



W2892040

E# 2892040 PG 1 OF 5
Leann H. Kilts, WEBER COUNTY RECORDER
28-Nov-17 1250 PM FEE \$19.00 DEP JC
REC FOR: FIRST AMERICAN TITLE INSURANCE CO
ELECTRONICALLY RECORDED

When recorded return to:
Utah CDC
5333 South Adams Ave., Suite B
Ogden, Utah 84405

FATC NCS-805706
Property Tax ID: 14-037-0031, 14-037-0017

Assignment of Lease and Subordination Agreement

This Assignment of Lease and Subordination Agreement is entered into by **Sand & Swirl, Inc.** ("Lessee") and **C & R Erdmann Properties, L.L.C.** ("Lessor").

WHEREAS, Lessee has heretofore leased from Lessor by lease dated November 1, 2017, for a term of 252 months (the "Lease") certain real property (the "Leased Premises") known as **2620 Wadman Drive, Ogden, UT 84401**, located in the county of **WEBER**, State of Utah and described as follows:

See Attached Exhibit "A"

WHEREAS, Utah Certified Development Company and the Small Business Administration (jointly referred to as "Assignee") have authorized the making of an SBA 504 Loan, Loan No. **85028850-04**, to Lessor in the amount of **\$404,000.00**, due and payable on or before a time to be determined by the U.S. Secretary of the Treasury (the "Loan").

WHEREAS, the Loan is for the benefit of both Lessee and Lessor, in that the funds are to be used for the benefit of the business conducted on the Leased Premises purchased and/or renovated by Loan proceeds.

NOW, THEREFORE, in consideration of disbursement of the Loan or any part thereof, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Lessee and Lessor covenant and agree as follows:

1. **Assignment of Lease.**
 - a. Lessee, with the consent of Lessor, hereby assigns, transfers, and conveys the Lease unto Assignee, as security for the Loan, to have and to hold for and during the remainder of the term mentioned in the Lease, and all renewals and extensions of the Lease term.
 - b. Lessor, with the consent of Lessee, hereby assigns, transfers, and conveys the Lease unto Assignee, as security for the Loan, to have and to hold for and during the remainder of the term mentioned in the Lease, and all renewals and extensions of the Lease term.
2. **No Default.** Lessee is not now in default in the performance of the Lease; and Lessee and Lessor will each perform the covenants and conditions required of them by the Lease for the term of the Loan and any extensions or renewals of it.

3. **Modification to Lease.** Except as otherwise herein permitted, Lessee and Lessor will not, alone or by agreement between them, modify or terminate the Lease without consent of Assignee. Lessee and Lessor may, at their discretion, modify the amount of rent paid by Lessor under the Lease provided that the modified amount (1) shall never be less than the original amount specified in the Lease and (2) shall be sufficient to cover Lessor's expenses related to the Leased Premises including, but not limited to, Lessor's total debt service for the Lease Premises, expenditures for insurance, real and personal property taxes, and expenditures for maintaining the condition and value of the Leased premises. Under no circumstances shall the rental amount exceed the amount ordinary and reasonable for like space under rental market conditions existing at the time of modification.

4. **Notice of Default.** Lessee and Lessor shall give to Assignee prompt written notice of any default by the other party to the Lease. This notice shall specify the nature of the default and shall be mailed to Assignee at:

Utah Certified Development Company
5333 S Adams Ave, Suite B
Ogden, Utah 84405

- and -

U.S. Small Business Administration
2237 Federal Building
125 South State Street, Rm. 2231
Salt Lake City, Utah 84138

5. **Cure of Default.** Notwithstanding any provision of the Lease to the contrary, should any default under the Lease occur, Assignee shall have sixty (60) days after receipt of notice pursuant to Paragraph 4, at the sole option and discretion of Assignee, to cure the default. If the nature of the default is such that it cannot reasonably be cured within a sixty (60) day period, Assignee shall have additional time reasonably necessary to cure the default. During this 60 day or reasonable period neither Lessee nor Lessor will take action without Assignee's written consent to enforce any claim arising from the default.

6. **Assignee's Rights upon Default.** In the event of default by Lessor in the performance of any of the obligations under the terms of the Loan, including but not limited to provisions of the note to Assignee evidencing the Loan, any renewal or extension thereof, or any other agreement made in connection therewith, including Lessee's agreements herein, Assignee may, at its option and discretion, without notice, using such force as may be necessary, enter the Leased Premises and do any one or more of the following:

- a. Remove all property of Lessor or Lessee therefrom that is hypothecated as collateral for the Loan;
- b. Sell the property referred to in paragraph a. on the leased premises;
- c. Transfer and assign the Lease and Lessor's rights therein to parties satisfactory to Assignee, and upon assignment, the obligations of the Lease shall be binding on the transferee.

In the event Assignee shall only undertake the options provided in paragraph a. or b., it shall have no obligation other than payment of rent accruing during the period of its possession of the Leased Premises. In the event Assignee shall transfer the Lease as provided in paragraph c., Assignee will cure all defaults in the Lease, and its sole other obligation shall be the payment of rent which accrued prior to the transfer of the Lease.

7. **Subordination of Lessor's Lien.** Lessor agrees to, and does hereby, subordinate any lien Lessor may now or hereafter have on the property of Lessee that is now or hereafter security for the Loan to Assignee's lien or liens on said property and to Assignee's rights herein.

8. **Representation of Ownership.** Lessor hereby represents and warrants that title to the Leased Premises is held by Lessor in fee simple and that Lessor has full power and authority to enter into this Agreement.

9. **Subordination of Lease.** All rights under the Lease together with any and all right, interest, estate, title, lien, or charge against or respecting the Leased Premises (or any portion thereof) by virtue of the Lease, shall be and the same are hereby made subject, subordinate, inferior, and junior to the lien and title of Assignee represented by Assignee's Note and security instruments related to the Loan, including without limitation the Promissory Note, Deed of Trust, Security Agreement and UCC Financing Statements (filed with the Uniform Commercial Code Division for the State of Utah and as fixture filings in WEBER County, Utah) (the "Loan Documents") and to all rights, powers, title, and authority of Assignee under or in any way related to or arising out of the Loan Documents and to all sums heretofore or hereafter advanced on the security of the Loan Documents or any of them, including all sums advanced or costs incurred as fees, expenses, disbursements, or charges in connection with the Loan Documents or the Loan. The Lease Rights, together with any and all right, interest, estate, title, lien, or charge against or respecting the Leased Premises (or any portion thereof) by virtue of the Lease, are hereby subordinated to the Loan Documents the same and as fully as if the Loan Documents had been executed and delivered (and recorded or filed, as applicable, in the case of those Loan Documents identified in Paragraph E hereof as items (ii), (iv), and (v)) prior to execution, deliver and filing of the Lease and the same and as fully as if the Loan Documents had been joined in and executed by Lessee (as well as by each of the persons who in fact is a party to the Loan Document concerned).

10. This Agreement shall be binding upon and inure to the benefit of the personal representatives, successors and assigns of the parties hereto.

Dated this 27th day of November, 2017.

Lessor: C & R Erdmann Properties, L.L.C.

By: Corey A Erdmann
Corey A. Erdmann, Member

By: Rebecca N. Erdmann
Rebecca N. Erdmann, Member

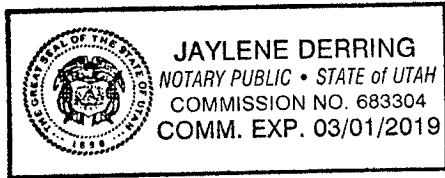
Lessee: Sand & Swirl, Inc.

By: Corey A Erdmann
Corey A. Erdmann, President

ACKNOWLEDGEMENT

STATE OF UTAH)
)
)
COUNTY OF WEBER)

On this 27th day of November, 2017, personally appeared before me Corey A. Erdmann and Rebecca N. Erdmann, who being by me duly sworn, did say that they are Members of **C & R Erdmann Properties, L.L.C.**, a limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company with full authority.



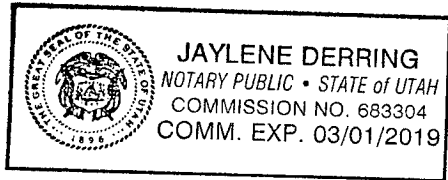
Jaylene Derring

NOTARY PUBLIC
Residing at: Ogden, Utah

ACKNOWLEDGEMENT

STATE OF UTAH)
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)
COUNTY OF WEBER)

On this 27th day of November, 2017, personally appeared before me Corey A. Erdmann, who being by me duly sworn, did say that he is the President of **Sand & Swirl, Inc.**, a corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors.



Jaylene Derring

NOTARY PUBLIC
Residing at: Ogden, Utah

EXHIBIT "A"

Debtor and Trustor: C & R Erdmann Properties, L.L.C.
to assist, Sand & Swirl, Inc.

Secured Party and Beneficiary: Utah Certified Development Company and
The U. S. Small Business Administration

Real Property Description

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PARCEL 1:

PART OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT SOUTH 89°02' EAST 936.29 FEET, NORTH 0°58' EAST 648.15 FEET, NORTHERLY ALONG THE ARC OF A 346.28 FOOT RADIUS CURVE TO THE LEFT 212.08 FEET AND NORTH 34°07'30" WEST 474.51 FEET FROM THE INTERSECTION OF PENNSYLVANIA AVENUE AND KERSHAW STREET, RUNNING THENCE NORTH 34°07'30" WEST 53.49 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF A 219.20 FOOT CURVE TO THE LEFT 99.95 FEET; THENCE NORTHERLY ALONG THE ARC OF A 50.00 FOOT RADIUS CURVE TO THE RIGHT 52.71 FEET; THENCE NORTH 0°09'15" EAST 73.18 FEET TO AN EXISTING FENCE; THENCE SOUTH 89°50'45" EAST 209.96 FEET ALONG SAID FENCE TO THE WEST LINE OF INTERSTATE 15; THENCE SOUTH 32°56'15" EAST 330.10 FEET ALONG SAID WEST LINE; THENCE NORTH 79°20'30" WEST 266.35 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

PART OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT SOUTH 89°31'50" EAST 477.10 FEET AND SOUTH 0°02' WEST 850.01 FEET FROM THE NORTHWEST CORNER OF SAID QUARTER SECTION AND RUNNING THENCE SOUTHERLY ALONG THE ARC OF A 50 FOOT RADIUS CURVE TO THE LEFT 52.71 FEET; THENCE ALONG THE ARC OF A 219.20 FOOT RADIUS CURVE TO THE RIGHT 99.95 FEET; THENCE SOUTH 34°07'30" EAST 109.00 FEET; THENCE NORTH 89°31'51" WEST 72 FEET; THENCE NORTH 34°07'30" WEST 67.12 FEET; THENCE ALONG THE ARC OF A 159.20 FOOT RADIUS CURVE TO THE LEFT 73.18 FEET; THENCE NORTH 0°02' EAST 102.82 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION OF DESCRIBED PROPERTY FALLING WITHIN WADMAN DRIVE, DEDICATION PLAT RECORDED DECEMBER 16, 2004, AS ENTRY NO. 2074419, IN BOOK 60 AT PAGE 84 OF OFFICIAL RECORDS.

14-037-0031, 14-037-0017

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The address of such property is: 2620 Wadman Drive, Ogden, UT 84401

**The owner of such real property is:
C & R Erdmann Properties, LLC**