

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 8:20-cv-00325-T-35AEP

BRIAN DAVISON, BARRY M.
RYBICKI, EQUIALT LLC, EQUIALT
FUND, LLC, EQUIALT FUND II, LLC,
EQUIALT FUND III, LLC, EA SIP, LLC.
128 E. DAVIS BLVD, LLC, 310 78TH
AVE, LLC, 551 3D AVE S, LLC, 604
WEST AZEELE, LLC, BLUE WATERS
TI, LLC, 2101 W. CYPRESS, LLC, 2112
W. KENNEDY BLVD, LLC, BNAZ, LLC,
BR SUPPORT SERVICES, LLC, CAPRI
HAVEN, LLC, EANY, LLC,
BUNGALOWS TI, LLC, EQUIALT 519
3RD AVE S., LLC, MCDONALD
REVOCABLE LIVING TRUST, 5123 E.
BROADWAY AVE, LLC, SILVER SANDS
TI, LLC, TB OLDEST HOUSE EST. 1842,
LLC,

Defendants.

**NON-PARTY, BANK OF AMERICA, N.A.'S MOTION FOR RECONSIDERATION OF
THE ORDER ON RECEIVER'S UNOPPOSED MOTION TO APPROVE SALE OF
PERSONAL PROPERTY (HIGH-END VEHICLES) AND
LIMITED OPPOSITION IN RESPONSE TO RECEIVER'S MOTION
TO APPROVE SALE OF PERSONAL PROPERTY (HIGH-END VEHICLES)**

Non-party Bank of America, N.A. ("Bank of America" or the "Bank"), by and through its undersigned counsel, pursuant to Fed. R. Civ. P. 60(b), hereby moves for reconsideration of this Court's Order [ECF 210] (the "November 2, 2020 Order") on the Receiver's Unopposed Motion to Approve Sale of Personal Property (High-End Vehicles) [ECF 208] (the "Sales Motion"), and hereby

files its limited response objecting to the Sales Motion, filed by Burton W. Wiand, as receiver over the assets of the corporate and relief defendants (the “Receiver”) which requests that this Court approve of the sale of certain luxury automobiles, free and clear of any and all liens, encumbrances, and claims. As grounds therefore, Bank of America states as follows:

REQUEST FOR HEARING ON BANK OF AMERICA’S MOTION

Pursuant to M. D. Fla. L. R. 3.01(j), Bank of America respectfully requests a fifteen-minute hearing for this Court to reconsider the November 2, 2020 Order on the Receiver’s Sales Motion. The November 2, 2020 Order authorizes the Receiver to engage in the marketing and sale of “certain high-end vehicles” and to “use the proceeds of the sales to satisfy any lien or relevant creditor’s claim.” The “certain high-end vehicles” referenced in the November 2, 2020 Order include a 2020 Bentley Convertible GTC V8 (VIN: SCBDG4ZG8LC075930) (the “Bentley” or the “Vehicle”). Bank of America has a superior lien interest in the Bentley by virtue of its financing agreement more fully described below; however, the November 2, 2020 Order does not provide any safeguards to protect the Bank’s interest in the Bentley.

Importantly, the Bank was not notified of the Receiver’s intent to move this Court for the entry of an order authorizing the Receiver to sell the Bentley via an online auction. Had the Receiver properly notified the Bank, the Receiver would have been reminded of the Bank’s concern in protecting its superior interest in the Bentley. After the Receiver filed the Sales Motion, the undersigned contacted the Receiver in a good faith attempt to work out safeguards to ensure the protection of the Bank’s lien interest. Specifically, the November 2, 2020 Order does not provide any assurances that the Bank will be paid first and that the Bentley will be returned to the Bank if the Receiver is unable to sell the Bentley for more than the amount of the Bank’s lien. To date, the Receiver has not been willing to confirm that the Bentley will be sold in excess of the Bank’s outstanding lien interest even though the Receiver presented in the Sales Motion that the Bentley

“should” be sold for more than the outstanding amount of the lien. *See* [ECF 208] at pg. 3. The Receiver is also unwilling to agree to payment of the Bank’s attorney’s fees which were incurred in its effort to collect the debt owed to Bank. Accordingly, Bank of America respectfully requests that this Court entertain a fifteen-minute hearing to modify, or in the alternative, clarify the language of the November 2, 2020 Order which does not adequately protect Bank of America’s superior interest in the Bentley.

STATEMENT OF FACTS

On or about December 15, 2019, FL DAV LLC, an entity not subject to either this action or the Receivership in the instant matter, and Defendant, Brian Davison, (collectively, the “Buyers”) purchased a 2020 Bentley Continental GTC (the “Vehicle” or the “Bentley”) from Fields Motorcars Orlando. A true and correct copy of the *Retail Installment Sale Contract Simple Finance Charge* (the “Financing Contract”) is attached hereto as **Exhibit A**. The purchase price of the Bentley was \$343,380.65. *See Id.* The purchase of the Bentley was funded by trade of a 2017 Aston Martin Rapide S, for \$115,000, along with \$22,894.81 in cash for a total down payment of \$137,894.81. The Buyers received financing from Bank of America for the remaining balance of \$182,737.88 owed on the Bentley. *See Id.*

Subsequently, Defendant, Brian Davison (the “Defendant”) and non-party FL DAV LLC, defaulted on their first payment owed to the Bank in the amount of \$2,853.00 on January 14, 2020. *See Exhibit A*. Since the execution of the Financing Contract, neither FL DAV LLC nor the Defendant have made single payment to Bank of America on the Bentley. As a result of the Buyers’ default, the current payoff figure of the Bentley (including principal, fees and interest) as of November 12, 2020 is \$184,119.21 with interest accruing at a rate of \$19.73 per day. A true and correct copy of the *Declaration of Edward Arciniega in Support of Non-Party, Bank of America, N.A.’s Motion for Reconsideration of Order on Receiver’s Unopposed Motion to Approve Sale of*

Personal Property (High-End Vehicles) and Limited Opposition in Response to Receiver's Motion to Approve Sale of Personal Property (High-End Vehicles) is attached hereto as **Exhibit B**. Under the terms of the Financing Contract, the Defendant and FL DAV LLC are required to pay attorney's fees for collection efforts for the Vehicle due to non-payment. *See* page 3 of **Exhibit A**. Bank of America has incurred attorney's fees due to its collection efforts of its unpaid debt. Specifically, Bank of America has incurred fees in connection with the Receiver taking possession of the Vehicle, along with having to file this motion and therefore Bank of America seeks leave to file Affidavits of its Attorney's Fees reflecting the fees incurred in this matter.

The Bank's counsel communicated with the Receiver on numerous occasions in March and April regarding the Vehicle, before and after the Defendant turned the Vehicle over to the Receiver. During this time, the Bank's counsel conveyed to the Receiver's attorney the Bank's concern about protecting its superior lien interest in the Bentley and its objection to anyone other than the Bank selling the Bentley. The Receiver's attorney expressed that she understood the Bank's concerns. However, the Receiver subsequently filed the Sales Motion [ECF 208] on October 28, 2020, requesting the Court authorize the Receiver to sell the Bentley and represented to the Court that the parties to the action did not object to the relief sought. While the parties to action may have not objected, the Receiver inadvertently failed to mention that interested non-party, Bank of America objected to the relief sought in the Sales Motion. In an apparent error, the Receiver failed to reach out to Bank of America prior to seeking relief, and thus failed to mention to the Court the Bank's objections to the Receiver's moving to sell the Vehicle without proper assurances.

After the Receiver filed the Sales Motion, the undersigned contacted the Receiver in a good faith attempt to work out safeguards to ensure the Bank's lien interest was protected. The November 2, 2020 Order states "[t]he Receiver shall use the proceeds of the sales [of the vehicles] to satisfy any lien or relevant creditor's claim." Despite the Receiver advising the Court in its Sales Motion that

the Bentley “should be sold for more” than the balance of the lien, the Receiver has been unwilling to confirm that safeguards will be put in place to ensure that the Bentley will not be sold unless the purchase price exceeds the payoff figure provided above, plus interest. Further, the November 2, 2020 Order does not provide any assurances that the Bentley will be returned to the Bank if the Receiver is unable to sell the Bentley for more than the amount of the Bank’s lien. *See* [ECF 208] at pg. 3. The Receiver is also unwilling to agree to payment of the Bank’s attorney’s fees which have been incurred in its effort to collect the debt owed to Bank.

MEMORANDUM OF LAW

The Bank seeks reconsideration of the November 2, 2020 Order [ECF 210] under Fed. R. Civ. P. 60(b). For reconsideration, the “[c]ourts have distilled three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice.” *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994). “The district courts are necessarily afforded substantial discretion in ruling on motions for reconsideration.” *Id.* at 694. For example, in a Chapter 7 bankruptcy proceeding in the Middle District, this Court has previously utilized such discretion to prevent manifest injustice where the Court found the bank’s response to a proof of claim was not taken into consideration in its order. *See Herendeen v. Regions Bank (In re Able Body Temporary Servs.)*, 2018 Bankr. LEXIS 2670, *11, 2018 WL 11206122 (Bankr. M.D. Fla. Sept. 4, 2018). Similarly, in *APR Energy, LLC v. Fist Inv. Group Corp.*, 2015 U.S. Dist. LEXIS 20521, *49-50 (M.D. Fla. Aug. 20, 2020), the Court vacated an order where there was a “manifest error of fact which must be corrected” in light of a misrepresentation to the court about the identity of parties concerning an anti-suit injunction.

In the case at bar, the Court’s reconsideration of the November 2, 2020 Order is justified as there is need to correct a “clear error” made by the Receiver in its failure to notify the Bank of the

relief sought in the Sales Motion [ECF 208] and then failing to advise the Court of Bank of America's objection to the relief sought in the Sales Motion. Alternatively, if the conduct was intentional, which the Bank does not believe it was, it would be a manifest injustice on Bank of America for the Court to rely on intentionally misleading information. Specifically, the Court entered its November 2, 2020 Order in reliance upon the Receiver's assertion that this matter was not opposed. On the contrary, the Receiver was aware that Bank of America, an interested party—with a lien interest of almost \$200,000.00, opposed the proposed relief sought by the Receiver and had concerns that its superior interest would not be adequately protected. This point was not placed in front of the Court for its consideration prior to entry of the Order. To deny the entity with a superior interest in the Vehicle the opportunity to be heard prior to entry of a ruling would be a manifest injustice.

As the Bank has a superior interest in the Vehicle, it also has standing to challenge the methods of the sale; therefore, it was incumbent upon the Receiver to notify the Bank of the its proposed relief in the Sales Motion. In fact, courts have held that a secured creditor must challenge the means of the sale of property prior to the sale of said property:

A secured creditor with knowledge of a Receiver's intent to sell specifically identified property cannot remain silent with that knowledge and not act upon it and then be heard to complain that the Receiver made the wrong decision. The secured creditor is entitled to prove the Receiver was wrong in selling certain property and recover damage for those items, but it avails the creditor nothing in these circumstances to contend the Receiver was grossly negligent for making that decision when the creditor had the opportunity and the right upon application to the Court to be heard and to restrain the Receiver if he was acting improperly.

In re Schwen's, Inc., 19 B.R. 681, 694, 1981 Bankr. LEXIS 2876, *38-39 (Bankr. D. Minn. 1981).

Here, as the Receiver did not provide the Bank notice of the relief sought in the Sales Motion, the Bank was denied the opportunity to challenge the relief sought prior to the entry of the November 2, 2020 Order.

Put simply, the Court's November 2, 2020 Order does not adequately protect the Bank's interest in the Vehicle. The November 2, 2020 Order [ECF 210] *only* specifies that "[t]he receiver shall use the proceeds of the sales to satisfy any lien or relevant creditor's claim." The November 2, 2020 Order does not provide any assurances that the Bank's prior lien will be paid in full. Specifically, if the Receiver is unable to guarantee a sale of the Vehicle for more than the Bank's lien interest, the Vehicle should be returned to the Bank. The Receiver alleges they are uniquely situated to sell the Vehicle because the Bank does not have an interest in selling the Bentley for more than Bank's lien interest. This argument lacks merit if the Receiver cannot at least sell the Vehicle for the full amount of the lien interest of the Bank and remains unwilling to commit to a reserve price.

Case law holds that the Receiver shall only be entitled to proceeds in excess of the Bank's contractual lien interest. *SEC v. Elliott*, 1989 U.S. Dist. LEXIS 19096, *31, Fed. Sec. L. Rep. (CCH) P94,440 (S.D. Fla. April 29, 1989) (reversed in part on other grounds); *See also SEC v. Elliott*, 953 F.2d 1560, 1576 (11th Cir. 1992). ("The Receiver shall be authorized to repay secured creditors... to the extent of the amount of their approved claim, principal and interest due from funds generated from the net proceeds from the sale of their collateral in accord with terms of their agreements."). Here, the Receiver's interest can only be derived by selling the Vehicle for more than what the Bank is owed. Unless the Receiver sells the Vehicle for more than the amount owed, the Bank is the only entity with an interest in the Vehicle; therefore, the Bank is in the best position to determine the ultimate disposition of its collateral.

Based on the foregoing, the Bank requests that the Court reconsider the November 2, 2020 Order and either vacate the November 2, 2020 Order or enter an amended order that specifically provides: (1) that the Receiver place a reserve on the Bentley of an amount no less than the Bank's outstanding lien interest; or alternatively, turn over the Vehicle to Bank of America to be sold, and clarifies (2) that the Bank is to be paid in full, including the loan principal, fees, interest, and

attorney's fees, as authorized by the Finance Contract. It should be noted that the Bank is entitled to the full amount it would be owed under the Finance Contract even without a Receiver in place. *See e.g. Corcoran v. Transouth Fin. Corp. (In re Corcoran)*, 268 B.R. 882, 885 (Bankr. M.D. Fla. 2001) (citing to Florida Statute Chapter 520 in dismissing a debtor's claim that the interest rate provided in the installment contract exceeded the legal limit).

WHEREFORE, Bank of America respectfully requests this Honorable Court enter an Order, granting Bank of America's Motion for Reconsideration:

- a. Directing the Receiver to turn over the Bentley to Bank of America if the Receiver is unable to sell the Bentley for at least the full amount of the Bank's lien interest;
- b. Directing that the Bank shall be paid in full, including its loan principal balance, interest, fees, including reasonable attorney's fees as authorized under its Finance Agreement with the Defendant and FL DAV LLC;
- c. And provide any other or further relief deemed just and proper by this Court.

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LOCAL RULE 3.01(G) CERTIFICATION

I HEREBY CERTIFY that Liebler, Gonzalez & Portuondo conferred with counsel for SEC, counsel for the Receiver and counsel for Mr. Davison and the parties were unable to reach consensus to the relief requested in the forgoing motion.

LIEBLER, GONZALEZ & PORTUONDO

Counsel for Non-Party, Bank of America, N.A.

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By: /s/Jaimée L. Braverman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2020, I electronically caused the foregoing document to be filed with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record in the manner specified via transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/Jaimée L. Braverman

JAIMEE L. BRAVERMAN

Florida Bar No. 62452

EXHIBIT A

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Seller-Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis at the Base Rate of 3.94 % per year. The Truth-In-Lending Disclosures below are part of this contract. You have thoroughly inspected, accepted, and approved the vehicle in all respects.

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. <u>3.94</u> %	FINANCE CHARGE The dollar amount the credit will cost you. \$ <u>22737.96</u>	Amount Financed The amount of credit provided to you or on your behalf. \$ <u>182747.88</u>	Total of Payments The amount you will have paid after you have made all payments as scheduled. \$ <u>205485.84</u>	Total Sale Price The total cost of your purchase or credit, including your down payment of \$ <u>137894.81</u> is \$ <u>343380.65</u>
Your Payment Schedule Will Be: (e) means an estimate				
Number of Payments	Amount of Payments	When Payments Are Due		
72	2853.97	Monthly beginning 01/14/2020		
N/A	N/A	N/A		
Or As Follows: N/A				
Late Charge. If payment is not received in full within <u>10</u> days after it is due, you will pay a late charge of <u>5</u> % of each installment. Prepayment. If you pay early, you may have to pay a penalty. Security Interest. You are giving a security interest in the vehicle being purchased. Additional Information: See this contract for more information including information about nonpayment, default, prepayment penalties, any required repayment in full before the scheduled date and security interest.				

ITEMIZATION OF AMOUNT FINANCED		
1	Cash Price (including \$ <u>11696.39</u> sales tax)	\$ <u>308646.39</u> (1)
2	Total Downpayment =	
	Gross Trade-In Allowance	\$ <u>115000.00</u>
	Less Pay Off Made By Seller (e)	\$ <u>N/A</u>
	Equals Net Trade In	\$ <u>115000.00</u>
	+ Cash	\$ <u>22894.81</u>
	+ Other _____	\$ <u>N/A</u>
	+ Other <u>N/A</u>	\$ <u>N/A</u>
	(If total downpayment is negative, enter "0" and see 5J below)	\$ <u>137894.81</u> (2)
3	Unpaid Balance of Cash Price (1 minus 2)	\$ <u>170751.58</u> (3)
4	Predelivery Service Fees	
	A Predelivery Service Charge \$ <u>N/A</u>	
	B Electronic Registration Filing Fee \$ <u>N/A</u>	
	C <u>N/A</u> \$ <u>N/A</u>	
	These charges represent costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale.	
	Total Predelivery Service Fees	\$ <u>N/A</u> (4)
5	Other Charges Including Amounts Paid to Others on Your Behalf	
	(Seller may keep part of these amounts):	
	A Cost of Optional Credit Insurance Paid to Insurance Company or Companies.	
	Life \$ <u>N/A</u>	
	Disability \$ <u>N/A</u>	\$ <u>N/A</u>
	B Vendor's Single Interest Insurance Paid to Insurance Company	\$ <u>N/A</u>
	C Other Optional Insurance Paid to Insurance Company or Companies	\$ <u>N/A</u>
	D Optional Gap Contract	\$ <u>N/A</u>
	E Official Fees Paid to Government Agencies	\$ <u>N/A</u>
	F Government Documentary Stamp Taxes	\$ <u>639.80</u>
	G Government Taxes Not Included in Cash Price	\$ <u>N/A</u>
	H Government License and/or Registration Fees	\$ <u>450.00</u>
	I Government Certificate of Title Fees	\$ <u>N/A</u>
J	Other Charges (Seller must identify who is paid and describe purpose)	
	to <u>N/A</u> for Prior Credit or Lease Balance (e)	\$ <u>N/A</u>
	to <u>N/A</u> for <u>N/A</u>	\$ <u>N/A</u>
	to <u>STATE OF FL</u> for <u>TIRE DISPOSAL</u>	\$ <u>5.00</u>
	to <u>STATE OF FL</u> for <u>BATTERY DISPOSAL</u>	\$ <u>1.50</u>
	to <u>DEALER</u> for <u>FULL BODY CLEAR BR</u>	\$ <u>6000.00</u>
	to <u>DEALER</u> for <u>CERAMIC LUX WINDOW</u>	\$ <u>500.00</u>
	to <u>DEALER</u> for <u>CERAMIC PRO EXT. C</u>	\$ <u>2500.00</u>
	to <u>SAFEGUARD</u> for <u>BENTLEY ROAD HAZAR</u>	\$ <u>1900.00</u>
	to <u>N/A</u> for <u>N/A</u>	\$ <u>N/A</u>
	to <u>N/A</u> for <u>N/A</u>	\$ <u>N/A</u>
	Total Other Charges and Amounts Paid to Others on Your Behalf	\$ <u>11996.30</u> (5)
6	Loan Processing Fee Paid to Seller (Prepaid Finance Charge)	\$ <u>N/A</u> (6)
7	Amount Financed (3 plus 4 plus 5)	\$ <u>182747.88</u> (7)

OPTION: ☐ You pay no finance charge if the Amount Financed, item 7, is paid in full on or before N/A, Year N/A. SELLER'S INITIALS N/A



OPTIONAL GAP CONTRACT. A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 5D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term N/A Mos. N/A
 I want to buy a gap contract. Name of Gap Contract _____
 Buyer Signs X N/A

☐ **VENDOR'S SINGLE INTEREST INSURANCE (VSI insurance):** If the preceding box is checked, the Creditor requires VSI insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft, concealment, skip). VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. **You may choose the insurance company through which the VSI insurance is obtained.** If you elect to purchase VSI insurance through the Creditor, **the cost of this insurance is \$ N/A** and is also shown in Item 5B of the Itemization of Amount Financed. The coverage is for the initial term of the contract.

You authorize us to purchase Vendor's or Lender's Single Interest Insurance.

Buyer Signs **X** N/A Co-Buyer Signs **X** N/A Date: 12/15/19

Trade-In Vehicle		Trade-In Vehicle	
Year	2011 Make ASTON MARTIN	Year	N/A Make N/A
Model	RAPIDE S	Model	N/A
VIN	SCFHMDFS9HGF05954	VIN	N/A
Gross Trade-In Allowance \$	115000.00	Gross Trade-In Allowance \$	N/A
Payoff Made by Seller \$	N/A (e)	Payoff Made by Seller \$	N/A (e)
Lienholder	N/A	Lienholder	N/A
<p>You assign to Seller all of your rights, title and interest in such trade-in vehicle(s). Except as expressly stated to Seller in writing, you represent that your trade-in vehicle(s) has not been involved in an accident, has not had any major body damage or required any major engine repair, and was not previously used as a taxicab, police vehicle, short term rental or is a vehicle that is rebuilt or assembled from parts, a kit car, a replica, a flood vehicle, or a manufacturer buy back.</p>			
Buyer Initials 		Co-Buyer Initials 	
<p>Trade-In Payoff Agreement: Seller relied on information from you and/or the lienholder or lessor of your trade-in vehicle to arrive at the trade-in payoff amount shown above and in Item 2 of the Itemization of Amount Financed as the Pay Off Made by Seller. You understand that the amount quoted is an estimate.</p> <p>Seller agrees to pay the payoff amount shown above and in Item 2 to the lienholder or lessor of the trade-in vehicle, or its designee. If the actual payoff amount is more than the amount shown above and in Item 2 you must pay the Seller the excess on demand. If the actual payoff amount is less than the amount shown above and in Item 2 Seller will refund to you any overage Seller receives from your prior lienholder or lessor. Except as stated in the "NOTICE" on the back of this contract, any assignee of this contract will not be obligated to pay the Pay Off Made by Seller shown above and in Item 2 or any refund.</p>			
Buyer Signature N/A		Co-Buyer Signature X	

JURY TRIAL WAIVER. By entering this contract, you agree to waive your right to trial by jury.

Buyer Signature X [Signature] Managing Member Co-Buyer Signature X [Signature]

SELLER'S RIGHT TO CANCEL - If Buyer and Co-buyer sign here, the provisions of the Seller's Right to Cancel section on the back, which gives the Seller the right to cancel if Seller is unable to assign this contract within _____ days, will apply. If you fail to return the vehicle within 48 hours after receipt of the notice of cancellation, you agree to pay Seller a charge of \$ N/A per day from the date of cancellation until the vehicle is returned or repossessed.

X N/A X N/A
 Buyer Signs Co-Buyer Signs

NO COOLING OFF PERIOD
State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding.

Buyer Signs: X [Signature] Seller Signs: X [Signature]


If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.

See back for other important agreements.

NOTICE TO THE BUYER: a) Do not sign this contract before you read it or if it contains any blank spaces. b) You are entitled to an exact copy of the contract you sign. Keep it to protect your legal rights.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs: [Signature] *Managing Member* Date 12/15/19 Co-Buyer Signs: X [Signature] Date 12/15/19
If the "business" use box is checked in "Primary Use for Which Purchased": Print Name Brian D. Davison Title Managing Member
Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here **X** **N/A** Address **N/A**
 Seller Signs **FIELDS MOTORCARS ORLANDO** Date **12/15/19** By **X**  Title **MANAGER**

Seller assigns its interest in this contract to BANK OF AMERICA (Assignee) under the terms of Seller's agreement(s) with Assignee.

☐ Assigned with recourse ☒ Assigned without recourse ☐ Assigned with limited recourse

Seller _____ By [Signature] Title Finance Manager
ILAW FORM NO. 553-FL (REV. 8/19) ©2019 The Reynolds and Reynolds Company TO ORDER: www.raysource.com; 1-800-344-0996; fax 1-800-531-9055
 /FIA00731 ORIGINAL LIENHOLDER

1. FINANCE CHARGE AND PAYMENTS

- a. **How we will figure Finance Charge.** We will treat any Prepaid Finance Charge as fully earned on the date of this contract. We will figure the rest of the finance charge on a daily basis at the Base Rate on the unpaid part of your Principal Balance. Your Principal Balance is the sum of the Amount Financed and the Prepaid Finance Charge, if any.
- b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of your Principal Balance and to other amounts you owe under this contract in any order we choose as the law allows.
- c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. **You may prepay.** You may prepay all or part of your Principal Balance at any time. If the contract is paid in full within six months after the date you sign it, we may impose an acquisition charge, not exceeding \$75, for services performed on your behalf for processing this contract. If you prepay, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. **You may ask for a payment extension.** You may ask us for a deferral of the scheduled due date of all or any part of a payment (extension). If we agree to your request, we may charge you a \$15 extension fee. You must maintain the physical damage insurance required by this contract (see below) during any extension. If you do not have this insurance, we may buy it and charge you for it as this contract says. You may extend the term of any optional insurance you bought with this contract to cover the extension if the insurance company or your insurance contract permits it, and you pay the charge for extending this insurance.
- If you get a payment extension, you will pay additional finance charges at the Base Rate on the amount extended during the extension. You will also pay any additional insurance charges resulting from the extension, and the \$15 extension fee if we charge you this fee.

2. YOUR OTHER PROMISES TO US

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security Interest.**
You give us a security interest in:
 - The vehicle and all parts or goods put on it;
 - All money or goods received (proceeds) for the vehicle;
 - All insurance, maintenance, service, or other contracts we finance for you; and
 - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.
- d. **Insurance you must have on the vehicle.**
You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. You agree to name us on your insurance policy as an additional insured and as loss payee. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium for the insurance and a finance charge at the highest rate the law permits. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- e. **What happens to returned insurance, maintenance, service, or other contract charges.** If we obtain a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. **You may owe late charges.** You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.
If you pay late, we may also take the steps described below.
- b. **You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe on this contract at once. Default means:
 - You do not pay any payment on time;
 - You give false, incomplete, or misleading information during credit application;
 - You start a proceeding in bankruptcy or one is started against you or your property; or
 - You break any agreements in this contract.

The amount you will owe will be the unpaid part of your Principal Balance plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.

- c. **You may have to pay collection costs.** If we hire an attorney to collect what you owe, you will pay the attorney's fee and court costs as the law allows. This includes any attorneys' fees we incur as a result of any bankruptcy proceeding brought by or against you under federal law.
- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device (such as GPS), you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you. If you do not ask for these items back, we may dispose of them as the law allows.
- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
- f. **We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle.
We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.
- g. **What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, you agree that we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

4. WARRANTIES SELLER DISCLAIMS

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.
This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

5. Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

6. OPTIONAL SERVICE CONTRACTS

You are not required to buy a service contract to obtain credit. Your choice of service contract providers for any service contracts you buy will not affect our decision to sell or extend credit to you.

7. REJECTION OR REVOCATION

If you are permitted under Florida's Uniform Commercial Code to reject or revoke acceptance of the vehicle and you claim a security interest in the vehicle because of this, you must either: (a) post a bond in the amount of the disputed balance; or (b) deposit all installment payments as they become due into the registry of a court of competent jurisdiction.

8. SERVICING AND COLLECTION CONTACTS

You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

9. APPLICABLE LAW

Federal law and the law of the state of Florida apply to this contract.

Seller's Right to Cancel

- a. **Seller agrees to deliver the vehicle to you on the date this contract is signed by Seller and you.** You understand that it may take a few days for Seller to verify your credit, locate financing for you on the exact terms shown on the front of this contract, and assign this contract to a financial institution. You agree that Seller has the number of days stated on the front of this contract to assign this contract. You agree that if Seller is unable to assign this contract within this time period to any one of the financial institutions with whom Seller regularly does business under an assignment acceptable to Seller, Seller may cancel this contract. Seller's right to cancel this contract ends upon assignment of this contract.
- b. **If Seller elects to cancel per Paragraph a above, Seller will give you written notice (or in any other manner in which actual notice is given to you).** In that event, you may have the option of negotiating and signing a new contract with different financing terms (for example, a larger down payment, a higher annual percentage rate, a required cosigner, etc.) or you may pay with alternate funds arranged by you.
- c. **Upon receipt of the notice of cancellation, you must return the vehicle to Seller within 48 hours in the same condition as when sold other than reasonable wear for the time you had it.** Except as described below, Seller must give you back all consideration Seller has received from you in connection with this contract.
- d. **If you do not return the vehicle within 48 hours after receipt of the notice of cancellation, you agree that Seller may use any lawful means to take it back (including repossession if done peacefully) and you will be liable for all expenses incurred by Seller in taking the vehicle from you, including reasonable attorney's fees.** If you fail to return the vehicle within 48 hours after receipt of the notice of cancellation, you agree to pay Seller the charge shown in the Seller's Right to Cancel provision on the front of this contract for each day you do not return the vehicle after receipt of the notice of cancellation.
- e. **While the vehicle is in your possession, all terms of this contract, including those relating to use of the vehicle and insurance for the vehicle, are in full force and you assume all risk of loss or damage to the vehicle.** You must pay all reasonable costs for repair of any damage done to the vehicle while the vehicle is in your possession. Seller may deduct from any consideration due to you under paragraph c. above Seller's reasonable costs to repair the vehicle and any daily charges you incur if you fail to return the vehicle within 48 hours after receipt of the notice of cancellation. If Seller cancels this contract, the terms of this Seller's Right to Cancel provision (including those on the front of this contract) remain in effect even after you no longer have possession of the vehicle.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only to goods or services obtained primarily for personal, family or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

EXHIBIT B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Case No. 8:20-CV-325-T-35AEP

Plaintiff,

v.

BRIAN DAVISON, et al.,

Defendants.

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

DECLARATION OF EDWARD ARCINIEGA IN SUPPORT OF NON-PARTY, BANK OF AMERICA, N.A.'S MOTION FOR RECONSIDERATION OF ORDER ON RECEIVER'S UNOPPOSED MOTION TO APPROVE SALE OF PERSONAL PROPERTY (HIGH-END VEHICLES) AND LIMITED OPPOSITION IN RESPONSE TO RECEIVER'S MOTION TO APPROVE SALE OF PERSONAL PROPERTY (HIGH-END VEHICLES)

I, Edward Arciniega, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct as follows:

1. I am employed by non-party, Bank of America, N.A. ("Bank of America" or the "Bank") as a Senior Vice President with the Consumer Vehicle Collections Department. In that position, my duties include supervising and directing the affairs of Bank of America as they relate to the collection of certain claims, including the indebtedness evidenced by the Retail Installment Sale Contract Simple Finance Charge (the "Financing Agreement") for that certain 2020 Bentley Convertible GTC V8, VIN: SCBDG4ZG8LC075930 (the "Vehicle"), dated December 15, 20019 and executed by Brian D. Davison, individually ("DAVISON") and on behalf of FL DAV, LLC ("FL DAV, LLC"), which is owned and held by Bank of America. (the "Indebtedness").

2. In my aforementioned capacity, I am also the custodian of the business records of Bank of America as they relate to certain assets and claims, including the indebtedness as set forth herein and the claims made by Bank of America in the instant action against DAVISON and FL DAV, LLC.

3. This declaration is based upon my personal knowledge pursuant to my review of the Financing Documents as well as the memoranda, reports, records and data compilations (“Business Records”) of Bank of America. The Business Records were made at or near the time of the occurrence of the facts or events reflected therein by, or from information transmitted by, persons with knowledge of the facts or events reported and whose regular practice it was to make and keep the Business Records in the course of the regularly conducted business activities of Bank of America. I routinely rely on the Business Records in the usual course of my business and the business of Bank of America.

4. Bank of America is the owner and holder of the Financing Agreement, dated on or about December 15, 2019, executed by DAVISON and FL DAV, LLC, evidencing a term loan in the amount of \$182,747.88. (the “Loan”) for the Vehicle. A true and correct copy of the Financing Agreement is attached hereto as **Exhibit “1”**.

5. I have conducted an examination and analysis of the Business Records to confirm the default under the Financing Agreement and current indebtedness due to Bank of America. Based on my review and examination of the Business Records of Bank of America and the Financing Agreement, DAVISON and FL DAV, LLC have defaulted under the Financing Agreement, including without limitation, failing to make payment on January 14, 2020 and all subsequent payments under the Financing Agreement.

6. Based on my review and examination of the Business Records of Bank of America, I know of my own personal knowledge that as of November 12, 2020 there is presently due from DAVISON and FL DAV, LLC jointly and severally to the Bank, the principle balance of \$179,893.91, fees (not including attorney's fees) in the amount of \$713.50, interest in the amount of \$3,511.80, for a total amount of \$184,194.21, with a per diem of \$19.73, exclusive of attorney's fees.

7. The law firm of LIEBLER, GONZALEZ & PORTUONDO has been retained as Bank of America's counsel in this cause and Bank of America has agreed to pay the law firm of LIEBLER, GONZALEZ & PORTUONDO a reasonable fee for their services.

Executed in Diamond Bar, California, this 12th day of November, 2020.

/s/ Edward Arciniega
EDWARD ARCINIEGA
Senior Vice President

EXHIBIT 1

Buyer Name and Address FL DAV LLC [REDACTED]		Co-Buyer Name and Address BRIAN D. DAVISON [REDACTED]		Seller-Creditor (Name and Address) FIELDS MOTORCARS ORLANDO 2202 33RD STREET ORLANDO, FL 32839	
Buyer's Birth Month:		Co-Buyer's Birth Month:			
<p>You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Seller-Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis at the Base Rate of <u>3.94</u> % per year. The Truth-in-Lending Disclosures below are part of this contract. You have thoroughly inspected, accepted, and approved the vehicle in all respects.</p>					
New/Used/ Demo	Year	Make and Model	Weight (lbs.)	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2020	BENTLEY CONT GTC V8	5147	SCBDG4ZG8LC075930	Personal, family, or household unless otherwise indicated below <input checked="" type="checkbox"/> business <input type="checkbox"/> agricultural <input type="checkbox"/> N/A
<p>You agree that we advised you whether, based on seller's knowledge, the vehicle was titled, registered, or used as a taxicab, police vehicle, short term rental or is a vehicle that is rebuilt or assembled from parts, a kit car, a replica, a flood vehicle, or a manufacturer buy back.</p>					

ITEMIZATION OF AMOUNT FINANCED		
1	Cash Price (including \$ <u>11696.39</u> sales tax)	\$ <u>308646.39</u> (1)
2	Total Downpayment =	
	Gross Trade-In Allowance	\$ <u>115000.00</u>
	Less Pay Off Made By Seller (e)	\$ <u>N/A</u>
	Equals Net Trade In	\$ <u>115000.00</u>
	+ Cash	\$ <u>22894.81</u>
	+ Other	\$ <u>N/A</u>
	+ Other <u>N/A</u>	\$ <u>N/A</u>
	(If total downpayment is negative, enter "0" and see 5J below)	\$ <u>137894.81</u> (2)
3	Unpaid Balance of Cash Price (1 minus 2)	\$ <u>170751.58</u> (3)
4	Predelivery Service Fees	
A	Predelivery Service Charge	\$ <u>N/A</u>
B	Electronic Registration Filing Fee	\$ <u>N/A</u>
C	<u>N/A</u>	\$ <u>N/A</u>
	These charges represent costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale.	
	Total Predelivery Service Fees	\$ <u>N/A</u> (4)
5	Other Charges Including Amounts Paid to Others on Your Behalf	
	(Seller may keep part of these amounts):	
A	Cost of Optional Credit Insurance Paid to Insurance Company or Companies.	
	Life	\$ <u>N/A</u>
	Disability	\$ <u>N/A</u>
B	Vendor's Single Interest Insurance Paid to Insurance Company	\$ <u>N/A</u>
C	Other Optional Insurance Paid to Insurance Company or Companies	\$ <u>N/A</u>
D	Optional Gap Contract	\$ <u>N/A</u>
E	Official Fees Paid to Government Agencies	\$ <u>N/A</u>
F	Government Documentary Stamp Taxes	\$ <u>639.80</u>
G	Government Taxes Not Included in Cash Price	\$ <u>N/A</u>
H	Government License and/or Registration Fees	\$ <u>450.00</u>
I	Government Certificate of Title Fees	\$ <u>N/A</u>
J	Other Charges (Seller must identify who is paid and describe purpose)	
	to <u>N/A</u> for Prior Credit or Lease Balance (e)	\$ <u>N/A</u>
	to <u>N/A</u> for <u>N/A</u>	\$ <u>N/A</u>
	to <u>STATE OF FL</u> for <u>TIRE DISPOSAL</u>	\$ <u>5.00</u>
	to <u>STATE OF FL</u> for <u>BATTERY DISPOSAL</u>	\$ <u>1.50</u>
	to <u>DEALER</u> for <u>FULL BODY CLEAR BR</u>	\$ <u>6000.00</u>
	to <u>DEALER</u> for <u>CERAMIC LUX WINDOW</u>	\$ <u>500.00</u>
	to <u>DEALER</u> for <u>CERAMIC PRO EXT. C</u>	\$ <u>2500.00</u>
	to <u>SAFEGUARD</u> for <u>BENTLEY ROAD HAZAR</u>	\$ <u>1900.00</u>
	to <u>N/A</u> for <u>N/A</u>	\$ <u>N/A</u>
	to <u>N/A</u> for <u>N/A</u>	\$ <u>N/A</u>
	Total Other Charges and Amounts Paid to Others on Your Behalf	\$ <u>11996.30</u> (5)
6	Loan Processing Fee Paid to Seller (Prepaid Finance Charge)	\$ <u>N/A</u> (6)
7	Amount Financed (3 plus 4 plus 5)	\$ <u>182747.88</u> (7)

☐ **VENDOR'S SINGLE INTEREST INSURANCE (VSI insurance):** If the preceding box is checked, the Creditor requires VSI insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft, concealment, skip). VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. **You may choose the insurance company through which the VSI insurance is obtained.** If you elect to purchase VSI insurance through the Creditor, **the cost of this insurance is \$ N/A** and is also shown in Item 5B of the Itemization of Amount Financed. The coverage is for the initial term of the contract.

You authorize us to purchase Vendor's or Lender's Single Interest Insurance.

Buyer Signs **X** N/A Co-Buyer Signs **X** N/A Date: 12/15/19

JURY TRIAL WAIVER. By entering this contract, you agree to waive your right to trial by jury.

Buyer Signature X [Signature] Managing Member Co-Buyer Signature X [Signature]

NO COOLING OFF PERIOD
State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding.

Buyer Signs *[Signature]* Seller Signs *[Signature]*

If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.

See back for other important agreements.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.

If the "business" use box is checked in "Primary Use for Which Purchased": Print Name Brian D. Davison Title Managing Member

Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Seller assigns its interest in this contract to BANK OF AMERICA (Assignee) under the terms of Seller's agreement(s) with Assignee.

Seller _____ By _____ Title Finance Manager

ILAW FORM NO. 553-FL (REV. 8/19) ORIGINAL LIENHOLDER

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PRINTED AND EXISTING FOR THE PUBLIC. NO PART OF THIS FORM MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM THE REYNOLDS AND REYNOLDS COMPANY.

1. FINANCE CHARGE AND PAYMENTS

- a. **How we will figure Finance Charge.** We will treat any Prepaid Finance Charge as fully earned on the date of this contract. We will figure the rest of the finance charge on a daily basis at the Base Rate on the unpaid part of your Principal Balance. Your Principal Balance is the sum of the Amount Financed and the Prepaid Finance Charge, if any.
- b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the unpaid part of your Principal Balance and to other amounts you owe under this contract in any order we choose as the law allows.
- c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. **You may prepay.** You may prepay all or part of your Principal Balance at any time. If the contract is paid in full within six months after the date you sign it, we may impose an acquisition charge, not exceeding \$75, for services performed on your behalf for processing this contract. If you prepay, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. **You may ask for a payment extension.** You may ask us for a deferral of the scheduled due date of all or any part of a payment (extension). If we agree to your request, we may charge you a \$15 extension fee. You must maintain the physical damage insurance required by this contract (see below) during any extension. If you do not have this insurance, we may buy it and charge you for it as this contract says. You may extend the term of any optional insurance you bought with this contract to cover the extension if the insurance company or your insurance contract permits it, and you pay the charge for extending this insurance.
- If you get a payment extension, you will pay additional finance charges at the Base Rate on the amount extended during the extension. You will also pay any additional insurance charges resulting from the extension, and the \$15 extension fee if we charge you this fee.

2. YOUR OTHER PROMISES TO US

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security Interest.**
You give us a security interest in:
• The vehicle and all parts or goods put on it;
• All money or goods received (proceeds) for the vehicle;
• All insurance, maintenance, service, or other contracts we finance for you; and
• All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.
This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.
- d. **Insurance you must have on the vehicle.**
You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. You agree to name us on your insurance policy as an additional insured and as loss payee. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium for the insurance and a finance charge at the highest rate the law permits. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- e. **What happens to returned insurance, maintenance, service, or other contract charges.** If we obtain a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. **You may owe late charges.** You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.
If you pay late, we may also take the steps described below.
- b. **You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe on this contract at once. Default means:
• You do not pay any payment on time;
• You give false, incomplete, or misleading information during credit application;
• You start a proceeding in bankruptcy or one is started against you or your property; or
• You break any agreements in this contract.
The amount you will owe will be the unpaid part of your Principal Balance plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.

- c. **You may have to pay collection costs.** If we hire an attorney to collect what you owe, you will pay the attorney's fee and court costs as the law allows. This includes any attorneys' fees we incur as a result of any bankruptcy proceeding brought by or against you under federal law.
- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you if we do so peacefully and the law allows it. If your vehicle has an electronic tracking device (such as GPS), you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you. If you do not ask for these items back, we may dispose of them as the law allows.
- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
- f. **We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle.
We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest lawful rate until you pay.
- g. **What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, you agree that we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

4. WARRANTIES SELLER DISCLAIMS

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.
This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

5. Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

6. OPTIONAL SERVICE CONTRACTS

You are not required to buy a service contract to obtain credit. Your choice of service contract providers for any service contracts you buy will not affect our decision to sell or extend credit to you.

7. REJECTION OR REVOCATION

If you are permitted under Florida's Uniform Commercial Code to reject or revoke acceptance of the vehicle and you claim a security interest in the vehicle because of this, you must either: (a) post a bond in the amount of the disputed balance; or (b) deposit all installment payments as they become due into the registry of a court of competent jurisdiction.

8. SERVICING AND COLLECTION CONTACTS

You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

9. APPLICABLE LAW

Federal law and the law of the state of Florida apply to this contract.

Seller's Right to Cancel

- a. **Seller agrees to deliver the vehicle to you on the date this contract is signed by Seller and you.** You understand that it may take a few days for Seller to verify your credit, locate financing for you on the exact terms shown on the front of this contract, and assign this contract to a financial institution. You agree that Seller has the number of days stated on the front of this contract to assign this contract. You agree that if Seller is unable to assign this contract within this time period to any one of the financial institutions with whom Seller regularly does business under an assignment acceptable to Seller, Seller may cancel this contract. Seller's right to cancel this contract ends upon assignment of this contract.
- b. **If Seller elects to cancel per Paragraph a above, Seller will give you written notice (or in any other manner in which actual notice is given to you).** In that event, you may have the option of negotiating and signing a new contract with different financing terms (for example, a larger down payment, a higher annual percentage rate, a required cosigner, etc.) or you may pay with alternate funds arranged by you.
- c. **Upon receipt of the notice of cancellation, you must return the vehicle to Seller within 48 hours in the same condition as when sold other than reasonable wear for the time you had it.** Except as described below, Seller must give you back all consideration Seller has received from you in connection with this contract.
- d. **If you do not return the vehicle within 48 hours after receipt of the notice of cancellation, you agree that Seller may use any lawful means to take it back (including repossession if done peacefully) and you will be liable for all expenses incurred by Seller in taking the vehicle from you, including reasonable attorney's fees.** If you fail to return the vehicle within 48 hours after receipt of the notice of cancellation, you agree to pay Seller the charge shown in the Seller's Right to Cancel provision on the front of this contract for each day you do not return the vehicle after receipt of the notice of cancellation.
- e. **While the vehicle is in your possession, all terms of this contract, including those relating to use of the vehicle and insurance for the vehicle, are in full force and you assume all risk of loss or damage to the vehicle.** You must pay all reasonable costs for repair of any damage done to the vehicle while the vehicle is in your possession. Seller may deduct from any consideration due to you under paragraph c. above Seller's reasonable costs to repair the vehicle and any daily charges you incur if you fail to return the vehicle within 48 hours after receipt of the notice of cancellation. If Seller cancels this contract, the terms of this Seller's Right to Cancel provision (including those on the front of this contract) remain in effect even after you no longer have possession of the vehicle.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only to goods or services obtained primarily for personal, family or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.