

This Instrument Prepared By
and after Recording Return To:

(enw)
Reid D. Evensky, Esquire
Reid D. Evensky, P.C.
850 Ridge Lake Blvd., Suite 200
Memphis, Tennessee 38120

cb 3/19/10 12:06:30
OK T BK 3,145 PG 59
DESOUD COUNTY, MS
J. E. DAVIS, CH. CLERK
Maximum Principal Indexed for
Tennessee Recording Tax Purposes is:
\$0.00. Previous Tax
Paid under Shelby County Register's
Instrument Numbers KV 4001, 01016486
02188000, 05004188, 06053220.
and 07108874.

SIXTH MODIFICATION AGREEMENT

THIS SIXTH MODIFICATION AGREEMENT made and entered into as of the 22nd day of December, 2009 (herein the "Effective Date"), by and among **Kurt W. Tauer and wife, Anita B. Tauer** (hereinafter each individually and collectively referred to as "Borrower"), **Andrew D. Pierotti**, resident of Shelby County, Tennessee, Trustee, and **Commercial Bank and Trust Company** (hereinafter referred to as "Bank").

WITNESSETH:

WHEREAS, on the 22nd day of January, 2001, Borrower executed a Promissory Note (hereinafter referred to as "Note 1") in the original principal amount of Three Million Seven Hundred Thousand and 00/100 (\$3,700,000.00) to the order of Bank, as amended by a certain Amendment to Promissory Note dated November 9, 2001; and

WHEREAS, Note 1 is secured by (i) a certain Deed of Trust With Security Agreement and Assignment of Rents and Leases (hereinafter referred to as "Deed of Trust 1") also dated as of the 22nd day of January, 2001, executed by Borrower and conveying to Trustee for the benefit of Bank certain real property located in Shelby County, Tennessee, as more particularly described in said Deed of Trust 1, which is recorded in the Register's Office of Shelby County, Tennessee under Instrument Number KV 4001; and (ii) an Assignment of Life and Disability Insurance Benefits dated as of January 16, 2001, as amended by a certain Restated and Amended Assignment of Life and Disability Benefits of even date herewith (herein collectively the "Insurance Assignment"); and (iii) a certain Security Agreement dated as of August 8, 2002 and encumbering for the benefit of Bank certain financial securities and instruments maintained at Merrill Lynch under therein identified pledge accounts (herein the "Securities Pledge Account"); and (iv) such other property secured by such other instruments, notes, assignments, mortgages and agreements delivered to and for the benefit of Bank; and

WHEREAS, Note 1 and Deed of Trust 1 were modified according to the terms and conditions of a certain First Modification Agreement dated as of the 9th day of November, 2001 (herein the "First Modification"), and placed or record in said Register's Office as Instrument Number 01016486, the effect of which, included, without limitation, a single additional principal advance in the amount of Five Thousand and no/100 (\$5,000.00) Dollars; and

WHEREAS, Borrower has executed a certain Guaranty Agreement dated the 7th day of October, 2002 (herein the "Guaranty Agreement") providing for the unconditional guaranty and prompt payment and performance of a certain Promissory Note in the original principal amount of Two Hundred Thousand and no/100 Dollars (\$200,000.00) and delivered to Bank by Michael Tauer (herein the "Michael Tauer Note"); and

WHEREAS, Deed of Trust 1 was further modified according to the terms and conditions of a certain Second Modification Agreement dated as of the 7th day of October, 2002 (herein the "Second Modification"), placed or record in said Register's Office as Instrument Number 02188000, the effect of which, included, without limitation, extending the security interests granted by Borrower in that collateral affecting Note 1, as modified and amended, to assure performance of Borrower pursuant to the Guaranty Agreement, along with such other instruments, notes, assignments, mortgages and agreements delivered to and for the benefit of Bank; and

WHEREAS, on the 13th day of August, 2003, Borrower executed a Promissory Note (hereinafter referred to as "Note 2") in the original principal amount of Seven Hundred Ninety Seven Thousand Six Hundred Eighty Seven and 46/100 (\$797,687.46) to the order of Bank; and

WHEREAS, Note 2 is secured by (i) a certain Mortgage (hereinafter referred to as the "Florida Mortgage") dated as of the 22nd day of May, 2003, executed by Borrower and encumbering for the benefit of Bank certain real property located in the Walton County, Florida, as more particularly described in said Florida Mortgage, which is recorded in the Walton County Clerk of Court Office under Instrument Number 763511 (or at Book 2502, Pages 1240-1255) and (ii) certain UCC 1 Financing Statements recorded in the Tennessee Secretary of State's Office under Instrument Numbers 303-047562 and 304-067466 and encumbering Borrower's interests in a certain Glacier Bay Model 2640 Boat (Serial Number GLKD1553F304) and affixed Yamaha Engines model numbers Z150TXRB (Serial Number 6GX4-1005857) and LZ150TXRC (Serial Number 6K0X-1000471) all of such property herein collectively referred to as the "Boat Lien"; and (iii) and such other property secured by such other instruments, notes, assignments, mortgages and agreements delivered to and for the benefit of Bank; and

WHEREAS, Borrower has executed a certain Promissory Note dated the 9th day of August, 2003 (herein the "Line of Credit") in the original principal amount of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) and payable to the order of Bank; and

WHEREAS, Borrower has executed a certain Promissory Note dated the 15th day of April, 2004 (herein "Note 3") in the original principal amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) payable to the order of Bank; and

WHEREAS, Borrower and Bank restated, consolidated and modified the terms and conditions for payment evidenced by Note 2, such that the outstanding principal balances of Note 2, the outstanding principal balance evidenced by the Line of Credit and the outstanding principal balance evidenced by Note 3, were restated, consolidated and modified by a certain Restated, Consolidated and Modified Promissory Note in the original principal amount of One Million One Hundred Fifty One Thousand and no/100 Dollars (\$1,151,000.00) and dated May 31, 2007 (herein "Note 4"); and

WHEREAS, Borrower has executed a certain Promissory Note dated the 22nd day of February, 2006 (herein "Note 5") in the original principal amount of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) payable to the order of Bank; and

WHEREAS, Borrower has executed a certain Promissory Note dated the 22nd day of December, 2009 (herein "Second Renewal Note 1") evidencing the then unpaid principal balances of Three Million Fifty Seven Thousand One Hundred Twenty Seven and 69/100 Dollars (\$3,057,127.69) payable to the order of Bank; and

WHEREAS, Borrower has executed a certain Promissory Note dated the 22nd day of January, 2006 (herein "Renewal Note 2") evidencing the then unpaid principal balances of Note 4 in the amount of One Hundred Sixty Six Thousand Nine Hundred Eighty Three and 89/100 Dollars (\$166,983.89) payable to the order of Bank; and

WHEREAS, Borrower encumbered its existing real property municipally known as 245 Sterlin, Hernando, Mississippi (herein "Mississippi Farm Property") and consolidated, modified and extended certain existing obligations evidenced as Renewal Note 2 and Note 5 and all secured by a certain Mississippi Deed of Trust of even date herewith recorded in the Chancery Clerk's Office of DeSoto County, Mississippi at Book 2,733, Page 583 (the "Mississippi Deed of Trust"); and

WHEREAS, Borrower has executed a certain Promissory Note dated the 31st day of May, 2007 and in the original principal amount of \$1,115,750.00 (herein "Note 6") and evidencing the then unpaid principal balances of (i) Renewal Note 2 and in the amount of One Hundred Fifty One Thousand Eight Hundred Thirty and 82/100 Dollars (\$151,830.82); plus (ii) Note 5 and in the principal amount of Four Hundred Fifty Three Thousand Six Hundred Nine and 37/100 Dollars (\$453,609.37); plus (iii) Five Hundred Ten Thousand Three Hundred Nine and 81/100 Dollars (\$510,309.81); and

WHEREAS, Bank is the holder and owner of Second Renewal Note 1 and bearing a maturity date of December 22, 2012 and Note 6 (and evidencing the consolidation of Renewal Note 2, Note 5 and the refunding necessary to accommodate the Mississippi Farm Property) and bearing a maturity date of June 5, 2012, as hereinabove described (herein collectively the "Obligations") and all as secured by the Deed of Trust 1, the Florida Mortgage, the Insurance Assignment, the Securities Pledge Account, the Boat Lien, the Mississippi Deed of Trust placed of record at Book 2,733, Page 583 in the Chancery Clerk's Office of DeSoto County, Mississippi and such other instruments, notes, assignments, mortgages and agreements delivered to and for the benefit of Bank (herein collectively the "Security Agreements") and all of such property interests affected thereby, including any and all proceeds therefrom (herein collectively the "Collateral"); and

WHEREAS, Borrower and Bank desire to extend the lien of all of the Security Agreements and the Collateral affected thereby, and whether or not specifically identified hereinabove, or whether or not in the possession of Bank or later acquired, without, however, releasing or affecting the priority of the Security Agreements and to subject and encumber all of the Collateral delivered to Bank by Borrower, and whether or not specifically identified hereinabove, or whether or not in the possession of Bank or later acquired, as cross collateral for all of the Obligations, as modified and amended, and to provide for the benefit of Bank, in its absolute discretion, the right to determine the order in which Bank's rights in or remedies against the Collateral are to be exercised and which types or portions of the Collateral are to be proceeded against and the order of application of proceeds of the Collateral as against particular Obligations of Borrower.

1. **ACKNOWLEDGMENT OF DEBT.** Borrower hereby acknowledges the outstanding principal balances owed to Bank as follows:

<u>Obligation</u>	<u>Outstanding Principal Balance</u>
Second Renewal Note 1 (Loan # 40082)	\$ 3,057,127.69
Note 6 (Loan #34645)	\$ 1,049,079.03

Borrower and Bank hereby acknowledge all obligations evidenced by the Guaranty Agreement and the Michael Tauer Note have been satisfied in full and no longer evidences an Obligation of the Borrower.

2. **CROSS-COLLATERAL, CROSS DEFAULT AND MODIFICATION OF FIRST DEED OF TRUST AND FLORIDA MORTGAGE.** The Deed of Trust 1, Florida Mortgage, the Mississippi Deed of Trust (and all other instruments, notes, assignments, mortgages and agreements delivered to and for the benefit of Bank to secure the Obligations) are hereby modified and amended to reflect the cross collateralization of all Collateral affected thereby and resulting from Borrower's execution thereof. The Collateral described in the Security Agreements and all other property (or proceeds therefrom) which Bank may at any time acquire from any other source in connection with the Obligations of Borrower to Bank, shall constitute cross collateral for all Obligations of Borrower, including without limitation, those obligations of Borrower to Bank and evidenced by Second Renewal Note 1 or Note 6. Moreover, Bank in its absolute discretion and without apportionment or designation as to particular Obligations, and all Obligations, howsoever and whensoever incurred, shall be secured by all of the Collateral, howsoever and whensoever acquired, and Bank shall have the right, in its sole discretion, to determine the order in which Bank's rights in or remedies against the Collateral are to be exercised and which types of the Collateral or which portions of the Collateral are to be proceeded against and the order of application of proceeds of the Collateral as against particular Obligations of Borrower.

The liens of the Deed of Trust 1, Florida Mortgage, Mississippi Deed of Trust and all other collateral delivered to Bank by Borrower, are hereby so extended that the same shall not be barred by any applicable statute of limitations until ten (10) years from the date of maturity of the Obligations, as modified and as set forth herein, and the lien of the Deed of Trust 1 and the Florida Mortgage shall remain in full force and effect and unimpaired for a period of ten (10) years from the date of maturity of the Obligations as herein modified.

3. **REAFFIRMATION OF OBLIGATIONS.** All terms and provisions of the Obligations and the Security Agreements not herein specifically modified or amended shall remain in full force and effect and are hereby reaffirmed by Borrower.

4. **NOTATION.** Bank agrees to make a notation upon its records showing that the Obligations have been modified as set forth herein.

5. OTHER AGREEMENTS. In consideration of the modifications granted herein, Borrower promises to pay the indebtedness evidenced by the Obligations, as modified and as set forth herein, to keep and perform all the covenants, terms and conditions contained in any instrument, note, agreement or document governing the terms and conditions of the borrowings affected thereby, in default of which the holder of said indebtedness, at its option, may declare said indebtedness accelerated and matured for all purposes, and may proceed to foreclose on any of the collateral held to secure same, or to exercise, at its option, any right or privilege granted in any of said instruments, notes, agreements or documents or by law. It is expressly understood and agreed that the terms, covenants and conditions of all instruments, notes, agreements or documents evidencing or securing the aforesaid Obligations shall remain in full force and effect, and shall in no manner be affected by the execution of this Agreement, except, as the same are expressly extended or modified herein.

6. DEFAULT. The Obligations, including principal and accrued interest, as modified hereby shall bear interest, from the date of maturity (whether by demand, acceleration or otherwise) until the same is fully satisfied, at the maximum rate of interest which Bank is permitted by law to contract for and charge on the date hereof or at such maximum rate so permitted on the maturity date hereof, whichever is greater. Moreover, a default as to any portion of the Obligations shall constitute a default as to all Obligations, in the absolute discretion of Bank. Moreover, Borrower agrees to pay all expenses directly related to the Obligations incurred or to be incurred in its collection, including reasonable attorney's fees.

7. NO RELEASE. The execution of this Agreement does not discharge any of the obligors, sureties, endorsers or guarantors of the Obligations, including without limitation, and all rights of the Bank against any or all of the same are expressly reserved.

8. MISCELLANEOUS, BINDING, ETC. A full release of the Deed of Trust 1 and the Florida Mortgage shall constitute a release of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, next of kin, successors, assigns, transferees and grantees, and shall be governed and construed in accordance with the laws of the State of Tennessee, except with respect to interest which shall be governed and construed in accordance with applicable law.

9. NAME AFFIDAVIT. The said Kurt W. Tauer represents and warrants that he is one and the same person as Kurt Tauer and the said Anita B. Tauer, represents and warrants that she is one and the same person as Anita Tauer.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date first above written.

BORROWER:

BANK:

Kurt Tauer
Kurt W. Tauer, individually
Anita B. Tauer
Anita B. Tauer, individually

Commercial Bank and Trust Company

Diana Rose
By: DIANA ROSE
Its: VICE PRESIDENT

TRUSTEE:

Andrew D. Pierotti
Andrew D. Pierotti, Trustee

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, Notary Public of the state and county aforesaid, personally appeared DIANA ROSE, with whom I am personally acquainted, and who, upon oath, acknowledged him/herself to be the VICE PRESIDENT of Commercial Bank and Trust Company, the within named bargainor, and that he/she as such VICE PRESIDENT executed the foregoing instrument for the purpose therein contained, by signing the name of Commercial Bank and Trust Company by him/herself as VICE PRESIDENT

WITNESS my hand and seal, at office in Memphis, this 22nd day of DECEMBER, 2009

Patricia N. Funk
Notary Public

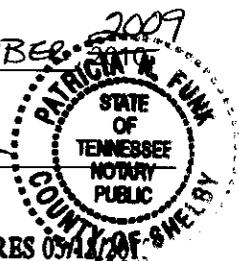


STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, Notary Public of the state and county aforesaid, personally appeared Andrew D. Pierotti, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

WITNESS my hand and seal, at office in Memphis, this 22nd day of DECEMBER, 2009

Patricia N. Funk
Notary Public

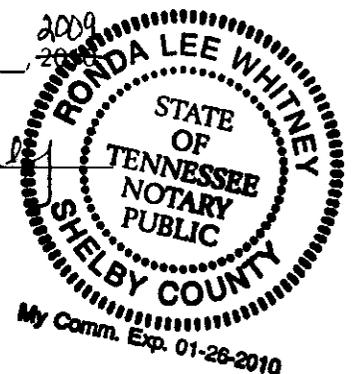


STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, Notary Public of the state and county aforesaid, personally appeared Kurt W. Tauer and wife, Anita B. Tauer, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

WITNESS my hand and seal, at office in Memphis, this 22nd day of December, 2009

Ronda Lee Whitney
Notary Public





Tom Leatherwood

Shelby County Register

As evidenced by the instrument number shown below, this document has been recorded as a permanent record in the archives of the Office of the Shelby County Register.

	
10019735	
03/01/2010 - 02:17 PM	
5 PGS	
DONALD 723866-10019735	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	25.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	27.00
TOM LEATHERWOOD	
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	