

EASEMENT AGREEMENT

1901 Flagler Avenue

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2010, between the City of Key West, Florida (hereinafter Grantor) and OUACHITA LAND, LLC, a Louisiana Limited Liability Company, owner of property located at 1901 Flagler Avenue, Key West, FL (hereinafter the Grantee) (RE# 00045080-000000).

RECITALS

Grantee is owner of the property known as 1901 Flagler Avenue, Key West, Florida, including parts of a contributing historic structure that encroaches onto the Grantor's right-of-way. Portions of Grantee's property, including roof eaves and two second floor balconies encroach onto the Grantor's right-of-way for an area of approximately 164 square feet. Specifically, the existing roof eaves of the building encroach for an area of 1.08 feet in depth by 33.75 feet in length along First Street, and an area of 1.86 feet in depth by 33.49 feet in length along Flagler Avenue. One second floor balcony with associated roof encroaches for an area of

3.42 feet in depth and 10.61 feet in length along First Street, and one with an area of 3.38 feet in depth by 10.54 feet in length along Flagler Avenue, as more specifically described in the attached survey by Reece & White Surveying, Inc. dated September 14, 2010 (copy attached hereto). This encroachment impedes marketability of the property.

#### I. CONVEYANCE OF EASEMENT

The Grantor hereby agrees to grant and convey to Grantee an easement for building encroachments, at the property located at 1901 Flagler Avenue, as more specifically described in the attached survey. The easement shall pertain to the building encroachments 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. (4) That the owner shall irrevocably appoint the City Manager as

its agent to permit the removal of the encroachment 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 one hundred thousand dollars per person and two hundred thousand dollars per incident (or such other amount as may legislatively be 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. Pursuant to Florida Statute 768.28, this amount shall increase to two hundred thousand dollars per person and three hundred thousand dollars per incident beginning October 11, 2011. (6) That the City reserves the right to construct surface improvements within the easement area.

## 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 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 fee 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 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 hundred thousand dollars (\$100,000.00) per person and two hundred thousand dollars 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. Pursuant to Florida Statute 768.28, this amount shall increase too two hundred thousand dollars per person and three hundred thousand dollars per incident beginning October 11, 2011.

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.

***[Signatures continue on next page]***

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 \_\_\_\_\_, 2010 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

\_\_\_\_\_  
Ouachita Land, LLC  
by James Conway Liner, IV, Sole Member

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

The foregoing instrument was acknowledged before me this \_\_\_\_  
day of \_\_\_\_\_, 2010, by James Conway Liner, IV, for  
Ouachita Land, LLC, as Property Owner, who is personally known to  
me or who has produced \_\_\_\_\_ as identification.

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

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