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EXECUTIVE SUMMARY

To: The City Commission for the City of Key West

From: George B. Wallace, Assistant City Attorney

Date: June 19, 2019

RE: Execution of Amended Note, Mortgage, and Ground Lease (as to Key West Housing Authority) for Douglass Square extending the reporting and affordable restrictions until October 31, 2028.

Action statement:

Authorize the City Manager to accept and execute Amended Loan Documents relating to the Douglass Square Apartments owned by the Key West Housing Authority and Leased to Creative Choice IV, LLC. (Creative Choice) extending the low and very low income restrictions for 17 of the 50 units until October 31, 2028. The terms of the existing Mortgage Note and Fourth Mortgage will also be extended for the same time period and provide for the amortization of the balance due of \$1,116,818.00 over the life of the extension provided there is no other default by the Borrower in its rental practices and reporting requirements as monitored by the Key West Housing Authority.

Background:

On August 21, 1989 the City of Key West, the Key West Housing Authority, HUD, and Creative Choice IV, LLC, through its predecessor entity, entered into a HODAG agreement which provided funding for the development of Douglass Square Apartments as an affordable housing project of 50 units, 17 of which were required to be maintained for low or very low-income residents. As a part of that Agreement, the City received and then loaned to Creative Choice the sum of \$2,233,635.00 and received and holds a Fourth Mortgage secured by a 99-year lease of the property from the Key West Housing Authority to Creative Choice.

The original Fourth Mortgage and Note matured on or about May 22, 2016. Prior to the maturity of the Note the City received a request from Creative Choice for an Estoppel letter declaring the City's Fourth Mortgage and Note in good standing in order to facilitate a refinance by Creative Choice of its First Mortgage with the Florida Housing Finance Corporation.

Former Chief Assistant City Attorney Larry Erskine initiated an inquiry with the Key West Housing Authority concerning Creative Choice's compliance with certain annual reporting requirements as well as payment history. The result of that investigation, continued by the undersigned, resulted in the conclusion that Creative Choice was not in compliance with the terms of the Mortgage and Note which require compliance with other agreements. (The Ground Lease with the Key West Housing Authority and the original HODAG agreement.)

Creative Choice disputes that they were not in compliance and lengthy negotiations were undertaken to resolve the dispute between the City and Creative Choice resulting in the negotiated Amended Mortgage, Note, and Ground Lease proposed herein.

Recommendation:

To approve the proposed Modified Loan Documents and authorize the City Manager to execute, record and deliver the same.
