


**SHAKOPEE PUBLIC UTILITIES  
MEMORANDUM**

TO: John Crooks, Utilities Manager

FROM: Joseph D. Adams, Planning & Engineering Director 

SUBJECT: Sarazin Flats Utility Easement Agreement and Vacation of Existing Easement

DATE: September 13, 2018

#### ISSUE

The developer (MWF Properties, LLC) of the proposed apartments Sarazin Flats requests the Commission vacate an existing electric line easement to facilitate their development and in exchange will reimburse the Commission the cost of relocating the electric facilities that currently lie within the existing easement.

At the same time the developer wishes to convey to the Commission new and additional easements for the planned underground electric, including the relocated facilities, and new public water main to serve their development.

#### BACKGROUND

The existing easement and electric line serves a cell phone tower installation located with the Xcel Energy transmission easement on the subject property. The south portion of the existing easement and the electric line need to be relocated to accommodate the existing dead end street constructed into a cul-de-sac.

#### DISCUSSION

In addition to the existing facilities we require easements over the planned new underground electric and public water main lines being installed within the private property.

#### REQUESTED ACTION

Staff requests the Commission approve the Utility Easement Agreement and authorize its execution by the Utilities Manager.

Staff also requests the Commission adopt Resolution #1207, A Resolution Vacating an Existing Electric Easement and Accepting a Utility Easement Agreement.

## UTILITY EASEMENT AGREEMENT

**THIS UTILITY EASEMENT AGREEMENT** (this “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **Sarazin Flats, Limited Partnership**, a Minnesota limited partnership (the “Sarazin”), **MWF Properties, LLC**, a Minnesota limited liability company (“MWF” and, together with Sarazin, the “Grantors”), and the **Shakopee Public Utilities Commission**, a municipal utility commission organized under Minnesota law (the “Grantee”).

### Recitals

A. Sarazin owns fee simple title to the below described real estate (the “Sarazin Property”):

Lot 1, Block 1, Sarazin Flats First Addition.  
Scott County, Minnesota.

B. MWF owns fee simple title to the below described real estate (the “MWF Property” and, together with the Sarazin Property, the “Property”):

Outlot A, Sarazin Flats First Addition.  
Scott County, Minnesota.

C. Grantee has requested, and Grantors have agreed to grant, in accordance with the terms and conditions stated herein, permanent, non-exclusive, utility easements for the purposes described herein, over, across and under that portion of the Property.

### Terms of Easement

**NOW, THEREFORE**, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easements. Grantors hereby grant, bargain, and convey to Grantee, its successors and assigns, perpetual, non-exclusive, utility easements for water and electrical utilities and utility purposes over, across and under the easement areas (the “Easement Area”) depicted and

described on Exhibit A (the “Electrical Easement”) and Exhibit B (the “Water Main Easement”) and, together with the Electrical Easement, the “Easements”) attached hereto, subject to the terms and conditions herein. Grantee also conveys the eight inch public watermain installed by Grantee within the watermain easement.

- a. Scope of Water Main Easement Rights. This Agreement includes the right and authority to use, operate, maintain and repair (including reconstruction) an underground water main and appurtenances. Grantee hereby represents, agrees, and warrants that the water main and appurtenances shall be used, operated, maintained, repaired and reconstructed in accordance with all applicable laws, statutes, codes, ordinances, rules and regulations (“Laws”) including those of Scott County and that all inspections necessary for the completion of such installation will be undertaken as required. Grantors agree to allow Grantee ingress and egress over driveways and parking areas on the Property solely to the extent necessary to access the Easement Area. No portion of the water main shall be located above the surface of the ground, except for hydrants appurtenant to the water main. Grantee agrees to maintain, at its sole expense, the underground water main and appurtenances across Grantors’ Property in good condition and repair and in accordance with all applicable Laws.
  
- b. Scope of Electric Easement Rights. The perpetual combined utility easement includes the right to inspect, locate, erect, improve, construct, relocate, remove, operate, maintain, alter and repair an underground conduit and/or cable lines for distributing electrical power, including all wires, cables, hand holes, manholes, transformers, transformer enclosures, concrete pads, connection boxes, ground connection attachments, equipment and related accessories and appurtenances within the Easement Area. Grantors agree to allow Grantee ingress and egress over driveways and parking areas on the Property solely to the extent necessary to access the Easement Area. The easement includes the right to improve and make such changes, alterations, substitutions and additions in and to Grantee’s facilities within the Easement Area as Grantee may from time to time deem advisable or expedient. This Agreement includes the right to cut, trim or remove from the Easement Area trees, shrubs, roots, or other vegetation, and any buildings, fences or structures within the Easement Area that in Grantee’s judgment unreasonably interfere with Grantee’s facilities. Grantee shall have the right to permit the use of the easement by other utilities, subject to and in accordance with this instrument.

2. Repair/Restoration.

- a. Water Main. Grantee will, at its sole cost and expense and promptly after completion of its work, replace the surface and subsurface of the soil as may be disturbed in the use, operation, maintenance and repair (including reconstruction) of the aforesaid water main and appurtenances in substantially the same condition that existed prior to the improvement or repair, and repair all driveways and other paved areas and replace sod which may be damaged by construction on the

Easement Area or which is a direct result of the exercise of the rights herein granted. Grantors specifically agree that Grantee shall have no obligation to replace or repair surface improvements installed by Grantors within the easement areas, other than paved areas, sod, or any other improvements approved by Grantee prior to their installation by Grantors.

- b. Underground Electric. Grantee will, at its sole cost and expense and promptly after completion of its work, replace the surface and subsurface of the soil as may be disturbed in the use, operation, maintenance and repair (including reconstruction) of Grantee's electrical facilities in substantially the same condition that existed prior to the improvement or repair, and repair all driveways and other paved areas, replace sod which may be damaged by construction on the Easement Area or which is a direct result of the exercise of the rights herein granted. Grantors specifically agree that Grantee shall have no obligation to replace or repair surface improvements installed by Grantors within the Easement Area, other than paved areas or sod. Grantors shall pay for all costs and expenses related to the relocation of the existing electrical facilities located on the Property.

3. Non-Exclusivity and Restrictions. Grantors may continue to use the Easement Areas for any purpose, including granting additional easements over the Easement Area, which does not unreasonably interfere with the stated use of the Easements as set forth herein. Grantors shall not grant any rights to the Easement Areas to any other party which would unreasonably interfere with the use of the Easements for the purposes set forth herein. The Easements are subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of record related to the Easement Areas and all applicable laws, regulations, ordinances and rules.

4. Nondisturbance. In Grantee's use of the Easements herein granted and in the construction, installation, repair, replacement and maintenance of the Easement Area or Grantee's improvements, Grantee agrees not to unreasonably disturb the Grantors' business operations or use of the Property.

5. Use of Easement Areas. The grant of the Easements includes the right of Grantee, its contractors and agents, to enter upon the Property, in a manner designed to minimize disturbance to the Property and which will not interfere with any improvements located thereon beyond the rights granted to Grantee in this Agreement, to install, construct, reconstruct, inspect, repair and maintain the portions of the public utilities located therein and improvements associated therewith. After completion of any installation, construction, maintenance, repair or removal, Grantee shall restore the Property to the condition in which it was found prior to the commencement of such actions, save only for the necessary removal of trees, brush, undergrowth and other obstructions in the Easement Areas. Grantee shall be responsible to pay all costs, expenses and charges in connection with the operation, maintenance, repair, replacement, upkeep and upgrading of the public utilities located in the Easement Areas. Grantee shall not do anything within the Easement Areas that will cause the Property to become encumbered by any mechanic's lien or similar lien, charge or claim.

6. Grantors' Use. Grantors hereby reserve the right to use the land included within the Easement Area (including without limitation, parking of vehicles on the surface thereof), subject to

all governmental rules and regulations, and provided that such use will not unreasonably disturb or interfere with Grantee's water main or appurtenances and Grantee's electrical utility facilities or prevent reasonable ingress and egress thereto for the purposes of operation, use, maintenance and repair (including reconstruction) thereof. It is also understood and agreed between the parties hereto that no building or structure shall be placed by Grantors, their successors or assigns within the Easement Area. Grantee specifically agrees that, subject to all governmental rules and regulations, Grantors retains the right to cross and recross the Easement Area with other utility lines, pipes, wires and easements, parking and access easements and that Grantors may install paving, curb and gutter, traffic direction signs, and landscaping on the Easement Area which are not inconsistent with the grant of the easements herein.

7. Indemnification. Grantee and its successors shall hold harmless and indemnify Grantors, their agents, and their employees, successors and assigns, from and against all losses, costs, damages, injuries, actions, suits, judgments and expenses, including reasonable attorneys' fees, arising out of or due to the use of the Easements, Easement Areas, or Grantee's activities on the Property, except to the extent that such damage is caused by, or the result of the gross negligence or willful misconduct of any Grantor, its agents, employees, agents, contractors, successors and assigns. Grantors and their successors shall hold harmless and indemnify Grantee, its agents, and their employees, successors and assigns, from and against all losses, costs, damages, injuries, actions, suits, judgments and expenses, including reasonable attorneys' fees, arising out of or due to the use of the Easements, Easement Areas, or Grantors' activities on the Property, except to the extent that such damage is caused by, or the result of the gross negligence or willful misconduct of the Grantee, its agents, employees, agents, contractors, successors and assigns.

8. Easements to Run with Land. The Easements created herein shall run with the land and be binding on all parties having any right, title or interest in the Property, their heirs, successors and assigns.

9. Notices. Notices in demand required or permitted to be given hereunder shall be given by certified mail, return receipt requested, or by a national overnight express service such as FedEx, and

(1) in the case of Grantors, is addressed to or delivered personally to the Grantors at:

MWF Properties, LLC  
7645 Lyndale Avenue South  
Minneapolis, MN 55423  
Attention: Christopher J. Stokka

and

Sarazin Flats, Limited Partnership  
7645 Lyndale Avenue South  
Minneapolis, MN 55423  
Attention: Christopher J. Stokka

With copies to:

Winthrop & Weinstine, P.A.  
Capella Tower, Suite 3500  
225 South Sixth Street  
Minneapolis, Minnesota 55402  
Attention: Jeffrey J. Koerselman, Esq.

Wells Fargo Affordable Housing  
Community Development Corporation  
MAC D1053-170  
301 South College Street, 17<sup>th</sup> Floor  
Charlotte, North Carolina 28202-6000  
Attention: Asset Management

Joel Hjelmaas, Counsel  
Wells Fargo Bank, N.A.  
MAC X2401-06T  
1 Home Campus, 6th Floor  
Des Moines, Iowa 50328-0001

and

Erin O'Gara  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102

(2) in the case of Grantee, is addressed or delivered personally to Grantee at:

Shakopee Public Utilities Commission  
255 Sarazin Street  
Shakopee, Minnesota 55379

10. Compliance with Laws. Grantee shall comply with all applicable laws and regulations in connection with its use of this easement.

11. Environmental Matters. Grantee shall not be responsible for any costs, expenses, damages, demands, obligations or losses, including penalties and reasonable attorney's fees, resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which existed on the Easement Area or Property prior to the date of this Agreement.

12. Duration of Easement. The perpetual Easements granted herein shall remain in full force and effect in perpetuity.

13. Warranty of Grantors. The Grantors warrant that they are the owners of a fee

simple interest in the Property, that they have the right and authority to grant the easement conveyed by this Agreement, and, to the best of the Grantors' knowledge, that the Property is free and clear of any lien, encumbrance, easement, restriction, covenant or condition, except for those filed of record with the County Recorder in and for Scott County, Minnesota.

14. Exhibits and Addendum. All exhibits referred to herein shall be deemed part of this Agreement.

15. Recording. This Agreement shall be recorded in the records of Scott County, Minnesota.

16. Governing laws. The laws of the state of Minnesota shall apply to the Agreement.

17. Severability. If any term, provision or condition contained in the Agreement shall, to any extent, be invalid or unenforceable, the remainder of the Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. Amendment; Modification; Termination. This Agreement may not be modified, restated, amended, or changed in any way without the prior written consent of the Grantors and Grantee, or their successors and assigns, as applicable.

19. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original.

20. Termination of Existing SPUC Easement. Grantee hereby terminates the rights granted to it pursuant to that certain Grant of Right-Of-Way Easement between Grantee and Grantors' predecessor in interest dated June 5, 2006 and recorded in the Office of the Scott County Recorder on July 20, 2006 as Document No. A742666.

*[The remainder of this page has been left intentionally blank]*

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

**SARAZIN:**

**SARAZIN FLATS, LIMITED PARTNERSHIP,**  
a Minnesota limited partnership

By : Shakopee Group LLC  
Its : General Partner

By : \_\_\_\_\_  
Christopher J. Stokka  
Its Chief Manager

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, a notary public, personally appeared Christopher J. Stokka, the Chief Manager of Shakopee Group LLC, a Minnesota limited liability company, the general partner of Sarazin Flats, Limited Partnership, a Minnesota limited partnership, named in the foregoing instrument and acknowledged said instrument on behalf of the limited partnership.

\_\_\_\_\_  
Notary Public



**MWF:**

**MWF PROPERTIES, LLC,**  
a Minnesota limited liability company

By : \_\_\_\_\_  
Jay Weis  
Its Managing Member

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, a notary public, personally appeared Jay Weis, the Managing Member of MWF Properties, LLC, a Minnesota limited liability company, named in the foregoing instrument and acknowledged said instrument on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public



**EXHIBIT A**

**ELECTRICAL EASEMENT DEPICTION AND DESCRIPTION**

(See Attached)

**EXHIBIT B**

**WATER MAIN EASEMENT DEPICTION AND DESCRIPTION**

(See Attached)

Document comparison by Workshare 9.5 on Tuesday, September 11, 2018  
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Rendering set	WW Default

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<u>Moved to</u>	
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Moved cell	
Split/Merged cell	
Padding cell	

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Format changed	0
Total changes	92

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**Legal Description of SPUC Electric Easement**  
(August 21, 2018)

A 10.00 foot wide strip of land over, under and across Lot 1, Block 1 and Outlot A, SARAZIN FLATS FIRST ADDITION, according to the recorded plat thereof, Scott County, Minnesota, the easterly line of which is described as follows:

Commencing at the southwest corner of said Outlot A; thence on an assumed bearing of North 89 degrees 30 minutes 38 seconds East, along the south line of said Outlot A, a distance of 10.00 feet to the point of beginning of the line to be described; thence North 0 degrees 00 minutes 29 seconds West 17.45 feet; thence northerly 186.70 feet along a non-tangential curve, concave to the west having a radius of 85.00 feet and a central angle of 125 degrees 50 minutes 40 seconds, the chord of said curve bears North 5 degrees 40 minutes 45 seconds East; thence North 0 degrees 00 minutes 29 seconds West 53.00 feet; thence North 54 degrees 17 minutes 39 seconds East 33.00 feet; thence North 0 degrees 03 minutes 46 seconds West a distance of 131.00 feet and said line there terminating.

Together with a 10.00 foot wide strip of land over, under and across said Outlot A, the westerly line of which is described as follows:

Commencing at the southwest corner of said Outlot A; thence on an assumed bearing of North 89 degrees 30 minutes 38 seconds East, along the south line of said Outlot A, a distance of 370.98 feet to the point of beginning of the line to be described; thence North 0 degrees 29 minutes 22 seconds West 40.00 feet to the southeast corner of said Lot 1; thence North 0 degrees 29 minutes 22 seconds West along the east line of said Lot 1, a distance of 33.00 feet and said line there terminating.

SARAZIN FLATS  
FIRST  
ADDITION

Chaska, Minnesota

MWF Properties

745 Lynchville Avenue, Suite 200  
Minnetonka, MN 55342

**LOUCKS**

PLANNING  
CIVIL ENGINEERING  
LAND SURVEYING  
LANDSCAPE ARCHITECTURE  
ENVIRONMENTAL

7200 Hennock Lane, Suite 300  
Maple Grove, MN 55349  
763.424.5505  
www.loucksinc.com

**CADD QUALIFICATION**

CADD files prepared by the Consultant for the project are prepared in accordance with the standards and specifications for the state with respect to the project. These CADD files shall not be used for any other project, nor shall they be used for the preparation of any other project, without written approval by the Consultant. The Consultant is not responsible for any errors, omissions, and violations of any laws, regulations, or standards that may be made by the user of the CADD files. The Consultant is not responsible for any errors, omissions, and violations of any laws, regulations, or standards that may be made by the user of the CADD files. The Consultant is not responsible for any errors, omissions, and violations of any laws, regulations, or standards that may be made by the user of the CADD files.

**SUBMITTALS/REVISIONS**

8/6/18 DRAWING ISSUED  
8/21/18 LEGAL DESC.

**PROFESSIONAL SIGNATURE**

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.  
*Shirley D. Nelson*  
License No. 12235  
Date 8/6/18

**QUALITY CONTROL**

Locks's Project No. 16-017  
Project Lead HDN  
Drawn By SFM  
Checked By HDN  
Field Crew N/A

VICINITY MAP

SPUC Electric  
Easement  
Exhibit

1 of 2



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**Legal Description of SPUC Water Main Easement**  
(August 27, 2018)

A 20.00 foot strip of land over, under and across that part of Lot 1, Block 1 and Outlot A, SARAZIN FLATS FIRST ADDITION, according to the recorded plat thereof, Scott County, Minnesota, the center line of said strip is described as follows:

Commencing at the northwest corner of said Lot 1, Block 1; thence on an assumed bearing of South 00 degrees 00 minutes 29 seconds East, along the west line of said Lot 1, a distance of 166.63 feet to the point of beginning of said center line; thence North 80 degrees 57 minutes 40 seconds East a distance of 186.11 feet to a point to be hereinafter referred to as "Point A"; thence continue North 80 degrees 57 minutes 40 seconds East a distance of 171.43 feet to a point to be hereinafter referred to as "Point B"; thence continue North 80 degrees 57 minutes 40 seconds East a distance of 206.78 feet; thence South 49 degrees 45 minutes 51 seconds East a distance of 13.05 feet; thence South 0 degrees 29 minutes 22 seconds East a distance of 20.40 feet to a point to be hereinafter referred to as "Point C"; thence continue South 0 degrees 29 minutes 22 seconds East a distance of 178.00 feet to a point to be hereinafter referred to as "Point D"; thence continue South 0 degrees 29 minutes 22 seconds East a distance of 76.63 feet; thence South 44 degrees 30 minutes 38 seconds West a distance of 14.14 feet; thence South 89 degrees 30 minutes 38 seconds West a distance of 225.75 feet to a point to be hereinafter referred to as "Point E"; thence continue South 89 degrees 30 minutes 38 seconds West a distance of 293.95 feet to the easterly right of way line of Sarazin Street and said center line there terminating.

Together with a 20.00 foot strip of land over, under and across that part of said Lot 1, the center line of which is described as beginning at the aforementioned "Point A"; thence South 9 degrees 02 minutes 20 seconds East, a distance of 27.00 feet and said center line there terminating.

Together with a 20.00 foot strip of land over, under and across that part of said Lot 1, the center line of which is described as beginning at the aforementioned "Point B"; thence South 9 degrees 02 minutes 20 seconds East, a distance of 27.00 feet and said center line there terminating.

Together with a 20.00 foot strip of land over, under and across that part of said Outlot A, the center line of which is described as beginning at the aforementioned "Point C"; thence South 89 degrees 30 minutes 28 seconds West, a distance of 22.00 feet and said center line there terminating.

Together with a 20.00 foot strip of land over, under and across that part of said Outlot A, the center line of which is described as beginning at the aforementioned "Point D"; thence North 77 degrees 40 minutes 16 seconds East, a distance of 26.57 feet to an east line of said Outlot A and said center line there terminating.

Together with a 20.00 foot strip of land over, under and across that part of said Outlot A, the center line of which is described as beginning at the aforementioned "Point E"; thence South 0 degrees 29 minutes 22 seconds East a distance of 35.41 feet to the south line of said Outlot A and said center line there terminating.

SARAZIN FLATS  
FIRST  
ADDITION  
Chalopee, Minnesota

MWF Properties  
1455 Lyndale Avenue South  
Minneapolis, MN 55425

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ENVIRONMENTAL  
7200 Hennock Lane, Suite 300  
Maple Grove, MN 55369  
763.424.5505  
www.loucksinc.com

**CADD QUALIFICATION**

CADD files prepared by the Consultant for this project are a representation of the Consultant's professional services for use solely with respect to this project. These CADD files shall not be used or modified for any other project without the express written consent of the Consultant. The Consultant's approval cannot be given to any person to copy, modify, or otherwise use the CADD files for any other project without the express written consent of the Consultant. The Consultant shall not be held responsible for any errors or omissions in the CADD files or for any consequences arising therefrom.

**SUBMITTAL/REVISIONS**

05/03/18 DRAWING ISSUED  
08/27/18 UTILITY COMMENTS

**PROFESSIONAL SIGNATURE**

I hereby certify that this survey, plan or report was prepared by me or a duly qualified person or persons under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.  
*Anthony D. Nelson*  
Date 05/03/18 License No. 17255

**QUALITY CONTROL**

Loucks Project No. 16-017  
Project Lead HDN  
Drawn By SFM  
Checked By HDN  
Field Crew N/A

VICINITY MAP

Water Main  
Easement  
Exhibit  
1 of 2





## RESOLUTION #1207

A RESOLUTION FOR VACATION OF ELECTRIC UTILITY EASEMENT  
WITHIN A PORTION OF LOT 1, BLOCK 1 AND OUTLOT A, SARAZIN FLATS FIRST  
ADDITION, SCOTT COUNTY, MINNESOTA

WHEREAS, Sarazin Flats, Limited Partnership, a MN Limited Partnership (Sarazin) and MWF Properties, LLC, a Minnesota Limited Liability Company (MWF) are the owners of property, described as follows: Lot 1, Block 1 and Outlot A Sarazin Flats First Addition, Scott County, Minnesota, (the "Property") and

WHEREAS, There presently exists an Electric Utility Easement across a portion of the Property granted to SPUC, filed as Document No. A742666 and recorded on July 20, 2006 in the Office of the Registrar of Titles Scott County, Minnesota (the "Existing Electric Utility Easement"), and

WHEREAS, Sarazin and MWF have dedicated a new Utility Easement over the same property, and desires that the Existing Electric Utility Easement be vacated, and

WHEREAS, SPUC is willing to agree to the vacation of the Existing Electric Utility Easement in exchange for the New Utility Easement.

NOW, THEREFORE, in consideration for the terms of the attached Utility Easement Agreement, SPUC vacates the Existing Electric Utility Easement filed as Document No. A742666.

Passed in regular session of the Shakopee Public Utilities Commission, this 17th day of September, 2018.

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Commission President: Aaron Weyer

ATTEST:

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Commission Secretary: John R. Crooks