

AMENDED EASEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2011, between the City of Key West, Florida (hereinafter Grantor) and Robert T. Feldman, as Personal Representative of the Estate of Robert William Townshend, deceased, owner(s) of property located at 712 714 716 Eisenhower Drive, Key West, FL (hereinafter the Grantee) (RE# 00023300-000000).

RECITALS

Grantee is owner of the property known as 712-716 Eisenhower Drive, Key West, Florida, including part of a structure that encroaches onto the Grantor's right-of-way. Specifically, portions of Grantee's property, including existing porch, roof eaves and steps encroach onto the Grantor's right-of-way: Specifically, those certain portions of the building and wood deck on the Eisenhower Drive a/k/a Salt Pond Road side of the property, as more specifically described and illustrated in the attached specific purpose survey dated February 16, 2010 survey by Island Surveying Inc., and also described as parcels "D" and "E" in a boundary survey dated January 26, 2010 by Island Surveying Inc. (Copies attached hereto). This encroachment impedes marketability of the property.

The City Commission previously granted an easement for the subject property via resolution 10-136 passed on April 6, 2010.

Grantee has requested that the easement be amended. The parties agree that the easement approved in resolution 10-136 is terminated and of no force or effect. The parties shall take any and all necessary further action to ensure the easement approved in resolution 10-136 is extinguished. This amended easement agreement is intended to replace the easement approved in resolution 10-136 in its entirety.

CONVEYANCE OF EASEMENT

The Grantor hereby agrees to grant and convey to Grantee an easement for building encroachments, at the property located at 712 714 716 Eisenhower Drive, as more specifically described in the attached survey. The easement shall pertain to the building, accessory structures and surrounding property 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, except as specifically set forth below. (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 (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. (6) That approval of the easement is contingent upon deed-restricted, affordable use of the units on-site. (7) That this easement shall immediately terminate upon a finding by the City Commission that any of the units are not occupied or utilized within the affordability guidelines. (8) That the City reserves the right to construct an ADA compliant sidewalk and stormwater improvements within the easement area. (9) 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. Notwithstanding the ability of the City Commission to terminate this easement upon a finding of public purpose, the easement over those habitable areas of the structure now existing on the property may not be extinguished by a finding of public purpose so long as all other terms of this easement agreement are satisfied.

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; provided however, prior to termination, Grantor shall provide Grantee, as well as Grantee's mortgagee of record, with notice of said failure and the ability to cure said failure within thirty (30) days of receipt of said notice by Grantee and Grantee's mortgagee of record.

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 after the notice and opportunity to cure as set forth above.

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, except that the easement over those habitable areas of the structure now existing on the property may not be extinguished by a finding of public purpose so long as all other terms of this easement agreement are satisfied.

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), 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; provided however, prior to termination, Grantor shall provide Grantee, as well as Grantee's mortgagee of record, with notice of said failure and Grantee and/or Grantee's mortgagee of record shall have the ability to cure said failure within thirty (30) days of receipt of said notice by Grantee and Grantee's

mortgagee of record

This easement shall immediately terminate upon a finding by the City Commission that any of the units are not occupied or utilized within the affordability guidelines; provided however, prior to termination, Grantor shall provide Grantee, as well as Grantee's mortgagee of record, with notice of the foregoing and Grantee and/or Grantee's mortgagee of record shall the ability to cure said failure within thirty (30) days of receipt of said notice by Grantee and Grantee's mortgagee of record.

It is the intent of the parties that in the event of any default which may result in the termination of this easement, Grantor shall, prior to termination, provide Grantee, as well as Grantee's mortgagee of record, with notice of said default. Grantee and/or Grantee's mortgagee of record shall have the ability to cure said default within thirty (30) days of receipt of said notice by Grantee and Grantee's mortgagee of record (or within a reasonable amount of time in the event said default cannot be reasonably cured within said thirty (30) day period).

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

Robert T. Feldman, as Personal Representative
Of the Estate of Robert William Townshend, deceased

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Robert T. Feldman, as Personal Representative for the Estate of Robert William Townshend, deceased, who is personally known to me or who has produced _____ as identification.

Notary Public
State of _____

My commission expires: _____