

526-528 DUVAL STREET

EASEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2018,
between the City of Key West, Florida (hereinafter Grantor) and
526-528 Duval retail, LLC, as owner of property located at 526-
528 Duval Street, Key West, Florida (hereinafter the Grantee)
(RE # 00009770-000000).

I. RECITALS

Grantee is owner of the property known as 526-528 Duval
Street, Key West, Florida, including an area in order to
maintain an existing second floor balcony supported by three
pilasters on the first floor that encroaches Duval Street and
Appelrouth Lane onto the Grantor's right-of-way. Portions of
Grantee's property encroaches 167.15 square feet, more or less,
onto the Grantor's right-of-way. Specifically:

Begin at the intersection of the Southeasterly Right-of-Way
of Appelrouth Lane (Formerly known as Smiths Lane) and the
Southwesterly Right-of-Way Line of Duval Street; thence in a
Southwesterly direction along the said Southeasterly Right-of-
Way Line of Appelrouth Lane for a distance of 16.76 feet; thence
at an angle of 40 degrees 52'21" to the left and in a Northerly

direction and along the Street face of a balcony for a distance of 4.24 feet; thence at an angle of 139 degrees 05'08" to the left and in a Northeasterly direction along the said street face of a balcony for a distance of 13.05 feet; thence at an angle of 135 degrees 00'00" the left and in a Easterly direction and along the said street face of a balcony for a distance of 4.24 feet; thence at an angle of 130 degrees 00'00" to the left and in a Southeasterly direction and along the street face of a balcony for a distance of 49.30 feet; thence at a right angle and in a Southwesterly direction and along the street face of a balcony for a distance of 2.46 feet to the said Southwesterly Right-of-Way Line of Duval Street; thence at an angle of 90 degrees 02'31" to the left and in a Northwesterly direction along the said Southwesterly Right-of-Way Line of Duval Street for a distance of 49.54 feet to the Point of Beginning.

Land described herein contains 167.15 square feet, more or less as specifically described and illustrated in the attached specific purpose survey dated February 12, 2018, drawn by Frederick H. Hildebrandt, PSM of Island Surveying Inc., (Copy attached hereto). This encroachment impedes marketability of the property.

II. CONVEYANCE OF EASEMENT

The Grantor hereby agrees to grant and convey to the Grantee an easement for encroachments, at the property located at 526-528 Duval Street, as more specifically described in the attached survey. The easement shall pertain to an area in order to maintain an existing second floor balcony supported by three pilasters on the first floor along Duval Street and Appelrouth Lane herein described, and not to any other encroachment. The granting of this easement is conditioned upon the following:

1. 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 \$1,000,000. 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".

2. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. The owner shall pay the annual fee of \$400.00 specified in Code Section 2-938(b) (3).
4. The owner 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. The area in order to maintain an existing second floor balcony supported by three pilasters on the first floor along Duval Street and Appelrouth Lane shall be the total allowed construction within the easement area.
6. The easement area 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 improvements within the easement area.

8. 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 damage.

III. CONSIDERATION

Grantee agrees 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.

IV. 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.

The easement shall terminate upon the removal of the existing second floor balcony supported by three pilasters on the first floor.

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 million dollars (\$1,000,000.00) per occurrence, and any other insurance 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

JAMES K. SCHOLL, CITY MANAGER

STATE OF FLORIDA)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 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(S)

By: 526-528 Duval Retail, LLC, _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, for 526-528 Duval Street, who is personally known to me or who has produced _____ as identification.

Notary Public
State of _____

My commission expires: _____