

1011 WHITEHEAD STREET

EASEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2015, between the City of Key West, Florida (hereinafter Grantor) and Boleto Properties, LLC, as owner of property located at 1011 Whitehead Street, Key West, FL (hereinafter the Grantee) (RE# 00027330-000200, AK# 8682425).

RECITALS

Grantee is owner of the property known as 1011 Whitehead Street, Key West, Florida, including an existing principal structure, entrance steps, overhang, eaves, two-tiered rear balcony and rear gate and wooden fence associated with a multi-story mixed use historic structure, that encroach onto the Grantor's Whitehead Street and Julia Street right-of-way. Portions of Grantee's property, including the principal structure, entrance steps, overhang, eaves, two-tiered rear balcony and rear gate and wooden fence, encroach approximately 159.35 square feet on to the Grantor's Whitehead Street right-of way, and approximately 83.77 square feet on the Grantor's Julia Street right-of-way for approximately a total of 243.12 square feet.

Specifically: Beginning at the northeasterly right-of-way line of Whitehead Street and the northwesterly right-of-way line of Julia Street; thence in a northwesterly direction along the said northeasterly right-of-way line of Whitehead Street for a distance of 21.83 feet; thence at a right angle and in a southwesterly direction and along an overhang for a distance of 6.56 feet; thence at a right angle and in a southeasterly direction and along an overhang for a distance of 21.32 feet; thence at an angle of $138^{\circ}31'19''$ to the right and in a easterly direction and along an overhang for a distance of 6.68 feet; thence at a right angle and in a northerly direction and along the overhang for a distance of 4.05 feet to overhead eaves along Julia Street; thence at an angle of $221^{\circ}01'10''$ to the left and along a line parallel with the northwesterly right-of-way line of Julia Street for a distance of 46.54 feet; thence at a right angle and in a northwesterly direction for a distance of 1.80 feet to the said northwesterly right-of-way line of Julia Street; thence at a right angle and in a southwesterly direction along the said northwesterly right-of-way line of Julia Street for a distance of 47.76 feet to the point of beginning. Containing 243.12 square feet, more or less. As specifically described and illustrated in the attached specific purpose survey dated 7/22/85 and updated 1/9/15 by Island Surveying Inc. (Copy attached hereto). This encroachment impedes

marketability of the property.

CONVEYANCE OF EASEMENT

The Grantor hereby agrees to grant and convey to Grantees an easement for encroachments, at the property located at 1011 Whitehead Street, as more specifically described in the attached survey. The easement shall pertain to the existing principal structure, entrance steps, overhand, eaves, two-tiered rear balcony and rear gate and wooden fence on property located along Whitehead Street and Julia Street and related to the 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. (2) The wooden ramp shall be removed from the Julia Street right-of-way within 60 days. (3) The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission. (4) The owner shall pay the annual fee of \$400.00 specified in Code Section 2-938(b). 5) The owner shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment if the annual fee required by the Code of Ordinances is not paid. (6) Grantee shall secure, pay for, and file with the Grantor, prior to

commencing any work under this Agreement, all certificates for public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amount indicated. Notwithstanding any other provision of this Agreement, Grantee shall provide the minimum limits of liability coverage as follows: General Liability a. \$2,000,000 Aggregate (Per Project), b. \$2,000,000 Products Aggregate, c. \$1,000,000 Any One Occurrence, d. \$1,000,000 Personal Injury, e. \$300,000 Fire Damage/Legal. (7) Grantee shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured" on a primary and non-contributory basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its Equivalent, (combination OF CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations is acceptable) including a "Waiver of Subrogation" clause in favor of City of Key West on all policies. Grantee shall maintain the General Liability coverage summarized above, including the "additional insured" endorsement, with coverage continuing in full force during the period of time this easement agreement remains in effect. (8) Grantee's insurance policies shall be endorsed to give 30 days written notice to Grantor in the

event of cancellation or material change, using form CG 02 24, or its equivalent. (9) Certificates of Insurance submitted to Grantor shall not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation / material change notice endorsements and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements shall also be required if necessary. Grantee shall advise its insurance agent accordingly. (10) The portions of principal structure, entrance steps, overhang, eaves, two tiered rear balcony and rear gate and wooden fence shall be the total allowed construction within the easement area. (11) The easement area shall not be used in site size calculations such as lot, yard, and bulk calculations for site development. (12) The City reserves the right to construct surface improvements within the easement area.

II. CONSIDERATION

Grantee agrees to pay to Grantor 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 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.

This easement shall terminate upon the failure of the Grantee or its heirs, successors, or assigns to maintain liability

insurance in a minimum amount of two hundred thousand dollars (\$200,000.00) per person and three hundred thousand dollars (\$300,000.00) per incident, or such other amount as may legislatively be determined to be the maximum extent of sovereign immunity waiver, naming the City of Key West 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 _____, 2015 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: _____

GRANTEE

By: _____ (title)
For Boleto Properties, LLC, Owner

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____
day of _____, 2015, by _____, who is
personally known to me or who has produced _____ as
identification.

Notary Public
State of _____

My commission expires: _____