

# UNOFFICIAL COPY



Doc#: 0726344067 Fee: \$38.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/20/2007 03:45 PM Pg: 1 of 8

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

John N. Oest  
Lord, Bissell & Brook LLP  
111 South Wacker Drive  
Chicago, IL 60606

11069975

## SUBORDINATION, NONDISTURBANCE, AND ATTORNMEN AGREEMENT

THIS AGREEMENT (the "Agreement") made and entered into this 28<sup>th</sup> day of August, 2007, by and between RECREATIONAL EQUIPMENT, INC., a Washington corporation ("Tenant") and NATIONAL CITY BANK, a national banking association as Agent for itself and other Agents ("Agent").

### RECITALS:

A. Agent has made a mortgage loan ("loan") to BLACKHAWK/HALSTED, LLC, an Illinois limited liability company ("Borrower" and "Landlord") in the maximum principal amount of \$ 70,000,000.00, to be secured by a mortgage (the "Mortgage") on the real property (the "Premises") legally described on Exhibit A attached hereto and made a part hereof.

B. Tenant is the lessee under a lease dated August 28, 2007, of a portion of the Premises (said lease being referred to as the "Lease"); and

C. Agent requires that Tenant subordinate the Lease and its interest in the Premises in all respects to the lien of the Mortgage and that Tenant attorn to Agent, and acknowledge that the lease is in full force and effect; and

D. In return, Agent is agreeable to not disturbing Tenant's possession of the portion of the Premises covered by the Lease (the "Demised Premises"), so long as Tenant is not in default under the Lease beyond applicable notice and cure periods.

NOW THEREFORE, the parties hereby agree as follows:

1. Subordination. So long as Tenant's occupancy is not disturbed as provided in Section 2 below, the rights of Tenant in, to, and under the Lease, and the Demised Premises are hereby subjected and subordinated, and shall remain in all respects and for all purposes subject and subordinate, to the lien of the Mortgage, and to any and all renewals, modifications, and extensions thereof, and any and all other instruments held by Agent as security for the loan.

2. Tenant Not to be Disturbed. So long as Tenant is not in default (beyond any period given Tenant by the terms of the Lease to cure such default) in the payment of rent or

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additional rent or in the performance of any of the terms, covenants, or conditions of the Lease on Tenant's part to be performed, (a) the Lease shall be recognized and Tenant's possession of the Demised Premises, or any extension or renewal rights therefore in the Lease, shall not be diminished or interfered with by Agent, and Tenant's occupancy of the Demised Premises shall not be disturbed by Agent during the term of the Lease or any such extensions or renewals thereof, and (b) Agent will not join Tenant as a party defendant in any action or proceeding exercising Agent's remedies under the Mortgage (including without limitation foreclosing the Mortgage) unless such joinder is necessary pursuant to applicable law to foreclose the Mortgage and then only for such purposes and not for the purpose of terminating the Lease or otherwise adversely affecting Tenant's rights under the Lease or this Agreement in such action.

3. Tenant to Attorn to Agent. If Agent shall become the owner of the Demised Premises, or the Demised Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Mortgage, or the Demised Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then owner of the Demised Premises (a "Successor Landlord") and Tenant, and Tenant hereby attorns to Agent or any other Successor Landlord as its lessor, said attornment to be effective and self-operative without the execution of any further instruments; provided, however, that Agent or such Successor Landlord shall not be

- (a) except as to maintenance obligations respecting the Demised Premises for which Agent received notice and was provided an opportunity to cure, liable for any act or omission of any prior lessor (including Borrower as lessor); provided that the foregoing shall not limit either (i) Tenant's right to exercise against Successor Landlord any right it may have to any offset, defense, claim, counterclaim, reduction, deduction, or abatement otherwise available to Tenant because of events first occurring after the date of attornment, or (ii) Successor Landlord's obligation to perform the obligations of Landlord under the Lease first arising from and after the date of attornment and violate Successor Landlord's obligation as landlord under the Lease; or
- (b) except as described in the preceding paragraph, subject to any offsets or defenses which Tenant might have against any such prior lessor; or
- (c) bound by any prepayment of rent or additional rent for more than one (1) month in advance which Tenant might have paid; or
- (d) bound by any amendment or modification of the Lease or by any waiver or forbearance on the part of any such prior lessor made or given without the written consent of Agent or any subsequent holder of the Mortgage (except for amendments or modifications expressly contemplated by the Lease—e.g., an amendment documenting Tenant's exercise of an extension option), or a termination unilaterally effected by Tenant in accordance with the Lease or applicable law due to Landlord's breach thereunder that is not cured by Agent pursuant to its rights under Section 4 hereinbelow;

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- (e) bound to return any security deposit unless Agent has actually received that security deposit; or.
- (f) bound by any covenant to perform (including without limitation, any covenant to complete) any renovation or construction in the Demised Premises or to pay any sums to Tenant in connection therewith, provided, however, that the foregoing shall not apply to Landlord's obligation to complete the initial construction of the Center and Landlord's Work and to provide any tenant improvement allowance to Tenant in connection with Tenant's initial occupancy of the Demised Premises.

Notwithstanding anything to the contrary herein, if Agent or any Successor Landlord succeeds to the Landlord's interest in the Lease and (i) fails to complete any of Landlord's initial construction and delivery obligations as to the Demised Premises as and when required by the Lease, or (ii) fails to complete any of Landlord's repair/restoration obligations following damage, destruction, or condemnation with respect to the Demised Premises or the Building of which it is a part, as and when required by the Lease, Tenant may exercise any right set forth in the Lease or under law for such failure (including without limitation the right to terminate the Lease and/or abate rent if permitted by the Lease or applicable law, and notwithstanding any purported waiver of such rights that may be contained in the Lease). Furthermore, nothing herein shall affect the obligation of the then-holder of the landlord's interest in the Lease to pay to Tenant any tenant improvement or other construction allowance as and when required by the Lease, or affect the rights and remedies of Tenant in connection with any failure thereof. Tenant shall be under no obligation to pay rent to Agent or any such other owner until Tenant receives written notice from Agent or any such other owner that it has succeeded to Borrower's interest under the Lease.

4. Agent's Option to Cure Borrower's Default. Tenant agrees to provide a copy to Agent of any written notice of default given to Borrower under the Lease. Tenant agrees that Agent shall have the right to cure such default on behalf of Borrower within thirty (30) days after the receipt of such notice. Tenant further agrees not to invoke any of its remedies under the Lease until said thirty (30) days have elapsed, or during an additional thirty (30) day period provided Agent is proceeding during such period to cure such default with due diligence, or is diligently taking steps to obtain possessory rights to the Premises as may be reasonably required to cure the default.

5. Assignment of Lease. Tenant acknowledges that the interest of Landlord in the Lease is held by Borrower and that Borrower's interest has been assigned to Agent as security under the Mortgage and that Agent assumes no duty, liability, or obligation under the Lease or any extension or renewal of the Lease, either by virtue of said assignment or by any subsequent receipt or collection or rents under the assignment, and that unless the written consent of Agent is first obtained, and except with respect to rights to assign to a Permitted Transferee expressly granted to Tenant under the Lease, no cancellation, surrender, or modification made of the Lease shall be binding as against Agent. Agent, or any Successor Landlord shall be liable only for the performance of the other obligations of Landlord under the Lease accruing only during the period Agent, or such Successor Landlord shall hold such interest in the Demised Premises.

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6. Rental Payment. Until such time as Tenant is otherwise notified in writing by Agent, it shall make all rental payments under the Lease to Borrower as provided therein. By its execution below, Landlord hereby consents to the foregoing, and irrevocably directs Tenant to comply with any such payment demand by Agent without any duty on the part of Tenant to confirm, controvert or challenge same. Tenant shall receive full credit against amounts owed to the Landlord under the Lease for all such payments made to Agent to the same extent as if such payments had been made directly to Landlord. Landlord hereby releases Tenant from, and shall indemnify, defend, and hold Tenant harmless from and against, any and all loss, claim, damage, liability, cost or expense (including reasonable attorneys fees and costs) arising from any claim based upon Tenant's compliance with any such payment demand by Agent.

7. Successor and Assigns. This Agreement and each and every covenant, agreement, and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto, and their heirs, administrators, representatives, successors, and assigns.

8. Non Reduction of Rent. The landlord and tenant represent and warrant that they have not heretofore and will not hereafter enter into any agreement between themselves or with third parties which (i) reduces the Base Rent provided for in the Lease or (ii) would allow an abatement in Base Rent, either of which would result in the failure to pay monthly rental payments to National City Bank as Agent or its successor in the event a default occurs in the obligation of the landlord to National City Bank as agents; provided, however, that, except as provided elsewhere in this Agreement, nothing in this paragraph shall be deemed to affect or interfere with express rights and remedies granted to Tenant under the Lease.

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

[Signature page to follow]

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**AGENT:**

**NATIONAL CITY BANK**, as agent for itself and other lenders

By: [Signature]  
Name: JOHN MURPHY  
Title: VICE PRESIDENT

**TENANT:**

**RECREATIONAL EQUIPMENT, INC.**

By: [Signature]  
Name: Bradley K. Johnson  
Title: SVP, CFO & CAO

**LANDLORD:**

**BLACKHAWK/HALSTED, LLC**

By: [Signature]  
Name: Daniel A. Lukas  
Its Manager

Property of Cook County Clerk's Office

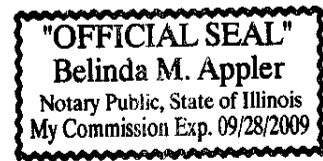
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[Acknowledgment of Agent)

STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

On Aug. 28, 2007 before me, Belinda M. Appler, A Notary Public in and for said County and State, personally appeared John Murphy, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument on behalf of the Agent and acknowledged to me that he/she they executed same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.  
Signature: *Belinda M. Appler*

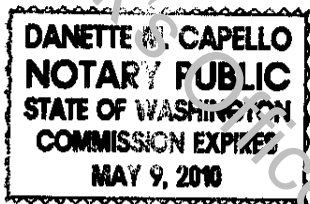


[Acknowledgment of Tenant)

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On Aug. 29, 2007 before me, Danette M. Capello, a Notary Public in and for said County and State, personally appeared Bradley Jones personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument on behalf of the Tenant and acknowledged to me that he/she/they executed same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.  
Signature: *Danette M. Capello*



**UNOFFICIAL COPY****EXHIBIT A****LEGAL DESCRIPTION OF REAL PROPERTY**

## Parcel 1

THE WEST 66 FEET OF LOTS 14 AND 15 (EXCEPT THE SOUTH 2 FEET 6 INCHES OF THE EAST 6 FEET THEREOF); THE WEST 60 FEET OF LOTS 16, 17, 18, 19, 20, 21 AND 22 AND THE NORTH 2 FEET 11 INCHES OF THE WEST 60 FEET OF LOT 23 IN J.A. YALE'S RESUBDIVISION OF BLOCK 59 IN ELSTON'S ADDITION TO CHICAGO IN THE NORTHEAST  $\frac{1}{4}$  OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## Parcel 2

LOTS 1 TO 8, BOTH INCLUSIVE; THE NORTH  $\frac{1}{2}$  OF LOT 9; THAT PORTION OF THE VACATED ALLEY WEST OF AND ADJOINING SAID LOTS 1 TO 8, BOTH INCLUSIVE, AND THE NORTH  $\frac{1}{2}$  OF LOT 9 AND EAST AND ADJOINING LOTS 14 TO 21, BOTH INCLUSIVE, AND THE NORTH  $\frac{1}{2}$  OF LOT 22, LOTS 14 AND 15, EXCEPT THE WEST 66 THEREOF; THE SOUTH 2 FEET 6 INCHES OF THE EAST 6 FEET OF THE WEST 66 FEET OF LOT 15; LOTS 16 TO 21, BOTH INCLUSIVE, EXCEPT THE WEST 60 FEET THEREOF AND THE NORTH  $\frac{1}{2}$  OF LOT 22, EXCEPT THE WEST 60 FEET THEREOF, ALL IN J.A. YALE'S RESUBDIVISION OF BLOCK 59 IN ELSTON'S ADDITION TO CHICAGO IN THE NORTHEAST  $\frac{1}{4}$  OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 1480 North Halsted Street  
Chicago, IL

PIN: 17-05-219-002  
17-05-219-003  
17-05-219-005  
17-05-219-006

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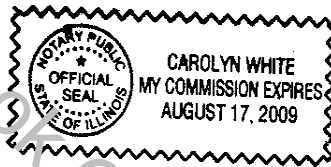
[Acknowledgement of Landlord]

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

On August 28, 2007 before me, Carolyn White, a Notary Public in and for said County and State, personally appeared Daniel A Lukas, the manager of the Landlord personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed same in his authorized capacity and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Carolyn White



Deputy Cook County Clerk's Office