

RESOLUTION NO. 22-075

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "AMENDED CONCESSION AGREEMENT" FOR THE WILDLIFE CENTER AT 1801 WHITE STREET (INDIGENOUS PARK) BETWEEN THE CITY OF KEY WEST AND KEY WEST WILDLIFE CENTER, INC.; AUTHORIZING ANY NECESSARY BUDGET TRANSFERS OR ADJUSTMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, in Resolution 18-368, the City Commission approved a Concession Agreement for the Wildlife Center at 1801 White Street for a term of ten years; and

WHEREAS, costs related to the care, habitat maintenance and relocation of feral chickens have increased substantially. Accordingly, the Wildlife Center has requested, and City staff recommends approval of the attached "Amended Concession Agreement," which adjusts the City's compensation for such services; and

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

Section 1: That the attached "Amended Concession Agreement" between the City and the Key West Wildlife Center, Inc. is hereby approved.

Section 2: That necessary budget transfers and adjustments are hereby authorized, including a transfer of funds

in the amount of \$20,000.00 from the City Manager's General Fund Contingency to General Fund Account 001-7201-572-3400.

Section 3: That the City Manager or designee is authorized to execute any necessary documents in conformance herewith, upon consent of the City Attorney.

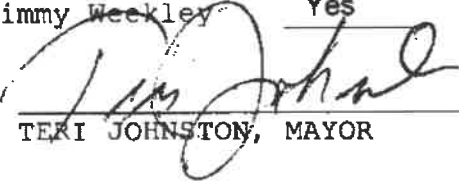
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 15th day of March, 2022.

Authenticated by the Presiding Officer and Clerk of the Commission on 16th day of March, 2022.

Filed with the Clerk on March 16, 2022.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
TERI JOHNSTON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

# EXECUTIVE SUMMARY



**TO:** Patti McLaughlin, City Manager  
Nathalia Mellius, Assistant City Attorney

**FROM:** Michael Henriquez Jr, Senior Property Manager

**DATE:** March 1, 2022

**SUBJECT: Concession Agreement amendment - Key West Wildlife Center, Inc. 1801 White Street**

## **Action statement:**

This is a request to approve a Concession Agreement amendment between the City of Key West and the Key West Wildlife Center, Inc., a Florida Non-Profit Corporation, for the premises located at 1801 White Street, Key West.

## **Background:**

The Concessionaire will utilize the property for the operation of a wildlife center, providing rehabilitation and release or rehabilitation and permanent educational habitat for injured wildlife and relocation of chickens out of the city. The use shall be limited to retrieving, rehabilitating, and releasing injured migratory birds, land mammals and reptiles and conducting educational classes dealing with migratory birds, land mammals and reptiles as well as operating the chicken relocation program.

The City of Key West and the Key West Wildlife Center, Inc. have had a successful multi-year relationship via a Concession Agreement. Under the previous and now proposed agreement the concessionaire is granted the right to operate on part of a City owned parcel known as Indigenous Park. Exhibit A depicts the specific area of operation under the proposed concession agreement. The proposed agreement is the continuation of the ten (10) year term, beginning on February 18<sup>th</sup>, 2019. As part of the agreement the concessionaire is obligated to accept all healthy and unhealthy chickens which are delivered to the property by the general public. The concessionaire will now be able to charge private wide life trappers a reasonable fee. The concessionaire is further obligated to relocate all healthy chickens to a site, as approved by the City Manager or designee, outside of Key West no less than every two months. In exchange for managing the "chicken program" the City of Key West will compensate the concessionaire \$7,500 per month, for the care, habitat maintenance, medical supplies and relocation expenses incurred by the concessionaire.

## **Financial Impact:**

Under the prior agreement, and called for under the proposed agreement, concessionaire provides continuous financial reporting for the expenses incurred in managing the chicken relocation segment of their business. The concessionaire's records over the last several years indicate that there has been an increase in costs incurred to properly managing the "chicken program". In short, the Key West Wildlife Center, Inc. addresses the City's "chicken relocation" efforts in a much more efficient and cost-effective manner. The amended increase from \$4,166.66 to \$7,500 is a fair

financial compensation for the operation of the City's "chicken program". The additional \$20,000 in funds necessary to fulfill the proposed Concession Agreement for the months of April 2022 through September 2022, will be transferred from the City Manager's General Fund Contingency account for FY2022.

**Conclusion:**

Staff recommends approval of the Concession Agreement between the City of Key West and the Key West Wildlife Center, Inc.

**Attachments:**

Proposed Concession Agreement  
Exhibit A - Demised Premises  
Corporate Filings  
Previous Concession Agreement

## AMENDED CONCESSION AGREEMENT

This Concession Agreement made this 16<sup>th</sup> day of March, 2022, by and between The City of Key West, a municipal corporation, (hereinafter referred to as "City") and Key West Wildlife Center, Inc., a non-profit corporation of the State of Florida, (hereinafter referred to as "Concessionaire").

Whereas, the City is the owner of the property described in Exhibit "A", attached hereto, located at 1801 White Street, Key West, in Monroe County, Florida (hereinafter referred to as the "Property"); and

Whereas, the City desires to make a portion of the Property available to the Concessionaire for the operation of a wildlife center, providing rehabilitation and release or rehabilitation and permanent educational habitat for injured wildlife; and

Whereas, the City requires relocation of chickens out of the City; and

Whereas, the Key West Wildlife Center, Inc. in exchange for use of the subject property described above will operate a wildlife center and provide rehabilitation and release or rehabilitation and permanent educational habitat for injured native wildlife and agrees to administer a chicken relocation program as agreed upon by both parties.

Now, therefore, the parties mutually agree as follows:

**1. Concession Use:** Operation of a wildlife center, providing rehabilitation and release or rehabilitation and permanent educational habitat for injured native wildlife and relocation of chickens out of the City. The City grants Concessionaire the right to use the Property to operate Concessionaire's headquarters, operate a wildlife center, and manage a chicken relocation program. Such use shall be limited to retrieving, rehabilitating, and releasing injured migratory birds, land mammals and reptiles and conducting educational classes dealing with migratory birds, land mammals and reptiles as well as administer the chicken relocation program and conduct such administrative and management activities as necessary to support the foregoing. Concessionaire shall have the right to use and rent the picnic area within the Demised Premises for the purpose of making it available to the public for scheduled events.

The Concessionaire expressly agrees to accept all healthy and unhealthy chickens which are delivered to the Property by the general public or the City but not from private, professional chicken trappers unless a reasonable fee per chicken is paid, such fee to be proposed by the Concessionaire and approved by the City Manager. The Concessionaire expressly agrees herein to relocate no less than every two months all healthy chickens housed on the Demised Premises to a location outside the City of Key West pursuant to the direction of the City Manager or his designee. In the event of an impending hurricane or other natural disaster, Concessionaire shall transport all chickens out of the City pursuant to the direction of the City Manager or his designee.

All wildlife (to include chickens) shall be housed in the aviaries and Concessionaire agrees to operate the facilities in accordance with all required US Fish and Wildlife and FWC permits and all wildlife shall be kept in accordance with the general requirements governing captive wildlife, pens, and caging as set forth in Rules 68A-6.004, 68A-6.0041 and 68A-6.0023, F.A.C.

In the event that the City Commission, at some point in the future, decides to discontinue the chicken relocation program, the City explicitly agrees that Concessionaire shall nonetheless continue to have all rights to the Demised Premises conveyed herein so long as Concessionaire continues to operate, manage and administer a wildlife center for retrieving, rehabilitating and releasing injured migratory birds, land mammals and reptiles, and conducting educational programs dealing with migratory birds, land mammals and reptiles and with the understanding that the City may recommence the chicken relocation program at any time upon seven (7) days' notice to the Concessionaire.

Concessionaire further agrees to take all steps necessary to assure that all fecal material is contained and disposed of in accordance with all applicable permits and regulations.

**2. Demised Premises:** The buildings and grounds as outlined on "Exhibit A" attached hereto and incorporated herein. City reserves the right from time to time with good cause, upon at least sixty (60) days advance written notice to relocate Concessionaire to other Demised Premises within the Property, during the term of this Concession Agreement, so long as usable area so substituted equals or exceeds the usable area of the Demised Premises; provided however that Concessionaire shall have the right at its sole option and as its sole remedy, to terminate the Concession Agreement upon ninety (90) days advance written notice which right must be exercised, if at all, within fifteen (15) days after receipt of City's relocation notice, which relocation notice may be withdrawn by City within ten (10) days after City's receipt of Concessionaire's termination notice, in which event Concessionaire's attempted termination shall be null and void and the Agreement shall continue in full force and effect in accordance with its terms. In the event that the City shall relocate Concessionaire to other space within the Property, City shall pay the reasonable relocation costs of Concessionaire in connection therewith, but City shall not have any other liability with respect to any such relocation.

City agrees to install new fencing and gates to secure the Demised Premises in accordance with the Concessionaire's requirements and all applicable regulations prior to the commencement of any other physical changes to the property including any existing fence removal.

Concessionaire may locate a temporary storage trailer within the Demised Premises for the purposes of supporting the Concessionaire's services as stated herein, in compliance with regulations regarding such installations.

**3. Concession Term:** The City grants to Concessionaire the Property for a term of ten years beginning on February 18, 2019 and as memorialized in City of Key West Resolution 18-368. This Agreement shall commence upon the expiration of the current term pursuant to Resolution 14-047, which is February 18, 2019. This Amendment does not extend the term of

this Agreement. This Agreement will terminate pursuant to City of Key West Resolution 18-368.

**4. Concession Fees:** Concessionaire shall pay an annual fee of \$10.00 to the City.

The City expressly agrees herein to compensate Concessionaire for the care, habitat maintenance, medical supplies, and relocation of the chickens in the amount of \$4,166.66 per month for the entire term of the Agreement. Beginning with the April 2022 monthly payment, this monthly amount shall increase to \$7,500.00. Concessionaire shall maintain accounting records sufficient to segregate the aforementioned operating costs of the wildlife center from the Concessionaire's obligations pursuant to this paragraph. Concessionaire will provide the City a full annual report of such costs and effectiveness of the chicken location program. Monthly compensation will be reviewed annually by the City and the Concessionaire to ensure the costs of administering the chicken relocation program is fair and reasonable to both parties. Any change in the monthly compensation will require the agreement of both parties. Additionally, the monthly compensation amount is subject to continued appropriation in the City of Key West annual budget.

Concessionaire may charge private, professional chicken trappers a reasonable fee per chicken provided such fee is approved by the City Manager prior to assessment.

Should the Concessionaire receive and take possession of 140 chickens within a four week period, the Concessionaire agrees to immediately take steps to relocate the chickens. During the relocation effort, it may be necessary to delay receipt of healthy chickens from private trappers and/or large volume community trappers. This temporary moratorium shall last no longer than one (1) week unless the City Manager agrees to extend the temporary moratorium in writing.

**5. Employees:** At its own expense, the Concessionaire shall furnish employees as may be necessary in the operation of the Concessionaire's activities pursuant to this Agreement. Employees of Concessionaire shall not accrue any of the rights or benefits of a City employee.

**6. Utilities:** The City shall pay for all public utility services utilized by Concessionaire on the Property in furtherance of this Agreement, including but not limited to electricity, water, solid waste and sewer service. Concessionaire expressly agrees herein to be responsible for payment of all connectivity; including internet, telephone and television service.

**7. Compliance with laws:** The Concessionaire agrees that it will, at its sole cost and expense, comply with all federal, state and local laws and ordinances and further agrees that it will abide by all applicable rules and regulations that are now in or hereafter may be enforced by all applicable rules and regulations that are now in or hereafter may be enforced by the City.

**8. Insurance:** At Concessionaire's sole cost and expense, Concessionaire will secure, pay for, and file with the City, during the entire Term hereof, an occurrence form commercial general liability policy, covering the Demised Premises and the operations of Concessionaire

and any person conducting business in, on or about the Demised Premises in a at least the following minimum amounts with specification amounts to prevail if greater than minimum amount indicated. Notwithstanding any other provision of this Lease, Concessionaire shall provide the minimum limits of liability coverage as follows:

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

Concessionaire shall also procure the following insurance coverage:

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

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

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

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

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

All policies of insurance required to be carried by Concessionaire pursuant to this Lease shall be written by responsible insurance companies authorized to do business in Florida with an AM Best rating of A-VI or better. Any such insurance required to be carried by



Concessionaire hereunder may be furnished by Concessionaire under any blanket policy carried by it or under a separate policy therefore. Certificates shall be delivered to City prior to the commencement of the Term of this Lease and, upon renewals, but not less than sixty (60) days prior to the expiration of such coverage. In the event Concessionaire shall fail to procure such insurance, City may, at its option, procure the same for the account of Concessionaire, and the cost thereof shall be paid to City as an additional charge upon receipt by Concessionaire of bills therefore, together with an administrative fee equal to fifteen (15%) percent to cover the cost of the City's efforts to procure such policy.

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

**9. Indemnification:**

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

The indemnification obligations under this Section shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Concessionaire under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of Concessionaire or of any third party to whom Concessionaire may subcontract work. This indemnification shall continue beyond the date of termination of the Agreement.

**10. Repair and maintenance:**

The Concessionaire shall be responsible for the maintenance and cleaning of the Demised Premises.

Concessionaire shall at Concessionaire's cost, keep the premises and every part thereof in good condition and repair except for damages from causes beyond the control of the Concessionaire and ordinary wear and tear. Concessionaire shall upon the expiration, or sooner termination, of this Lease surrender the Premises to the City in good condition. Ordinary wear and tear and damage from causes beyond the reasonable control of the Concessionaire are excepted. Unless specifically provided in an addendum to this Lease, the City shall have no obligation to alter, remodel, improve, repair, decorate or paint the

Premises or any part thereof and the parties hereto affirm that Landlord has made no representations to Concessionaire respecting the condition of the premises or the building except as specifically herein set forth. Notwithstanding the above provisions, The City shall be responsible for repairing and replacing the structural and mechanical aspects located on the Property, including plumbing and electrical.

Concessionaire shall be responsible for the repair and maintenance of all furnishings, specific operational structures or capital improvements brought on the premises by the Concessionaire, or a third party representative. Concessionaire shall be responsible for the repair and maintenance of standard plumbing, air conditioning, and electrical systems furnished by the City.

Unless such maintenance and repairs are caused in part or in whole by the act, neglect, fault, or omission of any duty by the Concessionaire, its agents, employees or invitees, in which case Concessionaire shall pay to the City the reasonable cost of such maintenance and repairs.

Concessionaire shall give the City written notice of any required repairs or maintenance. The City shall not be liable for any failure to repair or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice, or if it is the best interest of the city to not make such repairs.

**11. Termination by City:** The City shall have the right to terminate this Agreement after the expiration of 90 days from the date written notice has been given by the City to the Concessionaire or upon the happening of any of the following:

- (a) The abandonment or discontinuance of operation by Concessionaire.
- (b) The failure of the Concessionaire to perform any of the terms and conditions of this Agreement after the expiration of 30 days from the date written notice has been given by the City to the Concessionaire to correct such default or breach.
- (c) In the event of emergency, the City requires use of the Property.

**12. Termination by Concessionaire:** The Concessionaire shall have the right to terminate this Agreement after the expiration of 90 days from the date written notice has been given by the Concessionaire to the City.

**13. Public Access:** Concessionaire expressly agrees herein that access by the general public to the McCoy Indigenous Park will be during the hours and days established by the city therefor.

**14. Section 1.31:** Unless waived by the City commission, the Concessionaire must submit to the appropriate background check pursuant to Section 1.31 of the Key West Code of Ordinances. Compliance with Section 1.31 is a condition of the effective commencement of this Agreement.

**15. Assignment, Sub-lease, Transfer of Control:** This concession shall be a privilege to be held by the Concessionaire for the benefit of the public. The concession cannot under any circumstances be assigned, or control thereof be transferred, by any means whatsoever without the prior written consent of the City, and then only under such conditions as the City may establish. Any purported transfer of control of or sublease or assignment of this concession without prior written authorization by the City Commission shall be null and void. The authorization shall be at the absolute discretion of the City.

**16. City's Right of Entry:** The City or its agents shall have the right to enter upon the Demised 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 Concessionaire in the conduct of the Concessionaire's operations on said Demised Premises. If the said Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the City may enter upon the Demised Premises to make emergency repairs. City may enter upon the Demised Premises to make renovations and repairs of a non-emergency nature by giving reasonable notice to the Concessionaire, and in such a manner as to minimize any inconvenience to both parties.

**17. Captions:** Headings labeling any provision herein are for convenience only, and shall not in any way be construed as affecting, limiting expanding, or stating the contents or intent of this Agreement.

**18. Entire Agreement:** This Agreement sets forth all the promises and agreements between City and Concessionaire. No subsequent alteration, amendment or change to this Agreement shall be binding upon City or Concessionaire unless reduced to writing and duly executed by both parties.

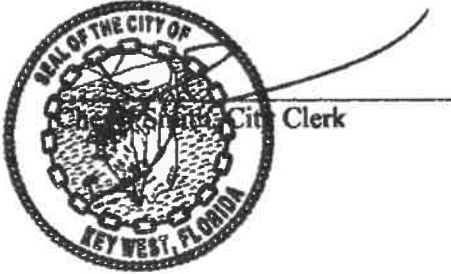
**19. Partial Invalidity:** If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

**20. Governing Law:** This Agreement shall be construed and governed in accordance with the laws of the State of Florida.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:




CITY OF KEY WEST

By:   
Patti McLauchlin, City Manager

CONCESSIONAIRE:

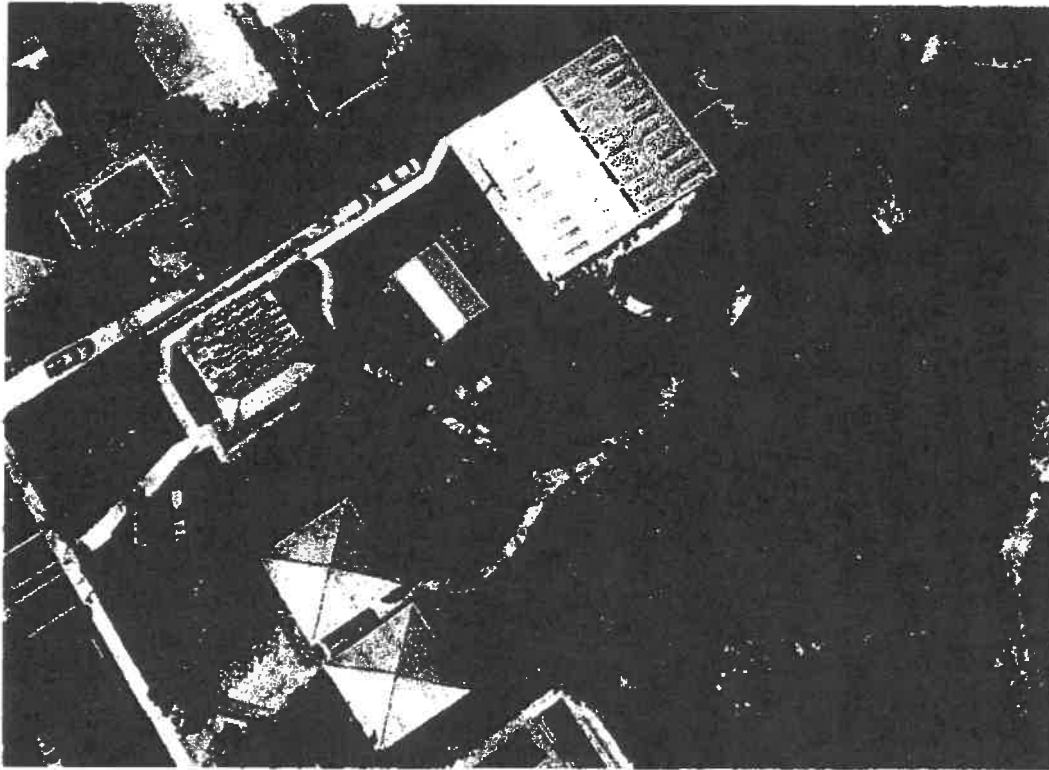
Key West Wildlife Center, Inc.

ATTEST:

  
\_\_\_\_\_

By:   
Thomas F. Sweets, Director

**Exhibit "A"**



The Demised Premises are approximately as shown with any immaterial adjustments that may be necessary to follow existing fence lines and provide for the installation of new perimeter fencing and gates.

