RESOLUTION NO. 2026-_____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING AN EASEMENT AGREEMENT FOR THE PROPERTY LOCATED AT 518 FLEMING STREET, KEY WEST, FLORIDA (RE # 00009520-000000), TO MEMORIALIZE THE EXISTING ENCROACHMENT OF A SECOND-STORY BALCONY AND A PORTION OF THE EXISTING BUILDING INTO CITY-OWNED RIGHT-OF-WAY ALONG FLEMING STREET AND BAHAMA STREET, CONSISTING OF APPROXIMATELY 167.20 SQUARE FEET WITHIN THE HISTORIC RESIDENTIAL COMMERCIAL CORE (HRCC-1) ZONING DISTRICT; PROVIDING CONDITIONS OF APPROVAL; AUTHORIZING THE EXECUTION OF THE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the property located at 518 Fleming Street, Key West, Florida, identified by Real Estate (RE) Number 00009520-000000, is located within the Historic Residential Commercial Core-1 (HRCC-1) zoning district; and

WHEREAS, the owner of the property has requested an easement from the City of Key West to memorialize the continued maintenance of an existing second-story balcony and a portion of the existing building that encroach into City-owned right-of-way along Fleming Street and Bahama Street; and

WHEREAS, the existing encroachment consists of approximately 167.20 square feet of City-owned right-of-way, including the second-story balcony encroachment into the air space above the public right-of-way and an approximately seven-inch encroachment at the northwesterly corner of the existing building; and

WHEREAS, the requested easement is depicted on the survey prepared by Reece and Associates dated June 21, 2026, which identifies the existing encroachment area; and

WHEREAS, the request was reviewed by the City of Key West Development Review Committee at a publicly held meeting on July 23, 2026, and no objections or concerns were raised by the reviewing departments; and

WHEREAS, Chapter 2, Article VIII, Division 3 of the Code of Ordinances of the City of Key West governs the disposition of City-owned real property; and

WHEREAS, Section 2-938(a) of the Code of Ordinances provides that the City may grant an easement over lands or interests therein owned by the City or any City agency, subject to the notice and other requirements contained therein; and

WHEREAS, Section 2-938(b)(3) of the Code of Ordinances requires an annual fee of $400.00 for an easement involving more than 100 square feet of City property, with the annual fee prorated based upon the effective date of the easement; and

WHEREAS, the City Commission finds that approval of the requested easement, subject to the conditions set forth herein, is in the best interests of the City and its residents and is consistent with the applicable provisions of the City Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA:

Section 1: The above recitals are hereby incorporated as if fully set forth herein.

Section 2: The City Commission hereby approves the easement agreement for the existing encroachments into City-owned right-of-way adjacent to 518 Fleming Street, including the second-story balcony and the approximately seven-inch encroachment at the northwesterly corner of the existing building, as depicted on the survey prepared by Gina Furlano of Reece & Associates dated June 21, 2026, consisting of approximately 167.20 square feet.

Section 3: The approval of the easement is subject to the following conditions:

1. Ordinary repair and maintenance of the existing encroachment shall be permitted.
2. The easement shall not authorize any increase in the degree or extent of the existing encroachment or authorize any additional improvements within the City-owned right-of-way.
3. The easement shall be limited to the existing encroachment area totaling approximately 167.20 square feet as depicted on the survey prepared by Reece and Associates

dated June 21, 2026. Any additional or future easement area shall require an amendment to the Easement Agreement in accordance with Section 2-938 of the Code of Ordinances.

4. The City reserves the right to unilaterally terminate the easement upon a finding of public purpose by vote of the City Commission.

5. The Grantee shall pay an annual easement fee of $400.00, pursuant to Section 2-938(b)(3) of the Code of Ordinances. The fee for the initial year shall be prorated based upon the effective date of the easement.

6. The Grantee shall irrevocably appoint the City Manager, or the City Manager's designee, as the Grantee's agent for purposes of permitting the removal of the encroachment in the event that the annual easement fee required by the Code of Ordinances is not timely paid.

7. Prior to the easement becoming effective, the Grantee shall obtain and maintain Commercial General Liability insurance extending coverage to the property and the improvements governed by the easement, with limits of not less than $300,000.00. Such coverage shall be provided by an insurer authorized to conduct business in the State of Florida and shall contain terms and conditions consistent with the latest filed Commercial General Liability form of the Insurance Services Office (ISO). The Grantee shall furnish

the City with an original Certificate of Insurance identifying the City of Key West as an "Additional Insured" or "Additional Interest," as applicable.

8. The easement area shall not be considered part of the Grantee's property for purposes of determining lot area, yards, setbacks, building coverage, impervious surface, open space, or any other dimensional or development standard.

9. The City expressly reserves the right to construct, install, maintain, repair, replace, modify, or otherwise improve surface or subsurface improvements within the City-owned easement area.

10. The City expressly reserves the right of entry and re-entry upon the easement area for purposes of inspection, maintenance, repair, construction, improvements, and operations in connection with City-owned or City-leased property and public facilities.

11. To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the City of Key West and its respective officers, officials, agents, employees, and representatives from and against any and all claims, demands, actions, liabilities, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from the Grantee's use, maintenance, repair, or existence of the improvements within the easement area,

except to the extent caused by the negligence or willful misconduct of the City or its officers, officials, agents, employees, or representatives.

12. The easement shall not be construed as conveying any fee-simple interest in the City-owned right-of-way or as authorizing any use of the right-of-way beyond the specific encroachment identified in the Easement Agreement.

13. The easement shall not relieve the Grantee from compliance with any applicable federal, state, county, or City law, ordinance, regulation, permit, building code, fire code, zoning requirement, or other applicable requirement.

14. The Grantee shall be responsible for all costs associated with preparation, execution, recording, and maintenance of the Easement Agreement and any associated documents, unless otherwise expressly agreed to by the City.

Section 4: The City Manager, or designee, is hereby authorized to execute the easement agreement and any associated documents consistent with this Resolution.

Section 5: This Resolution shall take effect immediately upon adoption.

Passed and adopted by the City Commission at a meeting held this _____ day of _____, 2026.

Authenticated by the Presiding Officer and Clerk of the Commission on _____day of _____, 2026.

Filed with the Clerk on _____, 2026.

Mayor Sam Kaufman	_____
Vice Mayor Donald “Donie” Lee	_____
Commissioner Lissette Carey	_____
Commissioner Aaron Castillo	_____
Commissioner Monica Haskell	_____
Commissioner Christopher Massicotte	_____
Commissioner Mark Rossi	_____

_____
SAM KAUFMAN, MAYOR

ATTEST:

_____
KERI O’BRIEN, CITY CLERK