

LEASE AGREEMENT

THIS LEASE made and entered into as of the ____ day of March, 2014, by and between the **City of Olympia**, a Washington municipal corporation ("Lessor") and **Dung Nguyen**, sole proprietor of the Little Da Nang Restaurant ("Lessee").

WITNESSETH: The parties hereto, for the consideration hereinafter mentioned, covenant and agree as follows:

1. PREMISES: Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, upon the terms and conditions hereinafter set forth, those certain following-described premises:

That building known as Little Da Nang Restaurant, located at 301 W 4th Avenue, Olympia, Washington, together with adjacent parking ("the Premises). The Little Da Nang Restaurant is located on real property legally described as Lot 1 in Block 66 of Olympia Tidelands, as platted and filed of record on the 17th day of May 1892, in the Office of the Commissioner of Public Lands, at Olympia, Washington. EXCEPTING THEREFROM that portion deeded to the City of Olympia for right of way purposes in Statutory Warranty Deed recorded March 7, 2002 under Auditor's file No. 3417655. Parcel No. 91003600000.

2. USE: The Premises may be used and occupied only for restaurant purposes by Lessee's officers, directors, staff, agents and employees, and no other purpose or purposes without the written consent of Lessor. Lessee shall not use the leased premises for the purposes of storing, manufacturing, or selling any explosives, flammables, or other inherently dangerous substance, chemical, thing, or device. No use shall be made of the Premises, no act done in or about the Premises, which is illegal, unlawful, or which will increase the existing rate of property insurance upon the Little Da Nang Restaurant Building. Lessee shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance or other act or thing which disturbs the quiet enjoyment of any other Lessee in the Building or the Lessor's use described in Section 2 above, nor shall Lessee, without the written consent of Lessor, use any apparatus, machinery or device in or about the Premises which shall cause any substantial noise or vibration. If any of Lessee's machines and equipment should disturb the quiet enjoyment of any other Lessee in the Premises or anyone outside the Premises, then Lessee shall provide adequate insulation, or take such other action as may be necessary to eliminate the disturbance. Lessee shall observe such reasonable rules and regulations as may be adopted and published by Lessor for the safety, care and cleanliness of Premises or the Little Da Nang Restaurant Building and the preservation of good order therein.

3. TERM: The Premises shall be leased until March 31, 2016 (the "Term"). The Term shall commence on April 1, 2014, and shall terminate upon the sooner of a date specified in a written notice by either party to the other, or on March 31, 2016. Delay in commencement notwithstanding said commencement date. Any holding-over after the

expiration of the Term hereof, with the consent of the City, shall be construed to be a tenancy from month- to-month and shall otherwise be on the terms and conditions herein specified, so far as applicable. If for any reason Lessor cannot deliver possession of the Premises to Lessee on said date, Lessor shall not be subject to any liability therefore, nor shall such failure affect the validity of this Lease or the obligations of Lessee hereunder. In such case, the date of commencement shall be extended a period of time equal to the period of any delay in delivery of possession of the Premises. Upon the expiration of the initial Term, future term extensions may be considered by the City on a year-to-year basis. The rental rate for any future term extension(s) will be based upon prevailing local lease rates for similar commercial uses at that time. Should the City elect to terminate this agreement, the City will provide Lessee One Hundred and Twenty (120) days written notice. Lessee may, without penalty, elect to terminate this agreement with 30 days written notice to the City.

4. ASSIGNMENT/SUBLEASE: Lessee shall not assign this lease nor sublet the premises and shall not permit the use of the premises by anyone other than Lessee, its officers, directors, employees, agents, without written consent of the City.

5. LESSEE CONSIDERATIONS: Lessee shall provide and pay for restroom supplies, paper products, hand soap, light bulbs, total janitorial service, and all utilities (including without limitation water, sewer, solid waste, storm water, electricity, natural gas (if any), telephone equipment and service, internet access, and cable TV). In addition, Lessee shall carry insurance of all building contents, including personal and company equipment, furnishings, etc.

6. MAINTENANCE AND REPAIR: Lessee agrees by taking possession of Premises that Premises are then in a tenantable and good condition, and that Lessee will maintain the Premises in as good or better condition during the entire term of the Lease, damage by fire or other casualty excepted. Further, during said Lease term Lessee shall make, at Lessee's expense, all repairs necessary to maintain Premises in a tenantable and good condition, including but not limited to minor plumbing problems, floors, walls, ceilings, light ballasts, and other parts of the leased premises damaged or worn through normal occupancy, except for major mechanical systems or the roof. Lessee will promptly perform any maintenance or repair items identified during periodic scheduled walk-through inspections with City maintenance staff, as per Section 7 below. Lessee hereby waives any right to make repairs at Lessor's expense. The Lessee shall pay for the replacement of doors or windows of Premises which are cracked or broken by Lessee, its employees, agents or invitees. Lessee shall be responsible for the removal of any graffiti or "tagging" within 24-hours of its occurrence. Lessee shall also be responsible for the maintenance of the items of personal property listed in Exhibit "A" (attached). The City shall make, at the City's expense, necessary repairs to major mechanical systems (including HVAC), the roof, exterior windows, doors, and door hardware (locks). The City may elect to terminate this lease if the cost of these repairs exceeds Five Thousand Dollars (\$5,000.00). Lessee may elect to pay the overage of repair costs in excess of \$5,000.00 or terminate the lease as per Section 3 above. City facility maintenance staff is not to be considered "on-call", and are available only during their regular business hours,

6:30 am to 4:30 pm Monday through Friday, excluding holidays. City will not be responsible for any loss of revenue resulting from City-performed maintenance downtime. The City will waive the rent during any City-performed downtime on a per diem basis at a rate per day equal to one 365th part of the annual rent. For City maintenance items, please contact:

Paul Hanna
Fleet and Facilities Supervisor
City of Olympia Public Works
Office: (360) 753-8256
Mobile: (360) 239-0995
E-mail: phanna@ci.olympia.wa.us

7. ENTRY: The City shall have the right to enter upon the leased premises at reasonable hours to for the purpose of maintenance inspections, cleaning, repairing, altering or improving Premises or the Little Da Nang Restaurant Building. When reasonably necessary for such purposes, Lessor may close entrances, doors, corridors, elevators or other facilities without liability to Lessee by reason of such closure and without such action by Lessor being construed as an eviction of Lessee or relieve the Lessee from the duty of observing and performing any of the provisions of this Lease. Lessor shall exercise its rights of entry provided herein in such a way as to not thereby unreasonably interfere with Lessee's business on the Premises.

8. FIXTURES: Lessee shall have the right during the existence of this lease with the written permission of the City (such permission shall not be unreasonably withheld) to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased. In taking any actions under this Section, Lessee shall comply with all applicable governmental regulations and building codes, including obtaining any necessary permits.

9. ALTERATIONS/IMPROVEMENTS: With 15 days notice to the City, Lessee, at Lessee's expense, shall have the right (with written City consent) to redecorate and make replacements of and to all or any part of the Premises from time to time as Lessee may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Any major remodeling or addition to the Premises is prohibited.

10. RENTAL RATE: Lessee shall pay the City for the premises rent at the following rate: One Thousand Sixty-three and 45/100 Dollars (\$1,063.45.00) plus state leasehold excise tax due pursuant to RCW 82.29A.030. Payment shall be made on or before the fifth day of each month delivered or mailed to the address listed below. If the Term commences on any day other than the fifth day of a calendar month, rent for the fractions of a month at the commencement or end of the Term are calculated and payable on a per diem basis at a rate per day equal to one 365th part of the annual rent. Payments made after the 10th day of the month shall incur an additional \$25.00 per day late fee, which shall be paid and included as part of the rent.

City of Olympia
Attention: Accounts Receivable
PO Box 1967
Olympia, WA 98507-1967

11. **DISASTER:** In the event the leased premises are destroyed or damaged by fire, earthquake, or other casualty so as to render the premises totally unfit for occupancy, or the City neglects and/or refuses to restore said premises to their former condition, Lessee may terminate this lease and shall be reimbursed for any unearned rent that has been paid. In the event said premises are partially destroyed by any of the aforesaid agencies, the rent herein agreed to be paid shall be abated from the time or occurrence of such destruction of damage until the premises are again restored to their former condition, and any rent paid by Lessee during the period of abatement shall be credited upon the next installment or rent to be paid. It is understood that the terms "abated" and "abatement" mean a prorate reduction of area unsuitable for occupancy due to casualty loss in relation to the total rented area.

12. **REIMBURSEMENT FOR DAMAGE TO PREMISES:** Lessee hereby agrees to reimburse the City for damages caused by the acts of negligence of its employees, clients, and agents, but in no event shall this paragraph be construed as diminishing the City's duty to make repairs set forth in preceding paragraphs of this lease or to maintain in full force and effect a policy of personal property insurance on its personal property within the leased premises.

13. **DEFAULT:** In addition to termination provided in Section 4 above, if default shall at any time be made by Lessee in the payment of rent when due to the City as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Lessee by the City, or if default shall be made in any of the other covenants or conditions to be kept, observed, and performed by Lessee, and such default shall continue for thirty (30) days after notice thereof in writing to Lessee by the City without correction thereof then having been commenced and thereafter diligently prosecuted, the City may declare the term of this lease ended and terminated by giving Lessee written notice of such intention, and if possession of the leased premises is not surrendered, the City may reenter said premises. The City shall have, in addition to the remedy above provided, any other right or remedy available to the City on account of any Lessee default, either in law or equity.

14. **COMPLIANCE WITH LAW:** Lessee shall comply with all laws, orders, ordinances, and other public requirements now or hereafter pertaining to Lessee's use of the leased premises. The City shall comply with all laws, orders, ordinances, and other public requirements now or hereafter affecting the leased premises.

15. **NOTICES:** All notices hereunder may be delivered or mailed. If mailed, they shall be sent to the following addresses:

CITY: City of Olympia
Attention: Tom Morrill, Esq.
PO Box 1967
Olympia, WA 98507-1967

LESSEE: Mr. Dung Nguyen
4321 3rd Ave. NW
Olympia, WA 98502

16. INDEMNIFICATION: Lessee shall hold harmless, defend and indemnify the City from and against any and all claims, liability, damages, costs, expenses (including attorneys' fees), or legal actions resulting from Lessee's use of the Premises or the act, omission, or negligence of Lessee, or the officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of Lessee in or about the Premises, or arising from any accident, injury, or damage, howsoever and by whomsoever caused, to any person or property, occurring in or about the Premises, except those claims solely related to the City's sole negligence or nonperformance of any duty assigned to the City by this Lease.

17. INSURANCE. Lessee, at its sole expense, shall procure and maintain in full force and effect, general comprehensive public liability insurance in responsible companies qualified to do business in the State of Washington, which shall insure Lessee, its agents, employees, officers, directors, members and invitees against all claims which Lessee has indemnified Lessor in Section 16 above, including claims for injuries or death to persons, or property damage, occurring in or about the Premises, in the amount of at least \$1 million (\$1,000,000.00) combined single limits. The City shall be named as additional insured on all such insurance policies, with the exception of professional liability and workers' compensation coverage(s). The insurance provided to the additional insured shall be primary. Contractor shall provide certificates of insurance and an Additional Insured endorsement, concurrent with the execution of this Lease, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Agreement, except after thirty (30) days prior written notice to the City. As stated in Section 6 above, the City shall not be responsible for loss of revenue resulting from maintenance down-time, and Lessee shall carry insurance against such loss. As stated in Section 5 above, Lessee shall carry insurance for all building contents, including personal and company equipment, furnishings, etc. Lessee's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

18. HAZARDOUS CONDITIONS: Lessee agrees to remove any and all hazardous defects or conditions caused by the Lessee or restaurant operation. Lessee will immediately notify the City of any other hazardous conditions it observes on the premises. The City will address these conditions subject to the provisions of Section 6 above.

19. STATE OF WASHINGTON: This lease shall be governed by and its terms and conditions construed in accordance with the laws of the State of Washington, and venue shall be in the Thurston County Superior Court.

20. NON-WAIVER: Waiver by Lessor or Lessee of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this lease, other than the failure of Lessee to pay the particular rent so accepted regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

21. PERSONAL PROPERTY: A list of the personal property of the Lessee that is located within the Premises is attached as Exhibit "A". All personal property shall be removed from the premises upon conclusion of the lease Term.

22. ACCESS FOR ENVIRONMENTAL CLEAN-UP: Prior to purchasing the Premises, the City performed a Phase 2 Environmental Site Assessment of the Premises. The report indicates that the eastern ¼ of the Premises is contaminated with gasoline-range hydrocarbons at concentrations greater than MTCA Method A cleanup levels. Should the Department of Ecology require that the City clean-up the Premises during the lease Term, Lessee will allow City reasonable access to the Premises to perform the clean-up activity. City will not be responsible for any loss of revenue resulting from the clean-up activity. The City will waive the rent during any City-performed downtime on a per diem basis at a rate per day equal to one 365th part of the annual rent.

23. SECURITY DEPOSIT: Upon closing of the purchase of this property from Mr. Trinh, Lessor assumed Mr. Nguyen's security deposit of \$3,000. Lessor may withhold the security deposit to:

- (1) Remedy any default in the payment of rent.
- (2) Repair damages to the premises, except ordinary wear/tear, caused by Lessee.
- (3) Clean the premises if necessary.

Lessee may not, without Lessor's prior written consent, apply this security deposit to the last month's rent or any other sum due under this agreement. Within 14 days after the Lessee has vacated the premises, returned the keys and provided Lessor with a forwarding address, Lessor will return the deposit in full or give Lessee an itemized written statement of the reasons for and the dollar amount of, any of the security deposit retained by Lessor, along with a check for any deposit balance. The security deposit will be held by the Lessor and Lessor will not be required to pay any interest earned on this security deposit.

IN WITNESS WHEREOF, the parties hereto have subscribed their names:

CITY OF OLYMPIA

By: _____
Steven R. Hall
Title: City Manager

APPROVED AS TO FORM

Darren Nienaber
Darren Nienaber, Deputy City Attorney

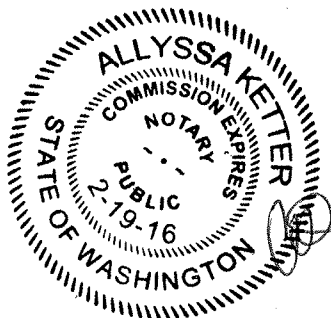
DUNG NGUYEN

By: [Signature]
Dung Nguyen

STATE OF WASHINGTON }
 }
County of Thurston } **SS.**

I certify that I know or have satisfactory evidence that Dung Nguyen is the person who appeared before me, and said person(s) acknowledged that she/he signed this instrument and acknowledged it to be her/his free and voluntary act for the uses and purposes mentioned in this instrument.

DATED: Feb 24, 2014.



[Signature]
Name (typed or printed): Allyssa Ketter
NOTARY PUBLIC in and for the State of
Washington
Residing at Lacey, WA
My appointment expires: 02-19-2016

STATE OF WASHINGTON

}
}
}

SS.

County of Thurston

I certify that I know or have satisfactory evidence that Steven R. Hall is the City Manager of the City of Olympia, who appeared before me, and said person acknowledged that she/he signed this instrument and acknowledged it to be her/his free and voluntary act for the uses and purposes mentioned in this instrument.

DATED: _____, 2014.

Name (typed or printed): _____
NOTARY PUBLIC in and for the State of
Washington
Residing at _____
My appointment expires: _____

EXHIBIT "A"

Personal Property of Dung Nguyen

- Stove
- Refrigerator
- Drapes
- Blinds
- Hood fan
- Freezer
- Tables
- Chairs
- Sundry utensils
- Equipment
- Supplies
- Implements
- Food stocks