

RESOLUTION NO. 04-131

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED AGREEMENT WITH THE KEY WEST CULTURAL PRESERVATION SOCIETY, INC. FOR THE USE OF MALLORY SQUARE FOR SUNSET CELEBRATION; 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 Agreement is hereby approved.

Section 2: 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 16 day of March, 2004.

Authenticated by the presiding officer and Clerk of the Commission on March 17, 2004.

Filed with the Clerk March 17, 2004.

ATTEST:

  
CHERYL SMITH, CITY CLERK

  
JIMMY WEEKLEY, MAYOR

## AGREEMENT

THIS AGREEMENT is entered into this 22nd day of March 2004, between the City of Key West (hereinafter "CITY") and the Key West Cultural Preservation Society, Inc. (hereinafter, "CPS"), a corporation not for profit, organized and existing under the laws of the State of Florida.

### WITNESSETH:

WHEREAS, the CITY controls the use of the waterfront structure owned by the CITY and known as Mallory Dock, and owns property known as Mallory Square; and

WHEREAS, CPS wishes to use Mallory Dock and Mallory Square at certain hours daily in order to provide to the public a "Sunset Celebration" consisting of free live performances, limited sales of edibles, and goods hand-crafted by the artists; and

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WHEREAS, CITY and CPS desire to enter into a written agreement providing for the terms of the use of Mallory Dock and Mallory Square;

NOW THEREFORE, in consideration of the benefits conferred upon the parties by the terms of this Agreement, CITY and CPS agree as follows:

**(1) Area Occupied**

In consideration of the payments and covenants of the respective parties hereto, CITY agrees to the use by CPS of the premises known as Mallory Square, (hereinafter the "Premises") located in the Mallory Square Area of Key West, and being more particularly described on Exhibit A attached.

**(2) Period of Daily Use**

CPS shall have the right to the use and occupancy of the Premises for four hours daily, the period commencing two hours prior to sunset and expiring two hours after sunset of each day, except as otherwise provided in this Agreement. The period of daily use shall expire two hours after sunset whether or not four hours have expired since its beginning. Time of sunset shall be as indicated in Key West on NOAA weather radio, or as listed in NOAA navigational publications (adjusted). Exceptions to the period of daily use may be granted by the City Manager upon special request made by CPS.

**(3) Vessels Docked During Period of Daily Use**

CITY shall have such rights to dock or keep docked during the period of daily use any cruise ship at Mallory Dock, subject to those limitations set forth in Paragraph (25) and those limitations imposed by Sovereignty Submerged Land Lease No. 440769265. CITY agrees to allow no ships engaged in "cruise to nowhere" gambling excursions from Key West to dock at Mallory Dock during the period of daily use. CITY shall allow no other type vessel to be docked at Mallory Dock during the period of daily use, unless the vessel meets one or more of the following criteria:

- (a) The vessel or its crew is in distress, is under emergency, is disabled, or is in need of safe haven, and the dockage mitigates the conditions;
- (b) The vessel's presence is required to help mitigate an emergency involving the City of Key West or Monroe County;
- (c) The vessel is a Navy vessel allowed to be docked pursuant to Paragraph (13).
- (d) The vessel's wall of view-obstructing superstructure and full-side combination is not over 6 feet in height above dock level for 150 feet or more of continuous length;
- (e) The vessel is not docked during the period one hour before sunset until one hour after sunset; or
- (f) The period of daily use shall commence not before 4:30 P.M. on days that vessels over 300 ft. in length are docked at the dolphins and "T"-shaped structure adjacent to Mallory Dock. When provisions are being loaded upon any vessels at Mallory Dock, or vehicles or machines are servicing any vessel from Mallory Dock, the period of daily use shall not commence until such activity is completed.

**(4) Special Events**

No more than thirty (30) days per year during the term of this Agreement, CPS shall allow CITY to occupy the Premises during the period of daily use for CITY's own special purposes, provided that CITY complies with the following:

- (a) CITY shall give CPS written notice, delivered seventy-two (72) hours in advance, of its intent to so occupy.
- (b) CITY shall allow CPS to occupy the Premises jointly with CITY, except in cases where the nature of the special event makes joint occupancy not feasible or impossible.

**(5) Term**

The term of this Agreement is ten (10) years, commencing March 23, 2004, and ending on March 22, 2014.

**(6) Payment; Late Fee; Termination for Nonpayment**

CPS agrees to pay to CITY for the first year of this Agreement Sixty-three Thousand Four Hundred Thirty-two and 51/100 dollars (\$63,432.51) in twelve (12) monthly payments of Five Thousand Two Hundred Eighty-six and 04/100 dollars (\$5,286.04) plus applicable sales tax. This amount shall be increased on the anniversary date of this Agreement each year by the total percentage increase (if any) in the U.S. Department of Commerce Consumer Price Index (CPI) for All Urban Consumers as reported by the Bureau of Labor Statistics for January of each year. Payments shall be paid to CITY ten (10) days after the close of the preceding month. In the event the funds are not fully paid by the tenth of the month, CPS shall pay a five percent (5%) late fee. In the event any payment is not fully paid within thirty (30) days of the date due, this Agreement may be terminated or renegotiated by CITY upon written notice to CPS.

**(7) Use of Funds by CITY**

Up to one-third of the monies paid to CITY by CPS may be spent to offset daily maintenance and security costs. The remainder of the funds collected shall be deposited into a CITY account designated to be used to defray the cost of building capital improvements for the Premises and its immediate adjacent area up to, but not including, the parking lot. Any capital improvements approved by the City Manager and not agreed to by CPS may be appealed by CPS to the City Commission. The decision of the City Commission shall be final.

**(8) Use**

The parties agree to the following use of the Premises:

(a) CITY authorizes CPS to manage the daily public "Sunset Celebration" on the Premises, consisting of free live performances and limited sales of edibles and goods handcrafted by the artists, by establishing guidelines for participants in the celebration, enforceable by CPS, and by controlling the number of participants on the Premises. CPS shall establish and collect a reasonable fee from vendors, artists and those performers who sell commercial products associated with their performances or otherwise. The initial fee established under this Agreement is Ten Dollars (\$10.00). CPS covenants that its sole use of the Premises shall be to provide to the public a daily "Sunset Celebration." The CPS Guidelines for Operation of Sunset Festival approved on December 2, 1997, are attached hereto as Exhibit "E" and incorporated herein by reference. Any additions or deletions to the Guidelines must have the prior written approval of the City Manager. In the event that CPS and the City Manager do not agree on the changes, CPS shall have the right to appeal to the City Commission. The decision of the City Commission shall constitute final administrative action. Any adjustments to fees initially established shall require written justification by CPS evidencing increased costs of operation.

(b) CPS agrees that citizens of Key West and all members of the public shall have free access to the Premises during the period of daily use; no fee shall be charged for such access.

(c) CPS shall provide for safe access for the public and shall arrange the artists and performers in the best interests of the parties to this Agreement, making allowances for access for emergency vehicles. The placement of performers and vendors and the use of space shall be arranged according to the security level in effect at that time, and provide for safety of vendors, performers and the public.

(d) CPS agrees that it shall not allow solicitation or acceptance of any funds or donations in return for non-edible goods on the Premises during the period of daily use, unless the goods are predominantly created or are substantially altered in form by the person accepting the funds.

(e) CPS agrees that it shall allow no person to accept funds or donations in return for edible goods on the Premises during the period of daily use unless the goods are prepared and traded in conformity with all state, county, and city health laws and regulations. CPS further agrees not to allow any persons to prepare edibles by combustion or flame unless they have at hand a fire extinguisher capable of extinguishing accidental fire arising from the fuel, and agree that no compressed flammable liquids or gases shall be allowed on the Premises, except propane/butane cooking systems duly certified by state or county health officials approved by the City Fire Inspector.

(f) CPS shall be allowed to apportion spaces for non-profit organizations approved by the City Manager on a space available basis, as CPS deems proper. Each non-profit group shall be limited to six nights per year. The non-profit organization shall not be included in the total number of vendors and shall be exempt from the requirements of Paragraph (8)(d).

(g) The parties agree that the number of participants offering goods or edibles for sale on the Premises shall not exceed fifty-five (55) exclusive of special categories as set forth in the CPS guidelines. CPS shall control the number of vendors and performers present on the Premises. Those persons licensed as mobile vendors, or having any other occupational license, shall be subject to all limitations and guidelines imposed upon other participants, including but not limited to CPS daily lottery for space.

(h) CPS agrees that at the end of each period of daily use it shall return the Premises to CITY's exclusive use and control, and that the Premises and immediately adjacent areas shall be as clean and clear of litter and debris as at the beginning of the period of daily use. CPS shall pay on a monthly basis fifty percent (50%) of the total solid waste costs associated with the Premises.

(i) CPS agrees to hire and provide on the Premises during the period of daily use, a manager, who shall have administrative responsibilities for the "Sunset Celebration". The manager shall have the responsibility of instructing persons not to go upon the cement "T" structure and to abide by all regulations contained herein. In addition, unless otherwise determined by the City Manager, CPS shall provide one off-duty police officer every day of each week during CPS's entire operating hours for that day. The City Manager may require an increase of the number of off-duty police officers to two (2), if such an increase is deemed necessary for the protection and safety of the public. CPS shall pay at least twenty-five percent (25%) of the compensation for the off duty police services. CITY shall obtain funds for the remaining compensation due the off duty police from adjoining tenants or businesses, or CITY shall pay the balance.

(j) CPS agrees to maintain the kiosk owned by it in good and safe condition. If the kiosk is removed by CITY, CITY agrees to provide similar enclosed and secured space to CPS adjacent to the Premises for management of the "Sunset Celebration."

(k) CPS shall require participants, prior to occupying the Premises, to register with CPS and to execute a form releasing CITY from any claims whatsoever arising from personal injury and property damage as a result of a person participating in the nightly event.

(l) CPS shall ensure that artists and food participants participate personally in the nightly event; no agents shall be allowed.

(m) CPS shall ensure that each artist and food participant has a current Sales and Use Tax Certificate Number prior to allowing them to participate in the nightly event. CPS shall require that artists and food participants possess current certificates, and CPS shall provide documentation of vendor names and Certificate Numbers to the Florida Department of Revenue, Key West Area Office, 3118 Flagler Avenue, and to CITY on a monthly basis.

(n) CPS agrees to use its best efforts to manage artists, food participants, and performers so as to prevent inconvenience to passengers and crew of cruise ships at Mallory Dock.

(o) CPS agrees to pay any and all taxes that may be or become due upon the Premises during the lease term, and renewal term, including but not limited to sales tax, real property, and ad valorem taxes, and personal property tax. It is specifically agreed that in the event that any of the aforementioned taxes shall become due, CPS shall be charged only those amounts directly related to its 4-hour period per day. Should the tax burden become such so that CPS can no longer continue paying the tax charges, then at the end of the tax year, CPS may terminate this Agreement upon thirty (30) days' notice to CITY.

**(9) Care of Premises, Emergencies, Security Measures**

CPS shall make no structural alteration to the Premises, its fixtures or appurtenances, and shall keep clear and unencumbered the "T"-shaped pier, the dolphins and catwalks, and all vehicular ramps. CPS shall not perform any acts or practices which cause damage to the Premises or its fixtures, or which present a menace or nuisance to the public; nor shall CPS paint or deface the Premises, or permit the use of any portion of the Premises for any unlawful purposes. CPS agrees to provide, at its expense, life-saving throw-rings or buoys at the Premises. CPS also agrees to use all reasonable effort to clear the Premises and maintain it clear of all persons and objects upon an emergency request by any agent of CITY, Monroe County or the United States of America. CPS shall keep clear the area designated according to the security level in effect according to the Exhibits B, C, and D attached when cruise ships are present at the premises, or as directed by CITY.

**(10) Insurance**

~~CPS covenants and agrees at its own expense to indemnify and save CITY harmless from and against any and all claims for damages or injuries to goods, wares, merchandise, and property and/or for any personal injury or loss of life in, upon or about the Premises arising for any reason whatsoever from or during use by CPS of the Premises, except such as may result solely from the negligence of CITY.~~

CPS covenants and agrees to keep in force during the lease term a comprehensive general liability policy of insurance insuring CITY and CPS against any liability whatsoever occasioned by accident on or about the Premises during the period of daily use, and agrees that CITY 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 \$1,000,000.00 (One Million dollars) in respect to any one (1) incident and in the aggregate, and shall include \$300,000.00 (Three Hundred Thousand dollars) for property damage. The original policy or certificate, together with evidence of premium payment, shall be delivered to CITY. CPS 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 CITY. 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 CITY. Failure of CPS to maintain the insurance in full force and effect at any time shall be deemed a material breach of the provisions of this Agreement, and shall entitle CITY to terminate the Agreement as provide in Section 15(b) below. Upon such breach, CPS shall immediately suspend all use of the Premises and shall provide to CITY written notice of its failure to maintain insurance coverage.

No acceptance or approval of any insurance policy or policies by CITY shall relieve or release or be construed to relieve or release CPS from any liability, duty or obligation assumed by or imposed upon it by the provisions of this Agreement.

None of the rights or obligations provided by this Agreement shall accrue to either party until CPS has in force the insurance policy(ies) required hereunder.

**(11) Nonprofit Status; Records; CITY Inspection**

(a) CPS shall maintain its status with the state and federal governments as a non-profit, tax-exempt corporation. Any failure to maintain such status, any change in corporate purpose, or any restriction or limitation of corporate membership, shall be deemed a material breach of the provisions of this Agreement and shall entitle CITY to terminate this Agreement as provided in paragraph (15)(b) below.

(b) CPS shall use standard accounting practices and shall keep all books and records up to date and in order. CITY shall have the right, upon reasonable notice, to inspect CPS' books and records. CPS shall file quarterly financial statements with CITY showing, at a minimum, receipts, disbursements, and net profit. Annually, within sixty (60) days after the end of the fiscal year, CPS shall provide to the CITY an audit performed by an independent Certified Public Accountant.

**(12) Assignment**

CPS shall not assign or mortgage any of its rights or interests under this Agreement in whole or in part; provided, however, that CPS may collect a fee from persons who, in its discretion, are allowed to offer goods or edibles during the period of daily use. This prohibition against assigning shall be construed to include a prohibition against any assignment or subletting by operation of law.

**(13) Use by Navy Vessels**

The parties agree that neither CITY nor CPS has control over the type and number of vessels that the United States Navy may dock at the Premises. The parties agree that security regulations and access by the parties may change depending upon the Navy's requirements. Navy regulations shall take precedence over the terms of this Agreement. The use by Navy vessels is not included in the number of special events allowed in this Agreement, nor is the use by Navy vessels permitted to remain docked during the sunset celebration included in the number of vessels permitted to remain in place as specified in the current Sovereign Submerged Land Lease No. 440769265 as it exists or is amended or renumbered.

**(14) Destruction**

If by reason of fire, act of God, unavoidable accident, or other casualty not the fault of CPS, its agents, employees, contractors, licensees or invitees, the Premises shall be rendered unusable, the monthly fee and vendor fee shall be abated during the period of repairs. This abatement shall be proportionate to the portion rendered unusable. CITY recognizes the possibility of disruption of "Sunset Celebration" during periods of renovation or repair and shall use its best efforts to plan and implement any and all renovations or repairs in the manner least disruptive to CPS. These efforts shall include, but not be limited to, providing signage, public service announcements, and coordination. If the Premises shall be rendered wholly unusable, CITY may, at its election, terminate this Agreement by giving CPS, within the sixty (60) days following the date of any of the above mentioned events, written notice of CITY's election to terminate the Agreement. In the event of such termination, payment by CPS shall be adjusted as of the date of termination. If CITY does not elect to terminate this Agreement it shall cause such damage to be repaired. CPS agrees that CITY may close the Premises to it and to the public in the event of disaster or emergency, which renders it temporarily or permanently unusable.

**(15) Default for Other than Nonpayment; Termination**

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Strict observance of the conditions and covenants in this Agreement are essential conditions upon which this Agreement is made and accepted. This Agreement shall be terminated upon any one of the following:

(a) By breach of any of the covenants or provisions of this Agreement: provided, however, that except as provided in Paragraph (15)(b) below, CPS shall be entitled to one written warning of any such breach delivered as provided in Paragraph (15) hereof, and shall have five (5) days after such delivery in which to achieve compliance. Subsequent violations of the same covenant or provision shall, at CITY's sole discretion, terminate this Agreement, and CITY shall not be required to issue another warning.

(b) By breach of covenants set forth in Paragraphs (8)(a), (b), (d) and (e), (9), (10), (11)(a), and (12). Written notice of termination shall be given to CPS as provided in paragraph (15) of this Agreement.

(c) By operation of Paragraph (14) of this Agreement.

(d) By CPS vacating or abandoning the use of the Premises.

(e) By reaching the end of the term as provided in Paragraph (5) above.

**(16) Access to Premises**

CITY, its agents or employees shall have the right to enter upon the Premises

during the period of daily use for the purpose of inspection, making repairs, improvements, and additions to the Premises or to any fixtures or property owned or controlled by CITY.

**(17) Payment**

Payment by CPS shall be presented to CITY at the following address:

Revenue Division  
City of Key West  
Post Office Box 1409  
Key West, FL 33041-1409

**(18) Notices**

All notices given pursuant to this Agreement shall be mailed United States mail, return receipt requested to the following addresses:

**CITY**

**CPS**

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City Manager  
City of Key West  
PO Box 1409  
Key West, FL 33041-1409

Chairman  
Key West Cultural Preservation Society, Inc.  
PO Box 4837  
33041-4837

The parties agree that notice to each shall be considered received and binding if delivery is attempted to the above addresses by postal officials. The parties are fully and solely responsible for the receipt of mail at these addresses.

**(19) Waiver**

One or more waivers of any covenants or conditions by CITY shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by CITY to any act by CPS requiring CITY's consent or approval shall not be deemed to waive or render unnecessary CITY's consent or approval to any subsequent similar act by CPS. The subsequent acceptance of payment by CITY shall not be deemed to be a waiver of any preceding breach by CPS of any term, covenant, or condition of this Agreement, other than the failure of CPS to pay the particular payment so accepted, regardless of CITY's knowledge of such preceding breach at the time of acceptance of such funds or additional vendor fee. No covenant, terms, or condition of this Agreement shall be deemed to have been waived by CITY, unless such waiver is in writing by CITY.

**(20) Surrender at End of Term**

Upon the expiration of the term hereof, or upon sooner termination of this Agreement as herein provided, CPS agrees to surrender and yield possession of the Premises to CITY peacefully and without further notice, and in good order and condition, but subject to ordinary wear and reasonable use thereof.

**(21) Entire Agreement**

This Agreement sets forth all the covenants, promises, and understandings between the CITY and CPS concerning the Premises. Except as herein provided, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon CITY or CPS unless reduced to writing and signed by both parties.

**(22) No Partnership**

CITY is not, and shall not become, in any way or for any purpose, a partner of CPS in the conduct of its business. CITY is not, and shall not become, in any way or for any purpose, a joint venturer or a member of a joint enterprise with CPS.

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**(23) Captions and Section Number**

The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections nor in any way affect the Agreement.

**(24) Attorney's Fees**

In the event litigation arises out of or results from the contractual relationship established between CITY and CPS by this Agreement, the non-prevailing party shall be liable for all costs, expenses, and fees, including attorney's fees, reasonably and necessarily incurred by the prevailing party as, and incident to, enforcement of the terms of this Agreement.

**(25) Subordination to Other Agreements**

The parties agree that the authority of CITY to enter into this Agreement, and the rights and duties of the parties to this Agreement, are limited by and subordinate to the terms of existing and future agreements between CITY and other parties, and specifically to existing and future leases and to the terms of Sovereignty Submerged Land Lease No. 440769265 entered into between CITY and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, as they may be amended from time to time. Should the City lose control of the Premises due to loss of bay bottom lease or failure of negotiations to result in a new bay bottom lease, this Agreement shall become null and void.

**(26) Severability Clause**

If a court of competent jurisdiction determines that any restriction in a clause or provision of this Agreement is void, illegal, or unenforceable, the other clauses and provisions of this Agreement shall remain in full force and effect, and the clauses and provisions that are determined to be void, illegal or unenforceable shall be limited so that they shall remain in effect to the extent permissible by law.

**(27) "Chain of Command"**

In the event of disputes at the Premises which are not an immediate threat to life, safety, or property, the following shall be contacted, in order, for dispute resolution purposes:

- (a) Pier Manager
- (b) Mallory Square Coordinator
- (c) Key West Police Dept.

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



*Cheryl Smith*  
Cheryl Smith, City Clerk

CITY OF KEY WEST

By: *Jimmy Weekley*  
Jimmy Weekley, Mayor

THE KEY WEST CULTURAL  
PRESERVATION SOCIETY, INC.

ATTEST:-

*William Perez*

By: *Isaac Valdes*  
Isaac Valdes, Chairman  
Print Name and Title

KEY WEST HARBOR

MALLORY PLAZA

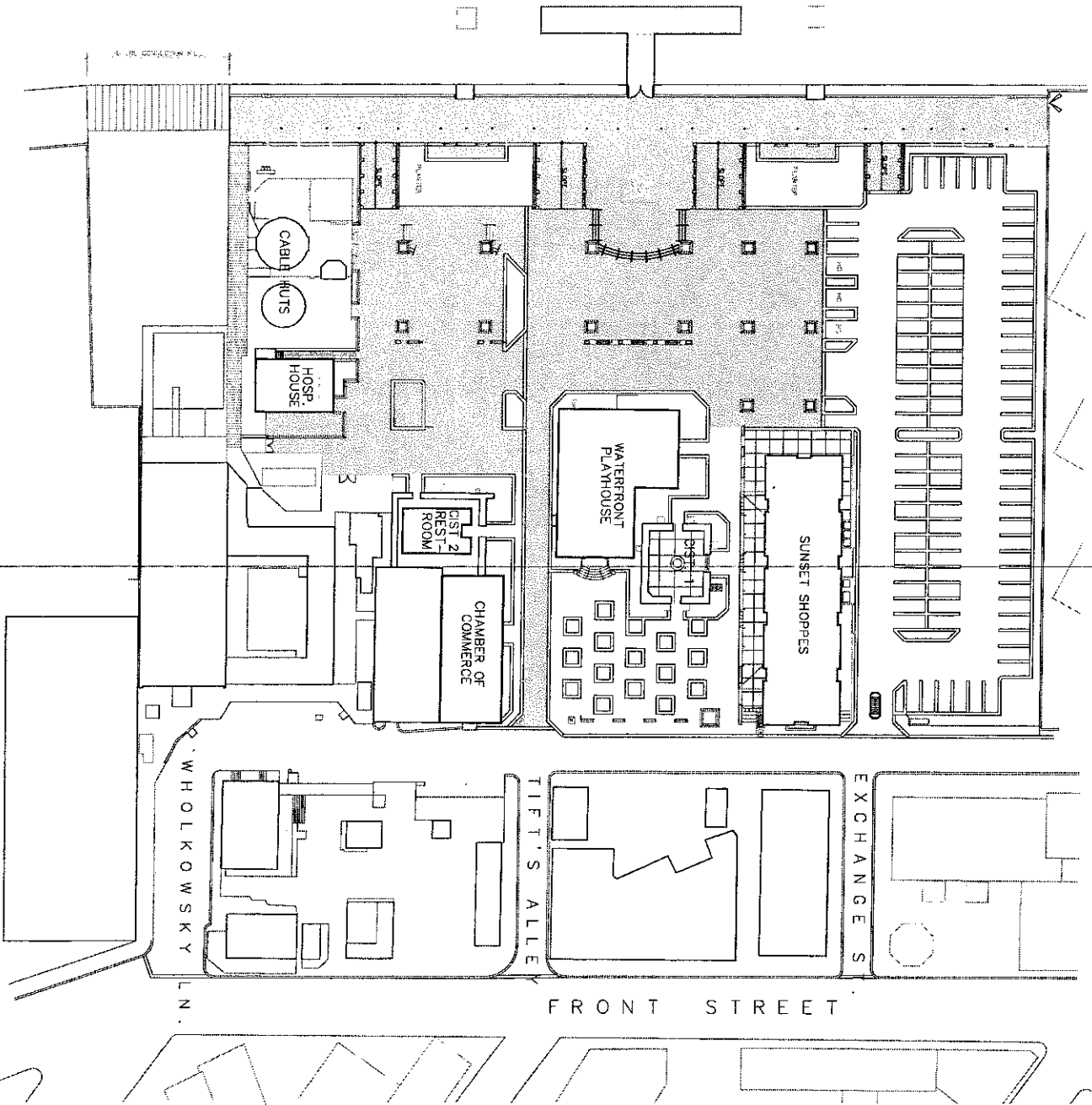
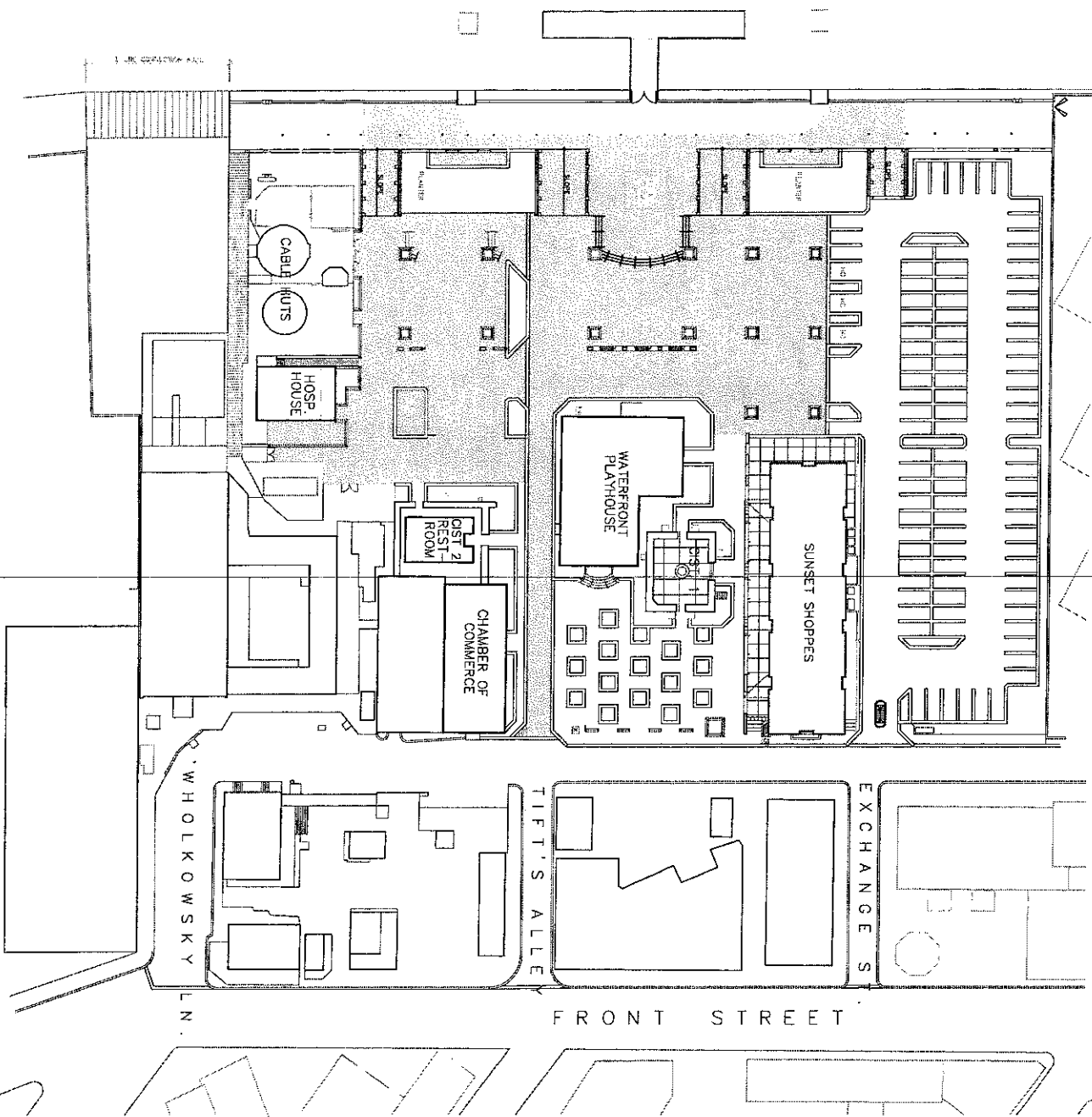


EXHIBIT A

KEY WEST HARBOR



MALLORY PLAZA

CRUISE SHIP SECURITY LEVEL YELLOW

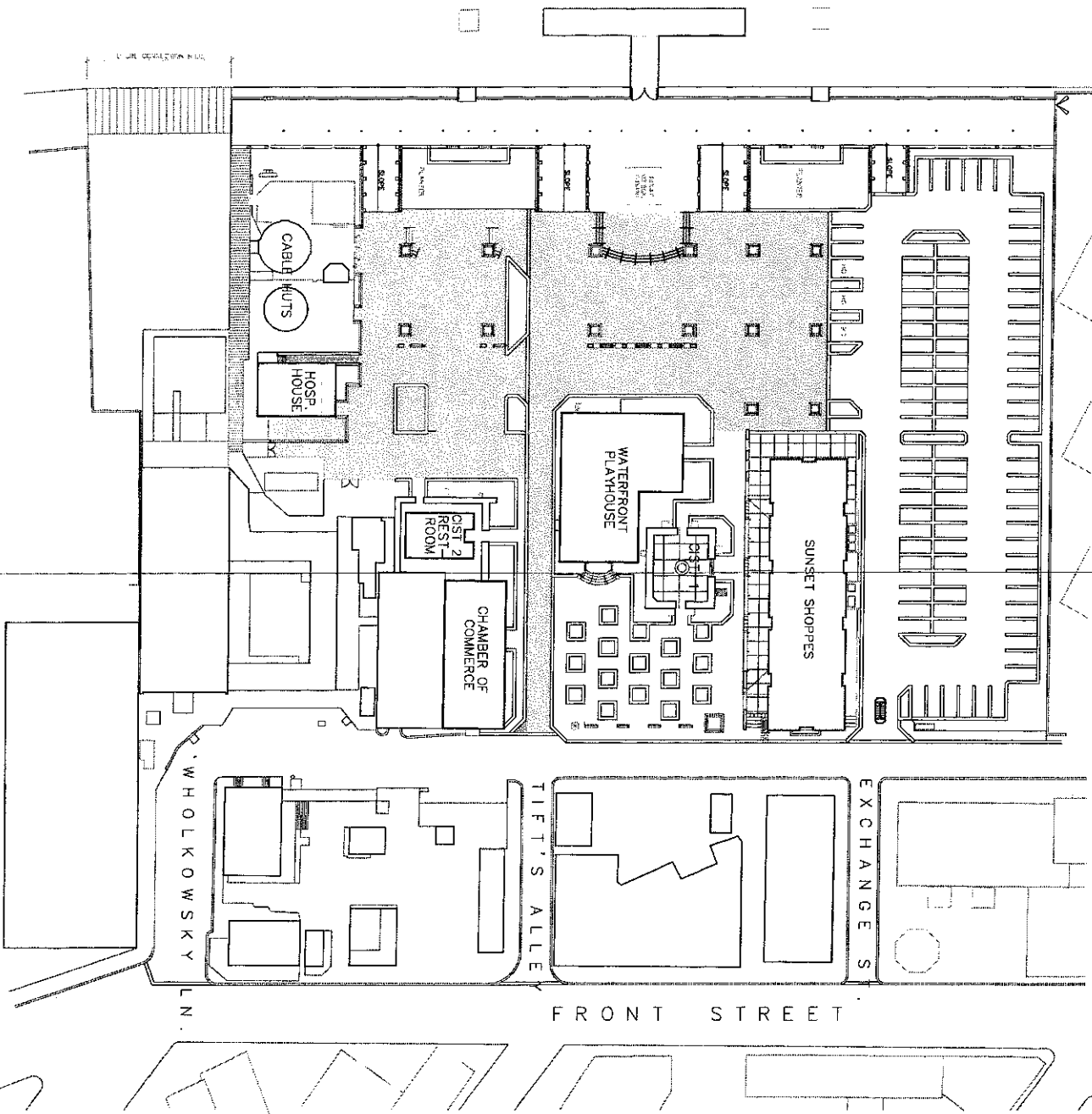
EXHIBIT B

KEY WEST HARBOR

MALLORY PLAZA

CRUISE SHIP SECURITY LEVEL ORANGE

EXHIBIT C

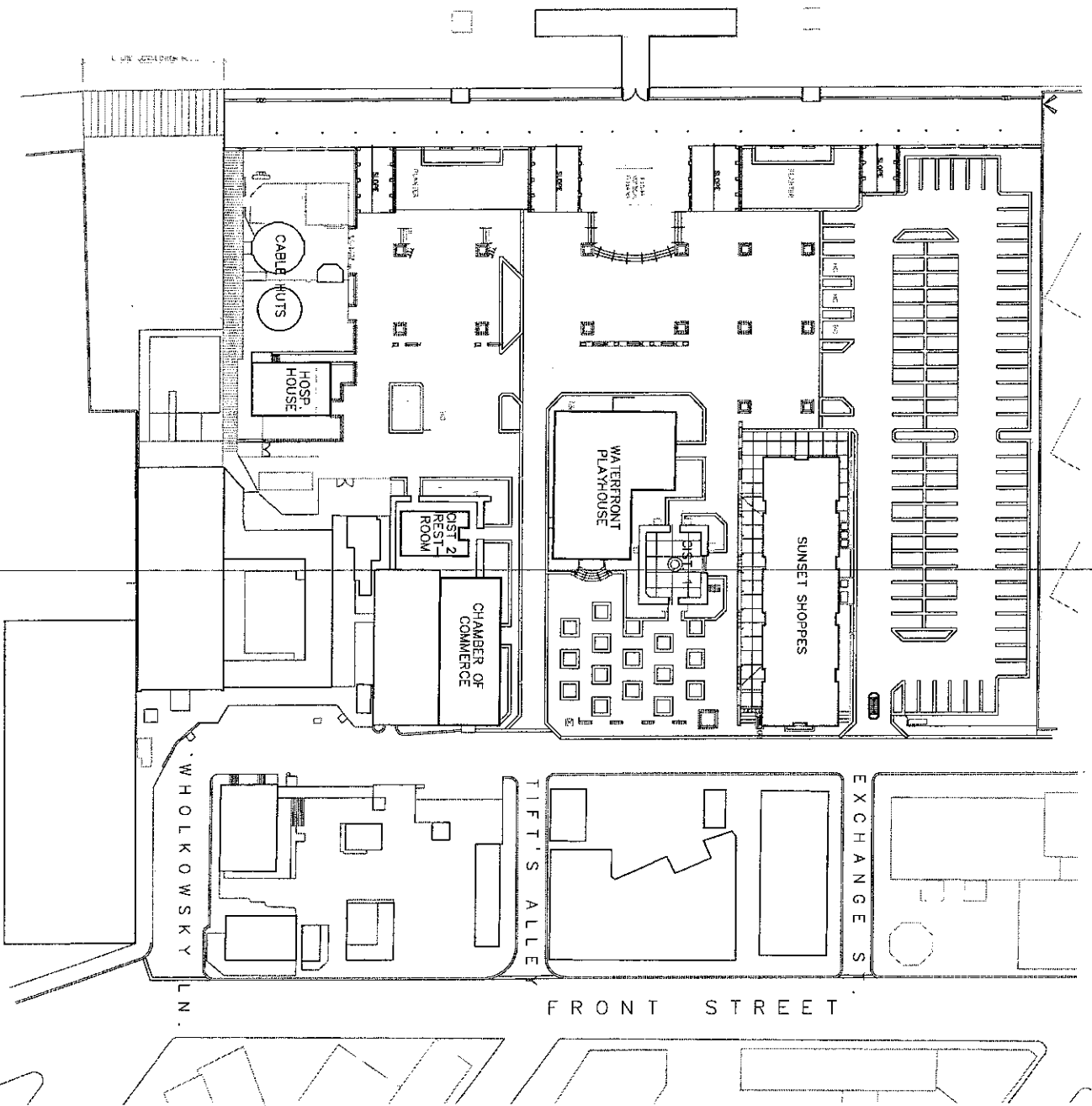


KEY WEST HARBOR

MALLORY PLAZA

CRUISE SHIP SECURITY LEVEL RED  
PLAZA AND PARKING LOT CLOSED

EXHIBIT D



Printed: December 29, 1999

**from Approved Lease with the City of Key West dated:  
December 2, 1997 and adopted on this date by the City  
Commission**

**Key West Cultural Preservation Society, Inc.**

**November , 1997**

**Proposed revision Guidelines**

**PARTICIPATION COMMITTEE**

- A. The purpose of the Participation Committee is to:
- insure authenticity of craft, art, or event at Sunset (the idea of aesthetic quality is not to be used as a criterion),
  - make the initial decision regarding participation in the nightly Sunset Celebration,
  - promote art as a cottage industry - *see attachment 1*
  - encourage creative growth,
  - and to maintain a list of participants which will be kept in committee records.
- B. The Participation Committee will be comprised of seven members with two alternate members. A quorum of four is necessary for any decision. The committee shall meet twice monthly. The committee shall also have two qualified people available to jury twilight category.
- C. If a dispute arises, the Committee may make a decision on the pier if a quorum is present, however, all jurying shall occur at a regular Participation Committee meeting, and any items in question can remain on the pier until such a decision is reached by the Participation Committee, unless otherwise requested by the Pier Manager. Individuals in violation must be noticed in writing within 72 hours of violation occurring unless said occurrence is amicably resolved on site. Notice of violation can be waived in writing.
- D. The Committee is selected by the CPS board, with CPS member suggestion as to personnel makeup. The Committee shall elect a chairman at their first regularly scheduled meeting each year following Board of Directors appointment of the Committee.
- E. The members of the Committee serve at the pleasure of the CPS board and are members in good standing of CPS.
- F. The Committee is the Board of Appeals for decisions made by the On-site Manager and the Board of Directors is the Board of Appeals for decisions made by the Committee.

## **SUMMARY**

The committee is authorized to evaluate and examine all aspects of the operation and development of artistic and cultural concerns in the Mallory Area, and report to the CPS Board of Directors its findings and recommendations. The Committee is further vested with all power and authority reasonably necessary for the execution of all responsibilities conferred upon it by this set of guidelines.

## **ONSITE MANAGER**

On-site Pier Manager is a paid position, hired by the board of directors, and serves at the direction of and under the discretion of the Board of Directors. The position requires knowledge of guidelines and traditions and "Spirit of Sunset". The On-site Manager's duties and responsibilities will include the following:

- to collect participants' registrations and releases, Florida State sales tax numbers, and twenty dollar sales tax security deposits.
  - to adjudicate booth size and location: (8 ft. wide, 6 ft. out and no taller than 4 ft. on the front 3 ft, with the exception of Food Participants height, all other exceptions to be made by the Participation Committee).
  - to implements all blind drew lotteries for space.
  - to assure that booth and performance set-up for the Sunset Festival begins no sooner than 2 hours before sunset each night in accordance with the Lease between the City of Key West and the CPS.
  - to ask participants to remove items if items do not appear to be hand crafted by the participants.
  - to attempt to adjudicate with fairness and equity with no discrimination, in accordance with the written Articles of Incorporation, Bylaws, Guidelines and Lease.
  - to instruct participant to alter or remove item, or cease activity, if it is deemed harmful to health, safety or welfare of the public
  - to contact Mallory Square Coordinator or police if necessary, or in cases of emergency. In non-emergency situation, will consult the Participation Committee and/or Board of Directors.
  - to remain on site during the hours of operation.
  - to attend all PC meetings in a non-voting status.
  - to perform any and other duties that arise from time to time from the Board of Directors.
  - to be responsible for having pier cleaned at the end of each evening.
  - to be responsible for keeping life rings or life jackets available for emergencies.
  - to come to or submit report to the Board of Directors meetings.
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- to post the report or minutes of Participation Committee and Board of Directors meetings and agendas for all meetings at the Kiosk in a timely manner
  - to give PATA an accurate participant count at the end of each night.
- F. The On-site Manager reserves the right to deny participation to anyone not in compliance with these guidelines, and shall notify Participation Committee and post written notice of violation or lack of compliance in the daily log.

## **ARTS AND CRAFTS AND FOOD**

**A. All participants shall sign CPS Registration and General Release forms and have Florida State sales tax number and a twenty dollar processing fee where applicable.**

**B. Arts and crafts shall be hand made by the participant or created or changed substantially in nature by participant for display or sale at the Sunset Festival. A potential participant must make his or her product(s) in front of PC and must come to the PC meeting prepared to do this. If this is impossible due to equipment restrictions, a home jurying can be arranged, but PC must see items first at a meeting to determine the need.**

**C. Policy is to suspend jurying when current participants have been turned away three evenings during the previous attendance book week. Prospective participants may be warned of this in advance.**

**D. Artists or craftsman shall be on site with their work; no agents or dealers will be allowed.**

- **An agent is defined as any person who would be present without the artist or food vendor and does not substantially participate in the production of the item being sold.**
- **To be recognized as a partnership by CPS all partners must sign the CPS waiver, jointly, and be juried as one entity all members of a partnership must jointly make all items and conform to paragraph B. A written agreement between partners shall be filed with CPS stating which partner has rights to which products. They must share the same space and have all names on the sales tax license. The partnership accrues the credit jointly, but is tracked in the attendance book individually, based on who draws and pays for the lottery key nightly. Should a partnership split up, the issue of who gets the seniority will be decided by the seniority accrued by each individual. The partner without seniority has the right to start as a new entity subject to jurying by the PC. If an individual takes on a partner after accruing seniority the new partnership is considered a new entity and the old partner must give up their seniority and start as a newcomer. Any questions regarding partnership and seniority may be addressed by the Board of Directors.**
- **A helper has no status of his own, and can be on site only with the active participant at the discretion of the pier manager. Helpers in Twilight Category (Hair wrappers, Readers, etc.) must be considered partners because they work individually.**

**D. Items will be judged for authenticity, originality, creativity and adherence to these guidelines and not according to anyone's standard of quality.**

**E. No jurying shall be done between PC meetings.**

**F. All bead work shall be hand strung by the participant no exact copies of imported or commercially catalogued items or items which are already over represented on the pier and in the community.**

**G. All items of questionable origin or manufacture (this is to be determined by the On-site Manager) shall be brought before the Participation Committee which can require crafts persons to do any and all of the following:**

- **actually produce said item before the Participation Committee,**
- **and/or show raw materials,**

• and/or show work place or studio, and may be required to show their invoices for raw material.

H. All new craft items shall be juried before being offered for sale. Any item which is substantially different from items already sold by crafts person must be juried by Participation Committee prior to being sold on pier. For current participants, a new products application shall be available at the pier. Participants shall fill out application and attach new product which shall be reviewed and voted on at the next regularly scheduled PC meeting, if there are questions, participant shall be asked to attend the meeting. The product is not to be offered for sale prior to PC approval.

I. Silk screened items shall be designed, the screens made and items printed by the participant.

J. Reproductions of original artwork must be juried by PC. They must conform to the 1/3 rule and be combined with original artwork on display. Participants must have made mats, and/or be framed or be hand tinted in some way have hand work. Only reproductions of the artist's own work is to be allowed.

K. Photographers must take own pictures but they can be developed commercially. The mattes or frames must be hand made by the participant or must have other hand work such as coloring or etc.

L. A cap on T-shirts and jewelry exists between Oct. 20 and May 1 (a period considered "season". This cap can be broken only in cases of work which the committee deems truly unique. Uniqueness is not defined as unique to the pier but as very unusual work.

M. One Third ruling: Participants who make complex or time consuming products can make one third of their product in a simpler or less time consuming manner in order to allow greater earnings. These products are subject to PC approval.

N. Misrepresentation of products or making oral or written misleading statements regarding products or services will not be tolerated. Violations of this shall be grounds for penalty or suspension as determined by the board. In all cases honest signage is required.

O. Any two or more persons jointly engaged in the creation of a single art or craft or food item shall occupy the same allotted space.

P. There shall be no signage offering wholesale

Q. No motorized vehicles are allowed on the pier, with exceptions to be made by the board on a case by case basis.

R. PC members will walk the pier from time to time and the Pier Manager may ask a participant to remove an item which is in flagrant violation. This can be appealed at the next meeting.

## FOOD

A. All participants shall sign registration and release.

B. Food items must be created or substantially altered by participant. All food items must be prepared by participant. No commercially precooked or other commercial food products will be allowed (e.g. hot dogs, pretzels, pre-packaged drinks or drinks made from drink mixes). No more than six separate food items shall be sold by any participant. New food items shall be judged based on originality, uniqueness and availability of similar products on the pier. Food participants will remove their own trash and not use public receptacles. Food participants will be assessed a reasonable charge for trash clean-up and removal.

C. Food vendors shall comply with all applicable health code and licensing requirements, and shall display all necessary health department certificates without exception.

D. Only state licensed persons, where applicable, will be allowed to sell food.

E. There will be no agents, dealers or franchises. No partnerships in more than one cart or space will be allowed.

F. Fire extinguishers are required for vendors using an open flame.

G. Butane and propane are the only acceptable fuels allowed.

H. No new items are to be sold without health department approval.

I. Food participants must arrive or call by the beginning of the artist's lottery so as to be counted per our lease.

\* J. There will be a limit of 10 food vendors unless there are fewer than 50 participants, at which time the cap of ten food vendors may be lifted.

## **PERFORMERS**

A. All performers shall adhere to the following guidelines:

- Shall sign a registration and release form
- Participate in the nightly lottery
- Perform close to the large curb, with your back to the water while facing the land side
- Keep your audience toed up to the dotted black line running the length of the pier (it is recommended that you use a rope to delineate your stage area)
- Regulate your "show" time to a half hour or less while taking at least a fifteen minute break between shows
- Refrain from using profanity or obscene language in your act
- Be courteous to spectators and fellow performers alike
- No use of amplification is permitted
- If fire is used in an act, a fire extinguisher is required
- Drinking alcoholic beverages is prohibited
- If your act generates a mess, you must clean it up

B. The Performer's lottery will be seniority based with the following categories:

- Honorary regular performers- 10 years (with Performers Committee approval).
- Permanent Regular Performers- 5 full successive seasons with Regular Performer status
- Regular Performers- Regular Performers are those who work from 60 days to three years on the pier.
- Newcomers- Anyone who has worked 59 days or less. Newcomers are always welcome

C. The Performer Lottery will be operated as follows:

- The lottery will begin approximately two hours and 15 minutes before sunset
- Call ins will be accepted from five minutes before until five minutes

after designated lottery start time

- Call ins will be picked last in their category
- Late walk ins can participate in lottery up until the time in which the numbers are called in their category
- Performers who have participated less than 35 days in the previous quarter shall fall back to the next lowest category until they make up the number of days that they are shy of the 35.

D. The change of status of any Mallory Square performer is subject to the approval of the Performers Committee. Any performer who believes he/she is being treated unfairly and therefore has a grievance may appeal to the Board of Directors of CPS and all interested parties will seek a satisfactory resolution to the dispute

E. Because each performer owns the rights to his own act, neither CPS nor anyone else has any right to negotiate any contract on behalf of the performer without his express permission. When the Pier Manager is informed of any commercial film company's plans to film the activities on the pier, he will notify the performers as soon as possible. Those performers who wish not to be filmed will notify the Pier Manager who in turn will notify the film company of the performer's request.

F. Performers shall have a Performers Committee comprised of seven members plus two alternates. A quorum shall be four members. They shall meet on a regular basis. The committee shall be elected each year following the general meeting at a performers open meeting. ~~The committee is subject to approval by the Board of Directors and serves at the direction of the Board of Directors.~~ The Committee shall keep minutes of all performer meetings and shall report to the board

G. A donation is requested to be made each night to help cover the cost of managing the Sunset celebration and providing insurance as required by the city.

H. The use of any non-professional person in any act, which would create an insurance liability (as determined by the pier Manager) is banned

I. Any decisions made by the Pier Manager are binding, unless appealed to the board.

### **SPECIAL CATEGORY**

A. To ensure the spontaneity and the spirit of sunset, a special events category may include:

- Charity or community service groups
- Traditional sunset participants and personalities not defined by previous categories such as Palm Readers, Tarot, Psychics Astrologers, Portrait Artists, Caricaturists, etc, shall be juried at a Participation Committee meeting prior to first setup.

B. These participants must sign registration and release

C. From October 20 through May 1, above mentioned Special Category participants shall participate in Lottery for land side and shall be allowed to set up on water side from May 1 through October 20. Individual exceptions may be made at the On-site Manager's discretion on a space available basis.

## MISCELLANEOUS GUIDELINES

- A. All participants are asked to respect the traditional set-up of performers on the "water" side and artists/crafts persons/food on the "land" side of the pier.
- B. For the purpose of these guidelines, performers are defined as buskers who work only for donations and all other participants are defined as anyone who charges a set fee.
- C. Professional camera crews must consult with the On-site Manager before filming.
- D. Non-participants may not distribute commercial pamphlets on the pier
- E. In order to assure fairness, it may be necessary from time to time to limit the number of participants in any category.
- F. All participants shall report to the On-site Manager two hours before the estimated time of sunset and participate in the daily Lottery before they set up, with the exception of food participants, who shall be assigned space by the pier manager. Food vendors shall be allowed to set up no sooner than 30 minutes prior to lottery, but shall not sell until two hours before sunset according to the lease with the City of Key West.
- G. All participants will be juried prior to initial setup and thereafter as the situation warrants.

Participants shall be on site and operational no later than thirty minutes after lottery is completed, with the exception of the performers.

- I. No participant shall occupy more than one 6' by 8' space.
- J. The use of gas generation is prohibited
- K. No toxic substances allowed
- L. No participant shall interfere with or damage the property of another participant.
- M. Abusive, discourteous or drunken behavior to visitors or other participants shall not be tolerated and shall be grounds for suspension. The period of suspension is to be determined by the Pier Manager. Suspensions can be appealed at the next regular board meeting.
- N. Any member of CPS giving time to CPS projects is given credit for that time, hour for hour. For every four hours given to CPS projects, a credit of one night on the pier is given, not as a free setup, but to earn days in maintaining or attaining status.

## BLIND DRAW LOTTERY

- A. There is a cap of 50 regular crafts person participants,
- B. The Blind Draw Lottery consists of four categories:
  - REGULAR PARTICIPANT- Has participated 150 days on Pier and is allowed 90 consecutive days absence. Regular participants may make up days missed over 90 days but starts new after 180 days absence. EXAMPLE: 120 day absence must make up 30 days in snow bird category.
  - SNOW BIRD IN WAITING- More than 150 days, until there is an opening

in regular category.

- SNOW BIRD- Less than 150 days more than 60 days.
- NEW COMERS- Less than 60 days.

**Grandfather Status-** If the participant has participated for five consecutive years, as a dues paying member in a regular category, and maintained that membership in the event of a hiatus at the pier, he/she is grandfathered into permanent Regular or Local status.

- D. All non-grandfathered Participants must be on the pier at least 90 days in each calendar year or lose their status unless membership is current.

Once a participant has been on the pier as an active participant for the past three consecutive years and leaves for more than 180 days, that participant will be an Honorary (Perpetual) Snow Bird upon return. The participant's day count will start at one, but the participant will draw from the Snow Bird category.

- E. There is no loss of status when changing categories between food vendor, artist, entertainer, or special category, however a participant cannot operate simultaneously in two unrelated categories.

- F. Participants who do not pay before set up shall be assigned space by the Pier Manager after Lottery is completed.

- G. Participants may draw keys for other participants as long as payment is made for each key drawn. There are no refunds for those who fail to use a key drawn on their behalf.

### CITY REGULATIONS

- \* A. CPS and all of its participants and performers, agree to conform with all regulations of the City of Key West. A participant or performer found to be in violation of a City regulation may be subject to expulsion by the board.

- \* B. In the event that the City and CPS determine that a participant or a performer is involved in an undertaking that might pose liability to the city or CPS, the City and CPS may require of the participant and performer additional insurance and the execution of an Indemnification.