

RESOLUTION NO. 15-365

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED THIRD AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY AND THE KEY WEST BOTANICAL GARDEN SOCIETY, INC. FOR USE OF A PORTION OF THE PROPERTY LOCATED AT 5205 COLLEGE ROAD LEASED BY THE KEY WEST SAIL AND POWER SQUADRON, IN ORDER FOR THE KEY WEST BOTANICAL GARDEN SOCIETY, INC. TO ESTABLISH A CANOE/KAYAK LAUNCH/LANDING AREA; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 06-180, the City Commission approved a lease with the Key West Botanical Garden Society, Inc.; and

WHEREAS, in Resolution No. 07-159 the City Commission approved the First Amendment to Lease Agreement;

WHEREAS, in Resolution No. 13-283 the City Commission approved the Second Amendment to Lease Agreement; and

WHEREAS, in order to facilitate a connection to the Florida Keys Paddling Trail and to fulfill the City's development commitment pursuant to a Florida Communities Trust Grant Agreement

approved in Resolution 04-018, the Key West Sail & Power Squadron has agreed, in concurrent resolution No. 15-365, to grant use of a portion of their premises for a canoe/kayak launch area in conjunction with the Key West Botanical Garden Society, Inc.; and

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

Section 1: That the attached Third Amendment to Lease Agreement is hereby approved.

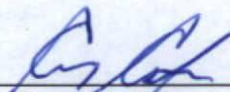
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 2nd day of December, 2015.

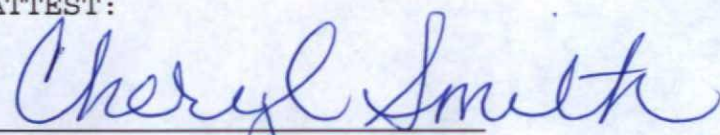
Authenticated by the presiding officer and Clerk of the Commission on December 3, 2015.

Filed with the Clerk \_\_\_\_\_ December 3 \_\_\_\_\_, 2015.

Mayor Craig Cates	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

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

ATTEST:

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

### THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to Lease Agreement is entered into this 2nd day of December, 2015, by and between The City of Key West, Florida (hereinafter "LANDLORD") and Key West Botanical Garden Society, Inc., a Florida not for profit corporation, organized under the laws of the State of Florida (hereinafter "TENANT").

#### WITNESSETH

WHEREAS, LANDLORD and TENANT entered into a Lease Agreement pursuant to City of Key West Resolution No. 06-180 (the "Lease Agreement"), the First Amendment thereto per Resolution 07-159, and Second Amendment thereto per Resolution 13-283, pertaining to the premises located at 5210 College Road, Key West, Florida; and

WHEREAS, the LANDLORD and TENANT now desire to amend their Lease Agreement which is attached hereto as Exhibit "A".

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

1. The Lease Agreement is hereby amended by the addition of a paragraph styled No. 26 to provide as follows:

The TENANT herein shall be granted the use of the demised launch area, as depicted on Exhibit "B" attached hereto and incorporated by reference (hereinafter "launch area"), for the sole purpose of establishing a public canoe/kayak launch/landing area in support of the Florida Communities Trust Grant's Paddling Trail.

2. The Lease Agreement is hereby amended by the addition of a paragraph styled No. 27 to provide as follows:

The Key West Botanical Garden Society, Inc. agrees to make the following improvements at its' sole cost and expense:

- a. Provide a piling and multi-strand rope style fence with specifications to be approved by the LANDLORD AND TENANT, beginning at the edge of the mangrove and ending the front gate post as shown on Exhibit "B";
- b. Provide and install landscaping in the launch area and provide one 4 foot native palm replacement tree on the property as required by the removal of one coconut palm which shall be approved by the LANDLORD and the Key West Power & Sail Squadron, Inc.;
- c. Provide and install signage at the front of the launch area with hours of operation and rules, which shall be approved by the LANDLORD the Key West Power & Sail Squadron, Inc.;

3. The Lease Agreement is hereby amended by the addition of a paragraph styled No. 28 to provide as follows:

The Key West Botanical Garden Society, Inc. agrees to provide the following, at their sole cost and expense on an on-going basis:

- a. Open and close the launch area on a daily basis in conformance with the hours of operation;
- b. Provide and empty trash and recycling containers daily;
- c. Maintain the walkway, boardwalk, landscaping and dock in the launch area however maintenance does not include any structural repairs or replacements to the dock;
- d. Keep and maintain a commercial liability policy in a minimum amount of \$2,000,000 aggregate and \$1,000,000 per occurrence naming the LANDLORD and the Key West Power & Sail Squadron, Inc. as additional insureds with respect to the use of the launch area.

4. The Lease Agreement is hereby amended by the addition of a paragraph styled No. 29 to provide as follows:

The LANDLORD agrees to make the following improvements at its' sole cost and expense:

- a. Improve the launch area to provide for ADA compliance through the construction of one handicap drop off space with a concrete ramp joining a boardwalk ramp leading up to and joining the existing dock;
- b. Install and compact Schedule 57 rock in the launch ramp area;
- c. Provide 2 front entry gates; one to the launch area and one to the Sail and Power Squadron Demised Premises utilizing aluminum swing gates as shown on Exhibit "B".

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

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



ATTEST  
*Cheryl Smith*  
Cheryl Smith, City clerk

Landlord: City of Key West, Florida

By: *Craig Cates*  
Craig Cates, Mayor

Tenant: Key West Botanical Garden Society, Inc.

*Rick Hart*  
Witness  
*Rick Hart*  
Witness

*Breathnael Rasch*  
By: *Breathnael Rasch - President.*

The foregoing Third Amendment to Lease Agreement was acknowledged before me this 11 day of Nov., 2015, by \_\_\_\_\_, who is personally known to me, or who [ ] produced personally known as identification.

Rebecca Gleason

Notary Public

Print name: 11/11/15

My commission expires:

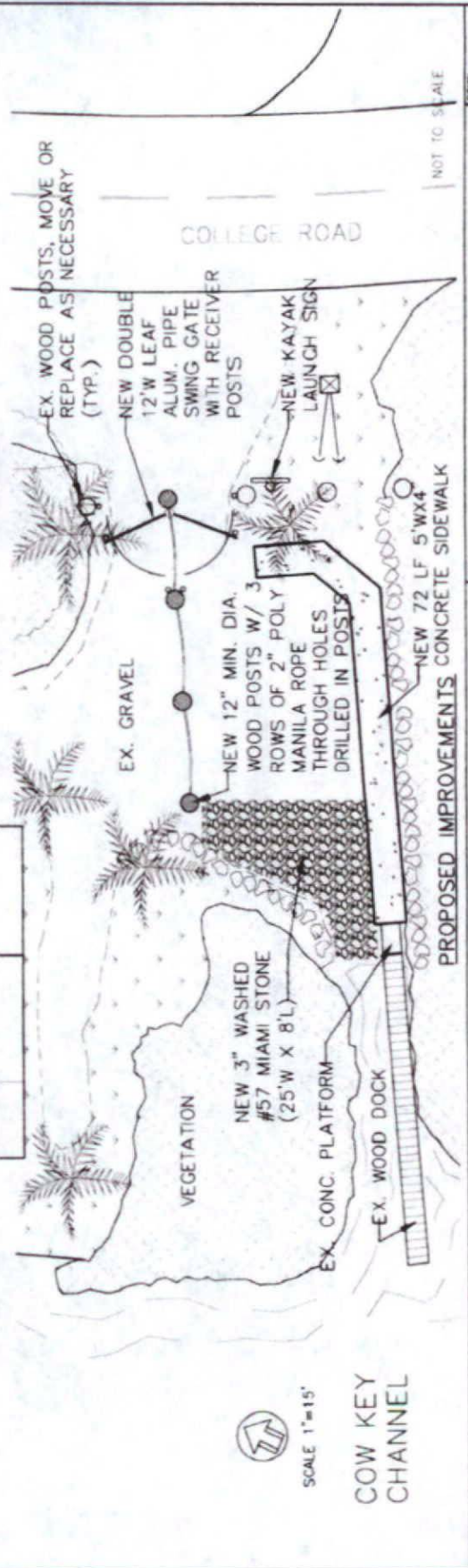
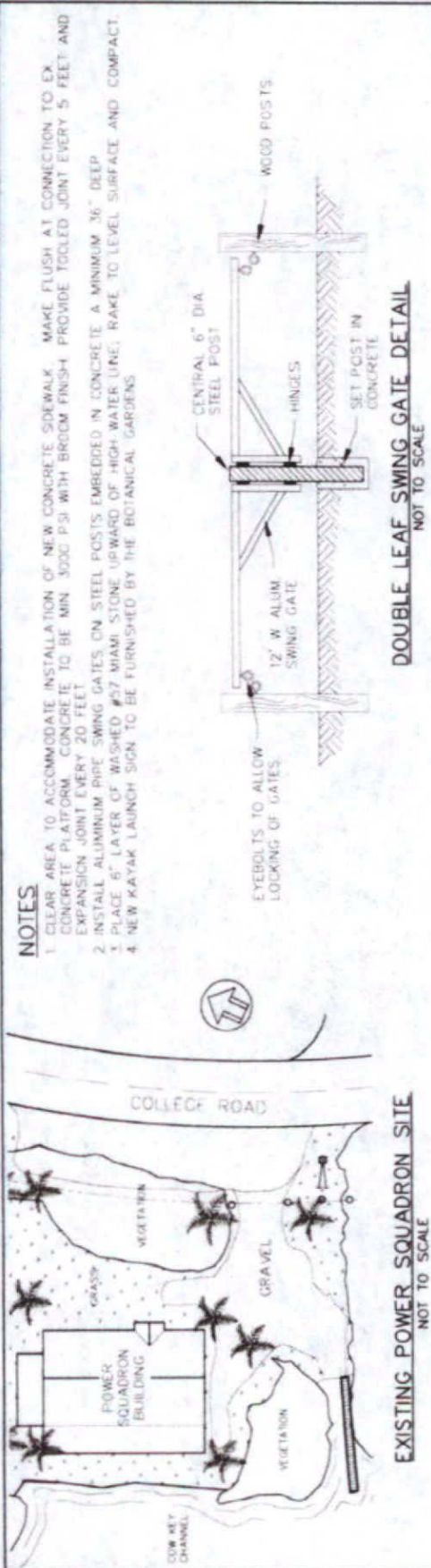


**Exhibit "A"**  
**Lease Agreement**

**Exhibit "B"**

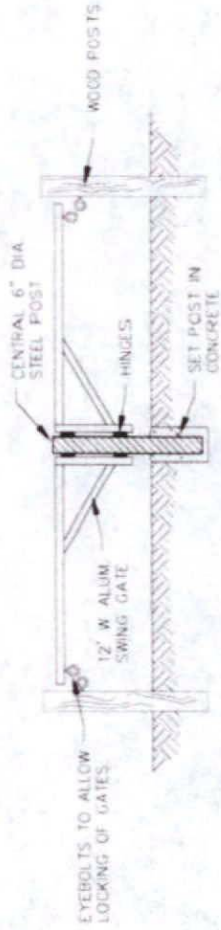
**Demised Launch Area**






**NOTES**

1. CLEAR AREA TO ACCOMMODATE INSTALLATION OF NEW CONCRETE SIDEWALK. MAKE FLUSH AT CONNECTION TO EX. CONCRETE PLATFORM. CONCRETE TO BE MIN. 3000 P.S.I. WITH BROOM FINISH. PROVIDE TOoled JOINT EVERY 5 FEET AND EXPANSION JOINT EVERY 20 FEET.
2. INSTALL ALUMINUM PIPE SWING GATES ON STEEL POSTS EMBEDDED IN CONCRETE A MINIMUM .36" DEEP.
3. PLACE 6" LAYER OF WASHED #57 MIAMI STONE UPWARD OF HIGH WATER LINE. RAKE TO LEVEL SURFACE AND COMPACT.
4. NEW KAYAK LAUNCH SIGN TO BE FURNISHED BY THE BOTANICAL GARDENS.



**DOUBLE LEAF SWING GATE DETAIL**  
NOT TO SCALE

	<b>City of Key West</b> Engineering Services 3132 Nadler Avenue, Key West, FL 33940		<b>EXHIBIT B</b>	<b>KAYAK LAUNCH</b> COLLEGE ROAD (POWER SQUADRON SITE)
	G.M.V. AS NOTED DATE: 10/21/15 SHEET: 1 of 1			

# EXECUTIVE SUMMARY



**TO:** City Commission

**CC:** Jim Scholl

**FR:** Thaddeus Cohen  
Marilyn Wilbarger

**DT:** October 27, 2015

**RE:** Key West Botanical Garden Society Third Lease Amendment

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## **ACTION STATEMENT:**

This is a request to amend the lease for the Key West Botanical Garden Society, Inc. for the purpose of establishing a canoe/kayak launch area at the property located at 5205 College Road that is leased to the Key West Sail and Power Squadron whose lease will also be amended to provide for this use.

## **BACKGROUND:**

In 2004, the City entered into a Florida Communities Trust Grant Agreement per City Resolution 04-018. The grant included a list of development commitments to be completed during the ten year period following the acquisition. One of those commitments is to establish a canoe/kayak launch area that will provide a connection to the Florida Keys Paddling Trail.

The city property that is currently leased to the Key West Sail and Power Squadron meets the criteria for the launch area as it is a waterfront location on the Cow Key Channel and it is directly across the street from the Key West Botanical Garden which will enable the Garden to provide the support services for the launch area.

There are physical improvements to the launch area that are required and will be shared by the City and the Botanical Garden, as follows:

### **Key West Botanical Garden**

The Key West Botanical Garden Society, Inc. agrees to make the following improvements at its' sole cost and expense:

- a. Provide a piling and multi-strand rope style fence with specifications to be approved by the LANDLORD AND TENANT, beginning at the edge of the mangrove and ending the front gate post as shown on Exhibit "B".
- b. Provide and install landscaping in the launch area and provide one 4 foot native palm replacement tree on the property as required by the removal of one coconut palm which shall be approved by the LANDLORD and the Key West Power & Sail Squadron, Inc.

- c. Provide and install signage at the front of the launch area with hours of operation and rules, which shall be approved by the LANDLORD the Key West Power & Sail Squadron, Inc.

**City of Key West**

The City agrees to make the following improvements at its' sole cost and expense:

- a. Improve the launch area to provide for ADA compliance through the construction of one handicap drop off space with a concrete ramp joining a boardwalk ramp leading up to and joining the existing dock;
- b. Install and compact Schedule 57 rock in the launch ramp area;
- c. Provide 2 front entry gates; one to the launch area and one to the Sail and Power Squadron Demised Premises utilizing aluminum swing gates

**Maintenance and Operation of the Launch Area**

The Key West Botanical Garden Society, Inc. agrees to provide the following, at their sole cost and expense on an on-going basis:

- a. Open and close the launch area on a daily basis in conformance with the hours of operation
- b. Provide and empty trash and recycling containers daily
- c. Maintain the walkway, boardwalk, landscaping and dock in the launch area however maintenance does not include any structural repairs or replacements to the dock
- d. Keep and maintain a commercial liability policy in a minimum amount of \$2,000,000 aggregate and \$1,000,000 per occurrence naming the LANDLORD and the Key West Power & Sail Squadron, Inc. as additional insureds with respect to the use of the launch area

**FINANCIAL:** The city will complete its' physical improvements utilizing city staff resources as much as possible at an approximate cost of \$7,500.00 per Community Services estimate.

**CONCLUSION:**

The Botanical Garden will meet one of the outstanding grant requirements and gain another public service connection furthering their mission. The Power and Sail Squadron provides safe boating classes, including a paddle safe course, which will continue to expand the public benefit of the organization in conjunction with the shared synergistic use of the launch area.

**ATTACHEMENTS:**

Third Amendment to the Lease Agreement Key West Botanical Garden Society, Inc.  
Resolution 04-018 - Florida Communities Trust Grant  
Resolution 06-180 Lease  
Resolution 07-159 First Lease Amendment  
Resolution 13-283 Second Lease Amendment

RESOLUTION NO. 04-018

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED GRANT AGREEMENT BETWEEN THE FLORIDA COMMUNITIES TRUST AND THE CITY OF KEY WEST FOR THE BOTANICAL GARDENS ADDITION; 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 Grant Agreement between the Florida Communities Trust and the City of Key West for the Botanical Gardens Addition is hereby approved; and the City of Key West shall retain ultimate responsibility for oversight of its development and operation.

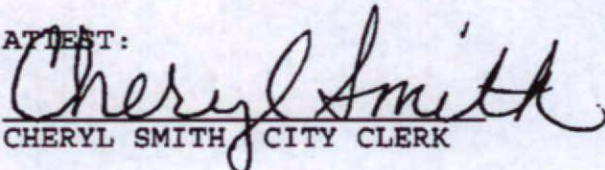
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

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

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

Filed with the Clerk January 7, 2004.

ATTEST:

  
CHERYL SMITH, CITY CLERK

  
JIMMY WEEKLEY, MAYOR

RESOLUTION NO. 06-180

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

WHEREAS, pursuant to Section 2-941(c) of the Code of Ordinances, the City finds that a not-for-profit botanical garden is a public benefit, justifying a lease that is below market rate;

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

Section 1: That the attached lease for the Key West Botanical Garden 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 16th day of May, 2006.

Authenticated by the presiding officer and Clerk of the Commission on June 12, 2006.

Filed with the Clerk June 12, 2006.

  
MORGAN MCPHERSON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

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:

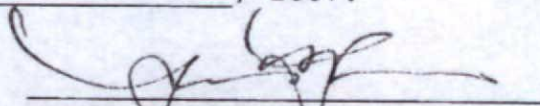
Section 1: That the attached First Amendment to Lease Agreement is hereby approved, contingent upon the completion of the Husbandry Report and Major Specimen Inventory referenced in paragraphs 5 and 17 of the Lease Agreement being completed within 60 days.

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

RESOLUTION NO. 13-283

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

WHEREAS, in Resolution No. 06-180, the City Commission approved a lease with the Key West Botanical Garden Society, Inc.; and

WHEREAS, in Resolution No. 07-159 the City Commission approved the First Amendment to Lease Agreement;

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

Section 1: That the attached Second Amendment to Lease 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.

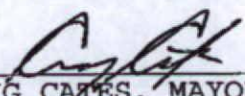
Passed and adopted by the City Commission at a meeting held

this 6th day of November, 2013.

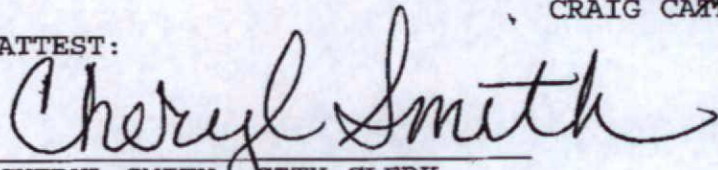
Authenticated by the Presiding Officer and Clerk of the  
Commission on 7th day of November, 2013.

Filed with the Clerk on November 7, 2013.

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

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

ATTEST:

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