

RESOLUTION NO. _____

VARIANCES: 1908 FLAGLER AVENUE

**A RESOLUTION OF THE KEY WEST CITY COMMISSION
TO ALLOW A VARIANCE TO SECTION 18-28 OF THE
CODE OF ORDINANCES OF KEY WEST, FLORIDA,
REGARDING THE SALE OF ALCOHOL WITHIN 300 FEET
OF A CHURCH, SCHOOL, CEMETARY OR FUNERAL HOME
FOR PROPERTY LOCATED AT 1908 FLAGLER AVENUE
(RE# 00063450-000000)**

WHEREAS, the City Commission finds that substantial competent evidence exists to show that the variance requested is consistent with the Code of Ordinances of the City of Key West and fulfills a legitimate public purpose; and

WHEREAS, the City Commission finds that the grant of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare;

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Key West, Florida:

Section 1. That a variance to the Code of Ordinances of the City of Key West, Florida, is hereby granted as follows to: **SECTION 18-28, FOR THE SALE OF ALCOHOL ON PROPERTY LOCATED WITHIN 300 FEET OF A CHURCH, SCHOOL, CEMETERY OR FUNERAL HOME FOR PROPERTY LOCATED AT 1908 FLAGLER AVENUE (RE#00063450-000000), with the following three (3) conditions: (1) Alcohol sales shall consist of beer and wine only and will be accessory to the restaurant use, and contingent upon a revenue generation ratio of 51% food and 49% alcohol sales; (2) alcohol sales are limited to the following hours: 11:00 am to 8:00 pm Monday through Saturday and 12 noon to 8:00 pm on Sunday; (3) the variance is associated with the operation of Essy's Café only.**

Section 2. It is a condition of this variance that full, complete, and final application for all permits required for any new construction for any use and occupancy for which this variance is wholly or partly necessary, whether or not such construction is suggested or proposed in the documents presented in support of this variance, shall be submitted in its entirety within two years after the date hereof; and further, that no application or reapplication for new construction for which the variance is wholly or partly necessary shall be made after expiration of the two-year period

without the applicant obtaining an extension from the City Commission and demonstrating that no change of circumstances to the property or its underlying zoning has occurred.

Section 3. The failure to submit a full and complete application for permits for new construction for which this variance is wholly or partly necessary, or the failure to complete new construction for use and occupancy pursuant to this variance in accordance with the terms of a City building permit issued upon timely application as described in Section 2 hereof, shall immediately operate to terminate this variance, which variance shall be of no force or effect.

Section 4. This variance does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This variance is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Community Affairs. Pursuant to Chapter 9J-1, F.A.C., this permit or development order is not effective for forty

five (45) days after it has been properly rendered to the DCA with all exhibits and applications attached to or incorporated by reference in the development order; that within the forty five (45) day review period the DCA can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit or development order until the appeal is resolved by agreement or order.

Section 6. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission, subject to the provision specified in paragraph 5 above.

Read and passed on reading at a regular meeting held

this _____ day of _____, 2010.

Authenticated by the presiding officer and Clerk of the Board
on _____ day of _____, 2010.

Filed with the Clerk on _____, 2010.

CRAIG CATES, Mayor

ATTEST:

CHERYL SMITH, CITY CLERK