

## **EASEMENT AGREEMENT**

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2023,  
between the City of Key West, Florida (hereinafter Grantor) and John Gallagher, the owner of  
the property located at 3728 Flagler Avenue, Key West, Florida (hereinafter the Grantee) (RE  
#00071780-000000).

### **I. RECITALS**

Grantee is the Owner of the property known as 3728 Flagler Avenue, Key West,  
Florida, including area for the construction of a boatlift. As depicted on the Specific Purpose  
Survey, the applicant has proposed to construct a boatlift on City owned Sunrise Canal. The  
proposed boatlift area encroaches 255.0 square feet, more or less, onto City owned property.  
Portions of Grantee's property would extend a total of 255.0 square feet, more or less, onto  
the Grantor's Rights-of-Way, specifically:

A parcel of land and submerged land lying Southeasterly of Lot 8 as shown on the plat  
of VISTA DEL MAR Subdivision, as recorded in Plat Book 3, at Page 124, of the Public Records  
of Monroe County, Florida, said parcel being more particularly described by metes and  
bounds as follows:

Commencing at the Southernmost corner of said Lot 8 and run thence Northeasterly  
along the Southeasterly boundary line of the said Lot 8 for a distance of 10.00 feet to the  
Point of Beginning of the parcel being described herein; thence continue Northeasterly along  
the previously described course for a distance of 17.00 feet; thence Southeasterly and at right  
angles for a distance of 15.00 feet; thence Southwesterly and at right angles for a distance of

17.00 feet; thence Northwesterly and at right angles for a distance of 15.00 feet back to the Point of Beginning, containing 255 square feet, more or less.

Land described herein contains 255.00 square feet, more or less, as specifically described and illustrated in the attached specific purpose survey dated August 2, 2022, drawn by J. Lynn O'Flynn, Inc. (Copy attached hereto).

The Grantor hereby agrees to grant and convey to the Grantee an easement for encroachments, at the property located at 3728 Flagler Avenue, as more specifically described in the attached survey. The easement shall pertain to addressing the encroachments to construct one (1) boatlift onto the Sunrise Canal right-of-way herein described, and not to any other encroachments.

The granting of this easement is conditioned upon the following:

1. The easement shall terminate with the removal of the structures.
2. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. The Grantee shall pay the annual fee of \$400.00 specified in code Section 2-938(b)(3).
4. Grantee shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment if the annual fee required by the Code of Ordinances is not paid.
5. Prior to the easement becoming effective, the Grantee shall obtain Commercial General Liability insurance that extends coverage to the property that is governed by this easement with limits of no less than \$300,000.00. Coverage must be provided by an insurer authorized to conduct business in the State of Florida and with terms and conditions consistent with the latest version of the Insurance Service Office's (ISO)

latest filed Commercial General Liability form. Grantee shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured".

6. The easement areas shall not be used in site size calculations such as lot, yard, and bulk calculations for site development.
7. The City reserves the right to construct surface or sub-surface improvements within the easement areas.
8. The areas to construct one (1) boatlift on the Sunrise Canal right-of-way shall be the total allowed within the easement area.
9. To the fullest extent permitted by law, the Grantee expressly agrees to indemnify and hold harmless the City of Key West, their respective officers, directors, agents, and employees (herein called the "indemnitees") from any and all liability for damages caused by or resulting from the Grantee's improvement in the easement area.

## II. CONSIDERATION

Grantee agree to pay to Grantor 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 annual 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 boatlift and wood dock.

The easement shall terminate upon the removal of the boatlift or wood dock.

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 encroachments 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 three-hundred thousand dollars (\$300,000.00) per incident and any other insurance cover specifications set forth in this agreement, naming the City of Key West as 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

\_\_\_\_\_  
PATTI MCLAUCHLIN, CITY MANAGER

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me by means of [ ] physical  
presence, or [ ] online notarization, this day of \_\_\_\_\_ day of \_\_\_\_\_,  
2023, by \_\_\_\_\_,  
authorized person of \_\_\_\_\_  
on behalf of the Company.

\_\_\_\_\_  
Signature of Notary Public-State of  
Florida

My commission expires:

GRANTEE

By: John Gallagher, \_\_\_\_\_

STATE OF \_\_\_\_\_

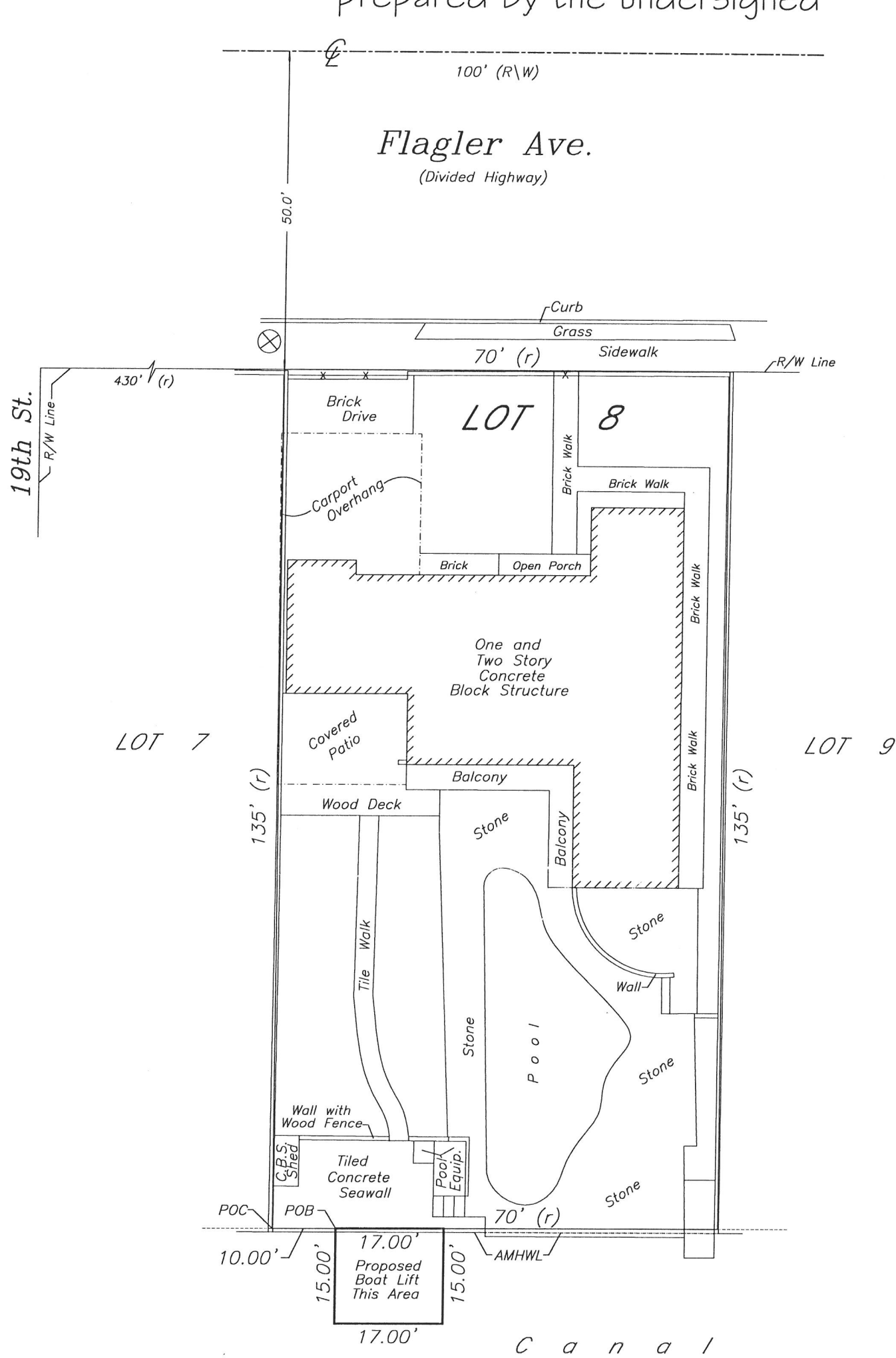
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this  
Day of \_\_\_\_\_, 2023 by \_\_\_\_\_  
For 3728 Flagler Avenue, who is personally known to me or who has produced \_\_\_\_\_  
\_\_\_\_\_ as identification.

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

My commission expires:

Specific Purpose Survey Map to illustrate a legal description of  
lands lying Southeasterly of Lot 8, VISTA DEL MAR,  
prepared by the undersigned



LEGEND

- R/W Right of Way  
(r) Record  
CL Centerline  
POC Point of Commencing  
POB Point of Beginning  
AMHWL Apparent Mean High Water Line

NOTE:  
This Survey Map is not  
full and complete without  
the attached Survey Report.

Sheet One of Two Sheets

J. LYNN O'FLYNN, Inc.



Professional Surveyor & Mapper  
PSM #6298

3430 Duck Ave., Key West, FL 33040  
(305) 296-7422 FAX (305) 296-2244

Specific Purpose Survey Report to illustrate a legal description of  
lands lying Southeasterly of Lot 8, VISTA DEL MAR,  
prepared by the undersigned

NOTES:

1. The legal description shown hereon was authored by the undersigned.
2. Underground foundations and utilities were not located.
3. All angles are 90° (Measured & Record) unless otherwise noted.
4. Street address: 3728 Flagler Avenue, Key West, FL.
5. This survey is not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
6. Lands shown hereon were not abstracted for rights-of-way, easements, ownership, or other instruments of record.
7. North Arrow is assumed and based on the legal description.
8. Adjoiners are not furnished.
9. The description contained herein and sketch do not represent a field boundary survey.
10. This Survey Report is not full and complete without the attached Survey Map.
11. The "Apparent Mean High Water Line" shown hereon does not purport to establish the actual Mean High Water for tidal boundary purposes.

SPECIFIC PURPOSE SURVEY TO ILLUSTRATE A LEGAL DESCRIPTION  
AUTHORED BY THE UNDERSIGNED

A parcel of land and submerged land lying Southeasterly of Lot 8 as shown on the plat of VISTA DEL MAR Subdivision, as recorded in Plat Book 3, at Page 124, of the Public Records of Monroe County, Florida, said parcel being more particularly described by metes and bounds as follows:

Commencing at the Southernmost corner of the said Lot 8 and run thence Northeasterly along the Southeasterly boundary line of the said Lot 8 for a distance of 10.00 feet to the Point of Beginning of the parcel being described herein; thence continue Northeasterly along the previously described course for a distance of 17.00 feet; thence Southeasterly and at right angles for a distance of 15.00 feet; thence Southwesterly and at right angles for a distance of 17.00 feet; thence Northwesterly and at right angles for a distance of 15.00 feet back to the Point of Beginning, containing 255 square feet, more or less.

SPECIFIC PURPOSE SURVEY FOR: John Gallagher;

I HEREBY CERTIFY that this survey was made under my responsible charge and meets the Standard of Practice as set forth by the Florida Board of Professional Surveyors & Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

J. LYNN O'FLYNN, INC.

J. Lynn O'Flynn, PSM  
Florida Reg. #6298

August 2, 2022

THIS SURVEY  
IS NOT  
ASSIGNABLE

Sheet Two of Two Sheets

J. LYNN O'FLYNN, Inc.



Professional Surveyor & Mapper  
PSM #6298

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