



2022-004481  
Klamath County, Oregon  
04/08/2022 10:06:01 AM  
Fee: \$122.00

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**PREPARED BY AND RETURN TO:**

RON PENNINGTON  
DAVIS, PICKREN, SEYDEL & SNEED  
2300 MARQUIS TWO TOWER  
285 PEACHTREE CENTER AVENUE, N.E.  
ATLANTA, GEORGIA 30303

STATE OF OREGON  
COUNTY OF KLAMATH

**ABSOLUTE ASSIGNMENT OF LEASES AND RENTS**

This Absolute Assignment of Leases and Rents (this "Assignment"), made and entered into on March 30, 2022, by and between Smith Brothers Professional LLC, An Oregon limited liability company (collectively, whether one or more, the "Assignor") whose address is 2310 Mountain View Blvd, Klamath Falls, Oregon 97601, in favor of LIVE OAK BANKING COMPANY (the "Lender") whose address is 1741 TIBURON DRIVE, WILMINGTON, North Carolina 28403.

**RECITALS:**

Smith Brothers Professional LLC, an Oregon limited liability company and Smith Brothers Dental, LLC, an Oregon limited liability company (collectively, whether one or more, the "Borrower") has executed and delivered to Lender that certain SBA Note (the "Note") dated on or about the date of this Assignment, which evidences the indebtedness of Borrower to Lender in the original principal amount of SEVEN HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$725,000.00) (the "Loan"). The term "Note" as used in this Assignment shall be

1/7/22

inclusive of any and all future renewals, extensions, increases, substitutions and other modifications thereof.

To secure Assignor's obligations to Lender under the Note and any other documents, agreements or instruments of any kind related to the Loan (collectively, the "Loan Documents"), Assignor agrees to assign all Leases and Rents related to the Property known as 2310 Mountain View Blvd, Klamath Falls, Oregon 97601 to Lender.

NOW, THEREFORE, for good and valuable consideration contained in this Assignment, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree to be bound as follows:

1. ASSIGNMENT OF LEASES AND RENTS. To secure the full and prompt payment when due, whether by acceleration or otherwise, with such interest as may accrue thereon, of the Note and any and all obligations evidenced or related to the Loan Documents (collectively, the "Obligations"), Assignor hereby absolutely and presently assigns and transfers to Lender all of Assignor's right, title and interest in and to: (i) all present and future leases, subleases, licenses, or occupancy agreements relating to all or any portion of the real property located in the State of Oregon, County of Klamath, as more particularly described on Exhibit "A" attached hereto (the "Property") and by this reference made a part hereof, together with any renewals, modifications or replacements thereof, and any options, rights of first refusal or guarantees of any lease now or hereafter in effect (collectively, the "Leases"); (ii) all rents, income, receipts, revenues, reserves, issues and profits arising under the Leases (collectively, the "Rents"); (iii) all security deposits and escrow accounts made by any tenant or subtenant under any Leases; (iv) all awards and payments of any kind derived from or relating to the Leases including, without limitation, claims for the recovery of damages to the Property, proceeds of any insurance policy, claims for damages resulting from acts of insolvency or bankruptcy, lump sum payments for the cancellation or termination of the Leases, awards payable by reason of condemnation action, the exercise of any right of first refusal or option to purchase, the return of any insurance premiums or ad valorem tax payments made in advance and subsequently refunded and the proceeds of any rental insurance carried by Assignor on the Property. This Assignment is intended to be and shall constitute an unconditional, absolute and present assignment from Assignor to Lender of all of Assignor's right, title and interest in and to the Leases and Rents, and not an assignment in the nature of a pledge of such Leases and Rents or the mere grant of a security interest therein. Notwithstanding that this Assignment is effective immediately, so long as there shall exist no Event of Default by Assignor under this Assignment, Assignor shall have the privilege under a revocable license to collect as they become due, but not prior to accrual, all Rents from the Property and to receive and hold the same. Assignor shall receive and hold such Rents in trust as a fund to be applied to the payment of real estate taxes, insurance, maintenance, repair and Lease obligations with respect to the Property and to the payment of interest and principal and other sums becoming due under the Obligations, prior to retaining and/or disbursing any part of the Rents for any other purpose.

2. REPRESENTATIONS AND WARRANTIES. Assignor represents and warrants to Lender as follows: (i) Assignor is the sole owner of all interests in the Leases and the Rents and such interest is free and clear of all liens and encumbrances; (ii) no other assignment of any interest in any of the Leases or Rents has been made; (iii) the Leases submitted to Lender are true and complete copies, and there have been no written or oral modifications thereto that have not been

disclosed in writing to the Lender; (iv) the Leases are in full force and effect and there is no existing default by Assignor or by any tenant under any of the Leases; (v) Assignor has not accepted Rents under the Leases more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised; (vi) Assignor has not received any funds or deposits from any tenant except as expressly provided for in the Leases; and (vii) no tenant has used or placed on the Property oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances, hazardous air pollutants or other hazardous materials in violation of any federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time.

3. COVENANTS AND AGREEMENTS. Assignor covenants and agrees that from the date of this Assignment and until final payment of all of the Obligations, Assignor will: (i) perform all of the obligations imposed upon Assignor under the Leases; (ii) not collect any of the Rents in advance of the time when the same become due; (iii) not discount any future accruing Rents; (iv) not execute any other assignment of Leases or Rents; (v) not change the terms of or terminate the Leases; (vi) not subordinate the Leases to any mortgage or other encumbrance except in favor of Lender; (vii) not consent to any assignment of or subletting under the Leases; and (viii) not enter into any Leases subsequent to the date of this Assignment without the prior written consent of Lender. Any attempted amendment, cancellation or other modification of the Leases without the prior written consent of Lender shall be null and void. Assignor further covenants and agrees to furnish to Lender, on demand, certified true copies and/or originals of all existing Leases and any subsequent Leases, and any modifications or amendments thereto.

4. FUTURE ASSURANCES. Notwithstanding the automatic applicability of this Assignment to all future Leases, Assignor agrees to formally assign to Lender all future Leases and to execute and or deliver to Lender all such Leases and, if requested by Lender, written assignments thereof in form acceptable to Lender.

5. LENDER OBLIGATIONS AND LIABILITY. Lender shall not be obligated or liable by reason of this Assignment to perform any obligation of Assignor under any of the Leases, and Lender shall not, prior to entry upon and actually taking physical possession of the Property, be deemed a mortgagee in possession. This Assignment shall not operate to place responsibility upon Lender for the control, care, management or repair of the Property or for the carrying out of any of the terms and conditions of the Leases. Lender shall not be responsible or liable for any waste committed on the Property by any tenant or any other party, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Lender assumes no liability for any security deposit or rent prepaid under Leases to Assignor, unless and until such deposits or prepaid rents are delivered to Lender.

6. INDEMNIFICATION. Assignor shall, and does hereby agree, to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or this Assignment. Assignor hereby agrees to defend, at its own cost and expense, any action brought against itself or Lender relative to the Leases or this Assignment.

7. EVENT OF DEFAULT. An event of default (an “Event of Default”) shall be deemed to have occurred hereunder upon any of the following: (i) the occurrence of any event or condition which constitutes a default under the terms of this the Note or the Loan Documents; (i) any representation or warranty made or furnished to Lender by or on behalf of Assignor under this Assignment is false or misleading in any material respect; or (iii) the failure or violation of Assignor to keep, perform, observe, or comply with any covenant, agreement, term, or condition required under provisions of this Assignment.

8. REMEDIES. Upon the occurrence of any Event of Default, Lender may at its option, with or without notice or demand of any kind, exercise any or all of the following remedies:

- (a) Declare any part or all of the Obligations to be immediately due and payable.
- (b) Perform any and all obligations of Assignor under any or all of the Leases or this Assignment and exercise any and all rights of Assignor, including, but not limited to, (i) enforcing, modifying, extending or terminating any or all of the Leases; (ii) collecting, modifying, compromising, waiving or increasing any or all of the Rents payable under the Leases; and (iii) obtaining new tenants and entering into new Leases on the Property on any such terms and conditions in Lender’s sole and absolute discretion.
- (c) Notify tenants under the Leases to pay all Rents directly to Lender. Assignor hereby irrevocably authorizes and directs the tenants under the Leases, upon receipt of written notice from Lender, to pay all Rents due under the Leases to Lender without the necessity of any inquiry to Assignor and without any liability respecting the determination of the actual existence of any Event of Default claimed by Lender or any claim by Assignor to the contrary.
- (d) Collect the Rents and any other sums due under the Leases and apply the same in such order and priority as Lender in its sole discretion may elect against: (i) the Obligations, together with all costs and reasonable attorney’s fees actually incurred; (ii) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment to the Obligations, (iii) insurance premiums; and (iii) the cost of all alterations, repairs, replacements and expenses related to taking, retaining possession of and operating the Property and the management and operation thereof.
- (e) Take possession of, manage, lease and/or operate the Property.
- (f) Make all alterations, renovations, repairs or replacements to the Property as Lender may deem necessary in its sole and absolute discretion.
- (g) Endorse as Assignor’s attorney-in-fact the name of Assignor or any subsequent owner of the Property on any checks, drafts or other instruments received in payment of the Rents, and deposit the same in Lender accounts, which power of attorney is coupled with an interest and shall be irrevocable.
- (h) Institute, prosecute, settle or compromise any summary or legal proceedings in the name of Assignor and Lender for the recovery of the Rents, or for damage to the Property, or for the abatement of any nuisance thereon. Notwithstanding the privilege and license granted by Lender herein, Lender, and not Assignor, shall be deemed to be the creditor of each tenant in respect of any assignment for the benefit of creditors, bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant. Assignor appoints Lender as its irrevocable attorney in fact to appear in any actions and to collect any awards or payments on Assignor’s behalf.
- (i) Defend any legal proceedings brought against Assignor or Lender arising out of the operation of the Property.

9. LENDER COSTS. Any charges, expenses or fees, including reasonable attorney's fees and costs, incurred by Lender in connection with this Assignment shall be included in the Obligations, and shall be due and payable on demand, together with interest at the default rate set forth in the Note, with such interest to be calculated from the date of such advance to the date of repayment thereof.

10. FURTHER DOCUMENTATION. Lender shall have the right to require Assignor to promptly deliver to Lender (i) tenant subordination agreements; (ii) subordination, nondisturbance, and attornment agreements ("SNDA"); (iii) estoppel letters; and (iv) any other such document requested in the sole and absolute discretion of Lender in form and substance satisfactory to Lender. All documentation requested by Lender hereunder shall be provided by Assignor within ten (10) days of such request and shall include such statements and certifications deemed necessary or desirable in Lender's sole and absolute discretion, including, but not limited to: (i) that the Leases are unmodified and in full force and effect; (ii) the amount of Rents (including a breakdown thereof) payable under the Leases and the dates to which the Rents and other charges under the Leases have been paid in advance; and (iii) whether there are any uncured defaults by Assignor or Lender or any setoffs or defenses against enforcement of any terms or conditions under any Lease.

11. NOTICES. Any and all notices, elections or demands permitted or required to be given under this Assignment shall be in writing, signed by or on behalf of the party giving such notice, election or demand, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt required, and shall be deemed to have been received on the earlier of the date shown on the receipt or three (3) business days after the postmarked date thereof, to the other party at the address of such other party set forth below or such other address within the continental United States as such other party may designate by specifically designating as a notice of change of address and given in accordance herewith. No notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a partner or any officer, partnership, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall also constitute receipt. Any such notice, election, demand, request or response shall be addressed as follows:

If given to Lender:

LIVE OAK BANKING COMPANY  
1741 TIBURON DRIVE  
WILMINGTON, North Carolina 28403

Copy (*does not constitute notice*) to:

DAVIS, PICKREN, SEYDEL & SNEED  
2300 MARQUIS TWO TOWER  
285 PEACHTREE CENTER AVENUE, N.E.  
ATLANTA, GEORGIA 30303  
Attn: RON PENNINGTON

If given to Assignor:

SMITH BROTHERS PROFESSIONAL LLC  
2310 MOUNTAIN VIEW BLVD  
KLAMATH FALLS, OREGON 97601

12. AMENDMENTS AND APPROVALS. No amendment of any provision of this Assignment, nor consent by Lender to Assignor for any departure thereof, shall be effective unless the same shall be in writing and signed by Lender and Assignor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Further, notwithstanding anything to the contrary in this Assignment, the Note or the Loan Documents, any right Lender has under this Assignment shall be in Lender's sole and absolute discretion.

13. GOVERNING LAW AND PARTIES BOUND. This Assignment shall be governed by and construed in accordance with the laws of the State of North Carolina, except and only to the extent of procedural matters related to the perfection and enforcement of Lender's rights and remedies against the Property, which matters shall be governed by the laws of the state in which the Property is located. However, in the event that the enforceability or validity of any provision of this Assignment is challenged or questioned, such provision shall be governed by which whichever applicable state or federal law would uphold or enforce such challenged or questioned provision. Assignor waives any objection which they may have based on lack of personal jurisdiction, improper venue or forum non conveniens.

14. SEVERABILITY. In the event that any clause or provisions of this Assignment is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect the validity, legality or enforceability any of the remaining portions or provisions of this Assignment.

15. COUNTERPARTS. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

16. SUCCESSORS AND ASSIGNS. All representations, warranties, covenants, and agreements by or on behalf of Assignor contained in this Assignment shall bind Assignor's successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

17. SBA SPECIAL STIPULATIONS. The Loan secured by this Assignment 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.
- (c) Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

The Assignor has executed and delivered this Assignment to Lender on March 30, 2022.

ASSIGNOR:

Smith Brothers Professional LLC,  
An Oregon limited liability company

BY: [Signature]  
Andrew J. Smith

TITLE: Member

BY: [Signature]  
Nicholas A. Smith

TITLE: Member

STATE OF OREGON  
COUNTY OF Hamilton

This instrument was acknowledged before me on March 30, 2022 by Andrew J. Smith and Nicholas A. Smith as Member of Smith Brothers Professional LLC, an Oregon limited liability company.

[Signature]  
Signature of Notary Public  
Type Name: Emily Coe  
My Commission Expires: 9/27/2025

(SEAL)



EXHIBIT "A"

Lots 3 and 4 in Block 3 of Resubdivision of a portion of MCLOUGHLIN HEIGHTS ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the Office of the County Clerk of Klamath County, Oregon.