

RESOLUTION NO. 07-159

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY AND THE KEY WEST BOTANICAL GARDEN SOCIETY, INC; PROVIDING FOR AN EFFECTIVE DATE

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

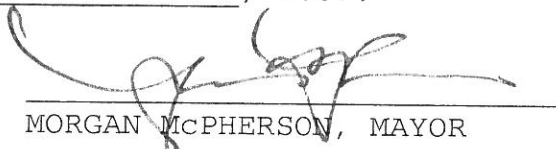
Section 1: That the attached First Amendment to Lease Agreement is hereby approved, contingent upon the completion of the Husbandry Report and Major Specimen Inventory referenced in paragraphs 5 and 17 of the Lease Agreement being completed within 60 days.

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 1st day of May, 2007.

Authenticated by the presiding officer and Clerk of the Commission on May 8, 2007.

Filed with the Clerk May 8, 2007.

  
MORGAN McPHERSON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

## FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement is entered into this 7th day of May, 2007, by and between the City of Key West, Florida, a municipal corporation, (hereinafter "LESSOR") and the Key West Botanical Garden Society, Inc., a not-for-profit corporation organized under the laws of the State of Florida and a 501 (c)(3) exempt organization, (hereinafter "LESSEE").

### WITNESSETH

WHEREAS, LESSOR and LESSEE entered into a Lease Agreement pursuant to City of Key West Resolution No. 06-180, (the "Lease Agreement"), pertaining to the premises located at 5210 College Road on Stock Island, Key West, Florida; and

WHEREAS, the LESSOR and LESSEE now desire to amend their Lease Agreement.

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, LESSOR and LESSEE agree as follows:

**Section 1:** That the reference to "Purchase of Premises" in the title to paragraph 1 of the Lease Agreement is hereby deleted.

**Section 2:** That paragraph 1(b) and paragraph 1(c) of the Lease Agreement are hereby deleted.

**Section 3:** That paragraph 10 is amended to include the sentence "Such consent may be arbitrarily and unreasonably withheld and is within the absolute discretion of the City Commission."

**Section 4:** That a new paragraph "26" is added which reads:

26. The Lessee expressly agrees that it will include a disclaimer in all contracts, grant applications and other relevant documents with third parties that states

Disclaimer and Waiver of Lien Right. It is acknowledged and agreed between the parties hereto that the Key West Botanical Garden Society, Inc. ("KWBGS") is a Florida corporation wholly and completely independent from the City of Key West; that KWBGS operates its primary activities on land leased from the City of Key West; that the activities contemplated by this contract/grant may involve improvements either to or located on land leased from the City of Key West; that the City of Key West is not a party to this contract/grant, has not been

involved in the negotiations establishing this contract/grant, and is not liable for the obligations of KWBGs under this contract/grant in any way whatsoever either directly or indirectly; and therefore the parties hereto agree that neither of them shall in any way look to the City of Key West, its officers or employees to fulfill obligations under this contract/grant and that the parties hereto waive any right to place a lien upon the property of the City of Key West for the fulfillment of any obligations under this contract/grant.

**Section 5:** Except as modified herein, the Lease Agreement shall remain in full force and effect.


IN WITNESS WHEREOF, the parties have made this First Amendment to Lease Agreement on the date first written above.

CITY OF KEY WEST, FLORIDA

By: 

JULIO AVAEL, CITY MANAGER

ATTEST:

  
CHERYL SMITH, CITY CLERK

KEY WEST BOTANICAL  
GARDEN SOCIETY, INC.

By: 

GAROLANN SHARKEY,  
CHAIRMAN OF THE BOARD

PETER RYSMAN, PRES.

ATTEST:

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Secretary