

## SUBORDINATION AND ATTORNMENT AGREEMENT

PREPARED BY &  
RETURN TO: Karen M. Nelson, Esq.  
K&L Gates LLP  
Hearst Tower, 214 North Tryon  
Charlotte, NC 28202

This SUBORDINATION AND ATTORNMENT AGREEMENT (hereafter referred to as "Agreement") made May 17, 2011, by and between Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, National Association, whose address is MAC Z3055-10, 225 Water Street, 10<sup>th</sup> Floor, Jacksonville, Florida 32202 ("Bank"), and Rec Operations, Inc., a Florida corporation, whose address is 450 South Ronald Reagan Blvd., Longwood, FL 32750 ("Tenant").

As security for a loan made by Bank, Birmingham Bay Limited Partnership, a Florida limited partnership ("Landlord"), has given to Bank a Mortgage, Assignment of Rents and Security Agreement (the "Security Instrument") dated June 1, 2006, recorded as Instrument No. 20060612000278050 in the Registry (as hereinafter defined), which constitutes a first lien against the real property described on Schedule "A" attached hereto (the "Property"). As used herein, the term "Registry" shall mean the Public Records of Shelby County, State of Alabama.

Tenant (as assignee of Leisure Bay Inc.) and Landlord have entered into a lease dated April 22, 2003 (as amended, the "Lease") covering all or a portion of the Property (the "Leased Premises"). In connection with and as contemplated under Section 4.8(a) of that certain Forbearance Agreement, dated as of May 17, 2011, by and among Landlord, Kennesaw Bay Limited Partnership ("Kennesaw Bay"), Pinellas Bay Limited Partnership ("Pinellas Bay"), Tampa Renaissance Limited Partnership ("Tampa Renaissance"), McDonough Bay Limited Partnership ("McDonough Bay"), Lakeland Bay Limited Partnership ("Lakeland Bay"), Allen Bay Limited Partnership ("Allen Bay"), Concord Bay Limited Partnership ("Concord Bay") (each, a Florida limited partnership, and collectively, the "Borrowers"), David R. Doeblor and Donald R. Czech (each a "Guarantor" and collectively, "Guarantors"), Leisure Bay, Inc., Rec Warehouse, Inc. f/k/a Leisure Bay Industries, Inc., and Leisure Bay Manufacturing, Inc. f/k/a United Leisure Manufacturing, Inc. (collectively, "LBI"), and Bank, Bank has required that the Lease be subordinated to the Security Instrument and that Tenant agrees, if Bank so elects, to attorn to the purchaser of the Property in the event of foreclosure of the Security Instrument, or to Bank prior to foreclosure in the event Bank elects to collect the rents and other sums due and becoming due under the Lease, and Tenant is willing to so attorn as hereinafter provided.

Relying on the covenants, agreements, representations and warranties contained in this Agreement, Bank and Tenant agree as follows:





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**Subordination of Lease.** The Lease is and shall be subject and subordinate to the provisions and lien of the Security Instrument and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal amount and other sums secured thereby and interest thereon.

**Attornment.** Tenant agrees that, if Bank so elects (in its sole discretion), Tenant will attorn to and recognize: (i) Bank, whether as mortgagee in possession or otherwise; or (ii) any purchaser at a foreclosure sale under the Security Instrument, or any transferee who acquires possession of or title to the Property, or any successors and assigns of such purchasers and/or transferees (each, a "Successor"), as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the terms and conditions set forth therein. Such attornment shall be effective and self-operative without the execution of any further instruments by any party hereto other than a written notice to Tenant of such election by Bank or any Successor; provided, however, that Tenant will, upon request by Bank or any Successor, execute a written agreement attorning to Bank or such Successor.

**Assignment of Leases.** Tenant consents to all provisions of that certain Absolute Assignment of Lessor's Interest in Leases and Rents dated June 1, 2006, recorded as Instrument No. 20060612000278060 in the Registry and all provisions of the Security Instrument relating to the assignment to Bank of Landlord's interest in and to the lease and all rights derived therefrom, including without limitation the right to receive rental payments (collectively, the "Assignment"). Tenant agrees that if Bank, pursuant to the Assignment or otherwise, and whether or not it becomes a mortgagee in possession, shall give notice to Tenant that Bank has elected to require Tenant to pay to Bank the rent and other charges payable by Tenant under the Lease, Tenant shall, until Bank shall have canceled such election, thereafter pay to Bank all rent and other sums payable under the Lease. Any such payment shall be made notwithstanding any right of setoff, defense or counterclaim which Tenant may have against Landlord, or any right to terminate the Lease.

**Limitation of Liability.** In the event that Bank succeeds to the interest of Landlord under the Lease, or title to the Property, and elects to require Tenant to attorn to Bank, then Bank and any Successor shall assume and be bound by the obligations of the landlord under the Lease which accrue from and after such party's succession to any prior landlord's interest in the Leased Premises, but Bank and such Successor shall not be: (i) liable for any act or omission of any prior landlord; (ii) liable for the retention, application or return of any security deposit to the extent not paid over to Bank; (iii) subject to any offsets or defenses which Tenant might have against any prior landlord; (iv) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord; or (v) bound by any amendment or modification of the Lease made without Bank's or such Successor's prior written consent. Nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord.

Tenant agrees that any person or entity which at any time hereafter becomes the landlord under the Lease, including without limitation, Bank or any Successor, shall be liable only for the performance of the obligations of the landlord which arise during the period of its or their ownership of the Leased Premises and shall not be liable for any obligations of the landlord under the Lease which arise prior to or subsequent to such ownership. Tenant further agrees that any such liability shall be limited to the interest of Bank or such Successor in the Property.


**Right to Cure Defaults.** Tenant agrees to give notice to Bank of any default by Landlord under the Lease, specifying the nature of such default, and thereupon Bank shall have the right (but not the obligation) to cure such default, and Tenant shall not terminate the Lease or abate the rent payable thereunder by reason of such default until it has afforded Bank thirty (30) days after Bank's receipt of such notice to cure such default and a reasonable period of time in addition thereto (i) if the circumstances are such that said default cannot reasonably be cured within said thirty (30) day period and Bank has commenced and is diligently pursuing such cure, or (ii) during and after any litigation action including a foreclosure, bankruptcy, possessory action or a combination thereof. It is specifically agreed that Tenant shall not require Bank to cure any default which is not susceptible of cure by Bank.



**Tenant's Agreements.** Tenant hereby covenants and agrees that: (i) Tenant shall not pay any rent under the Lease more than one month in advance; (ii) Tenant shall have no right to appear in any foreclosure action under the Security Instrument; (iii) Tenant shall not amend, modify, cancel or terminate the Lease without Bank's prior written consent, and any attempted amendment, modification, cancellation or termination of the Lease without such consent shall be of no force or effect as to Bank; (iv) Tenant shall not subordinate the Lease to any lien or encumbrance (other than the Security Instrument) without Bank's prior written consent; (v) Tenant shall not assign the Lease or sublet all or any portion of the Leased Premises (except as permitted by the terms of the Lease) without Bank's prior written consent; and (vi) Tenant shall promptly deliver to Bank, from time to time, a written statement in form and substance satisfactory to Bank certifying to certain matters relating to the Lease.

**Miscellaneous.** (i) The provisions hereof shall be binding upon and inure to the benefit of Tenant and Bank and their respective successors and assigns; (ii) Any demands or requests shall be sufficiently given Tenant if in writing and mailed or delivered to the address of Tenant shown above and to Bank if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code: MAC Z3055-10, 225 Water Street, 10th Floor, Jacksonville, FL 32202, Attention: Mr. Ralph Kelly, or such other address as Bank may specify from time to time. Notices to Bank must include the mail code; (iii) The Agreement may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (iv) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not part of this Agreement; (v) This Agreement shall be governed by and construed under the laws of the jurisdiction where this Agreement is recorded. (vi) **Telephone Communication Monitoring.** Tenant agrees that Tenant's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. (vii) **Final Agreement.** This Agreement and the other loan documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

[Signatures begin on following page]

  
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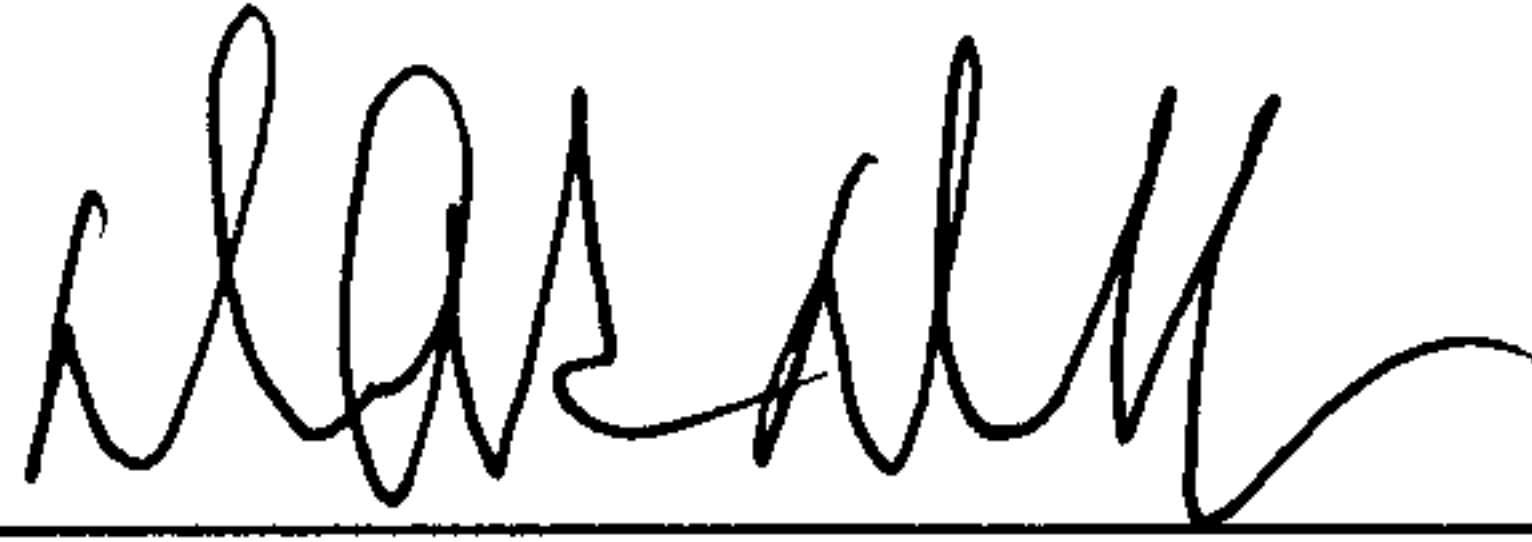
IN WITNESS WHEREOF, the parties hereto have duly signed and sealed this instrument as of the day and year first above written.

**Tenant**

Rec Operations, Inc., a Florida corporation

CORPORATE  
SEAL

By:



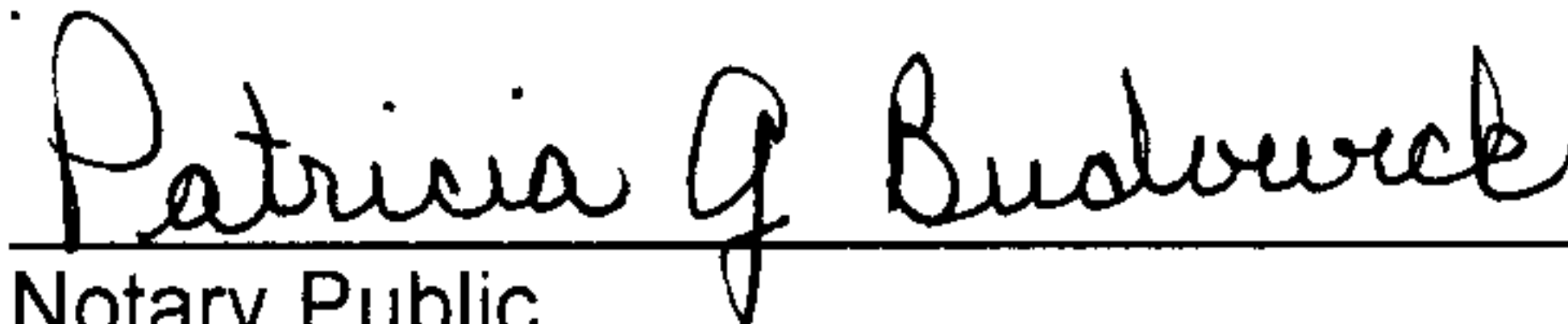
David R. Doeblen, President

STATE OF Florida)

Seminole COUNTY )

I, Patricia G. Budowick, a Notary Public in and for said county in said state, hereby certify that David R. Doeblen, an individual, whose name as President of Rec Operations, Inc., a Florida corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as President, executed the same voluntarily for and on behalf of said corporation on the day the same bears date.

Given under my hand this 17th day of May, 2011.

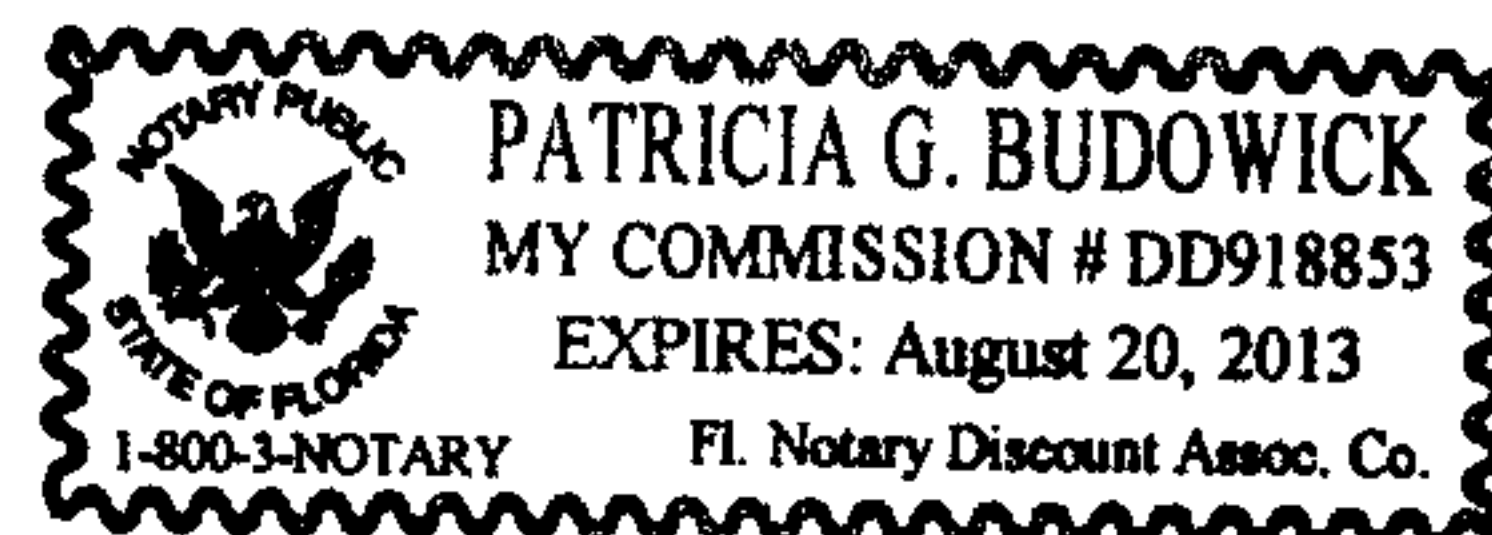


Notary Public

My Commission Expires: August 20, 2013

[Affix notarial seal]

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**Bank**

Wells Fargo Bank, N.A., successor by merger to Wachovia Bank,  
National Association

CORPORATE  
SEAL

By: \_\_\_\_\_

Ralph L. Kelly, Senior Vice President

STATE OF Florida )

Duval COUNTY )

I, Carol H. Baldwin, a Notary Public in and for said county in said state, hereby  
certify that Ralph L. Kelly, an individual, whose signature, as Senior Vice President of Wells Fargo Bank,  
National Association, is signed to the foregoing conveyance, and who is known to me, acknowledged  
before me on this day that, being informed of the contents of the conveyance, he, as Senior Vice  
President, executed the same voluntarily for and on behalf of said national banking association on the  
day the same bears date.

Given under my hand this 9 day of June, 2011.

Carol H. Baldwin  
Notary Public  
My Commission Expires: \_\_\_\_\_

[Affix notarial seal]

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## **SCHEDULE A**

### **LEGAL DESCRIPTION**

Lot 6-B, of Southpark Resurvey of Lots 6A & 7A, as recorded in Map Book 30, Page 141, in Shelby County, City of Hoover, Alabama.



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