

AGREEMENT

This Agreement is entered into this 29 day of Dec., 2011, by and between TERANCE E. KEENAN and GWEN L. KEENAN ("Keenan") and THE CITY OF KEY WEST, FLORIDA, a municipal corporation ("City").

WHEREAS, the Keenan is the owner in fee simple title of real property located at 1021 Watson Street, Key West, Florida, and more particularly described on Exhibit "A", which is attached hereto and incorporated by reference (hereinafter the "Property"); and

WHEREAS, the City is the owner in fee simple of real property located adjacent to the Property which includes the paved portion of what is commonly referred to as Virginia Street (hereinafter "Virginia Street right-of-way"); and

WHEREAS, Keenan's predecessors in title constructed improvements wholly or partially on the Virginia Street right-of-way, including a concrete wall, gate, concrete deck, wood deck, and brick deck; and

WHEREAS, City has designed and undertaken a construction project on the Virginia Street right-of-way adjacent to the Property (hereinafter "Project"), which project includes a sidewalk; and

WHEREAS, the Project's design necessitates the removal of certain improvements adjacent to the Property and located within the Virginia Street right-of-way; and

WHEREAS, the parties now wish to resolve all issues pertaining to the improvements located adjacent to the Property and within the Virginia Street right-of-way.

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The City shall install, at its sole expense, a temporary, chain-link fence along that side of the Property which borders the Virginia Street right-of-way. Specifically, with the exception of the area identified as "pool and deck removal" on the drawing attached hereto, incorporated by reference, and more particularly described as Exhibit "B", the temporary fence shall be placed on

Keenan's property line adjacent to the Virginia Street right-of-way. In the area identified as "pool and deck removal" on Exhibit B, the fence shall be placed on the edge of the area identified for removal closest to the Virginia Street right-of-way, and located one foot from the edge of the pool coping and running parallel to the Virginia Street right-of-way. Provided, however, at no point shall the location of the temporary fence be closer than one foot to the pool coping.

2. Subsequent to the erection of the fence referred to in the preceding paragraph, the City, at its sole expense, shall obtain all necessary approvals, remove, and dispose of the existing concrete wall adjacent to the Property and located within the Virginia Street right-of-way.

3. The City, at its sole expense, shall remove those portions of the wood deck, concrete deck adjacent to the pool which are within the Virginia Street right-of-way and identified on Exhibit B. In the event Keenan requests prior to City's removal of the said wood deck and concrete deck that City remove an additional portion of the wood deck or concrete deck to facilitate Keenan's future construction of a fence, the City shall remove such additional portion or portions at City's sole expense.

4. The parties herein expressly agree that the temporary fence shall be in place no longer than 90 days from the date of the completion of the temporary fence. No later than 30 days from the effective date of this Agreement, Keenan shall make application for a permit to install a new fence on the Property along the Virginia Street right-of-way at Keenan's sole expense, and shall be solely responsible to comply with all City codes, rules, and regulations, including those under the supervision of HARC. To the extent acceptable to City staff, the City shall provide assistance to Keenan regarding necessary applications and shall recommend approval when warranted. Further, City staff shall recommend waiver of those application fees necessary to install a new fence. Keenan expressly acknowledges herein that HARC guidelines limit the height of fences located on portions of property in the historic district to four feet. The City expressly acknowledges that Keenan may seek to exceed the four-foot limit as to a portion of the fence, and agrees to accept, process and recommend approval, if warranted. Although City is aware of no absolute prohibition of fences

which exceed four feet, City makes no representation that Keenan's request will be approved by City, HARC, or other City boards. Keenan or Keenan's fence contractor shall coordinate the removal of the temporary fence with the construction of the new fence so as to ensure that the public will not have access to the pool located on the Property.

5. Keenan expressly acknowledges that this Agreement contemplates that improvements located on the property, including Keenan's pool, will continue to encroach onto the Virginia Street right-of-way. Accordingly, no later than 30 days from the effective date of this Agreement, Keenan shall file an application with City to obtain an easement for those areas preempted by the said encroachments. City staff shall recommend waiver of the application fees for the easement. However, Keenan expressly acknowledges that the annual fee associated with easements shall be applicable.

6. To the extent that Keenan requests that City remove an additional portion of the wood deck or concrete deck to facilitate Keenan's future construction of a fence, Keenan agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all its Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way result from City's removal of the said portion of the wood deck or concrete deck, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. Keenan agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. Further, during the

period beginning with the City's construction of the temporary fence and ending with Keenan's construction of the new fence, this indemnification shall extend to claims of third parties occasioned by falling into the pool located on the Property. This indemnification shall survive the expiration or termination of this Agreement.

7. The laws of the state of Florida and Monroe County will govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. Venue for any proceedings between the Parties shall be in Key West, Monroe, Florida.

8. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

9. In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

10. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

11. This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year first written above.

  
TERANCE E. KEENAN

  
GWEN L. KEENAN



*Cheryl Smith*  
Cheryl Smith, City Clerk

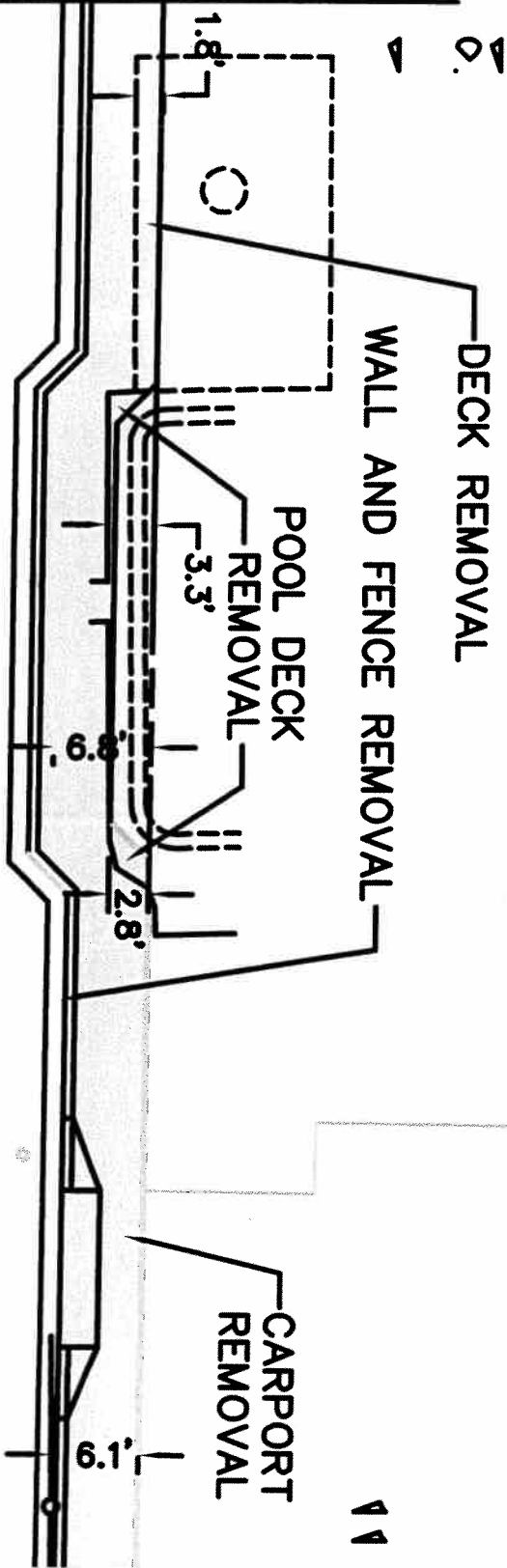
City of Key West, Florida

By: *J. Scholl*  
Jim Scholl, City Manager

On the Island of Key West, and know on William A. Whitehead's Map of said Island delineated in February, A. D. 1829 as a part of Tract Thirteen (13), better described on a diagram of a part of said Tract made by George G. Watson, and is further described as commencing at a point Three Hundred (300) feet from the corner of Division (Truman) and Watson Streets and running in a Southeasterly direction along said Watson Street Sixty-one (61) feet;  
thence at right angles in a Northeasterly direction One Hundred and Twenty (120) feet;  
thence at right angles in a Northwesterly direction Eleven (11) feet;  
thence in a Southwesterly direction Five (5) feet;  
thence in a Northwesterly direction Fifty (50) feet;  
thence at right angles in a Southwesterly direction One Hundred and Fifteen (115) feet to the Place of Beginning.

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1. AT F LINE  
CONTINUATION, 0 TO 10 FEET



IR 10.1A

EXHIBIT B