

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of December 15, 2016 by the undersigned (collectively whether one or more in number, "Guarantor"), in favor of JPMORGAN CHASE BANK, N.A. having an address at P.O. Box 9178, Coppell, Texas 75019-9178, Attn: Portfolio Administration ("Lender").

RECITALS

- A. Lender has agreed to make a loan (the "Loan") in the principal amount of \$1,345,000.00 to Charles Henry Properties, LLC, a New York limited liability company ("Borrower").
- B. The Loan is evidenced by Borrower's promissory note (the "Note") dated the date of this Guaranty and payable to Lender, and is secured by a deed of trust, mortgage or similar security instrument (as applicable, the "Security Instrument") dated the date of this Guaranty and encumbering the Property (as defined in the Security Instrument).
- C. The Note, the Security Instrument and all other documents, instruments and agreements (other than, and specifically excluding, any certificate and indemnity agreement regarding hazardous substances) now in effect or hereafter entered into in connection with the Loan (the "Indemnity Agreement") are referred to, collectively, as the "Loan Documents." Notwithstanding anything to the contrary, the Indemnity Agreement shall not be a Loan Document as that term is used in this Guaranty.
- D. It is a condition to Lender's agreement to make the Loan that Guarantor be unconditionally liable for and guarantee the payment and performance of the obligations represented by the Note and all other liabilities and obligations of Borrower under the Loan Documents (and the obligations of all owners of the Property other than Borrower under any and all Loan Documents executed by such owners) on the terms and conditions set forth in this Guaranty.

NOW, THEREFORE, in order to induce Lender to make the Loan to Borrower, Guarantor, intending to be legally bound, represents and warrants to Lender and covenants and agrees with Lender as follows:

AGREEMENT

1. **Unconditional Guaranty.** Guarantor unconditionally, absolutely and irrevocably: (a) guarantees and promises to pay to Lender or order, on demand, in lawful money of the United States of America, in immediately available funds, the Loan when due, whether by acceleration or otherwise, together with all interest thereon, and any and all other amounts that become due and owing to Lender under the Loan Documents (including, without limitation, late charges, premiums for prepayment, expenditures by Lender to preserve and protect collateral, amounts that would become due but for the effect of any bankruptcy or other insolvency proceedings, and all attorneys' fees, costs and expenses of collection incurred by Lender in enforcing its rights and remedies under the Loan Documents); and (b) guarantees the full and complete discharge and performance of each and every other term, covenant, liability, obligation and warranty contained in the Loan Documents. All amounts and obligations guaranteed by Guarantor under this Guaranty are referred to, collectively, as the "Guaranteed Obligations."

2. **Remedies.** If Guarantor fails promptly to perform its obligations under this Guaranty, Lender may from time to time, and without first requiring performance by Borrower or any other Person (as defined in Section 9.2 below) or exhausting any security for the Loan, bring any action at law or in equity or both to compel Guarantor to perform its obligations under this Guaranty, and to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by Lender as a direct or indirect consequence of the failure of Guarantor to perform such obligations, together with interest thereon at the rate of interest applicable to the principal balance of the Note. Any amounts due under this Section 2 will be in addition to the amounts due under Section 1 of this Guaranty. This is a guaranty of payment and not merely of collection. Notwithstanding anything contained in this Guaranty or the other Loan Documents to the contrary, this Guaranty and all obligations of Guarantor arising under it will not be secured by the Security Instrument or by any lien encumbering the Property.

3. **Rights of Lender.** Guarantor authorizes Lender, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time to: (a) renew or extend all or any portion of Borrower's or any other Person's obligations under the Note, the Security Instrument or any of the other Loan Documents or delay the enforcement thereof for any period of time; (b) declare all amounts owing to Lender under the Note, the Security Instrument and the other Loan Documents due and payable upon the occurrence of an Event of Default (as defined in the Security Instrument); (c) agree to changes in the dates specified for payment of any amounts payable under the Note or any of the other Loan Documents; (d) otherwise agree to modify, amend, waive, supplement or replace from time to time the terms of any of the Loan Documents in any manner; (e) take and hold security for the performance of Borrower's or any other Person's obligations under the Note, the Security Instrument or the other Loan Documents and exchange, enforce, waive, fail to perfect its interest in, or release any such security; (f) apply such security and direct the order or manner of sale thereof as Lender in its sole discretion may determine; (g) release, substitute or add any one or more indorsers of the Note or guarantors of any or all of the Guaranteed Obligations; (h) apply payments received by Lender from Borrower or any other Person to any obligations of the payor to Lender, in such order as Lender may determine in its sole discretion, whether or not any such obligations are covered by this Guaranty; and (i) assign this Guaranty in whole or in part.

4. **Waivers.**

4.1 Guarantor waives: (a) any defense based upon any legal disability or other defense of Borrower or any other Person, or by reason of the cessation or limitation of the liability of Borrower or any other Person from any cause other than full payment of all of the Guaranteed Obligations; (b) any defense based upon any lack of capacity of Borrower or any other Person or any lack of authority of the officers, directors, partners, members, managers, trustees, attorneys in fact or agents acting or purporting to act on behalf of Borrower or any other Person or any defect in the formation of Borrower or any other Person (and Lender shall have no obligation to inquire into any of the foregoing); (c) any defense based upon the application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender or Guarantor or intended or understood by Lender or Guarantor; (d) all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a Guaranteed Obligation, has destroyed Guarantor's rights of subrogation and reimbursement against Borrower or any other Person; (e) any defense based upon Lender's failure to disclose to Guarantor any information concerning Borrower's or any other Person's financial condition or any other circumstances bearing on Borrower's or any other Person's ability to pay the Guaranteed Obligations; (f) any defense based upon any statute or rule of law providing that the obligation of a surety must be neither larger in amount nor in any other respect more burdensome than that of a principal; (g) any and all claims for subrogation,

reimbursement or indemnification against Borrower, any general partner of Borrower or any collateral or security for the Loan until the Loan and all amounts owing under the Loan Documents have been paid and satisfied in full and any and all claims for contribution until the Guaranteed Obligations have been paid and satisfied in full; (h) acceptance of this Guaranty by Lender; (i) presentment, demand, protest and notice of any kind; (j) any and all defenses based on suretyship; and (k) the benefit of any statute of limitation affecting the liability of Guarantor under, or the enforcement of, this Guaranty. Guarantor agrees any act or event that tolls any statute of limitation applicable to the Guaranteed Obligations will similarly operate to toll any statute of limitation applicable to Guarantor's liability under this Guaranty.

4.2 Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things: (a) Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower or any other Person to secure the Guaranteed Obligations; and (b) if Lender forecloses on any real property collateral pledged by Borrower or any other Person to secure the Guaranteed Obligations: (i) the amount of the Guaranteed Obligations may be reduced only by the price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (ii) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower or any other Person. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations are secured by real property.

5. **Representations, Warranties and Covenants.** Guarantor represents, warrants and acknowledges to and for the benefit of Lender that: (a) Lender would not make the Loan but for this Guaranty; (b) there are no conditions precedent to the effectiveness of this Guaranty; (c) Guarantor has established adequate means of obtaining from sources other than Lender, on a continuing basis, financial and other information pertaining to the financial condition of Borrower and any other relevant Person, the Property and the activities of Borrower and other relevant Persons relating thereto and the status of the performance of the Guaranteed Obligations, and Guarantor agrees to keep adequately informed from such means of any facts, events or circumstances that might in any way affect Guarantor's risks under this Guaranty and Lender has made no representation to Guarantor as to any such matters; (d) the most recent financial statements of Guarantor previously delivered to Lender are true and correct in all material respects, such financial statements fairly present the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since such dates; (e) Guarantor will timely provide Lender with all financial statements, reports and other information that is required to be provided to Lender with respect to Guarantor under Section 4.12 of the Security Instrument or any other provision of the Loan Documents; and (f) Guarantor has had the opportunity to review the Loan Documents and discuss them with an attorney of Guarantor's choosing and has done so to Guarantor's satisfaction or has voluntarily declined to do so. Guarantor has determined in good faith that: (i) the Loan, including this Guaranty, is an arm's-length transaction on market rate terms; (ii) neither Lender nor any of its affiliates exercised any discretionary authority or control over, or rendered any investment advice in connection with, Guarantor's decision to execute this Guaranty and any other Loan Documents to which Guarantor is a party; and (iii) the statements in (i) and (ii) are also true with respect to any previous loan made by Lender, secured by the Property or any part thereof, and as to which Guarantor was a borrower or guarantor, both as of such loan's origination and through its life. Guarantor shall comply in all material respects with all laws, statutes, ordinances, rules, regulations, licenses, permits, approvals, orders, judgments and other requirements of governmental authorities applicable to Guarantor.

6. **Subordination.** Guarantor hereby subordinates to the Guaranteed Obligations any and all present and future obligations and liabilities owing to Guarantor by Borrower and/or any other Person obligated to pay any of the Guaranteed Obligations. While any Event of Default exists, Guarantor will enforce such subordinated obligations, and receive payment thereof, only as a trustee for Lender, and Guarantor will promptly pay over to Lender all payments on and other proceeds of such subordinated obligations for application to the Guaranteed Obligations.

7. **Disclosure of Information; Participations, Etc.** Guarantor agrees that Lender may elect, at any time, to sell, assign, participate or securitize all or any portion of Lender's rights and obligations under the Loan Documents. Guarantor agrees that Lender may disseminate any and all information pertaining to the Loan, the Property, Borrower, Guarantor or any other Person to any relevant Person in connection with any such transaction.

8. **Additional and Independent Obligations.** The obligations of Guarantor under this Guaranty are in addition to, and do not limit or in any way affect, the obligations of Guarantor under any other existing or future guaranties. This Guaranty is independent of the obligations of Borrower and other Persons, if any, under the Note, the Security Instrument, and the other Loan Documents. Nothing contained in this Guaranty will prevent Lender from suing to collect on the Note or from exercising concurrently or successively any rights available to it under applicable law or any of the Loan Documents, and that the exercise of any of such rights will not constitute a legal or equitable discharge of Guarantor. Guarantor hereby authorizes and empowers Lender to exercise, in its sole discretion, any rights and remedies, or any combination thereof, that may then be available, since it is the intent and purpose of Guarantor that the obligations under this Guaranty will be absolute, independent and unconditional under any and all circumstances. Lender may bring a separate action to enforce the provisions of this Guaranty against Guarantor without taking action against Borrower or any other Person or joining Borrower or any other Person as a party to such action.

9. **Miscellaneous.**

9.1 **Attorneys' Fees; Enforcement.** If any attorney is engaged by Lender to enforce or defend any provision of this Guaranty, or any of the other Loan Documents, or as a consequence of any Event of Default under the Loan Documents, with or without the filing of any legal action or proceeding (including any bankruptcy or other insolvency proceeding and including all post-judgment collection proceedings), Guarantor will pay to Lender immediately upon demand all reasonable attorneys' fees and costs incurred by Lender in connection therewith, together with interest thereon, from the date Lender pays such amounts until they are repaid to Lender, at the rate of interest applicable from time to time to the principal balance of the Note (and if more than one such rate applies to the principal balance at any one time, the highest such rate shall be used for purposes of this Section).

9.2 **Certain Definitions and Rules of Construction.** The word "Borrower" as used in this Guaranty includes both the named Borrower and any other Person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Note, the Security Instrument and the other Loan Documents. If this Guaranty is executed by more than one Person, the term "Guarantor" includes all such Persons. As used in this Guaranty, the term "Person" means any individual, corporation, limited or general partnership, limited liability company, trust or trustee(s) acting with respect to property held in trust, governmental agency or body, or other legal entity. When the context and construction so require, all words used in the singular will be deemed to have been used in the plural and vice versa. All headings appearing in this Guaranty are for convenience only and will be disregarded in construing this Guaranty. All references in this Guaranty to the Note, the

Security Instrument or any other document include the same as now in effect and as it may be modified, amended, restated, supplemented, extended, replaced or consolidated.

9.3 **Governing Law.** This Guaranty will be governed by, and construed in accordance with, the laws of the state where the Property is located, without regard to its conflict of laws principles.

9.4 **Consent to Jurisdiction.** Guarantor irrevocably submits to the jurisdiction of any state or federal court sitting in the state where the Property is located over any suit, action, or proceeding arising out of or relating to this Guaranty, the Loan Documents or the Loan. Guarantor irrevocably waives, to the fullest extent permitted by law, any objection that Guarantor may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

9.5 **Successors and Assigns.** The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, successors and assigns of Guarantor and Lender.

9.6 **Joint and Several Liability; Marital Property.** The liability of all Persons who are in any manner obligated under this Guaranty will be joint and several with one another and with all other guarantors, if any, of the Guaranteed Obligations. Guarantor's liability under this Guaranty is fully recourse in nature. Each individual liable hereunder as a Guarantor agrees that recourse may be had under this Guaranty to all such individual's separate property and to all community property or other marital property of such individual.

9.7 **Partners' Assets.** Notwithstanding any contrary provision of applicable law, each general partner in any partnership that is a party to this Guaranty, agrees that Lender need not exhaust the partnership assets of such partnership before executing upon the assets of such general partner in satisfaction of the obligations under this Guaranty, 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 liable therefor.

9.8 **Severability.** If any provision of this Guaranty is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion will be deemed severed from this Guaranty and the remaining parts will remain in full force as though the invalid, illegal or unenforceable portion had never been part of this Guaranty.

9.9 **Survival.** This Guaranty will be deemed to be continuing in nature and will remain in full force and effect and will survive the exercise of any remedy by Lender under the Security Instrument or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof. This Guaranty will continue to be effective, or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or otherwise must be returned by Lender due to the insolvency, bankruptcy or reorganization of the payor, or for any other reason, all as though such payment to Lender had not been made.

9.10 **Counterparts.** This Guaranty may be executed in counterparts, each of which will be deemed an original, and all such counterparts when taken together will constitute but one agreement.

9.11 **Notices.** Any notice to or demand on Guarantor in connection with this Guaranty shall be deemed to have been sufficiently made when deposited in the United States mails (with first class or

Loan No.: 100018625

registered or certified postage prepaid), addressed to Guarantor at Guarantor's most recent address on file with Lender. Any notice to or demand on Lender in connection with this Guaranty shall be deemed to have been sufficiently made when deposited in the United States mails (with registered or certified postage prepaid, return receipt requested), addressed to Lender as follows:

JPMorgan Chase Bank, N.A.
P.O. Box 9178
Coppell, Texas 75019-9178
Attention: Portfolio Administration

Any party may change the address for notices to that party by giving written notice of the address change in accordance with this section.

9.12 **Entire Agreement; Amendments.** This Guaranty and the other Loan Documents represent the final expression of the entire agreement of the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements. There are no unwritten oral agreements between the parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Guaranty and the other Loan Documents. Neither this Guaranty nor any of its provisions may be waived, modified, amended, discharged or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in that agreement.

9.13 **WAIVER OF SPECIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, GUARANTOR SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, 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 GUARANTY OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS CONTEMPLATED HEREBY, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

9.14 **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR AND LENDER (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS GUARANTY, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.

DATED as of the date first set forth above.

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