

2008-011123

Klamath County, Oregon



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**COVER SHEET**

ORS: 205.234

08/05/2008 02:55:35 PM

Fee: \$76.00

This cover sheet has been prepared by the persons presenting the attached instrument for recording. Any errors in this cover sheet DO NOT affect the transaction(s) contained in the instrument itself.

151 1268686

After recording, return to:

1st American title  
404 Main St  
Klamath Falls or 97601

The date of the instrument attached is August 1 2008.

1) NAMES(S) OF THE INSTRUMENT(S) required by ORS 205.234(a)

lease & option

2) PARTY(IES)/GRANTOR, required by ORS 205.125(1)(b) and ORS 205.160:

Robert Hall and Pam Munoz

3) PARTY(IES)/GRANTEE, required by ORS 205.125(1)(b) and ORS 205.160

Timothy and Kendi Southwell

4) TRUE and ACTUAL CONSIDERATION (if any), ORS 93.030

\$ \_\_\_\_\_

5) FULL OR PARTIAL SATISFACTION ORDER or WARRANT FILED IN THE COUNTY CLERK'S LIEN RECORDS, ORS 205.121(1)(c)

6) RE-RECORDED to correct: \_\_\_\_\_  
Previously recorded as: \_\_\_\_\_

F76-

~~XX~~ /

## LEASE AND OPTION

THIS AGREEMENT is made this 25th day of July 25, 2008, by and between Robert Hall & Pam Munoz, as lessors, hereinafter referred to as "Lessors," and Timothy and Kendi Southwell, as Lessee, hereinafter referred to as "Lessee." *American Marine RV LLC*

### WITNESSETH:

IT IS HEREBY AGREED between Lessors and Lessee:

1. LEASE. In consideration of the covenants, agreements and stipulations herein contained on the part of Lessee, Lessors have by this agreement, devised and leased to said Lessee the real property located at 5102 South 6th Street, Klamath Falls, Oregon. The real property leased hereby is referred to as the "property" or "premises."

2. TERM. Lessee shall have and hold said premises for a period of 1 years commencing with the 1st<sup>st</sup> day of September, to and including the 31<sup>st</sup> day of August, 2009.

3. RENT. The base rent for the property for the first 1 years of this lease shall be made up of the following components:

- a. Base rent of \$1923.98.
- b. Total premise consist of approximately 1810 square foot office And 1464 square Foot shop.

Total rent for the first year is therefore \$1923.98 per month. Total for first year is \$23087.76.

- c. Lessee to pay Property taxes and Property Insurance as due.

*Handwritten:* 8-1-08

*Handwritten initials:* PM

The Lessees will have an option to renew this lease for an additional 1 years and the rent shall be \$1923.98. At end this period lessees will have option for one more year at \$1923.98 per month.

4.. MAINTENANCE. Lessee shall provide the following maintenance at their expense: repair and maintenance of the roof and gutters, exterior walls and foundation, sidewalks, repair of the heating and air conditioning systems, repair and maintenance of exterior water, sewage, gas and electrical services,

repair and maintenance of interior walls, ceilings, doors, windows, hardware, light fixtures, switches, wiring and plumbing from the point of entry to the premises, any repairs necessitated by the negligence of Lessee, its agents, employees and invitees except as provided in Paragraph 26 dealing with waiver subrogation, ordinary day to day maintenance of the heating and air conditioning systems and any repairs of replacements necessary because of improper maintenance.

5. LIABILITY INSURANCE. Lessee shall maintain at Lessee's expense public liability insurance in an amount of not less than \$500,000.00 single limit coverage insuring Lessee and Lessors against liability arising from use or condition of the leased premises. Said policy shall contain a provision that the insurance may not be cancelled except upon 10-days' written notice to Lessors. A copy of said policy shall be delivered to Lessors as named additional insurance.

6.. UTILITIES. Lessee shall pay all utilities supplied to the leased premises including but not limited to water, sewer, electricity, natural gas, street lighting and garbage removal, effective September 1, 2008.

7. RETURN. Lessee promises that at the expiration of the term of this lease or upon the expiration of any of the options granted hereunder, Lessee shall yield the possession of the leased premises to Lessors in as good condition as when the same was entered upon by the Lessee, reasonable wear expected.

8. USE. The leased premises shall be used for Retail Sales ,Service and office space. Lessee shall make no unlawful, improper or offensive use of the lease premises.

9. WASTE. Lessee shall not cause or allow any strip or waste of the leased premises.

10. SUBLEASE AND ASSIGNMENT PROHIBITED. Lessee shall not sublease or sublet any portion or all of the premises and shall not assign all or part of this the lease without first obtaining the written permission of Lessors which permission shall not be unreasonably withheld.

11. WAIVER. Any waiver of any breach of covenants herein contained to be kept and faithfully performed by the Lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent Lessors from declaring a forfeiture of any succeeding breach either of the same condition or covenant otherwise.

12. DEFAULT. Lessee shall be in default in the event of any of the following conditions:

- a. Failure to pay rent or any other charge within 30 days after it is due.
- b. Failure of Lessee to comply with any term or condition or fulfilling any obligation of this lease.
- c. Insolvency of Lessee, assignment by Lessee for the benefit of creditors, the filing by Lessee of a voluntary petition in bankruptcy and adjudication that Lessee is bankrupt or an appointment of a receiver of the properties of Lessee, the filing of any involuntary petition in bankruptcy and the failure of Lessee to secure a dismissal of the petition within 30 days after filing, attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or the release of the levy of execution within 10 days.

The events of default specified in this paragraph shall apply to each individual executing this lease unless within 10 days after an event of default occurs, the remaining individuals

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produce evidence satisfactory to Lessors that they have unconditionally acquired the interest of the one causing the default.

13. REMEDIES. In the event of a default, this lease may be terminated at the option of Lessors by notice in writing to Lessee. If the lease is not terminated, Lessors shall be entitled to recover damages from Lessee for the default. In the event the lease is terminated, Lessee's Liability for damages shall survive such termination, and Lessors may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. Provided, however, that Lessors have complied with the provisions of Paragraph 16 herein entitled "Notice."

14. NOTICE. In the event Lessors believe Lessee is violating any of the terms or conditions of this lease, Lessors may notify Lessee in writing at the address below of the alleged violation. In the event Lessee does not cure the violation within 30 days after the mailing of notice, Lessors shall be entitled to exercise their rights under Paragraph 14 of this lease.

Lessors' address is as follows:

Robert Hall & Pam Munoz  
7992 Short Rd.  
Klamath Falls OR 97603

Lessees' address is as follows:

Timothy & Kendi Southwell  
5102 South 6<sup>th</sup> Street  
Klamath Falls, OR 97601

Notice under this paragraph and all other paragraphs shall be sent certified mail, return receipt requested.

15. PROMISES BINDING. The covenants and conditions herein contained apply to, bind, and inure to the benefit of the heirs, successors, executors, administrators, personal representatives and assigns of each of the parties hereto.

16. ATTORNEY'S FEES. In the event of any suit or action including declaratory relief for the purposes of enforcing any of the covenants of this lease, the prevailing party shall be entitled to recover from the losing party such sum as the trial court may adjudge reasonable as attorney's fees; and in the event any appeal is taken to appellate court, the prevailing party shall be entitled to recover from the losing party such further sum as the appellate court shall adjudge reasonable as attorney's fees on such appeal.

17. ENTIRE AGREEMENT. This lease is the entire agreement between the parties and may not be modified except by a writing signed by both parties hereto.

18. CONDEMNATION. If the whole or any part of the demised premises shall be condemned or taken by any municipality, county, state, federal or other authority for any purpose, then the terms of this lease shall cease as to the part so taken from the day possession of that part shall be required by the condemnor; and the rent shall be paid up to that day; and from that day, Lessee shall have the right provided that reasonable operation of Lessee's business is no longer feasible either to cancel this lease and declare the same null and void or to continue in possession of the remainder of the premises under the terms herein provided except that the rent shall be reduced in proportion to the amount of Lessee's use of the premises taken for such public use. All damages awarded for such taking for any public purpose shall belong to Lessors whether such damages shall be awarded compensation for diminution in value to the leasehold or to the fee of the premises herein leased.

19. HOLD HARMLESS AGREEMENT. Lessee shall indemnify and hold Lessors harmless from any suit, action, claim or demand arising out of injury to any person or property or any liability in or about the premises caused by any act of omission of Lessee, his agents, employees, customers, patrons, licensees or invitees or caused by defects in or about the premises whether due to the negligence or intentional acts or omissions of Lessee or otherwise. Lessee shall hold Lessors liable from any claims or actions arising out of injury to any person or property or any liability in or about the premises caused by any action except for willful acts of Lessors.

20. **ADDITIONAL RENT.** All taxes, insurance costs, utility charges and any other expenses which Lessee is required to pay by the terms of this lease shall be additional rent.

21. **PAYMENT OF RENT.** Rent shall be paid in advance and shall be due on the 1<sup>st</sup> day of each month of this lease beginning with the 1<sup>st</sup> day of September 2008.

22. **RESTRICTIONS ON USE.** Lessee shall refrain from any activity which would make it impossible to insure the leased premises against casualty, increase the insurance rate or prevent Lessors from taking advantage of any ruling of the Oregon Insurance Rating Bureau or its successor allowing Lessors to obtain reduced premium rates for long terms fire insurance policies unless Lessee pays the additional costs of said insurance. Lessee shall refrain from loading floors beyond the point considered safe by a competent engineer or architect selected by Lessors. Lessee shall refrain from making any marks on or touching any sign, insignia, antenna, arrow or other device to exterior or roof of the premises without the prior written consent of Lessors which consent shall not be unreasonably withheld.

23. **INSPECTION OF PREMISES.** Lessors shall have the right to inspect the premises at all reasonable times.

24. **ALTERATIONS PROHIBITED.** Lessee shall make no improvements or alterations of the leased premises of any kind without first obtaining the written permission of Lessors which permission shall not be unreasonably withheld.

25. **LESSEES' INSURANCE.** Lessee shall keep the leased premises insured at Lessees' expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage.

26. **WAIVER OF SUBROGATION.** Neither the Lessee or Lessors shall be liable to the other or the successors or assigns of the other for any loss or damage caused by fire or any other risks enumerated in the standard fire insurance policy with extended coverage endorsement; and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other.

27. SPECIAL ASSESSMENTS. If an assessment for a public improvement is made against the leased premises, Lessors may elect to cause such assessment to be paid in installments in which case all of the installments payable with respect to the lease term shall be treated the same as general property taxes for purposes of the preceding paragraph.

28. PARTIAL DAMAGE. In the event the leased premises is partially damaged, less than 40 percent of the value of the structure before the damage, the property shall be repaired by Lessees at Lessees' expenses. Repairs shall be accomplished with all reasonable dispatch subject to interruption and delays from labor disputes and matters beyond the control of Lessors.

29. DESTRUCTION. In the event the leased premises is destroyed or damaged such that the costs of repairs exceeds 40 percent of the value of the structure before the damage, either Lessee or Lessors may elect to terminate this lease as of the date of damage or destruction by notice given to the other in writing not more than 45 days following the date of such damage or destruction. In the event neither party elects to terminate, Lessors shall restore the leased premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters not under the control of Lessors.

30. RENT ABATEMENT. In the event of a partial damage or destruction, the rent shall be abated during the repair of any damage to the extent the premises are untenable except that there shall be no rent abatement in the event the damage occurs as result of the fault of tenant.

31. LIENS. Except with respect to activities for which Lessors are responsible, Lessee shall pay when due all claims for work done or services, repairs or materials furnished to the leased premises; and it shall keep the premises free from any liens provided, however, that Lessee may withhold payment of any claim in connection with the good faith dispute over the obligation to pay so long as Lessors' property interest in the leased property are not jeopardized.



32. RELETTING. Following re-entry or abandonment, Lessors may re-let the premises and in that connection may make any suitable alterations or refurbish the premises, or both, or change the character or use of the premises; but Lessors shall not be required to re-let for any use or purposes other than that specified in the lease or which Lessors may reasonably consider injurious to the premises or to the tenant which Lessors may reasonably consider objectionable. Lessors may re-let all or part of the premises, alone or in conjunction with other properties for a term longer or shorter than the term of this lease upon any reasonable terms and conditions including the granting of some rent-free occupancy or other rent concession.

33. DAMAGES. In the event of termination on default, Lessors shall be entitled to recover immediately without waiting until the due date of any future rent or until the date fixed for expiration of the lease term the following amounts as damages:

- a. The loss of reasonable rental value from the date of default until a new tenant has been, or with reasonable efforts could have been secured.
- b. The reasonable costs of re-entry and re-letting including without limitation the cost of any clean up, refurbishing, removal of Lessee's property and fixtures or any other expense occasioned by Lessee's failure to quit the premises upon termination and to leave them in the required condition, any remodeling costs, attorney fees, court costs, broker commissions and advertising costs.
- c. Any excess of the value of the rent and all of Lessee's other obligations under this lease over the reasonable expected return from the premises for the period commencing on the earlier of the date of trial or the date the premises are re-let and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

Lessors may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessors under applicable law.

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34. **HOLDOVER.** In the event Lessee does not vacate the leased premises at the time required, Lessors shall have the option to treat Lessee as a tenant for month-to-month subject to all the provisions of this lease except for the provisions for term and renewal. If such a month-to-month tenancy results, the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessors given not less than 10 days prior to the termination date which shall be specified in the notice. Lessee waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

35. **RECORDATION.** This lease shall not be recorded without the consent in writing of Lessors. Lessors agree to execute and acknowledge a memorandum of this lease in a form suitable for recording in the event Lessee wishes to record, and Lessee may record the memorandum.

36. **ONE INDIVIDUAL.** At all times during the term of this lease and during the remodeling of the leased premises, Lessee shall nominate one of its partners to deal with Lessors. Said nomination shall be in writing and delivered to Lessors and shall be valid until revoked in writing by notice to Lessors.

37. **EFFECTIVE DATE.** Not excluding any provisions herein to the contrary, this agreement shall be binding upon both parties hereto upon its execution.

38. **MAINTENANCE SPECIFICATIONS.** Notwithstanding the provisions contained in Paragraph 4 hereof, the ordinary day-to-day maintenance of the heating and air conditioning systems and any other maintenance required of Lessee shall include at the minimum, maintenance and repairs according to the specifications of the manufacturers of any equipment which is maintained by Lessee.

IN WITNESS WHEREOF, we the undersigned have set our hands on the date appearing first above.

LESSEE:

12  
[Signature]

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[Signature]  
BM

*Timothy Southwell*

*Kendi Southwell*

Timothy & Kendi Southwell American Marine ERY LLC

LESSORS:

*Robert Hall*

Robert Hall

*Robert A. Hall*

*Pam Munoz*

Pam Munoz

*Pam Munoz*

STATE OF OREGON,

County of

*Klamath*

} ss.

On *August 1, 2008*

DATE

before me personally appeared *Timothy*

*Southwell and Kendi Southwell*

whose identity was established to my satisfaction, and who executed the foregoing instrument, acknowledging to me that the same was executed freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the date first written above.



*Adrien Fleeck*

Notary Public for Oregon

My commission expires

*12-3-10*

NO PART OF ANY STEVENS-NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS.

FORM No. 23 - ACKNOWLEDGMENT, INDIVIDUAL. EA

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STATE OF OREGON

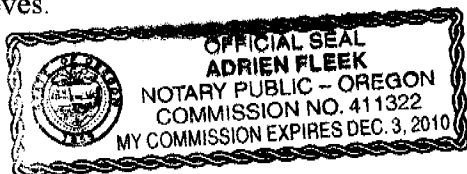
)

) ss.

County of Klamath

)

Personally appeared before me the above-mentioned Robert Hall & Pam Munoz and acknowledged that the foregoing instrument was his voluntary act and deed and true as he verily believes.



*Adrien Fleeck*

NOTARY PUBLIC FOR OREGON

My commission expires:

*12-3-10*

STATE OF OREGON

)

) ss.

## **EXHIBIT A**

### **LEGAL DESCRIPTION:**

LOT 3 OF KIELSMEIER ACRE TRACTS, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.  
EXCEPTING THE EASTERLY 30 FEET THEREOF. AND ALSO EXCEPTING THEREFROM THAT PORTION DEEDED TO STATE OF OREGON, BY AND THROUGH ITS STATE HIGHWAY COMMISSION AND MORE PARTICULARLY DESCRIBED IN VOLUME 352 PAGE 24, AND CORRECTED IN VOLUME 354 PAGE 265, ALL IN DEED RECORDS OF KLAMATH COUNTY, OREGON.