

1200-1212 WHITE STREET AND 1124 CATHERINE STREET

EASEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2015, between the City of Key West, Florida (hereinafter Grantor) and Victor H. Jr. and Cynthia A. Mills, as owner of property located at 1200-1212 White Street and 1124 Catherine Street, Key West, Florida (hereinafter the Grantee) (RE # 00033010-000000 / 00033050-000000; AK # 1033774 / 1033812).

I. RECITALS

Grantee is owner of the property known as 1200-1212 White Street and 1124 Catherine Street, Key West, Florida, including an existing building with a proposed metal awning that would be located along White and Catherine Streets and that would encroach onto the Grantor's rights-of-way. Portions of Grantee's property, including the metal awning, would encroach 780 square feet, more or less, onto the Grantor's right-of-way, as more specifically described and illustrated in the attached specific purpose survey dated September 25, 2014 by Frederick H. Hildebrandt of Island Surveying, Inc. (Copy attached hereto).

II. CONVEYANCE OF EASEMENT

The Grantor hereby agrees to grant and convey to the Grantee an easement for encroachments, at the property located at 1200-1212 White Street and 1124 Catherine Street, as more specifically described in the attached survey. The easement shall pertain to

the proposed metal awning to be located along White Street and Catherine Street related to structure encroachments herein described, and not to any other encroachment. The grant of this easement is conditioned upon the following:

(1) The easement shall terminate upon the replacement of the structure.

(2) The City may unilaterally terminate the easement upon a finding of public purpose by a vote of the Key West City Commission.

(3) The owner shall pay the annual fee of \$400.00 specified in Section 2-938(b) of the Code of Ordinances.

(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 easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of one million dollars (\$1,000,000.00) per person and two million dollars (\$2,000,000.00) per incident (or such other amount as may be legislatively determined to be the maximum extend 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) The proposed metal awning 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.

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. INDEMNIFICATION

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 damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in

establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, caused in whole or in part by any act, omission, or default by Grantee or its subcontractors, material men, or agents of any tier or their employees, arising out of this agreement or its performance, including any such damages caused in whole or in part by any act, omission or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Grantee or its subcontractors, material men or agents of any tier or their respective employees.

The indemnification obligations under this Agreement shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Grantee under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Grantee or of any third party to whom Grantee may subcontract a work. This indemnification shall continue beyond the date of termination of the Agreement.

V. 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 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 person and two million dollars (\$2,000,000.00) per incident, 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.

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

JIM SCHOLL, CITY MANAGER

STATE OF FLORIDA)
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by JIM 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:

By: Victor H. Mills Jr.

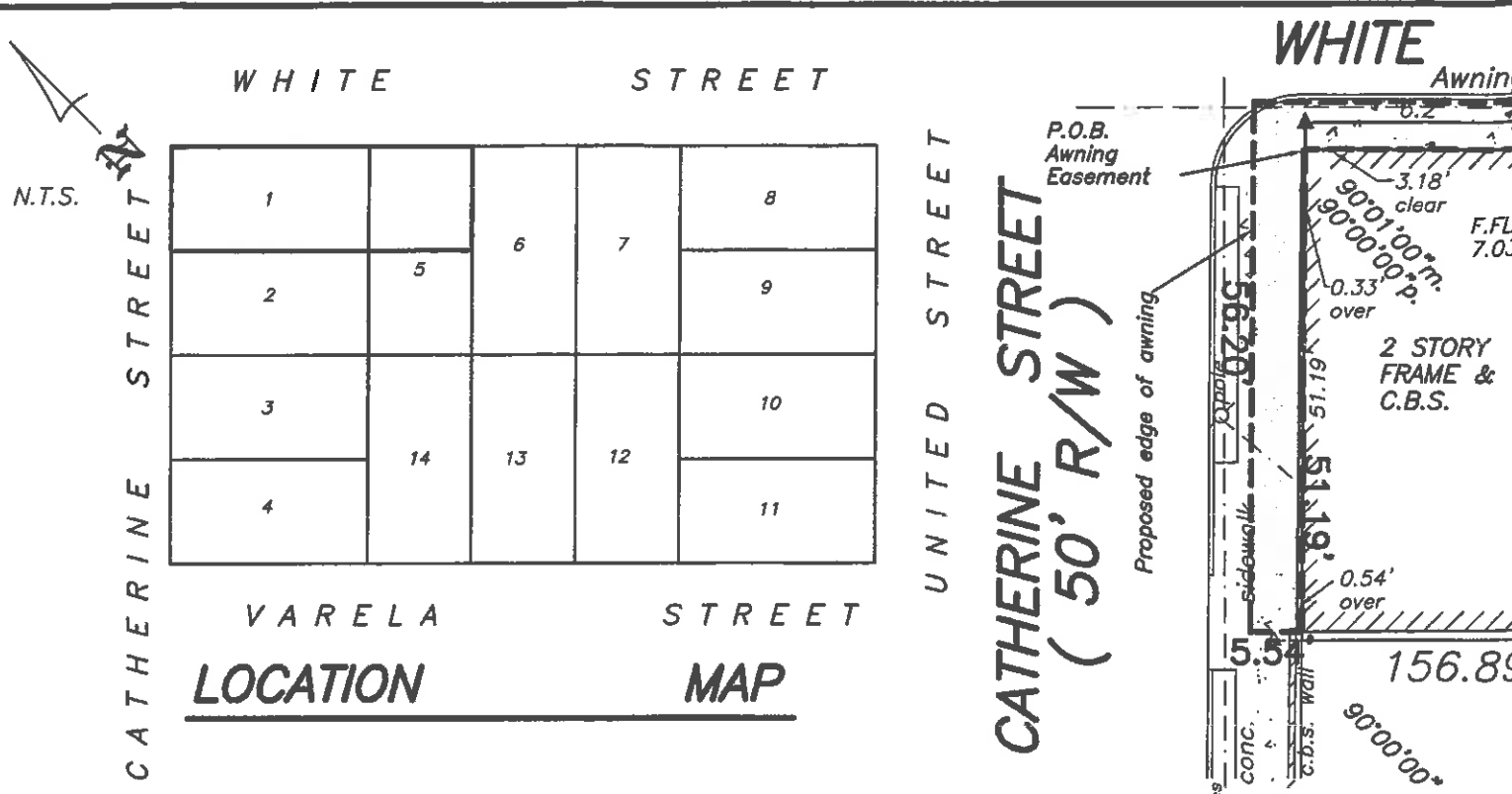
Cynthia A. Mills

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____
day of _____, 2015, by
_____, who is personally known to me or
who has produced _____ as identification.

Notary Public
State of _____

My commission expires: _____



LOCATION MAP

SURVEYOR'S NOTES:

North arrow based on Assumed Median
 Elevations based on N.G.V.D. 1929 Datum
 B.M.No: D-121 elevation 3.812

- △ = Set P.K. Nail/PCP No PLS 2749
- ⊙ = Set 1/2" iron pipe, Cap PLS 2749
- ▲ = Fd. P.K. Nail/PCP Reese & White

- Sty. = Story
- R/W = Right-of-Way
- fd. = Found
- p. = Plat
- m. = Measured
- d. = Deed
- N.T.S. = Not to Scale
- ⊕ = Centerline
- Elev. = Elevation

- Abbreviations:**
- o/h = Overhead
 - F.F.L. = Finish Floor Elevation
 - conc. = concrete
 - I.P. = Iron Pipe
 - C.B.S. = Concrete Block Stucco
 - P.B. = Plat Book
 - pg. = page
 - B.M. = Bench Mark

- cov'd. = Covered
- wd. = Wood
- ⊙ = Wood utility Pole
- Bal. = Balcony
- Pl. = Planter
- A/C = Air Conditioner
- P.O.C. = Point of Commence
- P.O.B. = Point of Beginning

Field Work performed on: 9/25/14

CERTIFICATION:

I HEREBY CERTIFY that the attached Specific Purpose Survey, Balcony Easement is true and correct to the best of my knowledge and belief; that it meets the minimum technical standards adopted by the Florida Board of Land Surveyors, Chapter 5J-17, Florida Statute Section 472.027, and the American Land Title Association, and that there are no visible encroachments unless shown hereon.

FREDERICK H. HILDEBRANDT
 Professional Land Surveyor & Mapper No. 2749
 Professional Engineer No. 36810
 State of Florida