Doc # 2440064 Bk# 3250 Pg# 2157 Recorded 11/14/2023 at 4:18 PM Pages 9
Filed and Recorded in Official Records of MONROE COUNTY KEVIN MADOK
REC: $78.00

This Instrument Prepared by,
Record and Return to:
Terry M. Lovell, Esq.
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, FL 33131

SECOND AMENDMENT TO GROUND LEASE AGREEMENT

THIS SECOND AMENDMENT TO GROUND LEASE AGREEMENT (this "**Amendment**") is made and entered into as of the 30 day of November, 2023, by and between THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KET WEST ("**Lessor**") and BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership ("**Lessee**"), and acknowledged by the City of Key West, a municipal corporation of the State of Florida (the "**City**").

RECITALS

A. Lessor and Lessee are parties to that certain Ground Lease Agreement recorded on March 21, 2022, at Book 3162, Page 1069, in the Official Records of Monroe County, Florida, as amended by that certain First Amendment to Ground Lease Agreement recorded on July 20, 2022, at Book 3185, Page 127, in the Official Records of Monroe County, Florida (collectively, the "**Lease**"), whereby Lessor leases to Lessee certain real property located in the City of Key West located at the Truman Waterfront in Historic Bahama Village.

B. That certain Quitclaim Deed recorded on December 9, 2002, at Book 1839, Page 410, in the Official Records of Monroe County, Florida, vested fee simple title to the Demised Premises in the City of Key West.

C. Section 2-450(3) of the City of Key West's Code of Ordinances authorizes Lessor, as the Local Redevelopment Authority, to dispose of property acquired within the community development area for uses in accordance with the community redevelopment plan.

D. Pursuant to Ordinance No. 21-15 recorded on September 13, 2023, at Book 3242, Page 818, in the Official Records of Monroe County, Florida, the City of Key West City Commission authorized a referendum for Lessor to enter into the Lease for the development of affordable workforce housing, and such referendum was approved.

F. Lessor and Lessee desire to amend the Lease as set forth in this Amendment.

NOW, THEREFORE, for and in consideration of Ten and 00/100 ($10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein as if set forth in full.

2. General Provisions. All defined terms in this Amendment shall have the same meaning as in the Lease, except if otherwise noted. Except as amended and modified by this Amendment, all of the terms, covenants, conditions, and agreements of the Lease shall remain in full force and effect. In the event of any conflict between the provisions of the Lease and the provisions of this Amendment, this Amendment shall control.

3. Legal Description. The legal description of the Demised Premises is hereby deleted in its entirety and replaced with the legal description attached hereto as Exhibit "A".

4. Investor Limited Partner. The following definition is hereby added to Section 1.1 of the Lease:

> "Investor Limited Partner" means TCC Lofts at Bahama Village LLC, a Georgia limited liability company, its permitted successors and/or assigns.

5. Use by Lessor. The following sentence is added to the end of Section 4.7 of the Lease.

> After the Commencement Date, the Lessee shall be solely responsible for all costs of maintaining the Demised Premises.

6. Tax Ownership of Demised Premises. The following sentence is added to the end of Section 4.11 of the Lease.

> Notwithstanding anything in the Lease to the contrary, the Lessee alone shall be entitled to all federal and state tax benefits associated with the Demised Premises, including but not limited to the right to deduct all depreciation on Lessee's income tax returns for such Demised Premises, amortize all capital costs, and claim any and all low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended.

7. Affordable Housing Development. The following Section 4.13 is hereby added to the Lease:

> 4.13. **Affordable Housing Development.** During the term of the Lease, the Affordable Housing Development will be owned by the Lessee, which shall have the right to alter, improve, and modify the Affordable Housing Development as follows:
>
> (i) If non-material and within the scope of the existing development plan, without lessor consent (except that any municipal building or development approvals must be met); and
>
> (ii) If material and outside the scope of the existing development plan, with lessor consent, not unreasonably to be denied, conditioned, or delayed (and after obtaining any municipal building or development approvals).

No regulatory or use agreement encumbering the Affordable Housing Development may permit the remedy of appointment of a receiver or trustee, change of property manager, or collection of rents without the prior written consent of the Leasehold Mortgagee, and only be permitted specific performance or injunctive relief.

8. Non-Subordination. The following sentence is added to the end of Section 6.1 of the Lease:

The fee interest of the Lessor is not encumbered, nor will it be while the Leasehold Mortgage remains in effect.

9. Right of First Refusal. The following sentence is added to the end of Section 12.2 of the Lease:

Notwithstanding the foregoing, any such assignment or sublease shall not result in a merger of the fee and leasehold estate, and the identity of the assignee or sublessee shall require the prior written approval of the Leasehold Mortgagee.

10. Eminent Domain; Condemnation. The following sentence is added to the end of Section 13.1 of the Lease:

Notwithstanding the foregoing, the provisions of any Leasehold Mortgage shall control as to the uses and disbursement of funds respecting any award or claim respecting condemnation.

11. Consent Required for Termination and Amendments. The following sentence is added to the end of Section 15.3 of the Lease:

The foregoing paragraph shall apply so that neither the Lessor nor the Lessee may voluntarily surrender or terminate the Lease without the prior written consent of the Leasehold Mortgagee.

12. Notice of Proceedings; Lender Right to Participate. Sections 15.4 and 16.1 of the Lease are hereby modified to include notice and right of the Leasehold Mortgagee to participate also in any appraisal, arbitration, litigation or other dispute resolution proceeding.

13. Estoppel. Section 15.14 of the Lease is hereby modified as follows:

Within ten (10) business days after Lessor's receipt of written request by Lessee, Investor Limited Partner or by Leasehold Mortgagee(s) or after receipt of such written request in the event that upon any sale, assignment or mortgaging of Lessee's interest in this Lease by Lessee, Investor Limited Partner or Leasehold Mortgagee(s) as allowed by this Lease, an estoppel or offset statement shall be required from the Lessor, and the Lessor agrees to reasonably deliver in recordable form a certificate or estoppel to any proposed leasehold mortgagee(s), purchaser(s), assignee(s) or to Lessee, certifying (if such be the case) (i) that this Lease is in full force and effect; (ii) that the Lessor has no knowledge of any

default under this Lease, or if any default exists, specifying the nature of the default; and (iii) that there are no defenses or offsets which are known and may be asserted by the Lessor against the Lessee with respect to any obligations pursuant to this Lease.

14. Investor Limited Partner Right to Cure. The following Section 16.6 is hereby added to the Lease:

16.6. **Investor Limited Partner Right to Cure.** The Investor Limited Partner shall have the right, but not the obligation, to cure any default under the Lease, and such cure shall be accepted or rejected as if tendered by the Lessee.

15. Notice. Section 21.5 of the Lease is hereby modified to include notice to the Investor Limited Partner:

TCC Lofts at Bahama Village LLC
c/o Truist Community Capital, LLC
303 Peachtree Street, N.E., Suite 2200
Mail Code GA-ATL-0243
Atlanta, GA 30308

and:

Holland & Knight LLP
10 St. James Ave., 12th Floor
Boston, MA 02116
Attn: Jarrod Connors, Esq.

16. Arbitration, Mediation, and Non-Judicial Proceedings. The following Section 21.30 is hereby added to the Lease:

21.30. **Arbitration, Mediation, and Non-Judicial Proceedings.** The Leasehold Mortgagee is not subject to the imposition of any arbitration or mediation proceeding unless it voluntarily in writing chooses to so participate. Lacking any such written consent, the Leasehold Mortgagee may require judicial proceedings to resolve any dispute or issue.

17. Binding Effect: Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State of Florida. Any litigation between the parties hereto concerning this Amendment or the Lease shall be initiated in the county in which the Demised Premises is located.

18. Authority. The parties each represent and warrant to the other that each has full authority to execute this Amendment without the joinder or consent of any other party and that each party has not assigned any of its right, title, and interest in the Lease to any other party.

19. Counterparts. This Amendment may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one instrument.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each party has caused this Amendment to be executed by its duly authorized representative as of the date above.

LESSOR:

(SEAL)

THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST

By: _____
Deputy Clerk

By: _____
Mayor

LESSEE:

BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership

By: Bahama Village GP, LLC, a Florida limited liability company, its general partner

By: Vestcor, Inc., a Florida corporation, its manager

By: _____
Name: Jason O. Floyd
Title: Vice President

STATE OF FLORIDA
COUNTY OF DUVAL

Subscribed and sworn to (or affirmed) before me, by means of ☐ physical presence or ☐ online notarization, on November ___, 2023, by Jason O. Floyd as Vice President of Vestcor, Inc., a Florida corporation, manager of Bahama Village GP, LLC, general partner of Bahama Village Community, Ltd., a Florida limited partnership. He is personally known to me or has produced _____ (type of identification) as identification.

_____
NOTARY PUBLIC

Acknowledged and Agreed:

ATTEST:

By: _____
Deputy Clerk

CITY OF KEY WEST, a municipal corporation of the State of Florida

By: _____
Mayor

IN WITNESS WHEREOF, each party has caused this Amendment to be executed by its duly authorized representative as of the date above.

LESSOR:

(SEAL)

THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST

ATTEST:

By: _____
Deputy Clerk

By: _____
Mayor

LESSEE:

BAHAMA VILLAGE COMMUNITY, LTD., a Florida limited partnership

By: Bahama Village GP, LLC, a Florida limited liability company, its general partner

By: Vestcor, Inc., a Florida corporation, its manager

By: _____
Name: Jason O. Floyd
Title: Vice President

STATE OF FLORIDA
COUNTY OF DUVAL

Subscribed and sworn to (or affirmed) before me, by means of ☑ physical presence or ☐ online notarization, on November 13th 2023, by Jason O. Floyd as Vice President of Vestcor, Inc., a Florida corporation, manager of Bahama Village GP, LLC, general partner of Bahama Village Community, Ltd., a Florida limited partnership. He is personally known to me or has produced _____ (type of identification) as identification.

_____
NOTARY PUBLIC

Notary Public State of Florida
Rebecca L White
My Commission GG 942290
Expires 03/23/2024

Acknowledged and Agreed:

ATTEST

By: _____
Deputy Clerk

CITY OF KEY WEST, a municipal corporation of the State of Florida

By: _____
Mayor

Exhibit A

Legal Description of Demised Premises

A PORTION OF THE LANDS DESCRIBED IN A QUITCLAIM DEED FROM THE U.S. GOVERNMENT (GRANTOR) TO THE CITY OF KEY WEST (GRANTEE) AS RECORDED IN OFFICIAL RECORDS BOOK 1839, PAGE 410, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, DESCRIBED AS:

A PORTION OF LAND LOCATED ON THE ISLAND OF KEY WEST, MONROE COUNTY, FLORIDA, SAID PARCEL ALSO LOCATED IN TRUMAN ANNEX (FORMERLY U.S. NAVY) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NATIONAL OCEAN SURVEY TRIANGULATION STATION, GSL, BEING A BRASS DISC SET IN CONCRETE, LOCATED ON THE OUTER MOLE OF TRUMAN ANNEX, THE COORDINATES OF WHICH ARE N 81,406.14 AND E 386,795.78 (1983/89), BASED ON THE U.S. COAST AND GEODETIC SURVEY MERCATOR GRID COORDINATE SYSTEM WHICH HAS FOR ITS ZERO COORDINATE A POINT OF LATITUDE NORTH 24°20'00" AND 500.00 FEET WEST OF LONGITUDE WEST 81°00'00"; THENCE N 74°38'54" E, A DISTANCE OF 901.39 FEET TO THE POINT OF BEGINNING OF THE LANDS GRANTED TO THE CITY OF KEY WEST AS DESCRIBED IN OFFICIAL RECORDS BOOK 1839, PAGE 410 OF SAID PUBLIC RECORDS; THENCE ALONG THE BOUNDARY OF THE LANDS AS DESCRIBED IN SAID QUITCLAIM DEED FOR THE FOLLOWING EIGHT (8) COURSES AND DISTANCES: N 88°01'07" E, A DISTANCE OF 57.69 FEET (1); THENCE N 01°52'38" W, A DISTANCE OF 2.77 FEET (2); THENCE N 88°13'17" E, A DISTANCE OF 19.93 FEET (3); THENCE S 19°53'46" E, A DISTANCE OF 549.69 FEET (4); THENCE S 00°20'55" E, A DISTANCE 409.16 FEET (5); THENCE N 89°49'18" E, A DISTANCE OF 100.84 FEET (6); THENCE S 33°56'54" E, A DISTANCE OF 842.47 FEET (7) TO THE NORTHWEST RIGHT-OF-WAY OF ANGELA STREET; THENCE S 55°59'51" W ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 105.64 FEET (8) TO THE SOUTHWESTERLY RIGHT-OF-WAY OF FORT STREET ACCORDING TO THE CITY OF KEY WEST STREET MAP DATED MAY 26, 1955; THENCE S 33°54'27" E, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 289.49 FEET TO THE POINT OF BEGINNING OF THE RENTAL PARCEL HEREIN DESCRIBED; THENCE CONTINUE S 33°54'27" E, ALONG SAID RIGHT-OF-WAY, 378.33 FEET; THENCE S 56°05'33" W, A DISTANCE OF 55.99 FEET; THENCE N 33°54'27" W, A DISTANCE OF 17.78 FEET; THENCE ALONG THE BOUNDARY OF THE LANDS AS DESCRIBED IN SAID QUITCLAIM DEED FOR THE FOLLOWING FOUR (4) COURSES AND DISTANCES: S 56°05'33" W, A DISTANCE OF 33.80 FEET (1); THENCE S 76°53'05" W, A DISTANCE OF 217.59 FEET (2) TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 40.00 FEET, A CENTRAL ANGLE OF 69°12'28" A CHORD BEARING OF N 68°30'41" W AND A CHORD LENGTH OF 45.43 FEET; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 48.32 FEET TO THE POINT OF TANGENCY OF SAID CURVE (3); THENCE N 33°54'27" W, A DISTANCE OF 100.28 FEET (4); THENCE N 56°05'33" E, A DISTANCE OF 13.05 FEET; THENCE N 33°49'42" W, A DISTANCE OF 145.64 FEET TO A LINE BEING 33.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTHEASTERLY

BOUNDARY LINE AND ITS NORTHEASTERLY EXTENSION OF TACTS TOWER AS DESCRIBED IN OFFICIAL RECORDS BOOK 1839, PAGE 410, OF SAID PUBLIC RECORDS; THENCE N 56°05'33" E ALONG SAID PARALLEL LINE, A DISTANCE OF 305.76 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY OF FORT STREET AND THE POINT OF BEGINNING.

SAID LANDS LYING WITHIN SECTION 6, TOWNSHIP 68 SOUTH, RANGE 25 EAST, CITY OF KEY WEST, MONROE COUNTY, FLORIDA.