

903 FRANCES STREET

EASEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2016,
between the City of Key West, Florida (hereinafter Grantor) and
Arthur G. Mustakas as owner of property located at 903 Frances
Street, Key West, Florida (hereinafter the Grantee). (RE #
00021710-000000).

I. RECITALS

Grantee is owner of the property known as 903 Frances
Street, Key West, Florida, including a portion of the existing
back yard concrete slab, an underground cistern, wood decks and
fence along Havana Avenue that encroach onto the Grantor's
right-of-way. Portions of Grantee's property encroach 462 square
feet, more or less, onto the Grantor's right-of-way.
Specifically: Commencing at the intersection of the
Northeasterly Right-of Way line of Frances Street with the
Southeasterly Right-of-Way Line of Olivia Street; thence in a
Southeasterly direction along the said Northeasterly Right-of-
Way Line of the said Frances Street for a distance of 62.10 feet
to the Southerly corner of the lands describe in Official Record
Book 1429 at Page2243 of the said Public Records; thence
Northeasterly and at right angles along the Southeasterly
boundary line of said lands for a distance of 46.00 feet to the

Southwesterly right of way line of Havana Avenue, said point also being the Point of Beginning; thence continue Northeasterly along the previously mentioned course for a distance of 8.00 feet; thence Northwesterly with a deflection angle of $90^{\circ}34'23''$ to the left and along the Northeasterly face of an existing wood fence and extension thereof for distance of 60.00 feet to a fence corner; thence Southwesterly with a deflection angle of $89^{\circ}25'37''$ to the left and along the Northwesterly face of said fence for a distance of 7.40 feet to the Southwesterly right of way line of the said Havana Avenue; thence Southeasterly and at right angles along Havana Avenue for a distance of 60.00 feet back to the Point of Beginning, containing 462 square feet, more or less, as specifically described and illustrated in the attached specific purpose survey dated January 15, 2016 by J. Lynn O'Flynn of J. Lynn O'Flynn, 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 903 Frances Street, as more specifically described in the attached survey. The easement shall pertain to the existing back yard concrete slab, an underground cistern, wood decks and fence along Havana Avenue herein described, and not to any other

encroachment. The granting of this easement is conditioned upon the following:

1. The easement shall terminate upon the replacement of the structure.
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).
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 existing back yard concrete slab, underground cistern, wood decks, balcony and fence shall be the total allowed construction within the easement area.
6. The property owner must maintain the vegetation from impacting the access to Havana Lane.
7. The easement area shall not be used in site size calculations such as lot, yard, and bulk calculations for site development.
8. The City reserves the right to construct surface improvements within the easement area.

9. Grantee shall secure, pay for, and file with the Grantor, prior to commencing any work under this Agreement, all certificates for public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amount indicated. Notwithstanding any other provision of this Agreement, Grantee shall provide the minimum limits of liability coverage as follows:

General Liability

- a. \$2,000,000 Aggregate (Per Project)
- b. \$2,000,000 Products Aggregate
- c. \$1,000,000 Any One Occurrence
- d. \$1,000,000 Personal Injury
- e. \$ 300,000 Fire Damage/Legal

10. Grantee shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured" on a primary and non-contributory basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its Equivalent, (combination OF CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations is

acceptable) including a "Waiver of Subrogation" clause in favor of City of Key West on all policies. Grantee shall maintain the General Liability coverage summarized above, including the "additional insured" endorsement, with coverage continuing in full force during the period of time this easement agreement remains in effect.

11. Grantee's insurance policies shall be endorsed to give 30 days written notice to Grantor in the event of cancellation or material change, using form CG 02 24, or its equivalent.
12. Certificates of Insurance submitted to Grantor shall not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation / material change notice endorsements and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements shall also be required if necessary. Grantee shall advise its insurance agent accordingly.
13. 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.

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 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 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 two million dollars (\$2,000,000.00) per aggregate, 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.

(This space left intentionally blank.)

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 _____, 2016 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: Arthur G. Mustakas, _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, for 903 Frances Street, who is personally known to me or who has produced _____ as identification.

Notary Public
State of _____

My commission expires: _____