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After recording, please mail to:  
Continuum Capital Funding, LLC  
Attn: Brian Lignelli  
520 W. Erie Ste 300-S  
Chicago, Illinois 60654

Doc#: 1123129056 Fee: \$70.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/19/2011 01:26 PM Pg: 1 of 18

11-0203

**SUBORDINATION AND  
INTERCREDITOR AGREEMENT**

THIS SUBORDINATION OF MORTGAGE AND INTERCREDITOR AGREEMENT ("Agreement") is dated as of the 16th day of August, 2011, by and between **Continuum Capital Funding, LLC**, an Illinois limited liability company ("**Senior Lender**"), and **June Meeks**, an individual ("**Junior Lender**").

**RECITALS:**

A. **SUGARS BAR, LLC**, an Illinois limited liability company ("**Borrower**"), is the owner of certain real property legally described on Exhibit A attached hereto located in Cook County, Illinois and all improvements thereon (such real property, together with all other collateral for the Senior Loan (as such term is defined in Recital B) of any kind, are referred to herein collectively as the "**Property**").

B. Senior Lender has agreed to make a loan in the stated principal amount of \$50,000 (the "**Senior Loan**"), which Senior Loan is (a) evidenced by a Promissory Note (Secured) from Borrower to Senior Lender dated as of the date hereof (the "**Senior Note**") in the original principal amount of \$50,000.00 (b) secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and UCC Fixture Filing executed by Borrower and encumbering the Property (the "**Senior Mortgage**") and (c) also secured or guaranteed by the other documents described on Exhibit B attached hereto. The Senior Note, the Senior Mortgage and all of the documents described on Exhibit B attached hereto, together with any extensions, modifications, substitutions and consolidations thereof (to the extent permitted hereunder), are hereinafter collectively referred to as the "**Senior Loan Documents**."

C. Junior Lender has agreed to make a loan in the principal amount of \$50,000 (the "**Junior Loan**") to Borrower, which Junior Loan is evidenced by a Promissory Note from Borrower to Junior Lender dated as of the date hereof (the "**Junior Note**") in the original principal amount of \$50,000 and is secured or guaranteed by (a) a Junior Mortgage executed by Borrower and encumbering the real property described in Exhibit A (the "**Junior Mortgage**") and (b) certain other documents described on Exhibit C attached hereto. The Junior Note, the

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Junior Mortgage, and all of the documents described on Exhibit C attached hereto, together with any extensions, modifications, substitutions and consolidations thereof (to the extent permitted hereunder), are hereinafter collectively referred to as the “**Junior Loan Documents**”.

D. **Brenda Sims**, an individual (collectively, together with all other persons or entities, other than Borrower that have any personal liability for the payment or performance of any obligations under the Senior Loan Documents, the “**Guarantor**”) have guaranteed or otherwise assumed personal liability for the payment and/or performance of certain obligations under the Senior Loan Documents (collectively, the “**Guarantor’ Senior Obligations**”) and under the Junior Loan Documents (collectively, the “**Guarantor’ Junior Obligations**”).

E. It is a condition precedent to Senior Lender making the Senior Loan that: (a) the payment and performance of all obligations with respect to the Senior Loan remain at all times prior and superior to the payment and performance of all obligations with respect to the Junior Loan, with respect to both the Borrower’s and the Guarantor’ obligations thereunder in accordance with the terms of this Agreement, (b) the Senior Loan Documents remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the Junior Mortgage and the other Junior Loan Documents in accordance with the terms of this Agreement, (c) unless and until the Senior Loan is paid and performed in full, except as otherwise expressly permitted hereunder, Junior Lender shall have no right to receive any payment with respect to the Junior Loan, except as set forth in Section 3 below, (including, without limitation, any payment by the Guarantor with respect to the Guarantor’ Junior Obligations) or to exercise any rights or remedies with respect to the Junior Loan, and (d) Junior Lender enters into the agreements with Senior Lender set forth herein.

F. It is a condition precedent to Junior Lender making the Junior Loan that, subject to the terms of this Agreement, Senior Lender (a) consents to the making of the Junior Loan, (b) consents to the encumbrance of the Property pursuant to the Junior Mortgage and other Junior Loan Documents, (c) consents to the execution, delivery and performance of the Junior Loan Documents (so long as same do not violate any of the terms or provisions of this Agreement or the Senior Loan Documents) and (d) enters into the agreements with Junior Lender set forth herein.

NOW, THEREFORE, in order to induce Senior Lender to continue to make the Senior Loan and Junior Lender to make the Junior Loan, and in consideration of the mutual agreements and acknowledgements contained herein, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The recitals to this Agreement are incorporated herein and made a part hereof by this reference thereto.

2. **Consent of Senior Lender.** Senior Lender consents to the making of the Junior Loan, the encumbrance of the Property pursuant to the Junior Mortgage and other Junior Loan Documents, subject to the restrictions set forth herein. Senior Lender further consents to the terms and provisions of the Junior Loan Documents and the execution, delivery, performance and observance thereof, but only to the extent that such terms and provisions can be performed and observed in a manner consistent with the terms and provisions of this Agreement. If and to the extent that the performance or observance of any of the terms or provisions of the Junior

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Loan Documents would be contrary to or inconsistent with any of the terms or provisions of this Agreement, then such terms and provisions of the Junior Loan Documents shall not be observed or performed unless and until all of the obligations of Borrower set forth in the Senior Loan Documents have been paid and performed in full. Neither the review of nor consent to any of the Junior Loan Documents by Senior Lender shall be deemed approval or authorization of performance or observance of any term or provision of the Junior Loan Documents that is contrary to or inconsistent with the Senior Loan Documents, except to the extent expressly permitted under this Agreement. Notwithstanding the foregoing, the mere existence of any term or provision in the Junior Loan Documents that is inconsistent with the Senior Loan Documents shall not constitute a default under the Senior Loan Documents so long as neither Borrower nor any Guarantor observes or performs such terms or provisions prior to the payment and performance of the Senior Loan Documents.

3. Agreements of Junior Lender. Junior Lender hereby acknowledges and agrees that until all of the obligations of Borrower set forth in the Senior Loan Documents have been paid and performed in full:

(a) Each of the security interests and encumbrances created by the Junior Mortgage and the other Junior Loan Documents shall be subject and subordinate to the liens, security interests and encumbrances created by the Senior Loan Documents in each and every respect, and shall be limited in the manner set forth in the other provisions of this Agreement.

(b) Except for the liens, security interests and encumbrances created by the Junior Mortgage and the other currently existing Junior Loan Documents, Junior Lender shall not be entitled to obtain or maintain any other mortgage or other liens, security interests or encumbrances on, in or against the Property, or any part thereof, whether voluntarily or involuntarily, by subrogation, express agreement, court order or otherwise (including, without limitation, any which may arise with respect to real estate taxes, assessments or other governmental charges); provided, however, that the foregoing shall not be deemed to prohibit any amendment to the Junior Loan Documents that is not a Prohibited Junior Amendment pursuant to Paragraph 7(b) below.

(c) Junior Lender shall not exercise any rights or remedies available to Junior Lender upon the occurrence of a breach or default under the Junior Loan Documents, whether available at law, in equity, under bankruptcy or insolvency laws (except for the filing and voting of proofs of claim or the exercising of other rights of Junior Lender expressly permitted under Paragraph 11 below), pursuant to the express provisions of the Junior Loan Documents or otherwise, including, without limitation, the right to foreclose the Junior Mortgage or any other lien or security interest in favor of Junior Lender, the right to the appointment of a receiver or the appointment of Junior Lender as mortgagee in possession, or the institution of any involuntary bankruptcy proceedings; subject to the limitations set forth herein (including the right to accelerate the Junior Loan and pursue an Enforcement Action, as permitted under Paragraph 5 below).

(d) (1) all amounts due to Junior Lender under the Junior Loan and rights with respect thereto are and shall at all times continue to be expressly subject and subordinate

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in right of payment to the indebtedness of, and all amounts due from, Borrower and/or Guarantor evidenced by or set forth in the Senior Loan Documents (including the obligations of the Guarantor for the payment of the Guarantor's Senior Obligations) and any and all obligatory advances and Protective Advances advanced or incurred in accordance therewith, and (2) until all of Borrower's obligations under the Senior Loan Documents have been paid and performed in full, other than the payments set forth below, no payment whatsoever shall be made to Junior Lender by or on behalf of Borrower or any Guarantor for or on account of any amount due under the Junior Loan Documents. For purposes of this Agreement, Borrower's obligations shall not be deemed to be paid and performed until Senior Lender has received full payment of all amounts due Senior Lender under the Senior Loan Documents. In the event any payment of amounts due under or with respect to the Junior Loan Documents that are subordinated and prohibited as set forth above is made, Junior Lender shall hold the same in trust for Senior Lender and promptly pay and deliver same to Senior Lender for the benefit of Senior Lender. Furthermore, in the event that after the Senior Loan is repaid in full: (a) Borrower or any Guarantor becomes obligated to pay to Senior Lender any amounts due under the Senior Loan Documents for any reason, including, without limitation, because of an indemnity or other obligation that survives repayment of the Senior Loan or because Senior Lender is required to surrender any amount previously paid under the Senior Loan Documents because of a preference, or other bankruptcy or insolvency defense, or otherwise; and (b) Junior Lender has received any amount due under or with respect to the Junior Loan after the date the Senior Loan was deemed to have been repaid in full, Junior Lender shall pay to Senior Lender the amount owing under the Senior Loan Documents up to the amount so received by Junior Lender.

Notwithstanding the foregoing, prior to the occurrence of an event of default under the Senior Loan Documents, Borrower may pay to Junior Lender, and Junior Lender may receive for its benefit so long as such payment does not result in the occurrence of an event of default under the Senior Loan Documents, the following payments:

- (i) monthly Interest Payments (as defined in the Junior Note); and

Without limiting the generality of the foregoing, in the event that, prior to the time that the obligations of Borrower set forth in the Senior Loan Documents have been paid and performed in full: (i) Junior Lender receives any payment of any kind whatsoever other than a payment permitted under Paragraph 3(d) above from Borrower or any Guarantor; or (ii) Junior Lender acquires any lien on, security interest in or other encumbrance against any of the Property (other than the liens, security interests and other encumbrances set forth in the Junior Loan Documents as of the date hereof) or any assets of any Guarantor, Junior Lender shall immediately take all action reasonably required by Senior Lender to pay such payment to Senior Lender, but only to the extent of the outstanding amount of the Senior Debt, or to release and remove such lien or other encumbrance. The term "**Protective Advances**" means any advances necessary in Senior Lender's or Junior Lender's reasonable judgment to protect the security for the Senior Loan or the Junior Loan, as the case may be, such as, by way of example and not limitation, advances to pay real estate taxes, insurance premiums or necessary repair, maintenance or construction costs or amounts advanced by Junior Lender in connection with its exercise of its rights hereunder to cure defaults under the Senior Loan Documents.



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(e) Junior Lender agrees and acknowledges that it shall not exercise the remedies set forth in the Junior Note until such time as all Senior Loan Obligations have been paid in full to Senior Lender.

## 4. Rights and Agreements of Senior Lender.

(a) Senior Lender may, without affecting the senior priority of the Senior Loan Documents or other rights and benefits afforded to Senior Lender herein, in its sole and absolute discretion, and without the approval of Junior Lender and without regard to any effect upon the Junior Loan or the collateral for the Junior Loan: (i) release or compromise any obligation in the Senior Note or Senior Loan Documents, or (ii) release its liens in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing repayment of the Senior Note.

## 5. Notice of Defaults; Right to Cure.

(a) Junior Lender shall give Senior Lender notice of any default by Borrower under any of the Junior Loan Documents at the time such notice is given to Borrower and shall promptly provide to Senior Lender copies of all other notices and correspondence given or received by Junior Lender relating to such default and copies of any foreclosure proceedings relating to the O'Connell Mortgage or any other collateral given as security for the Junior Loan. Notwithstanding anything in any of the Senior Loan Documents to the contrary, the occurrence of a default or an event of default under the Junior Loan Documents shall not be, in and of itself, a default or event of default under the Senior Loan Documents; provided, however, Junior Lender acknowledges and agrees that an event, circumstance or condition that constitutes a default or event of default under the Junior Loan Documents may, independently, constitute a default or event of default under the Senior Loan Documents.

## 6. Remedies of the Junior Lender.

Junior Lender shall not commence any remedial action against Borrower or any of the Guarantor (or against any assets of Borrower or any of the Guarantor) pursuant to the Junior Loan Documents following a breach or default by Borrower thereunder. The foreclosure of the Junior Mortgage or the appointment of a receiver or Junior Lender as mortgagee in possession or, any other remedial action against Borrower or any of the Guarantor (or against any assets of Borrower or any of the Guarantor) under the Junior Loan Documents or otherwise, without the prior, written consent of Senior Lender shall constitute an event of default under the Senior Loan and the Senior Loan Documents and under this Agreement at the time such enforcement or remedial action is initiated.

## 7. Representations of Junior Lender. Junior Lender hereby represents and warrants to and covenants and agrees with Senior Lender as follows:

(a) Junior Lender has delivered to Senior Lender true and complete fully executed copies of the Junior Loan Documents, such documents have not been amended, modified or supplemented in any way and such documents constitute (i) the entire

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agreement of Junior Lender and Borrower and (ii) all of the documents evidencing, securing, guaranteeing or governing the Junior Loan.

(b) Without Senior Lender's prior, written consent, which may be denied in the Senior Lender's sole and absolute discretion, Junior Lender shall not enter into any Prohibited Junior Amendment (as defined below). Junior Lender may enter into any modification or amendment of the Junior Loan Documents that is not a Prohibited Junior Amendment; provided, however, that the modified and amended Junior Loan Documents shall otherwise remain subject to the terms, conditions and limitations set forth herein. For purposes hereof, "**Prohibited Junior Amendment**" means any amendment or modification of the Junior Loan Documents which (i) expands the rights of the holder of the Junior Loan Documents to advance additional indebtedness beyond that permitted under the Junior Loan Documents in effect on the date hereof (which permitted additional advances include, without limitation, Protective Advances), (ii) shortens the term of the Junior Loan, (iii) increases the total payments (including both principal and interest) required under the Junior Loan Documents or recharacterizes principal payments as interest, fees or other amounts, (iv) increases the rate at which interest accrues on the Junior Loan, (v) shortens the cure periods available to Borrower, (vi) imposes additional fees, prepayment premiums or penalties beyond those amounts or rights provided in the existing Junior Loan Documents, (vii) limits the contractual ability of Borrower to make any payment of principal, interest or other amounts due under the Senior Loan Documents, (viii) creates any new defaults or events of default, (ix) grants the holders thereof any additional lien or encumbrance on or security interest in the Property or in any other property that secures the Senior Loan, or (x) grants the holders thereof a lien or encumbrance on or security interest in any property owned by any Guarantor. Copies of any amendments to the Junior Loan Documents will be delivered to Senior Lender upon execution thereof, regardless of whether consent thereto is required.

(c) Without the prior written consent of Senior Lender, no additional advances will be made under the Junior Loan Documents other than Protective Advances.

(d) Notwithstanding any other provisions in the Junior Loan Documents to the contrary, until the payment and performance in full of all of Borrower's obligations under the Senior Loan Documents, Junior Lender agrees to assign and release unto Senior Lender or any other holder or holders of the Senior Loan all of its right, title and interest or claim in and to (i) all insurance policies and insurance proceeds in respect to the Property for application pursuant to the provisions of the Senior Mortgage and (ii) all condemnation awards made for any taking of any part of the Property for application pursuant to the provisions of the Senior Mortgage.

(e) If Junior Lender obtains any assets of Borrower or any Guarantor and is not entitled to apply such assets to the Junior Loan in accordance with the provisions of this Agreement, Junior Lender will hold such assets in trust for, and immediately pay, deliver and assign to Senior Lender such assets for application to the Senior Loan.

(f) Junior Lender, as the holder of the Junior Loan, shall not at any time prior to the payment and performance in full of all of Borrower's obligations under the Senior

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Loan Documents, demand or retain any voluntary or optional payment, prepayment, redemption or repurchase of any portion of the Junior Loan from Borrower; provided, however, that the foregoing shall not be deemed to prohibit (i) the receipt by Junior Lender of any payment permitted under Paragraph 3(d) above.

(g) If Senior Lender or any other the holder or holders of the Senior Loan, or their agents, exercise any right or take any remedial action pursuant to the terms and provisions of the Senior Mortgage or the Senior Loan Documents, Junior Lender expressly waives any defenses or claims it may have as a mortgagee, creditor or otherwise against Senior Lender or any other holder of all or any part of the Senior Loan, in connection with such act by Senior Lender or any other holder or holders of the Senior Loan, or their agents, other than defenses or claims predicated on (i) a breach of this Agreement by Senior Lender or the holder of the Senior Loan; or (ii) bad faith or willful misconduct by Senior Lender or the holder of the Senior Loan.

The foregoing provisions are solely for the purpose of defining the relative rights of the holder or holders of the Junior Loan and the holder or holders of the Senior Loan, and nothing herein shall impair, as between the Borrower and Junior Lender, the obligation of the Borrower, which is unconditional and absolute, to pay the Junior Loan in accordance with its terms, nor shall anything herein prevent Junior Lender from exercising all remedies otherwise permitted by applicable law or under the Junior Note, Junior Mortgage or other Junior Loan Documents, subject to the provisions of this Agreement.

8. Representations of Senior Lender Senior Lender hereby represents to Junior Lender as follows:

(a) Senior Lender has delivered to Junior Lender true and complete fully executed copies of the Senior Loan Documents, and such documents have not been amended, modified or supplemented in any way and such documents constitute (i) the entire agreement of Senior Lender and Borrower and (ii) all of the documents evidencing, securing, guaranteeing or governing the Senior Loan.

The foregoing provisions are solely for the purpose of defining the relative rights of the holder or holders of the Senior Loan and the holder or holders of the Junior Loan, and nothing herein shall impair, as between the Borrower and Senior Lender, the obligation of the Borrower, which is unconditional and absolute, to pay the Senior Loan in accordance with its terms, nor shall anything herein prevent Senior Lender from exercising all remedies otherwise permitted by applicable law or under the Senior Note, Senior Mortgage or other Senior Loan Documents, subject to the provisions of this Agreement.

9. Transfers of the Senior Loan or the Junior Loan.

(a) Senior Lender shall have an absolute right to sell, transfer, assign, pledge or hypothecate the Senior Loan, or any interest therein, in whole or in part, to any institutional lender

(b) Junior Lender will not assign, sell, transfer or pledge any or all of the Junior Loan or any portion thereof or interest therein or any of the Junior Loan

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Documents without the prior consent of Senior Lender, which may be withheld in Senior Lender's sole discretion, so long as the Senior Loan remains outstanding. Notwithstanding the foregoing, and provided that any such sale, transfer, assignment, pledge or hypothecation of the Junior Loan shall be subject in all events to the terms and provisions of this Agreement, Junior Lender shall, without the prior consent of the Senior Lender, have the right to assign and transfer all or any portion of Junior Lender's interest in the Junior Loan and in all of the Junior Loan Documents to any entity controlling, controlled by or under common control with Junior Lender (as it is currently organized, owned and controlled).

## 10. Bankruptcy Proceedings.

(a) In the event of any proceedings to liquidate, dissolve or wind up the Borrower or any Guarantor, or of any execution, sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or other similar proceedings relative to the Borrower or any Guarantor, or its or his property (a "**Bankruptcy Proceeding**"), the Senior Loan shall be preferred in payment over the Junior Loan, and the Senior Loan shall first be paid in full before any payment is made upon the Junior Loan; and in any such event any payment or distribution of any kind or character, whether in cash, property or securities (other than in securities or other evidences of indebtedness, the payment of which is subordinated to the Senior Loan to the same extent as herein provided), which shall be made upon or in respect of the Junior Loan as a result of any such proceeding, shall be paid over first to the holder or holders of the Senior Loan for application in payment thereof unless and until the Senior Loan shall have been paid or satisfied in full.

(b) Junior Lender, as the holder of the Junior Loan, undertakes and agrees for the benefit of Senior Lender and each holder of the Senior Loan to execute, verify, deliver and file any consents or other instruments in form and content reasonably satisfactory to Junior Lender which Senior Lender may at any time reasonably require in connection with any Bankruptcy Proceeding in order to effectuate the agreements contained herein;

(c) Junior Lender shall vote in favor of, and not against, any and all actions taken by Senior Lender in any bankruptcy proceeding to permit the commencement or continuation of any foreclosure (subject to the terms and provisions of Paragraph 11 hereof); and

(d) Junior Lender shall not propose any plan or vote to confirm or take any other action in support of any plan or other course of action proposed by Borrower or any other party (other than Senior Lender) which would have the effect of (A) impairing the priority or lien of the Senior Loan, (B) denying, impeding or delaying Senior Lender's efforts to collect the Senior Loan, or (C) delaying, preventing, limiting, requiring a reduction in the amount of or impairing Senior Lender's collection of all or any portion of the Senior Loan. The foregoing shall not be deemed to prohibit Junior Lender from proposing or voting for a plan that has been expressly agreed to in writing by Senior Lender in its sole and absolute discretion.



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11. Intentionally omitted.

12. Intentionally omitted.

13. Non-Impairment of Agreement. No right of Senior Lender or any other holder or holders of the Senior Loan to enforce the subordination of the Junior Loan Documents, or the Junior Loan, as herein provided shall at any time or in any way be affected or impaired by any failure to act on the part of the Borrower or any Guarantor, or by any noncompliance by the Borrower or any Guarantor with any of the terms, provisions and covenants of the Junior Loan or the Junior Loan Documents, regardless of any knowledge thereof with which Senior Lender or any other holder or holders of the Senior Loan may have or otherwise be charged. No right of Junior Lender to enforce the provisions of this Agreement against Senior Lender or any other holder or holders of the Senior Loan shall at any time or in any way be affected or impaired by any failure to act on the part of the Borrower or any Guarantor, or by any noncompliance by the Borrower or any Guarantor with any of the terms, provisions and covenants of the Senior Loan or the Senior Loan Documents, regardless of any knowledge thereof with which Junior Lender or any other holder or holders of the Junior Loan may have or otherwise charged. The foregoing provisions of this Paragraph are not intended to modify or otherwise affect the relative rights and priorities between Junior Lender, on the one hand, and Senior Lender, on the other hand, as set forth in the other provisions of this Agreement.

14. Authority. Each party hereby represents and warrants to the other that the party making such representation has full power and authority to enter into and perform its obligations hereunder, that this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligations of such party enforceable in accordance with its terms.

15. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be received when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

To Senior Lender: Continuum Capital Funding, LLC  
520 W Erie St., Ste. 300-S  
Chicago, IL 60654  
Attn: Brian Lignelli

With copy to: Law Offices of Ian B. Hoffenberg  
221 N LaSalle, Suite 1300  
Chicago, IL 60601  
Attn: Ian B. Hoffenberg

If to Junior Lender: June Meeks  
12359 S. Racine Second Floor  
Calumet Park, IL 60827  
Attn: Ms. Meeks

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With copies to:

Ronald D. Babb  
Attorney at Law  
12757 Western Avenue  
Suite 207  
Blue Island, IL 60406

Attn: Ronald D. Babb Ian Hoffenberg

Any party may designate a change of address by written notice to the other parties by giving at least ten (10) days' prior written notice of such change of address.

16. Choice of Law; Venue. THIS AGREEMENT AND ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED UNDER THE LAWS OF THE STATE OF ILLINOIS. BORROWER, EACH GUARANTOR, SENIOR LENDER AND JUNIOR LENDER, IN ORDER TO INDUCE SENIOR LENDER AND JUNIOR LENDER TO ENTER INTO THE SENIOR LOAN AND THE JUNIOR LOAN, RESPECTIVELY, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH HEREBY IS ACKNOWLEDGED, CONSENT TO AND AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO OR FROM THIS AGREEMENT SHALL BE LITIGATED ONLY IN COURTS HAVING A SITUS WITHIN THE STATE OF ILLINOIS. BORROWER, EACH GUARANTOR, SENIOR LENDER AND JUNIOR LENDER EACH HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT BY SENIOR LENDER OR JUNIOR LENDER ON THIS AGREEMENT IN ACCORDANCE WITH THIS PARAGRAPH. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SENIOR LENDER AND JUNIOR LENDER TO ENTER INTO THE SENIOR LOAN AND THE JUNIOR LOAN, RESPECTIVELY.

17. Waiver of Jury Trial. SENIOR LENDER, JUNIOR LENDER, BORROWER AND EACH GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CONTROVERSY OR CLAIM, WHETHER ARISING IN TORT OR CONTRACT OR BY STATUTE OR LAW, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF), OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION HERewith. EACH PARTY ACKNOWLEDGES AND AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SENIOR LENDER AND JUNIOR LENDER TO ENTER INTO THE SENIOR LOAN AND THE JUNIOR LOAN, RESPECTIVELY, AND THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THIS WAIVER. EACH PARTY HERETO IS HEREBY AUTHORIZED TO FILE A

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## **COPY OF THIS AGREEMENT IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.**

18. Termination of Agreements of Junior Lender. This Agreement shall terminate upon the earlier to occur of (i) payment and performance in full of all of Borrower's obligations under the Senior Loan Documents, or (ii) the full release by Junior Lender of the Junior Loan Documents; provided, however, that at the time of such full release no amount theretofore paid to Junior Lender shall be payable to Senior Lender pursuant to the terms of this Agreement.

19. Enforceability. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded under any applicable law. If any term of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Agreement shall in no way be affected thereby.

20. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party (including but not limited to, the successor to Junior Lender, Edward Potocki); and all the covenants, promises and agreements in this Agreement contained by or on behalf of any party shall bind and inure to the benefit of the respective successors and assigns of such party, whether so expressed or not; provided, however, that the provision of this paragraph shall not be deemed to permit any unpermitted assignee to acquire any benefits hereunder (but such unpermitted assignee shall be bound by the assignor's obligations and restrictions hereunder).

21. Modification of Agreement. This Agreement and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

22. Recordation. This Agreement or a memorandum thereof shall be recorded concurrently with the execution and delivery hereof. In order to further notify third parties of the existence of this Agreement, the Junior Note and the Junior Mortgage each shall, at all times, expressly state that the obligations of the Borrower thereunder are subordinated to the Senior Loan pursuant to the terms and provisions of this Agreement.

23. Priority of Agreement. As between the parties hereto, the rights and obligations of the parties contained in this Agreement shall prevail over any provision in either the Senior Loan Documents or the Junior Loan Documents that is inconsistent with the terms of this Agreement. This Agreement is for the sole benefit of Senior Lender, Junior Lender and their respective successors and permitted assigns. Nothing herein shall be deemed to modify, limit or in any way affect the rights and obligations of Borrower or any Guarantor under the Senior Loan Documents or the Junior Loan Documents, except as otherwise expressly set forth herein. Neither Borrower nor any Guarantor is or shall be deemed to be a third-party beneficiary hereunder.

24. Loan Certificates. Senior Lender and Junior Lender mutually agree to provide to one another from time to time within 15 days after written request, but not more often than once in any 12-month period (except in the event of a default by Borrower, in which case requests

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first set forth above.

**SENIOR LENDER:**

**CONTINUUM CAPITAL FUNDING, LLC**  
an Illinois limited liability company

By: [Signature]  
Name: Prima Liguori  
Title: Manager

### JUNIOR LENDER:

## June Meeks

an individual

June Meade / Edward Ketchum P.O.s



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STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

I HEREBY CERTIFY that on this 17<sup>th</sup> day of August, 2011, before me personally appeared Brian Lignelli, Continuum Capital Funding LLC, an Illinois limited liability company to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said banking corporation.

WITNESS my signature and official seal at \_\_\_\_\_, in the County of Cook and State of Illinois, the day and year last aforesaid.



Christina L. Lopez  
 Notary Public

My Commission Expires: 10/30/11

(NOTARY SEAL)

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

I HEREBY CERTIFY that on this 16<sup>th</sup> day of August, 2011, before me personally appeared ED Votack, the Power of Attorney of June Meeks, an individual to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

WITNESS my signature and official seal in CHICAGO, ILLINOIS the day and year last aforesaid.

Ronald D. Babb  
 Notary Public  
 My Commission Expires: 12/20/11

(NOTARY SEAL)

# UNOFFICIAL COPY

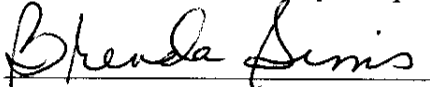
## ACKNOWLEDGMENT OF BORROWER AND GUARANTOR

The undersigned hereby acknowledge receipt of a copy of the foregoing Agreement and the undersigned's agreement to all of the provisions therein contained.

### BORROWER:

**SUGARS BAR, LLC**

an Illinois limited liability company



By: Brenda Sims, Manager

### GUARANTOR:



Brenda Sims, individually

## UNOFFICIAL COPY

STATE OF ILLINOIS )  
 )SS  
 COUNTY OF COOK )

I HEREBY CERTIFY that on this 16<sup>th</sup> day of August, 2011, before me personally appeared **Brenda Sims**, to me known to be the same person who signed the foregoing instrument as his act and deed as such individual for the use and purpose therein mentioned, and that the said instrument is the act and deed of said individual.

WITNESS my signature and official seal at \_\_\_\_\_, in the County of Cook and State of IL, the day and year last aforesaid.

(NOTARY SEAL)

Donna Zalg  
 Notary Public  
 My Commission Expires: \_\_\_\_\_

STATE OF Illinois )  
 )SS  
 COUNTY OF Cook )



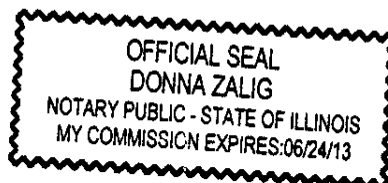
I HEREBY CERTIFY that on this 16<sup>th</sup> day of August, 2011, before me personally appeared Brenda Sims, the Manager of **SUGARS BAR, LLC**, an Illinois limited liability company, to me known to be the same persons who signed the foregoing instrument as his act and deed as such managing member for the use and purpose therein mentioned, and that the said instrument is the act and deed of said company.

WITNESS my signature and official seal at \_\_\_\_\_, in the County of Cook and State of IL, the day and year last aforesaid.

(NOTARY SEAL)

Donna Zalg  
 Notary Public

My Commission Expires: \_\_\_\_\_



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

LOT 25 IN BLOCK 4 IN W.F. KAISER AND COMPANY'S FAIRLAND SUBDIVISION OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 12359 S. RACINE, CALUMET PARK, IL  
PIN: 25-29-400-025-0000

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT B

### DESCRIPTION OF SENIOR LOAN DOCUMENTS

All documents are dated as of August 16, 2011 unless otherwise noted.

- 1 Promissory Note;
- 2 Mortgage, Security Agreement, Assignment of Leases and Rents and UCC Fixture Filing;
- 3 Personal Guaranty of Brenda Sims
- 4 Environmental Indemnity Agreement;
- 5 UCC Financing Statements;
- 6 Borrower's Affidavit;
- 7 Business Loan Affidavit;
- 8 Compliance Agreement
- 9 Any and all other documents signed by Borrower or Guarantor in relation to the Senior Loan.

# UNOFFICIAL COPY

## EXHIBIT C

### DESCRIPTION OF JUNIOR LOAN DOCUMENTS

All documents are dated as of August \_\_, 2011 unless otherwise noted.

1. Promissory Note
2. Junior Mortgage

Property of Cook County Clerk's Office

**W**