

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

BKY 04-33910 GFK
Chapter 13

Janet Helen Gerber,

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

Debtor.

TO: *All Parties in Interest as Set Forth in the Attached Service List.*

NOTICE OF HEARING

1. Bank of America ("Bank of America"), a party in interest, by and through its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this Motion at 10:30 a.m., on Monday September 20, 2004, before the Honorable Gregory F. Kishel in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this Motion must be filed and delivered not later than Wednesday September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Thursday September 9, 2004 which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holiday). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This 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 proceeding is a core proceeding. The Petition commencing this Chapter 13 case was filed on July 6, 2004. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. § 362(d)(2) and Fed. R. Bankr. P. 4001. This Motion is filed under Fed. R. Bankr. 9014 and Local Rules 9006-1, 9013-1, et sec. Bank of America hereby requests relief from the automatic stay imposed by 11 U.S.C § 362.

FACTS

6. That on or about March 11, 1997, Debtor entered into a Retail Installment Contract and Security Agreement (the "Contract") with Brambillas, Inc. , for the purchase of a 1994 Jamboree 29 Foot Searcher RV, VIN No. 1FDKE30G4RHA6223 (the "Vehicle"). A copy of said Agreement is attached as Exhibit "A" and incorporated by reference.

7. That thereafter, the Agreement was assigned to Fleetwood Credit Corp, with Fleetwood Credit receiving a first priority security interest in the Vehicle in accordance with the terms of the Agreement. The Confirmation of Lien Perfection of Title issued by the State of Minnesota in connection with the Vehicle lists Fleetwood Credit Corp. the first lienholder. Said Confirmation of Lien Perfection is attached as Exhibit "B" and incorporated by reference. Thereafter, Fleetwood Credit Corp. assigned its interest in the contract and Vehicle to Bank of America. A copy of the assignment is attached as Exhibit "B" and incorporated by reference. As holder of the Agreement, Bank of America is entitled to enforce the terms thereof.

8. That as of the date hereof, Debtor is indebted to Bank of America pursuant to the Agreement, in the approximate principal amount of Thirteen Thousand Seven Hundred Eighty Seven and 74/100 (\$13,787.74) Dollars.

9. That as of the date hereof, the Debtor is in default in both the payment and performance of her obligations to Bank of America under the Agreement, in that Debtor has failed to make the monthly payments called for under the contract and has additionally failed, upon information and belief, to maintain insurance on the Vehicle, as required under the Agreement.

10. That the *Debtor wishes to voluntarily surrender the Vehicle to Bank of America* and Movant seeks relief from this Court so that it may liquidate its interest in the Vehicle.

11. Thereafter, on or about July 6, 2004, Debtor filed a Chapter 13 Plan. The Plan submitted by the Debtor does not provide for payment of the Vehicle within the Plan.

12. That Bank of America believes it will not receive payments outside of the Plan.

13. That due to the Debtor's failure to maintain insurance on the Vehicle, Bank of America may in fact be forced to obtain insurance thereon at its own cost. If Bank of America is in fact required to do so, the cost of said insurance will be added to the amount of the default.

14. That it is believed that the Vehicle has a retail value of less than \$12,000. Since the outstanding balance is more than the retail value of the Vehicle, the Debtor has no equity in the Vehicle.

15. That Movant's interest is depreciating, while Debtor is failing to make payments. Movant does not have, and has not been offered adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and it is not necessary for an effective reorganization.

16. That cause exists within the meaning of 11 U.S.C. § 362(d)(1) and § 362(d)(2), including lack of adequate protection of the interest of Bank of America in the Vehicle, entitling Bank of America to relief from the automatic stay.

17. That Bank of America desires to protect its interest in the Vehicle, and therefore, requests this Court to vacate the stay of actions under 11 U.S.C. § 362, and allow enforcement of Bank of America's security interest in and repossession of the Vehicle pursuant to the Contract and Minnesota law.

18. That Bank of America has incurred and will incur legal fees and costs to protect and enforce its rights in the Vehicle, which fees and costs Debtor is liable to Bank of America for under the terms of the Agreement.

19. That Bank of America requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

20. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d (Minn. 1980). If the default is not cured before the hearing, Bank of America will repossess the Vehicle promptly upon the Court signing the Order.

21. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Bank of America, by and through its undersigned attorney, respectfully moves the Court for an Order modifying the automatic stay of 11 U.S.C. § 362 so as to allow Bank of America to take such steps as may be necessary to obtain possession of the Vehicle, pursuant to the terms of the

Contract and Minnesota law, and for such other and further relief as the Court deems just and equitable in the premises.

Dated this 1st day of September, 2004.

THE GURSTEL LAW FIRM, P.A.

BY /e/ Jennifer Berquist
Jennifer M. Berquist (#266681)
Attorneys for Movant
401 North Third Street Suite 590
Minneapolis, Minnesota 55401
Telephone: (612) 843 1080

FLEETWOOD CREDIT CORP.

RECREATIONAL VEHICLE RETAIL INSTALLMENT CONTRACT
AND SECURITY AGREEMENT - STATE OF MINNESOTA

CONTRACT DATE
3-11-97

BUYER NAME Jaret H. Gerber	NO. STREET 2154 Highland Pwy.	CITY, STATE ST. Paul, MN	ZIP CODE 55116
BUYER NAME	NO. STREET	CITY, STATE	ZIP CODE
SELLER/DEALER'S NAME Brambillas Inc.	NO. STREET 550 Valley Park DR.	CITY, STATE Shakopee, MN	ZIP CODE 55379

In this Contract, the words "we," "us" and "our" refer to the Seller named above and to any assignee of the Contract. The words "you" and "your" refer to the Buyer(s) named above, jointly and severally. You have the option of buying the recreational vehicle ("Vehicle") described below for cash or on credit. The cash price is shown below as the "Total Cash Price" and the credit price is shown below as the "Total Sale Price". By signing this Contract, you choose to buy the Vehicle on credit and agree to all of the terms on both sides of this Contract.

NEW/USED Used	ODOMETER 27,588	YEAR AND MAKE 1994 Jamboree	MODEL 29 searcher	SERIAL NUMBER 1FDKE30G4RHA622B	SIZE 29
AWINGS <input type="checkbox"/> AIR CONDITIONER <input checked="" type="checkbox"/> POWER GENERATOR <input checked="" type="checkbox"/> OTHER ACCESSORIES/ADDED EQUIPMENT: 190-021-003-00-08 764012					

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 9.25 %	FINANCE CHARGE The dollar amount the credit will cost you. \$ 16,477.76	Amount Financed The amount of credit provided to you or on your behalf. \$ 25,000.00	Total of Payments The amount you will have paid after you have made all payments as scheduled. \$ 41,477.76	Total Sale Price The total cost of your purchase on credit, including your down payment of \$ 6,032.50. \$ 47,510.26
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YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of		
144 Payments	288.04	Monthly, beginning 4-10-97
One Final Payment		

SECURITY: You are giving a security interest in the Vehicle being purchased.
PREPAYMENT: If you pay off early, you will not have to pay any penalty.
ASSUMPTION: Someone buying your Vehicle may, subject to conditions, be allowed to assume the remainder of this Contract on its original terms.
 See the other portions of this Contract, including the reverse side, for any additional information about prepayment, default and any required repayment in full before the scheduled date.

STATEMENT OF INSURANCE

PROPERTY INSURANCE: Property insurance against loss from fire, theft, collision and other damage, as well as comprehensive insurance coverage, is required. You may obtain this insurance from any insurance company acceptable to us, and through an agent or broker of your choice. You have voluntarily requested that Seller include in the balance due under this Contract the premiums for the insurance described below.

Term	Premium
\$ N/A DEC. COMP. FIRE & THEFT N/A Mos. \$ N/A	
\$ N/A DEDUCTIBLE COLLISION N/A Mos. \$ N/A	
BODILY INJURY \$ N/A LIMITS N/A Mos. \$ N/A	
PROPERTY DAMAGE \$ N/A LIMITS N/A Mos. \$ N/A	
MEDICAL N/A N/A Mos. \$ N/A	
N/A Mos. \$ N/A	
TOTAL VEHICLE INSURANCE PREMIUMS	\$ N/A

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY OR PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT UNLESS OTHERWISE INDICATED ABOVE.

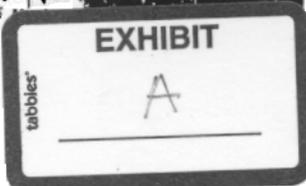
CREDIT INSURANCE: Credit life and credit disability insurance are not required to obtain credit and will not be provided unless you voluntarily request it and agree by signing below to pay the additional cost.

Term	Premium
SINGLE CREDIT LIFE N/A Mos. \$ N/A	
JOINT CREDIT LIFE N/A Mos. \$ N/A	
SINGLE CREDIT DISABILITY N/A Mos. \$ N/A	

ITEMIZATION OF THE AMOUNT FINANCED

CASH PRICE	
A. Cash Price (including accessories)	\$ 29,000.00
B. Sales Tax	\$ 1,885.00 (A)
C. Documentary Prep Fee	\$ 25.00 (C)
TOTAL CASH PRICE (1A + 1B + 1C)	\$ 30,910.00
DOWN PAYMENT	
A. Trade-In (Description)	
Year	Make
Model	\$ N/A (A)
L.O. No.	
Odometer	
B. Cash Pay Off	\$ N/A (B)
C. Net Trade-In (2A less 2B)	\$ N/A (C)
D. Deferred down payment due before second installment payment	\$ N/A (D)
E. MRP's Rebate	\$ N/A (E)
F. Remaining cash down payment	\$ 6,032.50 (F)
TOTAL DOWN PAYMENT (2C + 2D + 2E + 2F)	\$ 6,032.50
UNPAID BALANCE OF CASH PRICE (1 less 2)	\$ 24,877.50
AMOUNT PAID TO PUBLIC OFFICIALS	
A. License	\$ 105.50 (A)
B. Certificate of Title	\$ N/A (B)
C. Registration	\$ 17.50 (C)
D. Other	\$ N/A (D)
TOTAL PUBLIC OFFICIALS (3A + 3B + 3C + 3D)	\$ 123.00

190-021-003-00-08 764012



FINANCIAL RATE The cost of your credit as a yearly rate.	will cost you.	to you or on your behalf.	after you have made all payments as scheduled.	on credit, including your down payment of \$ 6,032.50
9.25 %	\$ 16,477.76	\$ 25,000.00	\$ 41,477.76	\$ 47,510.26

YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of		
144 Payments	288.04	Monthly, beginning 4-10-97
One Final Payment		

SECURITY: You are giving a security interest in the Vehicle being purchased.
PREPAYMENT: If you pay off early, you will not have to pay any penalty.
ASSUMPTION: Someone buying your Vehicle may, subject to conditions, be allowed to assume the remainder of this Contract on its original terms.
 See the other portions of this Contract, including the reverse side, for any additional information about in-payment, default and any required repayment in full before the scheduled date.

STATEMENT OF INSURANCE

PROPERTY INSURANCE: Property insurance against loss from fire, theft, collision and other damage, as well as comprehensive insurance coverage, is required. You may obtain this insurance from any insurance company acceptable to us and through an agent or broker of your choice. You have voluntarily requested that Seller include in the balance due under this Contract the premiums for the insurance described below.

	Term	Premium
\$ N/A DED. COMP. FIRE & THEFT	N/A Mos.	\$ N/A
\$ N/A DEDUCTIBLE COLLISION	N/A Mos.	\$ N/A
BODILY INJURY \$ N/A LIMITS	N/A Mos.	\$ N/A
PROPERTY DAMAGE \$ N/A LIMITS	N/A Mos.	\$ N/A
MEDICAL N/A	N/A Mos.	\$ N/A
	N/A Mos.	\$ N/A
TOTAL VEHICLE INSURANCE PREMIUMS		\$ N/A

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY OR PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT UNLESS OTHERWISE INDICATED ABOVE.

CREDIT INSURANCE: Credit life and credit disability insurance are not required to obtain credit and will not be provided unless you voluntarily request it and agree by signing below to pay the additional cost.

	Term	Premium
SINGLE CREDIT LIFE	N/A Mos.	\$ N/A
Insured:		
JOINT CREDIT LIFE	N/A Mos.	\$ N/A
Insured:		
Insured:		
SINGLE CREDIT DISABILITY	N/A Mos.	\$ N/A
Insured:		
TOTAL CREDIT INSURANCE PREMIUMS		\$ N/A

Buyer _____ Age _____

Buyer _____ Age _____

CREDIT LIFE AND CREDIT DISABILITY INSURANCE MAY NOT COVER THE ENTIRE AMOUNT DUE UNDER THIS CONTRACT. SEE YOUR POLICY OR CERTIFICATE FOR EXACT COVERAGE.

ITEMIZATION OF THE AMOUNT FINANCED

CASH PRICE

A. Cash Price (including accessories)	\$ 29,000.00
B. Sales Tax	\$ 1,885.00 (B)
C. Documentary Prep Fee	\$ 25.00 (C)
TOTAL CASH PRICE (1A + 1B + 1C)	\$ 30,910.00

DOWN PAYMENT

A. Trade-in (Description)	
Year	Make
Model	\$ N/A (A)
L.D. No.	
Odometer	
B. Less Pay Off	\$ N/A (B)
C. Net Trade-in (2A less 2B)	\$ N/A (C)
D. Deferred down payment due before second installment payment	\$ N/A (D)
E. MERV Rebate	\$ N/A (E)
F. Remaining cash down payment	\$ 6,032.50 (F)
TOTAL DOWN PAYMENT (2C + 2D + 2E + 2F)	\$ 6,032.50

UNPAID BALANCE OF CASH PRICE (1 less 2) \$ 24,877.50

AMOUNT PAID TO PUBLIC OFFICIALS

A. License	\$ 105.50 (A)
B. Certificate of Title	\$ N/A (B)
C. Registration	\$ 17.50 (C)
D. Other	\$ N/A (D)
TOTAL OFFICIAL FEES (4A + 4B + 4C + 4D)	\$ 122.50 (4)

AMOUNTS PAID TO INSURANCE COMPANIES

A. Total Vehicle Insurance Premiums	\$ N/A (A)
B. Total Credit Insurance Premiums	\$ N/A (B)
TOTAL INSURANCE PREMIUMS (5A + 5B)	\$ N/A (5)

SERVICE CONTRACT (optional) \$ N/A (6)

AMOUNT FINANCED (3 + 4 + 5 + 6) \$ 25,000.00 (7)

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

The undersigned acknowledges receipt of a completed copy of this RETAIL INSTALLMENT CONTRACT.

Seller: Brambilla's Inc
 By: Micheli Brambilla
 Title: Bus Mgr.

Buyer: X Janet H. Huber
 Buyer: _____

ADDITIONAL TERMS AND AGREEMENTS

A. SIMPLE INTEREST CONTRACT. This is a simple interest contract. We figure the finance charge daily by applying the Annual Percentage Rate to the unpaid portion of the Amount Financed and you pay all the money you owe us. The Finance Charge, Total of Payments and Payment Schedule shown may differ from what you have to pay. This will happen if we do not receive your payments on their due dates or we add amounts to the Contract. For example, if you make payments early, your final payment would be reduced. Late payments or additions to the amount you owe would increase your final payment.

B. PROMISE TO PAY. You promise to pay us the Amount Financed plus the Finance Charge on the unpaid portion at the Annual Percentage Rate, as shown in the Payment Schedule. You promise to pay the final payment on its due date even if it differs from the amount shown if the Finance Charge or Annual Percentage Rate provided for in this Contract exceeds the maximum allowed by applicable law, the resulting Finance Charge will be reduced so as not to exceed that maximum.

C. PREPAYMENT. You may prepay all or part of this Contract at any time without penalty. If you prepay a portion of your balance, we will apply the payment first to the earned Finance Charge and the remainder to the unpaid balance due under this Contract. If you prepay only part of the total amount of the Contract, your next payment is due on the next scheduled payment due date.

D. PROPERTY INSURANCE. You must keep the Vehicle fully insured for the term of this Contract. The insurance must cover the risks of fire, theft and other damage in amounts not less than the full value of the Vehicle. You will name us as loss payee on all required insurance. By naming us as loss payee, you agree to assign the proceeds (or any refund of premium) of the insurance to us and direct the insurance company to pay us directly. If you do not obtain the property insurance, we may purchase a policy covering our interest only. You will repay us this cost on demand, together with interest on the unpaid cost at 8% per year. Whether or not the Vehicle is insured, you must pay the amount you owe us under this Contract if the Vehicle is damaged, destroyed or stolen. We can use any proceeds from insurance to either repair or replace the Vehicle or to reduce your debt under this Contract.

E. SECURITY INTEREST. To secure what you owe us under this Contract, you give us a security interest in the Vehicle and its proceeds. This security interest includes accessories, equipment and replacement parts on the Vehicle. You also give us a security interest in the proceeds of any service contract and property insurance policies covering the Vehicle and any credit insurance policies covering this Contract. You also give us a security interest in any refunds of insurance premiums or service contract costs we finance.

F. USE OF GOODS. You agree that you will:

- (1) keep the Vehicle in good repair;
- (2) not make any major changes in the Vehicle;
- (3) permit us to inspect the Vehicle at any reasonable time;
- (4) not use the Vehicle to break any law;
- (5) not take the Vehicle from Minnesota for more than 30 days without our consent;
- (6) not take the Vehicle outside the United States;
- (7) not sell the Vehicle without our consent; and
- (8) pay all taxes and liens on the Vehicle.

G. AMOUNTS PAID BY US. You must keep the Vehicle fully insured. If you don't keep the Vehicle fully insured, we may, but do not have to, buy the required insurance. You must keep the Vehicle free of all taxes and liens. If you don't keep the Vehicle free of all taxes and liens, we may but do not have to, pay the taxes and liens. You agree to pay us these costs as soon as we bill you for them, plus interest on the unpaid costs due at 8% per year until paid.

H. TRANSFER. You will not transfer any interest in the Vehicle without our prior written consent. Another person may take over the balance of this Contract if that person:

- (1) meets our credit standards; and
- (2) enters into an agreement with us.

You agree to pay us a transfer fee if not prohibited by law.

I. DEFAULT. You will be in default under this Contract if:

- (1) you don't make any payment under this Contract when it is due;
- (2) you break any of your promises in this Contract;
- (3) you commence any bankruptcy or like action; or
- (4) you die.

J. REMEDIES: If you are in Default as defined above: (1) we may require you to pay the entire unpaid balance of this Contract with interest at the Annual Percentage Rate stated on the other side of this Contract. (2) we have the right, to peacefully and lawfully enter any premises where the Vehicle is located and take possession of the Vehicle together with any personal property found in the Vehicle; we will temporarily store the personal property for you at your risk, without any liability on our part; (3) any remedy required by law of the time and place of any public or private sale or other disposition of the Vehicle is reasonable notice when sent by regular or certified mail, postage prepaid, to your last known address, at least ten (10) days before the date of the sale or other disposition; and (4) we will apply the proceeds of any sale or other disposition of the Vehicle for all expenses we have in the repossession, holding, preparation for sale, and sale or disposition of the Vehicle, including any reasonable attorney's fees and other legal expenses to the extent permitted by law, and then to the satisfaction of your obligations under this Contract. Any surplus will be paid to you. If, after application of such proceeds is not enough to pay the amount owed to us, you will be responsible to pay any unpaid balance due to the extent permitted by law. The remedies provided in this Contract are in addition to all other rights and remedies provided by law or in equity, including those of a secured party under the Uniform Commercial Code.

K. COLLECTION COSTS. If we refer this Contract to any attorney for collection who is not a salaried employee of ours, you agree to pay our attorney's fees not to exceed 15% of the amount you owe us under the Contract. To the extent permitted by law, you will also pay all court costs and the costs of repossession, storing and sale of the Vehicle. You also agree that if the money is not enough to pay what you owe us, you will still have to pay the unpaid amounts due us to the extent permitted by law.

L. DELAY IN ENFORCEMENT. We can delay enforcing any of our Contract rights without losing them.

M. OTHER AGREEMENTS OF BUYER: You agree that (1) if the estimated license, title and registration fees are greater than the amount shown, you will pay the difference to us on demand, if they are less we will refund the difference to you; (2) if we accept partial payments or extend due dates of payments under the Contract, we do not give up our rights to enforce the Contract terms as written; (3) changes to this Contract are not valid unless they are made in writing and signed by you and us; (4) if we transfer this Contract to an assignee we will give you reasonable notice and agree that the assignee will have all of our rights and remedies under the Contract; and (5) if any provision of this Contract is not enforceable the remaining provisions of this Contract will continue to be enforced.

N. EACH SIGNER LIABLE. Each person who signs this Contract is equally and separately responsible for keeping the Contract promises.

O. ADDRESS CHANGE. You will promptly tell us in writing of any change in your address or the address where the Vehicle is kept.

REPRESENTATIONS AND WARRANTIES OF BUYER: You promise that:

- (1) you have given true and correct information in your application for credit. You understand that we have relied upon that correctness of that information in entering into this Contract; and
- (2) you have given us a true payoff amount on any goods traded in. You understand that if the payoff amount is not correct and is greater than the amount shown in this Contract you will pay the excess to us on our demand.

Q. GOVERNING LAW. This Contract shall be governed by the laws of the State of Minnesota and applicable federal law.

R. WARRANTIES: YOU AGREE THAT THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, REPRESENTATIONS, PROMISES OR STATEMENTS AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ON THE VEHICLE THAT HAVE BEEN MADE BY US UNLESS STATED IN THIS CONTRACT OR IN A SEPARATE WRITTEN WARRANTY DELIVERED TO YOU AT THE TIME OF SALE. ANY STATEMENT AS TO YEAR AND MODEL OF THE VEHICLE IS FOR IDENTIFICATION ONLY AND IS NOT A REPRESENTATION OR WARRANTY BY US.

NOTICE

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

GUARANTY BY THIRD PARTY

The words "I" and "me" mean the Guarantor(s) signing this Guaranty. The word "you" means the Seller and any assignee of the Contract.

I absolutely and unconditionally guarantee all payments called for by the Contract. You may extend or defer payments or require payment in full on the unpaid balance without giving me any notice. You do not have to perfect, protect, secure or insure any security interest or file.

You may release or substitute collateral for the Contract without giving me any notice. I waive notice of non-payment and all other demands or notices regarding the Contract.

Guarantor _____

Address _____

Guarantor _____

Address _____

covering our interest only. You will repay us this cost on demand, together with interest on the unpaid cost at 8% per year. Whether or not the Vehicle is insured, you must pay the amount you owe us under this Contract if the Vehicle is damaged, destroyed or stolen. We can use any proceeds from insurance to either repair or replace the Vehicle or to reduce your debt under this Contract.

E. SECURITY INTEREST. To secure what you owe us under this Contract, you give us a security interest in the Vehicle and its proceeds. This security interest includes accessories, equipment and replacement parts on the Vehicle. You also give us a security interest in the proceeds of any service contract and property insurance policies covering the Vehicle and any credit insurance policies covering this Contract. You also give us a security interest in any refunds of insurance premiums or service contract costs we finance.

F. USE OF GOODS. You agree that you will:
(1) keep the Vehicle in good repair;
(2) not make any major changes in the Vehicle;
(3) permit us to inspect the Vehicle at any reasonable time;
(4) not use the Vehicle to break any law;
(5) not take the Vehicle from Minnesota for more than 30 days without our consent;
(6) not take the Vehicle outside the United States;
(7) not sell the Vehicle without our consent; and
(8) pay all taxes and liens on the Vehicle.

G. AMOUNTS PAID BY US. You must keep the Vehicle fully insured. If you don't keep the Vehicle fully insured, we may, but do not have to, buy the required insurance. You must keep the Vehicle free of all taxes and liens. If you don't keep the Vehicle free of all taxes and liens, we may but do not have to, pay the taxes and liens. You agree to pay us these costs as soon as we bill you for them, plus interest on the unpaid costs due at 8% per year until paid.

H. TRANSFER. You will not transfer any interest in the Vehicle without our prior written consent. Another person may take over the balance of this Contract if that person:
(1) meets our credit standards; and
(2) enters into an agreement with us.
You agree to pay us a transfer fee if not prohibited by law.

I. DEFAULT. You will be in default under this Contract if:
(1) you don't make any payment under this Contract when it is due;
(2) you break any of your promises in this Contract;
(3) you commence any bankruptcy or like action; or
(4) you die.

M. OTHER AGREEMENTS OF BUYER: You agree that (1) if the estimated license, title and registration fees are greater than the amount shown, you will pay the difference to us on demand, if they are less we will refund the difference to you; (2) if we accept partial payments or extend due dates of payments under the Contract, we do not give up our rights to enforce the Contract terms as written; (3) changes to the Contract are not valid unless they are made in writing and signed by you and us; (4) if we transfer this Contract to an assignee we will give you reasonable notice and agree that the assignee will have all of our rights and remedies under the Contract; and (5) if any provision of this Contract is not enforceable the remaining provisions of this Contract will continue to be enforced.

N. EACH SIGNER LIABLE. Each person who signs this Contract is equally and separately responsible for keeping the Contract promises.

O. ADDRESS CHANGE. You will promptly tell us in writing of any change in your address or the address where the Vehicle is kept.

REPRESENTATIONS AND WARRANTIES OF BUYER: You promise that:
(1) you have given true and correct information in your application for credit. You understand that we have relied upon that correctness of that information in entering into this Contract; and
(2) you have given us a true payoff amount on any goods traded in. You understand that if the payoff amount is not correct and is greater than the amount shown in this Contract you will pay the excess to us on our demand.

Q. GOVERNING LAW. This Contract shall be governed by the laws of the State of Minnesota and applicable federal law.

R. WARRANTIES: YOU AGREE THAT THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, REPRESENTATIONS, PROMISES OR STATEMENTS AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ON THE VEHICLE THAT HAVE BEEN MADE BY US UNLESS STATED IN THIS CONTRACT OR IN A SEPARATE WRITTEN WARRANTY DELIVERED TO YOU AT THE TIME OF SALE. ANY STATEMENT AS TO YEAR AND MODEL OF THE VEHICLE IS FOR IDENTIFICATION ONLY AND IS NOT A REPRESENTATION OR WARRANTY BY US.

NOTICE

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

GUARANTY BY THIRD PARTY

The words "I" and "me" mean the Guarantor(s) signing this Guaranty. The word "you" means the Seller and any assignee of the Contract.

I absolutely and unconditionally guarantee all payments called for by the Contract. You may suspend or defer payments or require payment in full on the unpaid balance without giving me any notice. You do not have to perfect, protect, assure or insure any security interest or lien.

You may release or substitute collateral for the Contract without giving me any notice. I waive notice of non-payment and all other demands or notices regarding the Contract.

Guarantor _____
Address _____
Guarantor _____
Address _____

Guarantor(s) Must Sign All Copies

ASSIGNMENT

For valuable consideration, the undersigned Dealer ("Seller") hereby sells, assigns and transfers to Fleetwood Credit Corp. ("FCC") the above Recreational Vehicle Retail Installment Contract and Security Agreement ("Contract") and all interest in any property sold thereunder, and rights of Seller under any guaranty, subject to (a) the terms and conditions of that certain Retail Plan Dealer Agreement by and between Seller and FCC, as supplemented, amended or modified from time to time (the "Agreement"); and (b) the provisions of the paragraph labeled below by Seller, provided that if none of the paragraphs below have been initiated by Seller, this Assignment shall include the provisions of the paragraph below entitled "Repurchase."

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- 1. **WITHOUT RECOURSE.** Except as the Agreement provides with respect to a breach of any of Seller's representations or warranties in connection with a contract or assignment thereof, this Assignment of the Contract is and shall be without recourse against Seller.
- 2. **REPURCHASE.** If default be made under the Contract, Seller agrees to repurchase the Contract from FCC, upon the terms set forth in the Agreement.
- 3. **LIMITED TERM REPURCHASE.** If default be made in the payment of any installment under the Contract, Seller agrees to repurchase the Contract from FCC upon the same terms set forth in the Agreement provided that, if Buyer satisfactorily pays each of the first _____ installments coming due under the Contract, this Assignment shall thereafter be without recourse against Seller.
- 4. **PARTIAL GUARANTEE.** Notwithstanding the terms of the Agreement, Seller unconditionally guarantees payment of the full amount remaining unpaid under the Contract, and agrees to repurchase the Contract from FCC, upon demand, for the full amount then unpaid, regardless of whether the Contract shall then be in Default, provided that, at the time of such demand by FCC, Seller may at its election, pay to FCC the sum of \$ _____ in consideration of being released from this guaranty obligation; in such event this Assignment of the Contract shall be without recourse against Seller.
- 5. **FULL GUARANTEE.** Notwithstanding the terms of the Agreement, Seller unconditionally guarantees payment of the full amount remaining unpaid under the Contract and agrees to repurchase the Contract from FCC, upon demand, for the full amount remaining unpaid under the Contract regardless of whether the Contract shall then be in Default.

Dated _____ at St. Cloud, MN
Signed Franklin Tax (Name of Dealer) By Michael Bernillo (Dealer, Firm Member or Owner)

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICE DIVISION
PO BOX 191 AND DAVID ST PAUL MN 55154
CONFIRMATION OF THIS PERMIT THIS DEBIOR SAME AND ADDRESS

GERBER JANE7 HELEN
2154 HIGHLAND PLY
ST PAUL MN 55116

Field Class
US Postage
PAID
Permit No 171
St Paul MN

RV65663

94 <small>Year</small>	FL 1h <small>Make</small>	 <small>Model</small>	K0B00J339 <small>VIN-NR</small>
1FDKE30C4RHA622J1 <small>VIN</small>		03/11/97 <small>Expiry Date</small>	NO <small>Model</small>

1ST SECURED PARTY

LIEN HOLDER

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

FLEETWOOD CREDIT CORP
PO BOX 25447
OVERLAND PARK KS 66225



EXHIBIT

B

tabbies

To Whom It May Concern:

Bank of America is one and the same as:

Arizona Bank Leasing
 BA Auto Finance
 BA Auto Leasing
 BAAF
 Banc of America Auto Fin.
 BancAmerica
 BancAmerica Auto Fin.
 Bank of Del Mar
 Bank South
 BankAmerica Finance Corp
 Barnet Bank
 Barnet Dealer Financial Services
 Barnet Technologies
 Bank America
 Bank America Leasing
 BOAC Inc
 Boatmans
 Box Leasing Corp
 BTRAC Leasing Corp
 C & S National Bank
 C & S Sovran
 Carolina Mountain Bank
 Centrex Capital Corp
 Centrex Resources
 Chase Federal Bank

City National Bank
 Community Bank of the Islands
 Financial Federal Bank
 Financial Federal S & L Assoc
 First Federal S & L-Bakersfield
 First Sierra Bank
 Fleetwood Credit Corp
 Florida Water Sports
 Freedom Savings
 FSB
 Gibraltar Savings
 Glendale Federal
 Guardian Federal S & L Assoc
 Hibernia Bank
 Highland Leasing Corp
 Humboldt Natl Bank
 La Jolla Bank
 Lewis State Bank
 Long Island Savings Bank
 Mercury Savings
 Mission Bank
 NationsBanc Auto Lease
 NationsBanc Dealer Leasing Inc
 * NationsBank, N.A.
 NationsCredit

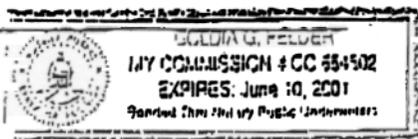
NBALT
 NOMB, N.A.
 North Fork Bank
 Norwalk Savings
 Oxford Leasing Corp
 Oxford Resources Corp
 Peoples Westchester Savings Bank
 Roosevelt Bank (St. Louis)
 Santa Clarita National Bank
 Southwest Bank
 Southwest Bank of Georgia
 Southwest Federal Savings
 Southwest Thrift & Loan
 Sovran Bank
 USA Automall
 Westlake Thrift

[Signature]
 Consumer Credit Services
 Bank of America

Sworn to and subscribed before me this 11th day of May, 2001
 Who is personally known to me Witness my hand and official seal.

Notary Public *[Signature]*

My commission expires
 Updated 1/6/2001



Seal



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

BKY 04-33910 GFK

IN RE:

Chapter 13

Janet Helen Gerber,

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

Debtor.

Bank of America ("Bank of America") submits this Memorandum of Law in Support of its Motion for Relief from Automatic Stay in the above-entitled matter.

FACTS

The facts are as outlined in Bank of America's Notice of Hearing and Motion for Relief from the Automatic Stay, and all the capitalized terms contained herein have the same meanings as in the Motion.

ARGUMENT

The automatic stay is one of the fundamental rights afforded the debtor in bankruptcy. The automatic stay provides a bankruptcy debtor with “a breathing spell from his creditors’ in which he may attempt ‘a repayment or reorganization plan.’” Farley v. Hanson, 2F.3d 273, 274 (8th Cir. 1993). Application of the automatic stay to secured creditors presents significant issues involving a balance between protecting secured creditors and allowing debtors a reprieve from collection activities.

Pursuant to § 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. § 362(d)(1).

Adequate protection is not defined in the Bankruptcy Code. “While the concept of adequate protection is complex, its application is intended to be flexible and molded to the needs of an individual case so that the purposes of bankruptcy will be accomplished.” In Re All-Way Services, Inc., 73 Bankr. 556, 565 (Bankr. E.D. Wisc. 1987). Each case must be decided on a case by case basis with attention given to the particular facts of the case. H.R.Rep. No. 95-595, 95th Cong., 2d Sess. 339; In Re Johnson, 90 Bankr. 973, 978 (Bankr. D. Minn. 1988). Adequate protection is derived from the fifth amendment protection of property interests of both the debtor and creditor and is meant to reconcile the competing interests of the debtor and the creditor. Federal Land Bank v. Carson (In Re Carson), 34 Bankr. 502, 505 (D. Kan. 1983).

There are a number of factors to be considered in determining whether a secured creditor’s interest is adequately protected, such as equity; necessity of property to an effective reorganization; ability to pay interest or give replacement liens or indubitable equivalents; and the debtor’s care in keeping property insured and repaired. In Re Johnson, 90 Bankr. At 979.

In this case, the Debtor has failed to provide adequate protection to Bank of America in connection with its interest in the Vehicle. ***The Debtor wishes to voluntarily surrender the Vehicle to Bank of America.*** The Debtor has failed to make the payments required by the terms of the Agreement. In fact, the Debtor’s Chapter 13 Plan does not include this Vehicle nor Bank of America.

The Debtor does not have any equity in the Vehicle. Further she has failed to provide proof of insurance for the Vehicle. Finally, Bank of America has incurred and will incur legal fees and costs in connection with the protection and enforcement of its rights in the Vehicle pursuant to the Agreement. Such circumstances constitute cause, within the meaning of §362(d)(1) of the Bankruptcy Code, justifying relief from the automatic stay. See In Re Brown, 70 B.R. 10, 12 (Bky.S.D.Ohio 1986); In Re Chapman, 23 B.R. 176, 178 (Bky. N.D.Ill 1982).

Furthermore, no payments have been made as required by the contract between the Debtor and the Movant and the Movant has otherwise not been provided with adequate protection of its interest in the collateral or adequate assurance of future performance under the terms of the contract. Such failure constitutes cause within the meaning of §362(d)(1) of the Bankruptcy Code thereby provide a basis for relief from the automatic stay. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 108 U.S. 365, 98 L.Ed.2d 740 (1988); In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Circuit 1991).

The court opined in *In re Albany Partners, Ltd.*, relief from stay is appropriate under § 362(d)(2) where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Circuit 1984). In this case, the balance owed to the Movant exceeds the value of the Vehicle, resulting in no equity for the Debtor. Since the Debtor did not include this Vehicle nor the Movant in its Chapter 13 Plan, it is clear that the Vehicle is not necessary for an effective reorganization.

CONCLUSION

Accordingly, Bank of America is entitled to an Order terminating the automatic stay and authorizing it to proceed with repossession and/or liquidation of the Vehicle pursuant to the Agreement and Minnesota law.

Respectfully submitted,

THE GURSTEL LAW FIRM, P.A.

BY /e/ Jennifer Berquist

Jennifer M. Berquist (#266681)

Attorneys for Movant

401 North Third Street, Suite 590

Minneapolis, Minnesota 55401

Telephone: (612) 843 1080

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

BKY 04-33910 GFK
Chapter 13

IN RE:

Janet Helen Gerber,

Debtor

**UNSWORN CERTIFICATE
OF SERVICE**

I, Jennifer Berquist, declare under penalty of perjury, that I am an employee of The Gurstel Law Firm, P.A. and on the 1st day of September, 2004, I served copies of the attached Notice of Hearing and Motion for Relief from Automatic Stay, Memorandum of Law and proposed Order, on all persons listed below, at the addresses shown, by mailing to each of them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota, to-wit:

JANET HELEN GERBER
2154 HIGHLAND PARKWAY
ST. PAUL, MINNESOTA 55116

CURTIS K. WALKER, ESQ.
4356 NICOLLET AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55409

U S TRUSTEE'S OFFICE
1015 U S COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS, MINNESOTA 55415

JASMINE Z. KELLER
CHAPTER 13 TRUSTEE
12 SOUTH 6TH STREET STE 310
MINNEAPOLIS, MINNESOTA 55402-1508

Executed on: September 1, 2004

/e/ Jennifer Berquist _____
Jennifer Berquist
401 North Third Street, Suite 590
Minneapolis, Minnesota 55401

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

BKY 04-33910 GFK
Chapter 13

Janet Helen Gerber,

ORDER

Debtor.

The above-entitled matter came before the Court on the 20th day of September, 2004, on the Motion of Bank of America ("Bank of America") seeking relief from the automatic stay imposed by 11 U.S.C. § 362 of the Bankruptcy Code. Appearances, if any, were as noted on the record.

Based upon the proceedings had on said date, and statements of counsel, and all files and records herein, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that Bank of America its assigns, assignees and/or successors in interest, is granted relief from the automatic stay imposed by 11 U.S.C. § 362. Notwithstanding Fed. R. Bankr. P. 4001 (a)(3), this order is effective immediately, and Bank of America is authorized to immediately commence repossession of the Vehicle, or otherwise satisfy its interests in the Vehicle more specifically described below, in accordance with the Agreement and Minnesota law:

1994 Jamboree 29 Foot Searcher RV
VIN No. 1FDKE30G4RHA6223

BY THE COURT:

DATED:

The Honorable Gregory F. Kishel
Chief Judge of Bankruptcy Court