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Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 04/11/2012 04:21 PM Pg: 1 of 9

Recording Prepared by and  
When Recorded Mail to:

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



THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY LENDER AGREEMENT (Agreement) is dated this 26<sup>th</sup> day of JANUARY, 2012, by and between Zions First National Bank (Third Party Lender) whose address is One South Main Street, Suite 1300, Salt Lake City, UT 84133, 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 #: 48272650-06  
SBA Loan Name: Derby British American Grill  
Borrower: Webster Avenue Investors, LLC  
Operating Company (if any): Onion Webster Enterprises, LLC  
Third Party Loan Amount: \$ 2,042,500.00  
Term of Third Party Loan: 10 years  
If Real Property -- Project Property Address:  
Street address: 1224 W .Webster Avenue  
City, State, Zip code: Chicago, IL, 60614-  
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 B.

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.

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## 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 must not contain any early call feature or contain any demand provisions 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.

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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 loans 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. If the Third Party Lender does take additional collateral or otherwise have a preference, in the case of liquidation, any proceeds received as a result of a preference must be applied to the Third Party Lender's debt prior to the proceeds from the liquidation of the common collateral held by the CDC/SBA and the Third Party Lender.

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.

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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.

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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.

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.



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Zions First National Bank

By: [Signature]  
Print Name: JEFF DORENBOSCH  
Title: VICE PRESIDENT

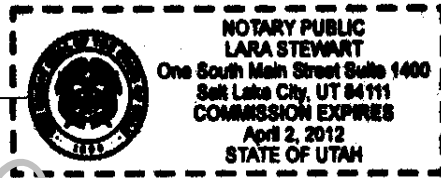
State of UTAH  
County of SALT LAKE

On JANUARY 26, 2012 before me, LARA STEWART, a Notary Public, personally appeared JEFF DORENBOSCH, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of UTAH that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature [Signature]  
SomerCor 504 Inc.



(seal)

By: [Signature]  
Print Name: Milan Maslic  
Title: Executive Vice President

### ASSIGNMENT TO SBA

CDC assigns this Third Party Lender Agreement to SBA.

By: [Signature] Date: 1/26/2012  
Print Name: Milan Maslic, authorized officer of CDC.

Attest: \_\_\_\_\_

State of ILLINOIS  
County of COOK

On January 26, 2012 before me, WINIFRED DOWD, a Notary Public, personally appeared MILAN MASLIC, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ILLINOIS that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]



(seal)

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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOTS 29 AND 30 IN BLOCK 8 IN SUBDIVISION OF BLOCK 12 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN#: 14-32-113-019-0000

PIN#: 14-32-113-020-0000

COMMON ADDRESS: 1224 W. WEBSTER AVE., CHICAGO, IL 60614

Property of Cook County Clerk's Office

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## EXHIBIT B TO UNIFORM COMMERCIAL CODE FINANCING STATEMENT -

1. All fixtures and personal property now or hereafter owned by Debtor and attached to or contained in and used or useful in connection with the real estate more fully described herein (the "Property") or the improvements thereon, including without limitation any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, fans, fittings, floor coverings, freezers, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, shipping dock level, sinks, sprinklers, stokers, stoves, toilets, trash compactor systems, ventilators, wall coverings, washers, wastewater facilities, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, and any and all proceeds of any of the foregoing.

2. All leases, subleases, rents, issues, income, amounts due and payable to Debtor under any lease or sublease of the Property (whether now due and owing or due and owing in the future, including, but not limited to, rent, additional rent, percentage rent, taxes, insurance and reimbursable costs and expenses, whether due in one payment or amortized over a period of time), condemnation proceeds and profits relating to the Property and all proceeds thereof.

3. All of Debtor's assets, howsoever arising, wherever located and whether now owned or existing or hereafter existing or acquired, including, but not limited to, the following:

- (i) all Equipment;
- (ii) all Accounts Receivable;
- (iii) all Inventory;
- (iv) any and all monies, reserves, deposits, deposit accounts, securities, cash, cash equivalents, balances, credits, and interest and dividends on any of the above, of or in the name of Debtor, now or hereafter with the Secured Party, and any and all other property of any kind and description of or in the name of Debtor, now or hereafter, for any reason or purpose whatsoever, in the possession or control of, or in transit to, the Secured Party or any agent or bailee for the Secured Party;
- (v) all chattel paper, whether tangible or electronic chattel paper, contract rights, letter of credit rights, and instruments including, without limitation, all supporting obligations of any of the foregoing;
- (vi) all General Intangibles;
- (vii) all investment property;
- (viii) all furniture and fixtures;
- (ix) all documents of title and receipts, whether negotiable or non-negotiable, including all goods covered by such documents;
- (x) all books, records and computer records in any way relating to the above property;



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- (xi) any and all substitutions, renewals, improvements, replacements, additions and proceeds of (i) through (x) above, including, without limitation, proceeds of insurance policies.

"Account Debtor" shall mean any Person who is or who may become obligated to Debtor under, with respect to, or on account of an Account Receivable or other Collateral.

"Accounts Receivable" shall mean any and all accounts (as such term is defined in the UCC) of Debtor and each and every right of Debtor to (i) the payment of money or (ii) the receipt or disbursement of products, goods, services or other valuable consideration, whether such right now exists or hereafter arises, whether such right arises out of a sale, lease, or other disposition of Inventory, or out of a rendering of services, or out of a policy of insurance issued or to be issued, or from a secondary obligation or arising out of the use of a credit or charge card or information contained on or for use with such card, incurred or to be incurred, or any other transaction or event, whether such right is created, generated or earned by Debtor or by some other Person who subsequently transfers such Person's interest to Debtor, whether such right is or is not already earned by performance, and howsoever such right may be evidenced, together with all other rights and interests (including all liens and security interests) which Debtor may at any time have by law or agreement against any Account Debtor or other Person obligated to make any such payment or against any property of such Account Debtor or other Person.

"Equipment" shall mean all machinery and equipment owned by Debtor, wherever located, whether now owned or hereafter existing or acquired by Debtor, any embedded software thereon, any additions thereon, accessions thereto or replacements of parts thereof.

"General Intangibles" shall mean all general intangibles (as such term is defined in the UCC) owned by Debtor, including, but not limited to payment intangibles, goodwill, software, trademarks, trade names, licenses, patents, patent applications, copyrights, inventions, franchises, books and records of Debtor, designs, trade secrets, registrations, prepaid expenses, all rights to and payments of refunds, overpayments, rebates and return of monies, including, but not limited to, sales tax refunds, tax refunds, tax refund claims and rights to and payments of refunds, overpayments or overfundings under any pension, retirement or profit sharing plans and any guarantee, security interests or other security held by or granted to Debtor to secure payment by an Account Debtor of any of the Accounts Receivable.

"Inventory" shall mean any and all goods, finished goods, whole goods, materials, raw materials, work-in-progress, components or supplies, wheresoever located and whether now owned or hereafter acquired and owned by Debtor, including, without limitation, goods, finished goods, whole goods, materials, raw materials, work-in-process, components or supplies in transit, wheresoever located, whether now owned or hereafter acquired by Debtor, which are held for demonstration, illustration, sale or lease, furnished under any contract of service or held as raw materials, work-in-process for manufacturing or processing or supplies for manufacturing or processing, and all materials used or consumed in the business of Debtor, and shall include such other property, the sale or disposition of which has given rise to an Accounts Receivable and which has been returned to or repossessed or stopped in transit by or on behalf of Debtor, but shall not include property owned by third parties in the possession of Debtor.

"Person" shall mean individually, and "Persons" shall mean collectively, any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise including, without limitation, any instrumentality, division, agency, body or department thereof).

"UCC" shall mean the Uniform Commercial Code as enacted and amended in the State of Illinois, and as may be further amended from time to time.