

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re: Chapter 7  
LLK Transport, Inc, BKY Case No. 04-41899-RJK  
Debtor(s).

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**NOTICE OF HEARING AND MOTION FOR  
RELIEF FROM THE AUTOMATIC STAY**

TO: DEBTOR, TRUSTEE AND OTHER ENTITIES SPECIFIED IN LOCAL RULES  
2002-5 AND 9013-3

1. FCC Equipment Financing, Inc. ("FCC"), a secured creditor herein, by and through its duly authorized and undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this Motion at **2:00 p.m. on October 14, 2004**, before the Honorable Robert J. Kressel, United States Bankruptcy Court, Courtroom No. 8, 301 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered no later than 2:00 P.M. on October 11, 2004, which is three (3) days before the time set for the hearing, or filed and served by mail no later than October 7, 2004, which is seven business days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing this case was originally filed as a Chapter 11 case on April 8,

2004 ("Petition Date"). On August 17, 2004, this case was converted to a Chapter 7 case and is pending in this Court ("Conversion Date").

5. This motion arises under 11 U.S.C. § 362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-4 and 9017-1. FCC seeks relief from the automatic stay under § 362(a) for purposes of repossessing certain personal property of the Debtor's subject to FCC's valid security interest and requests that this Court permit FCC to immediately enforce the order requested, lifting the 10 day stay imposed by Rule 4001(a)(3).

6. Debtor is indebted to FCC in the amount of \$27,463.32, pursuant to a Master Security Agreement (the "Contract") between the Debtor and FCC. Pursuant to the Contract, the Debtor purchased one Midland TW 3000 42' Tri Axle Side Dump Trailer S/N: 2MFB2R4D93R002452 (the "Collateral"). True and correct copies of the Contract and evidence of perfection of FCC's interest in the Collateral are attached hereto as Exhibits A, B and C and are hereby incorporated by reference.

7. The Debtor ceased making payments under the Contract as of December 1, 2003, and is therefore in default. As of the present date, neither the Debtor, nor the Trustee, has taken any action to reaffirm the Contract or to cure the resulting defaults. The Debtor's failure to make its monthly payments has caused undue financial burden and loss on the part of FCC. Moreover, the Collateral is depreciating in value and, upon information and belief, the Debtor has failed to maintain proper insurance coverage for the Collateral. If there is any insurance on the vehicle, such coverage does not likely comply with the terms of the Contract and has not been disclosed to FCC, despite repeated requests to Debtor's counsel.

8. The current wholesale value of the Collateral is approximately \$27,500. An affidavit supporting this value is attached hereto as Exhibit D and is incorporated herein by reference. Debtor has scheduled the value of the Collateral at approximately

\$29,000. Upon information and belief, the Collateral is in the Debtor's possession and is being stored at a safe and secure location.

9. Debtor's failure to make payments to FCC or otherwise provide FCC with adequate protection of its interest in the Collateral constitutes "cause" within the meaning of 11 U.S.C. § 362(d)(1), entitling FCC to relief from the stay. Moreover, in light of the fact that this is a Chapter 7 proceeding and there is no equity in the Collateral, the Collateral is not necessary to Debtor's reorganization.

10. FCC has incurred and will incur attorney fees and costs to protect its interest in the Collateral and to payments concerning the same. Incident to this motion, FCC seeks allowance of such attorneys fees and costs incurred.

11. This Notice of Motion and Motion also serve as a notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, FCC will foreclose and repossess the Collateral promptly upon the Court's execution of the requested Order.

12. Accordingly, FCC requests relief from the automatic stay to repossess and sell the Collateral, and to exercise any and all of its state law remedies in connection therewith.

13. This motion is supported by: (1) FCC's Memorandum in Support of Motion for Relief from the Automatic Stay; (2) such other matters which may be presented at the hearing on the motion or prior to the Court's decision; and (3) such other matters of which the Court may take notice.

14. If testimony is necessary to any facts relevant to this motion, FCC reserves the right to have its representatives testify as to the Contract and as to the material default thereunder.

WHEREFORE, FCC prays that this Court enter an order (1) granting FCC relief from the automatic stay, to the extent applicable, in accordance with 11 U.S.C. § 362(d)

to repossess the Collateral and to pursue its other state law remedies; and (2) granting such other and further relief as the Court deems just under the circumstances.

Dated: September 29, 2004

DORSEY & WHITNEY LLP

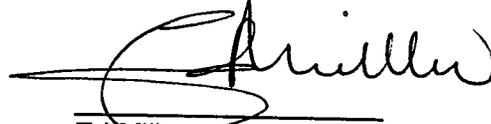
By /e/ Alpha Khaldi  
Katherine A. Constantine #123341  
Alpha Khaldi #0303860  
50 South Sixth St., Ste. 1500  
Minneapolis, MN 55402-1498  
Telephone: (612) 340-2600

Attorneys for FCC Equipment Financing, Inc.

**VERIFICATION**

I, Ed Miller, at FCC Equipment Financing, Inc., declare under penalty of perjury that the foregoing Notice of Hearing and Motion for Relief from the Automatic Stay is true and correct to the best of my knowledge, information and belief.

Dated this 28 day of September, 2004.



Ed Miller  
Portfolio Manager

**FCC  
Equipment  
Financing, Inc.**

**Master Security Agreement**

**1. Grant of Security Interest; Description of Collateral.**

Debtor grants to Secured Party a security interest in the property described in the Schedules of Indebtedness and Collateral now or hereafter executed by or pursuant to the authority of the Debtor and accepted by Secured Party in writing (collectively the "Schedules"), along with all present and future attachments and accessories thereto and replacements and proceeds thereof, including amounts payable under any insurance policy, all hereinafter referred to collectively as "Collateral." Each Schedule shall be serially numbered. Unless and only to the extent otherwise expressly provided in a Schedule, no Schedule shall replace any previous Schedule but shall be supplementary to all previous Schedules.

**2. What Obligations the Collateral Secures.**

Each item of Collateral shall secure not only the specific amount which Debtor promises to pay in each Schedule, but also all other present and future Indebtedness or obligations of Debtor to Secured Party of every kind and nature whatsoever.

**3. Promise to Pay; Terms and Place of Payment.**

Debtor promises to pay Secured Party the amounts set forth on each Schedule at the rate and upon such terms as provided therein.

**4. Use and Location of Collateral.**

Debtor warrants and agrees that the Collateral is to be used primarily for:

- business or commercial purposes (other than agricultural),
- agricultural purposes (see definition on the final page), or
- both agricultural and business or commercial purposes.

Location: 23906 Lime Valley Montato Blue Earth MN 56001  
Address City County State Zip Code

Debtor and Secured Party agree that regardless of the manner of affixation, the Collateral shall remain personal property and not become part of the real estate. Debtor agrees to keep the Collateral at the location set forth above, and will notify Secured Party promptly in writing of any change in the location of the Collateral within such State, but will not remove the collateral from such State without the prior written consent of Secured Party (except that in the State of Pennsylvania, the Collateral will not be moved from the above location without such prior written consent).

**5. Late Charges and Other Fees.**

Any payment not made when due shall, at the option of Secured Party, bear late charges thereon calculated at the rate of 1 1/2% per month, but in no event greater than the highest rate permitted by relevant law. Debtor shall be responsible for and pay to Secured Party a returned check fee, not to exceed the maximum permitted by law, which fee will be equal to the sum of (i) the actual bank charges incurred by Secured Party plus (ii) all other actual costs and expenses incurred by Secured Party. The returned check fee is payable upon demand as indebtedness secured by the Collateral under this Security Agreement.

**6. Debtor's Warranties and Representations.**

Debtor warrants and represents:

- a) that Debtor is justly indebted to Secured Party for the full amount of the indebtedness set forth on each Schedule;
- b) that except for the security interest granted hereby, the Collateral is free from and will be kept free from all liens, claims security interests and encumbrances;
- c) that no financing statement covering the Collateral or any proceeds thereof is on file in favor of anyone other than Secured Party, but if such other financing statement is on file, it will be terminated or subordinated;
- d) that all information supplied and statements made by Debtor in any financial, credit or accounting statement or application for credit prior to, contemporaneously with or subsequent to the execution of this Security Agreement with respect to this transaction are and shall be true, correct, valid and genuine; and
- e) that Debtor has full authority to enter this agreement and in so doing it is not violating its charter or by-laws, any law or regulation or agreement with third parties, and it has taken all such action as may be necessary or appropriate to make this Security Agreement binding upon it.

## 7. Debtor's Agreements.

Debtor agrees:

- (a) to defend at Debtor's own cost any action, proceeding, or claim affecting the Collateral;
- (b) to pay reasonable attorneys' fees (at least 15% of the unpaid balance if not prohibited by law) and other expenses incurred by Secured Party in enforcing its rights against Debtor under this Security Agreement;
- (c) to pay promptly all taxes, assessments, license fees and other public or private charges when levied or assessed against the Collateral or this Security Agreement, and this obligation shall survive the termination of this Security Agreement;
- (d) that if a certificate of title be required or permitted by law, Debtor shall obtain such certificate with respect to the Collateral, showing the security interest of Secured Party thereon and in any event do everything necessary or expedient to preserve or perfect the security interest of Secured Party;
- (e) that Debtor will not misuse fail to keep in good repair, secrete or without the prior written consent of Secured Party, sell, rent, lend, encumber or transfer any of the collateral notwithstanding Secured Party's right to proceeds;
- (f) that Secured Party may enter upon Debtor's premises or wherever the Collateral may be located at any reasonable time to inspect the Collateral and Debtor's books and records pertaining to the Collateral, and Debtor shall assist Secured Party in making such inspection; and
- (g) that the security interest granted by Debtor to Secured Party shall continue effective irrespective of any retaking or redelivery of any Collateral and irrespective of the payment of the amount described in any Schedule so long as there are any obligations of any kind, including obligations under guaranties or assignments, owed by Debtor to Secured Party, provided, however, upon any assignment of this Security Agreement the Assignee shall thereafter be deemed for the purpose of this Paragraph the Secured Party under this Security Agreement.

## 8. Insurance and Risk of Loss.

All risk of loss, damage to or destruction of the Collateral shall at all times be on Debtor. Debtor will procure forthwith and maintain at Debtor's expense insurance against all risks of loss or physical damage to the Collateral for the full insurable value thereof for the life of this Security Agreement plus breach of warranty insurance and such other insurance thereon in amounts and against such risks as Secured Party may specify, and shall promptly deliver each policy to Secured Party with a standard long-form mortgagee endorsement attached thereto showing loss payable to Secured Party; and providing Secured Party with not less than 30 days written notice of cancellation; each such policy shall be in form, terms and amount and with insurance carriers satisfactory to Secured Party; Secured Party's acceptance of policies in lesser amounts or risks shall not be a waiver of Debtor's foregoing obligations. As to Secured Party's interest in such policy, no act or omission of Debtor or any of its officers, agents, employees or representatives shall affect the obligations of the insured to pay the full amount of any loss.

Debtor hereby assigns to Secured Party any monies which may become payable under any such policy of insurance and irrevocably constitutes and appoints Secured Party as Debtor's attorney in fact (a) to hold each original insurance policy, (b) to make, settle and adjust claims under each policy of insurance, (c) to make claims for any monies which may become payable under such and other insurance on the Collateral including returned or unearned premiums, and (d) to endorse Debtor's name on any check, draft or other instrument received in payment of claims or returned or unearned premiums under each policy and to apply the funds to the payment of the indebtedness owing to Secured Party; provided, however, Secured Party is under no obligation to do any of the foregoing

Should Debtor fail to furnish such insurance policy to Secured Party, or to maintain such policy in full force, or to pay any premium in whole or in part relating thereto, then Secured Party, without waiving or releasing any default or obligation by Debtor, may (but shall be under no obligation to) obtain and maintain insurance and pay the premium therefor on behalf of Debtor and charge the premium to Debtor's indebtedness under this Security Agreement. The full amount of any such premium paid by Secured Party shall be payable by Debtor upon demand, and failure to pay same shall constitute an event of default under this Security Agreement.

## 9. Events of Default; Acceleration.

A very important element of this Security Agreement is that Debtor make all its payments promptly as agreed upon. It is essential that the Collateral remain in good condition and adequate security for the indebtedness. The following are events of default under this Security Agreement which will allow Secured Party to take such action under this Paragraph and under Paragraph 10 as it deems necessary:

- (a) any of Debtor's obligations to Secured Party under any agreement with Secured Party is not paid promptly when due;
- (b) Debtor breaches any warranty or provision hereof, or of any note or of any other instrument or agreement delivered by Debtor to Secured Party in connection with this or any other transaction;
- (c) Debtor dies, becomes insolvent or ceases to do business as a going concern;

**9. Events of Default; Acceleration (Continued)**

- (d) it is determined that Debtor has given Secured Party materially misleading information regarding its financial condition;
- (e) any of the collateral is lost or destroyed;
- (f) a complaint in bankruptcy or for arrangement or reorganization or for relief under any insolvency law is filed by or against Debtor or Debtor admits its inability to pay its debts as they mature;
- (g) property of Debtor is attached or a receiver is appointed for Debtor;
- (h) whenever Secured Party in good faith believes the prospect of payment or performance is impaired or in good faith believes the Collateral is insecure;
- (i) any guarantor, surety or endorser for Debtor dies or defaults in any obligation or liability to Secured Party or any guaranty obtained in connection with this transaction is terminated or breached.

If Debtor shall be in default hereunder, the indebtedness described in each Schedule and all other indebtedness then owing by Debtor to Secured Party under this or any other present or future agreement (collectively, the "Indebtedness") shall, if Secured Party shall so elect, become immediately due and payable. After acceleration:

- (a) the unpaid principal balance of the indebtedness described in any Schedule in which interest has been precomputed shall bear interest at the rate of 18% per annum (of, if less, the maximum rate permitted by law) until paid in full; and
- (b) the unpaid principal balance of the indebtedness described in any Schedule in which interest has not been precomputed shall bear interest at the same rate as before acceleration until paid in full.

In no event shall the Debtor upon demand by Secured Party for payment of the Indebtedness, by acceleration of the maturity thereof or otherwise, be obligated to pay any interest in excess of the amount permitted by law. Any acceleration of the Indebtedness, if elected by Secured Party, shall be subject to all applicable laws, including laws relating to rebates and refunds of unearned charges.

**10. Secured Party's Remedies After Default; Consent to Enter Premises.**

Upon Debtor's default and at any time thereafter, Secured Party shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to any deficiency remaining after disposition of the Collateral for which Debtor hereby agrees to remain fully liable. Debtor agrees that Secured Party, by itself or its agent, may without notice to any person and without judicial process of any kind, enter into any premises or upon any land owned, leased or otherwise under the real or apparent control of Debtor or any agent of Debtor where the Collateral may be or where Secured Party believes the Collateral may be, and disassemble, render unusable and/or repossess all or any item of the Collateral, disconnecting and separating all Collateral from any other property and using all force necessary. Debtor expressly waives all further rights to possession of the Collateral after default and all claims for injuries suffered through or loss caused by such entering and/or repossession. Secured Party may require Debtor to assemble the Collateral and return it to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties.

Secured Party may sell or lease the Collateral at a time and location of its choosing provided that the Secured Party acts in good faith and in a commercially reasonable manner. Secured Party will give Debtor reasonable notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition of the Collateral is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Debtor shown herein at least ten days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling and the like shall include reasonable attorneys' fees (at least 15% of the outstanding principal balance if not prohibited by law) and other legal expenses. Debtor understands that Secured Party's rights are cumulative and not alternative.

**11. Waiver of Defaults; Agreement Inclusive.**

Secured Party may in its sole discretion waive a default, or cure, at Debtor's expense, a default. Any such waiver in a particular instance or of a particular default shall not be a waiver of other defaults or the same kind of default at another time. No modification or change in this Security Agreement or any related note, instrument or agreement shall bind Secured Party unless in writing signed by Secured Party. No oral agreement shall be binding.

**2. Financing Statements; Certain Expenses.**

permitted by law, Debtor authorizes Secured Party to file a financing statement with respect to the Collateral signed only by Secured Party, and to file a carbon, photograph or other reproduction of this Security Agreement or of a financing statement. At the request of Secured Party, Debtor will execute any financing statements, agreements or documents, in form satisfactory to Secured Party which Secured Party may deem necessary or advisable to establish and maintain a perfected security interest in the Collateral and will pay the cost of filing or recording the same in all public offices deemed necessary or advisable by Secured Party. Debtor also agrees to pay all costs and expenses incurred by Secured Party in conducting UCC, tax or other lien searches against the Debtor or the Collateral and such other fees as may be agreed.

### 13. Waiver of Defenses Acknowledgment.

If Secured Party assigns this Security Agreement to a third party ("Assignee"), then after such assignment:

- (a) Debtor will make all payments directly to such Assignee at such place as Assignee may from time to time designate in writing;
- (b) Debtor agrees that it will settle all claims, defenses, setoffs and counterclaims it may have against Secured Party directly with Secured Party and will not set up any such claim, defense, setoff or counterclaim against Assignee. Secured Party hereby agreeing to remain responsible therefor;
- (c) Secured Party shall not be Assignee's agent for any purpose and shall have no authority to change or modify this Security Agreement or any related document or instrument; and
- (d) Assignee shall have all of the rights and remedies of Secured Party hereunder but none of Secured Party's obligations.

### 14. Miscellaneous.

Debtor waives all exemptions. Secured Party may correct patent errors herein and fill in such blanks as serial numbers, date of first payment and the like. Any provisions hereof contrary to, prohibited by or invalid under applicable laws or regulations shall be inapplicable and deemed omitted here from, but shall not invalidate the remaining provisions hereof.

Debtor and Secured Party each hereby waive any right to a trial by jury in any action or proceeding with respect to, in connection with, or arising out of this Security Agreement, or any note or document delivered pursuant to this Security Agreement. Except as otherwise provided herein or by applicable law, the Debtor shall have no right to prepay the indebtedness described in any Schedule. Debtor acknowledges receipt of a true copy and waives acceptance hereof

If Debtor is a corporation, this Security Agreement is executed pursuant to authority of its Board of Directors. Except where the context otherwise required, "Debtor" and "Secured Party" include the heirs, executors or administrators, successors or assigns of those parties; nothing herein shall authorize Debtor to assign this Security Agreement or its rights in and to the Collateral. If more than one Debtor executes this Security Agreement, their obligations under this Security Agreement shall be joint and several

If at any time this transaction would be usurious under applicable law, then regardless of any provision contained in this Security Agreement or in any other agreement made in connection with this transaction, it is agreed that:

- a) the total of all consideration which constitutes interest under applicable law that is contracted for, charged or received upon this Security Agreement or any such other agreement shall under no circumstances exceed the maximum rate of interest authorized by applicable law and any excess shall be credited to the Debtor; and
- b) If Secured Party elects to accelerate the maturity of, or if Secured Party permits Debtor to prepay the indebtedness described in Paragraph 3, any amounts which because of such action would constitute interest may never include more than the maximum rate of interest authorized by applicable law and any excess interest, if any, provided for in this Security Agreement or otherwise, shall be credited to Debtor automatically as of the date of acceleration or prepayment.

### 5. Special Provision.

See Special Provision Instructions

Dated: April 23 2003

Debtor:

LLK Transport Incorporated

Name of individual, corporation or partnership

By [Signature] Title Pres.

If corporation, have signed by President, Vice President or Treasurer, and give official title. If owner or partner, state which.

P.O. Box 3485

Address

Mankato MN 56002  
City State Zip Code

Secured Party:

FCC Equipment Financing, Inc.

Name of individual, corporation or partnership

By [Signature] Title Pres. DSM

If corporation, give official title. If owner or partner state which.

P.O. Box 56347

Address

Jacksonville, FL 32241-6347  
City State Zip Code

If Debtor is a partnership, enter:

Partners' names Home Addresses

NOTICE: Do not use this form for transactions for personal, family or household purposes. For agricultural and other transactions subject to Federal or State regulations, consult legal counsel to determine documentation requirements.

Agricultural purposes generally meaning farming, including dairy farming, but it also includes the transportation, harvesting, and processing of farm, dairy, or forest products if what is transported, harvested, or processed is farm, dairy, or forest products grown or bred by the user of the equipment itself. It does not apply, for instance, to a logger who harvests someone else's forest, or a contractor who prepares land or harvests products on someone else's farm.

SPECIAL PROVISIONS INSTRUCTIONS - The notations to be entered in the Special Provisions section of this document for use in ALABAMA, FLORIDA, GEORGIA, IDAHO, NEVADA, NEW HAMPSHIRE, OREGON, SOUTH DAKOTA and WISCONSIN are shown in the applicable State pages of the Loans and Motor Vehicles Manual.

Schedule No. 1  
Schedule of Indebtedness and Collateral

To Master Security Agreement dated April 23, 2003, between the undersigned Secured Party and Debtor.

This Schedule of Indebtedness and Collateral incorporates the terms and conditions of the above-referenced Master Security Agreement.

This is Originally Executed Copy No. 1 of 1 originally executed copies. Only transfer of possession by Secured Party Originally Executed Copy No. 1 shall be effective for purposes of perfecting an interest in this Schedule by possession.

The equipment listed on this Schedule will be located at:

<u>23906 Lone Valley</u>	<u>Marbato</u>	<u>MD</u>	<u>56001</u>
Address	City	State	Zip Code

Debtor grants to Secured Party a security interest in the property described below, along with all present and future attachments and accessories thereto and replacements and proceeds thereof, including amounts payable under any insurance policy, all hereinafter referred to collectively as "Collateral"

Collateral Description (Describe Collateral fully including make, kind of unit, model and serial numbers and any other pertinent information).

One (1) Midland TW 3000 42' Tri Axle Side Dump Trailer S/N: 2MFB2R4D93R002452

Debtor promises to pay Secured Party the total sum of ~~\$41,115.12~~<sup>24</sup> which represents principal and interest precomputed over the term hereof, payable in ~~32~~<sup>23</sup> (total number) combined principal and interest payments of 1 advance payment of ~~\$1,713.13~~ on ~~April 25, 2003~~ followed by ~~31~~ payments of ~~\$1,713.13~~ each commencing on ~~June 1, 2003~~ and a like sum on a like date each month thereafter, excluding the months of January, February, March, and April of each year, until fully paid, provided, however, that the final payment shall be in the amount of the unpaid balance and interest. Payment shall be made at the address of Secured Party shown on the Master Security Agreement or such other place as Secured Party may designate from time to time.

See Special Provisions instructions below:

A prepayment premium will be assessed if this loan is paid in full or in part prior to maturity as stated below:

Year 1	3%
Year 2	2%
Year 3	1%

Accepted April 23, 2003

Secured Party:

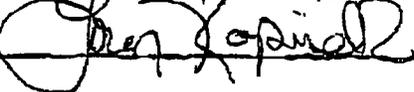
FCC EQUIPMENT FINANCING, INC.

By  Title DSM

Executed on April 23, 2003

Debtor:

LLK Transport Incorporated  
Name of individual, corporation or partnership

By  Title CEO

GUARANTY

TO: FCC EQUIPMENT FINANCING, INC.

Each of us severally requests you to extend credit to or to purchase security agreements, leases, notes, accounts and/or other obligations (herein generally termed "paper") of or from or otherwise to do business with

LLK Transport Incorporated

DEBTOR \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_

hereinafter called the "Debtor," and to induce you so to do and in consideration thereof and of benefits to accrue to each of us therefrom, each of us jointly and severally and unconditionally guarantees to you that the Debtor will fully and promptly and faithfully perform, pay and discharge all its present and future obligations to you, whether direct or indirect, joint or several, absolute or contingent, secured or unsecured, matured or unmatured and whether originally contracted with you or otherwise acquired by you, irrespective of any invalidity therein, the unenforceability thereof or the insufficiency, invalidity or unenforceability of any security therefor; and agrees, without you first having to proceed against the Debtor or to liquidate paper or any security therefor, to pay on demand all sums due and to become due to you from the Debtor and all losses, costs, attorneys' fees or expenses which may be suffered by you by reason of the Debtor's default or default of any of the undersigned hereunder; and agrees to be bound by and on demand to pay any deficiency established by a sale of paper and/or security held, with or without notice to us. This guaranty is an unconditional guarantee of payment.

No termination hereof shall be effected by the death of any or all of us. No termination shall be effective except by notice sent to you by registered mail naming a termination date effective not less than 90 days after the receipt of such notice by you; or effective as to any of us who has not given such notice; or affect any transactions effected prior to the effective date of termination. Each of us waives notice of acceptance hereof and of presentment, demand, protest and notice of non-payment or protest as to any note or obligation signed, accepted, endorsed or assigned to you by the Debtor, and all exemptions and homestead laws and any other demands and notices required by the law, and we waive all set-offs and counterclaims. You may at any time and from time to time, without our consent, without notice to us and without affecting or impairing the obligation of any of us hereunder, do any of the following: (a) renew or extend any obligations of the Debtor, of its customers, of co-guarantors (whether hereunder or under a separate instrument) or of any other party at any time directly or contingently liable for the payment of any said obligations; (b) accept partial payments of said obligations; (c) settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of the said obligations and the security therefor in any manner; (d) consent to the transfer of security, or (e) bid and purchase at any sale of paper or security. No payment by a guarantor hereunder shall entitle the guarantor, by subrogation or otherwise, to any payment by the Debtor under or out of the property of the Debtor, except after the full performance, payment and discharge of all of the Debtor's obligations to you.

This Guaranty shall bind our respective heirs, administrators, personal representatives, successors, and assigns, and shall inure to your successor and assigns, including, but not limited to, any party whom you may assign any item or items of paper, we hereby waiving notice of any such assignment. All of your rights are cumulative and not alternative.

Executed the 27 day of April, 2003.

INDIVIDUAL GUARANTORS

Loren Kopischke Individually  
Loren Kopischke

\_\_\_\_\_ Individually

Witness Joy Ann Hanson  
JOY ANN HANSON  
NOTARY PUBLIC  
My Commission Expires 1-31-2005

CORPORATE GUARANTORS

Loren Kopischke Title: PRES.  
Have signed by President, Vice President or Treasurer

663 Agency  
Home Address

Mankato, MN 56001  
Home Address

663 Agency RD  
Mankato, MN  
56001

Note: Insert exact name of company on first blank line, with city and state  
Individual guarantors must sign without titles. Sign "John Smith" not "John Smith, President."

8002

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

LLK TRANSPORT INC  
PO BOX 3485  
MANKATO MN 56002

First Class  
U.S. Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

72528ST

1ST SECURED PARTY

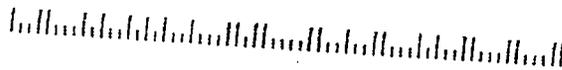
**LIEN HOLDER**

03 Year	MIDL Make	TR Model	B1280R785 Title NR.
2MFB2R4D93R002452 VIN		04/29/03 Security Date	NO Rebuilt

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

FCC EQUIP FINANCING INC  
PO BOX 56347  
JACKSONVILLE FL 32241-6347

23



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 7

LLK Transport, Inc,

BKY Case No. 04-41899-RJK

Debtor(s).

**AFFIDAVIT OF ED MILLER IN SUPPORT OF FCC EQUIPMENT FINANCING, INC.'S  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

Ed Miller, being first duly sworn, deposes and states as follows:

1. I am the Portfolio Manager for FCC equipment Financing, Inc., with thirty plus years of account management experience.

2. The estimated wholesale value of that certain Midland TW 3000 42' Tri Axle Side Dump Trailer S/N: 2MFB2R4D93R002452 and like models currently for sale is \$27,500.00.

This estimation is based upon the analysis of the industry's average auction results as outlined with Machinery Trader.

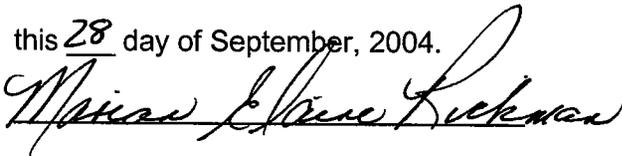
FURTHER AFFIANT SAYETH NOT.



Ed Miller  
Portfolio Manager

Subscribed and sworn to before me

this 28 day of September, 2004.



**MARIAN ELAINE RICKMAN**  
Notary Public, State of Florida  
My comm. expires Dec. 4, 2005  
Comm. No. DD 073528

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Chapter 7

BKY Case No. 04-41899-RJK

LLK Transport, Inc,

Debtor(s).

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**MEMORANDUM IN SUPPORT OF MOTION  
FOR RELIEF FROM THE AUTOMATIC STAY**

This Memorandum is submitted in support of the NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY (the "Motion") filed by FCC Equipment Financing, Inc. ("FCC").

**PROCEDURAL CONTEXT**

In this Motion, FCC seeks relief from the automatic stay provisions of 11 U.S.C. § 362(a) to repossess that certain Midland TW 3000 42' Tri Axle Side Dump Trailer S/N: 2MFB2R4D93R002452 (the "Collateral"), which is the subject of the Master Security Agreement (the "Contract") between FCC and Debtor, and to pursue its other state law remedies.

**POSITION**

FCC contends that the Debtor's failure to make any payments for the Collateral since December 1, 2003, and the resulting default, as well as the lack of adequate protection, constitute "cause" for relief from the automatic stay under 11 U.S.C. § 362(d)(1). Furthermore, the absence of equity in the Collateral, and the conversion of this case to one under Chapter 7 of the Bankruptcy Code, provide an independent basis for the lifting of the stay under 11 U.S.C. § 362(d)(2).

## FACTS

Debtor executed the Master Security Agreement (the "Contract") for the purchase of one Midland TW 3000 42' Tri Axle Side Dump Trailer S/N: 2MFB2R4D93R002452 (the "Collateral") on April 23, 2003. True and correct copies of the Contract and evidence of perfection of FCC's interest in the Collateral are attached hereto as Exhibits A, B and C and are hereby incorporated by reference. FCC is the holder of a secured claim, and is thus a party in interest. FCC has a valid and perfected security interest in the Collateral.

According to the terms of the Contract, the Debtor was required to pay \$1,713.13, per month for the Collateral, for a total of twenty-four payments. The account was originally scheduled with "skip payments" for the months of January through April of each year. The Debtor ceased making payments under the Contract as of December 1, 2003, and is therefore in default in the amount of \$11,991.91. The total balance due on the Contract is \$27,463.32, plus costs and attorneys fees. On information and belief, the wholesale value of the Collateral is approximately \$27,500.00.

The petition commencing this case under Chapter 11 was filed on April 8, 2004 (the "Petition Date"). Subsequent to the Petition Date, Debtor and FCC were in the process of negotiating an agreement for adequate protection; however such negotiations ended when the case was converted to a Chapter 7 case on August 17, 2004 (the "Conversion Date") and no post-petition payments were ever made. As of the present date, the Debtor has taken no action to re-affirm and/or assign the Contract and no adequate protection payments have been made. Moreover, neither the Debtor, nor the Trustee, has made any effort to cure the current default under the Contract. FCC requests relief from the automatic stay to repossess the Collateral, and to exercise any and all of its state law remedies in connection therewith.

## ARGUMENT

Under the Bankruptcy Code, the Court shall grant relief from the stay if either of two alternatives is met:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

(A) the debtor does not have an equity in such property;

and

(B) such property is not necessary to an effective reorganization . . . .

11 U.S.C. § 362(d). With the exception of the equity issue, the debtor bears the burden of proof on all elements. In re Marion Street Partnership, 108 B.R. 218, 224 (Bankr. D. Minn. 1989); 11 U.S.C. § 362(g) (“In any hearing under subsection (d) or (e) of this section . . . (1) the party requesting such relief has the burden of proof on the issue of the debtor’s equity in property; and (2) the party opposing such relief has the burden of proof on all other issues.”).

**A. FCC is entitled to relief from the automatic stay pursuant to 11 U.S.C § 362(d)(1).**

The Bankruptcy Code does not expressly define “cause.” See In re Metro Square, 1988 WL 86679, at \*2 (Bankr. D. Minn. Aug. 10, 1988). However, a lack of adequate protection has been construed to constitute sufficient cause for lifting the stay. See First Fed. Savs. Bank v. Sierra (In re Sierra), 73 B.R. 322, 323 (Bankr. D. P. R. 1987) (failure of debtor to provide adequate protection constitutes “per se . . . cause to lift the automatic stay.”). A debtor fails to provide adequate protection if the property that

is the subject of the creditor's interest is depreciating in value. See United Savs. Ass'n v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 370 (1988).

In the instant case, the Collateral is depreciating in value. Moreover, there is no evidence that the Chapter 7 Trustee has the resources to properly maintain and insure the Collateral or is in fact maintaining and insuring the collateral. Under 11 U.S.C. § 361(1), the Court can compel the trustee to provide adequate protection in the form of cash payments to the creditor, if the value of the creditor's interest in the property is depreciating. See 11 U.S.C. § 361(1). In light of the fact that the Collateral is depreciating, FCC is entitled to adequate protection payments and no such payments have been offered to FCC.

The automatic stay currently precludes FCC from protecting its interest in the Collateral. Based on the Debtor's current default under the Contract, and in the absence of adequate protection payments and evidence of adequate insurance coverage, FCC is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

**B. FCC is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).**

The provisions of 11 U.S.C. § 362(d)(2) provide an independent basis on which this Court may base a decision to lift the automatic stay. Under 11 U.S.C. § 362(d)(2), a creditor is entitled to relief from the stay if the debtor does not have equity in the property and the property is not necessary to an effective reorganization. The actual value of the Collateral does not exceed the amounts owed to FCC after consideration of the cost of repossession and liquidation. Accordingly, the Debtor does not have any equity in the Collateral.

Finally, the conversion of this case from Chapter 11 to Chapter 7 of the Bankruptcy Code obviates any consideration of the "necessary to an effective reorganization" provision on § 362(d)(2)(B). Given the Debtor's lack of equity in the

Collateral, FCC is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

### **CONCLUSION**

Cause exists under both 11 U.S.C. § 362(d)(1) and (d)(2) to grant FCC relief from the automatic stay provisions of 11 U.S.C. § 362(a). Accordingly, FCC respectfully requests that the relief requested in the Motion be granted so that it may repossess the Collateral, and exercise any and all of its state law remedies in connection therewith.

Dated: September 29, 2004

DORSEY & WHITNEY LLP

By /e/ Alpha Khaldi  
Katherine A. Constantine #123341  
Alpha Khaldi #0303860  
50 South Sixth St., Ste. 1500  
Minneapolis, MN 55402-1498  
Telephone: (612) 340-2600

Attorneys for FCC Equipment Financing, Inc.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Chapter 7

BKY Case No. 04-41899-RJK

LLK Transport, Inc,

Debtor(s).

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**ORDER GRANTING RELIEF**  
**FROM THE AUTOMATIC STAY**

The Motion of FCC Equipment Financing Corp. ("FCC Financial") for Relief from the Automatic Stay (the "Motion") came before the Court and the undersigned Judge. Notice of the hearing on the Motion being adequate, and the Court, being fully advised of the premises, and based upon the Motion, all of the files and records in this case and the arguments of counsel,

**IT IS HEREBY ORDERED THAT:**

1. The automatic stay imposed by 11 U.S.C. § 362(a) is terminated as it applies to FCC, in order that FCC may repossess that certain Midland TW 3000 42' Tri Axle Side Dump Trailer S/N: 2MFB2R4D93R002452 (the "Collateral") and exercise its state law rights and remedies;
2. FCC is allowed its reasonable attorneys fees and costs incurred in this matter, such amount to be added to its claim amount so that any sale proceeds in excess of such claim amount may be applied to the allowed attorney fees and costs;
3. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

Dated: October \_\_, 2004

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UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Chapter 7

BKY Case No. 04-41899-RJK

LLK Transport, Inc,

Debtor(s).

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

I, Dena Rootes, employed at Dorsey & Whitney LLP, attorney(s) licensed to practice law in this court, with office address of 50 South Sixth Street, Suite 1500, Minneapolis, Minnesota 55402, declare that on September 29, 2004, I caused to be served the **Notice of Hearing and Motion for Relief From the Automatic Stay; Memorandum in Support of Motion for Relief From The Automatic Stay; and proposed Order** upon each of the entities named below, by mailing to each of them a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and causing them to be deposited in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

William I. Kampf  
Hensch & Efron, P.A.  
220 South Sixth Street  
Suite 2200  
Minneapolis, MN 55402

LLK Transport Incorporated  
23906 Lime Valley Road  
Mankato, MN 56001

Navistar Financial Corporation  
Attn: Kathleen N. Siegel  
2850 West Golf Road  
Rolling Meadows, IL 60008

SunBridge Capital  
c/o Stephen J. Behm  
115 East Hickory Street, Suite 200  
P. O. Box 1056  
Mankato, MN 56002-1056

Northern Star Bank  
c/o James Rubenstein  
Moss & Barnett  
4800 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402

Peter B. Stein  
Stein & Moore, P.A.  
The First National Bank Building  
332 Minnesota Street, Suite W-1650  
St. Paul, MN 55101

Stephen F. Grinnell  
Henry Want  
Gray, Plant, Mooty, Mooty & Bennett, P.A.  
500 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

Brad A. Sinclair  
Serkland Law Firm  
10 Roberts Street  
P. O. Box 6017  
Fargo, ND 58108-6017

John A. Beckstead  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, Utah 84101-1004

Michael S. Dietz, Trustee  
505 Marquette Building  
P. O. Box 549  
Rochester, MN 55903

State of Minnesota  
Department of Revenue  
Collection Division  
600 North Robert Street  
St. Paul, MN 55146

Mr. Mark E. Fosse  
Dunlap & Seeger, P.A.  
206 South Broadway, Suite 505  
P. O. Box 549  
Rochester, MN 55903-0549

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 29, 2004



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