ORDINANCE NO. 10-01

AN ORDINANCE GRANTING A FRANCHISE TO CITYVIEW TROLLEY TOURS OF KEY WEST INC. TO OPERATE CITY-WIDE SIGHTSEEING / SHUTTLE OPERATION; PROVIDING TERMS AND CONDITIONS, INCLUDING THE FOLLOWING: PROVIDING THAT ORDINANCE DOES NOT PROHIBIT CITY FROM OPERATING A SHUTTLE SERVICE; DEFINING THE TERRITORY TO BE SERVED; AUTHORIZING CITY INSPECTION OF SIGHTSEEING/SHUTTLE VEHICLES; PROVIDING FOR THE OBSERVANCE OF CURRENT AND FUTURE RULES AND REGULATIONS, INSURANCE REQUIREMENTS AND INDEMNIFICATION; LIMITING ASSIGNMENT OF THE FRANCHISE; PROVIDING CONSIDERATION FOR GRANT OF THE FRANCHISE AND CONTINGENT RELIEF; DIRECTING THE PROCEDURE FOR DESIGNATION OF STOPS AND OPERATIONAL REQUIREMENTS OF FRANCHISEE; PROVIDING FOR INSPECTION OF BOOKS AND RECORDS; AUTHORIZING THE ISSUANCE OF PERMITS; ESTABLISHING THE DURATION OF THE FRANCHISE; PROVIDING FOR THE ESTABLISHMENT OF RATES, FEES AND ROUTES; SPECIFYING DEFAULT PROVISIONS AND PROCEDURE FOR NOTICE, SUSPENSION AND/OR TERMINATION UPON DEFAULT, INCLUDING APPEAL PROVISIONS; PROVIDING REMEDIES UPON BANKRUPTCY OF FRANCHISEE; INDICATING FRANCHISE IS NOT A WAIVER OF OTHER CITY REQUIREMENTS; CLARIFYING THAT NO JOINT VENTURE IS CREATED; PROHIBITING DISCRIMINATION; PROVIDING FOR CONSTRUCTION AND INTERPRETATION OF PROVISIONS; INDICATING TIME IS OF THE ESSENCE; PROVIDING FOR ATTORNEYS FEES, WAIVER OF JURY TRIAL AND SPECIFYING VENUE IN THE EVENT OF LITIGATION; PROVIDING FOR NOTICE, ACKNOWLEDGEMENT, ACCEPTANCE AND CUMULATIVE PROVISIONS; SPECIFYING THE FRANCHISE CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND MAY ONLY BE AMENDED BY SUBSEQUENT ORDINANCE OF THE CITY COMMISSION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, municipalities in the State of Florida are authorized to regulate commercial traffic upon municipal streets. *Pennington v. Quigg*, 114 So. 859 (Fla. 1927); *Jarrell v. Orlando Transit Co.*, 167 So. 664 (Fla. 1936); *City of Coral Gables v. City of Miami*, 190 So. 427 (Fla. 1939); *City of Miami v. South Miami Coach Lines, Inc.*, 59 So. 2d 52 (Fla. 1952); *Pratt v. City of Hollywood*, 78 So. 2d 697 (Fla. 1955).

WHEREAS, the City of Key West and City View Trolley Tours of Key West Inc. desire to enter into a franchise agreement for sightseeing / shuttle operations.

WHEREAS, Key West City Charter section 7.01(4) requires that the grant of a franchise must be done by ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST FLORIDA: *

Section 1. GRANT

For the purpose of providing a non-exclusive citywide sightseeing / shuttle service, there is hereby granted to CityView Trolley Tours of Key West Inc., a Florida Corporation (hereinafter referred to as "Grantee" or "Franchisee"), a franchise to operate a citywide sightseeing / shuttle service which shall include the

right, privilege, and franchise to use all public streets, avenues, sidewalks, public easements and other public highways, within the corporate limits of the City of Key West insofar as said operation does not unreasonably interfere with public transportation or block traffic, and in doing so employ and exercise the right hereby granted, subject at all times to the provisions, terms and conditions of this ordinance.

Section 2. TERRITORY TO BE SERVED.

The rights granted hereby shall be exercisable in and applicable to all sections of the City within the present or future corporate limits thereof.

Section 3. CITY INSPECTION OF SIGHTSEEING VEHICLES

All sightseeing / shuttle motor vehicles hereunder shall be maintained in good repair in order that they are suitable and safe at all times for operation in public service. The Grantee shall permit the City to make such inspections of such motor vehicles as the City shall deem necessary in the public interests, and shall comply in every respect with the provisions of all Ordinances relating to the inspection of motor vehicles by the City.

The City shall have the right to conduct such inspections, but not the obligation to do so.

Section 4. INSPECTION OF SIGHTSEEING / SHUTTLE SERVICE

The City shall have the right to designate from time to time a municipal department, or one or more duly authorized representatives of the City, to exercise appropriate control, supervision, inspection and regulation by the City of the sightseeing / shuttle service provided for herein.

Section 5. OBSERVANCE OF TRAFFIC RULES AND REGULATIONS

The Grantee shall observe, obey and fully comply with all present and future traffic laws and ordinances affecting the operation of motor vehicles, and shall also observe and carry into effect any rules, orders or regulations which may be promulgated by the City for the purpose of safeguarding public health, comfort, safety or property. Such regulation specifically includes the possible future city-wide licensing of tour guides regarding their knowledge of local history and similar aspects relevant to a sightseeing operation utilizing the public right of way.

Section 6. LIMITATION ON ASSIGNMENT OF FRANCHISE

This franchise shall not be leased, assigned or otherwise alienated except with the consent of the City Commission as expressed by Ordinance, which consent shall not be unreasonably withheld. Without in any way limiting the foregoing, the sale, transfer or disposition by any other means of twenty-five (25) percent or more of the stock or assets of a Grantee shall be deemed an assignment. Notwithstanding the above, any transfer between and among individuals or entities that are stockholders of the corporation on the effective date of this ordinance shall not violate this provision. The Grantee shall furnish prior written notice to the City of any proposed assignment, along with the names, addresses and relevant financial information of the persons or entities offering to acquire such stock or assets, in addition to any other information requested by the City Manager.

Section 7. PUBLIC LIABILITY INSURANCE.

The Grantee shall keep in full force and effect at all times during the effective period of this ordinance, liability insurance to provide insurance for the City and for all persons suffering injury, loss or damage to their persons or to property by reason of the negligent operation

of each sightseeing / shuttle vehicle operating by authority of this ordinance. The Grantee shall, at all times, maintain liability insurance in an amount of not less than ten million dollars ($10,000,000.00) per occurrence. Such insurance shall comply with the laws and regulations of the State of Florida. All insurance policies insuring said sightseeing / shuttle vehicles shall be issued by an insurance company registered to do business in the State of Florida, subject to the laws and regulations of the State of Florida. Insurers issuing the above referenced policies must maintain an A.M. Best rating of no less than "A". The City of Key West shall be named as an additional insured on all liability policies. The Policies shall contain a waiver of subrogation provision whereas the Grantee's insurer waives any claim against the City of Key West. Certificates of insurance shall be filed and maintained with the City Clerk evidencing the minimum limits of insurance cited above. All policies shall provide they may not be terminated or modified without the insurer providing the City at least thirty (30) days advance notice. The Grantee shall immediately notify the City of any cancellation of such insurance.

At the request of the City Manager, the Grantee shall meet with the Grantor's representatives to review the

extent and amount of insurance coverage provided hereunder. Should the City Manager believe that the coverage provided is not sufficient to protect its interest, it may specify the increased level of insurance required. If Grantee objects to the level of coverage, Grantor and Grantee shall enter into a binding arbitration within fifteen (15)days of the date of the dispute to resolve the issue. If Grantor and Grantee are unable to agree on a neutral arbitrator, each party shall select an arbitrator who will then appoint a third arbitrator to resolve the matter. If an arbitrator is not selected through no fault of the Grantor, the coverage required by the Grantor shall be placed.

The City hereby expressly assumes no responsibility for injury or damage done or caused to persons or property by reason of the operation of said sightseeing / shuttle operation and no third party benefit is intended to be conferred by any provision of this franchise. Nothing herein is intended to waive the sovereign immunity accorded to Grantor pursuant to Florida Statutes, including Section 768.28.

Section 8. INDEMNIFICATION

Grantor shall not be liable for injury or damage caused to any person or property by reason of the failure of Grantee, its' employees or agents to perform any of its

obligations hereunder or in the operation of the activities authorized herein. Grantee shall indemnify, hold harmless and defend Grantor, its employees, officials, officers and agents against all loss, damage, claim, demand, liability or expense, including attorneys' fees, by reason of any damage or injury to persons (including loss of life) or property which may arise or be claimed to have arisen as a result of, in connection with, or in any way related to Grantee's operations. Nothing herein is intended to waive the sovereign immunity accorded to Grantor pursuant to Florida Statutes, including Section 768.28.

Section 9. CONSIDERATION FOR GRANT AND AUTHORIZED NUMBER OF VEHICLES

During the period of time in which the Grantee is operating under this ordinance, the Grantee shall pay to the City five percent(5%)of the gross ~~receipts~~ revenues it receives from all sources it realizes from the operation of the sightseeing / shuttle service or the sum of seven thousand five hundred dollars ($7,500) per vehicle, whichever is greater. The seven thousand five hundred dollar ($7,500.00) per vehicle fee shall be increased yearly in an amount equal to the increase in the United States consumer price index (CPI-U) as published by the Bureau of Labor Statistics. Said five percent (5%) shall be

paid at the end of each calendar month with a 15-day grace period. The yearly guaranteed minimum payment of seven thousand five hundred dollars ($7,500) per vehicle shall be payable at the end of each 12-month period with a 30-day grace period.

Failure to pay any sum due shall result in imposition of interest at the rate of eighteen percent (18%) per annum of the delinquent amount per month, or such maximum amount permitted by law, until paid in full. ~~one and one-half percent (1.5%) of the delinquent amount per month until paid in full.~~

Grantor is hereby authorized to operate up to twelve (12) sightseeing vehicles under the provisions of this franchise. In the event that the Grantee can document through the use of a professional traffic impact or related study acceptable to the City that no adverse effects would be permitted upon the allowance of additional vehicles, the City Commission shall agenda an item for consideration of an amendment to this ordinance to permit additional vehicles.

~~It is acknowledged that Grantee may maintain one or more vehicles in reserve but agrees not to operate more than _____ sightseeing/shuttle vehicles at any given time.~~

True and accurate color photographs of the vehicles authorized to be used in the operation are attached hereto as Exhibit "A".

~~**Section 10. REDUCTION IN TOURIST TRADE**~~

~~The City realizes that the receipts from this operation depend almost entirely on the tourist trade, therefore the Grantee shall be excused from paying the to the City a reasonable pro-rata portion of the said guaranteed minimum fee in the event that tourist trade to the City is substantially interrupted by certain phenomena beyond the Grantee's control causing a loss of trade including but not limited to acts of God, serious recessions, etc. It is agreed that a 20% reduction in tourist trade over a one-year period as compared to an average of the previous three years as evidenced by the revenue produced by Ordinance No. 9-1981, (as may be amended from time to time) known as the Tourist Development Tax Ordinance, or such number of years that the Tourist Development Tax is in effect, would be considered as substantial reduction of tourist trade; therefore, a reasonable pro-rata reduction of said guaranteed yearly payment shall be allotted.~~

Section 10. OBLIGATION TO OPEN FOR BUSINESS.

Grantee shall conduct the business authorized by this franchisee agreement in a fully functioning manner on a continuous year round basis.

Section 11. ~~STANDS~~ STOPS AND OPERATIONAL REQUIREMENTS

The City Manager, with the input of the Grantee, shall designate ~~stands~~ stops for the loading and unloading of the Grantee's patrons. The City Manager shall have the authority to disapprove any stop, which in the City Manager's opinion disrupts traffic, City operations, or is otherwise unreasonably injurious to the public welfare. Should Grantee or any affected party or entity disagree with the decision of the City Manger, it shall, by filing written notice with the City Clerk appeal the decision to the City Commission. A copy of the route and stops approved by the City Manager is attached hereto as exhibit "B".

Should Grantee disagree with the decision of the City Manger, it shall, by filing written notice with the City Clerk within three (3) days of the City Manager's written determination, appeal the decision to the City Commission.

Upon the establishment of any proposed stop, the City Manager shall mail notice to all property owners and franchisees located within three-hundred (300) feet of the proposed stop. Such property owners and franchisees shall

have twenty days from the mailing of the notice to appeal the decision of the City Manager to the City Commission in accordance with the provisions of this chapter. The City Manager shall also cause notice to be mailed to all property owners and franchisees located within three-hundred (300) feet of any location that the City Manger has denied the Grantee an opportunity to establish a stop, and for which the Grantee has appealed, informing them of the City Commission meeting at which such appeal will be considered.

The City Commission shall set the matter for hearing with appropriate public notice for the next regularly scheduled Commission meeting. By majority vote, the Commission may affirm, reverse or modify the decision of the City Manager based upon the factors considered by the City manager and those contained in City of Key West Code of Ordinances section 78-252(b).

Such authorized stops ~~locations~~ shall be for the loading and unloading of passengers only. The Grantee shall not solicit persons or transact ticket sales on the City streets or sidewalks. The City Manager shall have the authority to move ~~stands~~ stops and to reasonably regulate their use by the Grantee, including requiring of the sharing of ~~stands~~ stops with other franchisees. The

location of ~~stands~~ stops may be marked on City Streets in accordance with the City Code of Ordinances by the City for the benefit of the Grantee. The Grantee, with the consent of the City Manager, may install signage at such ~~stands~~ stops subject to any applicable City regulations. If the City should lawfully decide to alter or change the grade of any street or to make any other public improvements which, in the City Manager's sole discretion, requires the Grantee to relocate, modify, or otherwise alter its operations under this Franchise, the City shall give the Grantee at least forty-eight (48) hours notice of such decision and may require the Grantee to remove its signs, vehicles, or other property in order to facilitate such City project. The Grantee acknowledges and agrees to release the City from any losses, injuries, or damages it may suffer as a result of such decision by the City. The movement or relocation of any ~~stands~~ stops on public property shall be applied equally to all operators under City franchises. The City shall not require Grantee to relocate, temporarily or otherwise, unless the same request is made to a similarly situated franchisee.

The Grantee shall not utilize loudspeakers in the operation of its business other than in the confines of its

own sightseeing/ shuttle vehicles for the benefit of its patrons within such vehicles.

All vehicles operating under this agreement shall utilize an environmentally sensitive alternative fuel such as propane or CNG in order to reduce carbon emissions. If Grantee's vehicles do not utilize such fuel, it must submit a plan for city approval to do so, and implement such measures within ~~three (3)~~ one year~~s~~ from the effective date of this ordinance.

Prior to implementation of routes, the Grantee shall provide the City a plan to minimize noise and traffic impacts on the residents and guests of the City of Key West.

Section 12. BOOKS AND RECORDS

Grantee further agrees to have its gross ~~receipts~~ revenues and payments to the City audited at least ~~annually~~ every three years by a Certified Public Accounting firm pursuant to generally accepted accounting principles, and the results of said audit shall be promptly transmitted to the City. Grantor shall also retain the right to have gross receipts and payments to the City audited at its own expense by a Certified Public Accounting firm selected by City upon fourteen (14) days written notice to Grantee and

further provided that the results of such audit be immediately transmitted to Grantee promptly upon completion. Upon fourteen (14) days written notice to Grantee, Grantor shall be permitted to inspect Grantee's books, records and other pertinent financial information to ensure compliance with the provisions of section 9 above.

Section 13. PERMITS

As a franchisee and an exception to Article IV of Chapter 78 of the Key West Code of Ordinances, the appropriate officers of the City are authorized and directed to issue such written permits and business tax receipts as the Grantee may need and apply for in the operation of its sightseeing / shuttle service. In all other respects, except as specifically agreed to in this franchise agreement, said Article remains in full force and effect.

Section 14. SHUTTLE SERVICE

It is the intention of the City to allow the Grantee to operate a shuttle service in addition to the traditional sightseeing operation. The Grantee may shuttle groups or individuals from place to place within the City corporate limits subject at all times to this Ordinance and provided

that any receipts realized from said operation are subject to and included in Section 9, Consideration for Grant. This section shall not be construed to either prohibit or allow private taxicabs or the City, its agencies or authorities from operating a shuttle service. Whether or not taxicabs or the City, its agencies or authorities may enter into a shuttle service operation in competition with the Grantee shall be determined by applicable City, State and Federal law.

Section 15. PERIOD OF GRANT

This franchise hereby granted to CityView Trolley Tours of Key West Inc., a Florida Corporation, shall be effective following final adoption by the City Commission and upon acceptance by Grantee as specified in section 28 below. Unless earlier terminated as specified herein, this grant shall remain in place until February 10, 2015. ~~for a period of twenty (20) years from and after the effective date hereof.~~

16. RATES, FEES, AND ROUTE PROVISIONS

The Grantee shall have the power to establish, increase or decrease rates, fares and charges to users of its services. However, prior to permanently increasing or

decreasing rates, fares or charges, the Grantee shall notify the City and the City Commission may schedule a public hearing.

Prior to commencing operations, the Grantee shall provide the Grantor with a proposed script of the sightseeing tour to be given to passengers. Material alterations to such script shall be forwarded to the City Clerk.

The Grantee shall also have the power to establish its own routes, ~~and~~ schedules, stops and hours of operation, subject to review by the City Manager as specified herein. At least ten (10) days prior to the implementation of any route or schedule, the Grantee shall provide the City Manager with a copy of the route and/or schedule specified on a City map. The City Manager shall have the authority to disapprove any route or schedule, which in the City Manager's opinion disrupts traffic, City operations, or is otherwise unreasonably injurious to the public welfare. Should Grantee disagree with the decision of the City Manger, it shall, by filing written notice with the City Clerk within three (3) days, appeal the decision to the City Commission. The City Commission shall set the matter for hearing with appropriate public notice for the next regularly scheduled Commission meeting. By majority vote,

the Commission may affirm, reverse or modify the decision of the City Manager.

Section 17. DEFAULT BY THE FRANCHISEE

Franchisee/Grantee shall be in default of this Agreement in the event of any of the following

(A) Failure to comply with any federal, state or local law, ordinance, rule, or regulation governing any part of the operations of activities authorized herein; or

(B) Failure to comply with any provision of this Franchise; or

(C) Voluntarily or involuntarily becomes bankrupt; or

(D) Voluntarily or involuntarily has a receiver appointed; or

(E) Has assets sold at sheriff's sale or any other judicial sale; or

(F) Involuntarily assigns, transfers, or encumbers any rights or privileges contained in the franchise; or

(G) Voluntarily assigns, transfers, or encumbers any rights or privileges contained in the franchise without first obtaining the written consent of the City commission; or

(H) Knowingly files false financial statements with the city; or

(I) Willfully fails to file the required financial information with the city.

While in default, Grantee and City agree that City may accept any payment, whether full or partial, without waiving or relinquishing any right to continue default proceedings.

Section 18. NOTICE; SUSPENSION, TERMINATION UPON DEFAULT

If the City Manager determines that the Grantee has defaulted in its performance under this Franchise, the City Manager shall provide written notice of such default and give the Grantee a reasonable time, but not less than seven (7) days, to cure such default. If default by the Grantee continues longer than the period of time specified in said notice, the City Manager shall provide the Grantee a second written notice, that the Grantee's right to operate a Sightseeing/Shuttle service under this Franchise may be suspended or terminated and that an administrative hearing shall be held not less than fourteen (14) days after the date of said notice for the purpose of hearing evidence from the Grantee and to determine an appropriate remedy. The Grantee shall have the right to call and cross-examine

witnesses and be represented by counsel at such hearing. Following the hearing, the City Manger shall have the right to suspend or terminate this Franchise or to take other appropriate remedies to ensure compliance with its terms.

The foregoing reasons for forfeiture, suspension, termination, cancellation or other action by the city manager are cumulative and not exclusive, and a franchise agreement may be forfeited, suspended, terminated, cancelled or other such measures taken by the City Manager for any other reason authorized by the law of the State of Florida.

Section 19. APPEAL UPON FINDING OF DEFAULT

The Grantee shall have the right to appeal the decision of the City Manager~~'s decision~~ issued pursuant to Section 18 to the City Commission provided such appeal is filed in writing with the City Clerk within three (3) days following the City Manager's decision. The City Commission shall have the right to affirm, modify, or reverse the City Manager's decision.

Section 20. BANKRUPTCY OF GRANTEE

IN THE EVENT GRANTEE FILES ANY FORM OF BANKRUPTCY, GRANTOR SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11

U.S.C. §352, GRANTING THE GRANTOR COMPLETE RELIEF AND ALLOWING THE GRANTOR TO EXERCISE ALL OF HIS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS FRANCHISE. ADDITIONALLY, GRANTEE AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE GRANTOR'S EFFORT TO GAIN RELIEF FROM THE AUTOMATIC STAY. THE GRANTOR SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING. GRANTEE SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D)(1). SHOULD A COURT DETERMINE THAT THE FRANCHISE IS NOT TERMINATED IN ACCORDANCE WITH THE PROVISIONS OUTLINED HEREIN, THE DEBTOR SHALL MAKE AN ELECTION OF WHETHER TO ACCEPT OR REJECT THE FRANCHISE WITHIN FOURTEEN (14) DAYS OF FILING FOR BANKRUPTCY.

THIS CLAUSE WAS A MATERIAL CONSIDERATION TO THE GRANTOR IN GRANTING THIS FRANCHISE.

Section 21. PROVISIONS CUMULATIVE

The rights and remedies reserved to the City by this Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City may have with respect to the subject matter of this Franchise.

Section 22. NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties. Neither party is authorized to act toward third

persons or the public in any manner which would indicate any such relationship with the other.

Section 23. NO WAIVER OF OTHER CITY REQUIREMENTS

Except as specifically provided herein, this franchise is not intended to waive any requirement of the Key West City Code of Ordinances or City Charter. The failure of a party to insist, in any one or more instances, upon strict performance of any covenants or conditions of this Franchise or to exercise any option of such party herein contained, shall not be construed as a waiver or relinquishment of that or any other right or remedy of such party hereunder and shall not be deemed a waiver of any subsequent breach or default by the other party of the covenants or conditions herein. No waiver by a party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. With respect to Grantor, such written expression of waiver may only occur by resolution of the Key West City Commission.

Section 24. DISCRIMINATION

The Franchisee shall not deny service, access or otherwise discriminate against any person, including customers, on the basis of race, color, religion, national origin, age, sex or sexual orientation. The Franchisee

shall comply at all times with all other applicable federal, state and local laws and regulations, including but not limited to the Americans With Disabilities Act.

Section 25. CONSTRUCTION; TIME IS OF THE ESSENCE

The provisions of this Franchise shall be liberally construed in order to effectuate its purposes and objectives consistent with the public interest. In construing any and all terms of this franchise agreement, time is of the essence.

Section 26. ATTORNEY'S FEES, WAIVER OF JURY TRIAL AND VENUE

In the event of any dispute affecting the rights of either party under this Franchise, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder upon a final determination on the merits.

As consideration for this agreement, the parties hereby waive the right to trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this agreement.

This agreement has been executed and delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Any action in connection herewith, in law or equity, shall be brought in Monroe County, Florida.

Section 27. NOTICES

All notices, requests, demands, and other communications which are required or may be given under this franchise shall be in writing and shall be served on the parties at the addresses indicated below:

To Grantee: CityView Trolley Tours of Key West, Inc.
422 Fleming Street
Key West, Florida 33040

To Grantor: City Manager
City Hall
Key West, FL 333040

Any such notices shall be delivered by one of the following methods:(a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the U.S. Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day

after deposit with such courier, (c) sent by telephone facsimile transmission, in which case notice shall be deemed delivered on the day of transmission of such notice and confirmation of such transmission, or (d) sent by personal delivery, in which case notice shall be deemed delivered on the day of actual delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

Section 28. ACCEPTANCE

Within ten (10) days of the passage and adoption hereof, the Grantee shall file with the City Clerk written notice of its acceptance of all terms and conditions of this Ordinance, and both the City and Grantee shall thereafter be bound thereby. This Ordinance shall expire and become null and void if not accepted within ten (10) days of passage and adoption. By its execution of the Franchise Agreement, Grantee acknowledges and accepts the City's legal right and authority to issue this Franchise and impose the requirements set forth herein.

Section 29. ACKNOWLEDGMENT AND INTERPRETATION

The parties hereto acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, restrictions and effect of all of the provisions of this Agreement, and each agrees to the enforcement of any and all of these provisions and executes this Agreement with full knowledge of these provisions. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the provision shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document.

Section 30. ENTIRE AGREEMENT; AMENDMENTS

This Franchise and any attachments hereto represent the entire understanding and agreement between the parties hereto, supersede all prior oral negotiations or written agreements between the parties, and can be amended, modified, or changed only by written instrument executed by both parties hereto.

Section 31. REPEALING SECTION

All ordinances or parts of ordinances of said City in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 32. SAVING PROVISION

If any section, part of section, paragraph, sentence or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered.

Section 33. WHEN ORDINANCE SHALL GO INTO EFFECT

This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Section 34. PERSONAL GUARANTY

The principals of the entity authorized to conduct the franchise granted pursuant to this ordinance shall execute personal guarantees consistent with the Guaranty the City customarily requires of its lessees, a copy of which is

attached hereto as exhibit "C" and incorporated herein as if fully set forth.

***(Coding: Added language approved at first reading is underlined; language deleted at first reading is ~~struck through~~. Added language approved at second reading is double underlined; language deleted at second reading is ~~double struck through~~.)**

Read and passed on first reading at a meeting held this 3rd day of December, 2009.

Read and passed on final reading at a meeting held this 5th day of January, 2010.

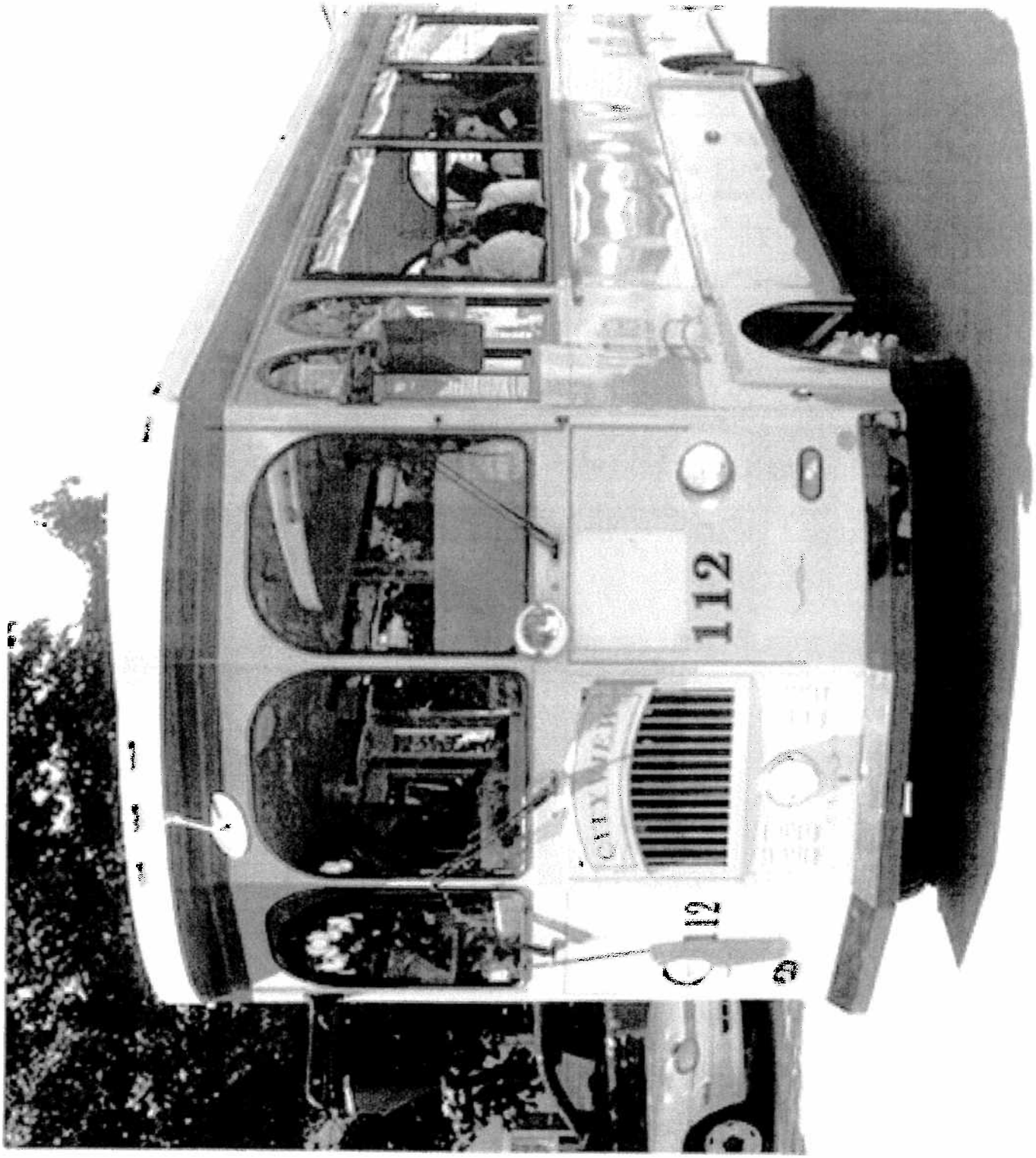
Authenticated by the presiding officer and Clerk of the Commission on 13th day of January, 2010.

Filed with the Clerk January 13, 2010.

CRAIG CATES, MAYOR

Attest:

CHERYL SMITH, CITY CLERK

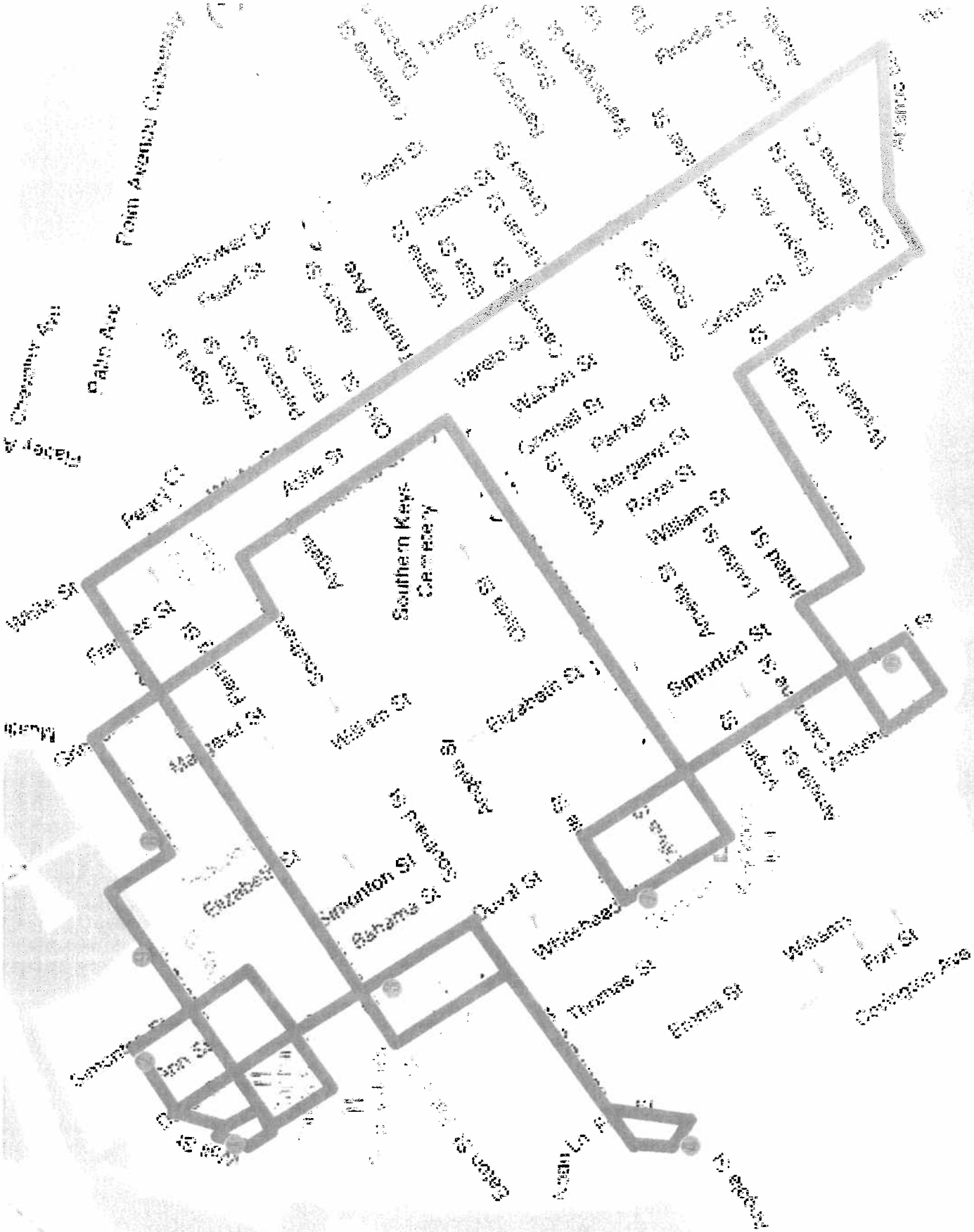


EXHIBIT

tabbies

A

CITYVIEW
108



EXHIBIT

tabbies

B

CityView Trolley Tours
Trolley Stops.

1. **Front Street, Clinton Square market.** Stop for: Mallory Square, Customs House Museum, Audubon House Museum, Aquarium, Mel Fisher, Lower Duval, Key West Art Center.

2. **Front Street Pirate Soul.** Stop for: Pirate Soul, Bottling Court.

3. **Duval Street at La Concha Hotel.** Stop for: La Concha Hotel, St. Paul's Church, Middle Duval.

4. **Eco-Discovery Center.** Stop for: Eco-Discovery Center, USS Mohawk, Fort Zachary Taylor State Park.

5. **Casa Marina Hotel.** Stop for: Casa Marina, Higgs Beach, AIDS Memorial, Key West Garden Club, White Street Pier.

6. **Duval Street, Butterfly Conservatory.** Stop for Southernmost Point, Butterfly Conservatory, upper Duval Street.

7. **Whitehead and Petronia.** Stop for: Hemingway House, Bahama Village, Middle Duval St.

8. **Caroline and Margaret.** Stop for: Key West Bight, Ferry terminal.

9. **Conch Republic Seafood.** Stop for: Conch Farm, Reef Relief, Lazy Way Lane.

Other potential stops are in negotiation but will occur off City-streets on private property (Hotels etc.)

CityView Trolley Tours of Key West
Left / right map accompaniment

- Start. **Stop #1 Front Street.**
- **Straight** on **Front** to **Green.**
- **LEFT** on **Green** to **Whitehead.**
- **LEFT** on **Whitehead** to **Front.**
- **Right** on **Front** to **Stop #2.**
- **Continue on Front** to **Simonton.**
- **Right** on **Simonton** to **Caroline.**
- **RIGHT** on **Caroline** to **Duval.**
- **LEFT** on **Duval** to **Stop #3.**
- **Continue** on **Duval** to **Southard.**
- **RIGHT** on **Southard to Stop #4.**
- **Turnaround** and continue back to **Southard.**
- **LEFT** on **Whitehead** to **Eaton.**
- **RIGHT** on **Eaton** to **White.**
- **RIGHT** on **White** to **Atlantic.**
- **RIGHT** on **Atlantic** to **Reynolds.**
- **RIGHT** on **Reynolds** to **Stop #5.**
- **Continue** on **Reynolds** to **South.**
- **LEFT** on **South** to **Simonton.**
- **RIGHT** on **Simonton** to **United.**
- **LEFT** on **United** to **Duval.**
- **Continue** on **Duval** to **Stop #6.**
- **RIGHT** on **South** to **Whitehead.**
- **RIGHT** on **Whitehead** to **United.**
- **RIGHT** on **United** to **Duval.**
- **LEFT** on **Duval** to **Petronia.**
- **LEFT** on **Petronia** to **Whitehead.**
- **LEFT** on **Whitehead** to **Stop #7**
- **Continue** on **Whitehead** to **Truman.**
- **LEFT** on **Truman** to **Frances.**

- LEFT on Frances to Southard.
- LEFT on Southard to Grinnell.
- RIGHT on Grinnell to Caroline.
- LEFT on Caroline to Stop #8.
- CONTINUE on Caroline to William.
- RIGHT on William to Lazy Way.
- LEFT on Lazy Way to Elizabeth.
- RIGHT on Elizabeth to Greene Stop #9.
- LEFT on Greene to Whitehead.
- LEFT on Whitehead to Caroline.
- LEFT on Caroline to Duval.
- LEFT on Duval to Front.
- LEFT on Front to Stop #1.

Not Shown on Map: a potential Hotel Loop which would consist of a difference between stops 3 and 4 wherein the trolley, rather than turn right on White from Eaton, will continue over the Palm Avenue Bridge to North Roosevelt, turn left on North Roosevelt and continue along to South Roosevelt turning left on Atlantic Boulevard and continuing the mapped tour from the intersection of White and Atlantic.

GUARANTY

This Guaranty is made this 22nd day of January 2010 in accordance with Section 34 of the Franchise Agreement approved by Ordinance 10-01 for CityView Trolley Tours of Key West Inc. (hereinafter "franchise") and is by and between the City of Key West (hereinafter "Franchisor") and CityView Trolley Tours of Key West, Inc (hereinafter "Franchisee") and Greg Wythe (hereinafter Guarantor).

In consideration of the franchise, and other good and valuable consideration, Guarantor does hereby covenant and agree that:

(a) The Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to the Franchisor the full and complete performance of all of Franchisee's covenants and obligations under the Franchise and full payment by Franchisee of all fees, additional charges and other charges and amounts required to be paid thereunder during the entire term. Guarantor's obligations hereunder shall be primary and not secondary and are independent of the obligations of the Franchisee.

(b) A separate action or actions may be brought and prosecuted against Guarantor, whether or not action is brought against Franchisee or whether Franchisee shall be joined in any such action or actions. At the Franchisor's option, the Guarantor may be joined in any action or proceeding commenced by the Franchisor against Franchisee in connection with and based upon any covenants and obligations under the Franchise, and the Guarantor hereby waives any demand by Franchisor and/or prior action by Franchisor of any nature whatsoever against Franchisee.

(c) The Guarantor consents to forbearance, indulgences and extensions of time on the part of the Franchisor being afforded to Franchisee, the waiver from time to time by Franchisor of any right or remedy on its part as against Franchisee. The Guarantor hereby agrees that no act or omission on the part of the Franchisor shall affect or modify the obligation and liability of the Guarantor hereunder.

(d) This Guaranty shall remain and continue in full force and effect, notwithstanding (i) any alteration of the Franchise by parties thereto, whether prior or subsequent to the execution hereof, (ii) any renewal, extension, modification or amendment of the Franchise, (iii) any assignment of Franchisee's interest in the Franchise.

(e) The Guarantor's obligations hereunder shall remain fully binding although Franchisor may have waived one or more defaults by Franchisee, extended the time of performance by Franchisee, released, returned, or misapplied other collateral given later as additional security (including other guarantees) and released Franchisee from the performance of its obligations under the Franchise.

(f) In the event any action or proceeding be brought by Franchisor to enforce this Guaranty, or Franchisor appears in any action or proceeding in any way connected with or growing out of this Guaranty, then and in any such event, the Guarantor shall pay to

EXHIBIT

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Franchisor reasonable attorney's fees, but only if Franchisor is the prevailing party. The Guarantor in any suit brought under this Guaranty does hereby submit to the jurisdiction of the courts of the State of Florida and to the venue in the circuit court of Monroe County, Florida.

(g) This Guaranty shall remain in full force and effect notwithstanding the institution by or against Franchisee or bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or in the disaffirmance of the Franchise an any such proceedings or otherwise.

(h) This Guaranty shall be applicable to and binding upon the heirs, representatives, successors and assigns of Franchisor, Franchisee and the Guarantor.

IN WITNESS WHEREOF, the Guarantor has caused the foregoing Guaranty to be executed on this 22ND day of JAN. 2010.

Witness:

By: [signature]
Name: ANGELINA M. MALTESE

Date: 1-22-10

Guarantor:

By: [signature]
Name: Greg Wythe

Date: January 22, 2010

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Greg Wythe, to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 22ND day of JANUARY, 2010.

[signature]
Notary Public, State of Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
LINDA CLINE
MY COMMISSION # DD650823
EXPIRES: March 14, 2011
1-800-3-NOTARY Fl. Notary Discount Assoc. Co.

GUARANTY

This Guaranty is made this 23 day of JAN, 2010 in accordance with Section 34 of the Franchise Agreement approved by Ordinance 10-01 for CityView Trolley Tours of Key West Inc. (hereinafter "franchise") and is by and between the City of Key West (hereinafter "Franchisor") and CityView Trolley Tours of Key West, Inc (hereinafter "Franchisee") and Michael Thomas (hereinafter Guarantor).

In consideration of the franchise, and other good and valuable consideration, Guarantor does hereby covenant and agree that:

(a) The Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to the Franchisor the full and complete performance of all of Franchisee's covenants and obligations under the Franchise and full payment by Franchisee of all fees, additional charges and other charges and amounts required to be paid thereunder during the entire term. Guarantor's obligations hereunder shall be primary and not secondary and are independent of the obligations of the Franchisee.

(b) A separate action or actions may be brought and prosecuted against Guarantor, whether or not action is brought against Franchisee or whether Franchisee shall be joined in any such action or actions. At the Franchisor's option, the Guarantor may be joined in any action or proceeding commenced by the Franchisor against Franchisee in connection with and based upon any covenants and obligations under the Franchise, and the Guarantor hereby waives any demand by Franchisor and/or prior action by Franchisor of any nature whatsoever against Franchisee.

(c) The Guarantor consents to forbearance, indulgences and extensions of time on the part of the Franchisor being afforded to Franchisee, the waiver from time to time by Franchisor of any right or remedy on its part as against Franchisee. The Guarantor hereby agrees that no act or omission on the part of the Franchisor shall affect or modify the obligation and liability of the Guarantor hereunder.

(d) This Guaranty shall remain and continue in full force and effect, notwithstanding (i) any alteration of the Franchise by parties thereto, whether prior or subsequent to the execution hereof, (ii) any renewal, extension, modification or amendment of the Franchise, (iii) any assignment of Franchisee's interest in the Franchise.

(e) The Guarantor's obligations hereunder shall remain fully binding although Franchisor may have waived one or more defaults by Franchisee, extended the time of performance by Franchisee, released, returned, or misapplied other collateral given later as additional security (including other guarantees) and released Franchisee from the performance of its obligations under the Franchise.

(f) In the event any action or proceeding be brought by Franchisor to enforce this Guaranty, or Franchisor appears in any action or proceeding in any way connected with or growing out of this Guaranty, then and in any such event, the Guarantor shall pay to

EXHIBIT

C

Franchisor reasonable attorney's fees, but only if Franchisor is the prevailing party. The Guarantor in any suit brought under this Guaranty does hereby submit to the jurisdiction of the courts of the State of Florida and to the venue in the circuit court of Monroe County, Florida.

(g) This Guaranty shall remain in full force and effect notwithstanding the institution by or against Franchisee or bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or in the disaffirmance of the Franchise an any such proceedings or otherwise.

(h) This Guaranty shall be applicable to and binding upon the heirs, representatives, successors and assigns of Franchisor, Franchisee and the Guarantor.

IN WITNESS WHEREOF, the Guarantor has caused the foregoing Guaranty to be executed on this 23rd day of JAN. 2010.

Witness:	Guarantor:
By: [signature]	By: [signature]
Name: Angela Mankel Dorn	Name: MICHAEL THOMAS
Date: 1/23/2010	Date: 1/23/2010

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Michael Thomas, to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 23 day of JAN., 2010.

Salina Chowdhury
Notary Public, State of ~~Florida~~ MASSACHUSETTS

My Commission Expires:

SALINA CHOWDHURY
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires 08/13/2015