

PREPARED BY AND RETURN TO:
DANIEL J. SHEPHERD, ESQUIRE
DANIEL J. SHEPHERD, P.A.
ONE PARK PLACE SUITE 395
621 NORTHWEST 53RD STREET
BOCA RATON, FLORIDA 33487

8100
1050
3-12-90

(2)

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$1,116,818.00 WITH CREDIT BEING GIVEN FOR ALL MONIES PAID PURSUANT TO BORROWER'S NOTE DATED THE SAME DATE AS THIS SECURITY INSTRUMENT.

MAR 12 P2:40

FOURTH MORTGAGE

THIS FOURTH MORTGAGE (hereinafter "Security Instrument") is given on this 7TH day of March, 1990. The Mortgagor is CREATIVE CHOICE MANAGEMENT, INC., a Florida corporation with its principal office at 115 Inlet Way, Palm Beach Shores, Florida 33404, (hereinafter "Borrower"). This Security Instrument is given to THE CITY OF KEY WEST, FLORIDA, a municipality, acting pursuant to Chapter 125, Florida Statutes, whose address is 525 Angela Street, Key West, Florida 33040, (hereinafter "Lender") as a fourth (4th) mortgage on the Borrower's leasehold interest in property described in "EXHIBIT A", (the "Leasehold Estate") Borrower owes Lender the principal sum of TWO MILLION TWO HUNDRED THIRTY THREE THOUSAND SIX HUNDRED THIRTY FIVE AND NO/100 DOLLARS (\$2,233,635.00). This debt is evidenced by Borrower's Note dated the same date as this Security Instrument (hereinafter "Note"). This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications, and the repayment of future or additional advances as may be made to Borrower pursuant to the Note; (b) the payment of all other sums, with interest, advanced under Section 6 hereof to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender Borrower's leasehold estate in the following described property located in Monroe County, Florida (the "Property"):

SEE ATTACHED "EXHIBIT A".

TOGETHER with all buildings and improvements now or hereafter located on the Property; and

TOGETHER with all tenements, hereditaments, easements, fixtures and appurtenances thereto pertaining or belonging, including but not limited to, all fixtures, apparatus, equipment or articles now or hereafter located therein or thereon used to supply heat, gas, air cooling, air conditioning, water, light, power, sanitation, sprinkler protection, waste removal, refrigeration and ventilation, including (without restricting the foregoing), all other fixtures, apparatus, equipment, furniture, furnishings and articles owned by Borrower and used or useful in connection with the operation of the buildings and related facilities and amenities now or hereafter located upon said Premises, it being understood that the enumeration of any specific articles of property shall in nowise result in or be held to exclude any items of property not specifically mentioned. As to any of the property aforesaid which does not form a part and parcel of the real estate, this Fourth Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Borrower, as a Debtor, hereby grants to Lender as a secured party (as said term is defined in the Uniform Commercial Code), securing said indebtedness and obligations.

350.55 3-12-90
Date
DANIEL J. SHEPHERD, ESQUIRE
By: *Daniel J. Shepherd*

DS

The Property, the buildings and improvements and the personalty and fixtures herein conveyed and above referred to, and all replacements thereof, shall hereinafter be called the "Secured Premises".

TOGETHER with all rents, issues, and profits from the Secured Premises, and leases of the Secured Premises, or of any portion thereof, now or hereafter entered into, including, without limitation cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right, upon the happening of an event of default, to receive and collect the rents thereunder; and

TOGETHER with rights to the proceeds of any fire or hazard insurance policy covering the Secured Premises, or any part thereof, or any award in eminent domain proceedings for a taking or for loss of value of the Secured Premises, or any part thereof.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Secured Premises and that the Secured Premises are unencumbered, except for encumbrances of record, to wit:

See attached "Exhibit B".

Borrower warrants and will defend generally the title to the Secured Premises against all claims and demands, subject to said encumbrances of record.

COVENANTS. Borrower covenants and agrees that it will perform, comply with and abide by each and every one of the stipulations, agreements, conditions of the Note and this Security Instrument.

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under Section 1 shall be applied: first, the payment of all other sums, with interest, advanced by lender under Section 6 hereof; secondly, to interest due; and last, to principal due.

3. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Secured Premises which may attain priority over this Security Instrument, and leasehold payments or ground rents. Borrower shall pay these obligations on time and before they become delinquent, directly to the person or entity owed payment. Borrower shall within ten (10) days of receipt of same furnish to Lender upon written request all notices of amounts to be paid under this Section. Borrower shall promptly furnish to Lender upon written request receipts evidencing the payments.

Borrower shall not permit or suffer to be filed or claimed against the Secured Premises any lien or claim of any kind for improvements made by or for Borrower or Borrower's subtenants, successors and/or assigns. If such lien be claimed or filed, it shall be the duty of Borrower, within five (5) days after Lender shall have been given written notice of such claim and shall have been given written notice of such claim and shall have transmitted written notice of the receipt of such claim unto Borrower or within five (5) days of Borrower becoming aware that a lien has been or may be filed, whichever is sooner, to cause the payment, by the posting of a bond, by the payment to the court of the amount necessary to

relieve and release the Secured Premises from such claim, or in any other manner which, as a matter of law, will result, in releasing the Secured Premises from such claim; and Borrower covenants and agrees, within such period of five (5) days, to cause the Secured Premises and Lender's interest therein to be released from the legal effect of such claim. Subject to the foregoing obligation to cause the Secured Premises to be released from such claim, Borrower shall have the right to protest any such claim if Borrower feels such are invalid. Borrower shall notify Lender in writing within three (3) days after it has learned that a lien has been filed against the Secured Premises.

4. Hazard Insurance.

(a) Public Liability Insurance.

(i) Borrower shall obtain and maintain, at its expense, a policy or policies known as General Comprehensive Public Liability Insurance with respect to the Property, insuring Borrower, Lender and any designee of Lender as their respective interests may appear, against any and all claims, demands made by any person whomever for personal injury, death and/or property damage which arise from any occurrence in, on or about the Property or any appurtenances or sidewalks of the Property, or which Borrower is required to indemnify Lender and for all liability imposed by law.

(ii) The coverage limits of the policy shall be at least One Million Dollars (\$1,000,000.00) with respect to any one person, at least Three Million Dollars (\$3,000,000.00) with respect to any one accident, and at least One Million Dollars (\$1,000,000.00) with respect to any property damage.

(b) Fire and Extended Coverage Insurance.

(i) Borrower will keep insured any and all buildings and improvements upon the Property insuring Borrower, Lender and any designee of Lender, as their respective interests may appear, against all loss or damage by fire, windstorm, flood, lightning, hurricane, hail, riot, civil commotion, vandalism and other contingencies and casualties, together with "extended coverage" which said insurance will be maintained in an amount which will be sufficient to prevent any party in interest from being or becoming a co-insurer on any part of the risk and which amount shall not be less than one hundred percent (100%) of the full replacement of the building and improvements.

(ii) In the event of destruction of the buildings or improvements upon the Property or any part thereof by fire, windstorm, or other casualty for which insurance shall be payable and as often as such insurance money shall be been paid to Lender and Borrower, all proceeds so paid shall be deposited in a joint account of Lender and Borrower in a bank located in the City of Key West designated by Lender, and shall be made available to Borrower for the construction or repair, as the case may be, of any building or improvements, damaged or destroyed by fire, windstorm, or other, casualty for which insurance money shall be payable. All such proceeds shall be paid out by Lender and Borrower from said joint account from time to time on the estimate of any reliable architect licensed in the State of Florida having jurisdiction over such reconstruction and repair, certifying that the amount of such estimate is being applied to the payment of the reconstruction or repair and at a reasonable cost therefore provided, however, that the total amount of money necessary for the reconstruction or repair of any building, buildings or improvements destroyed or injured has been used by Borrower for such purpose and its application for such purpose assured.

(iii) In the event of the destruction or damage of the buildings and improvements upon the Property or any part thereof, and as often as any building or improvement on the Property shall be destroyed or damaged by fire, windstorm, or other casualty, Borrower shall promptly rebuild and repair the same to

the same or greater total square footage that existed prior to the damage and in such manner that the building or improvement so rebuilt and repaired, and the personal property so replaced or repaired, shall be of the same or higher value as the said building or improvement and the personal property upon the Property prior to such damage or destruction, and shall have the same rebuilt and ready for occupancy within fifteen (15) months from the time when the loss or destruction occurred. The fifteen (15) month period for reconstruction shall be enlarged, if necessary as a result of delays caused, without fault or neglect on the part of Borrower, by act of God, strikes, lockouts, or other conditions, other than matters of refinancing the Property, which are beyond Borrower's control.

(iv) All insurance proceeds received by Borrower or Lender under the terms of this provision shall be applied solely to the repair and replacement of the building or improvement so damaged or destroyed.

(c) Workmen's Compensation, Rent Loss Insurance and Other Insurance. Borrower shall maintain (i) Workmen's Compensation Insurance as required by all applicable federal, state, local or other laws including employer's liability with a limit of at least Five Hundred Thousand Dollars (\$500,000.00); (ii) Rent Loss Insurance, insuring Borrower and Lender against loss of rent in the event of a fire or other catastrophe in the amount of twelve (12) months gross rent or the maximum available at the time coverage is to be obtained, not to exceed twelve (12) months; and (iii) such other insurance as is reasonably required by Lender.

(d) Unfinished Improvements. Borrower shall maintain insurance insuring Borrower and Lender for damage to all unfinished buildings and improvements caused by the elements listed in Section 4 (b)(1) hereinabove, theft or vandalism for the full replacement value of said unfinished buildings and improvements.

(e) General Insurance Provisions.

(i) Before any insurance policy shall expire, Borrower shall deliver to Lender the insurance policy, or a renewal thereof, or in the case of a renewal, reasonable proof that the policy has been renewed or extended, as the case may be, together with evidence of payment of applicable premiums.

(ii) All insurance policies required to be carried under this Security Instrument by or on behalf of Borrower or Lender shall provide, and any certificate evidencing the existence of any insurance policies, shall certify, that, unless Lender shall be given thirty (30) days written notice of any cancellation of failure to renew, or material change to, the policies, as the case may be, (A) the insurance shall not be cancelled and shall continue in full force and effect, (B) the insurance carrier shall not fail to renew the insurance policies for any reason, and (C) no material change may be made in an insurance policy. As used in this Security Instrument, the term "insurance policy" shall include any extensions or renewals of an insurance policy.

(iii) In the event that either party shall at any time deem the limits of the insurance then carried to be either excessive or insufficient, the parties shall endeavor to agree on the proper and reasonable limits for such insurance carried with the limits thus agreed on until further change pursuant to the provisions of this Section. However, if the parties shall be unable to agree thereon, the proper and reasonable limits for such insurance then to be carried shall be determined in accordance with the rules of the American Arbitration Association. Such determination as to the proper and reasonable limits for such insurance shall be carried with the limits as thus determined until such limits shall again be changed pursuant to the provisions of this Subsection. The expenses of such determination shall be borne equally by the parties.

(iv) Borrower shall pay all premiums for all of the insurance policies which Borrower is obligated to carry on the Property under the terms of this Security Instrument.

(v) All insurance required to be maintained by Borrower hereunder shall be insured by financially solvent and responsible Best-rated insurance companies licensed and authorized to do business in the State of Florida and approved by Lender. All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Borrower shall give prompt notice, and within the time period provided by Lender, to the insurance carrier and Lender of any loss. Lender may make proof of loss if not made promptly by Borrower.

(vi) Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Section 1 or change the amount of the payments. If under Section 21 the Property is acquired by Lender, Borrower's right to any insurance to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

(vii) No lien upon any of said policies of insurance or upon any refund or return premium, which may be payable on the cancellation or termination thereof, shall be given to anyone other than Lender, except by the proper endorsement affixed to such policy and approved by Lender.

5. Preservation and Maintenance of Secured Premises. Borrower shall not destroy, damage or substantially change the Secured Premises, allow the Secured Premises to deteriorate or commit waste. Borrower shall at all times during the term of this Security Instrument keep in good state of repair and in first class condition in accordance with this Section (it being understood that "first class condition" shall be deemed to be in comparison to other improvements of similar age and design located in the City of Key West, Florida), nor shall Borrower suffer or permit any strip, waste, or neglect of any building or other property to be committed, and that Borrower shall repair, replace and renovate such property as often as it may be necessary in order to keep the improvements and other property which is the subject matter of this Security Instrument in first class repair and condition. Borrower shall not do anything or permit anything to be done which will impair or weaken the security of this Security Instrument and in case of the refusal, neglect or inability of the Borrower to repair and maintain said Secured Premises, Lender may exercise its rights under Section 6.

Lender or its representatives are hereby authorized to enter upon and inspect the Secured Premises at all reasonable times.

Without limiting any other provision contained herein relating to the same or similar matters as hereinafter set forth, Borrower covenants and agrees that in the ownership, operation and management of the Secured Premises, Borrower will observe and comply with all applicable federal, state, and local statutes, ordinances, regulations, orders, and restrictions, including, without limitation, all zoning building codes, environmental protection and equal employment opportunity statutes, ordinances, regulations, orders, and restrictions.

Borrower shall maintain in good state of repair, replacement and in first class condition, the common areas of and utilities on the Property and the interior and exterior of the buildings constructed thereon, which shall include, without limiting in generality of the foregoing, the obligation to maintain, paint, clean, inspect and illuminate same, to remove all conditions that interfere with the proper use of same, and to remove keep all of

the facilities on the Property which are available to the subtenants, including but not limited to, the laundry facilities, in good working order.

Borrower shall make all necessary structural repairs to the roof, foundation, exterior walls and interior walls of the buildings constructed on the Property.

Borrower shall make all necessary repairs to, and replace when necessary, any and all appliances, windows, fixtures and appurtenances located on the Property.

Borrower shall make all necessary repairs to, and replace when necessary, any and all pipes, plumbing, lines, ducts, wires and conduits located on the Property.

Borrower shall keep the Property and the buildings located thereon free of vermin and in a clean and sanitary condition.

6. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Secured Premises (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Secured Premises and Lender's rights in the Secured Premises, Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this Section 6, Lender does not have to do so.

Any amounts disbursed by Lender under this Section 6 shall become additional debts of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

7. **Inspection.** Lender and his agents shall have the right to enter the Property at all reasonable times to examine the conditions and use thereof, provided that Lender give Borrower twenty-four (24) hours notice prior to entering the Property and provided that such right shall be exercised in such manner so as not to interfere with Borrower in the conduct of Borrower's business on such Property; and if the Property are damaged by fire, hurricane, or by any other casualty which caused the Property to be exposed to the elements, then Lender may enter upon the Property without prior notice to make emergency repairs; but if Lender exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse Borrower from its obligation to keep the Property in repair and Borrower shall, upon demand of Lender, immediately reimburse Lender for the cost and expense of such emergency repairs.

8. **Condemnation.** If (a) the entire Property shall be permanently taken by the exercise of the right of eminent domain for any public or quasi-public improvement or use, (b) if so substantial a portion of the Property or any building or improvement thereon shall be taken so as to render that portion not taken unsuitable and unusable for the purposes to which the Property shall then be devoted, or (c) if the portion of the Property so taken does not render the Property unsuitable and unusable for the purposes to which the Property were devoted, then on such entire taking or substantial partial taking under Subsections (a) and (b) hereinabove of Borrower's leasehold estate in the Property, the award of damages for such taking shall be

apportioned between Borrower and Lender on equitable and just principles in accordance with their respective interests and in the following order of priority:

(i) The holder of the mortgage in first position and placed on Borrower's leasehold interest shall be entitled to the award to the extent of the unpaid balance of the mortgage debt.

(ii) The holder of the mortgage in second position and placed on Borrower's leasehold interest shall be entitled to any excess proceeds remaining to the extent of the unpaid balance of the mortgage debt.

(iii) The holder of the mortgage in third position and placed on Borrower's leasehold interest shall be entitled to any excess proceeds remaining to the extent of the unpaid balance of the mortgage debt.

(iv) Lender shall be entitled to any excess proceeds remaining up to the amount of the unpaid balance and all accrued interest and all monies expended under Section 6 hereof.

In the event of a partial taking under Subsection (c) of this Section, then Borrower shall upon the receipt of the award in condemnation, make all necessary repairs or alterations to restore the portion of the Property remaining to as near its former condition as the circumstances will permit, and to the building thereon, to the extent necessary to make the portion of the building not so taken a complete architectural unit, provided, however, that Borrower, in any event, shall not be required to spend for such repair and alteration work an amount in excess of the respective amounts received by Borrower as damages for the taking of such part of the Property and of the building of which it forms a part.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Section 1 or change the amount of such payments.

9. **Borrower Note Releases; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

10. **Successors and Assigns Bound.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Section 18.

11. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower.

If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

12. **Legislation Affecting Lender's Rights.** If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by Section 20.

13. **Notices.** If either party desired to give notice to the other in connection with and according to the terms of this Security Instrument, such notice shall be sent via certified mail, return receipt requested or by next day delivery, and be deemed given when received or if refused, on the date refused, and such notices shall be addressed as follows:

For Lender: City Manager
The City of Key West, Florida
525 Angela Street
Key West, Florida 33040

For Borrower: Dilip Barot, President
Creative Choice Management, Inc.
115 Inlet Way
Palm Beach Shores, Florida 33404

Nothing herein contained shall be construed as prohibiting the parties respectively from changing the place at which notice is to be given, but no such change shall be effective unless and until it shall have been accomplished by written notice given in the manner set forth in this Section.

14. **Laws; Waste; Nuisance.** Borrower shall, at its own expense and cost, (a) comply with all governmental laws, ordinances, orders and regulations affecting the Property now in force or which hereinafter may be in force; and (b) comply with and execute all rules, requirements and regulations of the Board of Fire Underwriters, and Borrower's and Lender's insurance companies; and (c) not suffer, permit or commit any waste or nuisance; and (d) not permit any outside/exterior storage of garbage or other materials except in enclosed dumpsters or similar containers; and (e) not permit the accumulation or burning of any rubbish or garbage; and (f) not permit loitering on the Property.

Borrower recognizes that Lender will be damaged in the event Borrower violates any provisions of this Section, and, accordingly, without notice to Borrower, Lender may enter upon the Property at any time to correct any violation hereunder and Borrower shall reimburse Lender immediately upon demand the cost of any such correction undertaken by Lender.

15. **Environmental Contamination; Indemnity.** Borrower represents and warrants to and covenants with Lender that neither Borrower nor any employee, agent, licensee, invitee, customer, tenant or subtenant of Borrower shall (i) dispose of on, bury beneath, or percolate beneath the Property or any improvements thereon any toxic, explosive or hazardous substances; (ii) remove from the Property or any improvements thereon and store off site of the Property any toxic, explosive or hazardous substance; (iii) release (as herein defined) or permit the release of hazardous substances on or from the Property or any improvements thereon; (iv) use or permit the use of the Property or any improvement thereon for the handling, transportation or disposal of a hazardous substance; and (v) manufacture, treat, store or dispose of any hazardous substance on the Property or any improvements thereon.

Borrower shall, at all times during the term of this Security Instrument and Note, comply with all federal, state and local hazardous waste and environmental rules, regulations, statutes, codes, ordinances and other laws including those hereinafter enacted, applicable to the Property and/or improvements thereto and/or Borrower's use thereof, including but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (hereinafter "CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended (hereinafter "RCRA").

For purposes hereof, the term "hazardous substance" means any one or more of the following (a) any substance deemed hazardous under Section 101(14) of CERCLA, (b) any other substance deemed hazardous by the Environmental Protection Agency pursuant to Section 102(a) of CERCLA, (c) petroleum (including, without limitation, crude oil or any fraction thereof), (d) any substance deemed hazardous pursuant to Section 1004(5) of RCRA, (e) any solid waste identified in Section 1004(27), of RCRA or (f) any other hazardous or toxic substance, material, compound, mixture, solution, element, pollutant, or waste regulated under any federal, state or local statute, ordinance or regulation including those hereinafter enacted. The term "release" shall have the meaning given to such term in Section 101(22) of CERCLA.

Borrower shall pay, perform, discharge, defend, indemnify and hold Lender harmless from and against all claims, orders, demands, actions, proceedings and/or suits, and all losses, costs, damages and expenses (including, but not limited to, court costs, technical consultant fees and expenses, reasonable attorneys' fees, paraprofessional fees and expenses at all trial and appellate levels and post judgment proceedings and regardless of whether or not any action, proceeding or suit may be instituted) arising or resulting from any act, occurrence or omission in violation of or contrary to the covenants, representations and warranties made herein. Such indemnification shall include, but not be limited to, claims made against Lender with respect to contamination of the soil and/or groundwater, damage to the environment and natural resources, and injury or damage to persons or property, the costs of any health assessment or health effects study, the costs of any environmental audit revealing the existence of hazardous waste in violation of the terms of this Security Instrument, and any costs of removal or remedial action incurred in connection with the cleanup of the hazardous substance on the Property or any improvements thereon, whether such liability arises under the terms hereof, or under RCRA, CERCLA, or any other federal, state, and/or local statute, ordinance, or regulation, including those hereinafter enacted, or common law.

16. **Governing Law; Severability; Venue.** This Security Instrument shall be governed by federal law and the laws of the State of Florida. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and Note are declared to be severable. The venue for any legal proceedings to enforce or determine the terms and conditions of this Security Instrument or the Note shall be Monroe County, Florida.

17. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

18. **Transfer of the Secured Premises or a Beneficial Interest in Borrower.** If all or any part of the Secured Premises or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at its option, upon such sale or transfer declare to be immediately due and payable the entire

outstanding principal balance, any accrued interest thereon and all monies paid under Section 6 hereof without further notice or demand, time being of the essence.

19. Borrower's Right to Reinstate. Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) five (5) days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument provided Borrower simultaneously with the exercise of such right of redemption: (i) pays Lender all sums which then would be due under this Security Instrument and the Note had no acceleration occurred; (ii) makes payment to Lender of all sums due in the form of cash, cashier's check or certified check; (iii) cures any default of any other covenants or agreements; (iv) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorney's fees and costs involved in any action to enforce Lender's rights, including a foreclosure action; (v) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Secured Premises and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if not acceleration has occurred. However, this right to reinstate shall not apply in the case of acceleration under Sections 12 or 18.

20. Acceleration; Remedies. In the event of Borrower's breach of any covenant or agreement contained in this Security Instrument, Lender may, at its option, upon any such default declare to be immediately due and payable the entire outstanding principal balance, any accrued interest thereon and all monies expended by Lender on Borrower's behalf under Section 6 hereof, without further notice or demand. Lender's failure to exercise said option at any time shall not be construed or interpreted as a waiver of any of Lender's rights hereunder. Lender may foreclose this Security Instrument by judicial proceeding upon default. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 20, including, but not limited to, reasonable attorneys' fees, court costs and expenses, and expenses of title evidence.

21. Lender in Possession.

(a) Upon acceleration under Section 20 or abandonment of the Property, Lender (by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument.

(b) Right of Lender to Enter and Take Possession.

(i) If an event of default shall have occurred, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Secured Premises and may exclude Borrower and Borrower's agents and employees wholly therefrom.

(ii) Upon every such entering and taking of possession, Lender may hold, store, use, operate, manage, control, and maintain the Secured Premises conduct the business thereof, and, from time to time (a) make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (b) insure or keep the Secured Premises insured; (c) manage and operate the Secured

Premises and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same; and (d) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender may from time to time determine to be to its best advantage; and Lender may collect and receive all the income, rents, profits, issues, and revenues of the Secured Premises, including those past due as well as those accruing thereafter and, after deducting the cost of collecting the same, shall apply the remainder of the money so received by Lender, in a manner within the sole discretion of Lender.

(iii) For the purpose of carrying out the provisions of this Subsection (b), Borrower hereby constitutes and appoints Lender the true and lawful attorney-in-fact of Borrower to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney-in-fact for such purposes.

(c) Appointment of a Receiver.

(i) If an event of default shall have occurred, Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Secured Premises and to collect the rents, profits, issues, and revenues thereof.

(ii) Borrower will pay to Lender upon demand, all expenses, including receiver's fees, attorneys' fees, costs and agents' compensation, incurred pursuant to the provisions contained in this Subsection (c) together with interest thereon, and all such expenses and interest shall be secured by this Security Instrument.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Attorneys' Fees. In the event any party is forced to bring legal proceedings or seek legal assistance to enforce the terms and conditions hereof, the non-prevailing party in such proceeding shall be responsible for the reasonable attorney's fees and costs incurred by the prevailing party in connection therewith.

24. Tenant Leases.

(a) Borrower shall faithfully perform all covenants under subsisting and future tenant leases affecting the Secured Premises and will use its best efforts to enforce or secure the performance of each and every obligation of the respective tenants under such leases.

(b) Borrower shall neither do, nor neglect to do, nor permit to be done, anything other than pursuing the enforcement of the terms of such leases in the exercise of the remedies thereunder following default of the part of any lessee in the performance of its prescribed obligations, which may cause the modification or termination of any of said leases, or of the obligations of any lessee or any person claiming through such lessee, or which may diminish or impair the value of any lease, or the rents provided for therein, or the interest of the Borrower or of Lender therein or thereunder.

(c) Borrower will not, without the prior written consent of Lender, assign the rents, or any part thereof, from the Secured Premises, except as provided for herein or in a separate assignment of even date herewith from Borrower as the assignor to Lender as the assignee.

(d) Borrower will not accept prepayment of rents for more than one (1) month under any lease now or hereafter covering the Secured Premises or any part thereof; and any such purported prepayment, made without the written consent of Lender, shall be void as against the Lender.

(e) Borrower will give Lender immediate notice by certified mail of any notice of default or notice of cancellation received from any tenant.

25. Assignment of Rents, Issues, and Profits.

(a) Borrower does hereby assign and set over unto Lender, all rents, issues, and profits which, whether before or after foreclosure or during the full period of redemption, shall accrue and be owing for the use or occupation of the Secured Premises or any part thereof. For the purpose aforesaid, Borrower does hereby constitute and appoint Lender its attorney-in-fact, irrevocably in its name, to receive, collect and receipt for all sums due or owing for such use and occupation, as the same accrue, and out of the amount so collected. Lender, its successors and assigns, is hereby authorized (but not obligated) to pay and discharge all obligations of Borrower hereunder, including, but not being limited to, the obligation to pay the indebtedness secured by this Fourth Mortgage, (and including any accelerated indebtedness) in such order as Lender, its successors or assigns, may determine, and whether due or not, and to pay the remainder, if any, to Borrower.

(b) For the purpose aforesaid, Lender may enter and take possession of the Secured Premises and exercise any and all of its rights under Section 21 hereof. Lender shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Lender.

(c) So long as there shall exist no default hereunder, Borrower shall have the right to collect, as they accrue, all such rents, issues and profits. Borrower agrees to use such rents, issues and profits in payment of principal and for interest payable pursuant to the Note and in payment of all taxes, assessments, water rates, sewer rents, insurance premiums, and other charges on or against the Secured Premises.

(d) As additional and collateral security for the payment of the Note, Borrower will, as requested from time to time by Lender assign to Lender or its nominee by specific or general assignment, any leases now or hereafter made upon said Secured Premises, such assignments to be in form and content acceptable to Lender. For the aforesaid purposes, Borrower agrees to deliver to Lender, upon Lender's request an executed original counterpart of each and every lease which is at the time of such request outstanding upon the said Secured Premises and in addition thereto shall supply Lender at its request a complete list of each and every lease showing location, name of tenant, monthly rental, date to which paid, term of lease, date of occupancy, date of expiration, and any and every special provision, concession, or inducement granted to tenant.

26. Borrower acknowledges that the proceeds of the loan were made available to the Lender as a grant from the United States Department of Housing and Urban Development to be used in connection with the Frederick Douglass Square Project; that all proceeds of the loan must be used in accordance with the regulations and requirement of the United States Department of Housing and Urban Development, Housing Development Grant Program including the terms of the Grant Agreement entered into between Lender and the United States Department of Housing and Urban Development, executed by the Secretary for Housing and Urban Development on December 29, 1989 and by Lender on January 5, 1990, (the "Grant Agreement") a copy of which has been provided to

EXHIBIT A

In the City of Key West, Monroe County, Florida, and being known as part of Lots 5, 6, 9 and 10, Tract 3, according to Charles W. Tift's map, and being more particularly described as follows:

BEGIN at the intersection of the Northeasterly Right-of-Way Line of Fort Street and the Southeasterly Right-of-Way Line of Petronia Street; thence in a Northeasterly direction along the said Southeasterly Right-of-Way Line of Petronia Street for 291.88 feet to the Southwesterly Right-of-Way Line of Emma Street; thence at a right angle and in a Southeasterly direction along the said Southwesterly Right-of-Way Line of Emma Street for 246.68 feet; thence at a right angle and in a Southwesterly direction for 108.84 feet; thence at a right angle and in a Southeasterly direction for 25.18 feet; thence at a right angle and in a Southwesterly direction for 183.04 feet to the said Northeasterly Right-of-Way Line of Fort Street; thence at a right angle and in a Northwesterly direction along the said Northeasterly Right-of-Way Line of Fort Street for 271.86 feet to the Point of Beginning. Containing 76,609.91 Square feet, more or less.



EXHIBIT B

1. Easement in favor of The Utility Board of the City of Key West, Florida recorded July 12, 1962 in Official Records Book 255, Page 205, Public Records of Monroe County, Florida.
2. Mortgage executed by City of Key West, Florida in favor of School Board of Monroe County, Florida recorded September 22, 1989 in Official Records Book 1106, Page 126, Public Records of Monroe County, Florida, securing the original principal amount of \$635,000.00.
3. Housing Development Grant Covenants executed by the City of Key West, Florida recorded September 22, 1989 in Official Records Book 1106, Page 131, Public Records of Monroe County, Florida.
4. Terms and conditions contained in Deed of Bargain and Sale executed by the City of Key West to the Housing Authority of the City of Key West recorded October 20, 1989 in Official Records Book 1109, Page 408, Public Records of Monroe County, Florida.
5. Ground Lease Agreement between the Housing Authority of the City of Key West and Creative Choice Management, Inc. recorded October 20, 1989 in Official Records Book 1109, Page 410, Public Records of Monroe County, Florida, and all Exhibits attached thereto.
6. Corrective Deed executed by the School Board of Monroe County, Florida, recorded February 28, 1990 in Official Records Book 1122, Page 1308, Public Records of Monroe County, Florida.
7. Corrective Mortgage Deed executed by the City of Key West, Florida, recorded February 28, 1990 in Official Records Book 1122, Page 1312, Public Records of Monroe County, Florida.
8. Corrective Instrument executed by the City of Key West, Florida, recorded February 28, 1990 in Official Records Book 1122, Page 1316, Public Records of Monroe County, Florida.
9. Corrective Deed executed by the City of Key West, Florida, recorded February 28, 1990 in Official Records Book 1122, Page 1318, Public Records of Monroe County, Florida.
10. Corrective Instrument executed by the Housing Authority of the City of Key West and Creative Choice Management, Inc., recorded February 28, 1990 in Official Records Book 1122, Page 1321, Public Records of Monroe County, Florida.
11. Addendum to Owner-Grantee Agreement and Attachment A-Supplemental Provisions Agreement executed by Creative Choice Management, Inc., by the Housing Authority of the City of Key West and by the City of Key West, Florida, recorded February 28, 1990 in Official Records Book 1122, Page 1324, Public Records of Monroe County, Florida.
12. Subordination Agreement between the School Board of Monroe County, Florida, the City of Key West, Florida, Creative Choice Management, Inc., Ramstein, Inc., and the Florida Housing Finance Agency, recorded February 28, 1990 in Official Records Book 1122, Page 1328, Public Records of Monroe County, Florida.
13. Mortgage executed by Creative Choice Management, Inc., in favor of Ramstein, Inc., recorded February 28, 1990 in Official Records Book 1122, Page 1333, Public Records of Monroe County, Florida, securing the original principal amount of \$500,000.00.



EXHIBIT B (Continued)

14. Leasehold Mortgage and Security Agreement executed by Creative Choice Management, Inc., in favor of The Florida Housing Finance Agency, recorded February 28, 1990 in Official Records Book 1122, Page 1340, Public Records of Monroe County, Florida, securing the original principal amount of \$1,290,000.00.
15. Collateral Assignment of Subleases, Rents and Contract Rights executed by Creative Choice Management, Inc., recorded February 28, 1990 in Official Records Book 1122, Page 1360, Public Records of Monroe County, Florida.
16. Notice of Limitation on Mortgage Future Advance executed by Creative Choice Management, Inc., recorded February 28, 1990 in Official Records Book 1122, Page 1370, Public Records of Monroe County, Florida.
17. Land Use Restriction Agreement between Creative Choice Management, Inc., and The Florida Housing Finance Agency, recorded February 28, 1990 in Official Records Book 1122, Page 1372, Public Records of Monroe County, Florida.
18. Financing Statement Form UCC-1 executed by Creative Choice Management, Inc., recorded February 28, 1990 in Official Records Book 1122, Page 1382, Public Records of Monroe County, Florida.
19. Leasehold Mortgage and Security Agreement executed by Creative Choice Management, Inc., in favor of The Florida Housing Finance Agency recorded February 28, 1990 in Official Records Book 1122, Page 1387, Public Records of Monroe County, Florida, securing the original principal amount of \$440,000.00.
20. Collateral Assignment of Subleases, Rents, and Contact Rights executed by Creative Choice Management, Inc., recorded February 28, 1990 in Official Records Book 1122, Page 1407, Public Records of Monroe County, Florida.