

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY AGREEMENT
CONVEYING PARTY DATA	
Name	Execution Date
Savannah Yacht Company, LLC	06/29/2006
RECEIVING PARTY DATA	
Name:	Branch Banking and Trust Company
Street Address:	900 S. Gay Street, Suite 2400
City:	Knoxville
State/Country:	TENNESSEE
Postal Code:	37902
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	11560956
CORRESPONDENCE DATA	
Fax Number:	(423)752-9548
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	423 209-4103
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ATTORNEY DOCKET NUMBER:	2814465-000057
NAME OF SUBMITTER:	Micheline Kelly Johnson
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## ASSIGNMENT AND SECURITY AGREEMENT

THIS ASSIGNMENT AND SECURITY AGREEMENT (the "Agreement") is made and executed on the 29<sup>th</sup> day of June, 2006, between Branch Banking and Trust Company, a North Carolina banking corporation having a branch office in Knoxville, Tennessee ("Lender"), and Savannah Yacht Company, LLC, a Tennessee limited liability company ("Borrower").

### RECITALS

Pursuant to that Loan Agreement between the parties dated as of the date hereof (the "Loan Agreement"), Borrower has requested Lender to extend Borrower a term loan in the maximum principal amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) (the "Term Loan") and a separate line of credit in the maximum principal amount of Two Million and 00/100 Dollars (\$2,000,000.00) (the "Line of Credit"), both of which are evidenced by a Promissory Note of even date herewith in the principal amounts of the Term Loan and Line of Credit, respectively, executed by Borrower and delivered to Lender. The Term Loan and the Line of Credit are collectively referred to herein as the "Loans", and the respective promissory notes evidencing the Loans are collectively referred to herein as the "Notes".

In order to more fully secure Borrower's obligations under the Notes, Lender has requested Borrower to execute this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Borrower and Lender do hereby agree as follows:

#### 1. CONSTRUCTION AND DEFINITION OF TERMS.

All terms used herein without definition which are defined by the Georgia Uniform Commercial Code shall have the meanings assigned to them by the Georgia Uniform Commercial Code, as in effect on the date hereof, unless and to the extent varied by this Agreement. All accounting terms used herein without definition shall have the meanings assigned to them as determined by generally accepted accounting principles. Whenever the phrase "satisfactory to Lender" is used in this Agreement such phrase shall mean "satisfactory to Lender in its sole discretion." The use of any gender or the neuter herein shall also refer to the other gender or the neuter and the use of the plural shall also refer to the singular, and vice versa. In addition to the terms defined elsewhere in this Agreement, unless the context otherwise requires, when used herein, the following terms shall have the following meanings:

1.1 "Agreement" means this Security Agreement and all amendments, modifications and supplements hereto.

1.2 "Banking Day" shall mean any day that banks in the state of Tennessee are not required or permitted to be closed.

1.3 "Bankruptcy Code" means the United States Bankruptcy Code, as amended from time to time.

1.4 "Business Premises" shall mean Borrower's principal office located at 280 Industrial Boulevard, Rincon, Georgia 31326.

1.5 "Certified" shall mean that the information, statement, schedule, report or other document required to be "Certified" shall contain a representation of a duly authorized officer of Borrower that such information, statement, schedule, report or other document is true and complete.

1.6 "Closing" shall mean the date on which this Agreement is executed.

1.7 "Collateral" shall mean all of the following property of Borrower, both now owned and hereafter acquired:

- (1) Accounts;
- (2) As-extracted collateral;
- (3) Chattel paper;
- (4) Deposit accounts;
- (5) Documents;
- (6) Equipment;
- (7) Farm products;
- (8) Fixtures;
- (9) General intangibles;
- (10) Goods;
- (11) Instruments;
- (12) Inventory;
- (13) Investment property;
- (14) Letter-of-credit rights; and
- (15) Proceeds and products of all of the foregoing.

Without limiting or restricting the Collateral identified and described in this Section 1.7, Collateral shall also include all of the Borrower's interest in its deposit account or accounts, as now existing or hereafter established with Lender, and in all of Borrower's rights

and interests in any contract.

1.8 "Event of Default" shall mean any of the events described in Section 6 hereof.

1.9 "GAAP" shall mean generally accepted accounting principles in the United States of America in effect from time to time.

1.10 "Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.11 "Hazardous Materials" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; (c) any substance the presence of which on any property now or hereafter owned, operated or acquired by Borrower is prohibited by any Law similar to those set forth in this definition; and (d) any other substance which by Law requires special handling in its collection, storage, treatment or disposal.

1.12 "Hazardous Materials Contamination" means the contamination (whether presently existing or occurring after the date of this Agreement) by Hazardous Materials on any property owned, operated or controlled by Borrower or for which Borrower has responsibility, including, without limitation, improvements, facilities, soil, ground water, air or other elements on, or of, any property now or hereafter owned, operated or acquired by Borrower, and any other contamination by Hazardous Materials for which Borrower is, or is claimed to be, responsible.

1.13 "Indebtedness" shall include all items which would properly be included in the liability section of a balance sheet or in a footnote to a financial statement in accordance with generally accepted accounting principles, and shall also include all contingent liabilities.

1.14 "Laws" shall mean all ordinances, statutes, rules, regulations, orders, injunctions, writs or decrees of any Governmental Authority or political subdivision or agency thereof, or any court or similar entity established by any thereof.

1.15 "Lien" shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of setoff, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code of any jurisdiction.

1.16 "Loan Documents" shall mean this Agreement, the Loan Agreement, the Notes, the Security Deed, and any and all other agreements, contracts, promissory notes, security agreements, assignments, subordination agreements, pledge or hypothecation agreements, mortgages, deeds of trust, leases, guaranties, instruments, letters of credit, letter-of-credit

agreements and documents now and hereafter existing between Lender and Borrower, executed and/or delivered in connection with the Loan or otherwise or guaranteeing, securing or in any other manner relating to any of the Obligations, together with any other instrument or document executed by Borrower, Lender or any other Person in connection with the Loan.

1.17 "Obligations" shall include the full and punctual observance and performance of all present and future duties, covenants and responsibilities due to Lender by Borrower under this Agreement, the Notes and the other Loan Documents, all present and future obligations and liabilities of Borrower to Lender for the payment of money under this Agreement, the Notes and the Loan Documents (extending to all principal amounts, interest, late charges, fees and all other charges and sums, as well as all costs and expenses payable by Borrower under this Agreement, the Notes, the Loan Documents and otherwise), whether direct or indirect, contingent or noncontingent, matured or unmatured, accrued or not accrued, related or unrelated to this Agreement, whether or not now contemplated, whether or not any instrument or agreement relating thereto specifically refers to this Agreement, including, without limitation, overdrafts in any checking or other account of Borrower at Lender and claims against Borrower acquired by assignment to Lender, whether or not secured under any other document, or agreement or statutory or common law provision, as well as all renewals, refinancings, consolidations, re-castings and extensions of any of the foregoing, the parties acknowledging that the nature of the relationship created hereby contemplates the making of future advances by Lender to Borrower.

1.18 "Obligor" shall mean individually and collectively, Borrower and each endorser, guarantor and surety of the Obligations; any Person who is primarily or secondarily liable for the repayment of the Obligations, or any portion thereof; and any Person who has granted security for the repayment of any of the Obligations.

1.19 "Permitted Liens" shall mean (a) Liens of Lender, (b) Liens for taxes not delinquent or for taxes being diligently contested in good faith by Borrower by appropriate proceedings, subject to the conditions set forth in **Subsection 4.2** hereof, (c) mechanic's, workman's, materialman's, landlord's, carrier's and other like Liens arising in the ordinary course of business with respect to obligations which are not due or which are being diligently contested in good faith by Borrower by appropriate proceedings, provided such Liens did not arise in connection with the borrowing of money or the obtaining of advances or credit and do not, in Lender's discretion, in the aggregate materially detract from the value of Borrower's assets or materially impair the use thereof, and (d) Liens specifically consented to by Lender in writing.

1.20 "Person" shall include natural persons, corporations, associations, limited liability companies, partnerships, joint ventures, trusts, governments and agencies and departments thereof and every other entity of every kind.

1.21 "Security Deed" shall mean the Georgia Security Deed and Security Agreement executed by Borrower of even date herewith.

1.22 "Subsidiary" shall include any corporation, limited liability company, or

unincorporated business entity at least a majority of the outstanding Voting Stock or interests of which is owned, now or in the future, by Borrower and/or by one or more Subsidiaries.

1.23 "Voting Stock" shall mean the shares of any class of capital stock of a corporation having ordinary voting power to elect the directors, officers or trustees thereof, including such shares that shall or might have voting power by reason of the occurrence of one or more conditions or contingencies.

## 2. SECURITY

2.1 **Security Interest.** As security for the payment and performance of all of the Obligations, whether or not any instrument or agreement relating to any Obligation specifically refers to this Agreement or the security interest created hereunder, Borrower hereby assigns, pledges and grants to Lender a continuing security interest in the Collateral. Lender's security interest shall continually exist until all Obligations have been paid in full.

2.2 **Covenants and Representations Concerning Collateral.** With respect to all of the Collateral, Borrower covenants, warrants and represents that:

(1) No financing statement covering any of the Collateral is on file in any public office or land or financing records except for financing statements in favor of Lender and Borrower is the legal and beneficial owner of all of the Collateral, free and clear of all Liens, except for Permitted Liens.

(2) The security interest granted Lender hereunder shall constitute a first priority Lien upon the Collateral. Borrower shall not, and Lender does not authorize Borrower to, sell, lease, license, withdraw or assign any interest in the Collateral nor, without Lender's prior written consent, permit any other Lien to be created or remain thereon except for Permitted Liens, provided that Borrower may sell inventory in the ordinary course of business.

(3) Borrower will maintain the Collateral in good order and condition, ordinary wear and tear excepted, and will use, operate and maintain the Collateral in material compliance with all laws, regulations and ordinances and in material compliance with all applicable insurance requirements and regulations. Borrower will promptly notify Lender in writing of any litigation involving or affecting the Collateral which Borrower knows or has reason to believe is pending or threatened. Borrower will promptly pay when due all taxes and all transportation, storage, warehousing and other such charges and fees affecting or arising out of or relating to the Collateral and shall defend the Collateral, at Borrower's expense, against all claims and demands of any Persons claiming any interest in the Collateral adverse to Borrower or Lender.

(4) At all reasonable times Lender and its agents and designees may enter the Business Premises and any other premises of Borrower and inspect the Collateral and all books and records of Borrower (in whatever form). Notwithstanding the above, Lender shall require two (2) audits per year, for which Borrower shall pay

Lender \$1,500 plus expenses for each such audit.

(5) Borrower will maintain comprehensive casualty insurance on the Collateral against such risks, in such amounts, with such loss deductible amounts and with such companies as may be satisfactory to Lender, and each such policy shall contain a clause or endorsement satisfactory to Lender naming Lender as loss payee and a clause or endorsement satisfactory to Lender that such policy may not be cancelled or altered and Lender may not be removed as loss payee without at least thirty (30) days prior written notice to Lender. Borrower hereby assigns to Lender and grants to Lender a security interest in any and all proceeds of such policies and authorizes and empowers Lender to adjust or compromise any loss under such policies and to collect and receive all such proceeds. Borrower hereby authorizes and directs each insurance company to pay all such proceeds directly and solely to Lender and not to Borrower and Lender jointly. Borrower authorizes and empowers Lender to execute and endorse in Borrower's name all proofs of loss, drafts, checks and any other documents or instruments necessary to accomplish such collection, and any Persons making payments to Lender under the terms of this paragraph are hereby relieved absolutely from any obligation or responsibility to see to the application of any sums so paid. After deduction from any such proceeds of all costs and expenses (including reasonable attorney's fees) incurred by Lender in the collection and handling of such proceeds, the net proceeds shall be applied as follows. If no Event of Default shall have occurred and be continuing, such net proceeds may be applied, at Borrower's option, either toward replacing or restoring the Collateral, in a manner and on terms satisfactory to Lender, or as a credit against such of the Obligations, whether matured or unmatured, as Lender shall determine in Lender's sole discretion. In the event that Borrower may and does elect to replace or restore as aforesaid, then such net proceeds shall be deposited in a segregated account of Borrower at Lender subject to the sole order of Lender and shall be disbursed therefrom by Lender in such manner and at such times as Lender deems appropriate to complete such replacement or restoration; provided, however, that if an Event of Default shall occur at any time before or after replacement or restoration has commenced, then thereupon Lender shall have the option to apply all remaining net proceeds either toward replacing or restoring the Collateral, in a manner and on terms satisfactory to Lender, or as a credit against such of the Obligations, whether matured or unmatured, as Lender shall determine in Lender's sole discretion. If an Event of Default shall have occurred prior to such deposit of the net proceeds, then Lender may, in its sole discretion, apply such net proceeds either toward replacing or restoring the Collateral, in a manner and on terms satisfactory to Lender, or as a credit against such of the Obligations, whether matured or unmatured, as Lender shall determine in Lender's sole discretion.

(6) All books and records pertaining to the Collateral are located at the Business Premises and Borrower will not change the location of such books and records without the prior written consent of Lender, which consent shall not be unreasonably withheld.

(7) Borrower shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances, instruments and documents as Lender may



request to vest in and assure to Lender its rights hereunder or in any of the Collateral, including, without limitation, placing legends on Collateral or on books and records pertaining to Collateral stating that Lender has a security interest therein. Without limiting the forgoing, Borrower shall notify Lender prior to certificating any of the yachts manufactured by Borrower and shall assist Lender, as Lender shall reasonably request, in perfecting Lender's security interest in and to such certificated yachts as may be required under any applicable Laws. Subject to the terms and conditions of the Loan Documents, Borrower agrees that none of the yachts manufactured by Borrower shall be certificated without Lender first having, or contemporaneously obtaining, a perfected security interest in and to such certificated yachts.

(8) If requested by Lender, Borrower shall cooperate with Lender to obtain and keep in effect one or more control agreements in deposit account, electronic chattel paper, investment property and letter-of-credit rights Collateral.

(9) Borrower authorizes Lender to file financing statements covering the Collateral and all personal property of Borrower and containing such legends as Lender shall deem necessary or desirable to protect Lender's interest in the Collateral. Borrower agrees to pay all taxes, fees and costs (including attorneys' fees) paid or incurred by Lender in connection with the preparation, filing or recordation thereof.

(10) Whenever required by Lender, Borrower shall promptly deliver to Lender, with all endorsements and/or assignments required by Lender, all instruments, chattel paper, guaranties and the like received by Borrower constituting, evidencing or relating to any of the Collateral or proceeds of any of the Collateral.

(11) Borrower shall not file any amendments, correction statements or termination statements concerning the Collateral without the prior written consent of Lender.

(12) If any Collateral arises out of a contract with the United States Government or any department, agency or instrumentality thereof, Borrower shall immediately notify Lender thereof and shall execute and deliver to Lender specific assignments of those contracts and the related United States Government accounts of Borrower and shall do such other things as may be satisfactory to Lender in order that all sums due and to become due to Borrower under such contract shall be duly assigned to Lender in accordance with the Federal Assignment of Claims Act (31 United States Code § 3727; 41 United States Code § 15) as in effect on the date hereof and as hereafter amended and/or any other applicable laws and regulations relating to the assignment of governmental obligations. Payments on United States Government contracts or United States Government accounts which have been specifically assigned to Lender by means of a direct assignment, as provided herein, shall be made directly to Lender, for payment to the Obligations. The separate assignment of specific United States Government contracts to Lender, as contemplated herein, shall not be deemed to limit Lender's security interest to the payments under those particular United States Government contracts and the related United States Government accounts, but rather Lender's security

interest shall extend to any and all United States Government contracts and the related United States Government accounts and proceeds thereof, now or hereafter owned or acquired by Borrower. During the term of this Agreement, Borrower agrees and covenants not to make any assignment of any of the United States Government contracts to any party other than Lender without Lender's prior written consent.

**2.3 Collateral Collections.** After an Event of Default shall have occurred, Lender shall have the right at any and all times to enforce Borrower's rights against account debtors and other parties obligated on Collateral, including, but not limited to, the right to: (a) notify and/or require Borrower to notify any or all account debtors and other parties obligated on Collateral to make payments directly to Lender or in care of a post office lock box under the sole control of Lender established at Borrower's expense subject to Lender's customary arrangements and charges therefor, and to take any or all action with respect to Collateral as Lender shall determine in its sole discretion, including, without limitation, the right to demand, collect, sue for and receive any money or property at any time due, payable or receivable on account thereof, compromise and settle with any Person liable thereon, and extend the time of payment or otherwise change the terms thereof, without incurring liability or responsibility to Borrower; (b) require Borrower to segregate and hold in trust for Lender and, on the day of Borrower's receipt thereof, transmit to Lender in the exact form received by Borrower (except for such assignments and endorsements as may be required by Lender), all cash, checks, drafts, money orders and other items of payment constituting Collateral or proceeds of Collateral; and/or (c) establish and maintain at Lender a "Repayment Account," which shall be under the exclusive control of and subject to the sole order of Lender and which shall be subject to the imposition of such customary charges as are imposed by Lender from time to time upon such accounts, for the deposit of cash, checks, drafts, money orders and other items of payments constituting Collateral or proceeds of Collateral from which Lender may, in its sole discretion, at any time and from time to time, withdraw all or any part. Lender's collection and enforcement of Collateral against account debtors and other Persons obligated thereon shall be deemed to be commercially reasonable if Lender exercises the care and follows the procedures that Lender generally applies to the collection of obligations owed to Lender. All cash and non-cash proceeds of the Collateral may be applied by Lender upon Lender's actual receipt of cash proceeds against such of the Obligations, matured or unmatured, as Lender shall determine in Lender's sole discretion.

**2.4 Care of Collateral.** Borrower shall have all risk of loss of the Collateral. Lender shall have no liability or duty, either before or after the occurrence of an Event of Default, on account of loss of or damage to, to collect or enforce any of its rights against, the Collateral, to collect any income accruing on the Collateral, or to preserve rights against account debtors or other parties with prior interests in the Collateral. If Lender actually receives any notices requiring action with respect to Collateral in Lender's possession, Lender shall take reasonable steps to forward such notices to Borrower. Borrower is responsible for responding to notices concerning the Collateral, voting the Collateral, and exercising rights and options, calls and conversions of the Collateral. Lender's sole responsibility is to take such action as is reasonably requested by Borrower in writing; however, Lender is not responsible to take any action that, in Lender's sole judgment, would affect the value of the Collateral as security for the Obligations adversely. While Lender is not required to take certain actions, if action is needed, in Lender's sole discretion, to preserve and maintain the Collateral, Borrower authorizes Lender to

take such actions, but Lender is not obligated to do so.

**2.5 Authorization and Power-of-Attorney.** Borrower authorizes Lender to request other secured parties of Borrower to provide accountings, confirmations of Collateral and confirmations of statements of account concerning Borrower. Borrower hereby designates and appoints Lender and its designees as attorney-in-fact of Borrower, irrevocably and with power of substitution, with authority to endorse Borrower's name on requests to other secured parties of Borrower for accountings, confirmations of collateral and confirmations of statements of account.

### **3. REPRESENTATIONS AND WARRANTIES**

To induce Lender to enter into this Agreement, Borrower represents and warrants to Lender that:

**3.1 State of Organization and Legal Name.** Borrower's state of organization is Tennessee, and its exact legal name is Savannah Yacht Company, LLC.

**3.2 Good Standing.** Borrower is a limited liability company duly organized, legally existing and in good standing under the laws of the state of Tennessee, has the power to own its property and to carry on its business and is duly qualified to do business and is in good standing in Georgia and each other jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary.

**3.3 Authority.** Borrower has full power and authority to enter into this Agreement, to make the borrowings hereunder, to execute and deliver all documents and instruments required hereunder and to incur and perform the obligations provided for herein, all of which have been duly authorized by all necessary and proper corporate and other action, and no consent or approval of any Person, including, without limitation, members of Borrower and any public authority or regulatory body, which has not been obtained is required as a condition to the validity or enforceability hereof or thereof.

**3.4 Binding Agreements.** This Agreement has been duly and properly executed by Borrower, constitutes the valid and legally binding obligation of Borrower and is fully enforceable against Borrower in accordance with its terms, subject only to laws affecting the rights of creditors generally and application of general principles of equity.

**3.5 No Conflicting Agreements.** The execution, delivery and performance by Borrower of this Agreement and the Notes will not (a) violate (i) any provision of law or any order, rule or regulation of any court or agency of government, (ii) any award of any arbitrator, (iii) the Articles of Organization or Operating Agreement of Borrower, or (iv) any indenture, contract, agreement, mortgage, deed of trust or other instrument to which Borrower is a party or by which Borrower or any of its property is bound, or (b) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a material default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of any Lien upon any of the property or assets of Borrower except for

Liens created in favor of Lender under or pursuant to this Agreement.

3.6 **Litigation.** There are no judgments, injunctions or similar orders or decrees, claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or any property of Borrower, at law or in equity, by or before any court or any federal, State, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could result in any material adverse change in the business, operations, prospects, properties or in the condition, financial or otherwise, of Borrower, and Borrower is not, to Borrower's knowledge, in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court or any federal, State, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could have a material adverse effect on Borrower.

3.7 **Financial Condition.** The financial statements of Borrower heretofore delivered to Lender are true and complete, fairly present the financial condition of Borrower as at such dates and the results of its operations for the period then ended and were prepared in accordance with GAAP applied on a consistent basis for prior periods. There is no Indebtedness of Borrower as of the date of such statements which is not reflected therein, and no material adverse change in Borrower's financial condition has occurred since the date of such statements.

3.8 **Taxes.** Borrower has paid or caused to be paid all federal, State and local taxes to the extent that such taxes have become due and has filed or caused to be filed all federal, State and local tax returns which are required to be filed by Borrower.

3.9 **Title to Properties.** Borrower has good and marketable title to all of its properties and assets (including the Collateral), and all of the properties and assets of Borrower are free and clear of Liens, except for Permitted Liens.

3.10 **Place of Business.** Borrower's principal place of business and chief executive office is located at the Business Premises, and Borrower has disclosed any other business locations to Lender prior to the date hereof.

3.11 **Financial Information.** All financial statements, schedules, reports and other information supplied to Lender by or on behalf of Borrower heretofore and hereafter are and will be true and complete.

3.12 **Licenses and Permits.** Borrower has duly obtained and now holds all licenses, permits, certifications, approvals and the like required by federal, State and local laws of the jurisdictions in which Borrower conducts its business, and each remains valid and in full force and effect.

3.13 **Certain Indebtedness.** There is no Indebtedness of Borrower owing to any employee, officer, stockholder or director of Borrower other than accrued salaries, commissions and the like.

**3.14 Outstanding Indebtedness.** Borrower has no outstanding Indebtedness except as disclosed pursuant to the Loan Agreement and there exists no default under the provisions of any instrument evidencing such Indebtedness or under the provisions of any agreement relating thereto.

**3.15 Government Contracts.** Borrower is not now, and has not been within the past 3 years, in receipt of any communication from any officer or employee of the United States Government regarding Borrower's actual or possible disqualification, suspension or debarment from contracting with the United States Government. Further, Borrower has no information, in relation to the obtaining, formation, pricing, performance, billing or administration of any one of its contracts with the United States Government of: (a) a violation of law, regulation or contract provision, or any such fact(s) or circumstance(s) reasonably indicating any such violation; (b) a pending or threatened investigation; (c) an existing or threatened adverse audit finding, whether draft or final; (d) an existing or threatened cost disallowance or finding of defective pricing; (e) a pending or threatened claim or action seeking a fine, penalty or damages; (f) a communication regarding, or actual initiation of, payment withholding or suspension, setoff, recoupment or debt collection; or (g) a contract termination or a communication reasonably indicating the potential for such a termination.

**3.16 Presence of Hazardous Materials or Hazardous Materials Contamination.** To the best of Borrower's knowledge and belief, and except as permitted by applicable Laws, no Hazardous Materials are located on any real property owned, operated or controlled by Borrower or for which Borrower is responsible and for which remedial or corrective action would, be required under applicable Laws. To the best of Borrower's knowledge and belief, and except as permitted by applicable Laws, no property owned, operated or controlled by Borrower has ever been used as a manufacturing, storage, or dump site for Hazardous Materials. Lender acknowledges that Borrower's principal business is manufacturing boats and yachts, and in connection therewith releases Hazardous Materials such as volatile organic compounds in the normal and ordinary course of its business, and (ii) that it has received a Phase 1 Environmental Assessment ("Phase 1") of the property dated as of March, 2006, with respect to Borrower's manufacturing facility. The representations, warranties and covenants made herein are qualified and modified in every respect by the information contained in the Phase 1 and the air quality permit issued by the State of Georgia, to the extent such Phase 1 and air quality permit do not indicate violations of any applicable Environmental Laws, and Borrower shall not be deemed to have breached any representation, warranty or covenant made herein by the release of Hazardous Materials in the normal and ordinary course of its business so long as it complies in every material respect with applicable Laws.

**3.17 Patents, Trademarks, etc.** Borrower owns, possesses or has the right to use all necessary patents, patent rights, licenses, trademarks, trade names, trade name rights, copyrights and franchises to conduct its business as now conducted, without any known conflict with any patent, patent right, license, trademark, trademark rights, trade name right, trade name, copyright or franchise right of any other Person.

**3.18 Perfection and Priority of Collateral.** Lender has or upon proper recording of any financing statement, execution of any control agreement or delivery of

Collateral to Lender's possession, will have and will continue to have as security for the Obligations, a valid and perfected Lien on and security interest in all Collateral, free of all other Liens, claims and rights of third parties whatsoever, except Permitted Liens.

3.19 **Commercial Purpose.** The Loan is not a "consumer transaction" as defined in the Tennessee Uniform Commercial Code and none of the Collateral was or will be purchased or held primarily for personal family or household purposes.

3.20 **Survival; Updates of Representations and Warranties.** All representations and warranties contained in or made in connection with this Agreement and the other Loan Documents shall survive the Closing and any advance made hereunder. Lender acknowledges and agrees that any and all representations and warranties contained in or made under or in connection with this Agreement may be amended, changed or otherwise modified by Borrower, with the consent of Lender, at any time and from time to time after the Closing so as to accurately reflect the matters represented and warranted therein; provided, that such amendments, changes and/or modifications are disclosed in writing to and approved by Lender. Lender shall have no obligation to waive any Event of Default due to any present or future inaccuracy of such representation or warranty or to agree to any amendment, change or modification of such representation or warranty. Borrower ratifies its prior authorization for Lender to file such financing statements.

#### 4. **AFFIRMATIVE COVENANTS**

Borrower covenants and agrees with Lender that, until (a) all Obligations have been paid in full, (b) there exists no commitment by Lender which could give rise to any Obligations, and (c) all appropriate termination statements have been filed terminating the security interest granted Lender hereunder, Borrower will:

4.1 **Financial Statements.** Furnish to Lender in writing those annual and monthly financial reports as required under the Loan Agreement and such additional information, reports or statements as Lender may from time to time reasonably request.

4.2 **Taxes.** Pay and discharge all taxes, assessments and governmental charges upon Borrower, its income and properties, prior to the date on which penalties attach thereto unless and to the extent only that the same are being diligently contested by Borrower in good faith in the normal course of business by appropriate proceedings, provided, however, that (a) Lender shall have been given reasonable prior written notice of intention to contest, (b) nonpayment of the same will not, in Lender's sole discretion, materially impair any of the Collateral or Lender's rights or remedies with respect thereto or the prospect for full and punctual payment of all of the Obligations, (c) Borrower at all times effectively stays or prevents any official or judicial sale of or action or filing against any of the Collateral by reason of nonpayment of the same, and (d) Borrower establishes reasonable reserves for any liabilities being contested and for expenses arising out of such contest.

4.3 **Corporate Existence, Continuation of Business and Compliance with Laws.** Maintain its corporate existence in good standing; continue its business operations as now

being conducted; and comply with all applicable federal, State and local laws, rules, ordinances, regulations and orders unless and to the extent only that the validity or applicability thereof is being diligently contested by Borrower in good faith by appropriate proceedings, provided, however, that (a) Lender shall have been given reasonable prior written notice of intention to contest, (b) such noncompliance will not, in Lender's sole discretion, materially impair any of the Collateral or Lender's rights or remedies with respect thereto or the prospect for full and punctual payment of all of the Obligations, (c) Borrower at all times effectively stays or prevents any official or judicial sale of or action or filing against any of the Collateral by reason of such noncompliance, and (d) Borrower establishes reasonable reserves for any liabilities or expenses which may arise out of such noncompliance and contest.

**4.4 Civil and Criminal Proceedings.** Promptly notify Lender in writing of (i) the threatened or actual commencement of a criminal proceeding or investigation or (ii) any action, suit or proceeding at law or in equity by or before any court, governmental agency or instrumentality which could result in any material adverse change in the business, operations, prospects, properties or assets or in the condition, financial or otherwise, of Borrower.

**4.5 Extraordinary Loss.** Promptly notify Lender in writing of any event causing extraordinary loss or depreciation of the value of Borrower's assets (whether or not insured) and the facts with respect thereto.

**4.6 Books and Records.** Keep and maintain proper and current books and records in accordance with GAAP and permit access by Lender to, reproduction by Lender of and copying by Lender from, such books and records during normal business hours. All reasonable costs and expenses of such inspections and examinations shall be paid by Borrower.

**4.7 Conferences with Officers.** Permit Lender to discuss Borrower's affairs, finances and accounts with any officers of Borrower.

**4.8 Maintenance of Properties.** Maintain all properties and improvements necessary to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and cause replacements and repairs to be made when necessary for the proper conduct of its business.

**4.9 Patents, Franchises, etc.** Maintain, preserve and protect all licenses, patents, franchises, trademarks and trade names of Borrower or licensed by Borrower which are necessary to the conduct of the business of Borrower as now conducted, free of any conflict with the rights of any other Person.

**4.10 Insurance.** Maintain with duly licensed insurers and in amounts satisfactory to Lender such insurance on Borrower's tangible personal property against such risks and with such loss deductible amounts as may be satisfactory to Lender.

**4.11 Evidence of Insurance.** Deliver to Lender from time to time, and periodically if Lender shall so require, evidence satisfactory to Lender that all insurance and endorsements required pursuant to this Agreement and the Loan Documents are in effect.

**4.12 Further Assurances and Corrective Instruments.** Promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, to Lender from time to time such supplements hereto and such other instruments and documents as may be requested by Lender to protect and preserve the Collateral, Lender's security interest therein, perfection of Lender's security interest and/or Lender's rights and remedies hereunder.

**4.13 Financial Information.** Deliver to Lender promptly upon Lender's request, and periodically if Lender shall so require, such written statements, schedules or reports (which shall be Certified if required by Lender) in such form, containing such information and accompanied by such documents as may be satisfactory to Lender from time to time concerning the Collateral, Borrower's financial condition or business operations or any other matter or matters, including, without limitation, copies of federal, State and local tax returns of Borrower, and permit Lender, its agents and designees, to discuss Borrower's financial condition and business operations with Borrower's officers and employees.

**4.14 Notice of Event of Default.** Immediately notify Lender in writing of the occurrence of any Event of Default or any event or existing condition which, with the giving of notice and/or the lapse of time, could constitute an Event of Default or which might materially and adversely affect the financial conditions or operations of Borrower and the facts with respect thereto.

**4.15 ERISA.** (a) At all times maintain each of its employee pension benefit plans, as that term is defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), in conformity with all applicable provisions of ERISA and other federal and State statutes relating to employee benefit plans; (b) at all times make prompt payments of contributions required to meet the minimum funding standards set forth in Sections 302 and 305 of ERISA with respect to each such plan; (c) if requested by Lender, promptly after the filing thereof, furnish to Lender copies of each annual report required to be filed pursuant to Section 103 of ERISA in connection with each such plan for each plan year, including any certified financial statements or actuarial statements required pursuant to said Section 103; (d) notify Lender immediately of any fact, including, without limitation, any "Reportable Event" (as that term is defined in Section 4043(b) of ERISA) arising in connection with any such plan which might constitute grounds for the termination thereof by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer the plan; and (e) furnish to Lender, promptly upon its request therefor such additional information concerning any such plan as Lender may request.

**4.16 Continuance of Business.** Continue to operate the business as currently conducted and not to acquire or operate any other business enterprise without Lender's prior consent.

**4.17 Hazardous Materials: Contamination.** Borrower agrees to (a) give notice to Lender immediately upon Borrower's acquiring knowledge of the presence of any Hazardous Materials (other than those stored in compliance with applicable Laws and are in Borrower's possession in the ordinary course of business) on any property owned or controlled



by Borrower or for which Borrower is responsible or of any Hazardous Materials Contamination with a full description thereof for which remedial or corrective action is required; (b) promptly take action to comply with any Laws requiring the removal, treatment or disposal of Hazardous Materials or Hazardous Materials Contamination and provide Lender with satisfactory evidence of such action, which action must be in all respects sufficient to avoid any penalty, assessment or notice of non-compliance with any required remedial or corrective action on the part of any Governmental Authority; (c) provide Lender, within thirty (30) days after a demand by Lender, with a bond, letter-of-credit or similar financial assurance evidencing to Lender's reasonable satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of Hazardous Materials described in item (b) or Hazardous Materials Contamination and discharging any Lien which may be established as a result thereof on any property owned or controlled by Borrower or for which Borrower is responsible; and (d) defend, indemnify and hold harmless Lender and its employees, trustees, successors and assigns from any and all claims which may now or in the future (whether before or after the termination of this Agreement) be asserted as a result of the presence of any Hazardous Materials on any property owned or controlled by Borrower for which Borrower is responsible for any Hazardous Materials Contamination.

4.18 **Lender as Depository.** Maintain Lender as its principal depository for its deposit and other commercial accounts.

## 5. **NEGATIVE COVENANTS**

5.1 Borrower covenants and agrees with Lender that, until (a) all Obligations have been paid in full and (b) there exists no commitment by Lender which could give rise to any Obligations, Borrower will comply with those negative covenants set forth in Section 5 of the Loan Agreement.

## 6. **EVENTS OF DEFAULT**

The occurrence of any one or more of the following events shall constitute an "Event of Default":

6.1 **Failure to Pay.** The failure of Borrower to pay any of the Obligations as and when due and payable (whether by acceleration, declaration, extension or otherwise).

6.2 **Covenants and Agreements.** The failure of Borrower to perform, observe or comply with any of the covenants of this Agreement or any of the Loan Documents.

6.3 **Information, Representations and Warranties.** If any representation or warranty made herein or if any information contained in any financial statement, application, schedule, report or any other document given by Borrower in connection with the Obligations, with the Collateral, or with any of the Loan Documents is not in all respects true and accurate or if Borrower omitted to state any material fact or any fact necessary to make such information not misleading.

6.4 **Default under Loan Documents.** The occurrence of a default or an event of default under any of the Loan Documents.

6.5 **Default on Other Obligations.** The occurrence of any default under any other borrowing if the result of such default would permit the acceleration of the maturity of any note, loan or other agreement between Borrower and any Person other than Lender.

6.6 **Insolvency.** Borrower shall be or become insolvent (as defined in Section 101 of the United States Bankruptcy Code) or unable to pay its debts as they become due, or admits in writing to such insolvency or to such inability to pay its debts as they become due.

6.7 **Involuntary Bankruptcy.** There shall be filed against Borrower an involuntary petition or other pleading seeking the entry of a decree or order for relief under the United States Bankruptcy Code or any similar federal or state insolvency or similar laws ordering: (a) the liquidation of Borrower or (b) a reorganization of Borrower or the business and affairs of Borrower or (c) the appointment of a receiver, liquidator, assignee, custodian, trustee, or similar official for Borrower of the property of Borrower and the failure to have such petition or other pleading denied or dismissed within forty-five (45) calendar days from the date of filing.

6.8 **Voluntary Bankruptcy.** The commencement by Borrower of a voluntary case under the federal bankruptcy laws or any federal or state insolvency or similar laws or the consent by Borrower to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, or similar official for Borrower of any of the property of Borrower or the making by Borrower of an assignment for the benefit of creditors, or the failure by Borrower generally to pay its debts as the debts become due.

6.9 **Judgments, Awards.** The entry of any judgment, order, award or decree against Borrower and a determination by Lender, in good faith but in its sole discretion, that the same, when aggregated with all other judgments, orders, awards and decrees outstanding against Borrower could have a material adverse effect on the prospect for Lender to fully and punctually realize the full benefits conferred on Lender by this Agreement.

6.10 **Injunction.** The injunction or restraint of Borrower in any manner from conducting its business in whole or in part and a determination by Lender, in good faith but in its sole discretion, that the same would have a material adverse effect on the prospect for Lender to fully and punctually realize the full benefits conferred on Lender by this Agreement.

6.11 **Attachment by Creditors.** Any assets of Borrower shall be attached, levied upon, seized or repossessed, or come into the possession of a trustee, receiver or other custodian and a determination by Lender, in good faith but in its sole discretion, that the same would have a material adverse effect on the prospect for Lender to fully and punctually realize the full benefits conferred on Lender by this Agreement.

6.12 **Dissolution, Merger, Consolidation, Reorganization.** The voluntary or involuntary dissolution, merger, consolidation, winding up or reorganization of Borrower or the

occurrence of any action preparatory thereto.

**6.13 Termination Statement.** Any amendment to or termination of a financing statement naming Borrower as Borrower and Lender as secured party, or any correction statement with respect thereto, is filed in any jurisdiction by any party other than Lender without the prior consent of Lender.

## **7. RIGHTS AND REMEDIES**

**7.1 Rights and Remedies of Lender.** Upon and after the occurrence of an Event of Default, Lender may, without notice or demand, exercise in any jurisdiction in which enforcement hereof is sought, the following rights and remedies, in addition to the rights and remedies available to Lender under the Loan Documents, the rights and remedies of a secured party under the Georgia Uniform Commercial Code and all other rights and remedies available to Lender under applicable law, all such rights and remedies being cumulative and enforceable alternatively, successively or concurrently:

(1) Declare all Obligations to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand for payment, protest or notice of any kind, all of which are hereby expressly waived.

(2) Institute any proceeding or proceedings to enforce the Obligations and any Liens of Lender.

(3) Take possession of the Collateral, and for that purpose, so far as Borrower may give authority therefor, enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom without any liability for suit, action or other proceeding and require Borrower, at Borrower's expense, to assemble and deliver the Collateral to such place or places as Lender may designate.

(4) Operate, manage and control the Collateral (including use of the Collateral and any other property or assets of Borrower in order to continue or complete performance of Borrower's obligations under any contracts of Borrower), or permit the Collateral or any portion thereof to remain idle or store the same, and collect all rents and revenues therefrom and sell or otherwise dispose of any or all of the Collateral upon such terms and under such conditions as Lender, in its sole discretion, may determine, and purchase or acquire any of the Collateral at any such sale or other disposition, all to the extent permitted by applicable law.

(5) Enforce Borrower's rights against any account debtors and other obligors.

(6) Liquidate or otherwise take possession of all funds in any deposit account maintained with Lender.

**7.2 Power of Attorney.** Effective upon the occurrence of an Event of Default,

Borrower hereby designates and appoints Lender and its designees as attorney-in-fact of Borrower, irrevocably and with power of substitution, with authority to endorse Borrower's name on any notes, acceptances, checks, drafts, money orders, instruments or other evidences of payment or proceeds of the Collateral that may come into Lender's possession; to execute proofs of claim and loss; to adjust and compromise any claims under insurance policies; and to perform all other acts necessary and advisable, in Lender's sole discretion, to carry out and enforce this Agreement and the Loan Documents. All acts of said attorney or designee are hereby ratified and approved by Borrower and said attorney or designee shall not be liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law. This power of attorney is coupled with an interest and is irrevocable so long as any of the Obligations remain unpaid or unperformed or there exists any commitment by Lender which could give rise to any Obligations.

**7.3 Notice of Disposition of Collateral and Disclaimer of Warranties.** It is mutually agreed that commercial reasonableness and good faith require Lender to give Borrower, after default, no more than ten (10) days prior written notice of the time and place of any public disposition of Collateral or of the time after which any private disposition or any other intended disposition is to be made. It is mutually agreed that it is commercially reasonable for Lender to disclaim all warranties which arise with respect to the disposition of the Collateral.

**7.4 Costs and Expenses.** Borrower agrees to pay to Lender on demand the amount of all expenses paid or incurred by Lender in consulting with counsel concerning any of its rights hereunder, under the Loan Documents or under applicable law, all expenses, including attorneys' fees and court costs paid or incurred by Lender in exercising or enforcing any of its rights hereunder, under the Loan Documents or under applicable law, together with interest on all such amounts at the highest rate and calculated in the manner provided in the Notes, and such portion of Lender's overhead as Lender shall allocate to collection and enforcement of the Obligations in Lender's sole but reasonable discretion (the "Enforcement Costs"). The provisions of this Subsection shall survive the termination of this Agreement and Lender's security interest hereunder and the payment of all Obligations.

## **8. MISCELLANEOUS**

**8.1 Performance for Borrower.** Borrower agrees and hereby authorizes that Lender may, in Lender's sole discretion, but Lender shall not be obligated to, whether or not an Event of Default shall have occurred, advance funds on behalf of Borrower, without prior notice to Borrower, in order to insure Borrower's compliance with any covenant, warranty, representation or agreement of Borrower made in or pursuant to this Agreement or any of the Loan Documents, to continue or complete, or cause to be continued or completed, performance of Borrower's obligations under any contracts of Borrower, to cover overdrafts in any checking or other accounts of Borrower at Lender or to preserve or protect any right or interest of Lender in the Collateral or under or pursuant to this Agreement or any of the Loan Documents, including, without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Collateral or other property or assets of Borrower; provided, however, that the making of any such advance by Lender shall not constitute a waiver by Lender of any Event of Default with respect to which such advance is

made nor relieve Borrower of any such Event of Default. Borrower shall pay to Lender upon demand all such advances made by Lender with interest thereon at the highest rate and calculated in the manner provided in the Notes. All such advances shall be deemed to be included in the Obligations and secured by the security interest granted Lender hereunder; provided, however, that the provisions of this Subsection shall survive the termination of this Agreement and Lender's security interest hereunder and the payment of all other Obligations.

**8.2 Expenses.** Whether or not any of the transactions contemplated hereby shall be consummated, Borrower agrees to pay to Lender on demand the amount of all expenses paid or incurred by Lender (including the fees and expenses of its counsel) in connection with the preparation of all written commitments of Lender antedating this Agreement, this Agreement and the Loan Documents and all documents and instruments referred to herein and all expenses paid or incurred by Lender in connection with the filing or recordation of all financing statements and instruments as may be required by Lender at the time of, or subsequent to, the execution of this Agreement, including, without limitation, all documentary stamps, indebtedness taxes, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Borrower agrees to save harmless and indemnify Lender from and against any liability resulting from the failure to pay any required documentary stamps, indebtedness taxes, recordation and transfer taxes, recording costs or any other expenses incurred by Lender in connection with this Agreement. The provisions of this Subsection shall survive the termination of this Agreement and Lender's security interest hereunder and the payment of all other Obligations.

**8.3 Applications of Payments and Collateral.** Except as may be otherwise specifically provided in this Agreement, all Collateral and proceeds of Collateral coming into Lender's possession and all payments made by any Obligor may be applied by Lender to any of the Obligations, whether matured or unmatured, as Lender shall determine in its sole but reasonable discretion. Lender may defer the application of non-cash proceeds of Collateral, including, but not limited to, non-cash proceeds collected under **Subsection 2.3** hereof, to the Obligations until cash proceeds are actually received by Lender.

**8.4 Waivers by Borrower.** Borrower hereby waives, to the extent the same may be waived under applicable law: (a) notice of acceptance of this Agreement; (b) all rights of redemption of Borrower with respect to the Collateral; (c) in the event Lender seeks to repossess any or all of the Collateral by judicial proceedings, any bond(s) or demand(s) for possession which otherwise may be necessary or required; (d) presentment, demand for payment, protest and notice of non-payment and all exemptions; (e) settlement, compromise or release of the obligations of any Person primarily or secondarily liable upon any of the Obligations; (f) all rights of Borrower to demand that Lender release account debtors from further obligation to Lender; and (g) substitution, impairment, exchange or release of any Collateral for any of the Obligations. Borrower agrees that Lender may exercise any or all of its rights and/or remedies hereunder, under the Loan Documents and under applicable law without resorting to and without regard to any Collateral or sources of liability with respect to any of the Obligations. Upon termination of this Agreement and Lender's security interest hereunder and payment of all Obligations, (a) within ten (10) days following Borrower's request to Lender, Lender shall release control of any security interest in the Collateral perfected by control, and (b) within

twenty (20) days after Lender receives an authenticated demand from Borrower, Lender shall send Borrower a statement terminating any financing statement filed against the Collateral or file such termination statement.

**8.5 Waivers by Lender.** Neither any failure nor any delay on the part of Lender in exercising any right, power or remedy hereunder, under any of the Loan Documents or under applicable law shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**8.6 Lender's Setoff.** Lender shall have the right, in addition to all other rights and remedies available to it, following an Event of Default, to set off against any Obligations due Lender, any debt owing to Borrower by Lender, including, without limitation, any funds in any checking or other deposit account now or hereafter maintained by Borrower at Lender. Borrower hereby confirms Lender's right to setoff, and nothing in this Agreement or any of the Loan Documents shall be deemed a waiver or prohibition of Lender's right of setoff as Lender maintains pursuant to Article 9 of the Georgia Uniform Commercial Code or otherwise.

**8.7 Modifications.** No modifications or waiver of any provision of this Agreement or any of the Loan Documents, and no consent by Lender to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon Borrower in any case shall entitle Borrower to any other or further notice or demand in the same, similar or other circumstances.

8.8 **Notices.** Unless otherwise provided herein, all notices, requests and other communications provided for hereunder shall be in writing and shall be given at the following addresses:

(1) If to the Lender: Branch Banking and Trust Company  
Attn: R. Andrew Beam, Senior Vice President  
900 S. Gay Street, Suite 2400  
Knoxville, Tennessee 37902  
Fax No.: 865-766-8717

With a copy to: John G. Brock, Esq.  
Gentry, Tipton & McLemore, P.C.  
900 S. Gay Street, Suite 2300  
Knoxville, Tennessee 37902  
Fax No.: 865-637-6761

(2) If to Borrower: Savannah Yacht Company, LLC  
Attn: William J. Barrington,  
Chief Executive Officer  
280 Industrial Boulevard  
Rincon, Georgia 31326  
Fax No.: 912-754-0076

With a copy to: Herbert H. Slatery, III  
Egerton, McAfee, Armistead & Davis, P.C.  
900 S. Gay Street, Suite 1400  
Knoxville, Tennessee 37902

Any such notice, request or other communication shall be effective (i) if given by mail, upon the earlier of receipt or the third business day after such communication is deposited in the United States mails, registered or certified, with first class postage prepaid, addressed as aforesaid or (ii) if given by any other means (including, without limitation, by air courier), when delivered at the address specified herein. The Borrower or the Lender may change its address for notice purposes by notice to the other parties in the manner provided herein.

8.9 **Survival: Successors and Assigns.** All covenants, agreements, representations and warranties made herein and in the Loan Documents shall survive the execution and delivery hereof and thereof, shall survive Closing and shall continue in full force and effect until all Obligations have been paid in full, there exists no commitment by Lender which could give rise to any Obligations and all appropriate termination statements have been filed terminating the security interest granted Lender hereunder. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, agreements, representations and warranties by or on behalf of Borrower which are contained in this Agreement and the Loan Documents shall inure to the benefit of Lender, its successors and assigns. Borrower may not assign this Agreement or any of its rights hereunder without the prior written consent of Lender.

8.10 **Severability.** If any term, provision or condition, or any part thereof, of this Agreement or any of the Loan Documents shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement and the Loan Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

8.11 **Applicable Law and Venue of Disputes.** This Agreement has been delivered to Lender and accepted by Lender in the State of Tennessee. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of and exclusive venue in the courts of Knox County, the State of Tennessee, or the United States District Court for the Eastern District of Tennessee at Knoxville. Subject to the provisions on arbitration, this Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without giving effect to the conflict of law principles thereof.

8.12 **WAIVER OF JURY TRIAL.** BORROWER HEREBY (a) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND (b) WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH LENDER AND BORROWER MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS AND/OR ANY TRANSACTIONS, OCCURRENCES, COMMUNICATIONS, OR UNDERSTANDINGS (OR THE LACK OF ANY OF THE FOREGOING) RELATING IN ANY WAY TO BORROWER-LENDER RELATIONSHIP BETWEEN THE PARTIES. IT IS UNDERSTOOD AND AGREED THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS SECURITY AGREEMENT. THIS WAIVER OF JURY TRIAL IS SEPARATELY GIVEN, KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND BORROWER HEREBY AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. LENDER IS HEREBY AUTHORIZED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND BORROWER AND LENDER, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF SUCH WAIVER OF RIGHT TO TRIAL BY JURY. BORROWER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND/OR THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

8.13 **Merger and Integration.** This Agreement and the attached Schedules (if any) contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby, and no other agreement, statement or promise made by any



party hereto, or by any employee, officer, agent or attorney of any party hereto, which is not contained herein shall be valid or binding.

8.14 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

8.15 **Headings.** The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and shall not be used or deemed to limit or diminish any of the provisions hereof.

8.16 **Recitals.** The Recitals hereto are hereby incorporated into and made a part of this Agreement.

8.17 **Maximum Rate of Interest.** Notwithstanding any provision of this Agreement to the contrary, Borrower shall not be obligated to pay interest in excess of the maximum rate of interest permitted by the laws of any state determined to apply or the laws of the United States applicable to loans in such state. If any provisions of this Agreement shall ever be construed to require the payment of any amount of interest in excess of that permitted by applicable law, then the interest to be paid shall be held subject to reduction to the amount allowed under applicable law and any sums paid in excess of the interest rate allowed by law shall be applied in reduction of the principal balance outstanding. Borrower acknowledges that it has been contemplated at all times by Borrower that the laws of the state of Tennessee will govern the maximum rate of interest that it is permissible for Lender to charge Borrower.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed as of the date first above written.

BORROWER:

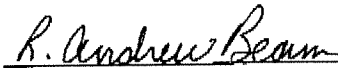
SAVANNAH YACHT COMPANY, LLC

By:   
William F. Barrington

Title: Chief Executive Officer

LENDER:

BRANCH BANKING AND TRUST CO.

By:   
R. Andrew Beam

Title: Senior Vice President