

SMITH/HAWKS
ATTORNEYS AT LAW

Barton W. Smith, Esq
Telephone: (305) 296-7227
Facsimile: (305) 296-8448
Email: Bart@smithhawks.com

VIA FEDEX and EMAIL

March 24, 2020

Roy Bishop, Planning Consultant
City of Key West Planning Department
1300 White Street
Key West, FL 33040

Re: **210 Duval Street, LLC – Application for Lawful Unit Determination
for 210 – 216 Duval Street (RE # 00001420-000000)**

Dear Roy,

This letter is to supplement and provide support for 210 Duval Street, LLC's ("Owner") Application for Lawful Unit Determination first received by the City of Key West Planning Department ("City") on July 24, 2014 ("LUD"). Owner wishes to amend the LUD to request that the City recognize four (4) non-transient residential units on their property located at 210-216 Duval Street, Key West, FL and bearing Monroe County Real Estate No. 00001420-000000 ("Property").

Pursuant to Section 108.991(3) of the City of Key West Code of Ordinances ("Code"), records have been submitted and additional records are offered herein to show that a body of evidence exists to support the existence of four (4) non-transient residential units on or about April 1, 2010 and these units should be excluded from the City of Key West Building Permit Allocation System. Section 108.991(3) of the Code requires at least two types of records to support the units, and Owner has provided at least four types of records, including: a.) aerial photographs; b.) building permits; e.) rental, occupancy, or lease records; and g.) documentation from public utility companies.

Commercial Units

The Property currently remains with substantially the same structures that existed as of the Survey completed April 1, 1992 and attached as **Exhibit A**. Additionally, the Property currently has the same building layouts measured by a State-Certified Appraiser in 2006 as shown in the Building Layouts document attached as **Exhibit B**. The bottom floor of the larger two-story

building that abuts both Duval Street and Charles Street has historically been and currently is used for commercial purposes and consists of two (2) commercial units. The commercial unit on the left when looking from Duval Street is licensed under the address 210 Duval Street. The commercial unit on the right when looking from Duval Street is licensed under the address 216 Duval Street. Both units are currently occupied by Elysse of Key West, Inc. doing business as “Beach Club.”

Residential Units

The second floor of the larger two-story building that abuts both Duval Street and Charles Street was used historically and on or about April 1, 2010 for residential purposes and consists of three (3) non-transient residential units. A Settlement Agreement entered into in Monroe County Case No. 2011-CA-1205-K attached as **Exhibit C**, the Photos from the Property attached as **Exhibit D**, and the HARC Staff Report dated December 17, 2019 support the entire second floor of this building being used for residential purposes.

Building 8

The right side of the second floor of the Duval building, labeled Building 8 of **Exhibit B**, is one unit. Building 8 has its own entrance from the outside stairs from the back. The unit contains at least three bedrooms and one full bathroom with toilet, shower, and sink. See Photos of the unit in **Exhibit D, Tab 1**. The Photos also show cabinets and washing and drying machines, which are further evidence of residential use. Based on the foregoing, Owner requests that you find one non-transient residential unit in Building 8.

Building 9

The left side of the second floor of the Duval building, labeled Building 9 of **Exhibit B**, should be found to have two (2) residential units. The entrance to Building 9 is into the door on Duval Street that splits the two commercial units and up the stairs. Building 9 contains five bedrooms and two full bathrooms with toilets, showers, and sinks. See Photos of Building 9 in **Exhibit D, Tab 2**.

Residents of the City of Key West, especially in Old Town, have traditionally lived with small and mobile cooking appliances for many reasons, including the abundance of great restaurants and fresh seafood within walking distance and small unit size. Furthermore, Paragraph 5 of the Settlement Agreement attached as **Exhibit C** orders that the apartments be “vacant, broom clean and have been removed of all appliances.” Therefore, the lack of cooking appliances in Building 9 on the date of the site visit on February 7, 2020 should not be considered. Based on the foregoing, Owner requests that you find two (2) non-transient residential units in Building 9.

Building 10

The second floor of the back structure that does not abut Duval Street, labeled Building 10 in **Exhibit B**, is one unit. The Settlement Agreement and Photos support that Building 10 was used as a residence. The unit contains at least two bedrooms and a full bathroom with toilet,

Application for Lawful Unit Determination – 210 Duval Street, LLC

shower, and sink. See Photos of Building 10 in **Exhibit D, Tab 3**. The Photos also show a stove, washing machine and drying machine in Building 10. Based on the foregoing, Owner requests that you find one unit in Building 10.

Keys Energy Meters

Keys Energy has six (6) active electrical service accounts for the Property that have all remained active since before April 1, 2010. Please see six (6) letters from Keys Energy dated February 28, 2020 describing each account attached as **Exhibit E**. The email received from keysenergy@govqa.us on January 16, 2020 regarding meters at the Property and attached as **Exhibit F** inaccurately included meters at the addresses 211 Duval Street and 215 Duval Street, which are across the street from the Property. Additionally, the email excluded two (2) meters that service the Property but are still in Keys Energy's records under the address of 8 Charles Street. The foregoing evidence establishes that six (6) electric meters served the Property on April 1, 2010 and still currently serve the Property. Unfortunately, Keys Energy was unable to provide, and Owner was unable to determine, which areas of the Property each meter services.

Conclusion

Owner respectfully requests that this letter be used to supplement and support the LUD, and that the City recognize four (4) non-transient residential units allowing the Owner to apply to renovate the Property with four (4) residential units. Thank you for your consideration and assistance, and please do not hesitate to contact me with any questions.

Sincerely,

Anthony Davila for
Barton W. Smith

BWS/AJD
Enclosures

CC: Daniel Sobczak – daniel.sobczak@cityofkeywest-fl.gov

EXHIBIT A

SURVEY & LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

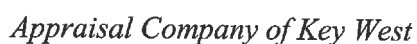
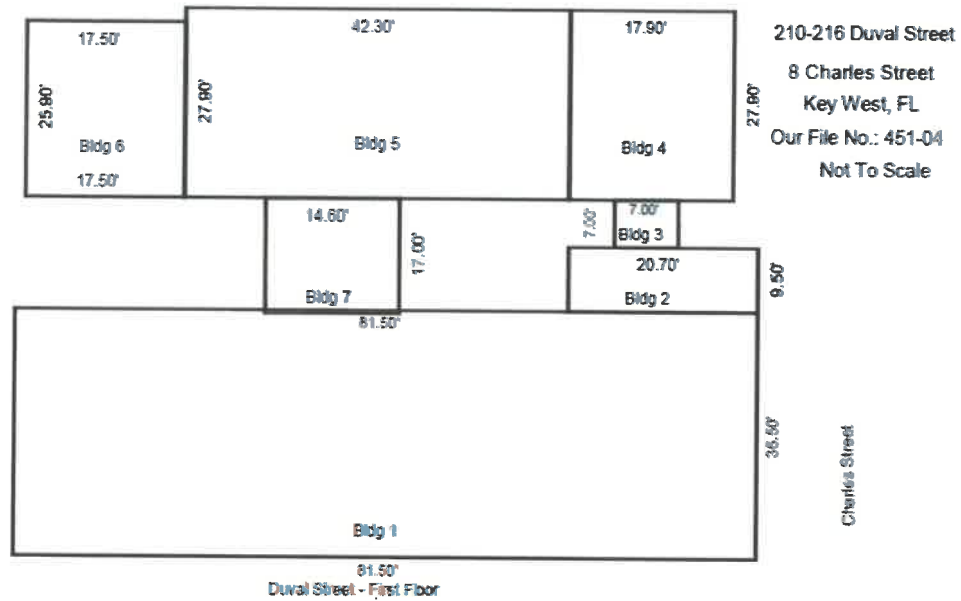


EXHIBIT B

Building Layouts

First Floor:



Second Floor:

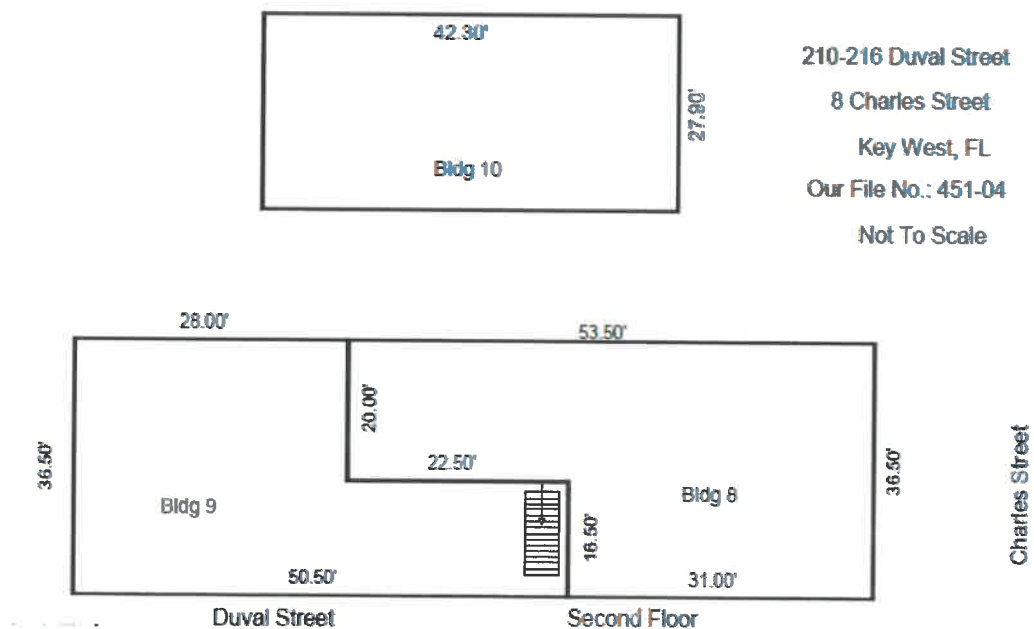


EXHIBIT C

IN THE CIRCUIT COURT OF THE
SIXTEENTH JUDICIAL CIRCUIT IN
AND FOR MONROE COUNTY,
FLORIDA

CASE NO. 2011-CA-1205-K

210 DUVAL STREET, LLC,

Plaintiff,

v.

ELYSSE OF KEY WEST, INC.,
a Florida corporation,

Defendant.

_____ /

SETTLEMENT AGREEMENT

Plaintiff, 210 DUVAL STREET, LLC ("Landlord"), and Defendant,
ELYSSE OF KEY WEST, INC. ("Tenant"), have agreed to resolve the issues in
this case pursuant to the following terms:

1. Landlord stipulates and agrees that the lease renewal option in Article
XII of the parties' July 12, 2004 Lease ("Lease") was validly exercised, and
Tenant's tenancy in the leased premises (as adjusted per ¶¶4 and 5, below) shall
continue through and until June 30, 2014.

2. Landlord stipulates and agrees that, as soon as Landlord receives the
funds from the Court Registry and settlement amount as outlined in ¶¶10 and 11,

below, Tenant is current on all rent obligations pursuant to the Lease through August 31, 2012.

3. Beginning with the rent payment due on September 1, 2012, Tenant's monthly rent obligation for the remainder of the Lease term (i.e. through and until June 30, 2014) shall be THIRTY EIGHT THOUSAND AND NO/100 DOLLARS (\$38,000.00) per month, inclusive of sales tax.

4. No later than October 15, 2012, the leased premises shall include only the 5,575 square foot retail area at 210 – 216 Duval Street and 8 Charles Street.

5. The second floor apartments currently rented (i.e. the 210 Duval Street Apartment and the 8 Charles Street Apartment, which apartments comprise 2,755 square feet — collectively referred to herein as "Apartments") shall no longer be part of Tenant's tenancy. Prior to October 15, 2012, Tenant shall notify Landlord, in writing, that the Apartments are not damaged, vacant, broom clean and have been removed of all appliances. If the second floor is not vacated pursuant to this paragraph, and Tenant has failed to cure any default within five (5) days of Landlord's written notice of such default, then the primary Lease between the parties shall be canceled.

6. Effective September 1, 2012, the Lease is amended so that Tenant's obligation to pay Tenant's proportionate share of *ad valorem* real estate taxes shall be 56.55%, rather than the 84.50% referenced in the Lease.

7. With regard to *ad valorem* real estate taxes for calendar year 2012, Tenant shall be responsible for 84.50% of such *ad valorem* taxes for eight (8) months (i.e. January 1, 2012 through August 31, 2012) of 2012, and for 56.55% of such *ad valorem* taxes for the remaining four (4) months of 2012 (i.e. September 1, 2012 through December 31, 2012). *For illustration purposes only, if the total ad valorem tax bill for 2012 is \$30,000, Tenant's obligation for the tax bill shall be \$22,555.00.*

8. Currently, both Landlord and Tenant procure property insurance for the leased premises. Effective immediately, Landlord may, but is not required to, cancel Landlord's property insurance on the leased premises. In any event, Tenant shall continue to insure ~~the~~ the leased premises,

9. Effective September 1, 2012, Landlord and Tenant shall work together to ensure that Tenant receives the monthly sewer/garbage invoices generated by the City of Key West for sewer/garbage services for the premises being leased by the Tenant. Tenant shall be responsible for the payment of such sewer/garbage invoices. In the event Landlord becomes aware that Tenant has not paid the sewer/garbage invoices for premises being rented by Tenant, Landlord shall immediately notify Tenant of such fact and Tenant shall remedy such situation.

10. Within thirty (30) days of the date of this Settlement Agreement, Tenant shall pay to Landlord the sum of \$50,000.00.

11. The sum of \$53,000.00 currently resides with the Clerk of the Court, having been deposited by Tenant into the Registry of the Court pursuant to the February 22, 2012 Agreed Order Requiring Defendant, Elysse Of Key West, Inc., to Deposit Funds Into Registry Of Court. The parties stipulate and agree to the entry of an order authorizing the Clerk to release all such funds in the Registry of the Court to Landlord. Counsel for Landlord shall prepare the Agreed Order in this regard.

12. Landlord and Tenant each release the other party for any and all claims each may have against the other party, which claim(s) in any way relate to the Lease, or to the tenancy thereby created, which claims arose, were made, or could have been made prior to the date of this Settlement Agreement. This release provision shall be self-executing and not require a collateral document.

13. The parties stipulate and agree that this Settlement Agreement is being entered into to resolve all disputes related to the parties regarding the Lease and any other claims which were brought, or could have been brought, in this lawsuit; all such claims having been satisfied concurrent with the payment referenced in ¶10, above.

14. Neither party admits liability to the other party and both parties expressly disclaim any liability to the other party.

15. Each party shall bear their own costs and attorney's fees.


16. Unless otherwise altered by this Settlement Agreement, all remaining terms of the Lease remain in full force and effect.

17. The parties expressly agree to the dismissal of this lawsuit, with prejudice, with the Court retaining jurisdiction to enforce the terms of this Settlement Agreement.


210 DUVAL STREET, LLC

ELYSSE OF KEY WEST, INC.

By:


NANCY PRICE LEACH
Managing Member
Date: Aug 30th - 12


By:


JUDITH GREENBERG
President
Date: 9/11/12


LAW OFFICE OF ROBERT
GOLDMAN
302 Southard Street, Suite 208
Key West, FL 33040
Telephone: (305) 296-1111

EDWIN A. SCALES, III, P.A.
201 Front Street, Suite 333
Key West, Florida 33040
Telephone: (305) 292-8950
Facsimile: (305) 296-6629

By:


ROBERT B. GOLDMAN
Florida Bar No. 81280
Date: Aug 30th - 12

By:


EDWIN A. SCALES, III
Florida Bar No. 0897700
Date: 9/13/2012

Attorney for Plaintiff

Attorney for Defendant

EXHIBIT D, TAB 1



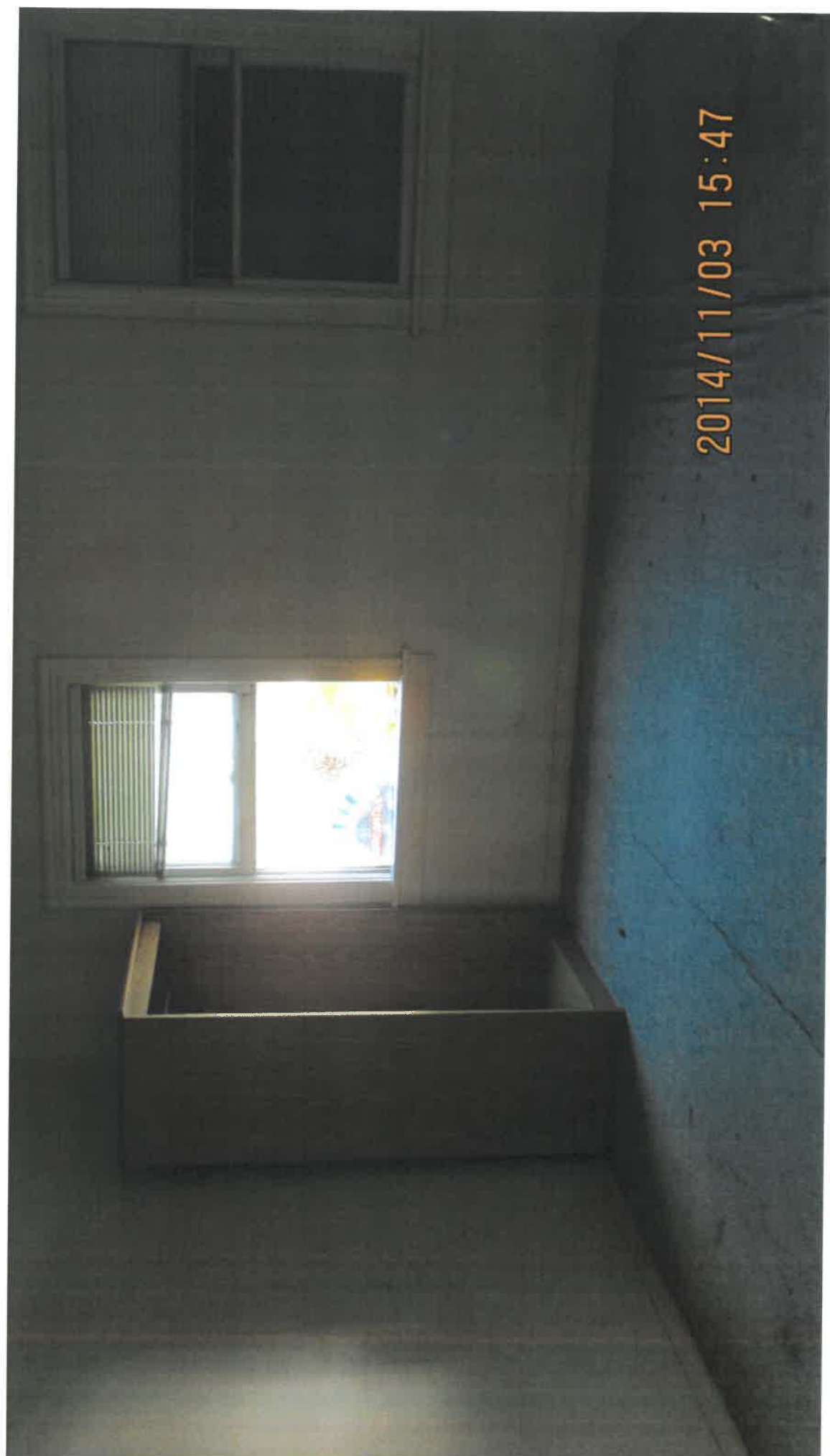




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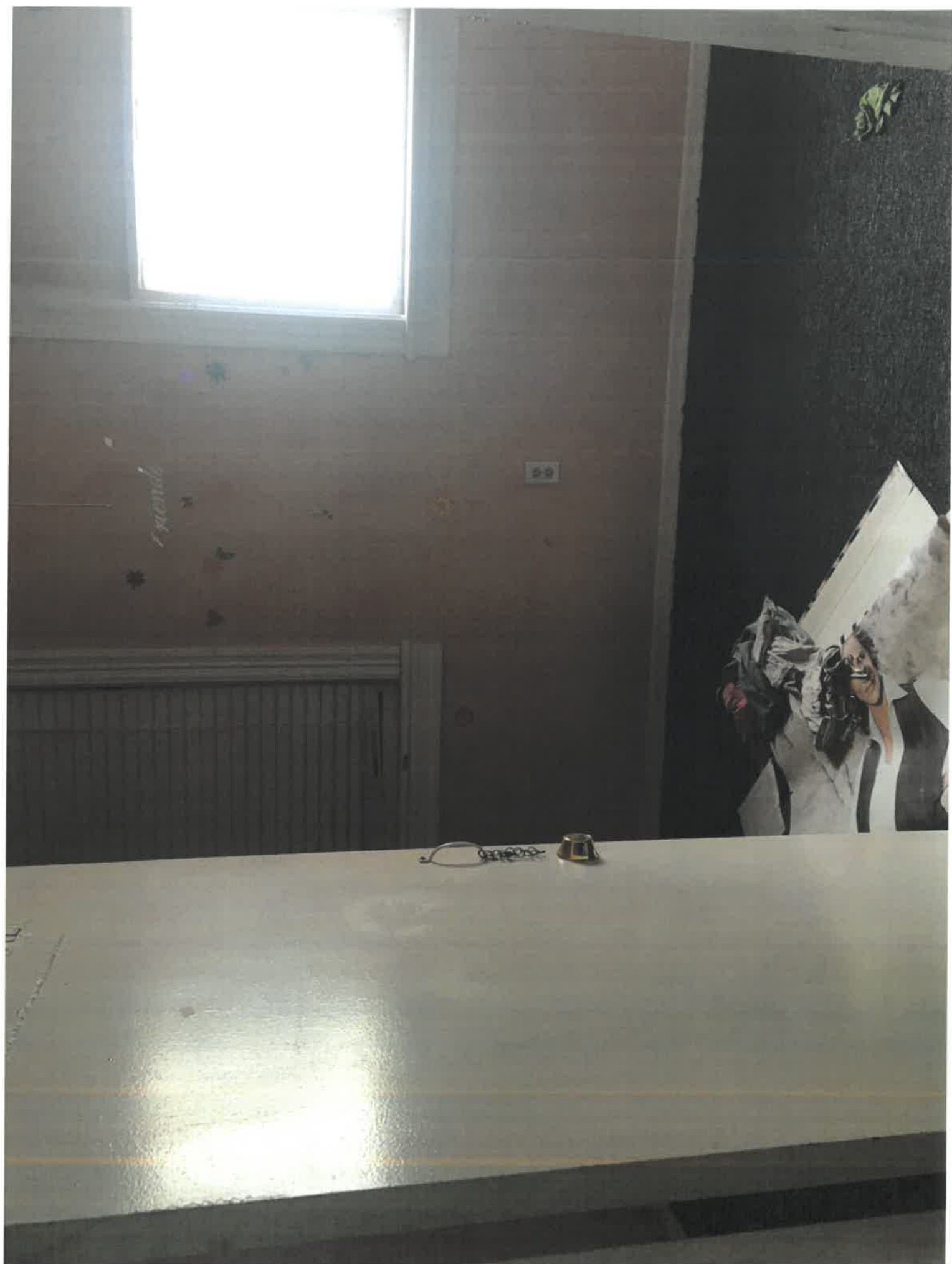


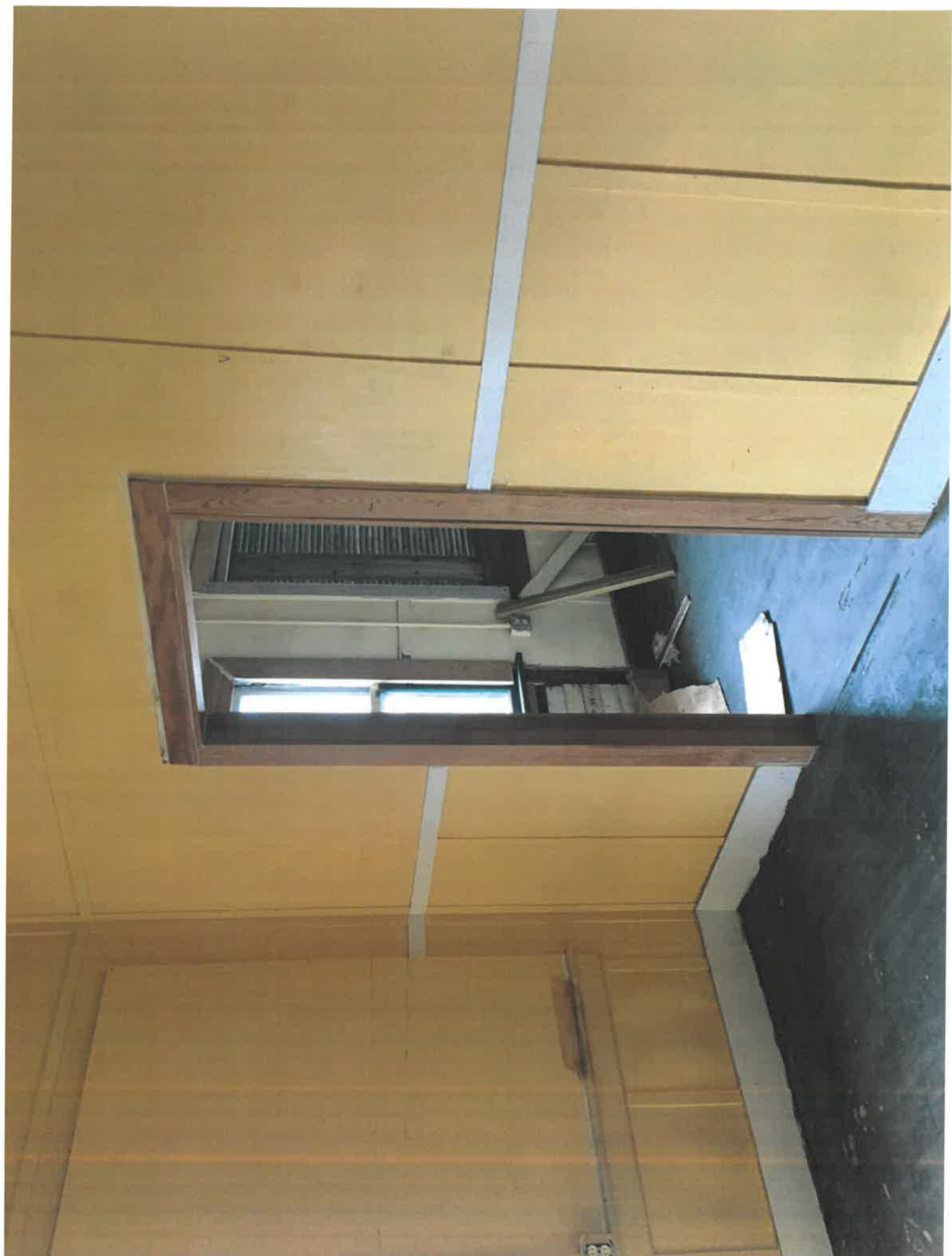
EXHIBIT D, TAB 2

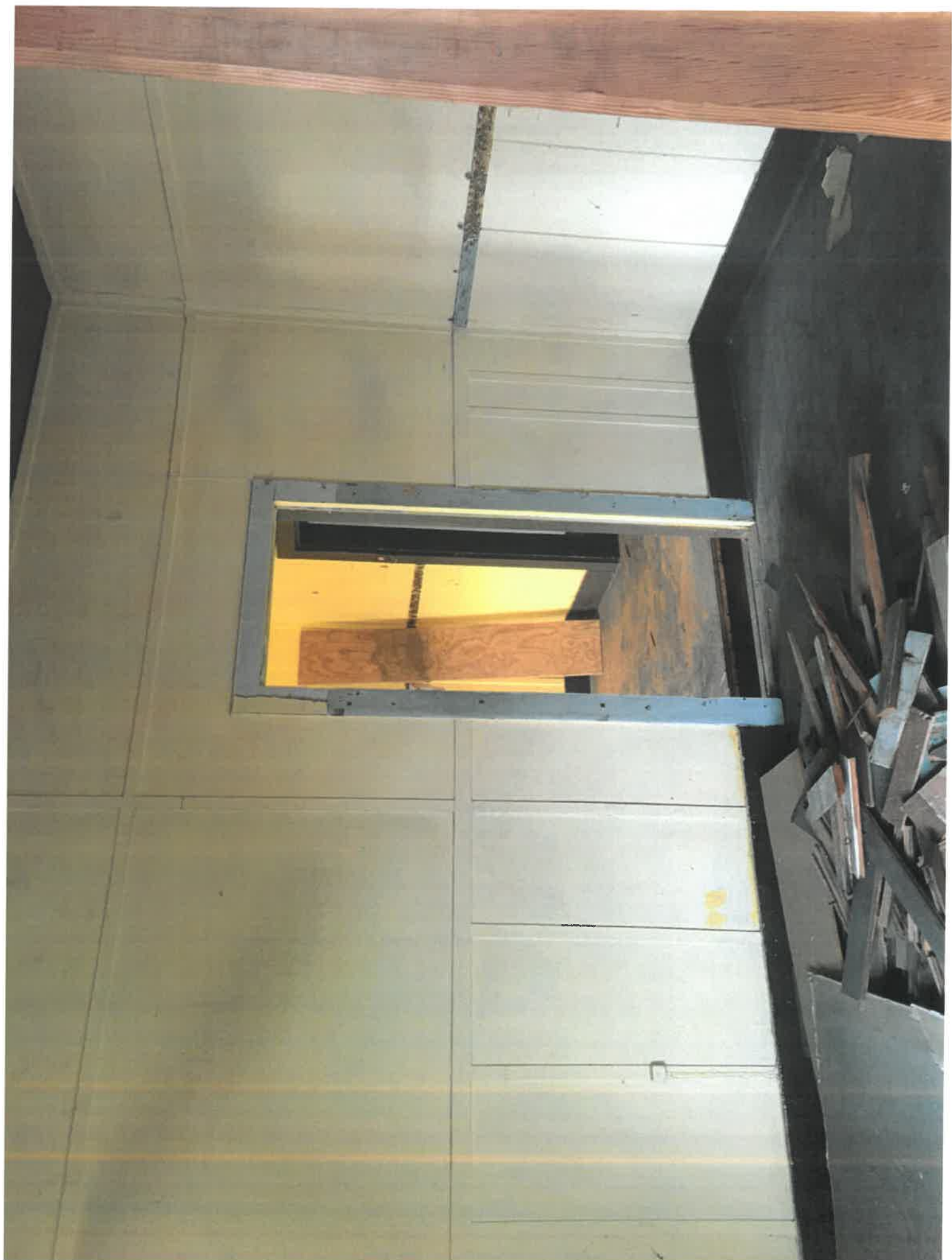












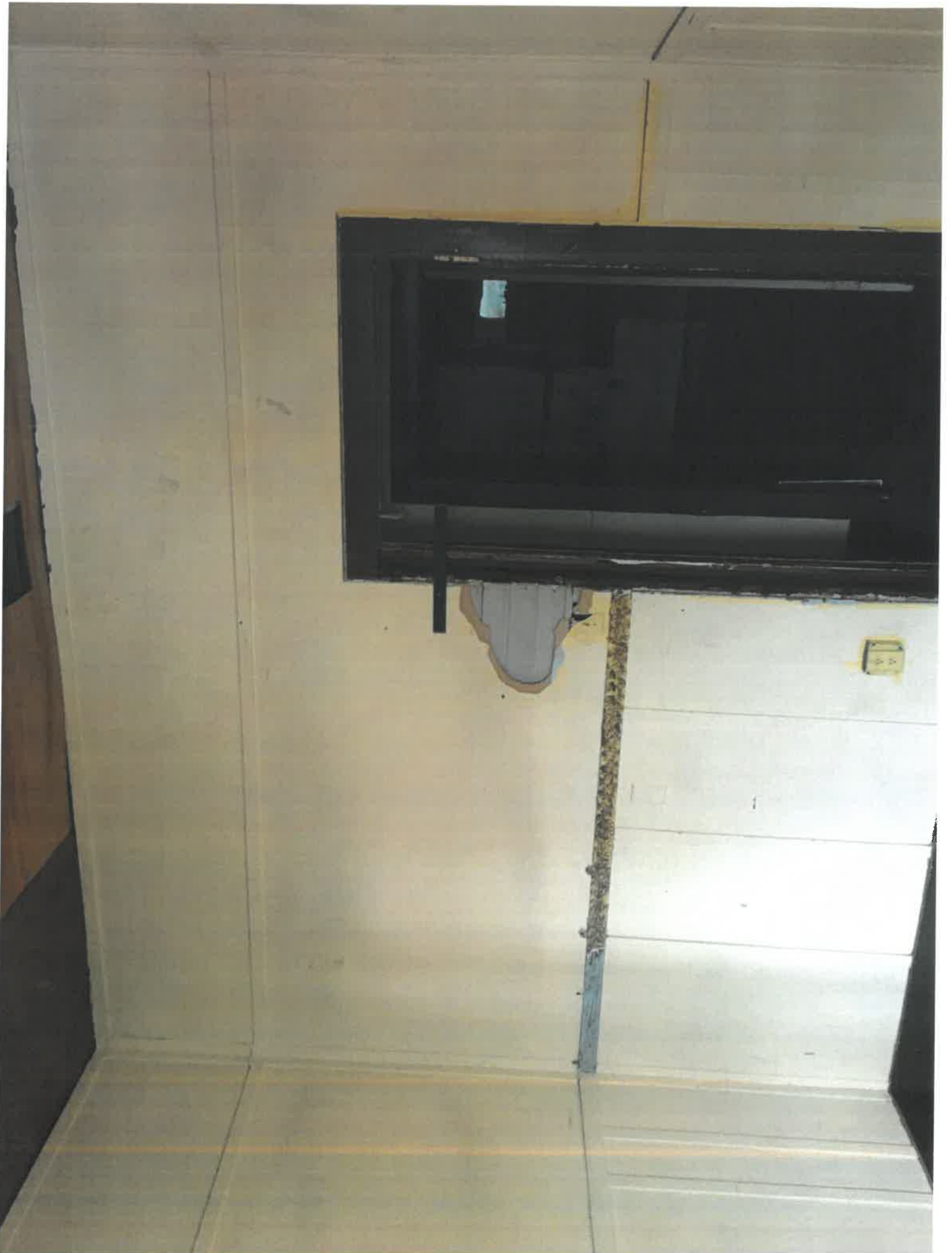














EXHIBIT D, TAB 3















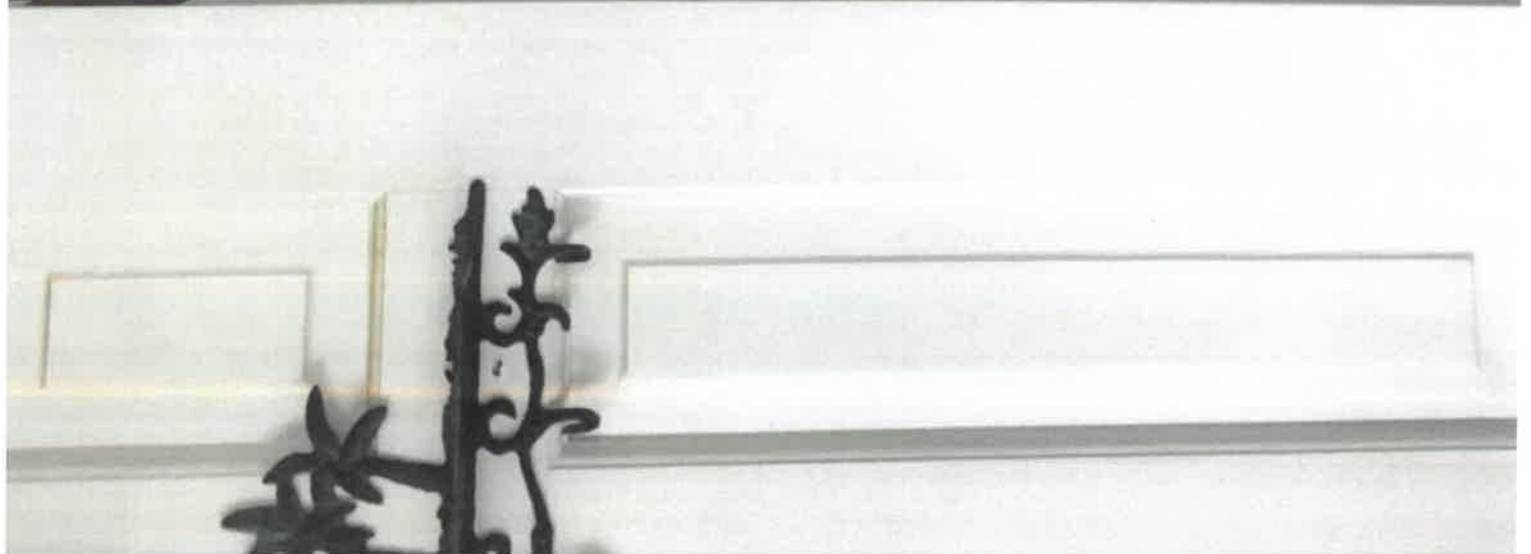






EXHIBIT E



(305) 295-1000
1001 James Street
PO Box 6100
Key West, FL 33040-6100
www.KeysEnergy.com

UTILITY BOARD OF THE CITY OF KEY WEST

February 28, 2020

Mr. Anthony Davila
Smith/Hawks Attorneys At Law
138 Simonton Street
Key West, FL 33040

RE: Electrical Service for:
210 Duval Street, Up, Key West, Florida

Dear Mr. Davila:

As requested, we have reviewed our records, and it has been determined that electrical service is available for the above referenced property. Keys Energy Services records indicate that this account is currently active and there has been residential electrical service with one (1) meter at the above mentioned address since January 6, 1993.

Should you have any questions or concerns, please contact me at (305) 295-1080.

Sincerely,

Zahny Gonzalez
Customer Service Staff Assistant

ZG/zg



(305) 295-1000
1001 James Street
PO Box 6100
Key West, FL 33040-6100
www.KeysEnergy.com

UTILITY BOARD OF THE CITY OF KEY WEST

February 28, 2020

Mr. Anthony Davila
Smith/Hawks Attorneys At Law
138 Simonton Street
Key West, FL 33040

RE: Electrical Service for:
210 Duval Street, Down, Key West, Florida

Dear Mr. Davila:

As requested, we have reviewed our records, and it has been determined that electrical service is available for the above referenced property. Keys Energy Services records indicate that this account is currently active and there has been residential electrical service with one (1) meter at the above mentioned address since April 13, 1964.

Should you have any questions or concerns, please contact me at (305) 295-1080.

Sincerely,

Zahny Gonzalez
Customer Service Staff Assistant

ZG/zg



(305) 295-1000
1001 James Street
PO Box 6100
Key West, FL 33040-6100
www.KeysEnergy.com

UTILITY BOARD OF THE CITY OF KEY WEST

February 28, 2020

Mr. Anthony Davila
Smith/Hawks Attorneys At Law
138 Simonton Street
Key West, FL 33040

RE: Electrical Service for:
212 Duval Street, Key West, Florida

Dear Mr. Davila:

As requested, we have reviewed our records, and it has been determined that electrical service is available for the above referenced property. Keys Energy Services records indicate that this account is currently active and there has been residential electrical service with one (1) meter at the above mentioned address since March 31, 1980.

Should you have any questions or concerns, please contact me at (305) 295-1080.

Sincerely,

Zahny Gonzalez
Customer Service Staff Assistant

ZG/zg



(305) 295-1000
1001 James Street
PO Box 6100
Key West, FL 33040-6100
www.KeysEnergy.com

UTILITY BOARD OF THE CITY OF KEY WEST

February 28, 2020

Mr. Anthony Davila
Smith/Hawks Attorneys At Law
138 Simonton Street
Key West, FL 33040

RE: Electrical Service for:
216 Duval Street, Key West, Florida

Dear Mr. Davila:

As requested, we have reviewed our records, and it has been determined that electrical service is available for the above referenced property. Keys Energy Services records indicate that this account is currently active and there has been residential electrical service with one (1) meter at the above mentioned address since October 19, 1970.

Should you have any questions or concerns, please contact me at (305) 295-1080.

Sincerely,

Zahny Gonzalez
Customer Service Staff Assistant

ZG/zg



(305) 295-1000
1001 James Street
PO Box 6100
Key West, FL 33040-6100
www.KeysEnergy.com

UTILITY BOARD OF THE CITY OF KEY WEST

February 28, 2020

Mr. Anthony Davila
Smith/Hawks Attorneys At Law
138 Simonton Street
Key West, FL 33040

RE: Electrical Service for:
8 Charles Street, Key West, Florida

Dear Mr. Davila:

As requested, we have reviewed our records, and it has been determined that electrical service is available for the above referenced property. Keys Energy Services records indicate that this account is currently active and there has been residential electrical service with one (1) meter at the above mentioned address since November 3, 1980.

Should you have any questions or concerns, please contact me at (305) 295-1080.

Sincerely,

Zahny Gonzalez
Customer Service Staff Assistant

ZG/zg



(305) 295-1000
1001 James Street
PO Box 6100
Key West, FL 33040-6100
www.KeysEnergy.com

UTILITY BOARD OF THE CITY OF KEY WEST

February 28, 2020

Mr. Anthony Davila
Smith/Hawks Attorneys At Law
138 Simonton Street
Key West, FL 33040

RE: Electrical Service for:
8 Charles Street, Rear, Key West, Florida

Dear Mr. Davila:

As requested, we have reviewed our records, and it has been determined that electrical service is available for the above referenced property. Keys Energy Services records indicate that this account is currently active and there has been residential electrical service with one (1) meter at the above mentioned address since December 4, 1980.

Should you have any questions or concerns, please contact me at (305) 295-1080.

Sincerely,

Zahny Gonzalez
Customer Service Staff Assistant

ZG/zg

EXHIBIT F

Anthony J. Davila

From: KEYS ENERGY SERVICES Support <keysenergy@govqa.us>
Sent: Thursday, January 16, 2020 1:26 PM
To: Daniel Sobczak
Subject: [Records Center] Public Records Request :: R000401-011620

--- Please respond above this line ---



Hi Daniel,

The number of meters for the time frame requested are as follows:

210 Duval St - 2 meters
211 Duval St - 5 meters
212 Duval St - 1 meter
215 Duval St - 1 meter
216 Duval St - 1 meter

Thank You,
Gricel Owen

To monitor the progress or update this request please log into the [Public Records Center](#)

