

**930 EATON STREET**

**EASEMENT AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
between the City of Key West, Florida (hereinafter Grantor) and  
Nina Cay, LLC, a Florida Limited Liability Company, as owner of  
property located at 930 Eaton Street, Key West, Florida  
(hereinafter the Grantee) (RE # 00005470-000100).

**I. RECITALS**

Grantee is owner of the property known as 930 Eaton Street,  
Key West, Florida, including an area in order to maintain the  
existing building and overhang that encroaches into both Eaton  
Street and Grinnell Street onto the Grantor's right-of-ways.  
Portions of Grantee's property encroaches 243 square feet, more  
or less, onto the Grantor's right-of-way. Specifically:

BEGIN at the intersection of the Southwesterly right of way  
line of Grinnell Street with the Southeasterly right of way line  
of Eaton Street and run thence Southeasterly along the  
Southwesterly right of way line of the said Grinnell Street for  
a distance of 21.10 feet to the Southeasterly face of an  
existing two story frame structure; thence Northeasterly with a

deflection angle of 89 degrees 39'59" to the left and along said structure for a distance of 2.00 feet; thence Northwesterly and at right angles along the Northeasterly face of said structure for a distance of 11.90 feet; thence Northeasterly and at right angles for a distance of 1.10 feet; thence Northwesterly and at right angles for a distance of 4.00 feet; thence Southwesterly and at right angles for a distance of 1.10 feet to the Northeasterly face of said structure; thence Northwesterly and at right angles along the said structure and overhang for a distance of 7.90 feet; thence Southwesterly and at right angles along the said overhang for a distance of 71.10 feet; thence Southeasterly and at right angles along said overhang for a distance of 2.79 feet to the Southeasterly right of way line of the said Eaton Street; thence Northeasterly with a deflection angle of 90 degrees 4'56" to the left and along the said Eaton Street for a distance of 69.01 feet back to the Point of Beginning, containing 243 square feet, more or less.

Land described herein contains 243 square feet, more or less as specifically described and illustrated in the attached specific purpose survey dated October 21, 2016, drawn by 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 930 Eaton Street, as more specifically described in the attached survey. The easement shall pertain to an area in order to maintain the existing building and overhang along Eaton Street and Grinnell 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 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) (3).
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 area in order to maintain the existing building and overhang along Eaton Street and Grinnell Street shall be the total allowed construction within the easement area.
6. The easement area shall not be used in site size calculations such as lot, yard, and bulk calculations for site development.
7. The City reserves the right to construct surface improvements within the easement area.

8. 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.

The easement shall terminate upon the removal of the building and overhang.

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 \_\_\_\_\_, 2017 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: Nina Cay, LLC, a Florida Limited Liability Company,

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, for 930 Eaton Street, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
State of \_\_\_\_\_

My commission expires: \_\_\_\_\_