



W2892458

E# 2892458 PG 1 OF 8
Leann H. Kilts, WEBER COUNTY RECORDER
29-Nov-17 0408 PM FEE \$25.00 DEP KL
REC FOR: FIRST AMERICAN TITLE INSURANCE COI
ELECTRONICALLY RECORDED

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

File Name: Sand & Swirl, Inc.
Loan #: 85028850-04

FATECO NCS 805706



THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY LENDER AGREEMENT (Agreement) is dated this 22 day of November, 2017, by and between **Wasatch Peaks Federal Credit Union**, (Third Party Lender) whose address is 4723 Hewitts Blvd, Ogden UT 84403, and Utah Certified Development Company, (CDC) whose address is 5333 South Adams Ave, Suite B, Ogden, UT 84405.

RECITALS

1. The Third Party Lender and CDC will provide separate loans to the Borrower and Operating Company, if any (collectively "Borrower"), according to the terms in the "Authorization for Debenture Guarantee (SBA 504 Loan)," as amended (Authorization). The Third Party Lender will provide term financing (Third Party Loan), and the CDC will provide a loan ("504 Loan") funded by a debenture issued by the CDC and guaranteed by the U.S. Small Business Administration (SBA), 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 #:	<u>85028850-04</u>
SBA Loan Name:	<u>Sand & Swirl, Inc.</u>
Borrower:	<u>C & R Erdmann Properties, L.L.C.</u>
Operating Company (if any):	<u>Sand & Swirl, Inc.</u>
Third Party Loan Amount:	<u>\$420,060.00</u>
Term of Third Party Loan:	<u>20 yrs</u>

If Real Property -- Project Property Address
Street address: 2620 Wadman Drive, Ogden, UT 84401

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 on the Project Property to secure the separate loans advanced by the parties (Common Collateral), and the lien of the CDC (CDC Lien) will be junior and subordinate to the lien of the Third Party Lender (Third Party Lender Lien), unless Third Party Lender, CDC and SBA agree otherwise in writing.

TERMS AND CONDITIONS

In consideration of the above, 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; does not exceed the amount stated in the Authorization; and, will not exceed the amount allowed by the Authorization, plus reasonable costs of collection, maintenance, and protection of the Third Party Lender's lien. Any amounts owed by Borrower to Lender in excess of the Third Party Loan amount cannot be secured by a lien on the Common Collateral unless it is subordinate to the 504 Loan except that reasonable costs of collection, maintenance, and protection may also be included.

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 lien position in the Common Collateral upon the conditions that Third Party Lender executes this Agreement and disburses the Third Party Loan according to the terms represented to CDC and SBA.

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 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 false statement to the federal government under 18 U.S.C. § 1001, and may subject the Third Party Lender to criminal penalties, and that CDC and SBA, are relying upon the information submitted by the Third Party Lender.

4. Waiver of Provision Not to Encumber Common Collateral. Third Party Lender waives its right to enforce, as against CDC and SBA, any provisions in its documents that prohibit Borrower from further encumbering the Common Collateral or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral.

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 SBA, including those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these 504 Loan Program requirements, Third Party Lender agrees to waive the right to enforce any 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 reasonable costs of collection, maintenance, and protection of the Third Party Loan and Third Party Lender's lien,

b. No Early Call or Demand Provisions. Third Party Lender agrees that either: i) Third Party Loan documents evidencing the Third Party Lender Loan and the Third Party Lender Lien do not contain any early call feature or any provisions which allow Third Party Lender to make demand under the Third Party Lender Loan (other than when such loan is in default in making payments on the Third Party Loan), or (ii) if Third Party Lender Loan or Third Party Lender Lien does contain any such provision(s), Third Party Lender will not exercise its rights under the provision(s) so long as the 504 Loan has any outstanding unpaid balance.

c. No Cross-Collateralization. Third Party Lender agrees that the Common Collateral is not security for any other financing provided by Third Party Lender to Borrower and that Third Party Lender will not use the Common Collateral to secure any future loan to Borrower unless authorized in writing by CDC and SBA.

d. No Cross-Default. During the term of the 504 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 on the Third Party Loan prior to maturity unless the Third Party Loan is in payment default.

e. Maturity and Balloon Payments. The Third Party Loan must have a term of at least 7 years (when the 504 loan is for a term of 10 years), or a term of at least 10 years (when the 504 loan is for 20 years). If the Third Party Lender had made more than one loan, then an overall loan maturity must be calculated, taking into account the amounts and maturities of each loan. Any balloon payment for the Third Party Loan must be clearly identified and disclosed to SBA and approved at application or subsequently approved by SBA.

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. Third Party Lender must not establish a preference beyond its rights as a senior lender on the Third Party Loan without the prior written consent of CDC/SBA. If the Third Party Lender does take additional collateral or otherwise have a preference, in the case of liquidation, any proceeds received from such additional collateral, 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. If the additional collateral no longer exists at the time of liquidation, or has insufficient value to justify the cost of collection, then the Third Party Lender is

not required to liquidate such collateral, provided the Third Party Lender notifies CDC/SBA and obtain CDC/SBA's written consent. (See 13 C.F.R. § 120.10 for a definition of preference.)

7. Notice of Default under the Third Party Loan. Within thirty (30) days of any default of the Third Party Loan or Third Party Lien, Third Party Lender must provide written notice (referencing SBA's loan number for the 504 loan), of the default to CDC and SBA. At least sixty (60) days prior to initiating any legal proceeding or collection activity against the Common Collateral, Third Party Lender must provide SBA with written notice of its intent to do so.

8. Limitation on Default Interest Rate. 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. SBA will only pay the interest rate on the note in effect before the date of Borrower's default.

9. Subordination to 504 Loan and/or 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 shall not inure to the benefit of 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 or 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. In addition, Third Party Lender shall charge as against SBA only the interest rate on the Third Party Loan that was in effect before the date of Borrower's default. 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.

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.

NA 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.

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 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.

LENDER:

Wasatch Peaks Federal Credit Union

By:

Printed Name:

Title:

[Signature]
Greg Washburn
Business Lending Manager

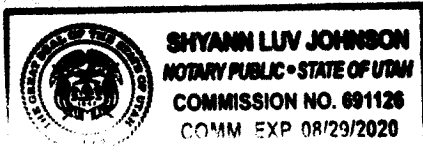
ACKNOWLEDGEMENT

STATE OF UT)

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COUNTY OF WEBER)

On this 22 day of NOVEMBER, 2017, personally appeared before me GREG WASHBURN, who being by me duly sworn, did say that HE (fill in gender) is the BUSINESS LENDING MGR (fill in the title as stated under lender signature) of **Wasatch Peaks Federal Credit Union**, and that the foregoing instrument was signed in behalf of Wasatch Peaks Federal Credit Union with full authority.



[Signature]
NOTARY PUBLIC
Residing at: WEBER

CERTIFIED DEVELOPMENT COMPANY (CDC):

Utah Certified Development Company

By: Caryl A. Eriksson
Caryl A. Eriksson, Vice President

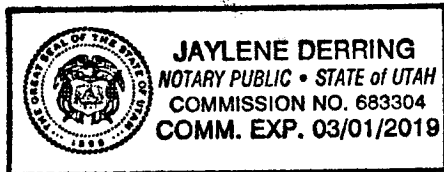
ASSIGNMENT TO SBA

Utah Certified Development Company hereby transfers, sets over and assigns unto U.S. Small Business Administration, an Agency of the United States, all of its right, title and interest in and to this Agreement.

ACKNOWLEDGEMENT

STATE OF UTAH)
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COUNTY OF WEBER)

On this 27th day of November, 2017, personally appeared before me, Caryl A. Eriksson, who being by me duly sworn, did say that she is the Vice President of **Utah Certified Development Company**, a Utah Corporation, and that the foregoing instrument was signed in behalf of said corporation by authority 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**