or Dealer's ability to honor its obligations hereunder.
- (m) That all payments made by Dealer to DSC via check or automated clearing house payment ("ACH"), at the time of issuance, are written or drawn upon an account that contains immediately available funds sufficient to cover the dollar amount of the check or ACH.
- (n) That Dealer's legal name and address as appears on the last page of this Note is accurate and complete.
- (o) That Dealer shall immediately notify DSC in writing of any change in Dealer's legal name, address, business type, ownership, management or control and shall execute any documents necessary at DSC's request to bring Dealer into compliance with this Note.
- (p) That Dealer and all guarantors are legally competent and have authority to enter into and execute this Note and any and all other documents.
- (q) That Dealer shall not disclose to any third party, without the written consent of DSC, any terms and conditions applicable to Dealer's DSC account, whether such terms and conditions are contained in the Term Sheet or this Note.
- (r) That Dealer expressly authorizes and agrees to accept all facsimile transmissions from DSC including, but not limited to, account information and promotional materials.
- (s) That Dealer may have an account with DSC where information can be accessed and transmissions can be sent through DSC's website located at www.discoverdsc.com. Dealer shall have the means to control access to the account information by passwords and a dealer account number in accordance with policies and procedures set forth by DSC. To participate, Dealer shall execute all documents required by DSC to register for such additional service and shall abide by DSC's policies and procedures set forth therein. Dealer agrees such documents shall be incorporated herein by reference and made part of this Note.

4. CREDIT TERMS AND PROCEDURES:

- (a) The decision to make an Advance to Dealer is the exclusive right of DSC and Dealer understands that DSC may refuse to make an Advance at any time, with or without cause. Dealer is not obligated to finance any Inventory through DSC.
- (b) All Dealer requests to DSC for an Advance for the purpose of acquiring Purchase Money Inventory must include a copy of the bill of sale for any Purchase Money Inventory, indicating the actual purchase price and vendor, a completed Odometer Disclosure Statement and the Unit's certificate of title showing that it has been duly assigned to Dealer. All Other Dealer requests to DSC for an Advance for purposes of financing or refinancing Inventory Dealer has previously acquired an interest in must include the Unit's certificate of title showing that it has been duly assigned to Dealer and such information that DSC may require. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (c) DSC is not required but may make, without notice to Dealer and without regard to the Dealer's Credit Limit, Advance on Dealer's behalf, for any liability to a third party at any time Dealer is in default under the terms of this Note. If DSC elects to make any such Advance, the Advance shall be deemed an additional Liability under this Note from the date on which the Advance is made.
- (d) Dealer must be in complete compliance with this Note before an Advance request will be approved by DSC. Additionally, DSC may require certain other information from Dealer to be submitted on a certified and sworn affidavit including, but not limited to, a statement that Dealer has not used any Advance for other than its originally requested and verified purpose.
- (e) Dealer shall pay to DSC at the offices of DSC Inventory and Purchase Money Inventory Liabilities, on demand and without notice, with respect to an item of Inventory or Purchase Money Inventory on the earlier of: (a) forty-eight (48) hours after the disposition by sale or otherwise of an item of Inventory or Purchase Money

Inventory; or (b) the Maturity Date. DSC shall apply such payments to the Inventory or Purchase Money Inventory Liabilities incurred from said item of Inventory or Purchase Money Inventory. Notwithstanding anything herein to the contrary, after the disposition by sale or otherwise and subsequent payment to DSC as delineated above, a Shortage exists between any payments received by DSC and the Inventory or Purchase Money Inventory Liability with respect to an item of Inventory or Purchase Money Inventory, that Shortage shall be considered a Liability owed by Dealer to DSC and secured with Collateral other than Inventory or Purchase Money Inventory. Dealer shall pay to DSC at the offices of DSC all other Liabilities, on demand and without notice. The order and method of application of such payments of the Liabilities shall be in the discretion of DSC.

- (f) If Dealer is in compliance with all other provisions of this Note, DSC may, in its sole discretion, permit an Extension of the Maturity Date relative to an item of Inventory, upon the payment of Shortage, Interest, Floorplan Fee(s) and a principal reduction of the outstanding Advance relating to such item of Inventory pursuant to this Note as established in the Term Sheet.
- (g) So long as Dealer is not in default of this Note, Dealer may sell Inventory to bona fide buyers in the ordinary and regular course of Dealer's business, but nothing herein shall be deemed to waive or release any interest DSC may have hereunder or under any other agreement in any proceeds or replacements of the Inventory. Upon the sale of any item of Inventory, Dealer shall hold the amount received from the disposition of Inventory in Trust for the benefit of DSC and Dealer shall pay to DSC, in accordance with this Note an amount equal to the unpaid balance of the Inventory Liabilities and Liabilities relating to such Inventory.
- (h) Dealer shall allow DSC's officers, employees, agents, attorneys, designees and representatives, including but not limited to representatives of Textron Financial Corporation, access to Dealer's books and records and the Dealer's Place of Business to conduct an audit of Dealer's inventory. Dealer shall be responsible for and agrees to pay all of DSC's expenses in conducting such audit.
- (i) Upon request by Dealer to obtain, for a legitimate business purpose, the certificate of title to a Unit or Units held by DSC, DSC shall consider said request and, in DSC's sole discretion, may grant such request. In the event DSC grants such request, Dealer must deliver to DSC a check or draft in an amount equal to the Advance(s) relating to such Unit(s). Title(s) must be returned to DSC within the time period established by DSC or any outstanding Liabilities(s), Floorplan Fee(s) or accrued interest relating to Advance(s) for such Unit(s) shall become immediately due and payable and DSC may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.
- (j) To protect DSC's interest, Dealer authorizes DSC to obtain credit information from a credit bureau, and any financial institutions or trade creditor that Dealer has provided as well as other credit investigation that DSC in DSC's sole discretion deems necessary. Dealer also authorizes DSC to contact any third parties to disclose information, including information contained in the DSC application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DSC's security interest. Further, if credit line is granted, Dealer authorizes DSC to review Dealer's account periodically, which may include obtaining additional credit reports.
- (k) Dealer's account is subject to "NSF" fees in the amount equal to or greater of \$25 dollars or the maximum amount permitted by law for each check or automated clearing house payment ("ACH") issued by Dealer which is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Dealer's and/or DSC's depository institution. Dealer's account is also subject to a Late Fee charge in the amount equal to or the greater of \$45 dollars or the maximum amount permitted by law for any item of Inventory that Dealer fails to remit payment under this Note when due. Dealer agrees that Late Fee charged by DSC is a reasonable estimate of DSC's probable losses due to the delay, inconvenience, and administrative expenses associated with a late payment. Dealer agrees that "NSF" fees and Late Fees are administrative expenses incurred by DSC subject to business and market conditions and may be adjusted by DSC without notice to Dealer at DSC's sole discretion.

5. EVENT OF DEFAULT: The occurrence of any of the following events shall be considered an "Event of Default" under this Note:

- (a) The Dealer fails to perform any of its obligations, undertakings or covenants hereunder, including but not limited to, failure to make payment upon maturity or upon demand of any outstanding Liability under this Note; or
- (b) Any warranty or representation made by the Dealer 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 Dealer to DSC proving to have been false or misleading in any material respect when made or delivered; or

- (c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DSC as "Loss Payee" is not in effect; or
- (d) The Dealer becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for the Dealer or any property thereof, 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 proceedings is commenced in respect of the Dealer; or
- (e) Any material change in the management, ownership or control of Dealer; or
- (f) The death or incompetence of Dealer or any Guarantor of this Note; or
- (g) Any change in the financial condition of Dealer or Guarantor(s) that DSC deems adverse; or
- (h) DSC deems itself insecure for any reason.

6. RIGHTS AND REMEDIES: Upon an event of default, DSC 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 under this Note and all other indebtedness owed to DSC by Dealer. DSC 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 Uniform Commercial Code in effect in the jurisdiction where the Collateral is kept. These rights and remedies include the right to cancel any unfunded Advances, to enter into Dealer's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DSC's request and to the extent Dealer may lawfully do so, Dealer shall assemble, prepare for removal and make available to DSC at a place designated by DSC which is reasonably convenient for DSC and Dealer, such items of Collateral as DSC may deem sufficient to cover all Dealer's Liabilities to DSC; and
- (b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Dealer waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DSC to post a bond; and
- (c) To the extent allowed by law, Dealer gives consent to DSC to proceed in any action to collect on or execute against any and all bonds that Dealer has posted with any governmental authorities.
- (d) Without limiting the foregoing, DSC may take control of any funds generated by the Collateral, and in DSC's name or Dealer's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral. Dealer waives any and all rights it may have to notice prior to seizure by DSC of any Collateral. Dealer agrees that private sale of any item financed by DSC at the amount owed to DSC on that item, less costs reasonably incurred by DSC in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral. Dealer shall be liable to DSC for any deficiency resulting from DSC's disposition of the Collateral. Dealer agrees that the Collateral is of the type customarily sold on a recognized market and that DSC therefore has no obligation to notify Dealer prior to a sale. However, Dealer agrees that ten (10) days written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DSC shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DSC shall not be required to marshal any assets in favor of Dealer. DSC has no obligation to pursue any third person for any Liability to obligation owed to Dealer. Dealer further agrees to pay reasonable attorney fees and collection costs incurred by DSC in enforcing this Note after an event of default by Dealer. To the extent not prohibited by law, Dealer 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.

7. POWER OF ATTORNEY: Dealer shall execute an irrevocable Power of Attorney in DSC's Favor and such Power of Attorney shall be incorporated herein by reference and made a part of this Note.

8. GUARANTEE(S): Dealer shall cause all owners of Dealer to execute an Individual Personal Guarantee. If Dealer is owned in whole or in part by a legally recognized business entity, then Dealer shall cause said entity to execute a Corporate Guarantee in addition to all required Individual Personal Guarantees. All such and the same shall be incorporated herein by reference and made a part of this Note.

9. **TERM SHEET(S):** Prior to an Advance under this Note, Dealer shall execute a Term Sheet for each unique set of terms applicable to Dealer, which may be amended from time to time, and the same shall be incorporated herein by reference and made a part of this Note.

10. **ASSIGNMENT:** This Note may be assigned by DSC but Dealer may not assign this Note without the prior written consent of DSC.

11. **INDEMNIFICATION:** Dealer shall indemnify and hold DSC harmless from and against all, loss, damage, costs, or expenses of whatever kind or nature relating to claims of third parties arising out of or in any way connected to this Note or Dealer's business affairs including, without limitation, attorneys' fees and expenses incurred both in the defense of any action against DSC and in any action to enforce these indemnity rights as against the Dealer.

12. **NO JOINT VENTURE OR PARTNERSHIP:** Nothing contained herein shall confer upon DSC or Dealer any interest in, or subject either of them to any liability for, or in respect of the business, assets, profits, losses or liabilities of the other. This Note does not constitute and shall not be characterized as a joint venture or partnership between DSC and Dealer. Nothing in this section shall limit or restrict the respective obligations and undertakings of DSC and Dealer hereunder.

13. **AMENDMENT, MODIFICATION AND MERGER:** This Note and all documents incorporated herein by reference are intended by the parties as an amendment and restatement of any prior Demand Promissory Note and Security Agreement between the parties. With the exception of the modifications referenced in paragraph 4(k) above, this Note may not be modified or amended except upon the written consent of DSC and Dealer. However, descriptions of specific items of Inventory, amounts and terms of Advances, Maturity Date Extensions and rates, and finance, service, late and other charges allowed by this Note may be proven by ordinary course of business records of DSC.

14. **EXECUTION:** The parties understand and agree that DSC may execute this Note and all corresponding documents by affixing an authorized DSC Officer's signature via signature stamp and a facsimile reproduction of such authorized DSC Officer's signature on the Note and all corresponding documents shall be deemed original signatures. Dealer may only execute this Note by original signature.

15. **NOTICES:** All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been duly given or made: if by hand or by facsimile, immediately upon the Business Day of receipt, if received before 5 p.m., recipient's time, otherwise on the next Business Day; if by Federal Express, Express Mail or any other overnight delivery service with proof of next day delivery on a Business Day, one (1) Business Day after dispatch; and if mailed by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the address set forth herein:

To DSC: Dealer Services Corporation, 11555 N. Meridian St., Suite 220, Carmel, IN 46032
Telephone (317) 571-3721 Facsimile: (317) 571-3737

To Dealer: Total Inc. DBA Gault's Used Cars
2015 Union Hwy, Gaffney, SC 29340
Telephone: (864)489-5008 Facsimile: (864)489-5025

16. **NO WAIVER:** No failure or delay by DSC in exercising any right, power, or privilege under this Note will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege.

17. **TERMINATION:** No termination of this Note shall alter Dealer's obligations and Liabilities relating to amounts funded or committed prior to the effective date of such termination, and all rights and remedies, including without limitation, the security interest granted herein and the rights of DSC as a secured party hereunder, shall extend until all Liabilities owed by Dealer to DSC have been satisfied.

18. **LEGAL FEES AND COLLECTION COSTS:** Dealer shall pay to DSC all reasonable legal fees, expenses and collection costs incurred as a result of Dealer's default or failure of any obligation under this Note.

19. **SEVERABILITY:** Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of any provision of this Agreement in any other jurisdiction.

20. **GOVERNING LAW:** The validity, enforceability and interpretation of this Note shall be governed by the laws of the State

of Indiana without regard to conflicts of laws provisions thereof.

21. JURISDICTION AND VENUE: As evidenced by Dealer's signature below, Dealer submits to the personal jurisdiction and venue of the state or federal courts of Marion County, Indiana and agrees that any and all claims or disputes pertaining to this Note initiated by Dealer shall be brought in the state or federal courts of Marion County, Indiana. Further, Dealer expressly consents to such jurisdiction and venue of the state or federal courts in Marion County, Indiana to any action brought in such court by DSC and waives any claim of inconvenient forum with respect to any such action. DSC reserves the right to initiate and prosecute any action against Dealer in any court of competent jurisdiction and Dealer consents to such Forum as DSC may elect.

22. WAIVER OF BOND: Dealer waives, to the extent permitted by law, any bond or surety or security on such bond which might, but for this waiver, be required of DSC.

23. WAIVER OF JURY TRIAL: DEALER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY OTHER LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY COURSE OF CONDUCT, STATEMENT, WHETHER ORAL OR WRITTEN, OR ACTIONS OF THE DEALER. THE DEALER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL HAVE NOT BEEN DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY DSC EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH DEALER AND DSC.

24. HEADINGS: Paragraph headings used in this Note are for reference only and shall not affect the construction of this Note.

WHEREFORE, the parties have, by their duly authorized representatives, executed this Note on the 15 day of March, 2007.

Dealer: Total Inc. DBA Gaul's Used Cars

Accepted By: Dealer Services Corporation

By: _____
DSC Officer

Signatures: Edward Keith Potter President
Edward Keith Potter, President

THIS IS A COPY OF THE DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT; THE SOLE ORIGINAL COUNTERPART OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT HAS BEEN DELIVERED TO TEXTRON FINANCIAL CORPORATION, AS AGENT, UNDER THAT CERTAIN AMENDED AND RESTATED PARTICIPATION AGREEMENT DATED AS OF MAY 31, 2006; EXCEPT AS EXPRESSLY PERMITTED IN SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT, ANY PURCHASE OR OTHER TRANSFER OF THIS DEMAND PROMISSORY NOTE AND SECURITY AGREEMENT FROM DEALER SERVICES CORPORATION WILL VIOLATE THE RIGHTS OF THE PARTICIPANTS UNDER SAID AMENDED AND RESTATED PARTICIPATION AGREEMENT.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2014-002467

Dealer Services Corporation Respondent,

v.

Total, Inc. d/b/a Gault's Used Cars d/b/a Gault's Auto Parts d/b/a Gault's Used Cars and Auto Parts d/b/a Gault's Used Cars and Motormaxx; Edward Keith Potter; Michael Wayne Gault; Christopher Drye d/b/a Drye's Auto Crushing; Ben D. Kochenower, CPA; Automotive Finance Corporation; Grandsouth Bank d/b/a CarBucks; Mason Motors, Inc. d/b/a Mason Ent; American Community Bank, a Division of Yadkin Valley Bank and Trust Company; Quick Capital, LLC d/b/a Quick Capital; and Auto Bank Floor plan, LLC Defendants,

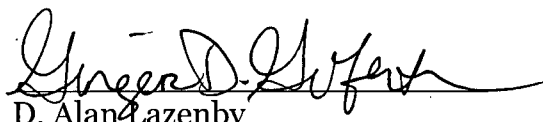
Of whom,

Total, Inc. d/b/a Gault's Used Cars d/b/a Gault's Auto Parts d/b/a Gault's Used Cars and Auto Parts d/b/a Gault's Used Cars and Motormaxx; Edward Keith Potter; Michael Wayne Gault
are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties.

SIGNATURE LINE TO FOLLOW



D. Alan Lazenby

Ginger D. Goforth

LAZENBY LAW FIRM, LLC

PO Box 6099

Spartanburg, SC 29304

Phone: (864) 804-5050

Fax: (864) 804-5051

ATTORNEYS FOR APPELLANT

September 14, 2015