

RESOLUTION NO. 14-069

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "LEASE AGREEMENT" BETWEEN THE CITY AND KEY WEST PLAYERS, INC. FOR THE WATERFRONT PLAYHOUSE; FINDING A PUBLIC BENEFIT; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached "Lease Agreement" between the City and Key West Players, Inc. for the Waterfront Playhouse is hereby approved.

Section 2: That pursuant to section 2-941(c) of the Code of Ordinances, a public benefit to the Waterfront Playhouse is hereby found, justifying a rental below market rate.

Section 3: That the City Manager is hereby authorized to execute the Lease Agreement on behalf of the City of Key West.

Section 4: 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 4 day of March, 2014.

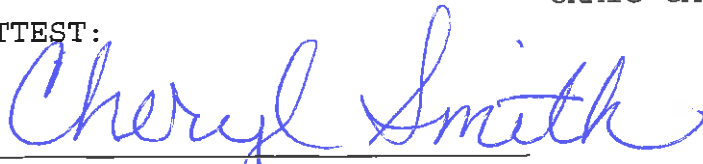
Authenticated by the Presiding Officer and Clerk of the Commission on 5 day of March, 2014.

Filed with the Clerk on March 5, 2014.

Mayor Craig Cates	<u>Yes</u>
	<u>Yes</u>
Vice Mayor Mark Rossi	<u>                    </u>
	<u>Yes</u>
Commissioner Teri Johnston	<u>                    </u>
	<u>Yes</u>
Commissioner Clayton Lopez	<u>                    </u>
	<u>Yes</u>
Commissioner Billy Wardlow	<u>                    </u>
	<u>Yes</u>
Commissioner Jimmy Weekley	<u>                    </u>
	<u>Yes</u>
Commissioner Tony Yaniz	<u>                    </u>
	<u>Yes</u>

  
\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

# EXECUTIVE SUMMARY



**TO:** City Commission

**FR:** Bogdan Vitas  
Marilyn Wilbarger, RPA, CCIM

**DT:** February 14, 2014

**RE:** Waterfront Playhouse Lease Renewal

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## **ACTION STATEMENT:**

This is a request to enter into an under market lease renewal with the Waterfront Players, Inc, a Florida non-profit corporation for the occupancy of the building known as the Waterfront Playhouse located at Mallory Square.

## **BACKGROUND:**

The City previously entered into a lease agreement for this use at this location in support of the city's arts and culture. The Playhouse has submitted a chronological listing of their tenancy and improvements and it is attached hereto. The lease will expire in November 2014 and a renewal has been proposed on the following terms:

**PREMISES:** The building located at Tift's Lane and Wall Street in Mallory Square

**TERM:** Ten (10) years, effective November 1, 2014

**USE:** Operation of a theater playhouse, and for events and meetings that directly support or benefit this use of the playhouse and for no other purpose.

**RENT:** \$250 per month in addition to 50% of the net revenue generated by use of the theater by third party for profit uses.

**EXPENSES:** The Tenant will pay for operating costs including all utilities, repairs and maintenance, replacements and renovations necessary to keep the premises in good repair and condition.

**IMPROVEMENTS:** Any improvements will be at the Tenant's sole cost and expense

**FINANCIAL:** The Waterfront Playhouse has submitted financial information and it is attached.

**CONCLUSION:** The Key West Players will celebrate their 75<sup>th</sup> anniversary in 2014 and with the city's continuing support they will remain a key element of the Key West arts community and continue to provide a public benefit through utilization of the city owned building at Mallory Square.

## The Key West Players, Inc. and the Waterfront Playhouse Lease

When the Key West Players went looking for a permanent location in 1961, they had already been in existence for more than 20 years and were an established cultural icon in the City of Key West. At the same time, the city was beginning to grapple with the complexities of historic preservation, use of the waterfront and transition to a tourist driven economy.

It turned out to be a match made in heaven, the Players needed a building large enough to serve as a theater and the city had a dilapidated warehouse on the old Mallory docks that was fast becoming a liability. The Key West Players were willing to put in the money and sweat equity required to turn the crumbling warehouse into a theater that would serve residents and much needed tourists alike. In return, the City was willing to lease the building at favorable terms and waive rent payments for the first three years. A 20-year lease was signed and thus began the mutually beneficial partnership that has existed to this day.

The Key West Players lived up to their end of the bargain and created a wonderful theater which became the jewel of the Mallory Square restoration project and a lynch pin in the City's move to a tourist based economy drawing thousands of out of county audience members each season as they transitioned to a superb professional theater named repeatedly as the Best Professional Theater in Florida. The lease and its favorable terms were renewed in 1984 and renegotiated in 2004. During that time, The Players have continued to pour money into maintenance and building improvements. Indeed there is now little resemblance to the old crumbling warehouse - even the façade and the footprint of the building have changed

Just since the approval of the current lease in 2004, the Key West Players have invested nearly \$790,000 in capital improvements and more than \$55,000 has been spent on repairs and maintenance. All planning has been done in concert with appropriate City departments, Keys Energy Services and the Monroe County tourist Development Council and all work has been done under the supervision of the City of Key West. The lease between the Key West Players and the City of Key West is a model of everything that is right about cooperation between the public and private not for profit sectors for the benefit of the community.

The Key West Players will celebrate their 75<sup>th</sup> anniversary in 2014 – they are the oldest arts organization in continuing operation in Key West! For over 50 of those years, their performances have been staged at the Waterfront Playhouse. They are a key element of the Key West arts community so vital to the marketing of the city as both a tourist and a residential destination. The lease for the Waterfront Playhouse is an integral part of the success story of the Key West Players and the City of Key West and it is hoped that it will remain that way far into the future.

A detailed history of the Waterfront Playhouse follows:

On February 3, 1961, Bazel Crowe (City Manager, City of Key West) notified William Dickerson (President, Key West Players) that on February 1, 1961, a resolution was passed authorizing a lease between the City of Key West and the Key West Players concerning a warehouse on Mallory Docks. [Exhibit A]

At the time of the lease, the city building was little more than four collapsing walls, a weak roof, a shaky second floor and a loose rock and dirt floor. Because of the significant restoration costs, the City delayed rent payments for three years. The Citizen provided the community details on the restoration and move to the new playhouse. [Exhibit B]

A 20-year lease was executed immediately and officially filed for record with the Clerk of Court on June 16, 1961. [Exhibit C] The lease specified that no rental payments would be made for the first three years of the 20-year term; rent payments were to commence on the 15<sup>th</sup> day of February 1964. In return for the rent-free period, the Key West Players assumed responsibility for the repair of the warehouse and its conversion into a theatre.

A requirement of the lease was that "within six (6) months from the date of this lease to substantially repair and equip the existing brick warehouse building located on the above described premises so that the building may be used for the production and enjoyment of plays in said building, and within twelve (12) months from the date of this lease, that the minimum repairs and equipment and furnishings to be installed in said building shall be as follows:

- (a) Reinforce the roof of said building to the satisfaction of the Building Official of the City of Key West, Florida.
- (b) Install a suitable floor throughout the said building.
- (c) Construct and install public restrooms and other plumbing features required for players' dressing rooms.
- (d) Install additional exits as required by the State Fire Marshall and Building Official of the City of Key West, Florida.
- (e) Construct a stage of approximately 35 feet by 20 feet.
- (f) Install proper stage curtains.
- (g) Install 150 theatre seats.
- (h) Install stage and theatre lighting in accordance with the requirements of the City Electric Code.

It was also noted in the lease that should the lease be terminated, the Lessee (Key West Players) would be 'permitted to remove from said building and the said premises the theatrical lighting equipment, seats, stage curtains, all materials pertaining to sets and scenery, costumes, stage properties and furniture, theatrical library, theatrical exhibits and other memorabilia, air conditioning unit or units and all other materials pertaining to theatres."

The architectural and engineering work for the Playhouse was done by Colonel Alvin R. Moore (US Army Corps of Engineers, Retired). The Key West Citizen [Exhibit D] supported the fund raising for the new playhouse and many community wide events were held to raise the necessary funds for the project.

As early as June 1961, the Key West Players, Inc. requested additional property on the Mallory Docks. [Exhibit E] In response to this request, the City Manager noted that "As you know, the entire area surrounding your building and other dock buildings will become a large parking lot.... If the area in question does not interfere with the over all parking plan, then perhaps your request will be in order." [Exhibit F- photo of parking on side of building]

On October 3, 1961, the Key West Players approved a resolution that authorized issuance of Building & Improvement Bond of approximately \$10,000 worth of \$100 bonds issued with simple interest of 6% annually payable over 10 years. [Exhibit G] These funds were used along with private donations to complete the renovation of the playhouse.

In the renovation, the Players leaned heavily on local builders and contractors. The floor was raised, the second story torn out, a new roof was built, and temporary seating and a stage installed along with essential lighting. Actual costs ran well beyond original estimates.

On the night of November 27, 1961, the Waterfront Playhouse hosted a gala opening!

After opening, the Key West Players continued to identify and implement essential improvements to the theatre: permanent seating was installed, water fountains were installed, as was air conditioning and the stairs to the entrance.

On October 16, 1963, pursuant to Resolution 2298, the lease was amended to modify the schedule for monthly rent payments effective 15<sup>th</sup> day of February 1969. [Exhibit H]

Then in 1972, the City of Key West gave approval to an expanded footprint (and amended the lease to include this additional property) and extended the lease until 1992. [Exhibit I]. Once again the Key West Players raised money for this capital improvement – once again, Colonel Alvin R. Moore provided the architect/engineering services. On the additional space, the shop and dressing rooms were constructed. Plans and photos of the addition are provided at Exhibit J. Apparently this was not an easy job: the first foundations in 1974 disappeared into the swamp below! Once the addition was completed, the Key West Players relocated totally to the Waterfront Playhouse.

When the City of Key West implemented a plan for the overall upgrade of Mallory Square, the Waterfront Playhouse was a key element of the plan itself. Documentation from the Key West Library shows the Playhouse as a 'modern,

functional playhouse'. Interestingly, the Waterfront Playhouse is the only element of the plan that operates as originally envisioned. [Exhibit K]

Over the years of the 1980's and 1990's, the management of the Key West Players changed from the 'old guard' to a new board. The productions were more polished as the theater moved from being a community theater (with volunteers on stage and back stage) to a professional theater. In the same period, the theater continued to be well maintained and constantly improved. By 1990, the awning over the entrance had been added along with the marquee poster that announces the shows to the visitors at Mallory Square. In that year, the Key West Players celebrated their 50<sup>th</sup> Anniversary. The Key West Citizen provided excellent coverage of the anniversary. [Exhibit L]

On April 6, 2004, the City Commission of the City of Key West approved Resolution 04-150 that approved the new lease at below market rate because of the public benefit of the Waterfront Playhouse to the City of Key West. The terms of the lease were for 10 years commencing November 14, 2004 and ending at midnight November 13, 2014. [Exhibit M]

Improvements to the building continued. In 2004, the front steps and railing were improved, new air-conditioning was installed and a major section of the roof was repaired. In 2004-7, the Key West Players held a major capital campaign fund drive that raised the funds that were used to renovate the lobby, bring restrooms to ADA compliance and provide ADA Compliant handicapped access. The total cost of the project was almost \$420 thousand. The improvements to the Playhouse were showcased in The Miami Herald [Exhibit N].

In 2010, another capital campaign provided the resources needed to replace the original stage, install lighting under the stage and improve the lighting for productions. In addition, the sound system for the theater was upgraded. During the summer of 2011, the roof was replaced in its entirety - now there is significant insulation under the roof! With that, not only were the costs of heating and cooling reduced, but also the noise transfer into the theater from Mallory Square neighbors. Together these projects were a \$165 thousand investment in the theater.

In the 2011-12 season, upgrades to the sound system were continued at a cost of an additional \$10,000. In the summer of 2012, the theater was completely rewired to current code and modern standards. This will allow continued modernization of the technology that supports productions as well as a future replacement of the air conditioning system. The electrical upgrade cost almost \$75,000!

An ADA compliant hearing assistance system - a 'Hearing Loop' - was installed in the summer of 2012. This system now allows us to provide support to the increasingly large population that needs assistance to enjoy the shows.

Since the approval of the current lease, the Key West Players have invested nearly \$790,000 in capital improvements to the Waterfront Playhouse. In addition to these major capital improvements, we have spent more than \$55,000 over the last 10 years in repairs to the existing plant.

Simultaneously, we have improved as a professional theater – named “Best Professional Theater in Florida” by Florida Monthly Magazine! The Key West Players will celebrate their 75<sup>th</sup> anniversary season in 2014-15 – we are probably the oldest arts organization in continuing operation in Key West! We are an important element of the Key West arts community that is so vital to the marketing of Key West as a town to visit and to move to!



## Sources and Used of Funds - Waterfront Playhouse

	2012/2013 Season	Last 5 Yrs.
Commercial Rev. from Operations *		
Ticket Sales	397,699	1,763,565
Theater User Fees	8,025	53,919
Ticket Fees	18,017	18,017
Children's Programs	-	4,759
Mystery Fest Events	6,815	20,138
Ad Sales	107,095	475,557
	<u>537,651</u>	<u>2,335,955</u>
 Total Expense of Operation	 767,210	 3,779,104
 Short Fall (Loss)	 (229,559)	 (1,443,149)
 Rev. from Contributions and Grants **		
Fund RaisersEvents	48,408	239,576
Privet Fund Grants	80,000	153,250
Government Grants	33,316	159,945
Contribution Housing in Kind	65,590	373,465
Privet Donations	149,582	778,850
	<u>376,896</u>	<u>1,705,086</u>
 Cash Flow before Cap. Adds	 147,337	 261,937

\* If the theater was a privet for profit operation these revenues would be expected.

\*\* These revenues would not exist if the theater was a privet for profit business.

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**Lease Agreement**

between

**City of Key West**

as  
Landlord

and

**Key West Players, Inc.**

as  
Tenant

Dated Feb. 13, 2014



THIS LEASE, made and entered into at Key West, Monroe County, Florida, this 13<sup>th</sup> day of Feb, 2014 by and between THE CITY OF KEY WEST, a Municipal Corporation whose address is P.O. Box 1409, Key West, Florida, 33041, (hereinafter "LANDLORD"), and KEY WEST PLAYERS, INC. a Florida 501 (C)(3) Non-profit Corporation whose address is P.O. Box 724, Key West, Florida 33040 (hereinafter "TENANT").

WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of their respective obligations contained herein, agree as follows:

1. **DEMISE.** The LANDLORD does hereby lease to the TENANT, and the TENANT does hereby lease from the LANDLORD, the following described premises: The property known as Monroe County Property Appraiser Alternate Key 8757794 located at Mallory Square, Key West, Florida as outlined and cross hatched on the drawing attached hereto as Exhibit "A".

2. **TERM.** The term of this Lease shall be for ten (10) years, which term shall commence on November 1, 2014, and shall end at midnight on October 31, 2024.

3. **RENT.** The TENANT agrees to pay to the LANDLORD a monthly amount of \$250.00 as the minimum base rent. Tenant additionally agrees to pay to Landlord 50% of any net revenue derived from third party use of the playhouse by person or organization that is not classified as a 501C3 nonprofit. All amounts due shall be paid to the City of Key West, P.O. Box 1409, Key West, FL 33040. Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased.



The TENANT additionally agrees to pay to LANDLORD any sales, use, excise, ad valorem, or other tax imposed or levied against rent or any other charge or payment which tax has been imposed or levied by any governmental agency having jurisdiction thereof, including any new taxes imposed during the term of this Lease which are in addition to or in substitution for any such tax which is presently imposed, and the TENANT agrees to make payment at the time said tax becomes due.

Furthermore, pursuant to City Ordinance Sec 2-872, Audits and Inspections; Any individual or organization that receives grant funds or subsidies from the city shall permit inspection of its books and records upon demand by the city as a precondition to the receipt of such funding. The city may also conduct program results audits to determine whether the desired results or benefits are being achieved and whether objectives of funding established by the city are being met.

4. **USE OF THE PREMISES.** The TENANT shall be entitled to use the Premises for operation of a theater playhouse, and for events and meetings that directly support or benefit this use of the playhouse and no other purpose. Tenant expressly agrees that there shall be no parking in front of the demised premises or any portion of the adjacent common areas however Tenant may utilize the area directly in front of the theater for service and delivery vehicles while supporting events at the Demised Premises.

In addition, TENANT further agrees:

- (a) To operate 100% of the Demised Premises for the entire term of this lease pursuant to the highest reasonable standards of its business category
- (b) With respect to the Property, not to display any merchandise, solicit business or distribute advertising material beyond the Demised Premises, nor in any manner use any part of the Common Areas for purposes other than for their intended common use and not to obstruct any part thereof.



(c) Not to display any banners, pennants, searchlights, window signs, balloons, or similar temporary advertising media on the exterior of the Demised Premises.

(d) Not to commit waste in the Demised Premises or Common Areas and to keep the Demised Premises and immediate adjacent areas including, without limitation, adjacent sidewalks, in a safe, neat, clean and orderly condition and to maintain and repair any lighting or signs under any canopy immediately in front of the Demised Premises.

(e) Not to use the Demised Premises or permit the same to be used in any manner which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the Property or annoy, inconvenience or damage its patrons or other TENANT'S; or that would constitute an extra-hazardous use or violate any insurance policy of TENANT, LANDLORD or any other TENANT in the Property or increase the cost thereof.

(f) To keep all garbage, refuse and solid waste inside the Demised Premises in the kind of containers specified by LANDLORD, or to place the same outside the Demised Premises, prepared for collection, in the manner and at the times and places designated by LANDLORD or the appropriate disposal company. TENANT agrees not to burn or permit any burning of garbage or refuse on the Demised Premises or any part of the Property. TENANT further agrees that, upon LANDLORD's instruction, TENANT shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by LANDLORD. TENANT further agrees to make every effort to recycle all glass, metal, paper and plastic refuse and solid waste.

(g) TENANT shall contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse including but not limited to, impact fees and dumpster rental with the exception of seaweed and beach debris. TENANT shall indemnify, save harmless and defend LANDLORD from and against any loss, claim, injury, damage or



expense arising out of or related to the generation, storage, or removal or disposal of TENANT's garbage, refuse or solid waste.

(h) To use its best efforts to cause all trucks serving the Demised Premises to load and unload from the hours of 7:00 a.m. to 11:00 a.m. and not to permit such trucks to service through the front entrance of the Demised Premises except when no other entrance is available.

(i) To take no action that would: (i) violate LANDLORD's contracts if any, affecting the Property or (ii) cause any work stoppage, picketing or cause any manner or interference with LANDLORD or, occupants, customers or any person lawfully in and upon the Property.

(j) Not to use amplified music or any other noise making machinery or devices that are in violation of the City of Key West Noise ordinance.

(k) To abide by and observe all reasonable rules and regulations established from time to time by LANDLORD and LANDLORD's insurance carrier with respect to the operation of the Property and it's Common Areas. Rules and regulation are attached and incorporated herein as **EXHIBIT "C"**.

(l) Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Demised Premises except in strict compliance with City Code Chapter 18.

(m) TENANT shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials which TENANT or it agents brought onto the Property. TENANT shall not allow storage or use of such materials or substances in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Demised Premised or the Property any such materials or substances except to use in the ordinary course of



TENANT'S business, and then only after written notice is given to LANDLORD of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local law and the regulations adopted under these acts. In addition, TENANT shall execute affidavits, representations and the like from time to time at LANDLORD'S request concerning TENANT'S best knowledge and belief regarding the presence of hazardous substances or materials in the Demised Premises. In all events, TENANT shall indemnify LANDLORD in the manner elsewhere provided for in this Lease against any liability resulting from any release of hazardous substances or materials in the Demised Premises or Property by TENANT or its agents, while TENANT is in possession or caused by TENANT or persons acting under TENANT which is due to hazardous substances that TENANT or its agents brought onto the Demised Premises or Property.

5. **COVENANT OF QUIET POSSESSION.** So long as the TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the Premises throughout the term of this Lease without interference or hindrance by the LANDLORD or LANDLORD'S agents.

6. **INSURANCE; INDEMNIFICATION.**

**TENANT'S INSURANCE** - At TENANT'S sole cost and expense, TENANT will secure, pay for, and file with the LANDLORD, during the entire Term hereof, an occurrence form commercial general liability policy, covering the Demised Premises and the operations of TENANT and any person conducting business in, on or about the Demised Premises in a at least the following minimum amounts with specification amounts to prevail if greater than minimum amount indicated. Notwithstanding any other provision of this Lease, TENANT shall provide the minimum limits of liability coverage as follows:



Commercial General Liability	\$2,000,000	Aggregate
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$300,000	Fire Damage/Legal

TENANT shall also procure the following insurance coverage:

- (i) "All risk" property insurance, including theft coverage, written at replacement cost value and a replacement cost endorsement insuring TENANT'S improvements and betterments, fixtures, furnishings, equipment and any other property belonging to TENANT.
- (ii) Workers compensation coverage as required by the provisions of Florida statute.

Any consignment agreement used by TENANT must provide that consignor acknowledge that the LANDLORD does not have any liability whatsoever for any damage which may be done to items left in the Demised Premises on consignment. The TENANT must provide the LANDLORD with a copy of any consignment agreement used by TENANT regarding Demised Premises. LANDLORD shall not be responsible for damage to any property belonging to TENANT or consignor. TENANT completely indemnifies the LANDLORD with regard to any claims made by any consignor for any reason. From time to time during this Lease, at LANDLORD'S request, TENANT shall (i) procure, pay for and keep in full force and effect such other insurance as LANDLORD shall require and (ii) increase the limits of such insurance as LANDLORD may reasonably require.

Any general liability or other policy insuring the LANDLORD does not provide any contributing or excess coverage for TENANT. The policies TENANT procures for TENANT'S exposure are the only coverage available to TENANT.



TENANT shall furnish an original Certificate of Insurance indicating, and such policy providing coverage, to LANDLORD named as "Additional Insured" on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, INCLUDING A "Waiver of Subrogation" clause in favor of LANDLORD on all policies. TENANT will maintain the General Liability coverage summarized above with coverage continuing in full force including the "additional insured" endorsement until at least 3 years beyond the termination of this Lease.

TENANT's insurance policies shall be endorsed to give 30 days written notice to LANDLORD in the event of cancellation or material change, using form CG 02 24, or its equivalent.

All policies of insurance required to be carried by TENANT pursuant to this Lease shall be written by responsible insurance companies authorized to do business in Florida with an AM Best rating of A-VI or better. Any such insurance required to be carried by TENANT hereunder may be furnished by TENANT under any blanket policy carried by it or under a separate policy therefore. Certificates shall be delivered to LANDLORD prior to the commencement of the Term of this Lease and, upon renewals, but not less than sixty (60) days prior to the expiration of such coverage. In the event TENANT shall fail to procure such insurance, LANDLORD may, at its option, procure the same for the account of TENANT, and the cost thereof shall be paid to LANDLORD as an additional charge upon receipt by TENANT of bills therefore, together with an administrative fee equal to fifteen (15%) percent to cover the cost of the LANDLORD'S efforts to procure such policy.

Certificates of Insurance submitted to LANDLORD will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. **PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.**



**INDEMNIFICATION** - TENANT does hereby agree to indemnify, defend, and save LANDLORD, its respective officers, directors, agents and employees harmless from and against any and all liability for any injury to or death of any person or persons or damage to property (including adjoining property for environmental damage) in any way arising out of or connected with the conditions, use or occupancy of the Demised Premises, or in any way arising out of the activities of TENANT, its agents, employees, licensees or invitees on the Demised Premises and/or the building, including reasonable attorney's fees and court costs incurred by LANDLORD in connection therewith, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, excepting, however, only liability caused by LANDLORD'S gross negligence in its failure to perform any of LANDLORD'S covenants, obligations or agreements of this Lease. Nothing herein is intended to waive the sovereign immunity afforded to City pursuant to Florida law, including section 768.28, Florida Statutes.

The indemnification obligations under this Section shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for TENANT 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 TENANT or of any third party to whom TENANT may subcontract work. This indemnification shall continue beyond the date of termination of the Agreement.

7. **ASSIGNMENT AND HYPOTHECATION.** This Lease is not transferable or assignable, except as provided by Resolution of the Key West City Commission. The TENANT may not sublet the Premises or any part thereof. Any assignment or sub-letting, even with the LANDLORD's consent, shall not relieve the TENANT from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of the LANDLORD.

8. DEFAULT CLAUSE.

A. It is covenanted and agreed by LANDLORD and TENANT that in case at any time default shall be made in the payment of rent, or if the TENANT shall fail to pay any of the taxes or assessments herein provided for, or in case of the sale or forfeiture of the Premises or any part thereof during the demised term for non-payment of any tax or assessment, or in case the TENANT shall fail to keep the required insurance, or shall fail to spend insurance money, as herein provided for, or if the TENANT shall fail to perform any of the covenants of this Lease, then, in any of such events, TENANT shall be subject to eviction pursuant to Chapter 83, Florida Statutes.

B. Or, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of the demised term, at such election of the LANDLORD, or in any other way, the TENANT will surrender and deliver up the Premises and property (real and personal) peaceably to the LANDLORD, its agent, or attorneys, immediately upon the termination of the demised term. If the TENANT, its agents, attorneys, or tenants shall hold the Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Premises under the applicable statute and shall be subject to eviction or removal, forcibly or otherwise.

C. Where the alleged default consists of some alleged violation of any term of this Lease, other than the payments of money, including rent and insurance premiums, the LANDLORD may not declare this Lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during this ten (10) days notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD'S right and interest of the LANDLORD in the Premises and in this Lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or



the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this Lease and in the Premises. With respect to the payment of the insurance premiums, the same must be paid at least thirty (30) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith.

E. All default and grace periods shall be deemed to run concurrently and not consecutively.

F. It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

G. It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this Lease to collect the rent that may be due under the terms of this Lease by any proceeding under same, or the right to collect any additional rent, money, or payments due under the terms of this Lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this Lease shall not in any way affect the right of such LANDLORD to declare this Lease void and the terms ended hereby, as herein provided, when default is made in the payment of rent or when default is made by the TENANT in any of the terms and provisions of this Lease.

H. If at any time, by reason of the failure of the TENANT to keep and perform any covenant or agreement which, under the terms of this Lease, the TENANT is bound and obligated to keep and perform, it becomes necessary for the LANDLORD to employ an attorney to protect the rights and interests of the LANDLORD in the property demised or to enforce the Lease or proceed under it in any particular, then in any of such events, the TENANT will owe and will pay unto the LANDLORD all costs of Court and reasonable attorney's fees incurred or expended by the LANDLORD in taking such actions, including actions taken in all trial and appellate courts.

9. TENANT'S DUTY TO KEEP PREMISES IN GOOD REPAIR.

The TENANT covenants and agrees with the LANDLORD that during the term of this Lease, the TENANT will keep in good state of repair and in current condition, the Premises, and the fixtures serving the Demised Premises, and all furnishings brought or placed upon the Premises by the TENANT; nor will the TENANT suffer or permit any strip, waste, or neglect of any such property to be committed; and the TENANT will repair, replace, and renovate the property as often as it maybe necessary in order to keep the property in good repair and condition, at TENANT'S sole cost and expense. Tenant shall only utilize licensed contractors and shall apply for all permits, as required, to complete the necessary repairs.

10. ADDITIONAL COVENANTS OF THE TENANT.

A. The TENANT shall pay for all utilities associated with the use of the Premises including, but not limited to, water, electricity, sewer gas and solid waste. In the event that a separate bill for the Premises is not available for one or more of the utility services required by the Premises, then the TENANT shall pay a pro-rated share of that particular utility based on the square footage of the Premises and/or the parties' estimated usage of that particular utility, calculation of which to be mutually agreed upon.

B. The TENANT covenants and agrees with the LANDLORD that no damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the Lease is canceled for the TENANT'S default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the Lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction of the Premises by casualty or hazard, the LANDLORD will have the option of canceling the Lease.



C. The TENANT shall be responsible for the air conditioning systems together with the plumbing and electrical system.

D. The TENANT shall be responsible for maintaining the roof and exterior of the building.

E. The TENANT covenants and agrees with the LANDLORD that nothing in this Lease shall ever be construed as empowering the TENANT to encumber or cause the TENANT to encumber the title or interest of the LANDLORD.

F. The TENANT covenants and agrees with the LANDLORD that, at the termination of this Lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the Premises and all improvements located thereon, as well as the LANDLORD's interest in all fixtures and equipment appertaining thereto.

G. The TENANT agrees not to make any changes or alterations without written approval of the LANDLORD.

11. **LANDLORD'S RIGHT OF ENTRY**. The LANDLORD or its agents shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the TENANT in the conduct of the TENANT's business on the Premises.

12. **EQUIPMENT, FIXTURES AND SIGNS**. All fixtures, equipment, and signs used on the Premises by the TENANT but provided by the LANDLORD will at all times be and remain the property of the LANDLORD. Provided that this Lease is in good standing, the TENANT will have the right to remove any equipment or fixtures provided by the TENANT, or any part thereof, from the Premises during the term of this Lease, at the expiration thereof, or within a reasonable time thereafter; provided, however, that the TENANT, in so doing, does not cause any irreparable damage to the Premises; and provided further, that the TENANT shall pay or reimburse the LANDLORD for the reasonable expense of repairing damage caused by such removal.



13. **ACCEPTANCE IN AS-IS CONDITION.** The TENANT accepts the Premises in an as-is condition and all improvements and additions shall be at the sole expense of the TENANT.

14. **NO MECHANIC'S LIENS.** It is hereby covenanted, stipulated and agreed by and between the parties hereto that there shall, during the demised term, be no mechanic's liens upon any buildings or improvements that may at any time be put upon the demised property, and that in case of any mechanic's liens the TENANT must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, LANDLORD shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall at the option of the LANDLORD, be so much additional rent due from the TENANT at the next rent due after such payment, with interest thereon at the maximum rate allowed by law. Nothing herein shall be construed to admit that a mechanic's lien may be enforced against municipal property.

15. **MISCELLANEOUS PROVISIONS.** It is mutually covenanted and agreed by and between the parties as follows:

A. That no waiver or a breach of any of the covenants in this Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

B. That time is of the essence in every particular and particularly where the obligation to pay money is involved.

C. That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.

D. That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.



E. That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this Lease.

F. That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the representative parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

G. That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. The notice shall be addressed as follows:

As to LANDLORD: City Manager  
City of Key West  
P.O. Box 1409  
Key West, FL 33041

As to TENANT: Key West Players, Inc.  
P.O. Box 724  
Key West, FL 33040

When the parties on either side (LANDLORD or TENANT) consist of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

H. This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida; venue for any action regarding this Lease shall be in Monroe County, Florida.





IN WITNESS WHEREOF, the parties hereto have caused the foregoing Lease to be executed on the day and year first above written.



Cheryl Smith  
Cheryl Smith, City Clerk

LANDLORD: CITY OF KEY WEST

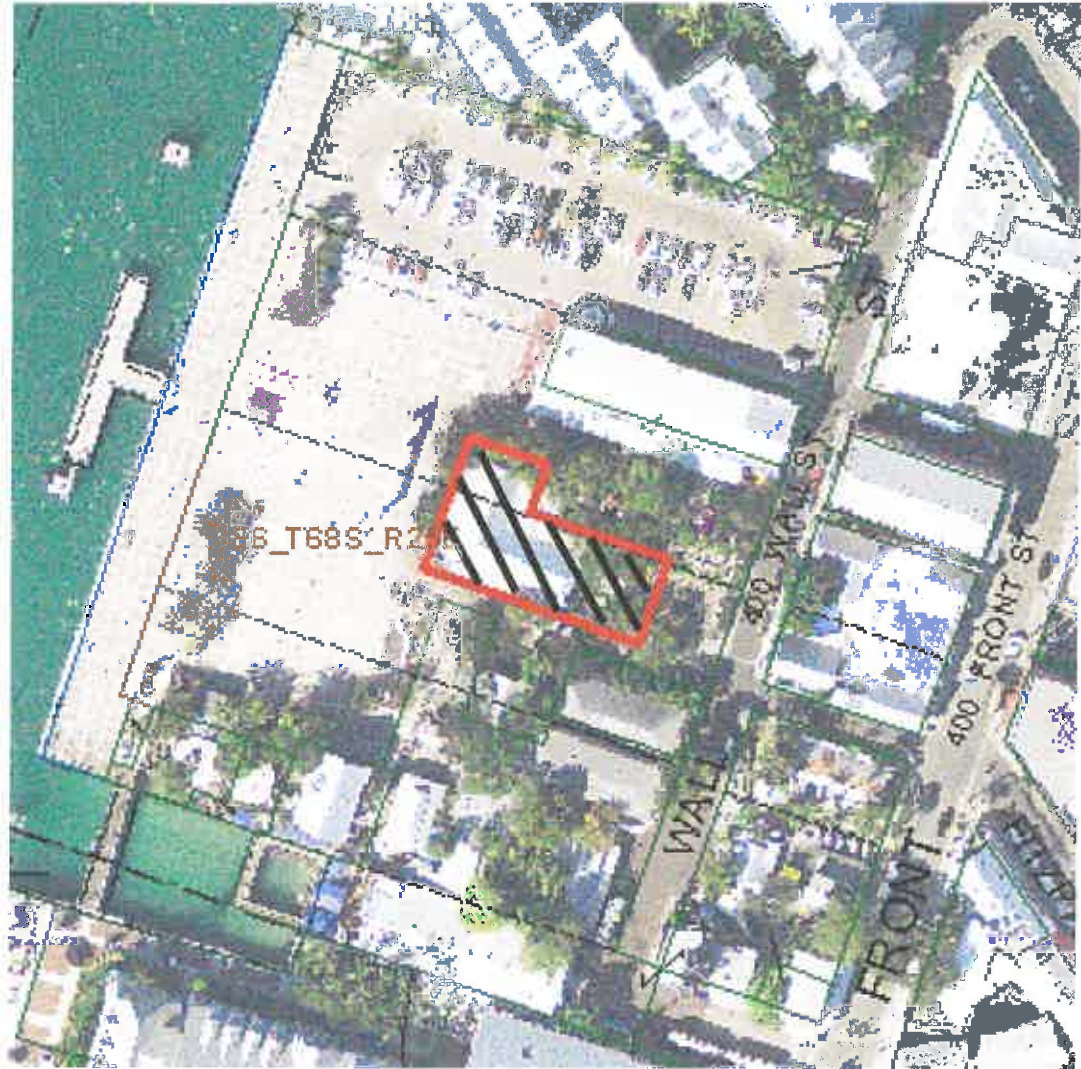
By: Craig Cates  
Craig Cates, Mayor

ATTEST:  
Robert M. Frechette  
Name: Robert M. Frechette

TENANT: KEY WEST PLAYERS, INC.

By: Jeffrey Johnson  
Jeffrey Johnson, President, Board of Directors

Exhibit "A"



RESOLUTION NO. 04-150

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LEASE BETWEEN THE CITY AND KEY WEST PLAYERS, INC. FOR THE WATERFRONT PLAYHOUSE; FINDING A PUBLIC BENEFIT; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached Lease is hereby approved.

Section 2: That pursuant to section 2-941(c) of the Code of Ordinances, a public benefit to the Waterfront Playhouse is hereby found, justifying a rental below market rate.

Section 3: That the City Manager is hereby authorized to execute the Lease on behalf of the City of Key West.

Section 4: 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 6 day of April, 2004.

Authenticated by the presiding officer and Clerk of the Commission on April 7, 2004.

Filed with the Clerk April 7, 2004.

ATTEST

  
CHERYL SMITH, CITY CLERK

  
JIMMY WEEKLEY, MAYOR

**LEASE**

THIS LEASE, made and entered into at Key West, Monroe County, Florida, this 21<sup>st</sup> day of April 2004 by and between THE CITY OF KEY WEST, whose address is P.O. Box 1409, Key West, Florida, 33041, (hereinafter "LANDLORD"), and KEY WEST PLAYERS, INC., whose address is P.O. Box 724, Key West, Florida, 33041, (hereinafter "TENANT").

**WITNESSETH:**

That the LANDLORD and the TENANT, for and in consideration of their respective obligations contained herein, agree as follows:

1. **DEMISE**. The LANDLORD does hereby lease to the TENANT, and the TENANT does hereby lease from the LANDLORD, the following described premises, situated in Monroe County, Florida (hereinafter referred to as "Premises"):

On the Island of Key West and is part of Lot 4, Square 3 according to William A. Whitehead's map of said Island delineated in 1829 and is more particularly described as follows:

From the intersection of the southwesterly property line of Wall Street and northwesterly curb line of Tift's Alley (as constructed) extended go southwesterly along the said northwesterly curb of Tift's Alley extended a distance of 48.9 feet to a point; thence northwesterly and at right angles a distance of 1 foot to a point which point is the point of beginning; thence continue northwesterly along the prolongation of the previously described course a distance of 52.4 feet to a point; thence southwesterly and at right angles a distance of 138.4 feet to a point; thence southeasterly and at right angles a distance of 52.4 feet to a point; thence northeasterly and at right angles a distance of 138.4 feet back to the point of beginning.

Together with the existing brick warehouse building located on the above described premises.

2. TERM. The term of this Lease shall be for ten (10) years, which term shall commence on November 14, 2004, and shall end at midnight on November 13, 2014.

3. RENT. The TENANT agrees to pay to the LANDLORD an annual rent for the Premises of five hundred dollars (\$500.00), which rental amount shall be paid on an annual basis on November 14<sup>th</sup>, or earlier, of each year of the term of this Lease. The TENANT additionally agrees to pay to LANDLORD any sales, use, excise, ad valorem, or other tax imposed or levied against rent or any other charge or payment which tax has been imposed or levied by any governmental agency having jurisdiction thereof, including any new taxes imposed during the term of this Lease which are in addition to or in substitution for any such tax which is presently imposed, and the TENANT agrees to make payment at the time said tax becomes due.

Rent shall be made payable to THE CITY OF KEY WEST, and shall be paid to the Finance Department, 604 Simonton Street, Key West. LANDLORD shall be entitled to impose a late fee of Fifty Dollars (\$50.00) if payment is not received on or before the due date.

4. USE OF THE PREMISES. The TENANT shall be entitled to use the Premises for operation of a theater playhouse, and for events and meetings that directly support or benefit this use of the Playhouse, and for no other purpose. In addition, TENANT further agrees:

A. Not to display any banners, pennants, search lights, window signs, balloons, or similar temporary advertising media on the exterior of the Premises;

B. Not to commit waste in the Premises and to keep the Premises and immediate adjacent areas including, without limitation, adjacent sidewalks and steps, in a safe, neat, clean and orderly condition and to maintain the Premises in good condition;

C. Not to use the Premises or permit the same to be used: in any manner that violates any law or ordinance or constitutes a nuisance; for lodging purposes; in a manner that may injure the reputation of the City of Key West or annoy, inconvenience or damage patrons of the Mallory Dock area or other tenants; or in a manner that would constitute a hazardous use of the Premises or violate any insurance policy of the TENANT or the LANDLORD;

D. To keep all garbage, refuse and solid waste inside the Premises in the kind of containers specified by the LANDLORD, or to place the same outside the Premises, prepared for collection, in the manner and at the times and places designated by the LANDLORD or the appropriate disposal company. The TENANT agrees not to burn or permit any burning of garbage or refuse on the Premises. The TENANT further agrees that, upon the LANDLORD's instruction, the TENANT shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by the LANDLORD;

E. To contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse, including but not limited to, impact fees and dumpster rental. The TENANT shall indemnify, save harmless and defend the LANDLORD from and

against any loss, claim, injury, damage or expense arising out of or related to the generation, storage, or removal or disposal of the TENANT's garbage, refuse or solid waste;

F. To take no action that would: (i) violate the LANDLORD's contracts, if any, affecting Mallory Square; or (ii) cause any work stoppage or cause any manner of interference with LANDLORD or other tenants, occupants, customers or any person lawfully in and upon the Mallory Square area;

G. Not to use amplified music or any other noise-making machinery or devices that in the LANDLORD's determination is harmful to the building or disturbing to other tenants, nor shall the TENANT use any loudspeakers, televisions, or other devices in a manner so as to be heard or seen outside of the Premises;

H. To abide by and observe all rules and regulations established from time to time by the LANDLORD and the LANDLORD's insurance carrier with respect to the operation of Mallory Square;

I. Not to conduct any auction, fire, bankruptcy, or selling-out sale on or about the Premises;

J. To obtain and maintain all licenses, permits, and other approvals necessary to conduct the TENANT's business during the Lease term;

5. COVENANT OF QUIET POSSESSION. So long as the TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the Premises throughout the term of this Lease without interference or hindrance by the LANDLORD or LANDLORD's agents.

6. INSURANCE; INDEMNIFICATION.

A. The TENANT covenants and agrees to keep in force during the lease term a comprehensive general liability policy of insurance insuring LANDLORD and TENANT against any liability whatsoever occasioned by accident on or about the Premises and agrees that LANDLORD shall be listed thereon as additional insured. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida. The comprehensive general liability policy shall be in the amount of One Million Dollars (\$1,000,000.00) in respect to any one incident and in the aggregate, and shall include Three Hundred Thousand Dollars (\$300,000.00) for property damage. The original policy or certificate, together with evidence of premium payment, shall be delivered to LANDLORD. TENANT shall renew the policy not less than thirty (30) days prior to the expiration date each year, and shall furnish evidence of the renewals and payment to LANDLORD. To the extent that such a provision is obtainable, the policy shall provide that it cannot be cancelled or terminated until at least thirty (30) days prior notice has been given to LANDLORD. Failure of TENANT to maintain the insurance in full force and effect at any time shall be deemed a material breach of this Lease, and shall entitle LANDLORD to terminate the Lease. Upon such breach, TENANT shall immediately suspend all use of the Premises and shall provide to LANDLORD written notice of its failure to maintain insurance coverage.

B. TENANT agrees to indemnify, hold harmless and defend the LANDLORD, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney's fees, court costs, and



expenses, caused by the conduct, misconduct, negligent error, omission or act of TENANT, its employees agents, servants or officers, or accruing, resulting from, or related to the subject matter of this Lease, including, without limitation, any and all claims, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property, whether or not suit be brought. The provisions of this indemnification provision shall survive the expiration or earlier termination of this Lease.

7. ASSIGNMENT AND HYPOTHECATION. This Lease is not transferable or assignable, except as provided by Resolution of the Key West City Commission. The TENANT may not sublet the Premises or any part thereof. Any assignment or sub-letting, even with the LANDLORD's consent, shall not relieve the TENANT from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of the LANDLORD.

8. DEFAULT CLAUSE.

A. It is covenanted and agreed by LANDLORD and TENANT that in case at any time default shall be made in the payment of rent, or if the TENANT shall fail to pay any of the taxes or assessments herein provided for, or in case of the sale of or forfeiture of the Premises or any part thereof during the demised term for non-payment of any tax or assessment, or in case the TENANT shall fail to keep the required insurance, or shall fail to spend insurance money, as herein provided for, or if the TENANT shall

fail to perform any of the covenants of this Lease, then, in any of such events, TENANT shall be subject to eviction pursuant to Chapter 83, Florida Statutes.

B. Or, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of the demised term, at such election of the LANDLORD, or in any other way, the TENANT will surrender and deliver up the Premises and property (real and personal) peaceably to the LANDLORD, its agent, or attorneys, immediately upon the termination of the demised term. If the TENANT, its agents, attorneys, or tenants shall hold the Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Premises under the applicable statute and shall be subject to eviction or removal, forcibly or otherwise.

C. Bankruptcy or Insolvency. If at any time during the term hereof proceedings in bankruptcy shall be instituted against the TENANT and which proceedings have not been dismissed within a reasonable time period, and which bankruptcy results in an adjudication of bankruptcy; or if any creditor of the TENANT shall file any petition under the Bankruptcy Act of the United States of America, as it is now in force or may hereafter be amended; and the TENANT be adjudicated bankrupt, or the TENANT makes an assignment for the benefit of creditors; or sheriff, marshal, or constable take possession thereof by virtue of any attachment or execution proceedings and offer same for sale publicly, and such taking and offer for sale is not rescinded, revoked, or set aside within ten (10) days thereafter, the LANDLORD may, at its option, in either of such events, immediately take possession of the Premises and terminate this

Lease. Upon such termination, all installments of rent earned to the date of termination and unpaid, shall at once become due and payable; and in addition thereto, the LANDLORD shall have all rights provided by the bankruptcy laws relative to the proof of claims on an anticipatory breach of an executory contract. The grace period for the curing of default shall not apply to this event of default.

D. Where the alleged default consists of some alleged violation of any term of this Lease, other than the payments of money, including rent and insurance premiums, the LANDLORD may not declare this Lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during this ten (10) days notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD's right and interest of the LANDLORD in the Premises and in this Lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this Lease and in the Premises. With respect to the payment of the insurance premiums, the same must be paid at least thirty (30) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith.

E. All default and grace periods shall be deemed to run concurrently and not consecutively.

F. It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

G. It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this Lease to collect the rent that may be due under the terms of this Lease by any proceeding under same, or the right to collect any additional rent, money, or payments due under the terms of this Lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this Lease shall not in any way affect the right of such LANDLORD to declare this Lease void and the terms ended hereby, as herein provided, when default is made in the payment of rent or when default is made by the TENANT in any of the terms and provisions of this Lease.

H. If at any time, by reason of the failure of the TENANT to keep and perform any covenant or agreement which, under the terms of this Lease, the TENANT is bound and obligated to keep and perform, it becomes necessary for the LANDLORD to employ an attorney to protect the rights and interests of the LANDLORD in the property demised or to enforce the Lease or proceed under it in any particular, then in any of such events, the TENANT will owe and will pay unto the LANDLORD all costs of Court and reasonable attorney's fees incurred or expended by the LANDLORD in taking such actions, including actions taken in all trial and appellate courts.

9. TENANT'S DUTY TO KEEP PREMISES IN GOOD REPAIR. The TENANT covenants and agrees with the LANDLORD that during the term of this Lease, the TENANT will keep in good state of repair and in current condition, the Premises and all furnishings brought or placed upon the Premises by the TENANT; nor will the TENANT suffer or permit any strip, waste, or neglect of any building or such personal property to be committed; and the TENANT will repair, replace, and renovate the said real and personal property as often as it maybe necessary in order to keep the building or buildings and the personal property which is subject to the LANDLORD's lien, in good repair and condition.

10. ADDITIONAL COVENANTS OF THE TENANT.

A. The TENANT shall pay for all utilities associated with the use of the Premises including, but not limited to, water, electricity, sewer gas and solid waste. In the event that a separate bill for the Premises is not available for one or more of the utility services required by the Premises, then the TENANT shall pay a pro-rated share of that particular utility based on the square footage of the Premises and/or the parties' estimated usage of that particular utility.

B. The TENANT covenants and agrees with the LANDLORD that no damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the Lease is canceled for the TENANT's default at any time while there remains outstanding any obligation from any insurance

company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the Lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction of the Premises by casualty or hazard, the LANDLORD will have the option of canceling the Lease, or repairing the building, and in the event that the LANDLORD elects to repair the building, an appropriate abatement of rent shall occur.

C. The TENANT shall be responsible for the air conditioning systems together with the plumbing and electrical system.

D. The TENANT shall be responsible for maintaining the roof and exterior of the building.

E. The TENANT covenants and agrees with the LANDLORD that nothing in this Lease shall ever be construed as empowering the TENANT to encumber or cause the LANDLORD to encumber the title or interest of the LANDLORD.

F. The TENANT covenants and agrees with the LANDLORD that, at the termination of this Lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the Premises and all buildings and improvements located thereon, as well as the LANDLORD's interest in all fixtures and equipment appertaining thereto.

G. The TENANT agrees not to make any internal changes or exterior changes or alterations without written approval of the LANDLORD.

11. LANDLORD'S RIGHT OF ENTRY. The LANDLORD or its agents shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such

manner as not to interfere with the TENANT in the conduct of the TENANT's business on the Premises. If the Premises are damaged by fire, windstorm, or by any other casualty which causes the Premises to be exposed to the elements, the LANDLORD may enter upon the Premises to make renovations and repairs of a non-emergency nature by giving reasonable notice to the TENANT, and in such manner as to minimize any inconvenience to both parties.

12. EQUIPMENT, FIXTURES AND SIGNS. All furnishings, fixtures, trade fixtures, equipment, and signs used on the Premises by the TENANT but provided by the LANDLORD will at all times be and remain the property of the LANDLORD. Provided that this Lease is in good standing and subject to the LANDLORD's lien for rent, the TENANT will have the right to remove any furniture or fixtures provided by the TENANT, or any part thereof, from the Premises during the term of this Lease, at the expiration thereof, or within a reasonable time thereafter; provided, however, that the TENANT, in so doing, does not cause any irreparable damage to the Premises; and provided further, that the TENANT shall pay or reimburse the LANDLORD for the reasonable expense of repairing damage caused by such removal.

13. ACCEPTANCE IN AS-IS CONDITION. The TENANT accepts the Premises and improvements thereon in an as-is condition and all improvements and additions shall be at the sole expense of the TENANT.

14. NO MECHANIC'S LIENS. It is hereby covenanted, stipulated and agreed by and between the parties hereto that there shall, during the demised term, be no mechanic's liens upon any buildings or improvements that may at any time be put upon the demised property, and that in case of any mechanic's liens the TENANT must pay off

the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, LANDLORD shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall at the option of the LANDLORD, be so much additional rent due from the TENANT at the next rent due after such payment, with interest thereon at the maximum rate allowed by law. Nothing herein shall be construed to admit that a mechanic's lien may be enforced against municipal property.

15. MISCELLANEOUS PROVISIONS. It is mutually covenanted and agreed by and between the parties as follows:

A. That no waiver or a breach of any of the covenants in this Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

B. That time is of the essence in every particular and particularly where the obligation to pay money is involved.

C. That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.

D. That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.

E. That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be



binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this Lease.

F. That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the representative parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

G. That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. The notice shall be addressed as follows:

As to LANDLORD: City Manager  
City of Key West  
P.O. Box 1409  
Key West, FL 33041

As to TENANT: Key West Players, Inc.  
P.O. Box 724  
Key West, FL 33041

When the parties on either side (LANDLORD or TENANT) consist of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

H. This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida; venue for any action regarding this Lease shall be in Monroe County, Florida.

IN WITNESS WHEREOF, the parties hereto have caused the foregoing Lease to be executed on the day and year first above written.



Cheryl Smith  
Cheryl Smith, City Clerk

CITY OF KEY WEST

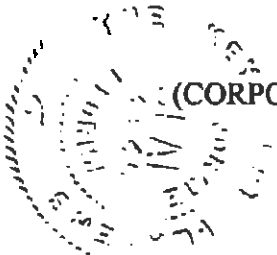
By: Julio Avel  
Julio Avel  
City Manager

ATTEST:

KEY WEST PLAYERS, INC.

George Gugliotta  
Name: GEORGE GUGLIOTTA  
Title: EXECUTIVE BOARD MEMBER

By: Henry L. Woods, Jr.  
Name: HENRY L. WOODS, JR.  
Title: PRESIDENT, BOARD OF DIRECTORS



(CORPORATE SEAL)

OFFICE OF THE CITY ATTORNEY



PHONE: (305) 292-8110  
FAX: (305) 292-8227

**THE CITY OF KEY WEST**

POST OFFICE BOX 1409  
KEY WEST, FLORIDA 33041-1409  
WWW.KEYWESTCITY.COM

**MEMORANDUM**

**TO:** Mayor & Members of the City Commission

**FROM:** Robert Tischenkel *RT*  
City Attorney

**DATE:** March 18, 2004

**RE:** Waterfront Playhouse Lease

Because the Waterfront Playhouse lease contains a below-market rate rental – \$500.00 per year – the City Commission must find a public benefit to the lease and approve it upon a supermajority vote. Section 2-941(c), Key West Code of Ordinances.



**To:** Julio Avel, City Manager  
**From:** Roger D. Wittenberg, Finance Director  
**Date:** 3/30/2004  
**Re:** Waterfront Play House

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I have reviewed the payment history for the Waterfront Playhouse and found it to be in order. Prompt payments annually for the appropriate amount.