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Attorney for Creditor / KeyBank National Association  
Our File No. 09-31932

FILED  
2009-03-11 11:52  
JF

**FEE PAID**  
RCPT # 162809

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

IN RE: )  
) Chapter 7  
DANNY J. AUSERMAN, )  
GAIL J. AUSERMAN, ) Case No. 99-20069  
)  
) **MOTION TO REMOVE**  
Debtor(s). ) **AUTOMATIC STAY**  
)

COMES NOW, KeyBank National Association, pursuant to 11 U.S.C. 362(d) Bankruptcy Rule 4001 and Local Bankruptcy Rule 4001.2 and alleges as follows:

1. That the Debtor(s), DANNY J. AUSERMAN and GAIL J. AUSERMAN, is/are indebted to Claimant upon a loan agreement dated June 14, 1996 whereby said Debtor(s) promised to pay to the order of the Claimant the total of \$14,724.95 plus interest. A copy of said note is attached hereto as Exhibit "A" and is incorporated herein in full by this reference.

2. That as security for said indebtedness, the Claimant claims a lien upon the following described property:

- One 1991 Bayliner 2255 Sunbridge, I.D. #BL3A11SJF091 and,**
- One Mercruiser 5.0L, I.D. #00396993 and,**
- One Escort 40522, I.D. #1BA2MB000009**

(See Exhibit "B" which is attached hereto and by this reference made a part of).

4

3. That Claimant's lien and security interest in said property is evidenced by the exhibits which are attached hereto and incorporated herein in full by this reference.

4. That Debtor(s) filed their Chapter 7 petition under the provisions of the applicable Bankruptcy Code on or about January 26, 1999.

5. That Debtor(s) are in default under the terms and conditions of the agreement/plan, as stated above, and owe \$12,267.56 as of February 22, 1999. Debtor(s) last paid on December 7, 1998, but are due for January 14, 1999. The amount in arrears is \$388.17.

6. That Claimant alleges and believes that the present fair market value of the property is below \$12,020.00 based on: N.A.D.A.

7. That Claimant alleges that the present fair market value of its collateral may not exceed the sums due Claimant and other liens against the property above described, including that of Claimant, and of Debtor(s)' exemptions, although the exemption provision is not an issue herein.

8. That Claimant alleges the estate of Debtor(s) has no interest in the property.

9. That Claimant alleges the above-described property is not necessary to an effective reorganization of Debtor(s).

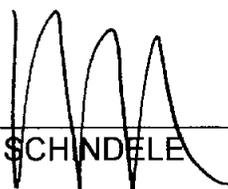
10. That Claimant does not have and has not been offered adequate protection for its liens and security interest in said property, and if Claimant is not permitted to foreclose its security interest in the collateral, Claimant will suffer irreparable injury, loss and damage.

WHEREFORE, Claimant moves the Court to issue an Order against the Debtor(s), the trustee and parties in interest as follows:

1. Removing the stay of 11 U.S.C. 362 as against Claimant and authorizing said Claimant to pursue its remedies against said property by foreclosing upon or reclaiming the same pursuant to the provisions of its Note and applicable local law.

2. In the alternative Claimant prays for an Order of this Court adequately protecting Claimant's lien on the collateral in the form of cash payments to Claimant, additional liens on other unencumbered property of Debtor(s) or imposing such other restrictions on Debtor(s)' use of the collateral as will provide Claimant with the indubitable equivalent of its interest in the property.

DATED this 5th day of March, 1999.

  
MICHAEL L. SCHINDELE



**CONSUMER NOTE  
INSTALLMENT LOAN  
NOTE, SECURITY AGREEMENT AND DISCLOSURE STATEMENT**

FORM NO. 20-0001 8/95  
MARINE/RV

**BORROWER(S):** DAN AUSHERMAN 503 RIVERSIDE HARBOR DR. W POST FALLS ID 83854  
NAME ADDRESS  
 GAIL AUSHERMAN  
NAME ADDRESS  
NAME ADDRESS  
**BANK:** KEY BANK USA, NATIONAL ASSOCIATION, 5000 TIEDEMAN RD. SUITE A BROOKLYN OH 44144

**MEANING OF WORDS** — In this document the word "Agreement" will mean Installment Loan Note, Security Agreement and Disclosure Statement. In this Agreement, the words "you" and "your" mean each and all of those persons who sign it individually and together. The words "we," "us," and "our" refer to the Bank. "Loan" means the Agreement and the debt it evidences.

**DISCLOSURE STATEMENT**

<b>AMOUNT FINANCED</b> The amount of credit provided to you on your behalf.  \$ 14724.95	<b>ANNUAL PERCENTAGE RATE</b> The cost of credit to you as a yearly rate which may be subject to change.  10.25 %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you which may be subject to change.  \$ 8870.65	<b>TOTAL OF PAYMENTS</b> The amount you will have paid after making all scheduled payments which may be subject to change.  \$ 23595.60
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**PAYMENT SCHEDULE**

Number of Payments	Amount of Payment*	Payments Are Due Monthly Beginning
120	\$ 196.63	JUL 14, 1996
	\$	

\*The Amount of Payment will be subject to change if the VARIABLE RATE box is checked below.

- FIXED RATE** — Unless the Variable Rate box is clearly checked below, the Contract Rate on this Agreement will remain constant until maturity.
- VARIABLE RATE** — The Contract Rate, which is determined by adding a margin to the index rate selected below, may increase or decrease during the term of this Loan if the selected Index Rate increases or decreases. Over the term of this Loan, the Contract Rate will not increase or decrease more than 5% over the initial Contract Rate. Increases in the Contract Rate will result in higher payment amounts while any decrease in the Contract Rate will result in lower payment amounts. For example, if your loan is for \$10,000 for 120 months at an initial Contract Rate of 12.00% and the Contract Rate increased to 13.5% at the first interest rate adjustment, your payment amount would increase by the following amount based on the index rate selected:  
 Quarterly Index: \$8.69 per month      Two Year Index: \$7.43 per month  
 (If the VARIABLE RATE box is checked, you must select one of the following indexes or the QUARTERLY INDEX will apply.)
- QUARTERLY INDEX** — The Quarterly Index is based on the three (3) month London Interbank Offer rate which is published in *The Wall Street Journal*' "Money Rates" table. The Quarterly Index is a weekly average of the rates in effect for the first week beginning the Monday following the 14th day of the month prior to the month of each Contract Rate change date. The Contract Rate will be adjusted on each third month anniversary of the date of this Agreement. The Contract Rate will not be increased or decreased by more than 1.5% on any rate change date based on a change in the Quarterly Index.
- TWO YEAR INDEX** — The Two Year Index is the Two Year Treasury Rate published in the Federal Reserve Statistical Release H. 15, or its equivalent as of the first business day of the month prior to the month of each Contract Rate change. The Contract Rate will be adjusted each two year anniversary of the date of this Agreement.

**CREDIT INSURANCE — YOU CANNOT BE DENIED CREDIT SIMPLY BECAUSE YOU CHOOSE NOT TO BUY CREDIT INSURANCE. CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT. INSURANCE WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL CHARGE.**

	Amount Covered	Term	Premium
<input type="checkbox"/> Credit Life (Insured Only)			
<input type="checkbox"/> Credit Life (Insured/Joint Insured)			
<input type="checkbox"/> Credit Disability (Insured Only)			

You desire the credit insurance indicated above.

**OTHER INSURANCE** — You are required to obtain property insurance. You may purchase this insurance from anyone that is acceptable to us.  
SIGNATURE OF INSURED      SIGNATURE OF JOINT INSURED

**SECURITY** — You give us a security interest in the goods or property purchased and: (brief description of other property, if any)  
USED BAYLINER / USED ESCORT  
USED MERCURUISER

**FILING FEES** — \$ N/A If paid in cash.

**LATE CHARGE** — For each payment that we do not receive within ten (10) days after it is due, you agree to pay us a late charge of 10% of the payment, but not more than \$30.00 for each late payment.

**PREPAYMENT** — You may have to pay a prepayment charge if you pay off your Loan early unless you are a resident of Delaware, Maryland, New Mexico, South Carolina, Utah, Vermont or West Virginia in which case you can pay off your Loan at any time without a prepayment charge.  
 See the rest of this Agreement, including the reverse side, for any additional information about nonpayment, default, prepayment penalties and insurance coverage(s).

**ITEMIZATION OF AMOUNT FINANCED**

NUMBER OF MONTHLY PAYMENTS 120  
 MONTHLY PAYMENT AMOUNT \$ 196.63  
 CONTRACT RATE 10.250 %  
**LOAN PROCEEDS**  
 Amount given directly to you: \$ N/A  
 Amount paid on your loan(s) with us: \$ N/A  
 Amounts paid to others on your behalf:  
 \$ 14645.00  
 \$ N/A  
 \$ N/A  
 a) Total Loan Proceeds \$ 14645.00

**ADDITIONAL CHARGES FINANCED**

Filing Fees + DOC. FEE \$ 79.95  
 Credit Insurance \$ N/A  
 \$ N/A  
 \$ N/A  
 b) Total Additional Charges \$ 79.95  
 c) AMOUNT FINANCED (sum of a + b) \$ 14724.95  
**PREPAID FINANCE CHARGES**  
 Loan Processing Fee \$ N/A  
 \$ N/A  
 d) Total Prepaid Finance Charges \$ N/A  
 PRINCIPAL NOTE AMOUNT (sum of c + d) \$ 14724.95

**NOTE AND SECURITY AGREEMENT** DATE: 6/14/96 EXECUTED AT: THE TOBLER MARINA HAYDEN LAKE ID

**NOTE** — To repay your Loan, you promise to pay to our order the PRINCIPAL NOTE AMOUNT stated above, together with interest at the CONTRACT RATE stated above, in accordance with the terms and conditions and at the rates set forth in the DISCLOSURE STATEMENT and on the reverse side hereof without relief from valuation and appraisal laws, if applicable. You will pay this amount at any of our offices in consecutive monthly payments in accordance with the Payment Schedule described in the DISCLOSURE STATEMENT.

**SECURITY AGREEMENT** — To protect us in the event of default on this Agreement, you give us a security interest, and assign as security all of your rights, title and interest, in the property described below and in all parts, appliances, equipment, fixtures, substitutions and proceeds from the sale of the Collateral, and loss proceeds or returned or unearned premiums of insurance policies in regard to this Loan (the "Collateral"). The Collateral shall also secure the payment of any advances that we make under this Agreement. By giving us a security interest in the Collateral, you waive any right provided by law to claim the Collateral exempt from legal process. You also agree that we have a right of set off, subject to applicable state law limitations, against any monies you have in our possession.

USED BAYLINER 2255 SUNBRID BL3A11SJF091 / USED ESCORT 405221BA24R0009

**INSURANCE** — You understand you must maintain property insurance on the Collateral covered by this Agreement for its full insurable value as more fully described on the reverse side.

<b>AMOUNT FINANCED</b> The amount of credit provided to you or your behalf. \$ 14724.95	<b>ANNUAL PERCENTAGE RATE</b> The cost of credit to you as a yearly rate which may be subject to change. 10.25 %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you which may be subject to change. \$ 8870.65	<b>TOTAL OF PAYMENTS</b> The amount you will have paid after making all scheduled payments which may be subject to change. \$ 23595.60
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**PAYMENT SCHEDULE**

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	Amount Covered	Term	Premium
<input type="checkbox"/> Credit Life (Insured Only)			
<input type="checkbox"/> Credit Life (Insured/Joint Insured)			
<input type="checkbox"/> Credit Disability (Insured Only)			

You desire the credit insurance indicated above. \_\_\_\_\_  
 SIGNATURE OF INSURED      SIGNATURE OF JOINT INSURED

**OTHER INSURANCE** — You are required to obtain property insurance. You may purchase this insurance from anyone that is acceptable to us.

**SECURITY** — You give us a security interest in the goods or property purchased and: (brief description of other property, if any)  
USED BAYLINER / USED ESCORT  
USED MERCURISER

**FILING FEES** — \$ N/A if paid in cash.

**LATE CHARGE** — For each payment that we do not receive within ten (10) days after it is due, you agree to pay us a late charge of 10% of the payment, but not more than \$30.00 for each late payment.

**PREPAYMENT** — You may have to pay a prepayment charge if you pay off your Loan early unless you are a resident of Delaware, Maryland, New Mexico, South Carolina, Utah, Vermont or West Virginia in which case you can pay off your Loan at any time without a prepayment charge.  
 See the rest of this Agreement, including the reverse side, for any additional information about nonpayment, default, prepayment penalties and insurance coverage(s).

**ITEMIZATION OF AMOUNT FINANCED**

NUMBER OF MONTHLY PAYMENTS	120
MONTHLY PAYMENT AMOUNT	\$ 196.63
CONTRACT RATE	10.250 %
LOAN PROCEEDS	
Amount given directly to you:	\$ N/A
Amount paid on your loan(s) with us:	\$ N/A
Amounts paid to others on your behalf:	\$ 14645.00
	\$ N/A
	\$ N/A
a) Total Loan Proceeds	\$ 14645.00

<b>ADDITIONAL CHARGES FINANCED</b>	
Filing Fees + DOC FEE	\$ 79.95
Credit Insurance	\$ N/A
	\$ N/A
	\$ N/A
b) Total Additional Charges	\$ 79.95
c) AMOUNT FINANCED (sum of a + b)	\$ 14724.95
<b>PREPAID FINANCE CHARGES</b>	
Loan Processing Fee	\$ N/A
	\$ N/A
d) Total Prepaid Finance Charges	\$ N/A
PRINCIPAL NOTE AMOUNT (sum of c + d)	\$ 14724.95

**NOTE AND SECURITY AGREEMENT** \_\_\_\_\_ DATE: 6/14/96 EXECUTED AT: THE TOBLER MARINA HAYDEN LAKE ID

**NOTE** — To repay your Loan, you promise to pay to our order the PRINCIPAL NOTE AMOUNT stated above, together with interest at the CONTRACT RATE stated above, in accordance with the terms and conditions and at the rates set forth in the DISCLOSURE STATEMENT and on the reverse side hereof without relief from valuation and appraisal laws, if applicable. You will pay this amount at any of our offices in consecutive monthly payments in accordance with the Payment Schedule described in the DISCLOSURE STATEMENT.

**SECURITY AGREEMENT** — To protect us in the event of default on this Agreement, you give us a security interest, and assign as security all of your rights, title and interest, in the property described below and in all parts, appliances, equipment, fixtures, substitutions and proceeds from the sale of the Collateral, and loss proceeds or returned or unearned premiums of insurance policies in regard to this Loan (the "Collateral"). The Collateral shall also secure the payment of any advances that we make under this Agreement. **By giving us a security interest in the Collateral, you waive any right provided by law to claim the Collateral exempt from legal process.** You also agree that we have a right of set off, subject to applicable state law limitations, against any monies you have in our possession.

USED BAYLINER 2255 SUNBRID BL3A11SJF091 / USED ESCORT 405221BA2MB000009  
USED MERCURISER 00396993

**INSURANCE** — You understand you must maintain property insurance on the Collateral covered by this Agreement for its full insurable value as more fully described on the reverse side of this Agreement, and that you can buy this insurance through any person of your choosing acceptable to us.

**ADDITIONAL TERMS AND CONDITIONS** — You understand that the additional terms and conditions printed on the reverse side are part of this Agreement and that you are bound by them in the same manner as if they were printed on the front. You also acknowledge that you have received a completed copy of the Agreement.

**NOTICE TO CONSUMER** — (1) Do not sign this Agreement before you read it; (2) You are entitled to a copy of this Agreement; (3) You may, at any time, prepay the unpaid balance subject to such penalty as the Agreement and applicable law permits.

\_\_\_\_\_  
 SIGNATURE      SIGNATURE      SIGNATURE

**NOTICE TO CO-SIGNER** — Your signature on this note means that you are equally liable for the repayment of this Loan. If the borrower does not pay, the lender has the legal right to collect from you.

Florida Documentary Stamp Tax required by law in the amount of \$ N/A has been paid or will be paid directly to the Department of Revenue, Certificate of Registration No. 34-0797057-78-01.

**NOTICE TO CO-SIGNER**  
 You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs which increases this amount. The Bank can collect this debt from you without first trying to collect from the borrower. The Bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is in default, that fact may become a part of your credit record. This notice is not the contract that makes you liable for the debt.

1. PLEASE TYPE THIS FORM IN BLACK  
 2. Filing fees: a. Secretary of State. Except for pre-paid account users, enclose filing fee of \$4.00 if form is typed or \$10.00 if handwritten. For attachments, add \$1.00 per printed page. Pre-paid account users must enter "Pre-paid" in "Filing Office Use" block to right.  
 b. Filing with county recorder. Enclose recording fee of \$3.00 per page.  
 3. File only the original. Make copies for your file. The original will be returned as your acknowledgment.  
 4. Enter only one debtor's name or assumed name per debtor block exactly as it is to be indexed. If more than four names, use an attached sheet. Enter individual debtor names: Last, First Middle Title; e.g. Smith, John Alan Jr.  
 5. When the obligation has been satisfied, complete the Termination Statement and return the original to the filing officer.

Form approved by Pete T. Cenerusa, Secretary of State, UCC Division, Statehouse, Boise, ID 83720. Ph 208-334-3191.

Debtor #1 (Last name, first, middle, title & mailing address)	Debtor #3
AUSHERMAN DAN 55 CEDAR ST POST FALLS ID 83854	
Debtor #2	Debtor #4
AUSHERMAN GAIL	

Secured Party and Address THE TOBLER MARINA E. 3400 SO. HAYDEN LAKE ROAD HAYDEN LAKE ID 83835	Assignee and Address KEY BANK USA 5000 TIEDEMAN RD. SUITE A BROOKLYN OH 44144
Mailing Address for acknowledgment, if not Secured Party	Check if Covered <input type="checkbox"/> Products of collateral are also covered If one of the following boxes is checked, the secured party may sign the financing statement. The collateral described herein is: <input type="checkbox"/> Brought into this state already subject to a security interest in another jurisdiction. <input type="checkbox"/> Subject to a security interest in another jurisdiction, and the debtor's location has changed to this state. <input type="checkbox"/> Proceeds of the original collateral described above in which a security interest was perfected. <input type="checkbox"/> The subject of a financing statement which has lapsed. <input type="checkbox"/> Subject to a security interest perfected under a prior name or identity of the debtor.

This financing statement covers the following types or items of property:  
 (If this is a fixture, timber or mineral filing to be recorded with the County Recorder, include legal description and name of record owner, if required.)

USED BAYLINER 2255 SUNBRIDGE BL3A11SJF091  
 USED MERCUISER 5.0L 00396993  
 USED ESCORT 405221BA2MB000009



125600940627F

Signature(s) of Debtor(s)  
*[Handwritten signatures]*

Secured Party Signature

TERMINATION STATEMENT-The Secured Party no longer claims a security interest under the financing statement. 6/14/96

Secured Party or Assignee of Record Date

Filing Office Use Only

IDAHO SECRETARY OF STATE  
 DATE 07/15/1996 0900 10839

2  
 CK #: 15330 CUST# 41489  
 UCC1 FILE  
 1@ 6.00= 6.00

#: B 714708  
 Revised 7/91

EXHIBIT B