

EASEMENT AGREEMENT

**405 FRANCES STREET EASEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the City of Key West, Florida (hereinafter Grantor) and 405 Frances, LLC, a Florida Limited Liability Company, as owner of property located at 405 Frances Street, Key West, FL (hereinafter the Grantees) (RE# 00004910-000000).

RECITALS

Grantee is owner of the property known as 405 Frances Street, Key West, Florida. Portions of Grantee's property, including a historically contributing single-family structure with fenced side and front yard areas that encroach approximately 157 square feet onto the Grantor's right-of-way at Elgin Lane and Frances Street. Specifically: A parcel of land on the island of Key West and being a portion of the right of way of Frances Street and Elgin Lane adjacent to Lot Three (3) of Square Thirty-one (31), according to Whitehead's Map or plan of said City delineated in February 1829, said parcel being more particularly described by metes and bounds as follows: BEGIN at the intersection of the Northeasterly right of way line of Frances Street with the Northwesterly right of way line of Elgin Lane and run thence Northeasterly along the said

Northwesterly right of way line of Elgin Lane for a distance of 50.25 feet; thence Southeasterly and at right angles for a distance of 2.10 feet to Southeasterly face of an existing wood fence; thence Southwesterly and at right angles along the said Southeasterly face of an existing wood fence for a distance of 51.25 feet; thence Northwesterly with a deflection angle of 89°18'13" to the right and along the Southwesterly face of said existing wood fence for a distance of 41.10; thence Northeasterly with a deflection angle of 90°41'47" to the right for a distance of 1.50 feet to the said Northeasterly right of way line of Frances Street; thence Southeasterly and at right angles along the Northeasterly right of way line of Frances Street for a distance of 39.00 feet back to the Point of Beginning, containing 157 square feet, as more specifically described and illustrated in the attached specific purpose survey dated 1/31/2012 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 historically contributing single-family structure and side-yard

area that is enclosed by a fence that encroaches into Elgin Lane and portions of the front yard fence on Frances Street, at the property located at 405 Frances Street, as more specifically described in the attached survey. The easement shall pertain to the existing building, side yard and fencing, and front yard and fencing, 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 of \$400, as specified in Code of Ordinances section 2-938, 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 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; (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:\_\_\_\_\_

GRANTEE: 405 FRANCES, LLC

BY: \_\_\_\_\_  
Andrea Amato, Managing Member

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Andrea Amato, Managing Member of 405 Frances, LLC, as owner, who is personally known to me or who has produced \_\_\_\_\_ as identification.

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

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