

1529 VON PHISTER STREET

EASEMENT AGREEMENT

THIS AGREEMENT made this 4<sup>th</sup> day of November, 2015, between the City of Key West, Florida (hereinafter Grantor) and The Wendy Perks Fisher Living Trust April 19, 1996 as owners located at 1529 Von Phister Street, Key West, Florida (hereinafter the Grantee) (RE # 00042640-000000, AK # 1043273).

I. RECITALS

Grantee is owner of the property known as 1529 Von Phister Street, Key West, Florida, including a portion of an existing roof overhang and fence and that encroach onto the Grantor's right-of-way. Portions of Grantee's property, including a portion of an roof overhang and fence, encroach 60 ± square feet along the Thompson Street right-of-way as well, as more specifically described and illustrated in the attached specific purpose survey dated June 1, 2015 by J. Lynn O'Flynn, Inc. (Copy attached hereto).

II. CONVEYANCE OF EASEMENT

The Grantor hereby agrees to grant and convey to the Grantee an easement for encroachments, at the property located at 1529 Von Phister Street, as more specifically described in the attached survey. The easement shall pertain to the portion of an existing roof overhang and fence related to structure encroachments herein described, and not to any other encroachment. The grant of this easement is conditioned upon the following:

(1) The easement shall terminate upon the replacement of the structure.

(2) Grantor may unilaterally terminate the easement upon a finding of public purpose by a vote of the Key West City Commission.

(3) Grantee shall pay the annual fee of \$300.00 specified in Section 2-938(b)(2) of the Code of Ordinances.

(4) Grantee 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.

(5) 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

(6) 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.

(7) 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.

(8) 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.

(9) The existing roof overhang and fence shall be the total allowed construction within the easement area.

(10) The easement area shall not be used in site size calculations such as lot, yard, and bulk calculations for site development.

(11) The City reserves the right to construct surface improvements within the easement area.

### III. 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 fee for this easement in the total amount of \$300.00, payable annually on the anniversary date of the execution of this Easement Agreement, to the City of Key West. Failure to pay such annual fee and/or to conform with agreed upon additional conditions shall constitute grounds for the Grantor to terminate the easement.

### IV. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee expressly agrees to indemnify and hold harmless the City of Key West, their respective officers, directors, agents and employees (herein

called the "indemnitees" from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, caused in whole or in part by any act, omission, or default by Grantee or its subcontractors, material men, or agents of any tier or their employees, arising out of this agreement or its performance, including any such damages caused in whole or in part by any act, omission or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Grantee or its subcontractors, material men or agents of any tier or their respective employees.

The indemnification obligations under this Agreement shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Grantee under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Grantee or of any third party to whom Grantee may subcontract

a work. This indemnification shall continue beyond the date of termination of the Agreement.

V. 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 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 one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) per aggregate, and any other insurance specifications set forth in this agreement, naming the City of Key West as an additional insured.

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

\_\_\_\_\_  
JIM SCHOLL, CITY MANAGER

STATE OF FLORIDA     )  
COUNTY OF MONROE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015 by JIM 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: Wendy Perks Fisher, Trustee

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

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

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