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## Nebraska Judicial Branch

### Case Summary

In the District Court of Cass County  
 The Case ID is CI 19 0000178  
 Pinnacle Bank v. Siebert Mobility, Inc.  
 The Honorable Michael A Smith, presiding.  
 Classification: Contract Disputes  
 Filed on 07/08/2019  
 This case is Closed as of 09/03/2019  
 It was disposed as Settled/Dismissed by Party

### Parties/Attorneys to the Case

<p>Party                  Plaintiff ACTIVE                  Pinnacle Bank</p> <p>Defendant ACTIVE                  Siebert Mobility, Inc.                  c/o Mark A. Tincher, Reg. Agent                  1906 Young Rd.                  Plattsmouth NE 68048</p> <p>Defendant ACTIVE                  Tincher Investments Co., Inc.                  c/o Mark A. Tincher, Reg. Agent                  203 Wiles Road                  Plattsmouth NE 68048</p> <p>Defendant ACTIVE                  Mark A Tincher                  1906 Young Rd.                  Plattsmouth NE 68048</p>	<p>Attorney                  Matthew J Kivett                  P.O. Box 540125                  11240 Davenport Street                  Omaha NE 68154                  402-330-6300</p>
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### Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	07/08/2019	\$35.00
Plaintiff	Filing Fee - State	07/08/2019	\$1.00
Plaintiff	Automation Fee	07/08/2019	\$8.00
Plaintiff	NSC Education Fee	07/08/2019	\$1.00
Plaintiff	Dispute Resolution Fee	07/08/2019	\$0.75
Plaintiff	Indigent Defense Fee	07/08/2019	\$3.00
Plaintiff	Uniform Data Analysis Fee	07/08/2019	\$1.00
Plaintiff	J.R.F.	07/08/2019	\$6.00
Plaintiff	Filing Fee-JRF	07/08/2019	\$6.00

Incurring By	Account	Date	Amount
Plaintiff	Legal Aid/Services Fund	07/08/2019	\$6.25
Plaintiff	Complete Record	07/08/2019	\$15.00
Plaintiff	Service Fees	07/22/2019	\$8.05
Plaintiff	Service Fees	07/12/2019	\$32.03

### Financial Activity

No trust money is held by the court  
No fee money is held by the court

### Payments Made to the Court

Receipt	Type	Date	For	Amount
9063855	Non-Monetary Rec	07/22/2019	Pinnacle Bank	\$8.05
			Service Fees	\$8.05
9063840	Non-Monetary Rec	07/12/2019	Pinnacle Bank	\$32.03
			Service Fees	\$32.03
101722	Electronic Trans	07/08/2019	Pinnacle Bank	\$83.00
			Petition	\$35.00
			Filing Fee - State	\$1.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$6.00
			Legal Aid/Services Fun	\$6.25
			Complete Record	\$15.00

### Register of Actions

09/03/2019 Dismissal without Prejudice

09/03/2019 Order-Dismissal

This action initiated by Michael A Smith  
The Cause of Action of the Plf is dismissed without prejudice at the cost  
of the Plf. eNotice Certificate Attached  
Image ID 000099365D20

08/29/2019 Motion-Dismiss  
This action initiated by party Pinnacle Bank  
Plf moves court for an Order dismissing it cause of action, without prej,  
at cost of plf.

Image ID N192416GYD20

07/22/2019 Return Summons/Alias Summons  
The document number is 00032466  
Served 07/12/2019, Certified Mail  
Copies of Summons were mailed by Cert Mail to Sibert Mobility Inc.  
c/o Mark A. Tincher, President @ 5450 L St., Omaha, NE  
Image ID N192032W0D20

07/12/2019 Return Summons/Alias Summons  
The document number is 00032468  
Served 07/10/2019, Cass County Sheriff  
Personal Service  
Served Summons & Complaint @ 1906 Young Blvd, Plattsmouth, NE  
Image ID 000098096D20

07/09/2019 Summons Issued on Mark A Tincher  
The document number is 00032468  
Image ID D00032468D20

07/09/2019 Summons Issued on Tincher Investments Co., Inc.  
The document number is 00032467  
E-MAILED: mattkivett@womglaw.com  
Image ID D00032467D20

07/09/2019 Summons Issued on Siebert Mobility, Inc.  
The document number is 00032466  
E-MAILED: mattkivett@womglaw.com  
Image ID D00032466D20

07/09/2019 Summons Issued on Siebert Mobility, Inc.  
The document number is 00032465

E-MAILED: mattkivett@womglaw.com  
Image ID D00032465D20

07/09/2019 Demand for Jury Trial  
For Progression Purposes Only

07/08/2019 Praecipe-Summons/Alias  
This action initiated by party Pinnacle Bank  
Cass Co Shf to serve Mark Tincher by pers svc. Siebert Mobility, Tincher  
Inv & Sieber Modility to be served by cert/mail.  
Image ID N1918901ED20

07/08/2019 Complaint-Praecipe  
This action initiated by party Pinnacle Bank  
CONTRACT DISPUTE. Attached exhibits A,B,C,D  
Image ID N19189014D20

## Judges Notes

09/03/2019  
Smith, Michael, A  
Plaintiff's Motion for Dismissal without prejudice sustained. Order of  
Dismissal without prejudice signed and entered.



IN THE DISTRICT COURT OF CASS COUNTY, NEBRASKA

PINNACLE BANK, a Nebraska state  
banking corporation, )  
)  
)  
Plaintiff, )  
)  
)  
vs. )  
)  
SIEBERT MOBILITY, INC., an Iowa )  
Corporation, TINCHER INVESTMENTS )  
CO., INC., a Nebraska corporation and )  
MARK A. TINCHER, an individual )  
)  
)  
Defendants )

Case No.: CI 19-\_\_\_\_\_

**COMPLAINT**  
(Law)

COMES NOW Plaintiff, Pinnacle Bank (“Plaintiff”), and for its cause of action against the Defendants, Siebert Mobility, Inc. (“Siebert Mobility”), Tincher Investments Co., Inc. (“Tincher Investments”) and Mark A. Tincher (“Mark Tincher”), (collectively the “Defendants”), states and alleges as follows:

1. Plaintiff is a bank chartered under the laws of the State of Nebraska. Plaintiff is authorized to and does transact business in the State of Nebraska in various branch locations located throughout the State.
2. Defendant Siebert Mobility is an Iowa corporation authorized to conduct business in the State of Nebraska.
3. Defendant Tincher Investments is a Nebraska corporation authorized to conduct business in the State of Nebraska.
4. Upon information and belief, Defendant Mark Tincher is an individual residing in Cass County, Nebraska.
5. The transaction out of which Plaintiff’s claims arise occurred in the State of Nebraska.

6. The Promissory Note, Commercial Guaranty and Guaranty hereinafter identified provide that Nebraska law is applicable.

FIRST CAUSE OF ACTION  
(Promissory Note as against Defendant Siebert Mobility)

7. On or about September 6, 2017, Siebert Mobility executed and delivered to Plaintiff a certain Promissory Note in the original principal amount of \$799,997.67 ("Note"). A true and correct copy of said Note is marked Exhibit A and is attached hereto and incorporated herein by this reference.

8. Siebert Mobility is in default under the Note for failing to pay the regular scheduled payments as set forth in the Note.

9. Despite demand, Siebert Mobility has failed or refused to pay to Plaintiff the delinquent amount under the Note. A true and correct copy of said demand is attached hereto as Exhibit B and is incorporated herein by this reference.

10. Pursuant to the terms of the Note, Plaintiff may accelerate the balance due under the Note immediately upon a default in payment by Siebert Mobility.

11. The amount that remains due and owing to Plaintiff from Siebert Mobility under the Note is \$810,508.74, itemized as \$799,997.67 principal and \$10,511.07 accrued interest as of June 26, 2019, plus interest which continues to accrue from and after June 26, 2019 on the outstanding principal balance thereof at the per diem rate of \$122.2218.

SECOND CAUSE OF ACTION  
(Commercial Guaranty as against Defendant Tincher Investments)

12. Plaintiff incorporates paragraphs one (1) through eleven (11) above as if fully restated herein.

13. On or about September 6, 2017, Tincher Investments executed and delivered to Plaintiff a certain Commercial Guaranty (“Commercial Guaranty”), pursuant to which Tincher Investments, to induce Plaintiff to extend or continue to extend financial accommodations to Siebert Mobility, thereby guaranteed to Plaintiff the full and punctual payment and satisfaction of the indebtedness of Siebert Mobility to Plaintiff. A true and correct copy of said Commercial Guaranty is marked Exhibit C, attached hereto and incorporated herein by this reference.

14. Tincher Investments is obligated to Plaintiff on account of its Commercial Guaranty to the full extent of the outstanding obligations due under the Note.

15. Despite demand, Tincher Investments has failed or refused to pay to Plaintiff the amount due and owing under its Commercial Guaranty. A true and correct copy of said demand in connection with the Commercial Guaranty is attached hereto as Exhibit B and is incorporated herein by this reference.

THIRD CAUSE OF ACTION  
(Guaranty as against Defendant Mark Tincher)

16. Plaintiff incorporates paragraphs one (1) through eleven (11) above as if fully restated herein.

17. On or about May 25, 2011, Mark Tincher executed and delivered to Plaintiff a Guaranty (“Guaranty”), pursuant to which Mark Tincher, to induce Plaintiff to extend or continue to extend financial accommodations to Siebert Mobility, thereby guaranteed to Plaintiff the full and punctual payment and satisfaction of the indebtedness of Siebert Mobility to Plaintiff. A true and correct copy of said Guaranty is marked Exhibit D, attached hereto and incorporated herein by this reference.

18. Mark Tincher is obligated to Plaintiff on account of his Guaranty to the full extent of the outstanding obligations due under the Note.

19. Despite demand, Mark Tincher has failed or refused to pay to Plaintiff the amount due and owing under his Guaranty. A true and correct copy of said demand in connection with the Guaranty is attached hereto as Exhibit B and is incorporated herein by this reference.

WHEREFORE, Plaintiff prays for the following relief:

- A. For judgment against the Defendants, jointly and severally, in the amount of \$810,508.74, itemized as \$799,997.67 principal and \$10,511.07 accrued interest as of June 26, 2019, together with interest accruing from and after June 26, 2019 on the outstanding principal balance thereof at the per diem rate of \$122.2218.
- B. For the costs of this action; and
- C. For such other relief as the court deems appropriate.

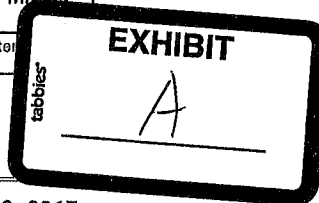
PINNACLE BANK, Plaintiff.

By: /s/ Matthew J. Kivett  
Matthew J. Kivett, #24841  
WALENTINE O'TOOLE, LLP  
11240 Davenport Street  
Omaha, Nebraska 68154-0125  
Office: (402) 330-6300  
Fax: (402) 330-6303  
[mattkivett@walentineotoole.com](mailto:mattkivett@walentineotoole.com)  
*Attorney for Plaintiff*



# PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call / Coll	Account	Officer	Initials
\$799,997.67	09-06-2017	11-01-2022				NE756	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							



**Borrower:** SIEBERT MOBILITY, INC.  
1906 YOUNG ROAD  
GLENWOOD, IA 51534

**Lender:** PINNACLE BANK  
180TH & WEST DODGE ROAD OFFICE  
18081 BURT STREET  
OMAHA, NE 68022

**Principal Amount: \$799,997.67**

**Date of Note: September 6, 2017**

**PROMISE TO PAY.** SIEBERT MOBILITY, INC. ("Borrower") promises to pay to PINNACLE BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Seven Hundred Ninety-nine Thousand Nine Hundred Ninety-seven & 67/100 Dollars (\$799,997.67), together with interest on the unpaid principal balance from September 6, 2017, calculated as described in the "INTEREST CALCULATION METHOD" paragraph using an interest rate of 5.500%, until paid in full. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section.

**PAYMENT.** Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in 9 principal payments of \$41,000.00 each and one final principal and interest payment of \$433,038.92. Borrower's first principal payment is due May 1, 2018, and all subsequent principal payments are due on the same day of each half-year after that. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning November 1, 2017, with all subsequent interest payments to be due on the same day of each month after that. Borrower's final payment due November 1, 2022, will be for all principal and all accrued interest not yet paid. Unless otherwise agreed or required by applicable law, payments will be applied first to any escrow or reserve account payments as required under any mortgage, deed of trust, or other security instrument or security agreement securing this Note; then to any accrued unpaid interest; then to principal; and then to any late charges. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing. All payments must be made in U.S. dollars and must be received by Lender consistent with any written payment instructions provided by Lender. If a payment is made consistent with Lender's payment instructions but received after 5:00 p.m. based on your branch time zone, Lender will credit Borrower's payment on the next business day.

**INTEREST CALCULATION METHOD.** Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

**PREPAYMENT; MINIMUM INTEREST CHARGE.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of \$10.00. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: PINNACLE BANK, 180TH & WEST DODGE ROAD OFFICE, 18081 BURT STREET, OMAHA, NE 68022.

**LATE CHARGE.** If a payment is 15 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment or \$25.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased to 18.000%. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**JURY WAIVER.** Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nebraska without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Nebraska.

**DISHONORED ITEM FEE.** Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by

**PROMISSORY NOTE  
(Continued)**

Loan No: \_\_\_\_\_

Page 2

law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the debt against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

**COLLATERAL.** Borrower acknowledges this Note is secured by a DEED OF TRUST DATED JULY 19, 2012 ON REAL PROPERTY LOCATED AT 814 CENTRAL AVENUE, AUBURN, NE 68305 PLEDGED BY TINCHER INVESTMENTS CO., INC.; ASSIGNMENT OF PRUDENTIAL LIFE INSURANCE COMPANY POLICY # L8020768 ON THE LIFE OF MARK A. TINCHER PLEDGED BY SIEBERT MOBILITY, INC..

**GUARANTY.** THIS NOTE IS GUARANTEED BY MARK A. TINCHER; AND TINCHER INVESTMENTS CO., INC.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**GENERAL PROVISIONS.** This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**BORROWER:**

SIEBERT MOBILITY, INC.

By: \_\_\_\_\_

MARK A. TINCHER, President of SIEBERT  
MOBILITY, INC.

**LENDER:**

PINNACLE BANK

X \_\_\_\_\_

Bernard D White, Executive Vice President

June 18, 2019

**Via Certified Mail/Return Receipt Requested and First Class Mail**

Siebert Mobility, Inc.  
Attn: Mark A. Tincher, President  
303 Fulton Ave.  
Plattsmouth, NE 68048

Tincher Investments Co., Inc., Guarantor  
Attn: Mark A. Tincher, Registered Agent  
203 Wiles Road  
Plattsmouth, NE 68048

Mark A. Tincher, Guarantor  
1906 Young Road  
Plattsmouth, NE 68048

Re: Pinnacle Bank-Loan No.

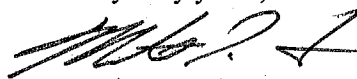
Dear Borrower and Guarantors:

Please be advised that this firm represents Pinnacle Bank with regard to the Promissory Note dated September 6, 2017 in the original principal amount of \$799,997.67 ("Note"). This is to advise you that you are in default for failing to pay the accrued interest payment due for May 1, 2019 in the amount of \$3,666.65.

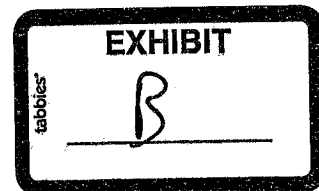
Demand is hereby made upon you to pay to Pinnacle Bank the past due accrued interest payment in the amount of \$3,666.65 in certified funds (cashier's check) on or before June 21, 2019.

In the event you fail to make payment as demanded herein on or before June 21, 2019, please be advised that Pinnacle Bank shall be entitled to proceed with the exercise of any and all rights and remedies available for recovery of said loan indebtedness, including electing to declare the entire unpaid principal balance, plus interest and late charges, immediately due and payable.

Very truly yours,



Matthew J. Kivett  
For the Firm



cc: Douglas White/Pinnacle Bank

Walentine O'Toole, LLP  
www.walentineotoole.com

11240 Davenport Street  
PO Box 540125  
Omaha, NE 68154  
Phone: (402) 330-6300  
Fax: (402) 330-6303

1851 Madison Avenue, Suite 712  
Council Bluffs, IA 51502  
(712) 388-2244

10610 Shawnee Mission Parkway, #200  
Shawnee, KS 66203  
(913) 228-1800

5024 S. Bur Oak Place, #210  
Sioux Falls, SD 57108  
(605) 681-9030

Michael F. Kivett\*\*  
Craig A. Knickrehm\*\*  
Camille R. Hawk\*  
Matthew J. Bock\*\*\*\*  
Raymond R. Aranza\*  
David P. Wilson  
Matthew J. Kivett\*\*\*\*\*

Jonathan M. Brown\*\*\*  
Andrew R. Biehl\*\*  
Jamie M. Hurst  
John M. Kivett\*  
Betty L. Egan, Of Counsel  
Richard C. Gordon, Of Counsel

\*(also admitted in Iowa)  
\*\*(also admitted in Iowa and South Dakota)  
\*\*\* (also admitted in Iowa, Wisconsin & South Dakota)

\*\*\*\*(also admitted in Kansas & Missouri)  
\*\*\*\*\* (also admitted in South Dakota)

# COMMERCIAL GUARANTY

**Borrower:** SIEBERT MOBILITY, INC.  
1906 YOUNG ROAD  
GLENWOOD, IA 51534

**Lender:** PINNACLE BANK  
180TH & WEST DODGE ROAD OFFICE  
18081 BURT STREET  
OMAHA, NE 68022

**Guarantor:** TINCHER INVESTMENTS CO., INC.  
1906 YOUNG ROAD  
PLATTSMOUTH, NE 68048

EXHIBIT

tabbles

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**CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE.** For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents. Under this Guaranty, Guarantor's liability is unlimited and Guarantor's obligations are continuing.

**INDEBTEDNESS.** The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorneys' fees, arising from any and all debts, liabilities and obligations of every nature or form, now existing or hereafter arising or acquired, that Borrower individually or collectively or interchangeably with others, owes or will owe Lender. "Indebtedness" includes, without limitation, loans, advances, debts, overdraft Indebtedness, credit card Indebtedness, lease obligations, liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower, and any present or future judgments against Borrower, future advances, loans or transactions that renew, extend, modify, refinance, consolidate or substitute these debts, liabilities and obligations whether: voluntarily or involuntarily incurred; due or to become due by their terms or acceleration; absolute or contingent; liquidated or unliquidated; determined or undetermined; direct or indirect; primary or secondary in nature or arising from a guaranty or surety; secured or unsecured; joint or several or joint and several; evidenced by a negotiable or non-negotiable instrument or writing; originated by Lender or another or others; barred or unenforceable against Borrower for any reason whatsoever; for any transactions that may be voidable for any reason (such as infancy, insanity, ultra vires or otherwise); and originated then reduced or extinguished and then afterwards increased or reinstated.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other unexpired guaranties.

**CONTINUING GUARANTY.** THIS IS A "CONTINUING GUARANTY" UNDER WHICH GUARANTOR AGREES TO GUARANTEE THE FULL AND PUNCTUAL PAYMENT, PERFORMANCE AND SATISFACTION OF THE INDEBTEDNESS OF BORROWER TO LENDER, NOW EXISTING OR HEREFTER ARISING OR ACQUIRED, ON AN OPEN AND CONTINUING BASIS. ACCORDINGLY, ANY PAYMENTS MADE ON THE INDEBTEDNESS WILL NOT DISCHARGE OR DIMINISH GUARANTOR'S OBLIGATIONS AND LIABILITY UNDER THIS GUARANTY FOR ANY REMAINING AND SUCCEEDING INDEBTEDNESS EVEN WHEN ALL OR PART OF THE OUTSTANDING INDEBTEDNESS MAY BE A ZERO BALANCE FROM TIME TO TIME.

**DURATION OF GUARANTY.** This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the Indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to new Indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new Indebtedness" does not include the Indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. For this purpose and without limitation, "new Indebtedness" does not include all or part of the Indebtedness that is: incurred by Borrower prior to revocation; incurred under a commitment that became binding before revocation; any renewals, extensions, substitutions, and modifications of the Indebtedness. This Guaranty shall bind Guarantor's estate as to the Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any other guaranty or termination of any other guaranty of the Indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. It is anticipated that fluctuations may occur in the aggregate amount of the Indebtedness covered by this Guaranty, and Guarantor specifically acknowledges and agrees that reductions in the amount of the Indebtedness, even to zero dollars (\$0.00), shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the Indebtedness remains unpaid and even though the Indebtedness may from time to time be zero dollars (\$0.00).

**GUARANTOR'S AUTHORIZATION TO LENDER.** Guarantor authorizes Lender, either before or after any revocation hereof, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) prior to revocation as set forth above, to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the Indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

**GUARANTOR'S REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

**GUARANTOR'S WAIVERS.** Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or

**COMMERCIAL GUARANTY  
(Continued)**

Loan No: \_\_\_\_\_

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defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing an action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the Indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the Indebtedness; (D) any right to claim discharge of the Indebtedness on the basis of unjustified impairment of any collateral for the Indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding Indebtedness which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the Indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

**GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS.** Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

**SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR.** Guarantor agrees that the Indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the Indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the Indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Guaranty:

**Amendments.** This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

**Governing Law.** This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nebraska without regard to its conflicts of law provisions.

**Integration.** Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parole evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

**Interpretation.** In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

**Notices.** Any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Unless otherwise provided or required by law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Successors and Assigns.** Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**Waive Jury.** Lender and Guarantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Guarantor against the other.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means SIEBERT MOBILITY, INC. and includes all co-signers and co-makers signing the Note and all their

COMMERCIAL GUARANTY  
(Continued)

Loan No:

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successors and assigns.

**Guarantor.** The word "Guarantor" means everyone signing this Guaranty, including without limitation TINCHER INVESTMENTS CO., INC., and in each case, any signer's successors and assigns.

**Guaranty.** The word "Guaranty" means this guaranty from Guarantor to Lender.

**Indebtedness.** The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

**Lender.** The word "Lender" means PINNACLE BANK, its successors and assigns.

**Note.** The word "Note" means and includes without limitation all of Borrower's promissory notes and/or credit agreements evidencing Borrower's loan obligations in favor of Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for promissory notes or credit agreements.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED SEPTEMBER 6, 2017.

GUARANTOR:

TINCHER INVESTMENTS CO., INC.

By: [Signature]  
MARK A. TINCHER, President of TINCHER INVESTMENTS CO., INC.

CORPORATE ACKNOWLEDGMENT

STATE OF Nebraska )  
 ) SS  
COUNTY OF Douglas )

On this 6th day of September, 2017, before me, the undersigned Notary Public, personally appeared MARK A. TINCHER, President of TINCHER INVESTMENTS CO., INC., and known to me to be an authorized agent of the corporation that executed the Commercial Guaranty and acknowledged the Guaranty to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Guaranty and in fact executed the Guaranty on behalf of the corporation.

By Jamella S. McCroden  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

State of Nebraska - General Notary  
JANETTA S MCCRODEN  
My Commission Expires  
August 21, 2018

**GUARANTY**  
(Continuing Debt - Unlimited)

**DATE AND PARTIES.** The date of this Guaranty is May 25, 2011. The parties and their addresses are:

**LENDER:**

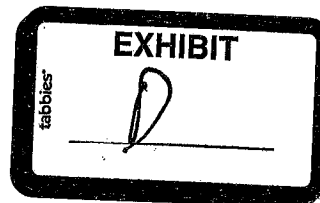
PINNACLE BANK  
P O BOX 540001  
OMAHA, NE 68154  
Telephone: (402) 697-8600

**BORROWER:**

SIEBERT MOBILITY, INC.  
an Iowa Corporation  
1906 YOUNG ROAD  
PLATTSMOUTH, NE 68048

**GUARANTOR:**

MARK A. TINCHER  
1906 YOUNG ROAD  
PLATTSMOUTH, NE 68048



**1. DEFINITIONS.** As used in this Guaranty, the terms have the following meanings:

- A. Pronouns.** The pronouns "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "your" refer to the Lender.
- B. Note.** "Note" refers to the document that evidences the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Note.
- C. Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

**2. SPECIFIC AND FUTURE DEBT GUARANTY.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with the Borrower from time to time, I absolutely and unconditionally agree to all terms of and guaranty to you the payment and performance of each and every Debt, of every type, purpose and description that the Borrower either individually, among all or a portion of themselves, or with others, may now or at any time in the future owe you, including, but not limited to the following described Debt(s) including without limitation, all principal, accrued interest, attorneys' fees and collection costs, when allowed by law, that may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 68-16081068, dated May 25, 2011, from SIEBERT MOBILITY, INC. (Borrower) to you, in the amount of \$1,450,890.70.

In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, overdrafts, letters of credit, guaranties, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all documents prepared or submitted for the transaction such as applications, security agreements, disclosures, and the Note.

You may, without notice, apply this Guaranty to such Debt of the Borrower as you may select from time to time.

**3. EXTENSIONS.** I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

**A. Future Advances.** I waive notice of and consent to any and all future advances made to the Borrower by you.

**4. UNCONDITIONAL LIABILITY.** I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, surety, guarantor or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and further is not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the Debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the Borrower. I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay the Debt, including the Borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law.

**5. BANKRUPTCY.** If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any action or undertakings by, or against, you or against any Property, in connection with any obligation in any proceeding in the United States Bankruptcy Courts. Such action or undertaking includes, without limitation, valuation of Property, election of remedies or imposition of secured or unsecured claim status upon claims by you, pursuant to the United States Bankruptcy Code, as amended. In the event that any payment of principal or interest received and paid by any other guarantor, borrower, surety, endorser or co-maker is deemed, by final order of a court of competent jurisdiction, to have been a voidable preference under the bankruptcy or insolvency laws of the United States or otherwise, then my obligation will remain as an obligation to you and will not be considered as having been extinguished.

**6. REVOCATION.** I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence. Notice of revocation or notice of my death or incompetence will not affect my obligations under this Guaranty with respect to any Debts incurred by or for which you have made a commitment to Borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such Debts. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty

until I provide such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

**7. PROPERTY.** I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without defeating, discharging or diminishing my liability. My obligation is absolute and your failure to perfect any security interest or any act or omission by you which impairs the Property will not relieve me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. For purposes of this paragraph, you will only be in "actual" possession when you have physical, immediate and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

**8. DEFAULT.** I will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

**A. Payments.** I fail to make a payment in full when due.

**B. Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt.

**C. Death or Incompetency.** I die or am declared legally incompetent.

**D. Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Guaranty.

**E. Other Documents.** A default occurs under the terms of any other document relating to the Debt.

**F. Other Agreements.** I am in default on any other debt or agreement I have with you.

**G. Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

**H. Judgment.** I fail to satisfy or appeal any judgment against me.

**I. Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

**J. Name Change.** I change my name or assume an additional name without notifying you before making such a change.

**K. Property Transfer.** I transfer all or a substantial part of my money or property.

**L. Property Value.** You determine in good faith that the value of the Property has declined or is impaired.

**M. Insecurity.** You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Guaranty or that the prospect for payment or performance of the Debt is impaired for any reason.

**9. WAIVERS AND CONSENT.** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

**A. Additional Waivers.** In addition, to the extent permitted by law, I consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to the Debt or this Guaranty.

(1) You may renew or extend payments on the Debt, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property.

(4) You, or any institution participating in the Debt, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of the Debt to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that the Borrower is authorized to modify the terms of the Debt or any instrument securing, guarantying or relating to the Debt.

(7) You may undertake a valuation of any Property in connection with any proceedings under the United States Bankruptcy Code concerning the Borrower or me, regardless of any such valuation, or actual amounts received by you arising from the sale of such Property.

(8) I agree to consent to any waiver granted the Borrower, and agree that any delay or lack of diligence in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.

(9) I agree to waive reliance on any anti-deficiency statutes, through subrogation or otherwise, and such statutes in no way affect or impair my liability. In addition, until the obligations of the Borrower to Lender have been paid in full, I waive any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any other right I may have to enforce any remedy which you now have or in the future may have against the Borrower or another guarantor or as to any Property.

Any Guarantor who is an "insider," as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes these waivers permanently. (An insider includes, among others, a director, officer, partner, or other person in control of the Borrower, a person or an entity that is a co-partner with the Borrower, an entity in which the Borrower is a general partner, director, officer or other person in control or a close relative of any of these other persons.) Any Guarantor who is not an insider makes these waivers until all Debt is fully repaid.

**B. No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in the Debt instruments, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

**C. Waiver of Claims.** I waive all claims for loss or damage caused by your acts or omissions where you acted reasonably and in good faith.

**10. REMEDIES.** After the Borrower or I default, you may at your option do any one or more of the following.

**A. Acceleration.** You may make all or any part of the amount owing by the terms of this Guaranty immediately due.

**B. Sources.** You may use any and all remedies you have under state or federal law or in any documents relating to the Debt.

**C. Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on default.

**D. Payments Made on the Borrower's Behalf.** Amounts advanced on the Borrower's behalf will be immediately due and may be added to the balance owing under the Debt.

**E. Attachment.** You may attach or garnish my wages or earnings.



**F. Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Guaranty against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Guaranty" means the total amount to which you are entitled to demand payment under the terms of this Guaranty at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay the Debt, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

**G. Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

**11. COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after the occurrence of an Event of Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

**12. WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am satisfied regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not relied on any representations or omissions from you or any information provided by you respecting the Borrower, the Borrower's financial condition and existing indebtedness, the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.

**13. RELIANCE.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and I have signed this Guaranty to induce you to extend such credit. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and expect to derive substantial benefits from any loans and financial accommodations resulting in the creation of indebtedness guaranteed hereby. I agree to rely exclusively on the right to revoke this Guaranty prospectively as to future transactions in the manner as previously described in this Guaranty if at any time, in my opinion, the benefits then being received by me in connection with this Guaranty are not sufficient to warrant the continuance of this Guaranty. You may rely conclusively on a continuing warranty that I continue to be benefited by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be effective and enforceable by you without regard to the receipt, nature or value of any such benefits.

**14. APPLICABLE LAW.** This Guaranty is governed by the laws of Nebraska, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

**15. AMENDMENT, INTEGRATION AND SEVERABILITY.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and executed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

**16. ASSIGNMENT.** If you assign any of the Debts, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will inure to the benefit of your assignee to the extent of such assignment. You will continue to have the unimpaired right to enforce this Guaranty as to any of the Debts that are not assigned. This Guaranty shall inure to the benefit of and be enforceable by you and your successors and assigns and any other person to whom you may grant an interest in the Debts and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

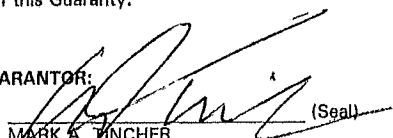
**17. INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Guaranty.

**18. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Guarantor will be deemed to be notice to all Guarantors. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Guaranty and to confirm your lien status on any Property. Time is of the essence.

**19. CREDIT INFORMATION.** I agree that from time to time you may obtain credit information about me from others, including other lenders and credit reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

**20. SIGNATURES.** By signing under seal, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTOR:

  
MARK A. TINCHER  
Individually

(Seal)

**LENDER:**

PINNACLE BANK

By *Douglas White* EVP (Seal)  
Douglas White, Executive Vice President

IN THE DISTRICT COURT OF CASS COUNTY, NEBRASKA

PINNACLE BANK, )  
)  
Plaintiff, )  
vs. )  
)  
SIEBERT MOBILITY, INC., an Iowa )  
Corporation, TINCHER INVESTMENTS )  
CO., INC., a Nebraska corporation and )  
MARK A. TINCHER, an Individual, )  
)  
Defendants. )

**CASE NO. CI 19-178**

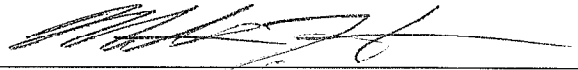
**MOTION FOR DISMISSAL  
(Without Prejudice)**

Plaintiff moves the Court for an order dismissing its cause of action, without prejudice, at the cost of Plaintiff, complete record waived.

WHEREFORE, Plaintiff prays for an order of dismissal in accordance with its motion.

PINNACLE BANK, Plaintiff.

By:



Matthew J. Kivett (#24841)

For

WALENTINE O'TOOLE, LLP

11240 Davenport Street

Omaha, NE 68154

(402) 330-6300

(402)-330-6303 (FACSIMILE)

[mattkivett@walentineotoole.com](mailto:mattkivett@walentineotoole.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss was sent via electronic mail, on this 29<sup>th</sup> day of August, 2019 to the following:

William F. Hargens  
McGrath North  
First National Tower, Suite 3700  
1601 Dodge Street  
Omaha, NE 68102  
[whargens@mcgrathnorth.com](mailto:whargens@mcgrathnorth.com)  
Attorney for Defendants



# Certificate of Service

I hereby certify that on Thursday, August 29, 2019 I provided a true and correct copy of the Motion-Dismissal to the following:

Tincher Investments Co., Inc. service method: Email

Tincher,Mark,A service method: Email

Siebert Mobility, Inc. service method: Email

Signature: /s/ Matt Kivett (Bar Number: 24841)

A

FILED  
DISTRICT COURT  
CASS COUNTY, NEBR.

2019 SEP -3 AM 10:36

BARBARA PROKUPEK  
CLERK

IN THE DISTRICT COURT OF CASS COUNTY, NEBRASKA

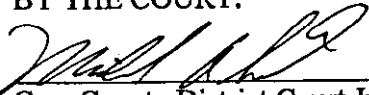
PINNACLE BANK, )  
)  
Plaintiff, )  
)  
vs. )  
)  
)  
SIEBERT MOBILITY, INC., an Iowa )  
Corporation, TINCHER INVESTMENTS )  
CO., INC., a Nebraska corporation and )  
MARK A. TINCHER, an Individual, )  
)  
Defendants. )

CASE NO. CI 19-178

ORDER OF DISMISSAL  
(Without Prejudice)

On this 3rd day of ~~August~~<sup>September</sup>, 2019, this matter came before the court on the Motion of the Plaintiff for a dismissal of its cause of action in the above-captioned matter; the Court being fully advised in the premises finds that said Motion should be granted.

IT IS, THEREFORE, ORDERED that the cause of action of the Plaintiff be and hereby is dismissed without prejudice at the cost of the Plaintiff, complete record waived.

BY THE COURT:  
  
Cass County District Court Judge

Prepared and Submitted:

Matthew J. Kivett (#24841)  
VALENTINE O'TOOLE, LLP  
11240 Davenport Street  
Omaha, NE 68154  
(402) 330-6300  
(402)-330-6303 (FACSIMILE)  
[mattkivett@valentineotoole.com](mailto:mattkivett@valentineotoole.com)  
ITS ATTORNEYS



**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on September 3, 2019, I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Siebert Mobility, Inc.  
c/o Mark A. Tincher, Reg. Agent  
1906 Young Rd.  
Plattsmouth, NE 68048

Tincher Investments Co., Inc.  
c/o Mark A. Tincher, Reg. Agent  
203 Wiles Road  
Plattsmouth, NE 68048

Mark A Tincher  
1906 Young Rd.  
Plattsmouth, NE 68048

Matthew J Kivett  
mattkivett@womglaw.com

Date: September 3, 2019

BY THE COURT:

*Barbara Prokusek*

CLERK

