

RESOLUTION NO. 17-233

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED REVOCABLE LICENSE AGREEMENT WITH KEY WEST WOMAN'S CLUB, INC. FOR USE OF PROPERTY ADJACENT TO 319 DUVAL STREET; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West Woman's Club raises funds for charitable purposes through the sale of beverages on and in front of their property, located at 319 Duval Street during Fantasy Fest week; and

WHEREAS, the City Commission finds that a revocable license for use of the public property abutting the Woman's Club property, provides a public benefit and is otherwise consistent with City Code of Ordinances;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Revocable License Agreement between the City and the Key West Woman's Club is hereby approved.

Section 2: That the City Manager is authorized to execute any necessary documents upon consent of the City Attorney.


Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3rd day of October, 2017.

Authenticated by the Presiding Officer and Clerk of the Commission on 4th day of October, 2017.

Filed with the Clerk on October 4, 2017.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

EXECUTIVE SUMMARY



TO: City Commission

FR: Jim Scholl
Marilyn Wilbarger, RPA, CCIM

DT: August 14, 2017

RE: Revocable License Agreement for the Key West Woman's Club, Inc.

ACTION: This is a request to approve an agreement between the City of Key West and the Key West Woman's Club, a 501(C)3 not for profit corporation organized under the laws of the State of Florida for the use of the city sidewalk during Fantasy Fest.

HISTORY: Previously, in 2006 and again in 2012 the City and the Key West Woman's Club entered into a lease agreement for the use of the sidewalk adjacent to their real property located at 319 Duval during Thursday, Friday, and Saturday of Fantasy Fest for the purposes of selling alcoholic beverages. The Woman's Club has requested a renewal of that lease agreement and a revocable license agreement for use of city property is proposed instead, as follows:

- Demised Area:** The sidewalk five feet in width immediately adjacent to the Licensee's real property located at 319 Duval Street.
- Use:** Alcohol sales from the immediately adjacent property
- Term:** Five Years, unless revoked by the City
- Use Fee:** \$1.00 per year, plus all costs of any nature associated with obtaining all regulatory approvals.
- Insurance** The Licensee will indemnify the City and keep insurance in the limits prescribed in full force and effect at all times naming the City as an additional insured
- CONCLUSION:** The Fantasy Fest alcohol sales fundraiser allows the Woman's Club to earn donations, enabling them to support other organizations with programs that provide education, counseling, and medical treatments, create or provide housing, and promote appreciation of the arts, music instruction, and cultural awareness in our community.
- ATTACHMENTS:** Revocable License Agreement
Resolution 12-178 First Lease Amendment
Resolution 06-147 Lease Agreement

REVOCABLE LICENSE AGREEMENT FOR USE OF CITY PROPERTY

This License Agreement is made this 3rd day of October, 2017, by and between the City of Key West, Florida, a municipal corporation, whose mailing address is P.O. Box 1409, Key West, Florida, 33041 (hereinafter "Licensor") and the Key West Woman's Club, Inc. a 501(c)(3) not for profit corporation organized pursuant to the laws of the State of Florida, whose mailing address is PO Box 2924, Key West, FL 33045 (hereinafter "Licensee").

WITNESSETH:

WHEREAS, Licensee desires to utilize the sidewalk five (5) feet in width immediately adjacent to Licensee's real property located at 319 Duval Street, Key West, FL 33040.

WHEREAS, Licensor owns the property upon which the use will be located; and

WHEREAS, pursuant to section 2-939 of the Key West Code of Ordinances, Licensor may grant Licensee a revocable license to use Licensor's property.

NOW, THEREFORE, the parties agree as follows:

1. For the period of the Thursday, Friday and Saturday only of the Fantasy Fest festivities for the years 2017 through 2021, the Licensor hereby grants to the Licensee a revocable and non-assignable license for use by the Licensee, its representatives, agents, contractors and assigns for the purpose of facilitating the Licensee's sale of alcoholic beverages from the Licensee's adjacent real property, reserving, however, to the Licensor, its successors and assigns, all such right, title, interest and privilege as may be used and enjoyed without interfering with or abridging the rights and right-of-use hereby acquired.

2. In consideration for the grant of license in paragraph 1 herein above, Licensee herein expressly agrees to be solely responsible for all costs of any nature whatsoever associated with obtaining all necessary federal, state, and local government regulatory approvals. Furthermore, Licensee agrees to comply with all applicable laws, codes, ordinances, rules and regulations of the Licensor, or other governmental agencies, as existing and as may be promulgated during the term hereof.

3. If any action of the Licensee's employees or agents in the exercise of this License results in damage to the property, the Licensee will immediately repair such damage in a manner acceptable to the Licensor. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property at the time immediately preceding such damage.

4. This License is personal to Licensee and may not be assigned or transferred. Licensors shall have the right to terminate this License with or without cause upon seven (7) days written notice to Licensee at the following address:

Key West Woman's Club, Inc.
319 Duval Street
Key West, FL 33040

5. To the fullest extent permitted by law, Licensee expressly agrees to indemnify and hold harmless the City of Key West and 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 Licensee 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 Licensee or its subcontractors, material men, or agents of any tier or their respective employees. The provisions of this indemnification provision shall survive the expiration or earlier termination of this License Agreement. Nothing herein is intended to waive the immunity afforded to City pursuant to Florida Law, including section 768.28, Florida Statutes.

6. Licensee shall keep in full force and effect at all times during the effective period of this Agreement, and at their own cost and expense the following insurance in insurance companies authorized in the State of Florida, with an A.M. Best rating of A-:VI or higher and shall provide evidence of such insurance to the City. The policies or certificates must be endorsed to provide thirty (30) days prior to cancellation notices of same shall be given to the City by U.S. Mail for all of the required insurance policies stated below. The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees are to be named as "additional insureds" under all policies herein on a primary and non-contributory basis as respects liability arising out of activities performed by or on behalf of the Licensee operating under this License Agreement as the Key West Woman's Club, Inc.

Licensee shall maintain limits no less than those stated below:

Commercial General Liability - with a minimum amount of One Million (\$1,000,000.00) Dollars per occurrence, Two Million (\$2,000,000.00) Dollars per Aggregate.

Business Automobile Liability Insurance with a minimum limit of liability per occurrence of One Million (\$1,000,000.00) Dollars Combined Single Limit. The City of Key West must be named as an Additional Insured. This insurance shall include for bodily injury and property damage the following coverage:

Owned automobiles

Hired automobiles

Non-owned automobiles

Excess/Umbrella Liability shall have a minimum limit of One Million (\$1,000,000.00) per occurrence with an annual aggregate of One Million (\$1,000,000.00.) This coverage is to be following form and include the Commercial General Liability and Automobile Liability Policies.

Scope of Insurance and Special Hazards

The insurance required under Paragraphs 6 hereof is a minimum to provide adequate protection for Licensee, respectively, against damage claims which may arise from operations under this Agreement, whether such operation be by the insured or by anyone directly or indirectly employed by the insured and, also against any of the special hazards which may be encountered in the entities' operation under this Agreement. The insurance required herein and approval of Licensee's insurance by the Licensor shall not relieve or decrease the liability of Licensee hereunder.

Alcoholic Beverages

If the Licensee sells or serves alcoholic beverages, the Licensee shall be required to maintain full liquor liability coverage with minimum limits of \$1,000,000.00. If the Licensee utilizes the services of a caterer and the caterer will be providing, selling, and/or serving alcoholic beverages, the Licensor will honor evidence from the caterer that they have the required coverage in full force and effect and the coverage names the City of Key West as an additional insured.

Waiver of Subrogation

The insurance policies required under Paragraph 6 hereof shall contain "waivers of subrogation" endorsements whereas Licensee's insurer waives any claim against the City of Key West.

Certificates of Insurance

Certificates of Insurance shall be filed and maintained throughout the life of this Agreement with the City Clerk evidencing the minimum limits of insurance cited above. All policies shall be endorsed that they may not be terminated or modified without insurer providing the City of Key West at least thirty (30) days advance notice. Additionally, Licensee shall immediately notify the City of any cancellation of such insurance.

7. Licensor does not warrant or represent that the property is safe or suitable for the purpose for which Licensee is permitted to use it, and Licensee assumes all risks in its use.

8. Licensor and Licensee agree that it is a public purpose and to the mutual benefit of the parties that the Licensee be permitted to sell alcoholic beverages from the adjoining property for a fee of One Dollar (\$1.00) per year.

IN WITNESS WHEREOF, the parties have executed this License Agreement on the date above written.



Ray Smith
Ray Smith, City Clerk

LICENSOR: CITY OF KEY WEST,
FLORIDA

By: JK Scholl
James K. Scholl, City Manager

LICENSEE: Key West Woman's Club, Inc.

WITNESS

Elizabeth Ignoffo
ELIZABETH IGNOFFO
Print Name

By:

Dawn Martin
Dawn Martin, President