

GUARANTY OF LEASE

THIS GUARANTY OF LEASE (the “Guaranty”) is made this _____, 2021, by **Chihn Thuy Noa** (the “Guarantor”), in favor of the **County of Orange**, a political subdivision of the State of California (the “County”) with reference to the following:

RECITALS

WHEREAS, this Guaranty is for the lease of the café space located at 301 The City Drive, Orange, as amended, more specifically located on the ground floor of the Manchester Office Building (“Lease”); and

WHEREAS, as a condition to consenting to an assignment of the Lease to _____ the County has required that the Guarantor concurrently execute and deliver to County this Guaranty. Guarantor is willing to provide such assurances to County as are more particularly set forth hereinbelow.

NOW, THEREFORE, in consideration of the County consenting to an assignment and amendment of the Lease to

_____ (“Lessee”), Guarantor hereby covenants and agrees as follows:

1. **Recitals.** The Recitals set forth above are incorporated herein by this reference.

2. **Guaranty** Guarantor absolutely, unconditionally and irrevocably guarantees to County the full, faithful and timely performance by Lessee of all of Lessee’s obligations under the Lease, including, but not limited to, the obligation of Lessee to make timely payments of rent or other monies that Lessee may at any time owe under the Lease or any extensions, renewals, or modifications of the Lease. If Lessee shall default at any time in the payment of any rent (or any other monetary covenant) or in the performance of any non-monetary covenant or obligation under the Lease, then Guarantor, at Guarantor’s expense, shall on demand by County fully and promptly pay all rent, sums, costs and charges to be paid by Lessee under or arising out of the Lease and shall perform all other covenants and obligations of the Lessee pursuant to the Lease. In addition, Guarantor shall on demand by County pay to County all sums due to County, including, without limitation, all interest on past due obligations of Lessee, costs advanced by County, damages and all expenses (including, but not limited to, court costs and attorney fees) that may arise in consequence of Lessee’s said default. The liability of the Guarantor under this guaranty is a guaranty of payment and performance and not of collectability only.

The obligations guaranteed in this Section 2 are collectively referred to hereinafter as the “Guaranteed Obligations”.

3. **Guaranty Absolute** The liability of the Guarantor under this Guaranty shall be absolute, unconditional and irrevocable, irrespective of:

(a) any express or implied amendment, modification, renewal, addition, supplement or extension (including, without limitation, extensions beyond the original term) of the Lease;

(b) any exercise or nonexercise by the County of any right or privilege under this Guaranty or the Lease;

(c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, litigation or other like proceeding relating to the Guarantor or the Lessee or to any other guarantor (which term shall include any other party at any time directly or contingently liable for any of Guaranteed Obligations), or any action taken with respect to this Guaranty by any trustee, receiver or court in any such proceeding, whether or not the Guarantor shall have had notice or knowledge of any of the foregoing;

(d) any release or discharge of the Lessee from its liability under the Lease or any release or discharge of any endorser, guarantor or other party at any time directly or contingently liable for the Guaranteed Obligations;

(e) any subordination, compromise, release (by operation of law or otherwise), discharge, compound, collection or liquidation of any or all of Lessee's obligations under the Lease;

(f) any assignment or other transfer of this Guaranty in whole or in part or of the Lease;

(g) any acceptance of partial performance of the Guaranteed Obligations; and

(h) any consent to the transfer of the Lease or any portion thereof.

4. **Waiver** The Guarantor unconditionally waives, to the extent permitted by law, any defense to the enforcement of this Guaranty, including, without limitation:

(a) any presentment, demand for performance, notice of nonperformance, protest, notice of protest, notice of dishonor and notice of acceptance of this Guaranty;

(b) any right to require the County to proceed against the Lessee, the Guarantor or any other guarantor at time, to proceed against or exhaust any security held by the County at any time or to pursue any other remedy whatsoever at any time;

(c) any defense of any statute of limitations affecting the liability of the Lessee, the Guarantor or any other guarantor, or the enforcement hereof or thereof, to the extent permitted by law;

(d) any defense arising by reason of any invalidity or unenforceability of the Lease or any disability of the Lessee, the Guarantor or any other guarantor or of any manner in which the County has exercised its rights and remedies under the Lease or by any cessation from any cause whatsoever of the liability of the Lessee, the Guarantor or any other guarantor;

(e) any defense based upon an election of remedies by the County, including but not limited to any election of remedies relating to real property or personal property security, that destroys or otherwise impairs the subrogation rights of the Guarantor to proceed against the Lessee or any other guarantor for reimbursement, or both;

(f) any duty of the County to advise the Guarantor of any information known to the County regarding the financial condition of the Lessee or any other circumstances affecting the Lessee's ability to perform the Guaranteed Obligations, it being agreed that the Guarantor assumes the responsibility for being and keeping informed regarding such condition or any such circumstances;

(g) any right of subrogation, contribution, indemnity or otherwise against the Lessee which may arise out of or in connection with this Guaranty, any right to enforce any remedy that the County now has or may hereafter have against the Lessee and any benefit of, and any right to participate in, any security now or hereafter held by the County, until this Guaranty ceases to be in full force and effect; and

(h) without limiting the generality of the foregoing or any other provision hereof, any rights and benefits that might otherwise be available to the Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2848, 2849, 2850, 2899 or 3433.

5. **Subrogation** The Guarantor shall not exercise any rights that it may acquire by way of subrogation, contribution, indemnity or otherwise arising out of or in connection with this Guaranty, by any payment made by the Guarantor hereunder or otherwise, until this Guaranty ceases to be in full force and effect. If any amount shall be paid to the Guarantor on account of such subrogation or other rights at any time before this Guaranty ceases to be in full force and effect, such amount shall be held in trust for the benefit of the County and shall forthwith be paid to the County to be credited and applied against the Guaranteed Obligations, when and as due, in accordance with the terms of the Lease. Upon this Guaranty ceasing to be in full force and effect, the County will, at the Guarantor's request execute and deliver to the Guarantor appropriate documents, without recourse and without representation or warranty, necessary to

evidence the transfer by subrogation to the Guarantor of any interest in the Guaranteed Obligations resulting from such payment by the Guarantor.

6. **Representation and Warranty** The Guarantor represents and warrants as a continuing representation and warranty until this Guaranty expires in accordance with the provisions contained herein that the Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms.

7. **Address for Notices** All notices and other communications provided for hereunder shall be in writing and, if to the Guarantor, mailed, or delivered to it at its address specified beneath its signature; if to the County, mailed or delivered to it at the address of the County specified in the Lease; or as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and other communications shall, when mailed, be effective when deposited in the mails or when received, respectively, addressed as aforesaid.

8. **No Waiver; Remedies** No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

9. **Continuing Guaranty** This Guaranty is a continuing guaranty and shall remain in full force and effect until the performance in full of the Guaranteed Obligations.

10. **Independent and Separate Obligations** The obligation of the Guarantor hereunder is independent of and may exceed, the obligation of the Lessee and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against the guarantor whether or not the Guarantor is the alter ego of the Lessee and whether or not the Lessee is joined therein or a separate action or actions are brought against the Lessor. The County's rights hereunder shall not be exhausted until all of the obligations have been fully paid and performed.

11. **Bankruptcy No Discharge; Repayments** So long as any of the Guaranteed Obligations shall be outstanding, the Guarantor shall not, without the prior written consent of the County, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against the Lessee. The Guarantor understands and acknowledges that by virtue of this Guaranty, the Guarantor has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to the Lessee. As an example and not in any way by limitation, a subsequent modification of the Guaranteed Obligations in any reorganization case concerning the Lessee shall not affect the obligation of the Guarantor to pay and perform the Guaranteed Obligations in accordance with its original terms. If claim is ever made upon the County for repayment of the Guaranteed Obligations and the County repays all

or any part of said amount, then, notwithstanding any revocation or termination of this Guaranty or the cancellation or termination of the Lease, the Guarantor shall be and remain liable to the County for the amount so repaid to the same extent as if such amount had never originally been received by the County.

12. **Expenses** The Guarantor agrees to pay all costs and expenses, including reasonable attorneys' fees, which may be incurred by the County in any effort to collect or enforce any of the obligations of the Guarantor hereunder, whether or not any lawsuit is filed, including, without limitation, all costs and attorneys' fees incurred by the County in any bankruptcy proceeding (including, without limitation, any action or relief from the automatic stay of any bankruptcy proceeding) and in any judicial or nonjudicial foreclosure action.

13. **Amendments; Successors; Etc.** Neither this instrument nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. All of the terms of this instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The term "Lessee" shall mean both the named Lessee and any other person or entity at any time assuming or otherwise becoming primarily liable on all or any part of the Guaranteed Obligations. If any one or more of the provisions of this Guaranty should be determined to be illegal or unenforceable, all other provisions shall remain effective. The Guarantor shall not have the right to assign any of the Guarantor's rights or obligations under this Guaranty. If this Guaranty is signed, or if the obligations of Lessee are otherwise guaranteed, by more than one party, their obligations shall be joint and several, and the release or limitations of liability of any one or more of the guarantors shall not release or limit the liability of any other guarantors.

14. **Assignability by the County** The County may, at any time and from time to time, assign, conditionally or otherwise, all of the rights of the County under this Guaranty, whereupon such assignee shall succeed to all rights of the County hereunder to the extent that such rights may be assigned to it. The County may give written notice to the Guarantor of any such assignment, but any failure to give, or delay in giving, such notice shall not affect the validity or enforceability of any such assignment.

15. **Governing Law** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty, or caused this Guaranty to be duly executed and delivered by its duly authorized representative, as of the date first above written.

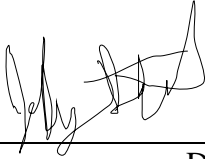
GUARANTOR

CHIHN THUY NOA

Address: _____

APPROVED AS TO FORM:

OFFICE OF COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By  _____
Deputy

COUNTY

COUNTY OF ORANGE

Thomas A. Miller, Chief Real Estate Officer
County Executive Office Per Minute Order dated
_____ of the Board of Supervisors

Date: _____