



## Subordinated Promissory Note

**Document 2063A**

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U.S. \$ \_\_\_\_\_

[CITY AND STATE]

[DATE]

### SUBORDINATED PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, [COMPANY NAME], a \_\_\_\_\_ corporation, hereinafter called “**Borrower**”, promises to pay to the order of [LENDER NAME], a \_\_\_\_\_ corporation, hereinafter called “**Payee**”, at \_\_\_\_\_ or at such other place as Payee shall designate in writing, in lawful money of the United States of America which shall at the time of payment be legal tender for the payment of all debts, public or private, the principal sum of \_\_\_\_\_ and 00/100 DOLLARS (\$\_\_\_\_\_), with interest, calculated on the basis of a 365-day year and actual days elapsed, from the date hereof at the rate of \_\_\_\_\_ percent (\_\_\_%) per annum on the principal amount from time to time outstanding. Interest only on the outstanding principal balance hereof shall be payable semi-annually on the first day of each [DATE(S)], with the first such payment being due and payable on [DATE]. After [DATE] principal and interest shall be payable in twelve (12) equal consecutive semi-annual installments each in the amount of \$\_\_\_\_\_, commencing on [DATE], and continuing to be due and payable on the first day of each [MONTH] thereafter to and including [DATE], which is the date the balance of any accrued but unpaid interest and the outstanding principal balance shall be due and payable.

Each payment, when paid, shall be applied first to the payment of interest accrued but unpaid on the outstanding principal balance of this Note and the residue thereof, if any, shall be applied toward the payment of principal.

1. **Prepayment Privilege.** Borrower shall have the right to prepay, in whole or in part, the outstanding principal balance due under the Note at any time after the date hereof. Prepayments shall be applied first to the payment of interest accrued but unpaid on the outstanding principal balance of this Note, and the residue hereof, if any, shall be applied to the payments of principal due hereunder in the order of their maturity. No prepayment shall postpone the due date of any installment of principal or interest due hereunder.

2. **Collateral; Subordination.** This Note is secured by a Security and Pledge Agreement (the “**Security Agreement**”) executed by Borrower in favor of [LENDER] (collectively, the “**Collateral Documents**”), copies of which are attached as Exhibit A to this Note. The indebtedness of Borrower under this Note and the security interest and other liens of the Payee under the Collateral Documents are subordinate and subject to the terms and conditions of that certain Subordination Agreement dated [DATE] (as amended from time to time, the “**Subordination Agreement**”), between Borrower and [LIST SENIOR LENDERS]. The Collateral Documents and the Subordination Agreement provide, among other things, that some or all of the real and personal property collateral covered by the Collateral Documents may be sold or otherwise disposed of by Borrower without Payee’s consent if and to the extent permitted

by Borrower's Loan and Security Agreement with [NAME OF SENIOR LENDER] (as amended, modified, restated, and supplemented from time to time, the "**Senior Lender Credit Agreement**") and the net proceeds from any such sale or disposition shall be paid to Senior Lender for application to Borrower's indebtedness to Senior Lender (the "**Senior Lender Indebtedness**").

3. **Default.** Subject to the senior rights of Senior Lender, if Borrower fails to pay when due any amount payable under this Note (except to the extent such payment is prohibited by the Subordination Agreement) or if an event of default shall occur under the Security Agreement, then Borrower shall be in default under this Note and Payee may exercise any and all rights and remedies provided for or allowed by the Security Agreement or provided for or allowed by law or in equity.

4. **Time.** Time is of the essence of this Note.

5. **Waiver.** Demand, presentment, notice, protest and notice of dishonor are hereby waived by Borrower and by each and every co-maker, endorser, guarantor, surety and other person or entity primarily or secondarily liable on this Note. Borrower and each and every co-maker, endorser, guarantor, surety and other person or entity primarily or secondarily liable on this Note: severally waives, each for himself and family, any and all homestead and exemption rights which any of them or the family of any of them may have under or by virtue of the Constitution or laws of the United States of America or of any state as against this Note or any and all renewals, extensions or modifications of, or substitutions for, this Note; (ii) hereby transfers, conveys and assigns to Payee a sufficient amount of such homestead or exemption as may be allowed, including such homestead or exemption as may be set apart in bankruptcy, to pay the indebtedness evidenced by this Note in full, with all costs of collection; (iii) does hereby direct any trustee in bankruptcy having possession of such homestead or exemption to deliver to Payee a sufficient amount of property or money set apart as exempt to pay the indebtedness evidenced by this Note, and any and all renewals, extensions and modifications of, and substitutions for, this Note; and (iv) does hereby appoint Payee attorney-in-fact to claim any and all homestead exemptions allowed by law.

6. **Set-off.** Notwithstanding anything herein to the contrary, Borrower may set-off and deduct from any amounts due pursuant to this Note an amount equal to the total amount of any Indemnified Losses (as defined in the [NAME OF PURCHASE AGREEMENT]) owed to Borrower pursuant to Paragraph \_\_\_ of the [NAME OF PURCHASE AGREEMENT].

7. **Third Party Liability.** With the consent of Payee, this Note may be extended or renewed, in whole or in part, without notice to or consent of any co-maker, endorser, guarantor, surety or other person or entity primarily or secondarily liable on this Note and without affecting or lessening the liability of any such person or entity, and each such person or entity hereby waives any right to notice of or consent to such extensions and renewals.

8. **Forbearance.** Payee shall not be deemed to waive any of Payee's rights or remedies under this Note unless such waiver be express, in writing and signed by or on behalf of Payee. No delay, omission or forbearance by Payee in exercising any of Payee's rights or remedies shall operate as a waiver of such rights or remedies. A waiver in writing on one occasion shall not be construed as a waiver of any right or remedy on any future occasion.

9. **Governing Law and Severability.** This Note shall be governed by, construed under and interpreted and enforced in accordance with the laws [STATE]. Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

10. **Terms.** The word "**Borrower**" as used herein shall include the legal representatives, successors and assigns of Borrower as if so specified at length throughout this Note and all indebtedness and liabilities of Borrower under this Note shall be binding upon and enforceable against the legal representatives, successors and assigns of Borrower. "Borrower" shall also include all makers of this Note, and each of them, who shall be jointly and severally liable under this Note, should more than one maker execute this Note; and shall include all endorsers, guarantors, sureties and other persons or entities primarily or secondarily liable on this Note, and each of them; and shall include the masculine and feminine genders, regardless of the sex of Borrower or any of them; and shall include partnerships, corporations and other legal entities, should such an entity be or become primarily or secondarily liable on this Note. The word "**Payee**" as used herein shall include the transferees, legal representatives, successors and assigns of Payee as if so specified at length throughout this Note, and all rights or Payee under this Note shall inure to the benefit of the transferees, legal representatives, successors and assigns of Payee.

11. **Notices.** All notices, requests, demands and other communications under this Note shall be in writing and shall be deemed to have been duly given if given in accordance with the provisions of the Security Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Promissory Note to be duly executed under seal and delivered on the day and year first above written.

[BORROWER NAME]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Attn.: \_\_\_\_\_

Phone: \_\_\_\_\_