

## **CERTIFICATE AND INDEMNITY AGREEMENT REGARDING HAZARDOUS SUBSTANCES**

THIS CERTIFICATE AND INDEMNITY AGREEMENT is made as of December 15, 2016, by the undersigned Borrower and, if applicable, Guarantor (individually and collectively, whether one or more in number, "Indemnitor"), for the benefit of JPMORGAN CHASE BANK, N.A. ("Lender") and its successors and assigns.

### **RECITALS**

- A. Lender has made or expects to make a loan (the "Loan") in the principal amount of \$1,345,000.00 to Borrower evidenced by a promissory note (the "Note") dated the date of this Agreement.
- B. The Note is secured by a deed of trust, security agreement, assignment of leases and rents and fixture filing or a mortgage, security agreement, assignment of leases and rents and fixture filing or a similar instrument (as applicable, the "Security Instrument") dated the date of this Agreement encumbering certain real property owned by Borrower and more particularly described on Exhibit A (the "Property").
- C. It is the intent of Indemnitor and Lender that this Agreement shall not be secured by the Security Instrument or any other document or instrument that secures the Note or other obligations of Indemnitor and that this Agreement shall be an independent, unsecured obligation, separate from Indemnitor's other covenants and obligations set forth in the Note, the Security Instrument and the other loan documents executed and delivered by Indemnitor to Lender (collectively, the "Loan Documents").

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the Loan, the party or parties signing below as Indemnitor, jointly and severally, agree, represent and warrant as follows for the benefit of Lender and its successors and assigns:

1. **Definition.** For purposes of this Agreement, "Hazardous Substance" means any hazardous or toxic substance, material or waste, including, but not limited to:
  - (a) those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302);
  - (b) those substances, materials, and wastes that are or become regulated under any applicable federal, state or local law, ordinance, rule, regulation or court decision ("Applicable Law") relating to the protection of the environment or human health;
  - (c) any material, waste or substance that is: (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) fungus, mold, mildew, spores or other biological or microbial agents the presence of which could reasonably be expected to materially and adversely affect human health or impair the occupancy, value or utility of the Property; (v) designated as a "hazardous substance" pursuant to § 311 of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (33 U.S.C. § 1321) or listed pursuant to § 307 of the Clean Water Act (33 U.S.C. § 1317); (vi) defined as a "hazardous waste" pursuant to § 1004 of the Resource Conservation and Recovery Act (42 U.S.C. § 6903); (vii) defined as a "hazardous substance"

pursuant to § 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601, *et seq.*); (viii) defined as a "hazardous waste," "solid waste," "hazardous material" or "hazardous substance" under any other Applicable Law; or

(d) any other substance or matter defined as a toxic or hazardous substance, material, pollutant or contaminant under any other Applicable Law or any substance or matter imposing liability for cleanup costs or expenses on any person or entity on any basis.

All references to statutes, ordinances, rules and regulations in this Section 1 include all amendments of and successors to the same.

2. **Representations and Warranties; Compliance With Law.** Indemnitor represents and warrants to Lender that, to the best of Indemnitor's knowledge and except as otherwise disclosed in any written environmental report provided to Lender in connection with the Loan: (a) all operations or activities upon, or any use or occupancy of the Property, or any portion thereof, by Borrower, any tenant, occupant or other user of the Property, or any portion thereof, is presently and has in the past been in all material respects in compliance with all Applicable Laws governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal of any Hazardous Substance; (b) there are not now, nor have there ever been tanks or facilities on, under or at the Property that contain or contained materials that, if present in the air, soils, groundwater or surface water, would require cleanup, removal or other remedial action under any Applicable Law; (c) Borrower has not at any time engaged in or permitted, nor has any prior owner or any prior or existing tenant, occupant or other user of the Property, or any portion thereof, engaged in or permitted, any material dumping, discharge, disposal, spillage or leakage (whether legal or illegal, accidental or intentional) of any Hazardous Substance, at, on, in, above, under or about the Property or any portion thereof; and (d) there is not now, nor in the future will there be, any generation, handling, manufacturing, treatment, storage, use or transportation of Hazardous Substances on the Property other than those of a type and in a quantity that are reasonable and customary for similar types of property. Indemnitor shall promptly notify Lender in writing if, at any time, Indemnitor learns that any statement in this Section 2 is no longer accurate in all material respects or that any person or entity has asserted in writing facts that, if true, would make any such statement inaccurate in any material respect. Borrower shall take all actions necessary to ensure that, from and after the date of this Agreement, all operations or activities upon, or any use or occupancy of the Property, or any portion thereof, by Borrower, any tenant, occupant or other user of the Property, or any portion thereof, shall be in all material respects in compliance with all Applicable Laws governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal of any Hazardous Substance. Without limiting the generality of any other provision of this Agreement, if the Property includes one or more heating fuel oil tanks or other tanks containing any Hazardous Substance, Indemnitor shall operate and maintain each such tank in accordance with all Applicable Laws including but not limited to those relating to tank removal, tank closure, tank tightness testing, tank registration, spill and leakage prevention and financial assurance.

3. **Indemnification.** Indemnitor shall indemnify, protect, defend (with counsel satisfactory to Lender) and hold Lender, and Lender's successors and assigns, and the directors, officers, shareholders, employees, agents and contractors of Lender, and of Lender's successors and assigns (all of the foregoing are referred to, collectively, as the "Indemnified Parties"), harmless for, from and against any and all claims (including without limitation third-party claims for personal injury or real or personal property damage), actions, administrative proceedings (including both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums

paid in settlement of claims), interest and losses, including reasonable attorneys' and paralegals' fees and expenses (including any and all such fees and expenses incurred in enforcing this Agreement or collecting sums due hereunder), consultant fees and expert fees, together with all other costs and expenses of any kind or nature (collectively, the "Costs") that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release of any Hazardous Substance in the Property or in or into the air, soil, groundwater or surface water at, on, about, above, under or within the Property, or any portion thereof. The indemnification provided in this paragraph shall specifically apply to and include claims or actions brought by or on behalf of employees of any Indemnitor or of any past, present or future tenants, occupants or other users of the Property, and each Indemnitor hereby expressly waives any immunity to which such Indemnitor may otherwise be entitled under any industrial or worker's compensation laws in connection with the foregoing. If Lender or any other Indemnified Party suffers or incurs any such Costs, Indemnitor shall pay to Lender or such other Indemnified Party, as applicable, the total of all such Costs suffered or incurred by Lender or such other Indemnified Party, as applicable, ten days after written demand therefor by the Indemnified Party entitled to such payment. Without limiting the generality of the foregoing, the indemnification provided by this paragraph 3 shall specifically cover Costs, including capital, operating, and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any cleanup, containment, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any nongovernmental entity or person because of the presence, suspected presence, release, or suspected release of any Hazardous Substance in the Property or in or into the air, soil, groundwater or surface water at, on, about, above, under or within the Property (or any portion thereof) and any claims of third parties for loss or damage due to such Hazardous Substance. In addition the indemnification provided by this paragraph 3 shall include, without limitation, all loss or damage sustained by Lender or any other Indemnified Party due to any Hazardous Substance: (a) that is present or suspected to be present in the Property or in the air, soil, groundwater or surface water at, on, about, above, under or within the Property (or any portion thereof) at any time; or (b) that migrates, flows, percolates, diffuses or in any way moves onto, into or under the air, soil, groundwater or surface water at, on, about, above, under or within the Property (or any portion thereof) at any time. Notwithstanding anything contained herein to the contrary, the foregoing indemnity shall not apply to matters finally determined by a court of competent jurisdiction to have been incurred solely as a result of (i) the gross negligence or willful misconduct of any Indemnified Party, or (ii) the actions of Indemnified Parties taken after such parties have taken title to, or exclusive possession of the Property, provided that, in either such case, the court determines that such matters did not arise from or accumulate with any condition of the Property that was not caused by an Indemnified Party.

**4. Remedial Work.** If any investigation or monitoring of site conditions or any cleanup, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any Applicable Law, by any judicial order, or by any governmental entity, or in order to comply with any agreement affecting the Property because of or in connection with any occurrence or event described in paragraph 3 above, Borrower shall perform or cause to be performed the Remedial Work in compliance with such Applicable Law, order or agreement; provided, that Borrower may withhold such compliance pursuant to a good faith dispute regarding the application, interpretation or validity of the law, regulation, order or agreement, subject to the requirements of paragraph 6 below. All Remedial Work shall be performed by one or more contractors, selected by Borrower and approved in advance by Lender, and under the supervision of a consulting engineer, selected by Borrower and approved in advance by Lender. Borrower shall pay all costs and expenses of such Remedial Work including, without limitation, the charges of such contractor(s) and/or the consulting engineer, and

Lender's reasonable attorneys' and paralegals' fees and costs incurred in connection with monitoring or review of such Remedial Work. If Borrower fails to commence such Remedial Work or to diligently prosecute it to completion, Lender may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall be Costs within the meaning of paragraph 3 above. All such Costs shall be due and payable ten days after written demand therefor by Lender.

**5. Operations and Maintenance Plan.** Borrower shall implement one or more operations and maintenance plans (each an "O&M") for the Property as required by this Section. If the Property includes one or more buildings constructed prior to 1980, Borrower shall implement an asbestos O&M to maintain the condition of materials presumed to contain asbestos, except as otherwise provided in subsection (c) of this Section. If the Property includes one or more buildings constructed prior to 1978, Borrower shall implement a lead-based paint O&M to maintain the condition of painted surfaces presumed to contain lead, except as otherwise provided in subsection (c) of this Section. If an O&M is required as provided above, Borrower shall:

- (a) Implement an O&M using the form O&Ms provided by Lender;
- (b) Engage Borrower's own asbestos/lead consultant at Borrower's expense to develop appropriate site-specific O&Ms; or
- (c) Engage Borrower's own asbestos/lead consultant at Borrower's expense to conduct a comprehensive asbestos/lead paint survey. If such survey determines that asbestos-containing materials and/or lead-based paint are located on the Property, Borrower shall implement an O&M under subsection (a) or (b) of this Section for such asbestos-containing materials and/or lead-based paint. If no asbestos-containing materials or lead-based paint are detected in such survey, then no O&M is required so long as Borrower's consultant affirmatively concludes in the report that the improvements at the Property are free from asbestos-containing materials and lead-based paint.

Any such consultant retained by Borrower must be satisfactory to Lender. Notwithstanding the age of the improvements on the Property, Lender may require, from time to time, Borrower to implement an O&M because of the presence or potential presence of asbestos, lead-containing paint or other hazardous substances on the Property, Borrower shall implement and follow the requirements of any such O&M, maintain records of such compliance at the Property, and make such records immediately available to Lender upon request by Lender. Lender may require Borrower to implement such an O&M at any time and without regard to whether (i) an Event of Default exists or (ii) Lender knew of the existence of the facts or legal requirements leading to such requirement for an O&M at the time the Loan was made or at any other time prior to the time Lender imposes such requirement.

**6. Non Reliance.** Indemnitor acknowledges that Lender and the other Indemnified Parties have no obligation or duty, express or implied, to conduct any investigation or to evaluate or achieve compliance with Applicable Laws in connection with the Property and do not assume any such duty or obligation by undertaking any investigation. Any investigation performed by or for Lender or any other Indemnified Party in connection with environmental or other conditions at the Property is for the exclusive benefit of Lender and Indemnitor has not and shall not rely on any such investigation for any purpose including, but not limited to, necessary due diligence to achieve defenses to liability under Applicable Laws.

**7. Permitted Contests.** Notwithstanding any provision of this Agreement to the contrary, Borrower will be permitted to contest, subject to compliance with the requirements of this paragraph and by appropriate action, any Remedial Work requirement. Lender shall not perform such Remedial

Work on Borrower's behalf so long as: (a) no Event of Default (as defined in the Security Instrument) has occurred and is continuing; (b) Borrower has given Lender written notice that Borrower is contesting or will contest such requirement and Borrower actually contests such requirement by appropriate proceedings conducted in good faith with due diligence; and (c) such contest does not subject Lender to liability and does not jeopardize Lender's lien on or interest in the Property or adversely affect the payment of any sums to be paid to Lender under the Loan Documents. Borrower shall give such security or assurances as may reasonably be required by Lender to ensure compliance with the legal requirements pertaining to the Remedial Work (and payment of all costs, expenses, interest and penalties in connection therewith) and to prevent any sale, forfeiture or loss by reason of such nonpayment or noncompliance.

**8. Subrogation of Indemnity Rights.** If any Indemnitor fails to perform its obligations under this Agreement, Lender shall be subrogated to any rights such Indemnitor may have against any present, future or former owners, tenants, occupants, other users of the Property (or any portion thereof), or any other person or entity relating to the matters covered by this Agreement.

**9. Independent Obligations; Survival.** The obligations of Indemnitor under this Agreement shall survive the consummation and repayment of the Loan, reconveyance or foreclosure of the Security Instrument or deed in lieu of such foreclosure. The obligations of Indemnitor under this Agreement are separate and distinct from the obligations of Indemnitor under the Loan Documents. Each Indemnitor is jointly and severally liable for the obligations of Indemnitor under this Agreement. This Agreement may be enforced by Lender without regard to any other rights and remedies Lender may have against Indemnitor under the Loan Documents or otherwise and without regard to any limitations on Lender's recourse that may be provided in the Loan Documents. Enforcement of this Agreement by either judicial or nonjudicial action shall not be deemed to constitute an action for recovery of the Loan indebtedness nor for recovery of a deficiency judgment against Indemnitor following foreclosure of the Security Instrument.

**10. Payment and Interest.** All amounts payable to Lender or any other Indemnified Party under this Agreement shall be payable ten days after written demand by the Indemnified Party entitled to such payment. All costs and other payments required to be paid by Indemnitor to Lender or any other Indemnified Party under this Agreement shall bear interest at the rate or rates from time to time borne by the Note from the date the applicable Indemnified Party pays any amount reimbursable by Indemnitor under this Agreement until repaid to the applicable Indemnified Party.

**11. Attorneys' Fees and Legal Expenses.** If any breach of Indemnitor's obligations under this Agreement occurs or if any dispute arises relating to the interpretation, enforcement or performance of this Agreement, each Indemnified Party shall be entitled to collect from Indemnitor on demand all fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Indemnitor shall pay all such fees and expenses incurred in connection with (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of any Indemnitor or any other party liable for any of the obligations of this Agreement; (c) post-judgment collection proceedings; (d) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Agreement; (e) all preparation for any of the foregoing; and (f) all settlement negotiations with respect to any of the foregoing.

12. **Time of Essence.** Time is of the essence under this Agreement and in the performance of every term, covenant and obligation contained herein.

13. **Miscellaneous.** If any term of this Agreement or any application thereof shall be invalid, illegal or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby. No delay or omission in exercising any right under this Agreement shall operate as a waiver of such right or any other right. This Agreement shall inure to the benefit of, and be enforceable by, Lender and the other Indemnified Parties, including, without limitation, any assignee or purchaser of all or any portion of Lender's interest in the Loan, the Loan Documents or the Property. No consent by Indemnitor shall be required for any assignment or reassignment of the rights of Lender under this Agreement to any such assignee or purchaser. As used in this Agreement, the plural form shall include the singular form and the singular form shall include the plural form as and where required by the context of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.

14. **Partners' Assets.** Notwithstanding any contrary provision of applicable law, each general partner in any partnership that is a party hereto, agrees that the Indemnified Parties need not exhaust the partnership assets of such partnership before executing upon the assets of such general partner in satisfaction of the obligations evidenced hereby, but may execute upon such general partner's assets prior to, at the same time as or after executing upon the partnership assets of such partnership. Each such general partner shall be jointly and severally liable for such obligations with all other persons and entities liable therefor.

15. **WAIVER OF SPECIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, INDEMNITOR SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER AND EACH OTHER INDEMNIFIED PARTY, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

16. **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. LENDER WILL BE DEEMED TO HAVE AGREED TO THE PROVISIONS OF THIS SECTION BY ACCEPTING THIS AGREEMENT.

Loan No.: 100018625

DATED as of the day and year first above written.

**BORROWER:**

Charles Henry Properties, LLC, a New York limited liability company



By: Claude Simon, Operating Manager

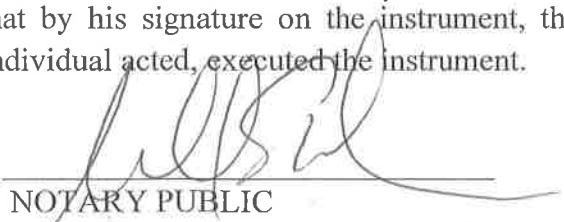
**GUARANTOR:**



Claude Simon

STATE OF NEW YORK      )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

On the 15th day of December in the year 2016, before me, the undersigned personally appeared Claude Simon personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC

WILLIAM E. WILSON  
Notary Public, State of New York  
No. 01WI6023601  
Certified in Nassau County  
Commission Expires 04/26/20 19

*AmTrust Title Insurance Company*

Title Number: **FN-12710-NY**  
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**SCHEDULE A DESCRIPTION**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of East 56<sup>th</sup> Street, distant 214 feet westerly from the point formed by the intersection of the southerly side of East 56<sup>th</sup> Street with the westerly side of First Avenue;

RUNNING THENCE southerly parallel with First Avenue and part of the distance through the center of a party wall, 100 feet 5 inches to the center line of the block between 55<sup>th</sup> and 56<sup>th</sup> Streets;

THENCE westerly along the center line of the block, 18 feet;

THENCE northerly parallel with First Avenue and part of the distance through the center of another party wall, 100 feet 5 inches to the southerly side of East 56<sup>th</sup> Street;

THENCE easterly along the southerly side of East 56<sup>th</sup> Street, 18 feet to the point or place of BEGINNING.

**FOR CONVEYANCING ONLY: TOGETHER** with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.