

UNOFFICIAL COPY



0807434095

Doc#: 0807434095 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/14/2008 03:03 PM Pg: 1 of 9

Recording Requested by and
When Recorded Mail to:

SomerCor 504 Inc.
David Frank
601 S. LaSalle, Suite 510
Chicago, IL 60605

TITLE OF DOCUMENT

THIRD PARTY LENDER AGREEMENT

Property of Cook County Clerk's Office

REC
B-m

UNOFFICIAL COPY**THIRD PARTY LENDER AGREEMENT**

THIS THIRD PARTY LENDER AGREEMENT (Agreement) is dated this 25 day of February, 2008, by and between Bank of Shorewood (Third Party Lender) whose address is 700 W. Jefferson, Shorewood, IL 60431 and SomerCor 504 Inc. (CDC) whose address is 601 S. LaSalle, Suite 510, Chicago, IL 60605.

RECITALS

1. As described in the "Authorization for Debenture Guarantee (SBA 504 Loan)," as amended (Authorization), and as detailed below, the Third Party Lender will provide term financing (Third Party Loan), and the CDC will provide a loan (the 504 Loan) funded by a debenture issued by the CDC and guaranteed by the U.S. Small Business Administration (SBA), to Borrower and Operating Company, if any, identified below (collectively, Borrower) for purposes of financing the Project described in the Authorization, which involves the acquisition and/or improvement of the real and/or personal property described below, and in Exhibit A attached hereto and incorporated herein by reference (Project Property):

SBA Loan #: 30775060-08
 SBA Loan Name: Stage 83
 Borrower: 10900 South Route 83, LLC
 Operating Company (if any): Dearcangelis Lounge, Inc. DBA Stage 83
 Third Party Loan Amount: \$ 1,186,500.00
 Term of Third Party Loan: 10.0
 If Real Property -- Project Property Address:
 Street address: 10900 S Archer Ave
 City, State, Zip code: Lemont, IL, 60439-
 Attach Legal description as Exhibit A

If Personal Property: Describe property, including name of manufacturer, name of equipment, and applicable serial number(s) or other identifying numbers for property valued at \$5000 or more. If needed, attach a more complete description as Exhibit A.

2. The parties have required the Borrower to grant liens or security interests in the Project Property to secure the separate loans advanced by the parties (Common Collateral), and the lien or security interest held by CDC (CDC Lien) will be junior and subordinate to the lien or security interest held by the Third Party Lender (Third Party Lender Lien), unless CDC and SBA agree otherwise in writing.

UNOFFICIAL COPY

TERMS AND CONDITIONS

In consideration of the above factual recitals, the mutual agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Amount of Third Party Loan. The Third Party Lender represents that the Third Party Loan is fully advanced and does not and will not exceed the amount allowed in the Authorization.
2. Subordination of 504 Loan. CDC agrees to make the 504 Loan to the Borrower, subject to SBA's approval, and accept a junior and subordinate position in the Common Collateral upon the condition that Third Party Lender executes this Agreement and makes the Third Party Loan.
3. Accurate Information. The Third Party Lender warrants and represents that all information provided to CDC, including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Third Party Lender has not withheld any material information. Third Party Lender acknowledges that for purpose of this transaction, CDC is acting on behalf of the SBA, an agency in the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by CDC. Third Party Lender further acknowledges that any false statements to CDC can be considered a false statement to the SBA, and that CDC and the SBA are relying upon the information submitted by the Third Party Lender.
4. Waiver of Provision Not to Encumber Common Collateral. If any of the Third Party Lender's documents evidencing the Third Party Loan and/or Third Party Lender Lien contain provisions that prohibit further encumbrances on the Common Collateral or subordinate debt by the Borrower or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral, then Third Party Lender waives its right to enforce such provisions as they may apply to the 504 Loan and the CDC Lien.
5. Compliance with 504 Loan Program Requirements. Third Party Lender agrees that all documents evidencing the Third Party Loan and the Third Party Lender Lien will comply with the 504 Loan Program requirements as established by the SBA and including those identified in the following subparagraphs and in the event that it is determined that one or more of the provisions in such documents do not comply with any of these 504 Loan Program requirements, Third Party Lender agrees to waive the right to enforce all such provisions.
 - a. No Open-Ended Features and No Future Advances. The Third Party Loan must not be open-ended. After completion of the project, the Third Party Lender may not make future advances under the Third Party Loan except expenditures to collect the amounts due the Third Party Loan notes, maintain collateral and protect the Third Party Lender's lien position on the Third Party Loan.
 - b. No Early Call or Demand Provisions. Third Party Lender agrees that Third Party Loan documents must not contain any early call feature or permit the Lender to make demand prior to maturity unless the loan is in default.
 - c. No Cross-Collateralization. Third Party Lender agrees that the Common Collateral is not now, and will not be in the future, security for any other financing provided by Third Party Lender to Borrower other than the Third Party Loan in a superior position to that of the CDC lien unless authorized in writing by CDC and SBA.

UNOFFICIAL COPY

d. No Cross-Default. During the term of the Third Party Loan, Third Party Lender will not exercise any cross-default, "deem at-risk," or any other provisions in documents evidencing the Third Party Loan or Third Party Lender Lien which allow Third Party Lender to make demand prior to maturity unless the loan is in default.

e. Maturity and Balloon Payments. The Third Party Loan has a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be clearly identified in the Authorization.

f. Reasonable Interest Rate. The Third Party Loan has a reasonable interest rate which does not and will not exceed the maximum interest rate for Third Party Loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this agreement.

6. No Preference. No Third Party Lender shall establish a preference beyond its rights as a senior lender on the Third Party Loan without the prior written consent of CDC/SBA. See 13 C.F.R. §120.10 for a definition of preference.

7. Notice of Default under the Third Party Loan. In the event of a default under the Third Party Loan or Third Party Lien, Third Party Lender must give CDC and SBA written notice, referencing the loan number for the 504 loan, of such default within thirty (30) days of the event of default and at least sixty (60) days prior to Third Party Lender's foreclosure upon the Common Collateral.

8. Certification as to Default Interest Rate as Against Borrower. Third Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate published by SBA in the Federal Register from commercial financial institutions in effect as of the date of this Agreement. SBA will only pay the interest rate on the note in effect before the date of Borrower's default.

UNOFFICIAL COPY

9. Subordination to 504 Loan and CDC Lien, of Amounts Attributable to Default Provisions.

a. The term "Default Charges" used in this paragraph includes, but is not limited to, prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

b. To the extent the Third Party Lender Lien secures any amounts attributable to Default Charges, which may exist in the Third Party Loan and Third Party Lender Lien, Third Party Lender Lien is and will be subordinate to the 504 Loan and the CDC Lien. This subordination applies only to CDC and SBA and their successors and assigns, and in no event shall be applicable to Borrower or any guarantor of the Third Party Loan.

c. In the event of default under the Third Party Loan, CDC or SBA may bring the Third Party Loan current or may acquire the Third Party Loan secured by the Third Party Lender Lien. Third Party Lender agrees that in either of these circumstances, the amount to bring the Third Party Loan current or the purchase price of that loan will be net of all amounts attributable to the Default Charges so subordinated to the 504 Loan and the CDC Lien. Third Party Lender further agrees that if it receives from CDC/SBA any amounts attributable to such Default Charges, Third Party Lender holds such funds in trust for SBA and will remit such funds to SBA as soon as possible. Should CDC or SBA not purchase the Third Party Loan but rather bring the Third Party loan current, Default Charges on the Third Party Loan may remain due and owing from the Borrower.

Paragraph 10 is optional and is applicable only if marked

10. Liquidation. In the event that either the Third Party Loan or the 504 Loan is declared in default, Third Party Lender and CDC and SBA agree to cooperate in liquidating and/or selling the Collateral. Third Party Lender agrees to (a) accept a U.S. Treasury check(s) in connection with any purchase of Third Party Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Third Party Loan; (c) to provide CDC and SBA with copies of any appraisals, environmental investigations, or title examinations or searches of the Collateral conducted by or for Third Party Lender; and (d) to provide any other information about Borrower or the Third Party Loan requested by CDC and SBA in writing.

11. Waiver of Right to Indemnification by SBA or CDC. If Third Party Lender's documents contain provisions granting Third Party Lender the right to indemnification by subsequent owners of the Project Property, then Third Party Lender waives its right to enforce such provisions against SBA or CDC in the event SBA or CDC acquires title to the Project Property through foreclosure of the CDC Lien, acceptance of a deed in lieu of foreclosure, or otherwise.

Paragraph 12 is optional and should be marked if CDC uses Third Party Lender to perform Customer Identification.

12. Bank Regulatory Issues. If Third Party Lender is regulated by one of the Federal functional regulators (Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, or National Credit Union Administration), Third Party Lender represents that it is subject to the Joint Final Rule on Customer Identification Programs (CIP) in 31 C.F.R. 103.121 and that it or its agent will perform with respect to the Borrower the specified requirements of its CIP.

UNOFFICIAL COPY

13. No Implied Third Party Beneficiaries. To the extent there is a conflict between this Agreement and any provision in any agreement either Party may have with a third party, including but not limited to, Borrower, the terms and conditions in this Agreement shall supercede any such provision. The parties agree that SBA may enforce this agreement as a third party beneficiary, and further agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower and Guarantor(s).
14. Successors and Assigns. This Agreement will inure to the benefit of and bind the respective parties to this Agreement, and their successors and assigns, including any party acquiring the Third Party Loan and Third Party Lender Lien by sale, assignment, or other transfer from Third Party Lender. Third Party Lender agrees that CDC may assign this Agreement to the SBA, and waives all rights to contest such assignment.
15. Federal Law. When SBA is the holder of the loan instruments evidencing the 504 Loan and any security for that loan (including but not limited to the CDC Lien on the Common Collateral), this Agreement and all such instruments will be construed in accordance with Federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. The Third Party Lender may not claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.
16. Termination. This document will be released and terminated upon the payment in full of either the Third Party Loan or the 504 loan and all costs related thereto.
17. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.
18. Validity of Provisions. In the event that any provision of this Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain valid and enforceable.
19. Revision of this Agreement. Both Third Party Lender and CDC agree that this Agreement is a standard SBA Form, and, as such, neither party has authority to modify or delete any provision in this Agreement, or add any additional provisions, without prior written authorization from the SBA.
20. Authority to Execute Agreement. The persons signing below certify that they have been duly authorized to execute this Agreement on behalf of their respective party.

UNOFFICIAL COPY

Bank of Shorewood

By: *Cheri Armstrong*

Print Name: Cheri Armstrong

Title: Loan Officer

SomerCor 504 Inc.

By: *DF*

Print Name: David Frank

Title: President

ASSIGNMENT TO SBA

CDC assigns this Third Party Lender Agreement to SBA.

By: *DF*

Date: 2/25/08

Print Name: David Frank

_____, authorized officer of CDC.

Attest: *Wendy Dowd*

Property of Cook County Clerk's Office

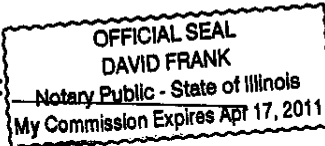
UNOFFICIAL COPY

The undersigned, a Notary Public in and for said County and the State aforesaid, does hereby certify that Cheri Armstrong, the Loan officer/VP of Bank of Shorewood, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that she signed and delivered said instrument as her free and voluntary act as such officer, and as the free and voluntary act of the aforesaid company, for the use and purpose herein set forth.

GIVEN under my hand and notarial seal this 25th day of February, 2008.

(NOTARIAL SEAL)

Notary Public: [Signature]

My commission expires: 

The undersigned, a Notary Public in and for said County and the State aforesaid, does hereby certify that David Frank, the President of SonarCor Sol, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act as such officer, and as the free and voluntary act of the aforesaid company, for the use and purpose herein set forth.

GIVEN under my hand and notarial seal this 25th day of February, 2008.

(NOTARIAL SEAL)

Notary Public: Winifred Dowd

My commission expires: May 2, 2008



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

Legal Description: Parcel 1: The North 121.17 feet of Lot 1 in Doolin and Kirk's Resubdivision of the East 404.7 feet of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 14, Township 37 North, Range 11 East of the Third Principal Meridian, (except Lots 1 to 5, both inclusive, in Christian Boes Subdivision of certain parts thereof) and excepting that part of said Lot 1 in said Resubdivision falling within a tract described as follows: beginning 833.6 feet North of the Southeast corner of said Section 14; thence West 300 feet; thence North 50 feet; thence East 300 feet; thence South 50 feet to the point of beginning, in Cook County, Illinois.

Parcel 2: That part of Lot 2 in Doolin and Kirk's Resubdivision of the East 404.7 feet of the Southwest Quarter of the Southeast Quarter together with the Southeast Quarter of the Southeast Quarter (except Lots 1 to 5, both inclusive, in Christian Boes Subdivision of certain parts thereof) of Section 14, Township 37 North, Range 11 East of the Third Principal Meridian according to the plat thereof recorded August 31, 1889 as document 1149383 in Book 37 of Plats, Page 18, described as follows: beginning at the Southeast corner of said Lot 2 on the center line of Sag-Lemont Road; thence North along the East line of said Lot 2 a distance of 436 feet to a point for a point of beginning; thence Westerly and parallel to the Southerly line of said Lot 2 a distance of 300 feet; thence Northerly on a line parallel to the East line of said East line extended North a distance of 415.40 feet more or less to the North line of said Lot 2; thence East along the North line of said Lot 2 to its point of intersection with the Southwesterly line of the certain strip of land dedicated for road purposes by instrument dated June 3, 1937 and recorded June 11, 1937 as document 12010930; thence Southeasterly along the said Southwesterly line of that certain strip dedicated for road purposes by instrument recorded as document 12010930 to its point of intersection with the North line of Lot 1 of said Doolin and Kirk's Resubdivision; thence West along the said North line of Lot 1 to the Northwest corner of said Lot 1, thence South along the West line of Lot 1 (being also an East line of said Lot 2) to the point of beginning, (excepting from said aforesaid parcel that part thereof described as follows: beginning at the point of intersection of the North line of said Lot 2 with the Westerly right of way of a public highway dedicated by instrument dated June 3, 1937 and recorded June 11, 1937 as document number 12010930; thence Southeasterly along a curve to the right having a radius of 1453.75 feet and a chord bearing of South 42 degrees 49 minutes 39 seconds East, a distance of 21.83 feet to a point in the Westerly right of way of the aforementioned public highway; thence South 35 degrees 36 minutes 32 seconds West a distance of 52.25 feet to a point; thence North 29 degrees 50 minutes 57 seconds West a distance of 66.96 feet to a point in the North line of Lot 2; thence North 89 degrees 30 minutes 33 seconds East along the North line of said Lot 2, a distance of 48.92 feet to the point of beginning, in Cook County, Illinois.

Permanent Index #'s: 22-14-401-010-0000 Vol. 062 and 22-14-401-026-0000 Vol. 062

Property Address: 10900 Route 83, Lemont, Illinois 60439