

**1200 WHITEHEAD STREET**

**EASEMENT**  
**AGREEMENT**

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2022,  
between the City of Key West, Florida (hereinafter Grantor) and Michael Freytag, for property located  
at 1200 Whitehead Street, Key West, Florida (hereinafter the Grantee) (RE # 00026390-000000).

**I. RECITALS**

Grantee is the owner of the property known as 1200 Whitehead Street, Key West, Florida,  
including a 270 square feet, more or less, of brick pavers which extends onto Catherine Street onto  
the Grantor's right-of-way. Portions of Grantee's property would extend 11.5 linear feet by 24.73  
linear feet, onto the Grantor's Rights-of-Way, specifically:

Legal Description:

A parcel of land on the Island of Key West, and known as a portion of Catherine Street  
according to Wm. A. Whitehead's map of the Island of Key West, delineated in February, A.D. 1829,  
adjacent to Lots 1 and 2, Square 3, in Tract 10 of E.C. Howe's Diagram of said Tract 10, said parcel being  
more particularly described by metes and bounds as follows:

COMMENCE at the intersection of the Southwesterly right of way line of Whitehead Street with  
the Southeasterly right of way line of Catherine Street and run thence Southwesterly along the  
Southeasterly right of way line of the said Catherine Street for a distance of 69.50 feet to the Point of  
Beginning; thence continue Southwesterly along the Southeasterly right of way line of the said  
Catherine Street for a distance of 24.70 feet; thence Northwesterly and at right angles for a distance of  
11.50 feet; thence Northeasterly with a deflection and of 92°51'28" to the right for a distance of 24.73  
feet; thence Southeasterly with a deflection angle of 87°08'32" to the right for a distance of 10.30 feet  
back to the Point of Beginning, containing 270 square feet, more or less.

And: (Easement Agreement with the City of Key West, Florida):

A parcel of land on the Island of Key West, and known as a portion of Catherine Street according to Wm. A. Whitehead's map of the Island of Key West, delineated in February, A.D. 1829, adjacent to Lots 1 and 2, Square 3, in Tract 10 of E.C. Howe's Diagram of said Tract 10, said parcel being more particularly described by metes and bounds as follows:

COMMENCE at the intersection of the Southwesterly right of way line of Whitehead Street with the Southeasterly right of way line of Catherine Street and run thence Southwesterly along the Southeasterly right of way line of the said Catherine Street for a distance of 69.50 feet to the Point of Beginning; thence continue Southwesterly along the Southeasterly right of way line of the said Catherine Street for a distance of 24.70 feet; thence Northwesterly and at right angles for a distance of 11.50 feet; thence Northeasterly with a deflection and of  $92^{\circ}51'28''$  to the right for a distance of 24.73 feet; thence Southeasterly with a deflection angle of  $87^{\circ}08'32''$  to the right for a distance of 10.30 feet back to the Point of Beginning, containing 270 square feet, more or less.

Land described herein contains 270 square feet, more or less, as specifically described, and illustrated in the attached specific purpose survey dated August 23, 2021, drawn by J. Lynn O' Flynn, P.S.M. of J. Lynn O' Flynn, Inc., (Copy attached hereto). This encroachment impedes marketability of the property.

The Grantor hereby agrees to grant and convey to the Grantee an easement for encroachments, at the property located at 1200 Whitehead Street, as more specifically described in the attached survey. The easement shall pertain to addressing the encroachments to maintain

270 square feet, more or less, of brick pavers onto the Catherine Street right-of-way herein described, and not to any other encroachments.

The granting of this easement is conditioned upon the following:

1. The easement shall terminate with the removal of the 270 square feet, more or less, of brick pavers onto Catherine Street.
2. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. The Grantee shall pay the annual fee of \$400.00 specified in code Section 2-938(b)(3).
4. Grantee 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. Prior to the easement becoming effective, the Owners shall obtain Homeowner or Personal Liability insurance that extends coverage to the property that is governed by this easement with limits of no less than \$300,000.00. 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 Homeowner or Personal Liability form. Grantees shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured" or "Additional Interest".
6. Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured" or "Additional Interest".
7. The easement areas 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 or sub-surface improvements within the easement areas.

9. The subject area includes 270 square feet of brick pavers, more or less, onto Catherine Street right-of-way and shall be the total allowed within the easement area.
10. No impacts authorized to occur to the protected tree located in the right of way next to the proposed paver area, including its roots or canopy branches. Pavers should not be placed within 2 feet of buttress base of tree. Any excavation within 10 feet of base of tree will require Urban Forestry review and approval.
11. 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.

## II. CONSIDERATION

Grantee agree 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.

## 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 270 square feet, more or less, of brick pavers.

The easement shall terminate upon the removal of the 270 square feet, more or less, of brick pavers.

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 encroachments 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 three hundred thousand dollars (\$300,000.00) per incident and any other insurance cover specifications set forth in this agreement, naming the City of Key West as additional insured or additional interest, 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

\_\_\_\_\_  
PATTI MCLAUHLIN, CITY MANAGER

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me this \_\_\_ day of.

\_\_\_\_\_, 2022 by Patti McLauchlin, 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: Michael Freytag \_\_\_\_\_

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

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

The foregoing instrument was acknowledged before me this day of\_\_ 2022, by \_\_\_\_\_ for 1200 Whitehead Street, who is personally known to me or who has produced \_\_\_\_\_ as identification.

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

My commission expires: