

916 POHALSKI AVENUE

EASEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2016,
between the City of Key West, Florida (hereinafter Grantor) and
Edward McGinley, as owner of property located at 916 Pohalski
Avenue, Key West, Florida (hereinafter the Grantee) (RE #
00021080-000000).

I. RECITALS

Grantee is owner of the property known as 916 Pohalski
Avenue, Key West, Florida, including a part of the one story
structure that encroaches onto the Grantor's right-of-way.
Portions of Grantee's property encroaches 126.63 square feet,
more or less, onto the Grantor's right-of-way. Specifically:

Commencing at the Southwesterly corner of the intersection
of Pohalski Avenue and Nicolas Avenue said point also being the
Northeasterly corner of the said Lot 12, and running thence S65
degrees 18'32"W along the Southeasterly Right of Way Line of
Nicolas Avenue for a distance of 1.99 feet to the Northeasterly
face of an existing roof overhang and the Point of Beginning of
the parcel of land hereinafter described; thence N24 degrees
14'42"W and along the said Northeasterly face of an existing
roof overhang for a distance of 2.43 feet to the Northeasterly

corner of the said roof overhang; thence S65 degrees 44'25"W and along the Northwesterly face of the said existing roof overhang for a distance of 40.78 feet to the Southwesterly corner of the said existing roof overhang; thence S24 degrees 15'35"E and along the Southwesterly face of the said existing roof overhang for a distance of 1.00 feet to the Northwesterly face of an existing frame structure; thence S65 degrees 44'25"W and along the said Northwesterly face of an existing frame structure for a distance of 12.00 feet to the Southwest corner of the said existing frame structure; thence S24 degrees 16'53"E and along the Southwesterly face of the said existing frame structure for a distance of 1.83 feet to a point on the said Southeasterly Right of Way Line of Nicolas Avenue; thence N65 degrees 18'32"E and along the said Southeasterly Right of Way line of Nicolas Avenue for a distance of 52.78 feet back to the Point of Beginning.

Land described herein contains 126.63 square feet, more or less as specifically described and illustrated in the attached specific purpose survey dated December 11, 2015, drawn by Eric A. Isaacs, PSM of Florida Keys Land Surveying, (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 916 Pohalski Avenue, as more specifically described in the attached survey. The easement shall pertain to a section of the one story structure along Nichols Avenue 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 Personal Liability insurance that extends coverage to the property that is governed by this easement with limits of no less than \$300,000. 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 Homeowners or Personal Lines form.
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 existing one story structure along Nichols Avenue 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.
9. 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 in the ordinary course of maintenance.

The easement shall terminate upon the removal 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: Edward McGinley, _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, for 916 Pohalski Avenue, who is personally known to me or who has produced _____ as identification.

Notary Public
State of _____

My commission expires: _____