

Prepared by and return to:
Spottswood, Spottswood, Spottswood & Sterling, PLLC
500 Fleming Street
Key West, Florida 33040

AMENDMENT TO GROUND LEASE AGREEMENT

THIS AMENDMENT TO GROUND LEASE AGREEMENT is made and entered into at Key West, Monroe County, Florida, on this ____ day of May 2019, by and between The Housing Authority of the City of Key West , a body politic organized under the U.S. Housing Act of 1937, as amended, having its principal office at 1400 Kennedy Dr., Key West, Florida (LESSOR) AND CREATIVE CHOICE IV LIMITED, LLC. , a Florida Limited Liability Company, as successor entity by conversion to CREATIVE CHOICE MANAGEMENT, INC. (LESSEE) with its principal place of business at 8895 N. Military Trail 201E, West Palm Beach, FL 33410.

WHEREAS, LESSEE 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 City of Key West, and the Note was secured by a Fourth Mortgage Deed from LESSEE to City of Key West 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 LESSEE and the City of Key West have agreed to modify the terms of the Fourth Mortgage and to Amend and Restate the Mortgage Note; and

WHEREAS, the LESSOR and LESSEE are parties to that certain GROUND LEASE dated October 12, 1989 and recorded in Official Records Book 1109 pages 0410 through 0445 inclusive ("Ground Lease"). The parties desire to amend certain terms of the Ground Lease as set forth herein..

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the receipt and sufficiency of which are hereby acknowledged, the above-referenced Ground Lease is amended as follows:

1. The Recitals contained herein are true and correct and incorporated herein by reference.
2. Section 3.02 BASE RENT which reads:

Section 3.02 Base Rent. LESSEE covenants and agrees to pay to LESSOR beginning on the fifteenth (15th) day of the seventeenth (17th) month following the date the Building Department for the City of Key West issues a Certificate of Occupancy for the residential building to be

constructed by LESSEE on the Demised Premises and annually thereafter for the Demised Term, the Base Rent, without any setoffs or deductions whatsoever.

The Base Rent for years one (1) through five (5) shall be Ten Thousand Dollars (\$10,000.00) per year and shall be paid from the Residual Receipts. Residual Receipts is defined as that portion of the Gross Income (hereinafter defined) received from the Demised Premises for the preceding year after payment of (i) the debt secured by the first position mortgage, the S.A.I.L. second mortgage and the Affordable Demonstration Loan third mortgage, placed on LESSEE's leasehold interest in the Demised Premises, the amount, terms and form of which debt instruments and mortgages shall be expressly approved by LESSOR, pursuant to HUD requirements, prior to entering into same and (ii) the actual operating expenses of the Demised Premises to be approved by LESSOR as per HUD guidelines and standard local business local practice. Pursuant to the terms of the Second Article, III, of Attachment A to the Owner-Grantee Agreement, LESSOR shall not unreasonably withhold or delay the above-referenced approvals.

The Base Rent for years six (6) through the end of the Project Term shall be Twenty Thousand Dollars (\$20,000.00) per year. Project Term is defined as that period of time beginning on the date the Building Department for the City of Key West issues a Certificate of Occupancy for the residential building to be constructed by LESSEE on the Demised Premises and continuing thereafter for twenty-five (25) years, unless a different period is required by HUD, in which event the term shall run until such date.

The Base Rent for the year beginning the day following the expiration of the Project Term and continuing annually thereafter for the remainder of the Demised Term shall be in an amount equal to the sum of Twenty Thousand Dollars (\$20,000.00) plus the average Percentage Rent (hereinafter defined) paid during the last ten (10) years of the Project Term.

Is hereby amended to add the following:

Notwithstanding the foregoing, the Base Rent for the year beginning November 1, 2018 and continuing until October 31, 2028 ("Extended Project Term") shall be in an amount equal to the sum of Twenty Thousand Dollars (\$20,000.00). Upon expiration of the Extended Project Term, Base Rent shall be due and payable in the amount set forth in the above and in 3.03.

3. Section 3.03 PERCENTAGE RENT which reads:

Section 3.03 Percentage Rent. In addition to payment of the Base Rent as set forth hereinabove, Lessee shall pay Lessor beginning on the fifteenth (15th) day of the thirty-sixth (36th) month following the date the Building Department for the City of Key West issues a Certificate of Occupancy for the residential building to be constructed by Lessee on the Demised Premises and continuing annually thereafter within thirty (30) days after the expiration of each lease year until the expiration of the Demised Term, without any setoffs or deductions whatsoever, Percentage rent.

The Percentage Rent for the first year such rent is due as set forth in the preceding sentence through the expiration of the Project Term, shall be equal to fifty percent (50%) of the Net Residual Receipts received from the Demised Premises. Net Residual Receipts is defined as that amount of the Residual Receipts remaining after payment of the Base Rent, *less* a preferred

return to Lessee equal to twelve percent (12%) per annum of the actual equity dollars invested in the Project as defined by HUD, by Lessee, which return however shall not exceed Seventy Two Thousand dollars (\$72,000.00), unless expressly approved in writing by Lessor, which approval shall not be unreasonably withheld, *less* payments on those debts secured by those mortgages in the fifth and latter positions placed on Lessee's leasehold interest in the Demised Premises, the amounts, terms and forms of which debt instruments and mortgages shall be expressly approved by Lessor which approval shall not be unreasonably withheld or delayed, but before federal income taxes. In the event there are not sufficient Residual Receipts from which to pay the above-referenced preferred return, then such preferred return shall accumulate and become due and payable the first year that there are sufficient Residual Receipts.

The Percentage rent for the year beginning the day following the expiration of the Project Term and continuing annually thereafter for the remainder of the Demised Term, shall be in an amount equal to the difference, if any, between five percent (5%) of the Gross Income (hereinafter defined) received from the Demised Premises for the lease year just concluded and the Base Rent paid for that lease year.

Percentage Rent shall be considered Additional Rent (hereinafter defined) under this Lease. It is the intent of the parties hereto that the Percentage Rent is to be based upon all rent generated from the Demised Premises, including rents which are paid to Lessee pursuant to a lawful lease, and Lessee further agrees that any subleases or assignments are to be at "arm's length" for full and adequate consideration with regard to these terms and conditions.

Is hereby amended to add the following:

The Percentage rent for the year beginning November 1, 2028 and continuing annually thereafter for the remainder of the Demised Term, shall be in an amount equal to the difference, if any, between five percent (5%) of the Gross Income (hereinafter defined) received from the Demised Premises for the lease year just concluded and the Base Rent paid for that lease year.

4. Section 10.03(b) which reads:

10.03 (b) There shall remain for the Project Term a building on the Demised Premises containing at least fifty (50) residential units (i) seventeen (17) of which shall remain occupied or available for occupancy by lower or very low income households and the remaining units as affordable housing such that the total rents charged for same do not exceed the permitted

amounts for affordable housing under the Growth Management Ordinance of the City of Key West, or if repealed, its substitute or equivalent, by more than fifteen percent (15%); and (ii) at the expiration of the Project Term and for so long as determined by Lessor and Lessee, there shall remain a building on the Demised Premises containing at least fifty (50) residential units all of which shall be maintained as affordable housing within the limits set by Growth Management Ordinance of the City of Key West or if repealed, its substitute or equivalent, as determined by Lessor and Lessee.

Is hereby deleted in its entirety and replaced with:

10.03 (b) There shall remain for the Extended Project Term a building on the Demised Premises containing at least fifty (50) residential units (i) seventeen (17) of which shall remain occupied or available for occupancy by lower or very low income households and the remaining units as affordable housing under the City of Key West Land Development Regulations, Chapter 122, Article V, Division 10, Section 122-1465 through 122-1500 (“Work Force Housing Ordinance”) such that the total rents charged for same do not exceed the permitted amounts for affordable housing under the Work Force Housing Ordinance or if repealed, its substitute or equivalent, by more than fifteen percent (15%); and (ii) at the expiration of the Extended Project Term and for so long as determined by Lessor and Lessee, there shall remain a building on the Demised Premises containing at least fifty (50) residential units all of which shall be maintained as affordable housing within the limits set by Work Force Housing Ordinance, or if repealed, its substitute or equivalent, as determined by Lessor and Lessee.

5. Section 14.01 which reads:

Section 14.01 Permitted Use. Lessee covenants and agrees, warrants and represents that the Demised Premises shall be used, maintained and managed in accordance with the terms of the Owner-Grantee Agreement and contain a low income housing project to be constructed by Lessee, which shall consist of a building containing fifty (50) residential units (12 one-bedroom units, 25 two-bedroom units, and 13 three-bedroom units) seventeen (17) of which units shall be available for occupancy by lower or very low income households for a period of not less than the Project Term, shall contain limited commercial space to be utilized as agreed upon by Lessor and Lessee and shall contain sufficient parking for tenants in compliance with parking requirement of the City of Key West.

Is hereby deleted in its entirety and replaced with:

Section 14.01 Permitted Use. Lessee covenants and agrees, warrants and represents that the Demised Premises shall be used, maintained and managed in accordance with the terms of the Owner-Grantee Agreement and contain a low income housing project to be constructed by Lessee, which shall consist of a building containing fifty (50) residential units (12 one-bedroom units, 25 two-bedroom units, and 13 three-bedroom units) seventeen (17) of which units shall be available for occupancy by lower or very low income households for a

period of not less than the Extended Project Term, shall contain limited commercial space to be utilized as agreed upon by Lessor and Lessee and shall contain sufficient parking for tenants in compliance with parking requirements of the City of Key West.

6. All remaining provisions of the original Ground Lease Agreement not in conflict herewith remain in full force and effect, ratified and confirmed for the duration of the remaining lease term.
7. Lessee hereby states, acknowledges, and declares that: (i) the Ground Lease is in full force and effect; (ii) except as set forth above, there are no other previous amendments or modifications to the Ground Lease; and (iii) to the best of their knowledge, there is no current default by Landlord.
8. Each person executing this Amendment on behalf of a party represents and warrants that it/he/she is has the full power, authority, and legal right to execute and deliver this Amendment on behalf of such party and that this Amendment constitutes the legal, valid and binding obligations of such party, its heirs, representatives, successors and assigns, enforceable against such party or parties in accordance with its terms.
9. To facilitate execution of this Amendment, this Amendment may be executed in one or more counterparts as may be convenient or required, and an executed copy of this Amendment delivered electronically by facsimile or e-mail shall have the effect of an original, executed instrument. All counterparts of this Amendment shall collectively constitute a single instrument; but, in making proof of this Amendment it shall not be necessary to produce or account for more than one such counterpart executed by each party hereto, or that the signature of all persons required to bind any such party appear on each counterpart of this Amendment.
10. To the extent that the terms of this Amendment conflict with the terms of the Owner-Grantee Agreement by and between the Parties and the City of Key West date August 21, 1989, the terms of this Amendment shall control.

*The remainder of this page has intentionally been left blank.
Signature page to follow.*

IN WITNESS WHEREOF, this Amendment to Ground Lease 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 LIMITED, LLC. a Florida Limited Liability Company:

WITNESS

LESSEE

Ashu
Print Name: Ashu Arora

[Signature]
Yashpal Kakkar, as Manager for NB Holdings Management LLC as Manager for DSQ Manager LLC as Manager for Creative Choice IV Limited 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 ~~May~~ June, 2019, by Yashpal Kakkar, as Manager of NB Holdings Management, LLC, as Manager of DSQ Manager, LLC, as Manager of Creative Choice IV Limited, LLC who is personally known or has produced _____ as identification and who did take an oath.



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

IN WITNESS WHEREOF, this Amendment to Ground Lease Agreement has been executed by the parties hereto as of the day and year first above written.

HOUSING AUTHORITY OF THE
CITY OF KEY WEST FLORIDA,
a body politic

WITNESS

LESSOR





Print Name: Gregory B. Walker

J. Manuel Castillo, Sr.,
Executive Director

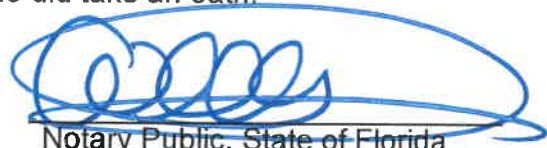


Print Name: William Sing



STATE OF FLORIDA
COUNTY OF Monroe

~~The~~ ^{June} foregoing instrument was acknowledged before me this 28 day of ~~November~~ ^{June} 2019, by J. Manuel Castillo who is personally known/~~has produced~~ as identification and who did take an oath.



Notary Public, State of Florida
My Commission Expires:

NAME AFFIDAVIT

STATE OF FLORIDA
COUNTY OF SEMINOLE

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared YASHPAL KAKKAR, who, after being by me first duly sworn, deposes and says:

1. That he/she is the Manager of NB HOLDINGS MANAGEMENT LLC.
2. That NB HOLDINGS MANAGEMENT LLC is the Manager of DSQ MANAGER , LLC.
3. That DSQ NANAGER LLC, is the Manager of Creative Choice IV Ltd LLC.
3. Affiant understands that material reliance will be placed upon this Affidavit by the City of Key West and the Housing Authority of the City of Key West.
4. That your Affiant is familiar with the nature of an oath; and with the penalties provided by the laws of the State for falsely swearing to statements made in an instrument of this nature.

FURTHER YOUR AFFIANT SAYETH NOT.

YASHPAL KAKKAR

Sworn to and subscribed before me this 12th day of June, 2019 by, Yash Pal Kakkar who is personally known to me or [] who has produced _____ as identification.



Notary Public
State of Florida at Large
My Commission Expires: