




MEMORANDUM

Date: January 11, 2023

To: Honorable Mayor and Commissioners

Via: Albert P. Childress
City Manager 

From: Gary Moreira
Senior Property Manager

Subject: **Key West Art Center request for execution of Restrictive Covenants**

Introduction

This is a request by Key West Art Center, (Lessee), to execute a Restrictive Covenants agreement which deed restricts City property at 301 Front Street as a condition of a \$20,000.00 State approved matching grant applied for by the Art Center.

Background

On May 26, 2021, the City Manager's office had provided a letter to the State of Florida Historic Preservation Officer expressing support of a grant application for an exterior rehabilitation project that was to be pursued by the Key West Art Center. After the Art Center applied, the matching grant was approved by the Florida Department of State, and on November 7, 2022 the president of the Arts Center executed a Grant Agreement. Paragraph 9(c) of the Grant Agreement requires execution of Restrictive Covenants prior to final distribution of grant funds.

With the Art Center work complete, Staff was asked by the grant manager of the Key West Art Center to sign the Restrictive Covenants. The Restrictive Covenants is a ten (10) year deed restriction on City property at 301 Front Street, binding the Owner, (City) and Grant Recipient, (KW Art Center), to seven (7) restrictive covenants including, but not limited to, return of the original grant amount in the event certain conditions are not met during the ten-year period.

Staff and the Art Center grant manager are unable to find where the City Manager, Staff or the Commission were presented with an opportunity to review and approve the Grant Application containing the Restrictive Covenants obligation in advance of submitting it to the Department of State. An e-mail to the grant manager from the State's Historic Preservation Grants Supervisor

dated November 27, 2023 says the City of Key West has consented to a restrictive covenant in the past, once in 1997 for the Thompson Fish House/Turtle Cannery, and twice at the Key West Cemetery in 2002 and 2007. The circumstances around the grants aren't clear, however these properties were not, and to this day, are not tenant occupied where the lessee would have pursued a grant.

Commission approval is required to execute documents which deed restrict City property. Staff, legal and the Commission should have been given an opportunity in 2022 to review the grant application with the restrictive covenants and approve or disapprove the terms of the application then. Staff believes this was an honest mistake on behalf of the Key West Art Center interpreting the former City Manager's Letter of Concurrence as an approval to apply as well as enter into the Grant Agreement binding both the City and the Art Center in order to receive final distribution of funds.

Procurement

None.

Recommendation

The City Manager's Office recommends approval. Typically tenants request grants through the City's Senior Grant Administrator, however, the tenant applied directly for the grant causing a change in the process. Legal has opined that the City liability exposure is minimal.

Exhibits:

Letter of Concurrence
Grant Application
Restrictive Covenants