

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.

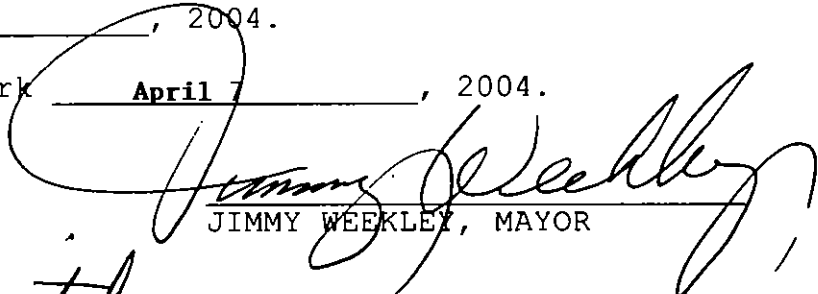
Passed and adopted by the City Commission at a meeting held this 6 day of April, 2004.

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 21st 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 14th, 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:

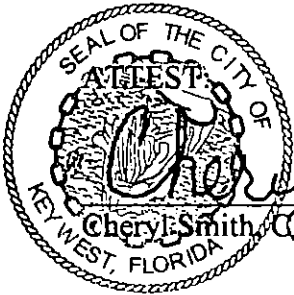
As to LANDLORD: City Manager
City of Key West
P.O. Box 1409
Key West, FL 33041

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

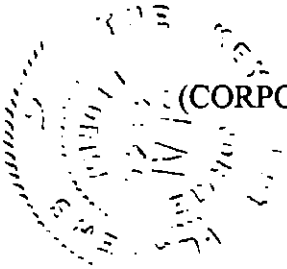
By: *Julio Avel*
Julio Avel
City Manager

ATTEST:

KEY WEST PLAYERS, INC.

George Gugliotti
Name: GEORGE GUGLIOTTI
Title: EXECUTIVE BOARD MEMBER

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



(CORPORATE SEAL)



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

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