

EASEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2011, between the City of Key West, Florida (hereinafter Grantor) and Brian K. Boyer, Trustee of the Brian K. Boyer Living Trust u/a/d June 2, 2004, and C. Todd Kemp, Trustee of the C. Todd Kemp u/a/d June 2, 2004 as owners of property located at 730 Fleming Street, Key West, FL (hereinafter the Grantee) (RE# 00008670-000000).

RECITALS

Grantee is owner of the property known as 730 Fleming Street, Key West, Florida, including part of an historic structure that encroaches onto the Grantor's right-of-way. Portions of Grantee's property, including structural piers and windows encroach approximately 34.84 square feet onto the Grantor's right-of-way along the southeastern side of Fleming Street. Specifically: commence at the intersection of the SE'ly right of way line of Fleming Street with the SW'ly right of way line of William Street and run thence SE'ly along the SW'ly right of way line of the said William Street for a distance of 51.38 feet to a point on the NW'ly face of an existing one story frame structure, said point also being the Point of Beginning; thence continue SE'ly along the SW'ly right of way line of the said William Street for a distance of 25.26 feet to the SE'ly face of the said frame structure; thence

NE'ly with a deflection angle of 88°13'33" to the left and along the SE'ly face of said frame structure for a distance of 1.04 feet; thence NW'ly and at right angles along the NE'ly face of said frame structure for a distance of 25.25 feet; thence SW'ly and at right angles along the said NW'ly face of said frame structure for a distance of 1.38 feet back to the Point of Beginning, as more specifically described and illustrated in the attached specific purpose survey dated November 10, 2010 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 building encroachments, at the property located at 730 Fleming Street, as more specifically described in the attached survey. The easement shall pertain to the structural piers and windows and surrounding property encroachment(s) 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, 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 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. (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 \$300.00, 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 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.

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.

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 _____, 2011 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:_____

Signatures continue on next page

GRANTEE

C. Todd Kemp, as Trustee for
C. Todd Kemp u/a/d dated June 2, 2004, as co-owner

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____
day of _____, 2011, by C. Todd Kemp, as Trustee for C.
Todd Kemp u/a/d dated June 2, 2004, who is personally known to me
or who has produced _____ as identification.

Notary Public
State of _____

My commission expires:_____

GRANTEE

Brian K. Boyer, Trustee for
Brian K. Boyer Living Trust u/a/d June 2, 2004, as co-owner

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____
day of _____, 2011, by Brian K. Boyer, as Trustee for
Brian K. Boyer Living Trust u/a/d June 2, 2004, as co-owner, who is
personally known to me or who has produced _____ as
identification.

Notary Public
State of _____

My commission expires:_____