

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY INTEREST

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Fountain Powerboat Industries, Inc.		03/01/2010	CORPORATION: NEVADA
Fountain Powerboats, Inc.		03/01/2010	CORPORATION: NORTH CAROLINA
Fountain Dealers' Factory Super Store, Inc.		03/01/2010	CORPORATION: NORTH CAROLINA
Baja by Fountain, Inc.		03/01/2010	CORPORATION: NORTH CAROLINA

**RECEIVING PARTY DATA**

Name:	FCC, LLC
Doing Business As:	DBA First Capital
Street Address:	125 TownPark Drive
Internal Address:	Suite 190
City:	Kennesaw
State/Country:	GEORGIA
Postal Code:	30144
Entity Type:	LIMITED LIABILITY COMPANY: FLORIDA

**PROPERTY NUMBERS Total: 12**

Property Type	Number	Word Mark
Registration Number:	2478143	.38 SPECIAL
Registration Number:	2529513	SPEED CHANGES YOU
Registration Number:	2480056	H2X
Registration Number:	2799560	OUTLAW
Registration Number:	0975381	BAJA
Registration Number:	3429633	FOUNTAIN
Registration Number:	3429631	FOUNTAIN
Registration Number:	3429630	

CH \$315.00 2478143

Registration Number:	3429629	REGGIE FOUNTAIN
Registration Number:	3257393	FOUNTAIN
Serial Number:	74007625	
Serial Number:	74006862	FOUNTAIN

**CORRESPONDENCE DATA**

Fax Number: (678)553-2693  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
Phone: 6785532692  
Email: withersS@gtlaw.com  
Correspondent Name: Sarah Withers  
Address Line 1: 3290 Northside Parkway  
Address Line 2: Suite 400  
Address Line 4: Atlanta, GEORGIA 30327

ATTORNEY DOCKET NUMBER:	069528.018700 (WITHERS)
NAME OF SUBMITTER:	Sarah Withers
Signature:	/S. Withers/
Date:	03/02/2010

**Total Attachments: 11**  
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## PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (this "Agreement"), dated as of March 1<sup>st</sup>, 2010, is made by and among FOUNTAIN POWERBOAT INDUSTRIES, INC., a Nevada corporation, FOUNTAIN POWERBOATS, INC., a North Carolina corporation, FOUNTAIN DEALERS' FACTORY SUPER STORE, INC., a North Carolina corporation, BAJA BY FOUNTAIN, INC., a North Carolina corporation (each, together with its respective successors and assigns, a "Borrower"), and FCC, LLC, a Florida limited liability company, d/b/a First Capital ("Lender").

### Recitals

Borrowers and Lender are parties to a Loan and Security Agreement of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, the "Loan Agreement") setting forth the terms on which Lender may now or hereafter extend credit to or for the account of Borrowers.

As a condition to extending credit to or for the account of Borrowers, Lender has required the execution and delivery of this Agreement by Borrowers.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Loan Agreement that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Loan Agreement) which any Borrower may now or at any time hereafter owe to Lender, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Obligations (as defined in the Loan Agreement).

"Patents" means all of each Borrower's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on **Exhibit A**.

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all of each Borrower's right, title and interest in and to:  
(a) trademarks, service marks, collective membership marks, registrations and

applications for registration for each, and the respective goodwill associated with each, (b) licenses, fees or royalties with respect to each, (c) the right to sue for past, present and future infringement, dilution and damages therefor, (d) and licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on **Exhibit B**.

2. Security Interest. Each Borrower hereby irrevocably pledges and assigns to, and grants Lender a security interest (the "Security Interest") with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of each Borrower. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.

3. Representations, Warranties and Agreements. Each Borrower represents, warrants and agrees as follows:

(a) **Patents. Exhibit A** accurately lists all Patents owned or controlled by any Borrower as of the date hereof, or to which any Borrower has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, any Borrower owns, controls or has a right to have assigned to it any Patents not listed on **Exhibit A**, or if **Exhibit A** ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then Borrowers shall within 30 days provide written notice to Lender with a replacement **Exhibit A**, which upon acceptance by Lender shall become part of this Agreement.

(b) **Trademarks. Exhibit B** accurately lists all Trademarks owned or controlled by any Borrower as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that **Exhibit B** need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to any Borrower's or any Affiliate's business(es). If after the date hereof, any Borrower owns or controls any Trademarks not listed on **Exhibit B** (other than common law marks which are not material to any Borrower's or any Affiliate's business(es)), or if **Exhibit B** ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then Borrowers shall promptly provide written notice to Lender with a replacement **Exhibit B**, which upon acceptance by Lender shall become part of this Agreement.

(c) **Affiliates.** As of the date hereof, no Affiliate of any Borrower owns, controls, or has a right to have assigned to it any items that would, if such item were owned by any Borrower, constitute Patents or Trademarks. If after the date hereof any Affiliate of any Borrower owns, controls, or has a right to have assigned to it any such

items, then Borrowers shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to an Borrower; or (ii) notify Lender of such item(s) and cause such Affiliate to execute and deliver to Lender a patent and trademark security agreement substantially in the form of this Agreement.

(e) **Title.** The Borrower identified as the owner of each Patent and Trademark on **Exhibits A and B** has absolute title to each such Patent and each Trademark listed thereon which lists such Borrower as the owner, free and clear of all Liens except Permitted Liens. The applicable Borrower (i) will have, at the time such Borrower acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(f) **No Sale.** No Borrower will assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without Lender's prior written consent.

(g) **Defense.** Borrowers will, at their own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

(h) **Maintenance.** Borrowers will at their own expense maintain the Patents and the Trademarks to the extent reasonably advisable in their business, including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. Borrowers covenant that they will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing Lender: (i) sufficient written notice, of at least 30 days, to allow Lender to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(i) **Lender's Right to Take Action.** If Borrowers fail to perform or observe any of their covenants or agreements set forth in this Section 3, or if Borrowers notify Lender that they intend to abandon a Patent or Trademark, Lender may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of one or more Borrowers (or, at Lender's option, in Lender's own name) and may (but need not) take any and all other actions which Lender may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(j) **Costs and Expenses.** Borrowers shall pay Lender on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees

and disbursements) incurred by Lender in connection with or as a result of Lender's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by Lender at the default rate of interest provided for Revolving Loans in the Loan Agreement.

(k) **Power of Attorney.** To facilitate Lender's taking action under subsection (i) and exercising its rights under Section 6, each Borrower hereby irrevocably appoints (which appointment is coupled with an interest) Lender, or its delegate, as the attorney-in-fact of such Borrower with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of such Borrower, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by such Borrower under this Section 3, or, necessary for Lender, after a Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. Each Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Loan Agreement as provided therein and the payment and performance of all Obligations.

4. Borrowers' Use of the Patents and Trademarks. Borrowers shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Default exists.

5. Defaults. Each of the following occurrences shall constitute an event of default under this Agreement (herein called a "Default"): (a) a Default, as defined in the Loan Agreement, shall occur; or (b) any Borrower shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. While a Default exists, Lender may, at its option, take any or all of the following actions:

(a) Lender may exercise any or all remedies available under the Loan Agreement.

(b) Lender may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) Lender may enforce the Patents and Trademarks and any licenses thereunder, and if Lender shall commence any suit for such enforcement, Borrowers shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement.

7. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Lender. A waiver signed by Lender shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Lender's rights or remedies. All rights and remedies of Lender shall be cumulative and may be exercised singularly or concurrently, at Lender's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to any Borrower under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. Lender shall not be obligated to preserve any rights any Borrower may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Borrowers and Lender and their respective participants, successors and assigns and shall take effect when signed by Borrowers and delivered to Lender, and each Borrower waives notice of Lender's acceptance hereof. Lender may execute this Agreement if appropriate for the purpose of filing, but the failure of Lender to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement authorized by any Borrower shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of Georgia without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

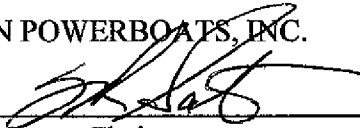
**THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date first written above.

FOUNTAIN POWERBOAT INDUSTRIES, INC.

By:   
William R. Gates, Chairman

FOUNTAIN POWERBOATS, INC.

By:   
William R. Gates, Chairman

FOUNTAIN DEALERS' FACTORY  
SUPERSTORE, INC.  
SUPER STORE

By:   
William R. Gates, Chairman

BAJA BY FOUNTAIN, INC.

By:   
William R. Gates, Chairman

FCC, LLC, d/b/a FIRST CAPITAL

By: \_\_\_\_\_  
Brian J. Cuttic, Executive Vice President

[SIGNATURE PAGE TO PATENT AND TRADEMARK SECURITY AGREEMENT]



IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date first written above.

FOUNTAIN POWERBOAT INDUSTRIES, INC.

By: \_\_\_\_\_  
William R. Gates, Chairman

FOUNTAIN POWERBOATS, INC.

By: \_\_\_\_\_  
William R. Gates, Chairman

FOUNTAIN DEALERS' FACTORY  
SUPERSTORE, INC.

By: \_\_\_\_\_  
William R. Gates, Chairman

BAJA BY FOUNTAIN, INC.

By: \_\_\_\_\_  
William R. Gates, Chairman

FCC, LLC, d/b/a FIRST CAPITAL

By:  \_\_\_\_\_  
Brian J. Cuttic, Executive Vice President

[SIGNATURE PAGE TO PATENT AND TRADEMARK SECURITY AGREEMENT]

STATE OF FL )

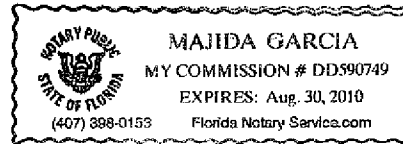
COUNTY OF Palm Beach )

The foregoing instrument was acknowledged before me this 25 day of Feb, 2010, by William R. Gates, the Chairman of each Borrower, on behalf of each such corporation.

Majda Garcia  
Notary Public

STATE OF GEORGIA )

COUNTY OF \_\_\_\_\_ )



The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010, by Brian J. Cuttic, an Executive Vice President of FCC, LLC, a Florida limited liability company, d/b/a First Capital, on behalf of such limited liability company.

\_\_\_\_\_  
Notary Public

[SIGNATURE PAGE TO PATENT AND TRADEMARK SECURITY AGREEMENT]

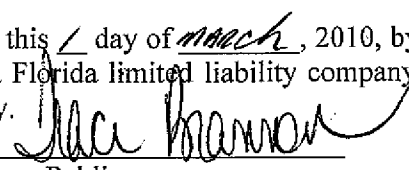
STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010, by William R. Gates, the Chairman of each Borrower, on behalf of each such corporation.

\_\_\_\_\_  
Notary Public

STATE OF GEORGIA )  
 )  
COUNTY OF Cherokee )

The foregoing instrument was acknowledged before me this 1 day of March, 2010, by Brian J. Cuttic, an Executive Vice President of FCC, LLC, a Florida limited liability company, d/b/a First Capital, on behalf of such limited liability company.

  
\_\_\_\_\_  
Notary Public

Cherokee County, Georgia  
My Commission Expires September 22, 2011

[SIGNATURE PAGE TO PATENT AND TRADEMARK SECURITY AGREEMENT]

EXHIBIT A

UNITED STATES ISSUED PATENTS

None.

UNITED STATES PATENT APPLICATIONS

None.

EXHIBIT B

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS  
AND COLLECTIVE MEMBERSHIP MARKS

REGISTRATIONS

<b>Owner</b>	<b>Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>
Baja by Fountain, Inc.	.38 Special	2478143	08/14/2001
Baja by Fountain, Inc.	Speed Changes You	2529513	01/15/2002
Baja by Fountain, Inc.	H2X	2480056	08/21/2001
Baja by Fountain, Inc.	Outlaw	2799560	12/30/2003
Baja by Fountain, Inc.	Baja	975381	12/25/1973
Fountain Powerboats, Inc.	Fountain	3429633	05/20/2008
Fountain Powerboats, Inc.	Fountain	3429631	05/20/2008
Fountain Powerboats, Inc.	[Symbol]	3429630	05/20/2008
Fountain Powerboats, Inc.	Reggie Fountain	3429629	05/20/2008
Fountain Powerboats, Inc.	Fountain	3257393	07/03/2007
Fountain Powerboats, Inc.	[Symbol]	74007625	07/17/1990
Fountain Powerboats, Inc.	Fountain	7400862	07/03/1990

APPLICATIONS

None.