

PREPARED BY & RETURN TO:
GEORGE B. WALLACE, ESQUIRE
City of Key West
1300 White Street
Key West, FL 33040
Phone: (305) 809-3774

SECOND AMENDED FOURTH MORTGAGE AND
MODIFICATION AGREEMENT

THIS AGREEMENT is made this ____ day of June, 2019, by CREATIVE CHOICE IV LIMITED, LLC. a Florida Limited Liability Company created by the conversion of CREATIVE CHOICE MANAGEMENT, INC. a former Florida Corporation, as "Borrower", hereinafter referred to as "Borrower" or "Mortgagor" and THE CITY OF KEY WEST, a Florida municipality, hereinafter referred to as "Lender" or "Mortgagee".

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 terms of the Fourth Mortgage were Amended by virtue of that certain Amendment to Fourth Mortgage dated March 30, 1988 and recorded in Official Records Book 1127 page 270 of the public records of Monroe County; and

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

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. The recitals set forth above are true and correct.
2. The Fourth Mortgage, as Amended and its secured promissory note are hereby modified as follows:

A. The Mortgage Note is hereby modified and renewed as set forth in that certain Amended and Restated Mortgage Note, in the amount of ONE MILLION ONE HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED EIGHTEEN AND NO/100 DOLLARS (\$1,116,818.00) dated of even date herewith (the "Renewal Note").

B. The Fourth Mortgage, as Amended, is hereby modified to secure the Amended and Restated Mortgage Note.

3. Mortgagor warrants and represents to Mortgagee after appropriate inquiry and investigation that: (a) while Mortgagee has any interest in or lien on the Mortgaged Property, the Mortgaged Property described herein is and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96.510, 94 Stat. 2767, 42 USC 9601 et seq, and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law No. 99-499, 100 Stat. 1613, and (b)(i) as of the date hereof, there are no hazardous materials, substances, wastes or other environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Mortgaged Property or used in connection therewith, (ii) Mortgagor has fully disclosed to Lender in writing the existence, extent and nature of any such hazardous materials, substances, wastes or other environmentally regulated substances, which Mortgagor is legally authorized and empowered to maintain on, in or under the Property or use in connection therewith, and Mortgagor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals. Mortgagor further warrants and represents that it will promptly notify Mortgagee of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will transmit to Mortgagee copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.

Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorneys', consultants', or experts' fees and expenses) of every kind and nature suffered by or asserted against Mortgagee as a direct or indirect result of any warranty or

representation made by Mortgagor in the preceding paragraph being false or untrue in any material respect or any Note or Mortgage and the Note and Mortgage remain unchanged in all other respects.

4. All of the Mortgaged Property shall continue to be in all respects subject to the lien, charge or encumbrance of the Second Amended Renewal Fourth Mortgage and Modification Agreement and nothing herein contained or done pursuant hereto shall affect or be construed to affect the lien, charge or encumbrance of the Second Amended Renewal Fourth Mortgage and Modification Agreement, as previously amended, or the priority thereof or other liens, charges, encumbrances or conveyances, or affect the liability of any party or parties which may now or hereafter be liable under or on account of the Second Amended Fourth Mortgage and Modification Agreement or the Amended And Restated Mortgage Note as modified hereby. This agreement is entered into by the parties hereto solely for the purpose of renewing and modifying the Amended Fourth Mortgage and this agreement is not intended by the parties, nor shall it be construed, as a novation or cancellation of the original obligations of the Borrower.

5. Mortgagee shall not amend, convert or otherwise restructure the form of its legal entity without first obtaining the written consent of the Lender.

6. This agreement shall be binding upon and inure to the benefit of all heirs, personal representatives, successors and assigns of the respective parties hereto.

7. With the exception of the modifications set forth herein above and the modified payment terms contained in the Amended and Restated Mortgage Note secured hereby, there have been no additional modifications to the Mortgage Note or Amended Fourth Mortgage Deed and the Amended and Restated Mortgage Note and the Amended Mortgage Deed remain unchanged in all other respects.

8. Borrower hereby represents, warrants and covenants that there are no offsets, counterclaims or defenses against the obligations of Borrower under the Mortgage Note and Amended Fourth Mortgage Deed, as modified hereby, and that Borrower has full right, power and authority to execute this agreement.

9. Borrower agrees to pay any mortgage or documentary stamp tax that may be or become due and payable in connection with this agreement, the Amended and Restated Mortgage Note, Second Amended Fourth Mortgage and Modification Agreement or any other documents delivered in connection therewith.

10. All loan documents executed by Borrower and Lender in connection with the Amended Fourth Mortgage and Mortgage Note, shall remain in full force and effect except as modified hereby.

11. THE BORROWER AND LENDER HEREBY MUTUALLY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY COURT FOR ANY AND ALL PROCEEDINGS WHICH MAY BE BROUGHT BY EITHER PARTY RELATING TO THE NOTE, THE MORTGAGE AND ANY AND ALL DOCUMENTS EVIDENCING, SECURING OR IN ANY WAY DIRECTLY OR INDIRECTLY CONNECTED WITH SUCH INSTRUMENTS, THE LOAN EVIDENCED THEREBY, OR ANY MATTER RELATED THERETO, OR ANY ACTIONS TAKEN PURSUANT TO OR IN FURTHERANCE OF THE PROVISIONS THEREOF.

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SIGNATURES ON NEXT PAGES

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto as of the 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

BORROWER

Ashu Arora
Print Name: Ashu Arora

Yashpal Kakkar
Yashpal Kakkar, 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, by Yashpal Kakkar who is personally known/has produced _____ as identification and who did take an oath.



[Signature]
Notary Public, State of Florida
My Commission Expires:

This Second Amended Renewal Fourth Mortgage and Modification Agreement amends, modifies, restates and renews that certain Fourth Mortgage 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.

CITY OF KEY WEST FLORIDA

WITNESS

LENDER

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 _____ 2019, by _____ who is personally known/has produced _____ as identification and who did take an oath.

Notary Public, State of Florida
My Commission Expires:

This Second Amended Renewal Fourth Mortgage and Modification Agreement amends, modifies, restates and renews that certain Fourth Mortgage 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.