**Subordination Agreement (Seller Note)**

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**Subordination Agreement**

This subordination agreement is entered into as of \_\_\_\_\_ between \_\_\_\_\_, a \_\_\_\_\_ (“**Creditor**”), and \_\_\_\_\_ (“**Borrower**”), to induce \_\_\_\_\_ (“**Bank**”) to make or continue loans from time to time.

Borrower is purchasing certain business assets from Creditor under an asset purchase and sale agreement dated \_\_\_\_\_\_ (the “**Purchase Agreement**”).

In partial consideration of the purchase under the Purchase Agreement, Borrower is executing a promissory note in favor of Creditor in original principal amount of $\_\_\_\_\_ (the “**Note**”). The indebtedness under the Note, including accrued and unpaid interest, and renewals, extensions, and modifications thereof and substitutions therefor are referred to in this agreement as the “**Subordinated Indebtedness**.”

In consideration of loans made or to be made or continued by Bank to Borrower, Borrower and Creditor hereby agree with Bank as follows:

1. **Subordination.** All Subordinated Indebtedness of Borrower to Creditor is and will be subordinated in all respects to all indebtedness of Borrower to Bank. If Creditor holds one or more security interests, whether now existing or hereafter acquired, in any of the Borrower’s real property or personal property, Creditor also subordinates Creditor’s security interests to all security interests held by Bank, whether now existing or hereafter created.
2. **Payments to Creditor.** (a) Creditor and Borrower agree that, except as provided below, all claims of Bank shall be paid in full before any payment may be made on the Subordinated Indebtedness to Creditor, whether of principal or interest. Creditor agrees not to enforce or to apply any security now or hereafter existing or to sue upon or collect or receive payment of, and Borrower agrees not to pay to Creditor any such claim or claims.

(b) Borrower may pay, and Creditor may accept payment on, obligations under the Note as provided therein as long as Borrower is not then in default on any indebtedness to Bank.

1. **Primacy of Bank’s Claim as Against Creditor.** In any insolvency, receivership, bankruptcy, dissolution, liquidation, or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against Borrower under any bankruptcy or insolvency law or laws relating to the relief of debtors, to compositions, extensions, or readjustment of indebtedness, Bank’s claim against the assets of Borrower shall be paid in full before any payment is made to Creditor, whether such payment is in kind or in cash. The fund out of which Creditor’s claim is to be paid shall be subject to a security interest in Bank’s favor to secure this subordination agreement, and Creditor and Borrower agree that Bank may collect Creditor’s claim directly from the trustee in such proceeding. Creditor agrees to furnish all assignments, powers, or other documents requested by Bank to facilitate such direct collection by Bank. Bank may file a claim in any such proceeding on Creditor’s behalf or may compel Creditor to file such. In any such proceeding or at any meeting of creditors, Creditor hereby grants to Bank an irrevocable proxy to vote its claim and agrees to execute all further documents requested by Bank to facilitate exercise of this proxy.
2. **Collection of Creditor’s Claims.** If Bank so requests in writing, any or all claims of Creditor against Borrower shall be collected, enforced, and received by Creditor as trustee for Bank and shall be paid over to Bank on account of the claim or claims of Bank against Borrower. Creditor agrees to pay over to Bank on account of the claim or claims of Bank against Borrower all moneys or funds that may be received by Creditor from Borrower, or for or on behalf of Borrower at any time when Bank has any claim or claims against Borrower. Creditor further agrees not to sell, assign, transfer, or endorse its claim or claims, no matter how evidenced, to anyone except subject to the terms and conditions of this agreement, and not to join in any petition of bankruptcy or any assignment for the benefit of creditors, or any creditors’ agreement, or to take any lien or security on any of Borrower’s property at any time when Bank has any claim or claims against Borrower.
3. **Reference on Evidence of Indebtedness.** Borrower and Creditor agree that any existing evidence of indebtedness of Borrower to Creditor or any subsequent evidence of any existing or future indebtedness shall contain or be stamped with a statement referring to the existence of this agreement.
4. **Continuance of Agreement.** The agreement and the obligations of Borrower and Creditor and the rights and privileges of Bank hereunder shall continue until payment in full of all claims of Bank notwithstanding any action or nonaction of Bank with respect thereto or any collateral therefor or any guarantees thereof, and after such payment shall continue until Creditor notifies Bank in writing to the contrary. Such notice shall not affect any loans made by Bank or claims arising in favor of Bank prior to Bank’s receipt of such notice, but shall terminate this agreement only as to loans made or claims arising after Bank’s receipt of such notice.
5. **Waiver.** Bank shall have uncontrolled power and discretion, without notice to Creditor, to deal in any manner with any indebtedness, interest, costs, and expenses payable by or liability of Borrower to Bank and any security and guarantees therefor including, but not by way of limitation, release, surrender, extension, renewal, acceleration, compromise, or substitution. Creditor hereby waives and agrees not to assert against Bank any rights which a guarantor or surety could exercise, but nothing in this agreement shall constitute Creditor a guarantor or surety.
6. **Insolvency.** The insolvency or bankruptcy of Borrower shall not affect this agreement and it shall remain in full force and effect and constitute an assignment by Creditor to Bank of all funds or property payable to Creditor from Borrower’s assets not previously assigned to Bank. Subject to the prior rights and interests, if any, of third parties, Bank covenants to account for and pay over to Creditor any excess thereof in its hands when its own claims have been paid in full.
7. **Binding Effect.** This agreement shall extend to and bind the respective successors, assigns, and administrators of the parties hereto. The covenants of Creditor and Borrower respecting subordination of the claims of Creditor in favor of Bank shall extend to, include, and be enforceable by any transferee or endorsee of Bank of any of its claim or claims.
8. **Acceleration.** If Borrower or Creditor violates any provision of this agreement, or if any subordinated indebtedness is involuntarily accelerated, Bank may elect by a notice in writing delivered to Borrower and Creditor to cause all indebtedness of Borrower to Bank to become immediately due and payable.
9. **Definitions.** The words “claim” and “indebtedness” are used herein and in their most comprehensive sense and include all advances, debts, obligations, and liabilities of Borrower heretofore, now, or hereafter made, incurred, or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Borrower may be liable individually or jointly with others, or as principal or as surety or guarantor.
10. **Entire Agreement.** This agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.
11. **Notices.** All notices or other documents under this agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.
12. **Non-Waiver.** No delay or failure by a party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
13. **Headings.** Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.
14. **Governing Law.** This agreement shall be construed in accordance with and governed by the internal laws of the State of [\_\_\_\_\_].
15. **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[Signature page follows.]

This agreement has been executed by the parties the day and year first above written.

[BANK]

By:

Name:

Title:

[BORROWER]

By:

Name:

Title:

[BORROWER]

By:

Name:

Title: