

2017-008557

Klamath County, Oregon

07/31/2017 03:48:01 PM

Fee: \$72.00


MTC 182156 AM

Prepared by and return to:
Gabriel B. Herman, Esquire
Starfield & Smith, P.C.
1300 Virginia Drive, Suite 325
Fort Washington, PA 19034

Tax Map No. R-3809-032AD-04400-000

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made on July 31, 2017 by SWEET WOLVERINE HOLDINGS LLC ("Assignor") whose address is 632 Oak Avenue, Klamath Falls, OR 97601 to United Community Bank ("Assignee") whose address is 2 West Washington Street, Suite 700, Greenville, SC 29601.

1. Definitions.

"Borrower" Shall collectively mean Assignor and SWEET WOLVERINE MANAGEMENT L.L.C.

"Leases": All of the leases, subleases, tenancies, and guaranties, present and future, and all amendments, extensions and renewals thereof for all or any part of the Property.

"Loan Agreement": The Loan Agreement dated of even date herewith, between Borrower and Assignee which incorporates the terms and conditions of the SBA Loan Authorization between the United States Small Business Administration and Assignee.

"Loan Documents": The Note, the Loan Agreement, and any loan documents relating to or securing the Note.

"Mortgage": The Mortgage dated of even date herewith, executed by Assignor and being recorded concurrently herewith which encumbers the Property.

"Property": The real estate located at **632 Oak Avenue, Klamath Falls, Oregon** and more fully described in Exhibit A attached hereto, together with all improvements thereon.

"Note": The promissory note dated of even date herewith, in the original principal amount of \$1,140,000.00 delivered to Assignee by Borrower.

"Rents": All of the rents, income, receipts, revenues, issues and profits, and prepayments of the same including, without limitation, lease termination, cancellation or similar fees now due or which may become due or to

which Assignor may now or shall hereafter become entitled or which it may demand or claim and arising directly or indirectly from the Leases or the Property.

“Tenant(s)”: Any present or future tenant, subtenant or occupant of the Property.

All other capitalized terms used herein, unless otherwise specified, shall have the same meaning as described to them in the Loan Agreement.

2. Assignment. Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby assign, convey, and deliver unto Assignee:

- (a) All of Assignor's right, title and interest in all of the Leases;
- (b) The immediate and continuing right to collect and receive all of the Rents; and
- (c) Any and all rights and claims of any kind that Assignor may have now or in the future against any Tenant.

To have and to hold the same unto Assignee, its successors and assigns, until termination of this Assignment as hereinafter provided.

3. Absolute Assignment. The parties intend that this Assignment shall be a present, absolute, and unconditional assignment and shall, immediately upon execution, give Assignee the right to collect the Rents and to apply them in payment of the principal, interest and all other sums payable under the Loan Documents. Such assignment and grant shall continue in effect until the Indebtedness is paid in full. Subject to the provisions set forth herein and provided there is no Event of Default, Assignee grants to Assignor a license to enforce the Leases and collect the Rents as they become due (excluding however, any lease termination, cancellation or similar payments which Assignor agrees shall be held in trust and turned over to Assignee for credit to principal under the Loan). Assignor shall deliver such other Rents to Assignee as are necessary for the payment of principal, interest and other sums payable under the Loan Documents as such sums become due.

Assignor further agrees that Assignee may enforce this Assignment without first resorting to or exhausting any security or collateral for the Loan; however, nothing herein contained shall prevent Assignee from exercising any other right under any of the Loan Documents.

4. Power of Attorney. Assignor hereby irrevocably appoints Assignee its true and lawful attorney-in-fact, with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor to demand and collect any and all Rents and to file any claim or take any other action or proceeding and make any settlement regarding the Leases. All Tenants are hereby expressly authorized and directed to pay to Assignee, or to such nominee as Assignee may designate in a writing delivered to such Tenants, all amounts due Assignor pursuant to the Leases. All Tenants are expressly relieved of all duty, liability or obligation to Assignor in respect of all payments so made to Assignee or such nominee.

5. Consideration. This Assignment is made for and in consideration of the loan made by Assignee to Assignor as set forth in the Loan Documents and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

6. Indemnity. Assignor hereby agrees to indemnify Assignee and to hold Assignee harmless from any liability, loss or damage including, without limitation, reasonable attorneys' fees, costs and expenses which may or might be incurred by Assignee under the Leases or by reason of this Assignment, and from any and all claims and demands which may be asserted against Assignee by reason of any term, covenant or agreement contained in any of the Leases, except for any such liability, loss or damage resulting solely from Assignee's gross negligence or willful misconduct.

7. Performance of Lease Covenants. Assignee may, at its option, upon prior notice to Assignor (except in the event of an emergency) perform any Lease covenant for and on behalf of Assignor, and all monies

expended in so doing shall be chargeable to Assignor and added to the outstanding principal balance and shall be immediately due and payable.

8. Representations and Warranties. Assignor represents and warrants:

- (a) The Leases are in full force and effect and have not been modified;
- (b) There are no defaults, defenses or setoffs of either landlord or, to the best of Assignor's knowledge, tenant under the Leases nor, to the best of Assignor's knowledge, is there any fact which, with the giving of notice or lapse of time or both, would constitute a default under the Leases;
- (c) The sole ownership of the entire landlord's interest in the Leases is vested in Assignor and the Leases have not been otherwise assigned or pledged; and
- (d) All Rents due to date have been collected, no Rent has been collected more than one (1) month in advance, and no Tenant has been granted any Rent concession or inducement whatsoever.

9. Covenants and Agreements. Assignor hereby covenants and agrees as follows:

- (a) Assignor shall not permit any Rent under any Lease of the Property to be collected more than one (1) month in advance of the due date thereof;
- (b) Assignor shall act in a commercially reasonable manner to enforce all available remedies against any delinquent Tenant to protect the interest of the landlord under the Leases and to preserve the value of the Property;
- (c) Assignor shall comply with and perform in a complete and timely manner all of its obligations as landlord under all Leases. Assignor shall give notice to Assignee of any default by Assignor under any Lease or by any Tenant under any non-residential Lease in such time to afford Assignee an opportunity to cure any such default prior to the Tenant having any right to terminate the Lease. Assignor shall also provide Assignee with notice of the commencement of an action of ejectment or any summary proceedings for dispossession of the Tenant under any of the Leases;
- (d) Assignor shall furnish promptly to Assignee the original or certified copies of all Leases now existing or hereafter created. Assignee shall have the right to notify any Tenant at any time and from time to time of any provision of the Loan Documents;
- (e) Assignor shall not permit any Leases to be made of the Property or existing Leases to be modified, terminated, extended or renewed without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed. At Assignee's request, Assignor shall cause the Tenant under any Lease to execute a Subordination, Non-Disturbance and Attornment Agreement in form and substance reasonably satisfactory to Assignee;
- (f) Assignor shall not without the prior written consent of Assignee: (i) perform any act or execute any other instrument which might interfere with the exercise of Assignee's rights hereunder; (ii) execute any assignment, pledge or hypothecation of Rents or any of the Leases; (iii) suffer or permit any of the Leases to become subordinate to any lien other than the lien of the Assignee;
- (g) This Assignment transfers to Assignee all of Assignor's right, title, and interest in any security deposits, provided that Assignor shall have the right to retain the security deposit so long as there is no Event of Default under this Assignment or the Loan Documents.

Assignee shall have no obligation to any Tenant with respect to its security deposit unless and until Assignee comes into possession and control of the deposit;

- (h) Assignor shall use reasonable efforts to deliver to Assignee, promptly upon request, a duly executed estoppel certificate from any Tenant in form and content satisfactory to Assignee; and
- (i) Assignee may assign its right, title and interest in the Leases and any subsequent assignee shall have all of the rights and powers provided to Assignee by this Assignment.

10. No Obligation. This Assignment shall not be deemed to impose upon Assignee any of the obligations or duties of the landlord or Assignor provided in any Lease. Assignor hereby acknowledges and agrees: (i) Assignor is and will remain liable under the Leases to the same extent as though this Assignment had not been made; and (ii) Assignee has not by this Assignment assumed any of the obligations of Assignor under the Leases, except as to such obligations which arise after such time as Assignee shall have assumed full ownership or control of the Property. This Assignment shall not make Assignee responsible for the control, care, management, or repair of the Property or any personal property or for the carrying out of any of the terms of the Leases. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm, or corporation in or about the Property.

11. Tenant Bankruptcy. In the event any Tenant should be the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state, or local statute which provides for the possible termination or rejection of any Lease, Assignor covenants and agrees no settlement for damages shall be made without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed, and any check in payment of damages for rejection of any Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that it will duly endorse to the order of Assignee any such check.

12. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Assignment:

- (a) failure of Borrower to pay when due any of the Indebtedness, including any payment due under the Note; or
- (b) failure of Assignor to strictly comply with Sections 9(a) and (f) of this Assignment; or
- (c) breach of any covenant (other than those covenants set forth in subsection (b) above), representation or warranty set forth in this Assignment which is not cured within ten (10) days after notice; provided, however, if such breach cannot by its nature be cured within ten (10) days, and Assignor immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical; or
- (d) the occurrence of an Event of Default under any other Loan Documents.

13. Remedies. Upon the occurrence of an Event of Default, then, without notice to, or the consent of, Assignor, Assignee shall be entitled to exercise all of the rights and remedies contained in this Assignment or in any other Loan Document or otherwise available at law or in equity including, without limitation, the right to do any one or more of the following:

- (a) To enter upon, take possession of and manage the Property for the purpose of collecting the Rents;
- (b) Dispossess by the usual summary proceedings any Tenant defaulting in the payment thereof to Assignor;

- (c) Lease the Property or any part thereof;
- (d) Repair, restore, and improve the Property;
- (e) Apply the Rent after payment of Property expenses as determined by Assignee to Assignor's indebtedness under the Loan Documents; and
- (f) Apply to any court of competent jurisdiction for specific performance of this Assignment, an injunction against the violation hereof and/or the appointment of a receiver.

14. No Waiver. Neither the exercise of any rights under this Assignment by Assignee nor the application of any Rents to payment of Assignor's indebtedness under the Loan Documents shall cure or waive any Event of Default thereunder. Failure of Assignee to avail itself of any of the terms of this Assignment for any period of time or for any reason shall not constitute a waiver of the Assignment.

15. Other Documents. This Assignment is intended to be supplementary to, not in substitution for, or in derogation of, any assignment of rents contained in the Deed of Trust or in any of the Loan Documents.

16. Notices. Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as first set forth above and shall be effective (i) when actually delivered, (ii) when deposited with a nationally recognized overnight courier or (iii) when deposited in the United States Mail, first class, certified or registered, postage prepaid. Any party may change its address for notices under this Assignment by giving written notice to the other party as set forth above.

17. Applicable Law. This Assignment shall be governed by and shall be construed and enforced in accordance with the internal laws of the State of Oregon without regard to conflicts of law principles. This Assignment shall be binding upon the parties hereto and their respective heirs, successors and assigns, and may not be modified, amended or altered except by writing signed by each of the parties hereto.

18. **U.S. SMALL BUSINESS ADMINISTRATION PROVISION:**

The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

- a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.
- b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may 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 this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

[Signature and Acknowledgement Page to Follow]

IN WITNESS WHEREOF, Assignor has executed this Assignment or has caused the same to be executed by its duly authorized representatives as of the date first set forth above.

ASSIGNOR:

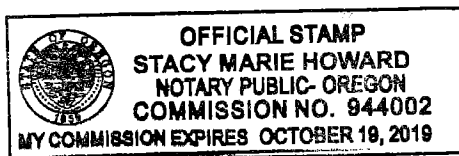
SWEET WOLVERINE HOLDINGS LLC

By: [Signature]
Veronica Hanley, Member

State/Commonwealth of Oregon
County of Klamath

On this, the 31 day of July, 2017, before me, the undersigned officer, personally appeared **Veronica Hanley** who acknowledged herself to be the Member of SWEET WOLVERINE HOLDINGS LLC an Arizona Limited Liability Company, and that she as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Company by herself as Member.

In witness whereof, I hereunto set my hand and official seal.



[Signature]
Notary Public

EXHIBIT "A"
(LEGAL DESCRIPTION)
632 Oak Avenue, Klamath Falls, Oregon

Parcel 1:

Lots 1 and 2 in Block 94, Klamath Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

Parcel 2:

Lot 3 in Block 94 of Klamath Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.