

423 DUVAL STREET

EASEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2016,
between the City of Key West, Florida (hereinafter Grantor) and
423 Duval Street, LLC., as owner of property located at 423
Duval Street, Key West, Florida (hereinafter the Grantee) (RE #
00006530-000000).

I. RECITALS

Grantee is owner of the property known as 423 Duval Street,
Key West, Florida, including an area in order to renovate and
maintain a concrete overhang along Duval Street that encroaches
onto the Grantor's right-of-way. Portions of Grantee's property
encroaches 594 square feet, more or less, onto the Grantor's
right-of-way. Specifically:

Commencing at the intersection of the Northwesterly right-
of-way line of Fleming Street with the Northeasterly right-of-
way line of Duval Street and run thence Northwesterly along the
Northeasterly right of way line of the said Duval Street for a
distance of 44.00 feet to the Point of Beginning; thence
continue Northwesterly along the Northeasterly right of way line
of the said Duval Street for a distance of 66.00 feet; thence
Southwesterly and at right angles for a distance of 9.00 feet;

thence Southeasterly and at right angles for a distance of 66.00 feet; thence Northeasterly and at right angles for a distance of 9.00 feet back to the Point of Beginning, containing 594 square feet, more or less.

Land described herein contains 594 square feet, more or less as specifically described and illustrated in the attached specific purpose survey dated May 25, 2016, J. Lynn O'Flynn, PSM 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 423 Duval Street, as more specifically described in the attached survey. The easement shall pertain to an area in order to renovate and maintain a concrete overhang along Duval Street 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 easement shall terminate upon the removal of the structure.
3. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
4. The owner shall pay the annual fee of \$400.00 specified in Code Section 2-938(b) (3).
5. 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.
6. The area in order to renovate and maintain a concrete overhang along Duval Street shall be the total allowed construction within the easement area.
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.

10. 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 the 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 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 _____, 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: Duval Street LLC. _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, for 423 Duval Street, who is personally known to me or who has produced _____ as identification.

Notary Public
State of _____

My commission expires: _____