

รายการอ้างอิง

ภาษาไทย

- กิตติพงษ์ อรุณพัฒน์พงศ์. การใช้กฎหมายไทยในสัญญากู้ยืมเงินระหว่างประเทศของภาคเอกชน.
วิทยานิพนธ์ปริญญาโทบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย, 2527.
- _____. แบบและความสมบูรณ์ของสัญญากู้ยืมเงินระหว่างประเทศตามกฎหมายไทย.
วารสารกฎหมาย 2 (2527): 171-190.
- จิต เศรษฐบุตร. หลักกฎหมายแพ่งลักษณะนิติกรรมและสัญญา เล่ม 1. พิมพ์ครั้งที่ 5.
กรุงเทพฯ: มิตรนราการพิมพ์, 2528.
- _____. หลักกฎหมายแพ่งลักษณะหนี้. พิมพ์ครั้งที่ 6. กรุงเทพฯ: ห้างหุ้นส่วนจำกัด
สำนักพิมพ์ประกายประกาย, 2531.
- จิตติ ดิงศักดิ์. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ บรรพ 2 มาตรา 345 ถึง
มาตรา 452. พิมพ์ครั้งที่ 3. กรุงเทพมหานคร: ห้างหุ้นส่วนจำกัด โรงพิมพ์
ไทยพิทยา, 2508.
- จ่าปี โรสดีพันธ์. หลักกฎหมายนิติกรรมสัญญา. กรุงเทพฯ: สำนักพิมพ์วิญญูชน, 2538.
- โชค จารุจินดา. การสอนชั้นปริญญาตรี ปีที่ 4 คณะพาณิชยศาสตร์และการบัญชีมหาวิทยาลัย
ธรรมศาสตร์ กฎหมายลักษณะล้มละลาย. กรุงเทพฯ: โรงพิมพ์มหาวิทยาลัย
ธรรมศาสตร์, 2507.
- เฉราหม. ยุติธรรมเสวนา. ตุลาคม 31 (พฤษภาคม-มิถุนายน 2527): 167-170.
- ดาราพร ธีระวัฒน์. กฎหมายสัญญา: สถานะใหม่ของสัญญาปัจจุบันและปัญหาข้อสัญญาที่ไม่
เป็นธรรม. กรุงเทพฯ: สำนักพิมพ์มหาวิทยาลัยธรรมศาสตร์, 2538.
- ทวี กลียพงษ์. คำอธิบายพระราชบัญญัติล้มละลาย พุทธศักราช 2483 พร้อมด้วยประมวล
ระเบียบปฏิบัติเกี่ยวกับการบังคับคดีล้มละลาย. กรุงเทพฯ: กรุงเทพมหานครการพิมพ์,
2523.

- เทพวิฑูร, พระยา. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ บรรพ 1-2 มาตรา 1 ถึง 240. กรุงเทพฯ: โรงพิมพ์ไทยพิทยา, 2502.
- ชานินทร์ กรัยวิเชียร. ระบบกฎหมายอังกฤษ. กรุงเทพฯ: คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, 2529.
- ธีรเดช ต้นสุวรรณรัตน์. การคุ้มครองทางกฎหมายแก่ผู้ถือหุ้นกู้. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย, 2535.
- บวรศักดิ์ อูวรรณโณ. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ บรรพ 6 ว่าด้วยมรดก. กรุงเทพฯ: สำนักพิมพ์นิติธรรม, 2537.
- บัญญัติ สุชีวะ. ทรัพย์สิน. ตุลพาห 9 (มกราคม 2505): 18-49.
- บุญศรี กอบบุญ. การบังคับชำระหนี้โดยเฉพาะเจาะจงและการบังคับชำระหนี้โดยคำสันนิษฐานทดแทน. บทบัณฑิตย 40 (2526): 308-347
- ประดิษฐ์มธุธรรม, หลวง. บันทึกข้อความสำคัญประกอบด้วยอุทธรณ์และคำแนะนำแห่งประมวลกฎหมายแพ่งและพาณิชย์ บรรพ 2 (ตอนที่ 2). กรุงเทพฯ: โรงพิมพ์นิติสาส์น, 2473.
- ประพนธ์ ศาตะมาน และไพจิตร บุญพันธ์. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ลักษณะซื้อขาย, กรุงเทพฯ: แสงทองการพิมพ์, 2510.
- ประภาศน์ อวยชัย, ศ. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยหุ้นส่วนและบริษัท. กรุงเทพฯ: กรุงเทพมหานครการพิมพ์, 2530.
- ประวิณ สุจริตกุล. เทคนิคการเจรจาเงินกู้จากต่างประเทศ. วารสารนิติศาสตร์ 1(2526): 56-109.
- ปรีชา พานิชวงศ์. กฎหมายล้มละลาย. กรุงเทพฯ: โรงพิมพ์แสงสุทธิการพิมพ์, 2526.
- พจน์ ปุษบาคม. ประมวลกฎหมายแพ่งและพาณิชย์ คำประกัน จำนอง จำนำ. พิมพ์ครั้งที่ 3. กรุงเทพฯ: โรงพิมพ์แสงสุทธิการพิมพ์, 2533.
- พิพัฒน์ จักรางกูร. คำอธิบายประมวลกฎหมายวิธีพิจารณาความแพ่ง ภาค 4 วิธีการชั่วคราวก่อนพิพากษา และการบังคับตามคำพิพากษาหรือคำสั่ง. กรุงเทพฯ: โรงพิมพ์จรัสสินทวงศ์, 2521.

- พิเศษ เสตเสถียร. หลักกฎหมายบริษัทมหาชนจำกัด. พิมพ์ครั้งที่ 2. กรุงเทพฯ: สำนักพิมพ์
นิติธรรม, 2536.
- เพชร ชุมทรัพย์. หลักการบริหารการเงิน. กรุงเทพฯ: โรงพิมพ์มหาวิทยาลัยธรรมศาสตร์,
2532.
- ภิญโญ ชีรนิติ. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ คู่ประกัน จำนอง จำนำ.
พิมพ์ครั้งที่ 3. กรุงเทพฯ: บริษัทประยูรวงศ์ จำกัด, 2530.
- มกุฎาณวิมลศาสตร์, พระ. แนวความคิดเรื่องความสงบเรียบร้อยของประชาชน. บทคัด
11 (2481).
- มหาวิทยาลัยสุโขทัยธรรมมาธิราช. เอกสารการสอนชุดวิชากฎหมายแพ่ง 2: หนี้ หน่วยที่ 1-6.
กรุงเทพฯ: โรงพิมพ์ชวนพิมพ์, 2528.
- . เอกสารการสอนชุดวิชาการบริหารการเงิน หน่วยที่ 8-15. พิมพ์ครั้งที่ 7. กรุงเทพฯ:
สำนักพิมพ์มหาวิทยาลัยสุโขทัยธรรมมาธิราช, 2531.
- มาโนช จรมาศ. ข้อกฎหมายที่เกี่ยวกับความสงบเรียบร้อยของประชาชน. ตุลพาท 12
(พฤษภาคม 2502): 10-17.
- วิชา มหาคุณ. กฎหมายล้มละลายฉบับสมบูรณ์. พิมพ์ครั้งที่ 2 กรุงเทพฯ: โรงพิมพ์
รุ่งเรืองธรรม, 2530.
- วิทยากร เชียงกูร. ศัพท์ เศรษฐกิจ ธุรกิจ การเงินและการธนาคารฉบับแก้ไขใหม่ 2534.
กรุงเทพฯ: สำนักพิมพ์เบียร์ฟ้า, 2534.
- ศักดิ์ สนองชาติ. นิติกรรมและสัญญา (พร้อมทั้งระยะเวลาและอายุความ). กรุงเทพฯ:
นิติบรรณาการ, 2536.
- สมยศ ช่างช้อย. ธนาคารพาณิชย์ไทยกับข้อกำหนด BIS การปรับตัวสู่มาตรฐานธนาคาร
พาณิชย์สากล. จุฬาลงกรณ์วารสาร 16 (ก.ค.-ก.ย. 2535): 60-85.
- สารกิจปริษา, หลวง. คำอธิบายกฎหมายลักษณะล้มละลาย. พิมพ์ครั้งที่ 6. กรุงเทพฯ:
โรงพิมพ์หน้าเขี้ยวการพิมพ์, 2513.
- สารนัยประสาส์น, หลวง, หลักปฏิบัติตามกฎหมายล้มละลายที่เกี่ยวกับศาล. ตุลพาท
7 (เมษายน 2530)

สุด สุตรา. เอ็กควิตีในกฎหมายไทย. ดุลพาห 7 (กันยายน 2503): 1079-1085.

สุธีร์ สุภินิตย์. คู่มือกฎหมายลักษณะล้มละลาย. พิมพ์ครั้งที่ 3. กรุงเทพฯ:

มิตรนราการพิมพ์, 2531.

สุบัน พูนพิพัฒน์. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยนิติกรรมและสัญญา.

กรุงเทพฯ: ศูนย์การพิมพ์, 2515.

เส็นีย์ ปราโมช, ม.ร.ว. ตำนานทรสดี. บทบัญญัติ 7 (พ.ย. 2475): 412-428.

—————. ประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยครอบครัวมรดก. กรุงเทพฯ: สำนักพิมพ์
จุฬาลงกรณ์มหาวิทยาลัย, 2508.

—————. ประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยนิติกรรมและหนี้ เล่ม 1. (ภาค 1-2)
พุทธศักราช 2474 แก้ไขเพิ่มเติม พ.ศ. 2505. กรุงเทพฯ: บริษัทไทยวัฒนาพาณิชย์
จำกัด, 2527.

—————. ประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยนิติกรรมและหนี้ เล่ม 2 ภาคจบบริบูรณ์
พุทธศักราช 2474 แก้ไขเพิ่มเติม พ.ศ. 2505. กรุงเทพฯ: บริษัทไทยวัฒนาพาณิชย์
จำกัด, 2527.

เสริม วินิจฉัยกุล. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ ลักษณะนิติกรรมและหนี้.

นครหลวง: โรงพิมพ์กรมสรรพาสามิต, 2515.

โรสภณ รัตนากร. การโอนสิทธิเรียกร้องในสัญญาต่างตอบแทน ใน 60 ปี ศาสตราจารย์

โรสภณ รัตนากร. กรุงเทพฯ: เพอร์เฟกต์ กราฟิก ก๊อปปี้, 2534.

—————. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยหนี้ บทเบ็ดเสร็จทั่วไป.

พิมพ์ครั้งที่ 2. กรุงเทพฯ: โรงพิมพ์สหมิตรออฟเซต, 2533.

หยุด แสงอุทัย. กฎหมายแพ่งลักษณะมูลแห่งหนี้หนึ่ง. กรุงเทพฯ: โรงพิมพ์มหาวิทยาลัย

ธรรมศาสตร์, 2517.

อนันต์ จันทโรภากร. Subordination Loan. รพี'33 ไม่ปรากฏสถานที่พิมพ์

(2533): 58-61.

อัมพร ณ ตะกั่วทุ่ง. คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วยมรดก. กรุงเทพฯ:

สำนักพิมพ์นิติบรรณาการ, 2532.

อุกฤษ มงคลนาวิน. ความสงบเรียบร้อยและศีลธรรมอันดีของประชาชน. บทบัญญัติ
32 (2518): 11-32.

ภาษาอังกฤษ

Aitken, L. Liquidator and the "Subordinated Loan." Company and Securities Law Journal 5 (February 1987): 4-11.

Arora, A.; Penn, G.A., and Shea, A.M. The Law relating to domestic banking. London: Sweet & Maxwell, 1989.

Berry, C. Bankruptcy : Law and practice. London : Butterworth, 1987.

Black, H.C. Black's Law Dictionary, 6th ed. St. Paul, Minn: West Publishing, 1990.

Calamari, J.D. Handbook of the law of Contracts. St. Paul, Minnesota: West Publishing, 1978.

Calligar, D.M. An analysis of bank loan subordination agreements. The Banker Magazine 147 (winter 1964): 5-17.

———. Subordination Agreements. Yale Law Journal 70(1961): 376-404.

Carlson, D.G. A theory of contractual debt subordination and lien priority. Vanderbilt Law Review 38 (May 1985): 975-1034.

Cary, W.L., and Eisenberg, M.A. Corporations case and materials. 5th ed. New York: The Foundation Press, 1980.

Coogan, P.F.; Kripke, H.; and Weiss, F. The outer fringes of Article 9: Subordination Agreement, Security Interests in money and deposits, Negative Pledge Clauses, and Participation Agreements. Harvard Law Review. 79 (December 1965): 259-260.

- Diener, R. How to finance a growing business. New York: Frederick Fell Publishers, 1974.
- Everett, E. Subordination debt-nature and enforcement. Business Lawyer 20 (July 1965): 953-987.
- Farrar, J.H.; Furey, N.E., and Hannigan, B.M., Farrar's Company Law. 3rd ed. London: Butterworth, 1991.
- Fealy, M. Debt subordination: Has the eagle landed?. The Cambridge Law Journal 52 (November 1993): 396-399.
- Fitch, T.P. Dictionary of Banking Terms 2nd ed. U.S.A.: Barron's Educational Series, Inc., 1993.
- Fitzgerald, M. The pitfalls and alternatives to subordinated loan. International Financial Law Review (November 1983): 17-20.
- Fletcher, I.F. Insolvency. The Journal of Business Law (May 1994): 283-284.
- Gifis, S.H. Law Dictionary 3rd. ed. U.S.A.: Burrton's Educational Series, Inc., 1991.
- Gleick, H.S. Subordination of claims in bankruptcy under the equitable power of the bankruptcy court. The Business Lawyer. 16 (April 1961): 611-625.
- Goode, R.M. Commercial Law. London: Sweet & Maxwell, 1982.
- . Legal problems of Credit and Security. 2nd ed. London: Sweet & Maxwell, 1988.
- . The principles of Corporate Insolvency. 2nd ed. London: Sweet & Maxwell, 1990.
- Golin R. Debt subordination as a working tool. New York Law Forum 7 (1961): 370-379.

- Grantham, R.B. Legal imperialism and debt subordination. The New Zealand Law Journal. (June 1989): 224-227.
- Hayton, D.J. The Law of Trust. London: Sweet & Maxwell, 1989.
- Heilesen, M.D., and Hirsch, M.W. Private subordination agreement and the U.C.C.; Is section 1-209 an Un-Wyse solution?. Business Lawyer 38 (February 1983): 555-571.
- Henn, G.H. Law of Corporations. 2nd ed. St Paul, Minn: West Publishing, 1970.
- Henson, R.D. Subordinations and bankruptcy: some current problems. Business Lawyer 21 (April 1966): 763-772.
- Herzog, A.S., and Zwiebel, J.B. The equitable subordination of claim in bankruptcy. Vanderbilt Law Review. 15 (1961): 83-113.
- Hillman, R.A.; McDonnell, J.B., and Nicdke, s.H. Common Law and Equity under the Uniform Commercial Code. Boston: Warren Gorham & Lermont, 1985.
- Johnson, R.W., Subordinated debenture: debt that serves as equity. The Journal of Finance 1 (March 1955): 1-16.
- Johnston, B. Debt Subordination: The Australian perspective. Australian Business Review 15 (August 1987): 80-146.
- . Contractual debt subordination and legislative reform. The Journal of Business Law (1991): 225-244.
- Laden, C.S., and Kline, M.J. Introduction to corporate law. St Paul, Minn: West Publishing, 1978.
- Lopes, J.L. Contractual subordinations and bankruptcy. Banking Law Journal 97(1980): 204-235.
- Major, W.T. Casebook on Contract Law. London: Pitman, 1990.

- Morse, G. Charlesworth & Morse Company Law, 14th ed. London: Sweet & Maxwell, 1991.
- Murphy, P.A. Creditors' rights in bankruptcy. Colorado: McGraw Hill, 1981.
- Nolan R.C. Less equal than others—Maxwell and subordinated unsecured obligations. The Journal of Business law (September 1995): 485-502.
- Nicolaides, C.M. Priorities for subordinated debt. 4 (June 1989): 247-250.
- Paton G.W. Jurisprudence. 2nd ed. London: Oxford Clarendon Press, 1951.
- Pennington, R.R. Company Law. 6th ed. London: Butterworth, 1990.
- Pettit, P.H. Equity and the Law of trust. London: Butterworth, 1984.
- Powell, J.R. Rethinking subordinated debt. Lloyd's Maritime and Commercial Law Quarterly 3 (August 1993): 357-381.
- Steven, E., and Steven, K. Contracts. 5th. ed. New York: Emanuel Law Outlines, 1993.
- . Corporations, 2nd ed., New York: Emanuel Law Outlines, 1992.
- Wood, P.R. English and international set-off. London Sweet & Maxwell, 1989.
- . Law and practice of international finance. London: Sweet & Maxwell, 1980.
- . Law and practice of international finance. New York: Clark Boardman, 1990.

Wood, P.R. Project Finance, Subordinated Debt and State Loans.

London: Sweet & Maxwell, 1995.

———. The law of Subordinated Debt. London: Sweet & Maxwell,

1990.



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ก.

FORM I

1. ALL MONEYS TURNOVER SUBORDINATION AGREEMENT
FOR UNSECURED CREDITORS: FULL FORM*Note on the form*

The senior and junior creditors are unsecured.
All moneys, *i.e.* the junior creditor subordinates all present and future liabilities owed to him by the borrower to all present and future liabilities owed by the borrower to the senior creditor.
The senior creditor is a party.

THIS SUBORDINATION AGREEMENT is dated [] and made
BETWEEN:

- (1) [BORROWER] (the "Borrower");
- (2) [SENIOR CREDITOR] (the "Senior Creditor");
- (3) [JUNIOR CREDITOR] (the "Junior Creditor");

1. DEFINITIONS

(a) *Terms defined* In this Agreement:

- "Event of Default" means any event of default or other event entitling the creditor concerned to accelerate the due date of any liability.
- "Junior Debt" means all present and future liabilities of the Borrower to the Junior Creditor, absolute, contingent or otherwise, whether or not matured, whether or not liquidated, and whether or not owed solely or jointly by the Borrower or to the Junior Creditor solely or jointly, including without limitation (a) liabilities which the Junior Creditor acquires by purchase, security assignment or otherwise, (b) interest, (c) damages, (d) claims for restitution and (e) costs.
- "Junior Finance Documents" means all present and future documents and agreements relating to the Junior Debt.
- "Pending Event of Default" means any event which with giving of notice, lapse of time, determination of materiality or fulfilment of

ที่มา: Philip R. Wood, The Law of Subordinated Debt,
(London : Sweet & Maxwell), 1990, p.172 - 184.

FORM 1

"Permitted Payments"

any other condition (or any combination of the foregoing) would be an Event of Default.

means the payments and receipts permitted by Clause 4 so long as they are so permitted.

"Senior Debt"

means all present and future liabilities of the Borrower to the Senior Creditor, absolute, contingent or otherwise, whether or not matured, whether or not liquidated, and whether or not owed solely or jointly by the Borrower or to the Senior Creditor solely or jointly, including without limitation (a) liabilities which the Senior Creditor acquires by purchase, security assignment or otherwise, (b) interest, (c) damages, (d) claims for restitution and (e) costs.

"Subsidiary"

means an entity from time to time:

- (a) of which another entity has direct or indirect control or another entity owns directly or indirectly more than 50 per cent. of the share capital; or
- (b) which is a subsidiary of another under the laws of the jurisdiction of its incorporation.

(b) *Assigns* Without prejudice to any restrictions on assignments or other dispositions, references to the Borrower, the Senior Creditor and the Junior Creditor include their respective successors and assigns.

(c) *Headings* Headings are to be ignored in construing this Agreement.

2. BORROWER'S UNDERTAKINGS

So long as any Senior Debt is or may become outstanding, the Borrower will not (except as the Senior Creditor has previously consented in writing)

- (a) (subject to Clause 6) pay or repay, or make any distribution in respect of, or purchase or acquire, any of the Junior Debt in cash or kind except for Permitted Payments;
- (b) permit any of its Subsidiaries to purchase or acquire any of the Junior Debt;
- (c) set off against the Junior Debt except for Permitted Payments;

FORMS

- (d) create or permit or subsist security over any of its assets for any of the Junior Debt;
- (e) merge or consolidate into or with any other company;
- (f) take or omit any action whereby the subordination achieved by this Agreement may be impaired.

3. JUNIOR CREDITOR'S UNDERTAKINGS

So long as any Senior Debt is or may become outstanding, except as the Senior Creditor has previously consented in writing, the Junior Creditor will not:

- (a) (subject to Clause 6) demand or receive payment of, or any distribution in respect or on account of, any of the Junior Debt in cash or kind from the Borrower or any other source, or apply any money or assets in discharge of any Junior Debt, except in each case for Permitted Payments;
- (b) set off any of the Junior Debt except for Permitted Payments;
- (c) permit to subsist or receive any security for any of the Junior Debt;
- (d) permit to subsist or receive any guarantee or other assurance against loss in respect of any of the Junior Debt;
- [(e) permit the Junior Debt to be evidenced by a negotiable instrument unless the instrument is legended with this subordination or is deposited with the Senior Creditor;]
- [(f) convert any of the Junior Debt into shares of the Borrower]

4. PERMITTED PAYMENTS

(a) So long as no Senior Debt is overdue and unpaid and no Event of Default or Pending Event of Default has occurred under any document relating to any Senior Debt, (subject to Clause 6) the Borrower may pay and the Junior Creditor may receive and retain payment of, the following:

- (i) scheduled payments of interest on the Junior Debt not earlier than the date the same are scheduled to be due in accordance with the original terms of the Junior Finance Documents and not exceeding interest at a commercial rate of return;
- (ii) [SPECIFY OTHER PERMITTED PAYMENTS]
- (b) In this Clause, a payment or receipt includes a payment or receipt by set-off.

5. TURNOVER OF NON-PERMITTED RECOVERIES

(a) *Non-permitted payment* If

- (i) the Junior Creditor receives a payment or distribution, in cash or

FORM 1

kind, in respect of or on account of any of the Junior Debt from the Borrower or any other source other than a Permitted Payment.

(ii) the Junior Creditor receives the proceeds of any enforcement of any security, or payment under any guarantee, for any Junior Debt, or

(iii) the Borrower or any of its Subsidiaries makes any payment or distribution, in cash or kind, on account of the purchase or other acquisition of any of the Junior Debt,

the Junior Creditor will hold the same in trust for and pay and distribute it to the Senior Creditor for application towards the Senior Debt until the Senior Debt is irrevocably paid in full.

(b) *Non-permitted set-offs* If any of the Junior Debt is discharged by set-off (except for a Permitted Payment), the Junior Creditor will immediately pay an amount equal to the discharge to the Senior Creditor for application towards the Senior Debt until the Senior Debt is irrevocably paid in full.

(c) *Non-permitted security proceeds* If the Junior Creditor receives proceeds of realisation in cash or in kind in respect of any security for the Junior Debt, it will hold the same in trust for, and pay and distribute them to, the Senior Creditor for application towards the Senior Debt until the Senior Debt is irrevocably paid in full.

6. SUBORDINATION ON INSOLVENCY

If

(i) any resolution is passed or order made for the winding-up, liquidation, dissolution, administration or reorganisation of the Borrower, or

(ii) the Borrower becomes subject to any insolvency, bankruptcy, reorganisation, receivership, liquidation, dissolution or other similar proceeding, voluntary or involuntary and whether or not involving insolvency, or

(iii) the Borrower assigns its assets for the benefit of its creditors or enters into any arrangement with its creditors generally, or

(iv) the Borrower becomes subject to any distribution of its assets, or

(v) any analogous event occurs anywhere

THEN:

(a) the Junior Debt will be subordinate in right of payment to the Senior Debt

(b) the Senior Creditor may, and is irrevocably authorised on behalf of the Junior Creditor to, (i) claim, enforce and prove for the Junior Debt, (ii) file claims and proofs, give receipts and take all such proceedings and do all such things as the Senior Creditor sees fit to recover the Junior Debt

FORMS

and (iii) receive all distributions on the Junior Debt for application towards the Senior Debt

(c) if and to the extent that the Senior Creditor is not entitled to do any of the things mentioned in (b), the Junior Creditor will do so in good time as directed by the Senior Creditor

(d) the Junior Creditor will hold all payments and distributions in cash or in kind received or receivable by the Junior Creditor in respect of the Junior Debt from the Borrower or its estate or from any other source in trust for the Senior Creditor and will pay and transfer them to the Senior Creditor for application towards the Senior Debt until the Senior Debt is irrevocably paid in full

(e) the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of the Borrower or their proceeds is directed to pay all payments and distributions on the Junior Debt direct to the Senior Creditor until the Senior Debt is irrevocably paid in full. The Junior Creditor will give all such notices and do all such things as the Senior Creditor may direct to give effect to this provision.

7. TREATMENT OF DISTRIBUTIONS

(a) *Realisation* If the Senior Creditor receives any distribution otherwise than in cash in respect of the Junior Debt from the Borrower or any other source, the Senior Creditor may realise the distribution as it sees fit and the Senior Debt shall not be deemed reduced by the distribution until and except to the extent that the realisation proceeds are applied towards the Senior Debt.

(b) *Transfer of distributions* The Junior Creditor will at its own expense do all such things as the Senior Creditor may require as being necessary or desirable to transfer to the Senior Creditor all payments and distributions which must be turned over or held in trust for the Senior Creditor, including endorsements and execution of formal transfers, and will pay all costs and stamp duties in connection therewith.

(c) *Currencies* If the Senior Creditor receives any payment required to be paid by the Junior Creditor under this Agreement or paid in respect of the Junior Debt in a currency other than the currency of the Senior Debt, the Senior Creditor may convert the currency received into the currency of the Senior Debt at a prevailing market rate of exchange and the Senior Debt shall not be deemed reduced by the payment until and except to the extent that the proceeds of conversion are applied towards the Senior Debt.

(d) *Failure of trust* If for any reason, a trust in favour of, or a holding of property for, the Senior Creditor under this Agreement is invalid or unenforceable, the Junior Creditor will pay and deliver to the Senior Creditor an amount equal to the payment, receipt or recovery in cash or



FORM 1

in kind (or its value, if in kind) which the Junior Creditor would otherwise have been bound to hold on trust for or as property of the Senior Creditor.

8. ENFORCEMENT BY JUNIOR CREDITOR

So long as any of the Senior Debt is or may become outstanding, unless Clause 6 applies or unless the Senior Creditor has previously consented in writing, the Junior Creditor will not:

- (a) accelerate any of the Junior Debt or otherwise declare any of the Junior Debt prematurely payable on an Event of Default or otherwise;
- (b) enforce the Junior Debt by execution or otherwise;
- (c) initiate or support or take any steps with a view to any insolvency, liquidation, reorganisation, administration or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or any similar proceedings involving the Borrower, whether by petition, convening a meeting, voting for a resolution or otherwise.

9. VOTING

So long as the Senior Debt is or may become outstanding,

- (a) the Senior Creditor may (and is hereby irrevocably authorised to) exercise all powers of convening meetings, voting and representation in respect of the Junior Debt and the Junior Creditor will provide all forms of proxy and of representation needful to that end,
- (b) if and to the extent that the Senior Creditor is not entitled to exercise a power conferred by the above the Junior Creditor (i) will exercise the power as the Senior Creditor directs, and (ii) will not exercise it so as to impair this subordination.

10. CONSENTS

(a) *New transactions* The Junior Creditor will have no remedy against the Borrower or the Senior Creditor by reason of any transaction entered into between the Senior Creditor and the Borrower which violates or is an Event of Default or Pending Event of Default under any Junior Finance Document and the Junior Creditor may not object to any such transaction by reason of any provisions of any Junior Finance Document.

(b) *Waivers* Any waiver or consent granted by the Senior Creditor will also be deemed to have been given by the Junior Creditor if any transaction or circumstances would, in the absence of such waiver or consent by the Junior Creditor, violate any Junior Finance Document or constitute an Event of Default or Pending Event of Default under any Junior Finance Document.

FORMS

11. REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower represents and warrants to the Senior Creditor

(a) *Status* The Borrower is a limited liability company, duly incorporated and validly existing under the laws of [].

(b) *Powers and authority* The Borrower has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of, the existing Junior Finance Documents and this Agreement and the transactions contemplated by those Junior Finance Documents and this Agreement.

(c) *Legal validity* The existing Junior Finance Documents and this Agreement constitute its legal, valid and binding obligations enforceable in accordance with their terms.

(d) *Non-conflict* The entry into and performance by the Borrower of, and the transactions contemplated by, the Junior Finance Documents and this Agreement do not and will not:

- (i) conflict with any law or regulation; or
- (ii) conflict with the constitutional documents of the Borrower or of any of its Subsidiaries; or
- (iii) conflict with any document which is binding on the Borrower or on any of its Subsidiaries or any asset of the Borrower or of any of its Subsidiaries.

(e) *Authorisations* All authorisations, consents, registrations, filings, notarisations and the like required or desirable in connection with the entry into and performance by it, the validity and enforceability of, and of the transactions contemplated by, the Junior Finance Documents and this Agreement have been obtained or effected (as appropriate) and are in full force and effect.

12. REPRESENTATIONS AND WARRANTIES OF JUNIOR CREDITOR

The Junior Creditor represents and warrants to the Senior Creditor

(a) *Legal validity* This Agreement is within its powers, has been duly authorised by it, constitutes its legal, valid and binding obligations enforceable in accordance with their terms and does not conflict with any law or regulation or its constitution documents or any document binding on it and that it has obtained all necessary consents for the performance by it of this Agreement.

(b) *Disclosure* There has been provided to the Senior Creditor true and

FORM I

complete copies of the existing Junior Finance Documents containing all terms relating to the Junior Debt.

(c) *Ownership* The Junior Creditor is the sole beneficial owner of the Junior Debt and of the benefit of the Junior Finance Documents free of encumbrances, options and subordinations in favour of any person other than the Senior Creditor.

[(d) *Set-off* The Junior Debt is not subject to any set-off, counterclaim or other defence.]

13. REPETITION OF REPRESENTATIONS AND WARRANTIES

The representations and warranties in Clauses 11 and 12 are deemed to be repeated by each of the Borrower and the Junior Creditor respectively on each date so long as any Senior Debt is outstanding with reference to the facts and circumstances then existing.

14. INFORMATION BY JUNIOR CREDITOR

(a) *Defaults* The Junior Creditor will promptly notify the Senior Creditor of the occurrence of any Event of Default or Pending Event of Default under any Junior Finance Document.

(b) *Amount of Junior Debt* The Junior Creditor will on written request by the Senior Creditor from time to time notify the Senior Creditor in writing of details of the amount of the Junior Debt and give the Senior Creditor copies of all Junior Finance Documents as soon as entered into.

15. SUBROGATION BY JUNIOR CREDITOR

If any of the Senior Debt is wholly or partially paid out of any proceeds received in respect of or on account of the Junior Debt, the Junior Creditor will to that extent be subrogated to the Senior Debt so paid (and all securities and guarantees for that Senior Debt) but not before all the Senior Debt is paid in full.

16. PROTECTION OF SUBORDINATION

(a) *Continuing subordination* The subordination provisions in this Agreement constitute a continuing subordination and benefit the ultimate balance of the Senior Debt regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

(b) *Waiver of defences* The subordination in this Agreement and the

FORMS

obligations of the Junior Creditor under this Agreement will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the subordination or any of those obligations in whole or in part, including without limitation:

(i) any time or waiver granted to, or composition with, the Borrower or other person;

(ii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Borrower or other person in respect of the Senior Debt or otherwise or any non-presentment or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

(iii) any unenforceability, illegality or invalidity of any obligation of the Borrower or security in respect of the Senior Debt or any other document or security;

(c) *Immediate recourse* The Junior Creditor waives any right it may have of first requiring the Senior Creditor (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person before claiming the benefit of this Agreement.

(d) *Appropriations* Until the Senior Debt has been irrevocably paid in full, the Senior Creditor (or any trustee or agent on its behalf) may:

(i) apply any moneys or property received under this Agreement or from the Borrower or from any other person against the Senior Debt in such order as it sees fit;

[(ii) (if it so decides) apply any moneys or property received from the Borrower or from any other person (other than money or property received for the Junior Creditor under this Agreement) against any liability other than the Senior Debt owed to it;]

[*Note:* The above para. (ii) will be relevant only if the Senior Debt does not include all debt owed by the Borrower to the Senior Creditor.]

(iii) hold in suspense any moneys or distributions received from the Junior Creditor under Clauses 5, 6 and 7 or on account of the liability of the Junior Creditor under this Agreement.

(e) *Non-competition* Until the Senior Debt has been irrevocably paid in full, the Junior Creditor will not by virtue of any payment or performance by it under this Agreement or by virtue of the operation of Clause 5, 6 or 7:

(i) be subrogated to any rights, security or moneys held, received or receivable by the Senior Creditor (or any trustee or agent on its behalf) or be entitled to any right of contribution or indemnity;

(ii) claim, rank, prove or vote as a creditor of the Borrower or any other person or their respective estates in competition with the Senior Creditor (or any trustee or agent on its behalf); or

(iii) receive, claim or have the benefit of any payment, distribution or security from or on account of the Borrower or other person.

FORM 1

17. PRESERVATION OF JUNIOR DEBT

Solely as between the Borrower and the Junior Creditor, the Junior Debt shall remain owing or due and payable in accordance with the terms of the Junior Finance Documents, and interest and default interest will accrue on missed payments accordingly.

18. TERMINATION OF SUBORDINATION

By not less than 30 days' prior written notice to the Senior Creditor, the Junior Creditor may terminate this subordination agreement. However the termination will not affect Junior Debt which is incurred prior to the expiry of the notice or which arises as a result of any transaction or under or in connection with any agreement entered into prior to such expiry.

19. RESPONSIBILITY OF SENIOR CREDITOR

The Senior Creditor will not be liable to the Junior Creditor

- (a) for the manner of exercise or for any non-exercise of its powers under this Agreement, or
- (b) for failure to collect or preserve the Junior Debt.

20. EXPENSES

(a) *Initial costs* The Borrower will forthwith on demand pay the Senior Creditor the amount of all costs and expenses incurred by it in connection with the negotiation, preparation, execution and performance of this Agreement and all waivers in relation to and variations of this Agreement.

(b) *Enforcement costs* Each of the Borrower and the Junior Creditor shall, forthwith on demand, pay to the Senior Creditor the amount of all costs and expenses incurred by it in connection with the enforcement against the Borrower or Junior Creditor (as the case may be) of the Senior Creditor's rights against it under this Agreement.

(c) *Legal expenses and taxes* The costs and expenses referred to above include, without limitation, the fees and expenses of legal advisers and any value added tax or similar tax, and are payable in the currency in which they are incurred.

21. CHANGES TO THE PARTIES

(a) *Successors and assigns* This Agreement is binding on the successors and assigns of the parties hereto.

FORMS

(b) *Borrower* The Borrower may not assign or transfer any of its rights (if any) or obligations under this Agreement.

(c) *Junior Creditor* So long as any Senior Debt is or may become outstanding, the Junior Creditor will not

(i) assign or dispose of, or create or permit to subsist any security (fixed or floating) over, any of the Junior Debt or its proceeds or any interest in the Junior Debt or its proceeds to or in favour of any person, or

(ii) subordinate any of the Junior Debt or its proceeds to any sums owing by the Borrower to any person other than the Senior Creditor

(iii) transfer by novation or otherwise any of its rights or obligations under any Junior Finance Document or in respect of any Junior Debt to any person

unless in each case that person agrees with the Senior Creditor that he is bound by all the terms of this Agreement as Junior Creditor in a manner satisfactory to the Senior Creditor.

(d) *Senior Creditor* The Senior Creditor may assign or otherwise dispose of all or any of its rights under this Agreement.

(e) *Memorandum on documents* The Junior Creditor will endorse a memorandum of this Agreement on each Junior Finance Document.

22. GENERAL

(a) *Rights of the borrower* The Borrower does not have any rights under or by virtue of this Agreement.

(b) *Perpetuity period* The perpetuity period for the trusts in this Agreement is 80 years.

(c) *Power of attorney* By way of security for the obligations of the Junior Creditor under this Agreement, the Junior Creditor irrevocably appoints the Senior Creditor as its attorney to do anything which the Junior Creditor (i) has authorised the Senior Creditor to do under this Agreement and (ii) is required to do by this Agreement but has failed to do. The Senior Creditor may delegate this power.

(d) *Stamp duties* The Borrower shall pay and forthwith on demand indemnify the Senior Creditor [and the Junior Creditor] against any liability it incurs in respect of any stamp, registration and similar tax which is or becomes payable in connection with the entry into, performance or enforcement of this Agreement.

(e) *Currency indemnity* The Junior Creditor will indemnify the Senior Creditor against losses suffered by the Senior Creditor if any claim by the

FORM I

Senior Creditor (or any agent or trustee on its behalf) against the Junior Creditor under this Agreement is converted into a claim, proof, judgment or order in a currency other than the currency in which the amount is contractually payable under this Agreement.

(f) *Waivers, remedies cumulative* The rights of the Senior Creditor under this Agreement:

- (i) are cumulative and not exclusive of its rights under the general law; and
- (ii) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

(g) *Set-off* The Senior Creditor may set off any matured obligation owed by the Junior Creditor under this Agreement (to the extent beneficially owned by the Senior Creditor) against any obligation (whether or not matured) owed by the Senior Creditor to the Junior Creditor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Senior Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

(h) *Default interest* If the Junior Creditor fails to pay any amount payable by it under this Agreement to the Senior Creditor, it shall, on demand by the Senior Creditor from time to time, pay interest on the overdue amount from the due date up to the date of actual payment, as well after as before judgment, at the rate of [].

(i) *Severability* If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (i) the validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (ii) the validity or enforceability in other jurisdictions of that or any other provisions of this Agreement.

(j) *Counterparts* This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

23. NOTICES

(a) *Service of notices* All notices under or in connection with this Agreement shall be given in writing or by telex or fax. If correctly addressed, any such notice is deemed to be given at the following times:

- (i) if in writing when delivered:

FORMS

- (ii) if by telex when dispatched; and
- (iii) if by fax when received.

However, a notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt is deemed to be given on the next working day in that place.

(b) *Addresses for notices* The address, telex number and fax number of each party hereto for all notices under, or in connection with, this Agreement, are:

[].

A party may change the above by prior written notice to the other parties.

24. JURISDICTION

(a) *Submission* For the benefit of the Senior Creditor, each of the Borrower and the Junior Creditor agrees that the courts of England are to have jurisdiction to settle any disputes in connection with this Agreement, submits to the jurisdiction of the English courts in connection with this Agreement, appoints [] as its agent for service of process relating to any proceedings before the English courts in connection with this Agreement and agrees to maintain a process agent in England notified to the Senior Creditor.

(b) *Non-exclusivity* Nothing in this Clause limits the right of the Senior Creditor to bring proceedings against another party hereto in connection with this Agreement:

- (i) in any other court of competent jurisdiction; or
- (ii) concurrently in more than one jurisdiction.

25. GOVERNING LAW

This Agreement is governed by English law.

IN WITNESS whereof this Agreement has been entered into on the date stated at the head of this Agreement.

ภาคผนวก ข.

FORM 5

CONTRACTUAL SUBORDINATION

Note on the form

The subordination agreement is solely between the debtor and the junior creditor. The senior creditor is not a party.

The junior creditor subordinates claims arising under a specific credit agreement to all other liabilities of the debtor.

The subordination on the insolvency of the common debtor is achieved by rendering the junior debt conditional on the payment of the senior debt.

THIS SUBORDINATION AGREEMENT is dated [] and made BETWEEN:

- (1) [BORROWER] (the "Borrower");
- (2) [JUNIOR CREDITOR] (the "Junior Creditor");

1. INTERPRETATION

(a) *Definitions* In this Agreement:

"Junior Credit Agreement"	means the credit agreement dated [] between the Borrower and the Junior Creditor for a credit of £[] and includes all variations, replacements, novations of and supplements to the credit agreement but without prejudice to any restrictions on the same.
"Junior Debt"	means all present and future liabilities of the Borrower under or in connection with (or on rescission of) the Junior Credit Agreement.
"Permitted Payments"	means the payments permitted by Clause 4 so long as the same are so permitted.
"Senior Creditor"	means each holder of any Senior Debt;
"Senior Debt"	means all present and future liabilities payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever), other than subordinated liabilities.

ที่มา: Philip R. Wood, The Law of Subordinated Debt,
(London : Sweet & Maxwell), 1990, p.231 - 234.

FORMS

(b) *Headings* Headings are to be ignored in construing this Agreement.

2. BORROWER'S UNDERTAKINGS

So long as any Senior Debt is outstanding, the Borrower will not

(a) pay or repay, or make any distribution in respect of, or purchase or acquire, any of the Junior Debt in cash or kind except for Permitted Payments;

(b) permit any of its Subsidiaries to purchase or acquire any of the Junior Debt;

(c) set off against the Junior Debt except for Permitted Payments;

(d) create or permit or subsist security over any of its assets for any of the Junior Debt;

(e) vary the Junior Credit Agreement.

3. JUNIOR CREDITOR'S UNDERTAKINGS

So long as any Senior Debt is outstanding, the Junior Creditor will not:

(a) demand or receive payment of, or any distribution in respect or on account of, any of the Junior Debt in cash or kind, or apply any money or assets in discharge of any Junior Debt, except for Permitted Payments;

(b) set off any of the Junior Debt except for Permitted Payments.

4. PERMITTED PAYMENTS

Subject to Clause 6, whether by actual payment or by set-off, the Borrower may pay and the Junior Creditor may receive and retain payment of (i) scheduled payments of principal and interest on the Junior Debt not earlier than the scheduled due dates in accordance with the original terms of the Junior Credit Agreement (for which purpose a mandatory or voluntary acceleration or prepayment is not a scheduled payment); (ii) [SPECIFY OTHER PERMITTED PAYMENTS] PROVIDED THAT:

(a) The Borrower may not make any payments otherwise permitted by this Clause if and so long as any of the Senior Debt is [more than 30 days] overdue and unpaid;

(b) The Borrower may not make any payments of principal otherwise permitted by this Clause unless the auditors of the Borrower have reported to the Borrower not less than 14 days before the payment that the Borrower would be solvent both at the time of and immediately after the payment. For this purpose the Borrower shall be considered to be solvent if it is able to pay all Senior Debt as it falls due and if the value of its assets is more than the amount of its liabilities, taking into account its contingent and prospective liabilities.

FORM 5

5. SUBORDINATION ON INSOLVENCY

If an order has been made or effective resolution has been passed for the liquidation, winding-up, bankruptcy, administration, rehabilitation, reorganisation or dissolution of the Borrower or any analogous event has occurred, the rights of the Junior Creditor in respect of the Junior Debt will be subordinated to the Senior Debt. Accordingly any payment in respect of the Junior Debt is conditional upon the Borrower being solvent both at the time of and immediately after the payment and shall not be made unless this condition is satisfied. For this purpose, the Borrower shall be considered to be solvent only if the Borrower is able to pay all the Senior Debt in full.

[*Note:* the Agreement may state that the only remedy of the Junior Creditor for the recovery of the Junior Debt is to petition for the winding up of the Borrower.]

6. RETURN OF NON-PERMITTED RECOVERIES

(a) *Non-permitted payment* If

(i) the Junior Creditor receives a payment or distribution in cash, in property, securities or otherwise in respect of or on account of any of the Junior Debt (other than a Permitted Payment);

(ii) the Junior Creditor receives the proceeds of any enforcement of any security for any Junior Debt, or

(iii) the Borrower or any of its subsidiaries makes any payment or distribution, in cash or kind, on account of the purchase or other acquisition of any of the Junior Debt,

the Junior Creditor will hold the same upon trust and immediately return the same to the Borrower or its estate. Thereupon the relevant payment or distribution or receipt will be deemed not to have been made or received.

(b) *Non-permitted set-offs* If any of the Junior Debt is discharged by set-off (except for a Permitted Payment), the Junior Creditor will immediately pay an amount equal to the discharge to the Borrower or its estate. Thereupon the discharge will be deemed not to have taken place.

7. RELIANCE BY SENIOR CREDITORS

The Borrower and the Junior Creditor declare in favour of each Senior Creditor that the terms of this Agreement are in inducement and consideration to each Senior Creditor to give or continue credit to the Borrower or to acquire Senior Debt. Each Senior Creditor may accept the benefit of this Agreement by giving or continuing credit to the Borrower or acquiring Senior Debt. Each of the Borrower and the Junior Creditor waives reliance and notice of acceptance. For the purpose of such inducement, each of the Borrower and the Junior Creditor agrees not to vary the terms

FORMS

of this Agreement nor to take or omit any action whereby the subordination achieved by this Agreement may be impaired.

[*Note:* This clause attempts to create an estoppel in favour of Senior Creditors who rely on the Agreement. Perhaps another method would be for the Borrower and the Junior Creditor each to declare a trust in favour of the Senior Creditor of the benefit of the undertakings given to it by the other.]

9. JUNIOR CREDIT AGREEMENT

This Agreement overrides anything in the Junior Credit Agreement to the contrary.

10. SUCCESSORS AND ASSIGNS

(a) *Successors and assigns* This Agreement is binding on the successors and assigns of the parties hereto.

(b) *Junior Creditor* So long as any Senior Debt is outstanding, the Junior Creditor will not

(i) assign or dispose of, or create or permit to subsist any security over, any of the Junior Debt or its proceeds or any interest in the Junior Debt or its proceeds to or in favour of any person, or

(ii) transfer by novation or otherwise any of its rights or obligations in respect of any Junior Debt to any person

unless in each case that person agrees with the Borrower that he is bound by all the terms of this Agreement as Junior Creditor.

11. PERPETUITY PERIOD

The perpetuity period for the trusts in this Agreement is 80 years.

12. JURISDICTION

[Adapt Clause 24 in Form 1.]

13. GOVERNING LAW

This Agreement is governed by English law.

This Agreement has been entered into on the date stated at the head of this Agreement.

กฎหมาย ก.

§ 256.03[1]

BANKING LAW

§ 256.03[1]—Subordination Agreement

To: _____ Bank

Gentlemen:

Undersigned _____ (herein called "Creditor") is a creditor of _____ (herein called "Debtor"). Creditor understands that Debtor has requested you to extend credit to said Debtor, but that you are unwilling to do so unless you first receive Creditor's subordination agreement as herein contained.

In order to induce you to at any time or from time to time at your options, to make loans or extend credit or other accommodation or benefit to or for account of the Debtor, with or without security, or to purchase or extend credit upon any instrument or writing in respect of which the Debtor may be liable in any capacity, or to grant such renewals or extensions of any thereof as you may deem advisable, it is agreed as follows:

1) Creditor and Debtor represent and warrant to you that,

a) At the date hereof the total indebtedness owing by Debtor to Creditor is \$ _____.

b) The instruments evidencing said indebtedness shall at your option be either delivered to you or the face of said negotiable instruments shall be permanently marked with the following legend:

"Subject to that certain Subordination Agreement executed by _____ on the _____ day of _____, 19____, addressed to _____ Bank.

and after being so marked the said instruments shall be exhibited to you. "Indebtedness" as used herein shall mean present indebtedness and any future indebtedness of Debtor to Creditor which may be from time to time directly or indirectly incurred, including any negotiable instruments evidencing the same, and all claims, rights, causes of action, judgment, decrees or other obligations of any kind whatsoever.

c) There is no default in the indebtedness from Debtor to Creditor or under any other agreements between Debtor and third parties.

2) Creditor agrees with you that,

a) The indebtedness shall be and hereby is subordinated and the payment therefor is deferred until the full cash payment of any and all indebtedness (including all inter-

(Pub. 022)

ที่มา: Jeffrey B. Deiltman, Harold Weisblatt and others,
Banking Law Vol.10, (New York: Matthew Bender, 1994),
 p.256-40 - 256-43.

GUARANTY AND SUBORDINATION § 256.03(1)

ests after the date of filing of a petition by or against Debtor under any bankruptcy act) of any nature whatsoever now due to you from Debtor or which may hereafter be incurred and become due to you from Debtor.

- b) Creditor will not, without your prior written consent assert, collect, enforce or release the indebtedness or any part thereof or realize upon or release any collateral securing the indebtedness or enforce any security agreements, real estate mortgages, lien instruments, or other encumbrances securing said indebtedness.
 - c) Creditor will hold in trust and immediately pay to you in the same form of payment received for application the amount now or hereafter owing to you by Debtor any amount Debtor pays to Creditor on the principal amount of indebtedness.
 - d) Creditor will forthwith deliver or cause to be delivered to you any collateral for the indebtedness now held by Creditor or anyone on its behalf, or in the future received by it or anyone on its behalf.
 - e) Creditor agrees that it will not commence, prosecute or participate in any administrative, legal, or equitable action against the Debtor or in any administrative, legal, or equitable action that might adversely affect the Debtor or its interest, without your prior written consent.
- 3) If Creditor in violation of this agreement, shall commence, prosecute or participate in any suit, action or proceeding against Debtor, Debtor may interpose as a defense or plea the making of this agreement and you may intervene and interpose such defense or plea in your name or in the name of the Debtor. If Creditor shall attempt to enforce any security agreements, real estate mortgages or any lien instrument or other encumbrances, you or Debtor may by virtue of this agreement restrain the enforcement thereof in your name or in the name of Debtor. If Creditor obtains any assets of the Debtor as a result of any administrative, legal, or equitable action, or otherwise, the Creditor agrees to forthwith pay, deliver, and assign to you any such assets for application upon the amount now or hereafter owing to you by Debtor.
- 4) If Debtor becomes insolvent or makes a general assignment for the benefit of Creditors or a petition is filed by or against Debtor under the Bankruptcy Act or any amendments thereto, or any insolvency acts or a receiver of the property or assets of Debtor is appointed. Creditor does hereby assign and transfer to you the



§ 256.03[1]

BANKING LAW

indebtedness as security for any and all amounts now and hereafter owing by Debtor to you, and Creditor irrevocably authorizes you or any person you may designate to collect and receive the proceeds of the indebtedness, doing any and all things with the same power and authority that Creditor might or could have done if this agreement had not been executed, including the filing and proving of claims in the name of you or Creditor, in receiverships, bankruptcies, and proceedings under the Bankruptcy Act or any amendments thereto. The net amount received by you from the indebtedness shall be applied to the payment of the amounts due from Debtor to you, and the excess, if any, shall be returned to Creditor.

- 5) Debtor agrees with you that it will not, without your prior written consent, pay to Creditor any sum on account of the indebtedness, or execute or deliver any negotiable instrument as evidence of the indebtedness or any part thereof.
- 6) Creditor agrees that you may grant extensions of the time of payment or performance to and make compromises, including releases of collateral, and settlements with Debtor and all other persons without the consent of Debtor and without affecting the agreements of Creditor or Debtor hereunder.
- 7) If, at any time hereafter, you shall, in your own judgment determine to discontinue the extension of credit to Debtor, you may do so. This agreement shall continue in full force and effect until Debtor shall have satisfied all obligations and you shall have been paid in full on all indebtedness, of any nature whatsoever that may be due to you from Debtor on any present future indebtedness against Debtor under this or any other agreement between Debtor and you.
- 8) This agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of Creditor and Debtor, and shall inure to the benefit of your successors and assigns.
- 9) This Agreement and the obligations which it secures and all rights and liabilities of the parties shall be governed as to validity, interpretations, enforcement and effect by the laws of the state where this agreement is accepted.

IN WITNESS WHEREOF, Creditor and Debtor have severally duly executed this Agreement this _____ day of _____ 19____.

GUARANTY AND SUBORDINATION § 256.03[1]

Accepted By:

_____ BANK

 Address

 City State
 By _____ Title
 _____ (SEAL)
 Debtor
 By _____ (SEAL)
 Title
 _____ (SEAL)
 Creditor
 By _____ (SEAL)
 By _____ (SEAL)

 Residence Address (street & city)

State of _____ }
 County of _____ } SS:

Personally came before me this _____ day of _____, 19____ the above named _____, to me personally known to be the person(s) who executed the foregoing Subordination Agreement and who after being by me duly sworn, stated and acknowledged under oath that he-they signed, executed, sealed and delivered same as his-their free and voluntary act and deed.

 Notary Public _____
 My Commission expires _____

ศูนย์วิทยุตำรวจ
 จุฬาลงกรณ์มหาวิทยาลัย

Form 30.16.15

SUBORDINATION AGREEMENT

The undersigned, _____, a _____ corporation (hereinafter referred to as "Creditor") is a creditor of _____, a _____ corporation (hereinafter referred to as "Borrower") and desires that _____, a national banking association (hereinafter referred to as "Bank") continue to extend or extend such financial accommodations to Borrower as Borrower may request and as banker may deem proper. At the present time, borrower is indebted to Creditor in the principal sum of \$_____ plus accrued interest, if any, thereon. For the purpose of including bank to grant, continue to renew such financial accommodations, and in consideration thereof, Creditor agrees as follows:

1. Any and all claims of Creditor against Borrower, now or hereinafter existing are, and shall be at all times, subject and subordinate to any and all claims, now or hereinafter existing which Bank may have against Borrower pursuant to any Business Loan Agreement (Receivables and Inventory) between Bank and Borrower providing for a line of credit in the principal sum of up to \$_____ ("Loan Agreement") (including any claim by Bank for interest accruing after any assignment for the benefit of Creditor or Borrower of the institution or against Borrower of any proceedings under the Bankruptcy Act, or any claim by Bank for any such interest which would have accrued in the absence of such assignment or the institution of such proceedings). Notwithstanding anything in this Agreement to the contrary, said claims of Creditor against Borrower shall be subordinate only to any and all claims pursuant to the Loan Agreement resulting from a principal amount outstanding not to exceed \$_____.

2. Creditor agrees not to sue upon, or to collect, or to resolve payment of the principal or interest of any claim or claims now or hereinafter existing which Creditor may hold against Borrower, and not to sell, assign, transfer, pledge, hypothecate, or encumber such claim or claims except subject expressly to this

(Matthew Bender & Co., Inc.)

(Rel.46-11/92 Pub.770)

↓
พมว: Martin D. Fern, Timothy A. Covington, Ronald F. Sullivan, Warren's Form of Agreement (Business Form), (New York: Matthew Bender, 1993), p. 30-199-30-202.

Form 30.16.15 COMMERCIAL LOANS

Agreement, and not to enforce or apply any security now or hereafter existing therefor, nor to file or join in any petition to commence any proceeding under the Bankruptcy Act, nor to take any lien or security on any of Borrower's property, real or personal, so long as any claim of Bank against Borrower shall exist.

3. In case of any assignment for the benefit of creditors by Borrower or in case any proceedings under the Bankruptcy Act are instituted by or against Borrower, or in case of the appointment of any receiver for Borrower's business or assets, or in case of any dissolution or winding up of the affairs of Borrower: (a) Borrower and any assignee, trustee in bankruptcy, receiver, debtor in possession or other person or persons in charge are hereby directed to pay to Bank the full amount of Bank's claims against Borrower (including interest of the date of payment) before making any payment of principal or interest to Creditor, and insofar as may be necessary for that purpose. Creditor hereby assigns and transfers to Bank all security or the proceeds thereof, and all rights to any payments, dividend or other distribution, and (b) Creditor hereby irrevocably constitutes and appoints Bank its true and lawful attorney to act in its name and stead: (i) to file the appropriate claim or claims on behalf of Creditor if Creditor does not do so prior to 30 days before the expiration of the time to file claims in such proceedings and if Bank elects as its sole discretion to file such claim or claims and (ii) to accept or reject any plan of reorganization or arrangement on behalf of Creditor, and to otherwise vote Creditor's claim in respect of any indebtedness now or hereafter owing from Borrower to Creditor in any manner Bank deems appropriate for its own benefit and protection.

4. Bank is hereby authorized by Creditor to: (a) renew, compromise, extend, accelerate or otherwise change the time of payment, or any other terms, of any existing or future claim of Bank against Borrower, (b) increase or decrease the rate of interest payable thereon to any part thereof, (c) exchange, enforce, waive or release any security therefor, (d) apply such

COMPLETE FORMS

security and direct the order or manner of sale thereof in such manner as Bank may at its discretion determine, (e) release Borrower or any guarantor of any indebtedness or Borrower from liability, and (f) make option future advances to Borrower, all without notice to Creditor and without affecting the subordination provided by this Agreement.

5. On request of Bank, Creditor shall deliver to Bank the original of any promissory note or other evidence of any existing or future indebtedness of Borrower to Creditor, and mark same with a conspicuous legend which reads substantially as follows:

"This promissory note is subordinated to any present or future indebtedness owing from the maker to _____ and its assigns, and may be enforced only in accordance with certain subordination agreement dated _____, 19____ between _____ and _____."

6. In the event that any payment or any cash or noncash distribution is made to Creditor in violation of the terms of this Agreement, Creditor shall receive same in trust for the benefit of Bank, and shall forthwith remit it to Bank in the form in which it was received, together with such endorsements or documents as may be necessary to effectively negotiate or transfer same to Bank.

7. Until all such claims of Bank against Borrower, now or hereafter existing, shall be paid in full, no gift or loan shall be made by Borrower to Creditor.

8. For violation of this Agreement, Creditor shall be liable for all loss and damage sustained by reason of such breach, and upon any such violation Bank may, at its option, accelerate the maturity of any of its existing or future claims against Borrower.

9. This Agreement shall be binding upon the heirs, successors and assigns of Creditor, Borrower and Bank. This Agreement and any existing or future claim of Bank against Borrower may be assigned by Bank, in whole or in part, without notice to Creditor or Borrower.

Form 30.16.15 COMMERCIAL LOANS

10. Notwithstanding the provisions of Paragraph 2, so long as there has been no occurrence of any default under any agreement between Borrower and Bank, now existing or hereafter entered into, Creditor may receive regularly scheduled interest payments on the presently existing indebtedness of Borrower to Creditor, provided, however, that Creditor shall not receive any prepayment of principal or interest on said indebtedness without prior written consent of Bank.

11. Notwithstanding anything in the foregoing provisions of this Agreement to the contrary, so long as Borrower is out of debt to Bank under the Loan Agreement on the due date(s) of the presently existing indebtedness of Borrower to Creditor, Borrower shall be entitled to pay such indebtedness to Creditor in full on said due date(s).

CREDITOR:

Acceptant of Subordination Agreement by Borrower

The undersigned being the Borrower named in the foregoing Subordination Agreement, hereby accepts and consents thereto and agrees to be bound by all provisions thereof and to recognize all priorities and other rights granted thereby to _____ its successors and assigns, and to perform in accordance therewith.

Dated: _____, 19____

BORROWER:

 _____, President

ศูนย์วิทยุทรัพยากร
 จุฬาลงกรณ์มหาวิทยาลัย

ਅਮਰੀਕਨ ਜੂਰਿਸਪ੍ਰੂਡੈਂਸ ਲੋਕਲ ਫਾਰਮ

H. PRIORITY SUBJECT TO SUBORDINATION
[UCC § 9-316]

§ 253:4231 Discussion of code provision

The Uniform Commercial Code recognizes the right to enter into subordination agreements. Section 9-316 restates the general right of a party entitled to priority to agree to surrender such priority in favor of others. Such a surrender may be general, that is, a waiver of all priority, or limited to the claim of a particular creditor or secured party. 9 ANDERSON ON THE UNIFORM COMMERCIAL CODE 3d § 9-316:3.

§ 253:4232 Subordination agreement—Priorities as among several subordinators—Permission to pay on subordinated debts

SUBORDINATION AGREEMENT

Subordination agreement made on ___1___ [date] among ___2___, of ___3___ [address], ___4___ [city], ___5___ County, ___6___ [state], ___7___, of ___8___ [address], ___9___ [city], ___10___ County, ___11___ [state], and ___12___, of ___13___ [address], ___14___ [city], ___15___ County, ___16___ [state].

The parties to this subordination agreement each claim an interest in the collateral described below and do hereby agree among each other that the priority of interests of each of the parties to this agreement shall be as follows:

Priority One: ___17___ [insert name of party and description of instrument held by party].

Priority Two: ___18___ [insert name and description of instrument held by party].

Priority Three: ___19___ [insert name and description of instrument held by party].

The highest priority held under this agreement is Priority One. The rest of the priorities enumerated above are in descending order of enumeration.

The collateral to which the above designated priorities apply is as follows: ___20___ [insert description of collateral].

The parties to this agreement agree that any right, title, security interest or other interest of each of the parties shall be subordinate in claim of lien to the interest of any higher priority. The priorities shall control in any action or proceeding for the enforcement of any right, title, security interest or other interest.

This subordination agreement shall in no way affect the obligation or the right of any debtor to pay or the right of any of the parties to this agreement to receive payments on any obligation evidenced or secured by the above enumerated instruments or transactions.

In witness whereof, the parties have executed this subordination agreement at ___21___ [designate location], on the day and year first above written.

[Signatures and addresses]

ਅਮਰੀਕਨ ਜੂਰਿਸਪ੍ਰੂਡੈਂਸ ਲੋਕਲ ਫਾਰਮ: American Jurisprudence Legal Form, 2nd ed.:

Section 253:3451- 253-4753 (New York: The Lawyer Cooperative Publishing, 1993), p.768-769



ประวัติผู้เขียน

นางสาวบัวทมา ทูมมา เกิดเมื่อวันที่ 30 มิถุนายน 2513 ที่กรุงเทพมหานคร
 สำเร็จการศึกษา นิติศาสตรบัณฑิต (เกียรตินิยมอันดับหนึ่ง) จากจุฬาลงกรณ์มหาวิทยาลัย เมื่อปี
 พ.ศ. 2534 และเนติบัณฑิตไทย (สมัยที่ 45) เมื่อปี พ.ศ. 2536 สำเร็จการศึกษา
 บริหารธุรกิจบัณฑิต (การจัดการทั่วไป) จากมหาวิทยาลัยสุโขทัยธรรมมาธิราช เมื่อปี พ.ศ. 2535
 เคยรับราชการตำแหน่งนิติกร 4 กรมทรัพย์สินทางปัญญา กระทรวงพาณิชย์ ระหว่างปี พ.ศ.
 2536-2538 เคยผ่านการดูงานด้านศาลทรัพย์สินทางปัญญาและการค้าระหว่างประเทศ ณ ประเทศ
 สหรัฐอเมริกา และได้เคยเข้าร่วมประชุมสัมมนาเรื่องความตกลงว่าด้วยสิทธิในทรัพย์สินทางปัญญา
 ที่เกี่ยวกับการค้า (TRIPS) ภายใต้กรอบความร่วมมือทางเศรษฐกิจเอเชียแปซิฟิก (APEC) ณ
 ประเทศออสเตรเลีย

ศูนย์วิทยทรัพยากร
 จุฬาลงกรณ์มหาวิทยาลัย