

EASEMENT AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2011, between the City of Key West, Florida (hereinafter Grantor) and 1415 Olivia Street, LLC, a Florida Limited Liability Company, as owner of property located at 1415 Olivia Street, Key West, FL (hereinafter the Grantee) (RE# 00023940-000000).

RECITALS

Grantee is owner of the property known as 1415 Olivia Street, Key West, Florida, including an area to be landscaped, including construction of a fence and placement of brick pavers, that encroaches onto the Grantor's right-of-way. Portions of Grantee's property, including the proposed landscaping, fence and brick pavers encroach approximately 204 square feet onto the Grantor's right-of-way. Specifically: Commence at the point of intersection of the SW'ly right of way line (ROWL) of Pearl Street with the NW'ly ROWL of Olivia Street and run thence SW'ly along the said NW'ly ROWL of Olivia Street for a distance of 62.00 feet to the SE'ly corner of the lands described in Official Records Book 2487, at Page 1631, of the Public Records of Monroe County, Florida, said point also being the Point of Beginning; thence continue SW'ly

along the said NW'ly ROWL of Olivia Street for a distance of 26.50 feet to the SW'ly corner of the said lands described in Official Records Book 2487, at Page 1631, of the Public Records of Monroe County, Florida; thence SE'ly and at right angles for a distance of 7.70 feet; thence NE'ly and at right angles for a distance of 26.50 feet, thence NW'ly and at right angles for a distance of 7.70 feet back to the Point of Beginning, as specifically described and illustrated in the attached specific purpose survey dated April 4, 2009 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 1415 Olivia Street, as more specifically described in the attached survey. The easement shall pertain to landscaping, brick pavers and a fence 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 proposed fence be the only buildable structure in the easement. (7) That the City reserves the right to construct surface improvements within the easement area. (8) 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 \$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 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 to 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:_____

GRANTEE - 1415 Olivia Street, LLC

By: David Graham, Managing Member

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____
day of _____, 2011, by David Graham, as managing
member of 1415 Olivia Street, LLC, who is personally known to me or
who has produced _____ as identification.

Notary Public
State of _____

My commission expires:_____