

EASEMENT AGREEMENT

**729 THOMAS STREET/305 PETRONIA STREET  
EASEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2012, between the City of Key West, Florida (hereinafter Grantor) and Richard Hatch and Suzanne Kitchar as owners of property located at 729 Thomas Street/305 Petronia Street, Key West, FL (hereinafter the Grantees) (RE# 000013260-000000 and 00013250-000000).

RECITALS

Grantees are owners of the property known as 729 Thomas Street/305 Petronia Street, Key West, Florida. Portions of Grantee's property, , including an existing building, sign, roof overhang and balcony encroach approximately 219 square feet onto the Grantor's right-of-way at corner of Thomas and Petronia Street and along Petronia Street. Specifically: A parcel of land on the island of Key West, a portion of Petronia Street being adjacent to Square 1, Tract 3, according to a diagram made by William H. Von Phister as recorded in Deed Book "F" at page 621 of the Public Records of Monroe County, Florida; said parcel being more particularly described by metes and bounds as follows: Commencing at the intersection of the Northeasterly right of way line of Thomas Street with the Northwesterly right of way line of Petronia

Street and run thence N45°00'00"E and along the said Northwesterly right of way line of Petronia Street for a distance of 1.18 feet to an existing overhang and the Point of Beginning; thence continue N45°00'00"E along the said Northwesterly right of way line of Petronia Street for a distance of 95.58 feet to the Northeasterly face of an existing wood fence; thence S46°08'35"E and along said Northeasterly face of an existing wood fence for a distance of 0.57 feet; thence S44°45'51"W and along the Southeasterly face of an existing wood fence for a distance of 23.58 feet to an existing overhang; thence S46°03'49"E and along said overhang for a distance of 0.99 feet; thence S44°03'53"W and along said overhang for a distance of 1.00 feet to an existing balcony; thence S45°52'15"E and along said balcony for a distance of 2.23 feet; thence S44°07'49"W and along said balcony for a distance of 15.59 feet; thence N45°52'12"W and along said balcony for a distance of 2.21 feet to an existing overhang; thence S44°03'53"W and along said overhang for a distance of 1.00 feet; thence N46°08'48"W and along said overhang for a distance of 1.00 feet to the Southeasterly face of an existing wood fence; thence S44°07'05"W and along said wood fence for a distance of 4.26 feet to an existing overhang; thence S45°50'08"E and along said overhang for a distance of 0.58 feet; thence S44°09'52"W and along an existing two story frame structure and said overhang for a distance of 12.70 feet to an existing

overhang; thence S45°50'08"E and along said overhang for a distance of 0.80 feet; thence S44°09'52"W and along said overhang for a distance of 36.08 feet to an existing sign; thence S03°06'33"W for a distance of 6.06 feet; thence N86°53'27"W for a distance of 1.10 feet; thence N3°06'33"E for a distance of 5.21 feet to an existing overhang; thence N46°03'31"W and along said overhang for a distance of 2.85 back to the Point of Beginning, as more specifically described and illustrated in the attached specific purpose survey dated 11/22/2010 by J. Lynn O'Flynn, Inc. (Copy attached hereto). This encroachment impedes marketability of the property.

#### CONVEYANCE OF EASEMENT

The Grantor hereby agrees to grant and convey to Grantee an easement for an existing encroachment of portions of an existing building, sign, roof overhang, and balcony, at the property located at 729 Thomas Street/305 Petronia Street, as more specifically described in the attached survey. The easement shall pertain to the existing building, sign, roof overhang, and balcony, encroachment(s) herein described, and not to any other encroachment. The grant of this easement is conditioned upon the following: (1) That the easement shall terminate upon the replacement of the structure and there shall be no expansion or

further encroachments in the easement area. (2) That the City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission. (3) That the owner shall pay the yearly fee specified in Code of Ordinances section 2-938 (currently \$400), as may be amended time to time. (4) That the owner shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment(s) if the yearly fee required by the Code of Ordinances is not paid. (5) That the easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of two hundred thousand dollars per person and three hundred thousand per occurrence(or such other amount as may be legislatively determined to be the maximum extend of sovereign immunity waiver) naming the City as an additional insured for that portion of real property which is the subject of this easement. (6) That the City reserves the right to construct surface improvements within the easement area. (7) That the easement area cannot be used in site size calculations such as lot, yard, and bulk calculations for site development. There shall be no additional construction related to this encroachment.

## II. CONSIDERATION

Grantee agrees to pay to Grantor a processing fee in the amount of \$1,000.00, together with all sums and fees for city sewer, city garbage, if unpaid; otherwise to promptly bring the property and all uses thereof into full compliance with all city and state laws and regulations, if it is not now in full compliance. Grantee further agrees to pay Grantor an annual rental fee for this easement in the total amount of \$400.00, payable annually on the anniversary date of the execution of this Easement Agreement, to the City of Key West. Failure to pay such rental and/or to conform with agreed upon additional conditions shall constitute grounds for the Grantor to terminate the easement.

### III. EASEMENT TERMINATION

Grantee agrees that the proposed improvements located on the Easement shall not be enlarged or expanded.

Grantee shall have the right to repair and maintain the improvements in the ordinary course of maintenance.

The easement shall terminate upon the replacement of the structure.

The Grantor herein expressly and irrevocably appoints the City Manager of the City of Key West as its agent to permit the removal of the encroachment in the event the annual rental fee referred to hereinabove is not paid.

In the event Grantor determines that retaking this property is necessary for a public purpose by virtue of a vote of the City Commission, then Grantor may unilaterally terminate this easement and reclaim the property without compensation to Grantee.

That the easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of two hundred thousand dollars per person and three hundred thousand per occurrence (or such other amount as may be legislatively determined to be the maximum extent of sovereign immunity waiver) naming the City as an additional insured for that portion of real property which is the subject of this easement agreement.

This easement shall be considered a covenant that runs with the land and shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this easement the date above written.

ATTEST:

CITY OF KEY WEST

\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

\_\_\_\_\_  
JAMES K. SCHOLL, CITY MANAGER

STATE OF FLORIDA     )  
COUNTY OF MONROE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012 by JAMES K. SCHOLL, City Manager of the City of Key West on behalf of the City who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
State of Florida

My commission expires:\_\_\_\_\_

Signatures continue on next page

GRANTEE

\_\_\_\_\_  
Richard Hatch, as co-owner

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Richard Hatch, as co-owner, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

GRANTEE

\_\_\_\_\_  
Suzanne Kitchar, as co-owner

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Suzanne Kitchar, as co-owner, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
State of \_\_\_\_\_

My commission expires: \_\_\_\_\_