

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: August 7, 2017

RE: **Exclusive Use Agreement with Downtown Lakeland Partnership, Inc. for First Friday Events**

Attached for your consideration is an Exclusive Use Agreement with the Downtown Lakeland Partnership, Inc. (DLP) for First Friday events. The Agreement grants the DLP the exclusive use and control the first Friday of every month of an area in downtown Lakeland generally located along Kentucky and Tennessee Avenues between Lemon and Oak Streets, including all rights-of-ways, sidewalks and other public property. With the exception of street closures, the subject area will be under the DLP's exclusive use and control from 3:30 p.m. to 9:30 p.m. Street closures will be limited to a time period of 5:00 p.m. to 9:30 p.m.

During the applicable time periods covered by the Agreement, the DLP will have the authority to require any individual or organization to obtain the DLP's permission in advance for booth set-up, soliciting, marketing or sales. The DLP will indemnify the City from all liability and carry commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence, naming the City as an additional insured. DLP must promptly correct any condition constituting a hazard to life or property as determined by the City's Parks and Recreation Director or designee, must repair any damage to the designated area and keep the area in a neat and orderly condition, including the removal of all trash and garbage following each First Friday event.

The DLP will pay the City \$1,000 per First Friday event as rent and compensation for City services provided for the event. The costs to the City will be reviewed on an annual basis, taking into consideration such factors as the City's labor costs, the footprint of the event and the subsidy required from the City's general fund. The DLP's payment to the City may, at the City's request, be adjusted each year to compensate for any additional costs. The Agreement is for a three (3) year term and may be terminated by either party with or without cause upon thirty (30) day written notice.

It is recommended that the City Commission approve the attached Exclusive Use Agreement with the DLP and authorize the appropriate City officials to execute the Agreement.

PCD
attachment

EXCLUSIVE USE AGREEMENT

THIS EXCLUSIVE USE AGREEMENT is made and entered this ____ day of _____, 2017, by and between the CITY OF LAKELAND, a Florida municipal corporation (hereinafter the “City”), and DOWNTOWN LAKELAND PARTNERSHIP, INC., a Florida not-for-profit corporation (hereinafter “DLP”), whose address is 122 E. Main Street, #228, Lakeland, Florida 33801.

WITNESSETH

WHEREAS, the DLP is actively engaged in the promotion of economic activity in downtown Lakeland; and

WHEREAS, the DLP sponsors and conducts monthly events known as First Friday, which are currently conducted in the downtown Lakeland area on the first Friday of every month, between the hours of 5:00 p.m. and 9:30 p.m.; and

WHEREAS, the DLP, in its conduct of the First Friday event, requires the use of public streets and other public property; and

WHEREAS, to facilitate and conduct the First Friday event, DLP requires the ability to control, through security measures to be determined by them, certain access to and use of public property; and

WHEREAS, the City recognizes the public benefit of the First Friday event in promoting downtown Lakeland and its merchants for the entire Lakeland community;

NOW THEREFORE, the City and DLP, for and in consideration of the mutual promises, agreements and covenants hereinafter contained, do hereby mutually covenant, agree and promise as follows:

SECTION 1. The City does hereby grant to DLP the exclusive use and control of property (hereinafter the "Premises") generally located along Kentucky Avenue and Tennessee Avenue between Lemon Street and Oak Street, inclusive, in Lakeland, Florida, including all rights of ways, sidewalks or other public property, as more particularly depicted on **Exhibit "A"**, attached hereto and made a part hereof, in accordance with the terms and conditions set forth herein. DLP shall employ such security measures as are reasonably required for a safe and orderly event for its invitees and the public at large.

SECTION 2. The Premises shall be used only for those activities associated with First Friday and generally in accordance with the Terms and Conditions attached as **Exhibit "B,"** or for such other activities as may be authorized by the City. All such activities are for the sole use and benefit of DLP, its employees, volunteers, agents and invitees.

SECTION 3. The term of this Agreement commences July 21, 2017, and shall continue for a term of three years unless otherwise terminated by the parties.

SECTION 4. DLP shall pay the City \$1,000.00 for each First Friday event as rental for City property and as compensation for City services provided for the event, including the services of the City's Police Department, Parks and Recreation Department and Traffic Operations Division. The costs to the City will be reviewed on an annual basis, taking into consideration such factors as, without limitation, the City's labor costs, the footprint of First Friday and the subsidy required from the City's general fund. The DLP's payment to the City shall, at City's request, be adjusted each year to compensate the City for any additional costs.

SECTION 5. It is mutually understood and agreed between the parties hereto that the Premises is comprised of public property consisting of streets and sidewalks, or other publicly owned lands, and that the Premises will be maintained, prepared and utilized for First Friday only and, with the exception of street closures, is under the exclusive control of DLP for the term of this Agreement from 3:30 p.m. through 9:30 p.m. on the first Friday of each month during the term hereof. Closure of streets within the Premises shall be limited to 5:00 p.m. to 9:30 p.m. the first Friday of every month, or as otherwise indicated on an appropriate Special Events Permit filed with the City's Special Events Review Team.

SECTION 6. Either party may terminate this Agreement, with or without cause, upon thirty (30) days' notice to the non-terminating party and thereafter neither party shall have any claim arising from this Agreement; provided, however, that DLP's obligation to indemnify the City shall survive this Agreement for the period of the statute of limitations for any action that may arise from DLP's activity under this Agreement.

SECTION 7.

(a) DLP shall indemnify, save harmless and defend the City, its officers, employees and agents from all claims, suits, losses, damages, judgments and actions of any kind brought against it for, or on account of, any injuries or damages received or sustained by any person or property by, from or on account of any acts or omissions of DLP, its officers, employees, agents, servants or invitees occurring on the Premises.

(b) DLP shall indemnify, save harmless and defend the City, its officers, employees and agents against any claim, judgment, loss, fine, penalty or liability arising from, or based upon, the violation of any federal, state, county or city law, ordinance or regulation by DLP, its officers, employees, agents, servants or invitees.

(c) During the term of this Agreement, DLP shall obtain and keep in effect commercial general liability insurance coverage with limits not less than \$1,000,000.00 single-limit each occurrence for bodily injury liability and property damage liability arising out of premises, operations, products and completed operations, advertising and personal injury liability. The City shall be named as an additional insured on such insurance policy. Such insurance coverage shall be obtained from an insurer authorized to do such business in the State of Florida. Such coverage may not be canceled, terminated, or changed without thirty (30) days written notice thereof from the insurer to the City. An appropriate certificate of insurance evidencing such coverage issued by insurer shall be provided to the City and kept current during the term of this Agreement.

(d) Insurance requirements will be mutually reviewed and modified as history, experience, industry practice and prudent risk management indicate to be necessary to protect the City, DLP and the public interest. Without limiting the generality of the foregoing, the City may require additional insurance coverage, both as to amount and type of coverage, if, in the City's sole judgment, activities or conditions are planned at a First Friday event that carry more risk than customary First Friday activities or conditions. DLP shall not conduct or permit such activities or conditions until the DLP obtains any required additional coverage.

(e) Failure of DLP to maintain the insurance coverage required by this section may result in immediate termination of this Agreement upon written notification to that effect from the City.

SECTION 8. The City has appointed a Parks and Recreation Director and hereby reserves the right for that Director, or his duly authorized representative, to enter the Premises at any time during the term of this Agreement to perform inspections deemed

necessary. DLP shall promptly correct any condition constituting a hazard to life or property as determined by the Director.

SECTION 9. DLP shall surrender the Premises after each First Friday in the same condition it was in upon the commencement of this Agreement, reasonable wear and tear excepted. DLP, at its expense, will repair any damage to the Premises that occurs as a result of its activities on the Premises.

SECTION 10. DLP shall, at its expense, during its actual use of the Premises or any portion thereof, maintain the Premises in a neat and orderly condition at all times and shall be responsible for the neatness and orderliness of the grounds, including the removal of trash and garbage following the First Friday event.

SECTION 11.

(a) DLP, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, religion, color, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to any discrimination on the grounds of race, religion, color, sex or national origin.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

**DOWNTOWN LAKELAND
PARTNERSHIP, INC.**

ATTEST: _____

By: _____
Print Name: _____
Title: _____

CITY OF LAKELAND, FLORIDA

ATTEST: _____
Kelly S. Koos, City Clerk

By: _____
R. Howard Wiggs, Mayor

APPROVED AS TO FORM AND CORRECTNESS:

Timothy J. McCausland, City Attorney

EXHIBIT "A"

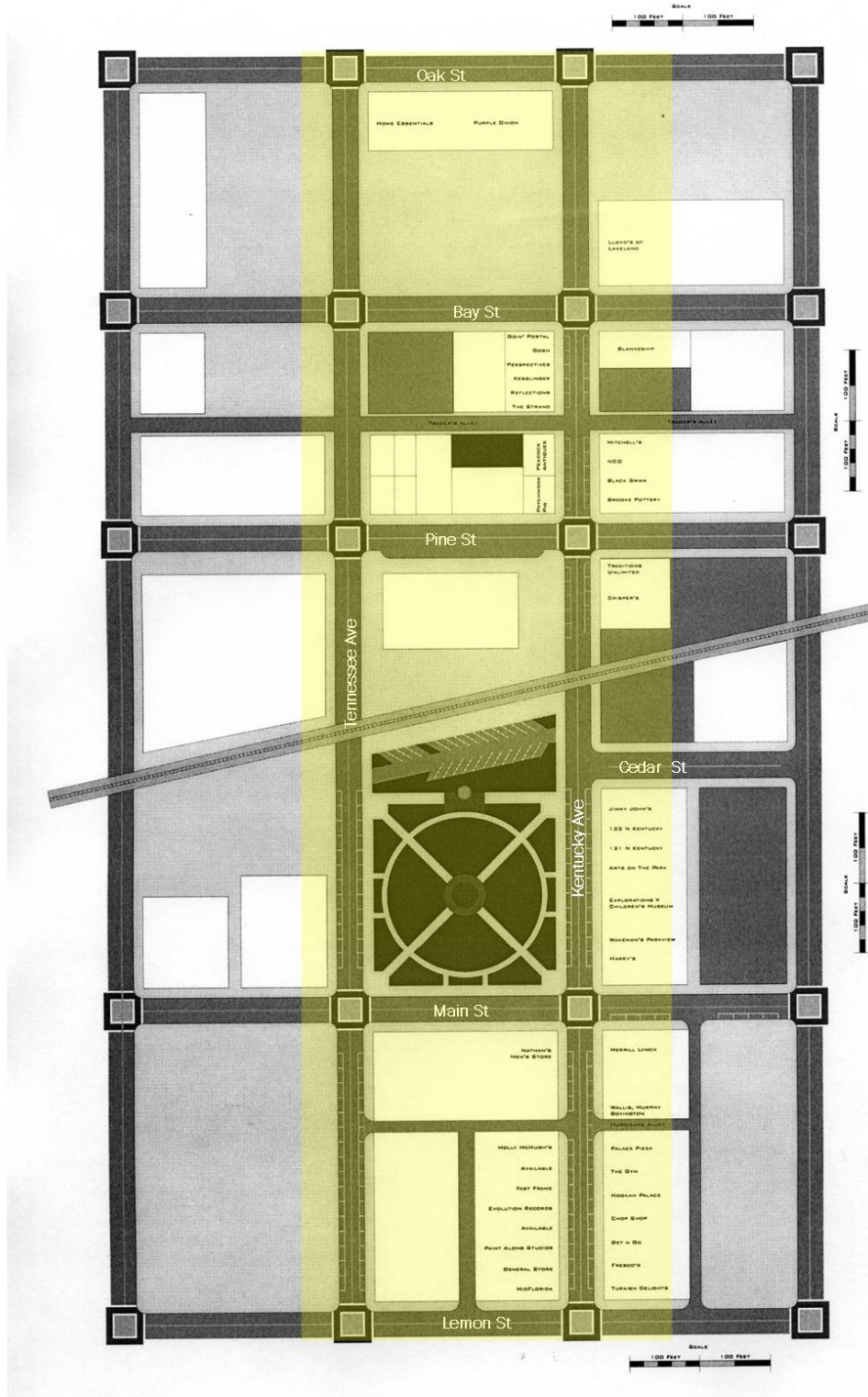


EXHIBIT "B"

TERMS & CONDITIONS

1. Full authority, with the exception of street closures, from 3:30 p.m. to 9:30 p.m. the first Friday of every month to control and determine use of the Premises.
2. Authority to require any individual, organization, private business or non-profit corporation to obtain the DLP's permission in advance for set-up, soliciting, marketing or sales in the Premises.
3. Closure of streets as indicated on attached Exhibit "A" from 5:00 p.m. to 9:30 p.m. the first Friday of every month, or as otherwise indicated on an appropriate Special Events Permit filed with the City of Lakeland Special Events Review Team. DLP shall be responsible for regularly monitoring all street closure barricades and ensuring that the barricades are maintained in place during the entirety of each First Friday event.
4. The City of Lakeland's Police Department, Parks and Recreation, Traffic Control and Lakeland Electric to provide support services for First Friday.
5. DLP shall exercise the rights granted by this Use Agreement consistent with all applicable federal, state and local laws and regulations.