

AFTER RECORDING MAIL TO:

Name Provide, Inc.
Address 268 Bush Street #2921
City/State San Francisco, CA. 94104

Document Title(s):

1. Subordination Agreement

Reference Number(s) of Documents Assigned or released:

202301230026, 202301230027

Grantor(s):

1. Susan K. Bergman
2. 120 West Fairhaven LLC

[] Additional information on page of document

Grantee(s):

1. Provide, Inc.
- 2.

[] Additional information on page of document

Abbreviated Legal Description:

Ptn of Tract 43, Burlington Acreage

Tax Parcel Number(s):

P62557

[] Complete legal description is on page of document

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Provide, Inc.

268 Bush Street #2921

San Francisco, CA 94104

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement") is made as of the 19th day of January, 2023 by and among PROVIDE, INC., whose address is 268 Bush Street #2921, San Francisco, CA 94104 ("Senior Lender"), Susan K. Bergman, whose address is 120 W. Fairhaven Avenue, Burlington, WA 98233 ("Subordinated Lender"), and 120 West Fairhaven LLC, whose address is 1311 Broad St, Bellingham, WA, 98229 ("Borrower").

WITNESSETH:

**FirstAm NCS
1159923**

WHEREAS, Borrower has executed and delivered to Senior Lender a Promissory Note (the "Senior Note"), which Senior Note evidences a loan from Senior Lender to Borrower in the amount of \$608,000.00 (the "Senior Lender's Loan");

WHEREAS, to secure the Senior Note, Borrower has executed and delivered, or intends to execute and deliver to Senior Lender a lien and security interest on all of Borrower's rights and interests in and to the real property located at 120 W Fairhaven Ave, Burlington, WA 98233 and a first priority security interest in all of Borrower's business assets as evidenced by a mortgage or deed of trust, commercial security agreement, and UCC financing statements, respectively ("Senior Security Agreements"); collectively, the Senior Note, mortgage or deed of trust, the security agreement, and any and all related documents executed by Borrower or any guarantor are referred to herein as "the Senior Loan Documents", copies of which have been provided to the Subordinated Lender, the receipt of which is hereby acknowledged;

WHEREAS, all of the Senior Lender's rights, liens, and security interests in any real or personal property and in all of Borrower's business assets as described in the Senior Loan Documents are collectively referred to herein as "the Senior Security Interests";

WHEREAS, Borrower has executed and delivered, or intends to execute and deliver, to Subordinated Lender a Promissory Note and other related documents (the "Subordinated Loan Documents"), which Subordinated Loan Documents evidence a loan from Subordinated Lender to Borrower in the original

amount of \$152,000.00 (the "Subordinated Loan"), which Subordinated Loan is secured by a mortgage or deed of trust and/or security agreement on Borrower's assets (the "Subordinated Security Interest");

WHEREAS, pursuant to the Subordinated Loan Documents, Borrower granted or will grant to the Subordinated Lender certain rights, liens, and security interests as described in the Subordinated Loan Documents.

WHEREAS, Senior Lender, Subordinated Lender, and Borrower are entering into this Agreement to set forth terms and conditions by which the Subordinated Lender is subordinating the Subordinated Security Interests to the Senior Lender's Senior Security Interests and the Subordinated Lender's ability to receive payment on the Subordinated Loan while the Senior Lender's Loan is outstanding.

1. **Subordination of Any Security Interests Securing Subordinated Loan.** The Subordinated Lender hereby acknowledges and agrees that, so long as any portion of the Senior Lender's Loan remains outstanding, all rights, liens, and privileges in and to the property identified in the Subordinated Security Interests, vested in it as the owner and legal holder of the Subordinated Loan Documents, shall be and are subordinate and inferior to the rights, liens, and privileges in and to the property identified in the Senior Security Interests, and the Subordinated Lender agrees that the rights, liens, and privileges set forth in the Senior Security Interests with respect to the property identified therein are prior and superior to the rights, liens, and privileges set forth in the Subordinated Loan Documents with respect to the property identified therein. The Subordinated Lender agrees to subordinate the Subordinated Security Interests or any other security interests in or to any assets that secure the Subordinated Loan or any other loan that the Subordinated Lender has made to the Senior Security Interests that secure the Senior Lender's Loan, which subordination shall be automatically effective by virtue of this Agreement. The Senior Lender may extend, modify, renew, or amend the Senior Loan Documents, and any such extension, modification, renewal or amendment shall be superior to the rights, liens, and privileges in and to the property identified in the Subordinated Loan Documents, and the Subordinated Lender agrees that the rights, liens, and privileges set forth in the Senior Security Interests with respect to the property identified therein are prior and superior to the rights, liens, and privileges set forth in the Subordinated Loan Documents with respect to the property identified therein.

Notwithstanding the foregoing, the Subordinated Lender shall, at the reasonable request of Senior Lender, sign subordination agreements evidencing the subordination that contains terms and conditions consistent with the terms and conditions contained in this Agreement that are satisfactory to Senior Lender in Senior Lender's sole opinion.

2. **Payments on Subordinated Loan.** Subordinated Lender agrees that it will only accept, and Borrower agrees that it will only pay, regular monthly payments of principal and/or interest on the Subordinated Loan in amounts not greater than required by the Subordinated Loan Documents. Subordinated Lender agrees that it will not accept, and Borrower agrees that it will not pay, any payments on the Subordinated Loan: (a) if Senior Lender's Loan is in default or delinquent; or (b) such payments exceed the regularly scheduled minimum payments that are due on the Subordinated Loan, including any balloon payment based on the maturity of the Subordinated Loan. If the Senior Lender notifies the Subordinated Lender that the Senior Lender's Loan is in default or delinquent pursuant to this paragraph, the Subordinated Lender shall not accept any future payments on the Subordinated Loan until such time as the Senior Lender's Loan has been paid in full or the Senior Lender agrees otherwise in writing.

3. **Maturity.** The Subordinated Lender acknowledges and agrees that the maturity date of the Subordinated Loan is December 1, 2032 and any outstanding principal balance is due at that time. In the event that the Subordinated Loan requires a balloon payment on the maturity date of the Subordinated Loan, and the Senior Lender's Loan has not been paid in full as of that maturity date, the Subordinated Lender agrees that it will not accept, and Borrower agrees that it will not pay, the balloon payment on the maturity date. Rather, the Subordinated Lender may only accept, and the Borrower may only pay, payments on the Subordinated Loan in the amount of the regularly scheduled minimum payments until such time as the Senior Loan has been paid in full unless the Senior Lender agrees otherwise in writing.

4. **Remittance.** In the event that the Subordinated Lender receives any payments other than the regular monthly payments referenced above or any payments on the Subordinated Loan after Senior Lender has provided notice to the Subordinated Lender of a default or delinquency of the Senior Lender's Loan, the Subordinated Lender agrees to turn over any such payments to Senior Lender within fifteen (15) days of receipt of said payment.

5. **Collateral; Enforcement of Subordinated Loan.** Except as permitted in paragraph 6 below, until such time as the Senior Lender's Loan has been paid in full, the Subordinated Lender agrees to take no action against any property, real or personal, owned by the Borrower or any guarantors of the Subordinated Loan or enforce any security interest pursuant to the Subordinated Security Interests in or to any of the Borrower or guarantor's assets, without prior written consent from the Senior Lender. Except as permitted in paragraph 6 below, Subordinated Lender further agrees to take no action to enforce any claims or causes of action against the Borrower or any guarantors of the Senior Lender's Loan, whether such action is intended to enforce claims under the Subordinated Loan or any other claim that the Subordinated Lender may have against the Borrower or any guarantors of the Senior Lender's Loan, until such time as the Senior Lender's Loan has been paid in full.

6. **Default.** If a default occurs under any of the Senior Loan Documents, then Senior Lender shall be entitled, at its sole discretion, to take such action as may be permitted at law or in equity or under the Senior Loan Documents to enforce its rights and remedies for the collection of all indebtedness, advances, interest, costs and expenses, and other charges or claims owed to Senior Lender under the Senior Loan Documents (collectively the "Senior Claims").

If a default occurs under any of the Subordinated Loan Documents, then the Subordinated Lender shall provide Senior Lender with a copy of any written notice thereof sent to Borrower contemporaneously with the service of such notice to Borrower. If such default is not cured prior to the expiration of any applicable cure period set forth in the notice or Subordinated Loan Documents, whichever is longer, the Subordinated Lender shall be entitled to pursue its rights and remedies under the Subordinated Loan Documents for the collection of all indebtedness, advances, interest, costs and expenses, and other charges or claims owed to the Subordinated Lender under the Subordinated Loan Documents, but only after an additional ninety (90) day period beginning on the expiration of the applicable cure period (the "Standstill Period"). If, at the expiration of the Standstill Period, the default has not been cured and the Senior Lender has not instituted a foreclosure action, UCC sale or other enforcement proceeding in order to enforce its rights and remedies under the Senior Loan Documents, the Subordinated Lender shall be permitted to exercise and/or enforce any and all of his rights under the Subordinated Loan Documents with respect to any property that is subject to a Senior Security Interests, or any other rights or remedies related to same, including without limitation, instituting a foreclosure action or UCC sale; provided, however, that any such foreclosure action or UCC sale shall be subject to the Senior Lender's superior and prior rights in and to the property subject to the foreclosure action

or UCC sale. Senior Lender may join in any foreclosure action, UCC sale, or other enforcement proceeding instituted by the Subordinated Lender under the Subordinated Loan Documents in order to enforce its rights under the Senior Loan Documents. All such rights of the Subordinated Lender shall be subordinate to the rights of Senior Lender.

7. **No Additional Loans.** The Subordinated Lender represents and warrants that it has not made any additional loans or contributions to the Borrower or any guarantors of the Senior Loan Documents other than those already disclosed to Senior Lender herein. The Subordinated Lender agrees that it will not make any additional loans to the Borrower or any guarantors of the Senior Loan Documents without the Senior Lender's prior written consent. In the event that the Subordinated Lender has made any loans or contributions to the Borrower or any guarantors of the Senior Loan Documents other than the Subordinated Loan, or in the event that the Subordinated Lender makes any additional loans or contributions to the Borrower or any guarantors of the Senior Loan Documents without the Senior Lender's prior written consent, the Subordinated Lender shall not accept any payments on any such loans or contributions or take any action to enforce any such loans or contributions, whether against the Borrower, any guarantor of the Senior Loan Documents, or any property owned by the Borrower or any guarantor of the Senior Loan Documents, without the Senior Lender's written consent or until such time as the Senior Lender's Loan has been paid in full.

In the event that the Subordinated Lender makes any additional loans to the Borrower or any guarantor of the Senior Loan Documents that are permitted by the Senior Lender, any such additional loans shall be subject to the terms of this Agreement, unless the Senior Lender agrees otherwise in writing.

8. **Modification of Subordinated Loan.** As long as the Senior Lender's Loan has not been paid in full, the Subordinated Lender agrees not to amend or modify the Subordinated Loan without Senior Lender's written approval if such modification or amendment results in an increase in the principal owed, an increase in the total obligation owed by Borrower to Subordinated Lender, or an increase the monthly payments due and owing to the Subordinated Lender.

9. **No Waiver.** Senior Lender may, in its sole discretion, take any action without affecting this Agreement, including, but not limited to, the following:

- i. Modifying the terms of the Senior Lender's Loan.
- ii. Granting an extension or renewal of the Senior Lender's Loan.
- iii. Deferring payments or entering into a workout agreement on the Senior Lender's Loan.
- iv. Releasing or substituting collateral securing the Senior Lender's Loan.
- v. Releasing or substituting the Borrower or any guarantor of the Senior Loan Documents.
- vi. Forbearing from collecting on existing collateral or requiring additional collateral.
- vii. Declaring a default on the Senior Lender's Loan and notifying the Subordinated Lender to stop accepting payments on the Subordinated Loan.
- viii. Agreeing to a release, compromise, or settlement of the Senior Lender's Loan.

10. **Notice.** Any notice required to be given under this Agreement shall be effective when actually delivered or received.

11. **Indulgences Not Waivers.** Neither the failure nor any delay on the part of any party hereunder to exercise any right, remedy, power, or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel, nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then only to the extent specifically stated in such writing.

12. **Effect of Bankruptcy.** This Agreement is intended to be enforceable as a subordination agreement under the United States Bankruptcy Code Section 510 notwithstanding the commencement of any bankruptcy or other insolvency proceeding by or against Borrower and, to the full extent permitted by law, shall apply with full force and effect to any indebtedness arising pursuant to debtor-in-possession financing arrangements or pursuant to financing arrangements entered into in connection with the confirmation of a plan of reorganization under Chapter 11 of the United States Bankruptcy Code. Subordinated Lender acknowledges and agrees that Subordinated Lender shall not seek relief from any automatic stay until the Senior Loan is paid in full. Subordinated Lender may not seek or request adequate protection or relief from the automatic stay imposed by section 362 of the United States Bankruptcy Code or other relief until the Senior Loan is paid in full. Any claim by a Subordinated Lender under section 507(b) of the United States Bankruptcy Code will be subordinate in right of payment to any claim of Senior Lender under section 507(b) of the United States Bankruptcy Code and any payment thereof will be deemed to be proceeds of Collateral.

13. **Successors and Assigns.** This Agreement applies to any successor to the Subordinated Lender or assignee of this Agreement or of the Subordinated Loan, including any bankruptcy trustee, receiver, guarantor, or surety of the Subordinated Lender.

14. **Termination.** This Agreement shall terminate when the Senior Lender's Loans have been paid in full.

15. **Authorization.** By the signatures below, each entity or person executing this Agreement represents and warrants to the other that they have the authority and are duly authorized to do so.

16. **Reaffirmation and Consent.** The Borrower hereby: (i) reaffirms all liability to the Senior Lender under the Senior Loan Documents, (ii) consents to the Senior Lender's execution of this Agreement; (iii) agrees to be bound by the terms of this Agreement; (iv) agrees that the Senior Lender has performed all of the Senior Lender's obligations under the Senior Loan Documents; and (v) releases the Senior Lender and its officers, employees, agents, representatives, attorneys, directors, successors and assigns from any and all liability to the Borrower associated with the Senior Loan Documents through the date hereof.

17. **Choice of Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Ohio. Further, the Borrower and Subordinated Lender consent to the jurisdiction and venue of the federal courts in and for Hamilton County, Ohio.

18. **WAIVER OF JURY TRIAL. THE SUBORDINATED LENDER AND BORROWER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR THE SENIOR LOAN DOCUMENTS,**

SUBORDINATED LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE SUBORDINATED LENDER AND BORROWER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE SENIOR LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE SUBORDINATED LENDER AND BORROWER. *AK* Initials

EXECUTED as of the date first above written. *Sub*

SUBORDINATED LENDER:

By: *Susan K. Bergman*
Susan K. Bergman, as an individual

STATE OF WA
COUNTY OF Snohomish

The foregoing instrument was acknowledged before me on this 19th day of January 2023 by Susan K. Bergman as the individual of 126 West Haven, on behalf of the _____

Dwain Pascoe
Notary Public

SENIOR LENDER:

PROVIDE, INC.

By: [Signature]
Angela Freeman,
Its Operations Manager

STATE OF Indiana }
COUNTY OF Boone }

The foregoing instrument was acknowledged before me on this 12th day of Jan., 2023, by Angela Freeman, as the Ops Manager of PROVIDE, INC., on behalf of the corporation.



[Signature]
Notary Public

BORROWER:

120 West Fairhaven LLC

By: Annika King ^{DOS}
sole
its ~~sole~~ member
inc

STATE OF WA }
COUNTY OF Skagit }

The foregoing instrument was acknowledged before me on this 19TH day of January 2023, by Annika King as the sole member of 120 West Fairhaven, LLC, on behalf of the _____.
D.B.S.

Dwain Rascoe
Notary Public

**First American**Commitment for Title Insurance
Washington - 2021 v. 01.00 (07-01-2021)

Commitment No. NCS-1159923-WA1

EXHIBIT A

The Land referred to herein below is situated in the County of Skagit, State of Washington, and is described as follows:

THAT PORTION OF THE NORTH 1/2 OF THE EAST 1/2 OF TRACT 43 OF "PLAT OF THE BURLINGTON ACREAGE PROPERTY", AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 49, RECORDS OF SKAGIT COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT 43 AND RUNNING THENCE WEST ALONG THE NORTH LINE THEREOF A DISTANCE OF 291.5 FEET;
THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID TRACT A DISTANCE OF 124 FEET;
THENCE EAST PARALLEL TO THE NORTH LINE OF SAID TRACT A DISTANCE OF 291.5 FEET TO THE EAST LINE THEREOF;
THENCE NORTH ALONG THE EAST LINE OF SAID TRACT, 124 FEET TO THE POINT OF BEGINNING,

EXCEPT THE EAST 150 FEET THEREOF.

ALSO EXCEPT THE WEST 5 FEET THEREOF CONVEYED TO THE CITY OF BURLINGTON BY DEED DATED SEPTEMBER 9, 1977 AND RECORDED SEPTEMBER 9, 1977 AS AUDITOR'S FILE NO. 864623.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON