



Agenda Report

File #: 19-0577

AGENDA REPORT REQUEST FOR CITY COUNCIL ACTION

DATE: 06/19/2019

TO: Honorable Mayor and City Council Members

FROM: Public Works Department

SUBJECT:

City Council consideration of an Improvement Agreement for 8590 Cajalco Road - Circle K Stores, Inc.

RECOMMENDED ACTION:

That the City Council authorize the Mayor to execute an Improvement Agreement between the City and Circle K Stores, Inc.

ANALYSIS:

Circle K Stores, Inc., is the owner of 8590 Cajalco Road in Riverside County, as shown on Exhibit "A." The owner is proposing to construct a self-serve fuel station and convenience store.

The City intends to serve the project with water and sewer utilities, and a portion of the street improvements required by the project encroach into the City's right-of-way. Therefore, the owner will enter into an Improvement Agreement with the City and post sufficient securities to guarantee construction of street, sewer, and water public improvements associated with the project.

Securities for public improvements have been posted as follows:

PWIM2018-0020	Faithful Performance		Labor and Materials	
	Security No.	Amount	Security No.	Amount
Public Improvements	9317883	\$91,600	9317883	\$45,800

COMMITTEE ACTION:

Not applicable.

STRATEGIC PLAN:

Not applicable.

FISCAL IMPACT:

The developer has submitted public improvement plans for approval, and paid the following plan check fees associated with the review:

PWIM2018-0020	Fee Type	Amount
Public Improvement	Plan Check	\$2,040.69
Per Sheet Scanning	Fees	\$270.00

ENVIRONMENTAL ANALYSIS:

Per Section 15070 of the Guidelines for implementing the California Environmental Quality Act (CEQA), a mitigated negative declaration and mitigation monitoring plan is not required as it is deemed exempt pursuant to Section 15061(b)(3) of CEQA, which states that a project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This action merely approves agreements that provide security to guarantee completion of improvements that are required in connection with a ministerial permit, and there is no possibility that approving these agreements will have a significant effect on the environment. Therefore, no further environmental analysis is required.

PREPARED BY: MICHELE HINDERSINN, P.E., SENIOR CIVIL ENGINEER

REVIEWED BY: TOM KOPER, P.E., ASSISTANT PUBLIC WORKS DIRECTOR

REVIEWED BY: NELSON D. NELSON, P.E., PUBLIC WORKS DIRECTOR

REVIEWED BY: KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

REVIEWED BY: MICHELE NISSEN, ASSISTANT CITY MANAGER

SUBMITTED BY: MITCHELL LANSDELL, ACTING CITY MANAGER

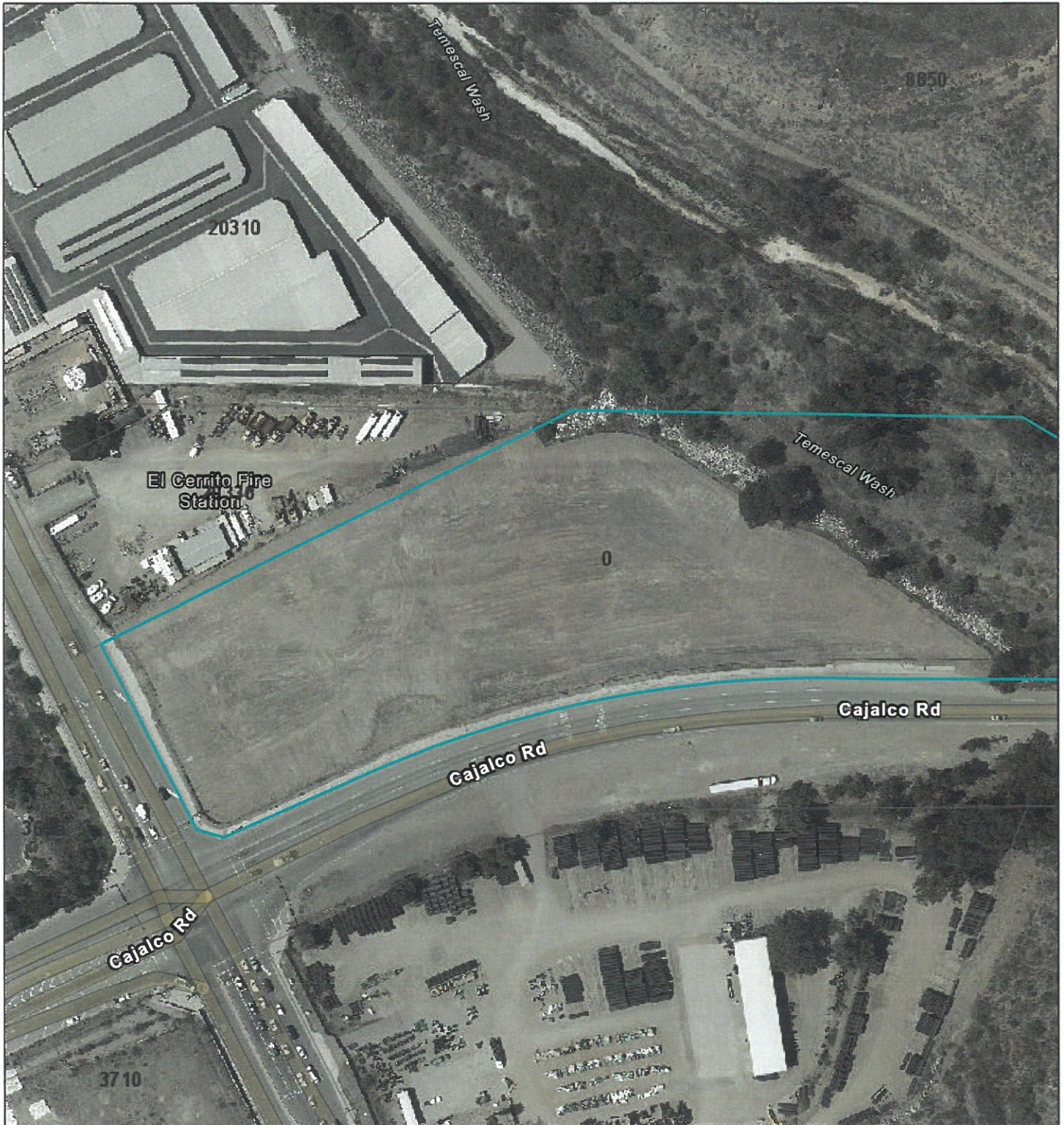
Attachments:

1. Exhibit "A" - Location Map
2. Agreement




Owner: Circle K Stores Inc.
255 E Rincon St #100
Corona, CA 92879

Engineer: Greenberg Farrow
30 Executive Park #100
Irvine, CA 92614

Corona Property Information



06/05/2019 9:48:04 AM

-  Parcels (Dark Outline)
-  Water Abandoned Lines
-  Water Abandoned Points

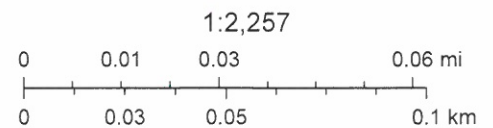


EXHIBIT "A"

**AGREEMENT FOR PUBLIC IMPROVEMENTS FOR
8590 CAJALCO ROAD –
DWG. # 18-052S – (PWIM2018-0020)
Non-Master Plan Improvements**

This Agreement is made and entered into as of this **19th** day of **June, 2019**, by and between the City of Corona, a municipal corporation (hereinafter referred to as "City"), and **Circle K. Stores Inc., a Texas corporation**, with its principal offices located at, **255 E. Rincon St., Suite 100, Corona, CA 92879**, (hereinafter referred to as "Developer").

WITNESSETH:

FIRST: Developer, for and in consideration of the approval by the City of the final map of that certain land division, or that certain other land development project, known as **8590 Cajalco Road** and more particularly described in Exhibit "A" attached agrees, at Developer's own expense, to furnish all labor, equipment and material necessary, and within **FORTY-EIGHT (48)** months from the date of this Agreement, to perform and complete in a good and workmanlike manner, all of the required improvements in accordance with those improvement plans for said project which have been approved by the Public Works Director, and are on file in the office of the City Clerk, and to do all work incidental thereto in accordance with the standards set forth in City ordinances and regulations, and pay all costs of engineering necessary in connection therewith, which are expressly made a part of this Agreement. All of the above-required work shall be done under the inspection of and to the satisfaction of the Public Works Director, and shall not be deemed complete until approved and accepted as complete by the City. The Developer shall ensure that all employees or contractors completing the work and improvements in connection with this agreement have all licenses, permits, qualifications, acceptable insurance as required by the City and approvals from the City necessary to perform their respective work and that such requirements are maintained throughout the term of this agreement or any extensions thereto. Developer further agrees to guarantee the improvements for a period of one year following acceptance by the City and agrees during this one year period to repair and replace, to the satisfaction of the Public Works Director, any defective work or labor done or defective materials furnished. Developer shall complete the improvements in accordance with Section 66462, Government Code. Developer shall also complete any offsite improvements required as a condition of approval for the project and with plans approved by the Public Works Director at such time as the City acquires an interest in the land which will permit such improvements to be made, and the Developer waives the 120 day time limitation set forth in Section 66462.5, Government Code. The estimated cost of said work and improvements is the amount of **Ninety-One Thousand Six Hundred Dollars and No Cents (\$91,600.00)** The work and improvements covered by this agreement may also include items in addition to those listed in Exhibit "B" if additional work or improvements are deemed necessary to protect public health or safety.

SECOND: Developer agrees to pay to the City the actual cost of such inspection of the work and improvements as may be required by the Public Works Director. Developer further agrees that, if suit is brought upon this Agreement or any bonds guaranteeing the completion of the improvements, all costs, expenses and fees, including attorney's fees, incurred by the City in enforcing such obligations shall be paid by Developer and guaranteed by the surety in addition to the face amount of the security, and that, upon entry of judgment, such costs, expenses and fees shall be included in any judgment rendered.

THIRD: City shall not, nor shall any officer or employee of City, except for its or their sole negligence, be liable or responsible for any accident, loss or damage happening or occurring to the improvements prior to the completion and approval thereof, nor shall City or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Developer, its agents or employees, in the construction of the improvements, and all of said liabilities are assumed by Developer. Developer agrees to defend, indemnify and hold harmless City and its officers and employees thereof from all loss, including attorney's fees, liability or claim because of, or arising out of the acts or omissions of Developer, its agents and employees, in the performance of this Agreement, or arising out of the use of any patent or patented article in the performance of this Agreement

FOURTH: Developer hereby grants to the City and any authorized agent or employee of the City, the irrevocable permission to enter upon the project for the purpose of completing the improvements. This permission shall terminate in the event that the Developer has completed construction of the improvements within the time specified

or any extension thereof granted by the City.

FIFTH: Developer agrees at all times, up to the completion and acceptance of the improvements by the City, to give good and adequate warning to the traveling public of each and every dangerous condition caused by the construction of the improvements, and to protect the traveling public from such dangerous conditions. Developer shall keep all traveled ways that are a part of, or affected by the construction of this project free and clear of mud, dirt and debris and shall provide a minimum of twice monthly street sweeping service. A copy of the contract for street sweeping service shall be provided to the City. Developer's obligation for street sweeping shall continue until such time as the City accepts the improvements as being complete. The bonds securing performance of this Agreement shall secure developer's obligation under this provision.

SIXTH: Developer, its agents and employees, shall give notice to the Public Works Director at least 48 hours before beginning any work and shall furnish the Public Works Director all reasonable facilities and access for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Developer, its agents or employees, neglects, refuses, or fails to construct the work with such diligence as to insure its completion within the specified time, or within such extensions of time that have been granted by the City, or if Developer fails to perform satisfactorily any of the provisions of the plans it shall be in default of this Agreement and written notice of such default shall be served upon Developer. The City Council shall have the power, on recommendation by the Public Works Director, to terminate all rights of the Developer because of such default. The determination by the Public Works Director whether any of the terms of the Agreement or plans have been violated, or have not been performed satisfactorily, shall be conclusive upon the Developer, and all parties who may have any interest in this Agreement or any portion thereof. The provisions of this section shall be in addition to all other rights and remedies available to the City at law or in equity.

EIGHTH: Developer agrees to file with City, prior to the date this Agreement is executed, (a) good and sufficient improvement security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this Agreement, and (b) good and sufficient security for payment of labor and materials in the amount prescribed by City ordinances and regulations to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code. Developer agrees to renew each and every such bond(s) with good and sufficient sureties or increase the amounts of said bond(s), or both, within ten (10) days after being notified by the Public Works Director that the sureties or amounts are insufficient. Notwithstanding any other provision herein, if Developer fails to take such action as is necessary to comply with said notice, he shall be in default of this Agreement unless all required improvements are completed within ninety (90) days following the date on which the Public Works Director notified Developer of the insufficiency of the security or the amount of the bond(s) or both.

NINTH: Developer and the City and any surety or sureties on the bond(s) securing this Agreement agree that, in the event it is deemed necessary to extend the time for completion of the improvements and work to be done under this Agreement, extensions of time **may** be granted by the City, either at its own option, or upon request of Developer, and such extensions shall not affect the validity of this Agreement or release the surety or sureties on said bond(s). Developer agrees to maintain the aforesaid bond(s) in full force and effect during the terms of this Agreement, including any extensions of time as may be granted.

TENTH: If any provision of this Agreement is held by the courts to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. This agreement and the obligations described herein are binding upon the project and successor owners thereof; provided, however, that Developer will remain obligated hereunder until such time as new agreements covering the matters described herein have been executed by the City and the new owner of the project.


ELEVENTH: Any notice or notices required or permitted to be given pursuant to this Agreement shall be given to the other party by mail, postage prepaid, at the following addresses:

City:
The City of Corona
Public Works Department
400 S. Vicentia Avenue
Corona, CA 92882

Developer:
Circle K. Stores Inc.
255 E. Rincon St., Suite 100
Corona, CA 92882

IN WITNESS WHEREOF Developer has affixed his name, address and seal.

**Circle K. Stores Inc.,
a Texas corporation**

By: 
Signature

Pia Bach Henriksen

Print Name

Vice President
Title

By: _____
Signature

Print Name

Title

ATTEST:

**CITY CLERK
OF THE CITY OF CORONA**

CITY OF CORONA

By: _____
(City Clerk)

By: _____
(Mayor)

(SEAL)

**NOTE: TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS UNLESS CORPORATE DOCUMENTS
ARE PROVIDED THAT INDICATE OTHERWISE.**

SIGNATURES OF DEVELOPER MUST BE EXECUTED AND ACKNOWLEDGED BEFORE A NOTARY
ORIGINAL - CITY CLERK; COPIES - DEVELOPER AND PUBLIC WORKS PROJECT FILE

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

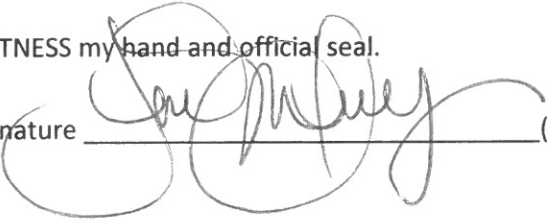
State of California

County of Riverside

On May 16, 2019, before me, Jennifer M. Seely, Notary Public personally appeared Pia Bach Henriksen, who proved to me on the basis of satisfactory evidence to the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (seal)

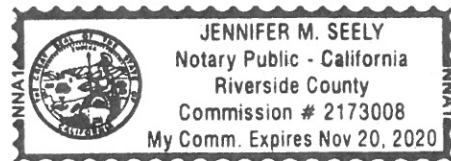


EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROJECT
SEE ATTACHED

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 AS SHOWN BY PARCEL MAP 17220, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 95, PAGE 45 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 279-231-055-0

EXHIBIT "B"
COST ESTIMATE
(To be provided by developer's engineer)

SEE ATTACHED

Faithful Performance	\$91,600.00
Labor and Material	\$45,800.00

BOND ESTIMATE SHEET
(Use for Improvements Other than Grading Work Only)

Project: Circle K
 Location: 8590 Cajalco Rd
 Drawing No: DWG 18-052S


DATE: 5/7/19

Description of Improvements <i>*Fill in as appropriate</i>	<u>Construction Cost</u>	<u>Performance Bond</u>	<u>Labor & Material</u>
		Note 2 (Round to nearest \$100)	Bond Note 3 (Round to nearest \$100)
1 Non-Master Planned R/W (Public) Improvements	<u>70,517</u>	<u>91,600.00</u>	<u>45,800.00</u>
2 Master-Planned R/W (Public) Improvements	<u> </u>	<u> </u>	<u> </u>
3 Interim Improvements (not including Grading Work)	<u> </u>	<u> </u>	<u> </u>
4 On-Site Public Improvements	<u> </u>	<u> </u>	<u> </u>
5 On-site Non-public Improvements	<u> </u>	<u> </u>	<u> </u>
6 Additional Bond Improvements (beyond typical)	<u> </u>	<u> </u>	<u> </u>

NOTES:

- 1 All construction cost estimates should be attached to this form, and shall include publicly maintained landscape & irrigation.
- 2 Performance Bond Estimate shall be calculated at 130% of the estimated construction cost, to include Engineering, Contingencies, & Planning. The 130% is the estimated **total** construction cost.
- 3 Labor & Material Bond Estimate shall be 50% of the calculated Performance Bond
- 4 City staff shall review all estimates and may change the amount of the engineer's estimated bonds. No arrangements for bonds shall be made until the City has issued the project's Bond & Fee Letter.
- 5 A current title report shall be submitted for bonding purposes.

PREPARED BY:


 ROBERT MICHAEL HOLMES

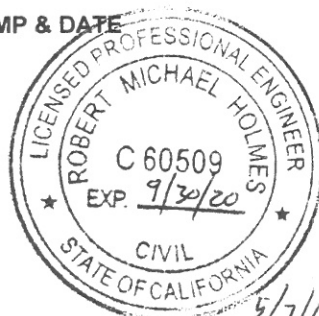
Engineer's Name & Signature

GREENBERGFARROW

Company

(479) 531-2824 / mholmes@greenbergfarrow.com
 Tel No/Email

WET STAMP & DATE





Cash Register Receipt

City of Corona

Receipt Number
R14723

DESCRIPTION	ACCOUNT	STATUS	PAID
ProjectTRAK			
PWIM2018-0020 Address: 8590 Cajalco Rd APN: 117252025			
FAITHFUL PERFORMANCE BOND – PUBLIC IMPROVEMENTS	11000000 22002	ORIGINAL	\$91,600.00
TOTAL FEES PAID BY RECEIPT:R14723			\$91,600.00

Date Paid: Thursday, May 16, 2019

Paid By: CIRCLE K STORES

Cashier: KAVV

Pay Method: BOND



Cash Register Receipt

City of Corona

Receipt Number
R14721

DESCRIPTION	ACCOUNT	STATUS	PAID
ProjectTRAK			
PWIM2018-0020 Address: 8590 Cajalco Rd APN: 117252025			
LABOR & MATERIAL BOND – PUBLIC IMPROVEMENTS	11000000 22002	ORIGINAL	\$45,800.00
TOTAL FEES PAID BY RECEIPT:R14721			\$45,800.00

Date Paid: Thursday, May 16, 2019

Paid By: CIRCLE K STORES

Cashier: KAVV

Pay Method: BOND

RESOLUTION OF THE BOARD OF DIRECTORS

OF

CIRCLE K STORES INC. (hereinafter « Circle K »)

BE IT RESOLVED :

1. SIGNATURE OF LOAN AGREEMENTS AND GRANTING OF SURETIES

That the acting President, Senior Vice President, Vice President and Treasurer be, one of them acting solely, and they are hereby authorized to exercise, on behalf of Circle K, the rights and powers mentioned in the General Borrowing By-laws of Circle K, and in particular, to make any agreement or contract with any institution concerning any subject matter regarding loans and other credits granted by such institution to Circle K, including the signing of any document or agreement for the purposes mentioned hereinabove or in the said By-laws, in particular and without limitation, any loan or credit agreement, any note and any act or document granting to the institution a surety, a title or any right regarding the whole or a part of the movable or immovable, corporeal and incorporeal, present and future properties of Circle K.

2. SIGNATURE OF OTHER AGREEMENTS

That the acting President, Senior Vice President, Vice President, Treasurer and Assistant Secretary be, one of them acting solely, and they are hereby authorized to sign, on behalf of Circle K, any permits agreements or license applications with regulatory authorities, or any agreement or contract binding Circle K, in particular any purchase or sale agreement for any movable or immovable property, any lease, any transfer of lease and any sub-lease, any retailer agreement, any management agreement and any contract with a contractor, supplier or a sub-contractor.

3. SIGNATURE OF INFORMATION FORMS, NOTICES AND CIRCULARS

That the acting President, Senior Vice President, Vice President and Treasurer be, one of them acting solely, and they are hereby authorized to authorize and sign, on behalf of Circle K, the annual information notices, the information circulars and all other documents required from time to time by the securities and exchange commissions by which Circle K is governed.

4. **SIGNATURE OF PERMIT AND LICENSE REQUESTS**

That the acting President, Senior Vice President, Vice President, Treasurer and Assistant Secretary be, one of them acting solely, and they are hereby authorized to sign, on behalf of Circle K, any request to any Organization, Ministry, Board, Society, Office, City, Municipality or any other body, to obtain any permit or license of any kind and in particular: liquor license, license for retail sales, retail petroleum product permit, video material retail permit, registration certificate, retailer of liquefied petroleum gas with and without decanting, certificate of periodical inspection of pressurized equipment (air container), firearm permit, fishing and hunting permit, occupation permit, gas station license, gas container registration, and any other operation permit having the same purposes or being complementary to those mentioned above.

5. **SIGNATURE OF RELEASE AND CANCELLATION OF REGISTRATION**

That the acting President, Senior Vice President, Vice President and Treasurer be, one of them acting solely, and they are hereby authorized, in the name of Circle K, after complete payment of a debt in capital, interests and fees owed to Circle K, under the provisions of a loan agreement or movable or immovable hypothec, to give a final release and cancellation of the registration.

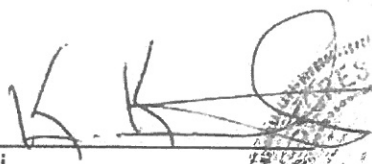
6. **GENERAL PROVISIONS**

That all bills, conveyances, warranties, agreements, documents signed, made, drawn, accepted or endorsed as provided for herein be, and will be, valid and binding upon Circle K and the same are hereby ratified and confirmed.

In the event that Circle K is doing business under another trade name, the present resolution will also apply to the transactions made by Circle K under said name by the agents hereinabove mentioned.

I, the undersigned, certify that on the 03rd day of February 2011, the above resolution was duly adopted by the Board of Directors of CIRCLE K STORES INC., in conformity with its Articles and By-laws and with the statutes and laws by which CIRCLE K STORES INC. is governed, and that the said resolution is still in full force and effect.

SIGNED in Tempe, Arizona, this 25th day of April 2019.



Kim Kwiatkowski
Assistant Secretary



I, the undersigned, certify that Mrs. Kathleen Cunnington is President Integration of Circle K Stores Inc. and is duly authorized to solely act and sign in terms of the present resolution.

SIGNED in Tempe, Arizona, this 25th day of April 2019.



Kim Kwiatkowski
Assistant Secretary



SECRETARY'S CERTIFICATE

I, the undersigned, Kim Kwiatkowski, Assistant Secretary of Circle K Stores Inc, a corporation organized and existing under and by virtue of the laws of the state of Texas (the "Corporation"), hereby certify as follows:

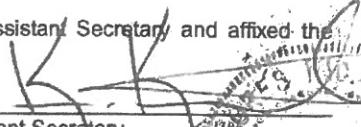
1. As Assistant Secretary, I am authorized to execute and deliver this Certificate on behalf of the Corporation.
2. The following persons have been elected to the offices set opposite their names to serve until their successors shall be elected and qualified:

Kathy Cunningham	President, Treasurer, & Secretary
Darrell Davis	Senior Vice President
Dennis Tewell	Senior Vice President
Timothy Alexander Miller	Senior Vice President
Timothy Tourek	Vice President
Pia Bach Henriksen	Vice President
Paul Rodriguez	Vice President
David Morgan	Vice President
Brian Bednarz	Vice President
Matt McCure	Vice President
Meredith Will Rice Jr.	Vice President
Rodney Blanton	Vice President
Mark Tate	Vice President
Steve Lattig	Vice President
Mark Ostolts	Vice President
Patrick Panzarella	Assistant Secretary
Kim Kwiatkowski	Assistant Secretary
Monica Huron	Assistant Secretary
Christine Anagnostou	Assistant Secretary
Sarah Lynn Longwell	Assistant Secretary
Michael L Foster	Assistant Secretary
Randy Home	Assistant Secretary
Luc Langevin	Assistant Secretary
Edward Giunta	Assistant Secretary
Kimberly Andrews	Assistant Secretary
John Little	Assistant Secretary
Aaron Brooks	Assistant Secretary

3. The following persons have been elected as directors until their successors shall be elected and qualified:

Kathy Cunningham	Director
Darrell Davis	Director

IN WITNESS WHEREOF, I have hereunto set my hand as Assistant Secretary and affixed the corporate seal of said Corporation this 04th day of February, 2019.


Assistant Secretary
Circle K Stores Inc.

