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Confession of Judgment

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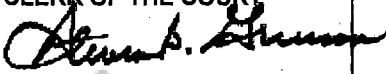
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1 **CONF**
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4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 KEY EQUIPMENT FINANCE, INC., a) Case No.: A-09-606465-C
7 Michigan corporation;)
8) Dept. No.: I
9 Plaintiff,)
0 vs.)
1)
2 TRITON GRADING AND PAVING, LLC, a) **CONFESSION OF JUDGMENT**
3 Nevada limited liability company; LUCAS)
4 LEAVITT, an individual; MARCUS)
5 LEAVITT, an individual; MICHAEL)
6 LEAVITT, an individual; DOES I-X; and)
7 ROE CORPORATIONS XI-XX, inclusive,)
8)
9 Defendants.)

0
1 Michael Leavitt confesses judgment in favor of Key Equipment Finance, Inc. ("Key
2 Equipment"), a Michigan corporation, and authorizes the Clerk of the Eighth Judicial District
3 Court in and for Clark County, Nevada to enter judgment in favor of Key Equipment upon this
4 Confession of Judgment as follows:

5 //
6 //
7 //
8 //

SHEA & CARLYON, LTD.
701 Bridger Avenue, Suite 850
Las Vegas, Nevada 89101
(702) 471-7432

I.

FACTS CONSTITUTING LIABILITY

1
2
3
4 1. WHEREAS, Key Equipment is a Michigan corporation registered and authorized to do
5 business within the State of Nevada.

6 2. WHEREAS, Triton Grading and Paving, LLC is a limited liability company organized
7 and existing under the laws of the state of Nevada and doing business in Clark County, Nevada.

8 3. WHEREAS, Lucas Leavitt, Marcus Leavitt, and Michael Leavitt (collectively, the
9 "Guarantors") are the managing members of Triton Grading.

10 4. WHEREAS, on September 1, 2006, Triton Grading entered into a Master Lease
11 Agreement (the "Master Lease") with Key Equipment, which set forth the terms and conditions
12 under which Key Equipment would lease equipment to Triton Grading.

13 5. WHEREAS, pursuant to the terms of the Master Lease, Key Equipment agreed to lease
14 equipment to Triton Grading from time to time pursuant to certain equipment schedules, each of
15 which fully incorporated the terms of the Master Lease.

16 6. WHEREAS, in conjunction with the Master Lease, on September 11, 2006, Triton
17 Grading executed Equipment Schedule No. 01 and Use and Condition Rider (collectively,
18 "Lease Schedule 1").

19 7. WHEREAS, pursuant to the terms of Lease Schedule 1, Triton Grading agreed to make
20 monthly rent payments to Key Equipment in the amount of \$7,335.67 each, beginning on
21 September 1, 2006, for forty-eight (48) consecutive months, to lease a Caterpillar Model 14H
22 Motor Grader S/N ASE01610 (the "Schedule 1 Equipment").

23 8. WHEREAS, Key Equipment satisfied its obligations under Lease Schedule 1, and the
24 Schedule 1 Equipment was delivered to Triton Grading.
25
26
27
28

1 9. WHEREAS, in June 2008, Triton Grading defaulted under the terms and conditions of
2 Lease Schedule 1 by failing to pay Key Equipment the monthly rental payments as agreed.

3 10. WHEREAS, Key Equipment entered into workout discussions with Triton Grading, and
4 on September 12, 2008, Triton Grading and Key Equipment executed a Modification and
5 Extension Agreement of Lease Schedule 1 (the "Schedule 1 Modification").

6 11. WHEREAS, pursuant to the Schedule 1 Modification, the monthly lease payments were
7 restructured to defer Triton Grading's rental obligations to the end of the lease term and to
8 extend the lease term to March 1, 2011.

9 12. WHEREAS, in conjunction with the Master Lease, on September 11, 2006, Triton
10 Grading also executed Equipment Schedule No. 02 and a Use and Condition Rider (collectively,
11 the "Lease Schedule 2").

12 13. WHEREAS, pursuant to the terms of Lease Schedule 2, Triton Grading agreed to make
13 monthly payments to Key Equipment in the amount of \$7,205.73 each, beginning on September
14 1, 2006, for forty-eight (48) consecutive months, to lease a Caterpillar Model 14H Motor Grader
15 S/N ASE01637 (the "Schedule 2 Equipment").

16 14. WHEREAS, Key Equipment satisfied its obligations under Lease Schedule 2, and the
17 Schedule 2 Equipment was delivered to Triton Grading.

18 15. WHEREAS, in June 2008, Triton Grading defaulted under the terms and conditions of
19 Lease Schedule 2 by failing to pay Key Equipment the monthly rental payments as agreed.

20 16. WHEREAS, Key Equipment entered into workout discussions with Triton Grading, and
21 on September 12, 2008, Triton Grading and Key Equipment executed a Modification and
22 Extension Agreement of Lease Schedule 2 (the "Schedule 2 Modification").

23 17. WHEREAS, pursuant to the Schedule 2 Modification, the monthly lease payments were
24 restructured to defer Triton Grading's rental obligations to the end of the lease term and to
25

1 extend the lease term to March 1, 2011.

2 18. WHEREAS, in conjunction with the Master Lease, on September 11, 2006, Triton
3 Grading executed Equipment Schedule No. 03 and Use and Condition Rider (collectively, the
4 "Lease Schedule 3").

5 19. WHEREAS, pursuant to the terms of the Lease Schedule 3, Triton Grading agreed to
6 make monthly rent payments to Key Equipment in the amount of \$5,705.87 each, beginning on
7 September 1, 2006, for forty-eight (48) consecutive months, to lease a Caterpillar Model 140H
8 Motor Grader S/N APM02334 (the "Schedule 3 Equipment").

9 20. WHEREAS, Key Equipment satisfied its obligations under the Lease Schedule 3, and
10 the Schedule 3 Equipment was delivered to Triton Grading.

11 21. WHEREAS, in June 2008, Triton Grading defaulted under the terms and conditions of
12 the Lease Schedule 3 by failing to pay Key Equipment the monthly rental payments as agreed.

13 22. WHEREAS, Key Equipment entered into workout discussions with Triton Grading, and
14 on September 12, 2008, Triton Grading and Key Equipment executed a Modification and
15 Extension Agreement of Lease Schedule 3 (the "Schedule 3 Modification").

16 23. WHEREAS, pursuant to the Schedule 3 Modification, the monthly rental payments were
17 restructured to defer Triton Grading's payment obligations to the end of the lease term and to
18 extend the lease term to March 1, 2011.

19 24. WHEREAS, in conjunction with the Master Lease, on September 11, 2006, Triton
20 Grading executed Equipment Schedule No. 04 and Use and Condition Rider (collectively, the
21 "Lease Schedule 4").

22 25. WHEREAS, pursuant to the terms of Lease Schedule 4, Triton Grading agreed to make
23 monthly rent payments to Key Equipment in the amount of \$4,035.62 each, beginning on
24 September 1, 2006, for forty-eight (48) consecutive months, to lease a Caterpillar 950G Wheel
25
26
27
28

1 Loader S/N BAA01064 (the "Schedule 4 Equipment").

2 26. WHEREAS, Key Equipment satisfied its obligations under Lease Schedule 4, and the
3 Schedule 4 Equipment was delivered to Triton Grading.

4 27. WHEREAS, in June 2008, Triton Grading defaulted under the terms and conditions of
5 Lease Schedule 4 by failing to pay Key Equipment monthly rental payments as agreed.

6 28. WHEREAS, Key Equipment entered into workout discussions with Triton Grading and,
7 on September 12, 2008, Triton Grading and Key Equipment executed a Modification and
8 Extension Agreement of Lease Schedule 4 (the "Schedule 4 Modification").
9

10 29. WHEREAS, pursuant to the Schedule 4 Modification, the monthly rent payments were
11 restructured to defer Triton Grading's payment obligations to the end of the lease term and to
12 extend the lease term to March 1, 2011.
13

14 30. WHEREAS, in conjunction with the Master Lease, on September 11, 2006, Triton
15 Grading executed Equipment Schedule No. 05 and Use and Condition Rider (collectively, the
16 "Lease Schedule 5").

17 31. WHEREAS, pursuant to the terms of Lease Schedule 5, Triton Grading agreed to make
18 monthly rent payments to Key Equipment in the amount of \$3,858.99 each, beginning on
19 September 1, 2006, for forty-eight (48) consecutive months, to lease a Caterpillar 950G Wheel
20 Loader S/N AXX01598 (the "Schedule 5 Equipment").
21

22 32. WHEREAS, Key Equipment satisfied its obligations under Lease Schedule 5, and the
23 Schedule 5 Equipment was delivered to Triton Grading.

24 33. WHEREAS, in June 2008, Triton Grading defaulted under the terms and conditions of
25 Lease Schedule 5 by failing to pay Key Equipment the monthly rental payments as agreed.
26

27 34. WHEREAS, Key Equipment entered into workout discussions with Triton Grading and,
28 on September 12, 2008, Triton Grading and Key Equipment executed a Modification and

1 Extension Agreement of Lease Schedule 5 (the "Schedule 5 Modification").

2 35. WHEREAS, pursuant to the Schedule 5 Modification, the monthly rental payments were
3 restructured to defer Triton Grading's payment obligations to the end of the lease term and to
4 extend the lease term to March 1, 2011.

5 36. WHEREAS, Lease Schedule 1, Lease Schedule 2, Lease Schedule 3, Lease Schedule 4,
6 and Lease Schedule 5 shall be collectively referred to herein as the "Lease Schedules," and
7 Schedule 1 Modification, Schedule 2 Modification, Schedule 3 Modification, Schedule 4
8 Modification, and Schedule 5 Modification shall be collectively referred to herein as the
9 "Schedule Modifications," and together with the Lease Schedules and Master Lease, the "Lease
10 Agreement."
11

12 37. WHEREAS, the Schedule 1 Equipment, Schedule 2 Equipment, Schedule 3 Equipment,
13 Schedule 4 Equipment, and Schedule 5 Equipment shall hereinafter be collectively referred to as
14 the "Equipment."
15

16 38. WHEREAS, to induce Key Equipment to enter into the Lease Agreements with Triton
17 Grading, on or about September 2006, Lucas Leavitt, Marcus Leavitt, and Michael Leavitt
18 executed a guaranty agreement (the "Guaranty").
19

20 39. WHEREAS, pursuant to the express terms of the Guaranty, Guarantors each, in their
21 individual capacity, "absolutely and unconditionally guarant[eed] to [Key Equipment] . . . the
22 full and prompt performance of all [Triton Grading's] obligations."
23

24 40. WHEREAS, Triton Grading breached the Lease Agreements by failing to timely make
25 the monthly payments as agreed.
26

27 41. WHEREAS, in addition, Guarantors breached the Guaranty by failing to satisfy the full
28 and prompt performance of all Triton Grading's obligations under the Lease Agreements as
agreed.

1 42. WHEREAS, Key Equipment has not received any payments from Triton Grading and/or
2 Guarantors since 2009.

3 43. WHEREAS, pursuant to the terms of the Lease Agreements, upon default, Key
4 Equipment is entitled to the return of all leased equipment.

5 44. WHEREAS, in addition to the term of the equipment, pursuant to the express terms of
6 the Master Lease, upon default, Key Equipment is entitled to monetary damages consisting of
7 any unpaid rent due prior to "Remedy Date" (including interest at 18% per annum), plus the
8 "Stipulated Loss Value."
9

10 45. The Master Lease defines the "Remedy Date" as the date when, "by written notice to
11 Lessee," the Lessor specifies a payment date (the "Remedy Date") and demands payment by that
12 date.
13

14 46. Whereas, on December 9, 2009, Key Equipment sent written notice to Defendants (the
15 "Notice of Demand and Acceleration") demanding payment in the amount of \$1,248,658,26 on
16 or before December 21, 2009, or Key Equipment would pursue its rights and remedies under the
17 Lease Agreements.

18 47. WHEREAS, thus, pursuant to the terms of the Master Lease, the Remedy Date is
19 December 21, 2009.
20

21 48. WHEREAS, the Master Lease defines the Stipulated Loss Value to mean "as of the date
22 of its calculation and as to any affected equipment, the sum of the present value of all future
23 Rent owed plus the value of the affected equipment as reflected on Key Equipment's accounting
24 system, both discounted to the date of payment by Triton at a per annum rate of interest equal to
25 three percent (3%)."
26

27 49. WHEREAS, pursuant to the terms of the Master Lease, if Triton Grading fails to make
28 its rental payments, Key Equipment is also entitled to late charges "equal to one and one half

percent of the delinquent amount per month from the due date until the date paid.”

1
2 50. WHEREAS, pursuant to the terms of the Master Lease, Triton Grading “shall pay when
3 due and shall indemnify and hold [Key Equipment] harmless from and against (on and after tax-
4 basis) any and all taxes, fees, withholdings, levies, imposts, duties, assessments and charges of
5 every kind and nature whatsoever.”

6 51. WHEREAS, on December 22, 2009, Key Equipment applied to the Court for a Writ of
7 Possession to recover all Equipment leased by Triton Grading.
8

9 52. WHEREAS, on March 16, 2010, after conducting an Order to Show Cause hearing as to
10 why the Equipment should not be turned over to Key Equipment, the Court entered an order
11 directing the Clerk of Court to issue a Writ of Possession for the immediate turnover of all
12 leased Equipment to Key Equipment.
13

14 53. WHEREAS, Key Equipment hired Asset Control Services, Inc. (“ACS”), which
15 specializes in the repossession, reconditioning, sales, and auctions of heavy equipment to
16 repossess, market, and sell the Equipment.

17 54. WHEREAS, on April 3, 2010, ACS took possession of the Equipment as directed by
18 Key Equipment.

19 55. WHEREAS, on April 8, 2010, Key Equipment gave notice to Triton Grading and
20 Guarantors that it intended to sell the Equipment by private sale or public auction on or after
21 April 21, 2010 (the “Notice of Intent to Sell”).
22

23 56. WHEREAS, ACS listed the Equipment for sale, undertook the marketing of the same,
24 and ultimately sold the Equipment by private sale.
25

26 57. WHEREAS, on or about May 20, 2010, Key Equipment, through the efforts of ACS,
27 was successful in selling, by private sale, the Schedule 4 Equipment and Schedule 5 Equipment
28 for \$170,000.00 (\$85,000.00 each).

1 58. WHEREAS, on or about June 9, 2010, Key Equipment, through the efforts of ACS, was
2 successful in selling, by private sale, the Schedule 3 Equipment for \$130,000.00.

3 59. WHEREAS, on or about August 20, 2010, Key Equipment, through the efforts of ACS,
4 was successful in selling, by private sale, the Schedule 1 Equipment and Schedule 2 Equipment
5 for \$416,000.00 (\$208,000.00 each).

6 60. WHEREAS, the gross proceeds for the Equipment totaled \$716,000.00. After deducting
7 ACS's 10% sale commission in the amount of \$71,600.00 and repossession/recovery expenses
8 in the amount of \$6,050.00, the net proceeds to Key Equipment totaled \$638,350.00.

9 61. WHEREAS, as of January 18, 2011, the combined past due lease payments, prior to the
10 Remedy Date, due to Key Equipment under the five Lease Schedules totaled \$309,560.68.

11 62. WHEREAS, in addition to the aggregate lease payments as of January 18, 2011, the
12 combined sales and use taxes due to Key Equipment prior to the Remedy Date under the five
13 Lease Schedules totaled \$27,327.85.

14 63. WHEREAS, as of January 18, 2011, the combined property taxes due to Key Equipment
15 prior to the Remedy Date under the five Lease Schedules totaled \$40,729.19.

16 64. WHEREAS, as of January 18, 2011, the accrued late charges, prior to the Remedy Date
17 due to Key Equipment under the five Lease Schedules totaled \$31,187.84 (calculated up to and
18 including December 21, 2009).

19 65. WHEREAS, as of January 18, 2011, the combined Stipulated Loss Value (the future
20 lease payments, including residuals, as of the Remedy Date, discounted to present value at the
21 rate of three percent) under the five Lease Schedules totaled \$771,297.68.

22 66. WHEREAS, as of January 18, 2011, the accrued and unpaid interest on the past due
23 lease payments after the Remedy Date due to Key Equipment under the five Lease Schedules
24 totaled \$31,489.22 (calculated from December 22, 2009).

1 67. WHEREAS, prior to the calculation of the deficiency amount below, Triton and/or
2 Guarantors were fully credited for payments of \$790,645.82, which paid the monthly lease
3 obligations through January 31, 2009.

4 68. WHEREAS, Triton and/or Guarantors have not satisfied the monthly lease obligations
5 from February 1, 2009.

6 69. The total deficiency currently due and owing is \$573,242.46 (the "Deficiency"). As of
7 the Remedy Date, Triton Grading was eleven months past due and had an additional fifteen
8 months, plus the residual amounts, remaining on the five Lease Schedules. This total is
9 exclusive of attorneys' fees and costs. The Deficiency was calculated as follows:
10

11	Past Due Lease Rentals	\$ 309,560.68
12	Unpaid Sales/Use Taxes	\$ 27,327.85
13	Unpaid Property Taxes	\$ 40,729.19
14	Accrued and Unpaid Late Charges	\$ 31,187.84
15	Stipulated Loss Value	\$ 771,297.68
16	Default Interest from Remedy Date	\$ 31,489.22
17	Net Sales Proceeds	\$ (638,350.00)
18		<hr/>
19	Deficiency Amount	\$ 573,242.46

20 70. WHEREAS, the Parties have negotiated in good faith and at arms length with respect to
21 the amounts owed to Key Equipment as set forth above (the "Indebtedness"), and the Parties
22 feel it is to their mutual benefit that these matters be settled and set aside for all times on the
23 terms provided herein.

24 71. WHEREAS, the Parties have entered into a Forbearance Agreement, pursuant to which,
25 among other things, Key Equipment has agreed to further forbear from exercising its rights and
26 remedies under the Lease Agreements unless and until a default under the Forbearance
27 Agreement occurs. In consideration of Key Equipment's agreement to forbear, Defendants have
28 agreed, among other things, to pay the outstanding debt as follows: (i) immediate payment of

1 \$50,000.00 via cashier's check or wire transfer; (ii) monthly payments thereafter, commencing
2 August 1, 2011, in the minimum amount of \$2,000.00; and (iii) payment of the principal balance
3 of \$523,242.44 before July 1, 2014.

4 72. WHEREAS, pursuant to the Forbearance Agreement, so long as Defendants do not
5 default under the terms of the Forbearance Agreement, Key Equipment will accept a discounted
6 payment of principal as follows: (i) if all principal is paid on or before July 1, 2014, Key
7 Equipment will accept a principal payment of \$400,000.00, and following such payment, shall
8 release the balance of the Indebtedness; (ii) if all principal is paid on or before July 1, 2013, Key
9 Equipment shall accept the sum of \$331,000.00 and, following such payment, shall release the
10 balance of the Indebtedness; (iii) if all principal is paid on or before July 1, 2012, Key
11 Equipment shall accept the sum of \$275,000.00 and, following such payment, shall release the
12 balance of the Indebtedness.
13

14
15 73. WHEREAS, once payment is received via the Forbearance Agreement as outlined
16 above, the Confession of Judgment shall be released. However, in the event of an uncured
17 default under the Forbearance Agreement, the Confession of Judgment may be filed and
18 executed by Key Equipment for the full amount that remains due under the Lease Agreements,
19 plus interest, costs, and fees, less any payments received in connection with the Forbearance
20 Agreement.
21

22 **II**

23
24 **CONFESSION OF JUDGMENT**

25 This Confession of Judgment is made with the understanding that Key Equipment shall
26 not file or execute upon this Confession of Judgment so long as Defendants pay to Key
27 Equipment the sums described above and set forth in the Forbearance Agreement, and so long as
28

1 Guarantors pay the Indebtedness of Defendants pursuant to the Guaranties should Defendants
2 fail to pay Key Equipment as agreed.

3 In the event Defendants fail to tender the amounts described above and as set forth in the
4 Forbearance Agreement, and Guarantors fail to pay the Indebtedness of Defendants, Key
5 Equipment may give a written notice for Defendants to cure the default, which shall be deemed
6 received three (3) days after it is deposited in the United States Mail, first-class postage prepaid.
7
8 If the default is not cured within twenty (20) days of receipt, along with a \$250.00 charge for
9 any legal fees incurred with respect to the default, Michael Leavitt authorizes the Eighth Judicial
10 District Court to enter Judgment pursuant to Nev. Rev. Stat. §§ 17.090, et seq., in the amount
11 of:

12 **\$655,364.56; PLUS INTEREST FROM JUNE 10, 2011, AT THE**
13 **CONTRACT RATE OF 18% PER ANNUM; PLUS ATTORNEYS' FEES**
14 **AND COSTS INCURRED BY KEY EQUIPMENT FROM AND AFTER**
15 **JUNE 9, 2011; LESS ANY PAYMENTS MADE TO KEY EQUIPMENT**
16 **PURSUANT TO THE FORBEARANCE AGREEMENT, WHICH SUM IS**
17 **JUSTLY DUE.**

18 Furthermore, Michael Leavitt agrees that each of the private sales of the Equipment,
19 conducted on May 20, 2010, June 9, 2010, and August 20, 2010, were commercially reasonable.


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III

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

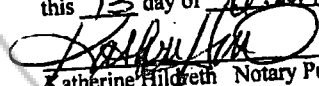
Under the penalty of perjury, the undersigned, being first duly sworn, deposes and says that he has made the foregoing Confession of Judgment, understands and knows the contents of the foregoing Confession of Judgment and that the same is true of his own knowledge.


MICHAEL LEAVITT

SUBSCRIBED and SWORN to before me this 13 day of June, 2011.

STATE OF NEVADA
COUNTY OF CLARK

Sworn to (or affirmed) and subscribed before me this 13 day of June, 2011, by Michael Leavitt xxx


Katherine Hildreth Notary Public
My Commission Exp. April 15, 2015

