

AMENDED AND RESTATED MORTGAGE NOTE

\$1,116,818.00

WHEREAS, Borrower executed and delivered a promissory note dated March 7th, 1988, in the amount of TWO MILLION TWO HUNDRED THIRTY-THREE THOUSAND SIX HUNDRED AND THIRTY-FIVE AND NO/100 DOLLARS (\$2,233,635.00) (the "Note") to Lender, and the Note was secured by a Fourth Mortgage Deed from Borrower to Lender recorded in Official Records Book 1123 page 1723 – 1742 of the Public Records of Monroe County, Florida (referred to as the "Mortgage") encumbering the property described therein (the "Mortgaged Property"); and

WHEREAS, the parties have agreed to modify the terms of the Fourth Mortgage and to Amend and Restate the Mortgage Note;

NOW, THEREFORE, THE UNDERSIGNED, CREATIVE CHOICE IV LIMITED, LLC, a Florida Limited Liability Company ("Maker" or "Borrower") promises to pay to the order of THE CITY OF KEY WEST, A FLORIDA MUNICIPALITY ("Payee" or "Grantee"), the principal sum of ONE MILLION ONE HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED EIGHTEEN DOLLARS & no cents (\$1,116,818.00) or so much thereof as may be advanced and outstanding from time to time, with interest on the unpaid principal from the date of each such advance at the following rate and payable in the following manner:

- (a) The interest rate shall be at a variable rate, the interest rate will be 2% over the average yield on outstanding long-term obligations of the United States during the month prior to the execution of this Amended and Restated Promissory Note.
- (b) The amount due hereunder shall be reduced by 10% per annum provided the Borrower is not otherwise in default of the terms and conditions of Owner-Grantee Agreement, (including all monitoring and reporting requirements contained therein) dated August 21, 1989, with the City of Key West (Grantee), the Key West Housing Authority (KWHHA), Creative Choice Management ; Inc. the legal entity predecessor of Maker (Owner), the Ground Lease between the Key West Housing Authority and Borrower dated October 6, 1989 and recorded in O.R. Book 1109 page 410 Public Records of Monroe County, Florida, as amended by that certain Amendment to Ground Lease of even date herewith.
- (c) The entire unpaid principal balance, together with accrued interest, shall be due and payable on or before October 31, 2028 (Maturity Date").

Interest shall be calculated on the basis of a three hundred sixty (360) day year for actual number of days principal is unpaid.

The Maker shall have the privilege of prepaying this Note in part or in full, without penalty, at any time, and any prepayment shall be applied to the installment or installments of principal last maturing.

All payments made on the indebtedness evidenced by this Note shall be applied first to repayment of monies paid or advanced by Payee on behalf of the Maker in accordance with the terms of the Mortgage securing this Note, and thereafter shall be applied to payment of accrued interest, and lastly to payment of principal.

All payments of interest and principal are payable at the office of Payee, or at such other place as the holder may designate in writing, in lawful money of the United States of America.

Payee may declare this Note immediately due and payable either: (1) when permitted under any security agreement, loan agreement or mortgage now or hereinafter in effect securing payment hereof; or (2) if Payee deems itself insecure, however, Payee shall not be unreasonable, arbitrary or capricious in exercising this option; or (3) upon any default in the payment of any sum due hereunder, that is not paid within ten (10) days of its due date, or due by the Maker to the Payee under any other promissory note or under any security agreement or other written obligation of any kind now existing or hereinafter created; or (4) upon the insolvency, bankruptcy, dissolution, death or incompetency of any maker, endorser, or guarantor hereby. After default or maturity, this Note and all sums due hereunder shall bear interest at the rate of eighteen percent (18%) per annum ("Penalty Rate") (but in no event at a rate which is higher than the maximum rate permitted by law) from due date until paid. (5) Upon default of any terms of the Ground Lease or or Owner-Grantee Agreement described in (b) above.

Each maker, endorser and guarantor, jointly and severally: (1) promises to pay all collection costs, including reasonable attorney's fee, whether incurred in connection with collection, trial, appeal or otherwise; (2) waives presentment, demand, protest of demand, protest and nonpayment; (3) waives the right of exemption under the Constitution and the laws of Florida; and (4) gives the payee a security interest in any funds or other assets from time to time on deposit with or in possession of the Payee, and the Payee may, at any time after the default of Maker set off the indebtedness evidenced by this Note against any such funds or other assets.

The parties agree and intend to comply with the applicable usury law, and notwithstanding anything contained herein or in any of the Loan Documents, as hereinafter defined, or other document related to the loan evidenced by this Note, the effective rate of interest to be paid on this Note (including all costs, charges and fees which are characterized as interest under applicable law) shall not exceed the maximum contract rate of interest permitted under applicable law, as it exists from time to time. Payee agrees not to knowingly collect or charge interest (whether

denominated as fees, interest or other charges) which will render the interest rate hereunder usurious, and if any payment of interest or fees by Maker to Payee would render this Note usurious, Maker agrees to give Payee written notice of such fact with or in advance of such payment. If Payee should receive any payment which constitutes interest under applicable law in excess of the maximum lawful contract rate permitted under applicable law (whether denominated as interest, fees, or other charges) the amount of interest received in excess of the maximum lawful rate shall automatically be applied to reduce the principal balance, regardless of how such sum is characterized or recorded by the parties.

The obligations of this Note shall be joint and several. The Maker and all endorsers and all persons liable or to become liable on this Note consent to any and all renewals and extensions of the time of payment hereof and further agree that at any time the terms of the payment hereof may be modified or security released by agreement between the Payee hereof and any owner of the premises affected by the instrument securing this Note without affecting the liability of any party to this Note or any person liable or to become liable with respect to any indebtedness evidenced thereby.

This Note is payable in full October 31, 2028. At maturity, Maker must repay the entire principal balance of this Note and unpaid interest then due. The Payee is under no obligation to refinance the Note at maturity. Maker will therefore be required to make payment out of other assets Maker may own, or Maker will have to find a lender willing to lend the money at prevailing market rates, which may be considerably higher than the interest rate on this Note.

The Maker and all guarantors, if any, to this obligation acknowledge: (1) that the relationship between Payee, Maker and Guarantor is one of creditor and debtor and not one of partner or joint venture; (2) there exists no confidential or fiduciary relationship between Payee and Maker and Guarantor imposing a duty of disclosure upon the Payee; (3) the Maker and Guarantor have not relied on any representation of the Payee regarding merits of the use of the proceeds of the loan; and (4) Maker and Guarantor waive any and all claims and causes of action which exist now or may exist in the future arising out of any breach or alleged breach of duty on the part of the Payee to disclose any facts material to this loan transaction and the use of the proceeds.

The remedies of Payee as provided in Loan Documents, as hereinafter defined, shall be cumulative and concurrent, and may be pursued singly, successively or together, at the sole discretion of Payee, and may be exercised as often as occasion therefor shall arise. No act, or omission or commission or waiver of Payee, including specifically any failure to exercise any right, remedy or recourse, shall be effective unless set forth in a written document executed by Payee and then only to the extent specifically recited therein. A waiver or release with reference to one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy or recourse as to any subsequent event.

This Note is secured by, among other things, a Mortgage upon a leasehold interest in real property in Monroe County, Florida, and other Loan Documents of

even date herewith or earlier dated with respect to the secured lease agreement, the Owner-Grantee Agreement and other documents executed pursuant to the original HODAG Agreement for which this Amended and Restated Promissory note and related Amended Fourth Mortgage act to extend. The Mortgage, this Note and all other documents given in connection with the loan evidenced hereby are sometimes herein referred to as the "Loan Documents".

This Note shall be governed by the laws of the State of Florida, and the United States of America, whichever the context may require or permit.

This loan is being made pursuant to the rate provisions of Chapter 687 of the Florida Statutes.

Payee as used herein shall include the named Payee and its successors and assigns.

Time is of the essence of this Note and the payments and performance hereunder and under the Loan Documents.

The Maker hereby, and the Payee by its acceptance of this Note, knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect of any litigation arising out of, under, or in connection with this Note and all loan documents and other agreements executed or contemplated to be executed in connection herewith, or arising out of, under, or in connection with any course of conduct, course of dealing, statements (whether verbal or written) or action of either party, whether in connection with the making of the loan, collection of the loan, or otherwise. This provision is a material inducement for the Payee making the loan evidenced by this Note.

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SIGNATURES ON NEXT PAGES

IN WITNESS WHEREOF, Maker has executed and delivered this instrument this day and year first above written.

Signed, sealed and delivered in the presence of:

CREATIVE CHOICE IV LTD, LLC. a Florida Limited Liability Company:

WITNESS

MAKER

Ashu Arora
Print Name: Ashu Arora

Yashpal Kakker
Yashpal Kakker as Manager for NB Holdings Management LLC as Manager for DSQ Manager LLC as Manager for Creative Choice IV Ltd LLC

Aisleen Moir
Print Name: Aisleen Moir

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 12th day of June, 2019 November 2018, by Yashpal Kakker who is personally known/has produced _____ as identification and who did take an oath.



Vaneeta Arora
Notary Public, State of Florida
My Commission Expires:

This Amended and Restated Mortgage Note amends, modifies, restates and renews that certain Mortgage Note in the original principal amount of TWO MILLION TWO HUNDRED THIRTY-THREE THOUSAND SIX HUNDRED THIRTY-FIVE AND 00/100 DOLLARS (\$2,233,635.00), executed by BORROWER in favor of LENDER and as amended by that certain AMENDMENT TO FOURTH MORTGAGE dated March 30, 1990 of the same amount. Documentary stamps in connection with the Original Mortgage have been affixed to and were paid upon the recording of the Fourth Mortgage Deed dated March 7, 1990 and recorded in Official Records Book 1123, Page 1723, Public Records of Monroe County, Florida.

SIGNATURES CONTINUE ON NEXT PAGE

**CITY OF KEY WEST FLORIDA,
A Florida Municipality**

WITNESS

PAYEE

Print Name: _____

James K. Scholl, City Manager

Print Name

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this _____ day of
November 2018, by _____ who is personally known/has produced
_____ as identification and who did take an oath.

Notary Public, State of Florida
My Commission Expires:

This Amended and Restated Mortgage Note amends, modifies, restates and renews that certain Mortgage Note in the original principal amount of TWO MILLION TWO HUNDRED THIRTY-THREE THOUSAND SIX HUNDRED THIRTY-FIVE AND 00/100 DOLLARS (\$2,233,635.00), executed by BORROWER in favor of LENDER and as amended by that certain AMENDMENT TO FOURTH MORTGAGE dated March 30, 1990 of the same amount. Documentary stamps in connection with the Original Mortgage have been affixed to and were paid upon the recording of the Fourth Mortgage Deed dated March 7, 1990 and recorded in Official Records Book 1123, Page 1723, Public Records of Monroe County, Florida.