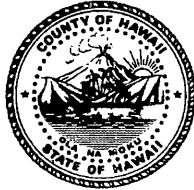


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 136

ORDINANCE NO. 22 33

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SPECIAL TAX REVENUE BONDS OF THE COUNTY OF HAWAI'I FOR THE PURPOSE OF FINANCING THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS AND INCIDENTAL EXPENSES RELATING TO THE COUNTY'S COMMUNITY FACILITIES DISTRICT NO. 1-2021 (KALOKO HEIGHTS PROJECT); AMENDING CERTAIN PROVISIONS OF THE ORDINANCE OF FORMATION FOR THE DISTRICT RELATING TO THE LIEN OF THE SPECIAL TAXES SECURING SUCH BONDS; FIXING OR AUTHORIZING THE FIXING OF THE FORM, DENOMINATIONS, AND CERTAIN OTHER DETAILS OF SUCH BONDS AND PROVIDING FOR THE SALE OF SUCH BONDS TO THE PUBLIC

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Findings and Determinations. The Council of the County of Hawai'i (the "Council" and the "County," respectively) hereby finds and determines as follows:

(a) Upon petition by RCFC Kaloko Heights, LLC, a Delaware limited liability company, Kaloko Heights B1A Holdings, LLC, a Delaware limited liability company, and Kaloko Heights Investors, LLC, a Delaware limited liability company (collectively, the "Petitioner"), the County has, pursuant to Chapter 32, Hawai'i County Code 1983 (2016 Edition, as Amended) ("Chapter 32," with all references herein to Articles and Sections, unless otherwise indicated, being intended to mean and refer to Articles and Sections within such Chapter) and Ordinance No. 21-67 (the "Ordinance of Formation"), established a community facilities district, designated as the "County of Hawai'i Community Facilities District No. 1-2021 (Kaloko Heights Project)" (the "District") for the purpose of financing the acquisition and construction of certain special improvements (as more fully described in the Ordinance of Formation, the "Improvements") and has further authorized the levy of a special tax on properties within the District pursuant to Chapter 32 (the "Special Tax").

(b) It is appropriate and in the interest of the County to authorize, and the Council intends hereby to authorize, the issuance and sale of special tax revenue bonds of the County (the "Bonds"), in an aggregate principal amount not to exceed \$22,000,000 (excluding Bonds issued to refund other Bonds previously issued), in order to provide funds (i) for payment of the costs of acquiring and constructing the Improvements (the "Project Costs"), and (ii) for payment of incidental expenses incurred with respect to the

District (as more fully described in the Ordinance of Formation, the "Incidental Expenses").

SECTION 2. Authorization of Bonds; Approval of Project Funding Agreement.

(a) Subject to the terms and conditions herein specified, the Bonds are hereby authorized for issuance and sale, in one or more series as determined by the Director of Finance of the County, in an aggregate principal amount not to exceed \$22,000,000 (excluding Bonds issued to refund other Bonds previously issued), for the purpose of funding all or a portion of the Project Costs and Incidental Expenses incurred with respect to the District; subject to compliance, with respect to each series of Bonds, with all applicable terms, conditions and limitations specified in Chapter 32 (including, but not limited to, the limitation on the principal amount of Bonds specified in Section 32-57(c)) and with the further provisions of this Ordinance. The Bonds shall be special limited obligations of the County, payable solely from and secured solely by the Special Tax on properties within the District, such funds and accounts as may be established as security for the Bonds under the Trust Indenture providing for the issuance of the Bonds (as approved pursuant to Section 4 hereof, the "Indenture") and any credit enhancement obtained for the Bonds. The Bonds shall not constitute a general obligation of the County or charge on its general fund, nor shall the Bonds be secured, directly or indirectly, by the full faith and credit of the County or by any revenues or taxes of the County other than taxes collected from the levy of the Special Tax.

(b) Pursuant to the Ordinance of Formation, the use of Bond proceeds to pay Project Costs shall be subject to the terms and conditions set forth in the Indenture and in a Project Acquisition and Funding Agreement (the "Project Funding Agreement") to be entered into by the County, acting through its Director of Finance and Director of Environmental Management, and the Petitioner. The form of Project Funding Agreement presented at this meeting is hereby approved, and the Director of Finance and the Director of Environmental Management are hereby authorized to execute and deliver the Project Funding Agreement in substantially such form, with such modifications as the County officials executing the same may approve, such approval to be conclusively evidenced by their execution thereof.

SECTION 3. Details of Bonds. Subject to the further provisions hereof, including without limitation the provisions of Section 4 hereof, the Bonds of each series authorized for issuance and sale hereunder shall:

(a) be dated as of the initial delivery date of the Bonds of such series;

(b) mature on such date or dates and be payable as to interest on such dates and at such fixed or variable rate or rates as shall be specified in the Indenture, provided that the final maturity date for the Bonds of such series shall not be more than 30 years after the initial delivery date thereof and in no event later than the expiration of the term of the District;

- (c) be issued in such denominations as shall be specified in the Indenture,;
- (d) be issued in the form, and executed in the manner, prescribed in the Indenture;
- (e) be registered as to both principal and interest, subject to registration, transfer and exchange upon such terms as shall be prescribed in the Indenture;
- (f) be payable (i) in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts, and (ii) at such place or places as shall be specified in the Indenture;
- (g) be subject to redemption prior to maturity, if applicable, at such times and upon such terms as shall be prescribed in the Indenture;
- (h) be secured under the Indenture by a pledge of (i) the Special Tax and the lien thereof established pursuant to Chapter 32 and the Ordinance of Formation, and (ii) the funds and accounts established under the Indenture as security for the Bonds, including all amounts deposited into such funds and accounts pursuant to the Indenture; it being expressly understood that, except as otherwise provided in the Indenture, the foregoing pledge shall be superior to all other claims on the Special Tax and the pledged funds and accounts, and all series of Bonds shall be of equal rank and priority under the Indenture unless the issuance of senior and junior lien Bonds is expressly authorized thereunder;
- (i) be subject to such other terms, conditions and limitations as are set forth in the Indenture, including terms and conditions pertaining to (i) the establishment and handling of a special fund or funds to pay or secure the Bonds and/or to pay Project Costs or Incidental Expenses, (ii) the investment of moneys on deposit in the funds and accounts established under the Indenture, and (iii) any other matters relating to the Bonds, including provisions for issuance, payment, security, credit enhancement, handling of funds, defaults and remedies; and
- (j) contain such other provisions and be subject to such other terms and conditions as are required under Chapter 32.

SECTION 4. Further Approvals by Council. The issuance and sale of any series of Bonds pursuant to this Ordinance shall be subject to approval by resolution of Council, prior to the marketing of such series of Bonds, of the following:

- (a) the maximum principal amount of the Bonds of such series, the maximum interest rate or true interest cost for the Bonds of such series, the maximum redemption price for the Bonds of such series, and the maximum underwriting discount at which such Bonds may be sold;

(b) the proposed forms of (i) the Indenture (or applicable supplement to the Indenture) providing for the issuance of such series of Bonds, (ii) the Preliminary Official Statement (the "Preliminary Official Statement") pertaining to the offering of such series of Bonds, including all material exhibits and appendices thereto, (iii) the Bond Purchase Agreement (the "Bond Purchase Agreement") pursuant to which such series of Bonds will be sold, and (iv) the Continuing Disclosure Agreement or other similar instrument to be executed pursuant to SEC Rule 15c2-12, it being expressly understood that variations from the approved forms of the foregoing documents shall be permitted in connection with the issuance and sale of the Bonds provided that the final documents shall be in substantially the forms approved by Council.

SECTION 5. Issuance and Sale of Bonds. Subject to the foregoing, and subject also to compliance with the applicable requirements provided in the Project Funding Agreement, but otherwise without further authorization from or action by the Council, the Director of Finance is hereby authorized to issue and sell the Bonds at negotiated sale in one or more separate series, at such time or times, in such amounts, at such prices and upon such terms and conditions as the Director of Finance shall approve and determine to be in the best interest of the County. In connection with each such issuance and sale, the Director of Finance and other appropriate officials of the County are hereby authorized:

(a) to negotiate, execute and deliver the Bond Purchase Agreement and Indenture (or applicable supplement) relating to the Bonds or series of Bonds to be issued;

(b) to prepare, execute (if applicable) and distribute a Preliminary Official Statement and a final official statement in substantially the form of the Preliminary Official Statement relating to the offering of the Bonds or series of Bonds to be issued;

(c) subject to any applicable procurement laws, to appoint and retain such consultants, advisors, agents, appraisers, legal counsel, underwriters, trustee banks and other persons or firms as such official or officials may deem advisable to assist the County in connection with the Bonds or series of Bonds to be issued; and

(d) to take such other actions and execute such documents and instruments as may be necessary or advisable in order to effectuate the issuance and sale of the Bonds or series of Bonds to be issued.

SECTION 6. Amendment to Section 3 of Ordinance of Formation Regarding Enforcement of Special Tax Liens. Pursuant to Section 32-53, the Special Tax "may be collected in the same manner as general real property taxes are collected, be subject to the same penalties and the same procedure, sale, and lien priority (subject to the provisions of section 32-32(c)) in case of delinquency as is provided by general law for default on the payment of real property taxes, unless another procedure is adopted by the council in the ordinance of formation or special tax ordinance." In order to further provide for the security of the Bonds, the Council hereby finds and determines that it is appropriate and in the interests of the County, by amendment to Section 3 of the Ordinance of Formation, to authorize certain procedures for the

enforcement of the lien of delinquent Special Taxes for so long as any Bonds are outstanding. Accordingly, Section 3 of the Ordinance of Formation is hereby amended to read in its entirety as follows (with stricken material in brackets and new material underscored):

SECTION 3. Levy of Special Tax. In accordance with Article 5, the Council hereby levies the Special Tax upon all taxable parcels of land within the District. The Special Tax shall be apportioned pursuant to the RMA, and the lien thereof shall be on a parity with the lien of general real property taxes and the lien of assessments levied under Section 46-80, Hawaii Revised Statutes; provided, however, that if collections of real property taxes, Special Taxes and assessments levied on a property (including any proceeds of foreclosure, if in a single foreclosure sale to satisfy all delinquent real property taxes, Special Taxes and assessments) are insufficient to pay the total amount due with respect to all real property taxes, Special Taxes and assessments on the property, then the Director may apply the amount collected first to real property taxes, second to the Special Tax levied hereunder, and third to assessments. In the event of delinquency in the payment of the Special Tax, the Special Tax shall be enforced in the same manner and shall be subject to penalties, interest, fees and charges at the same rates as are applicable to delinquent real property taxes under Chapter 19, Hawaii County Code (2016 Edition, as Amended), as in effect from time to time; provided, however, that for so long as any Bonds are outstanding: (i) if the Special Tax on a property is not paid when due and the delinquency continues to exist not less than 60 days after the due date thereof, the Director of Finance may sell the delinquent property by foreclosure without suit in order to collect the delinquent Special Tax and applicable penalties, interest, fees and charges; (ii) if the Special Tax on a property is not paid when due and the delinquency continues to exist not less than 120 days after the due date thereof, unless foreclosure is pending under clause (i) above, the Director of Finance shall proceed with foreclosure on the delinquent property if required under Section 32-60 in order to collect the delinquent Special Tax and applicable penalties, interest, fees and charges; and (iii) enforcement of the lien of the Special Tax may be subject to such further covenants and agreements as may be set forth in the Indenture. The Director of Finance or such official's designee is hereby appointed as the CFD Administrator, as said term is defined in the RMA, to determine, adjust and levy the annual amount of Special Tax due from each owner of Taxable Property, as said term is defined in the RMA, all in accordance with the provisions of the RMA. Proceeds of the Special Tax shall be used only to pay the costs of the [~~Facilities~~] Improvements, to pay debt service on the Bonds or other debt authorized and issued for the District pursuant to Section 5 above, and to pay Incidental Expenses. The Special Tax shall be levied pursuant to this ordinance only as long as needed to pay such costs, debt service and Incidental Expenses.

SECTION 7. Credit Enhancement. The Director of Finance is hereby authorized to procure bond insurance or other credit enhancement for the payment of the principal of and interest on some or all of the Bonds of a series if and upon such terms as may be required by the Project Funding Agreement or as otherwise deemed by the Director of Finance to be in the best interest of the County. The Director of Finance is authorized to execute such documents and certificates as may be necessary or appropriate to obtain such bond insurance or other credit enhancement.

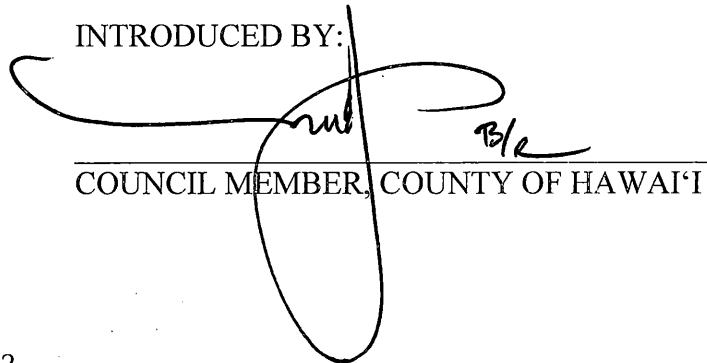
SECTION 8. Reimbursement of Expenditures. Pending the issuance of any particular series of Bonds, it is reasonably expected that the County or the Developer may advance funds from time to time to pay Project Costs and that such advances of funds will be reimbursed from proceeds of such series of Bonds when issued. The County hereby declares its official intent to use Bond proceeds to reimburse itself and/or the Developer for such future advances of funds to pay Project Costs. This ordinance is adopted in part for the purpose of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations.

SECTION 9. Repeal of Conflicts. All ordinances and resolutions, and any portions of ordinances and resolutions, heretofore enacted or adopted by the Council that are in conflict or inconsistent with any provision of this ordinance shall be and are hereby repealed to the extent of such conflict or inconsistency.

SECTION 10. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 11. Effective Date. This Ordinance shall take effect upon its approval.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAI'I

 Kona , Hawai'i
Date of Introduction: March 9, 2022
Date of 1st Reading: March 9, 2022
Date of 2nd Reading: March 23, 2022
Effective Date: April 7, 2022

REFERENCE Comm. 660

OFFICE OF THE COUNTY CLERK
 County of Hawai'i
 Kona, Hawai'i

COUNTY CLERK
 COUNTY OF HAWAII

2022 APR -7 PM 1:02

Introduced By: Matt Kāneali'i-Kleinfelder (B/R)
 Date Introduced: March 9, 2022
 First Reading: March 9, 2022
 Published: March 18, 2022

REMARKS: _____

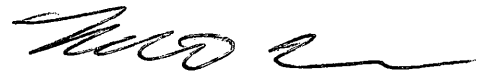
Second Reading: March 23, 2022
 To Mayor: April 5, 2022
 Returned: April 7, 2022
 Effective: April 7, 2022
 Published: April 22, 2022



REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung			X	
David	X			
Inaba	X			
Kāneali'i-Kleinfelder	X			
Kierkiewicz	X			
Kimball	X			
Lee Loy	X			
Richards	X			
Villegas			X	
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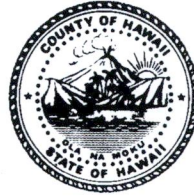
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Inaba	X			
Kāneali'i-Kleinfelder	X			
Kierkiewicz	X			
Kimball	X			
Lee Loy	X			
Richards	X			
Villegas	X			
	9	0	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

Approved/Disapproved this 7th day
 of March, 2022

 MAYOR, COUNTY OF HAWAII


 COUNCIL CHAIRPERSON

 COUNTY CLERK

Bill No.: 136
 Reference: C-660/Waived FC
 Ord No.: 22 33



RESOLUTION NO. 618 22

A RESOLUTION APPROVING THE ISSUANCE OF UP TO \$14,425,000 AGGREGATE PRINCIPAL AMOUNT OF SPECIAL TAX REVENUE BONDS OF THE COUNTY OF HAWAI‘I FOR THE COUNTY’S COMMUNITY FACILITIES DISTRICT NO. 1-2021 (KALOKO HEIGHTS PROJECT); AUTHORIZING THE APPLICATION OF THE PROCEEDS OF THE BONDS, TOGETHER WITH CERTAIN OTHER AVAILABLE FUNDS, TO FUND THE COSTS OF CERTAIN FACILITIES RELATING TO SUCH DISTRICT; APPROVING THE FORMS OF THE INDENTURE, PRELIMINARY OFFICIAL STATEMENT, BOND PURCHASE AGREEMENT AND CONTINUING DISCLOSURE AGREEMENTS RELATING TO THE BONDS; AND AUTHORIZING THE TAKING OF FURTHER ACTIONS RELATING TO THE BONDS AND THE DISTRICT

WHEREAS, upon petition by RCFC Kaloko Heights, LLC, a Delaware limited liability company, Kaloko Heights BIA Holdings, LLC, a Delaware limited liability company, and Kaloko Heights Investors, LLC, a Delaware limited liability company (collectively, the “Petitioner”), the County has, pursuant to Chapter 32, Hawai‘i County Code 1983 (2016 Edition, as Amended (“Chapter 32,” with all references herein to Articles and Sections, unless otherwise indicated, being intended to mean and refer to Articles and Sections within such Chapter) and Ordinance No. 21-67 (the “Ordinance of Formation”), established a community facilities district, designated as the “County of Hawai‘i Community Facilities District No. 1-2021 (Kaloko Heights Project)” (the “District”) for the purpose of financing the acquisition and construction of certain special improvements (as more fully described in the Ordinance of Formation, the “Improvements”) and has further authorized the levy of a special tax on properties within the District pursuant to Chapter 32 (the “Special Tax”); and

WHEREAS, pursuant to Ordinance No. 22-33 (the “Bond Ordinance”), the County has authorized the issuance of one or more series of special tax revenue bonds (including the Series 2022 Bonds referred to below, the “Bonds”) in an aggregate principal amount not to exceed \$22,000,000 (excluding Bonds issued to refund other Bonds previously issued), in order to provide funds (i) for payment of the costs of acquiring and constructing the Improvements (the “Project Costs”) in accordance with a Project Funding and Acquisition Agreement (the “Project Funding Agreement”) between the County, acting through its Director of Finance and Director of Environmental Management and the Petitioner, and (ii)

for payment of incidental expenses incurred with respect to the District (as more fully described in the Ordinance of Formation, the “Incidental Expenses”) to fund all or a portion of the costs (including “Incidental Expenses” as defined in the Ordinance of Formation); and

WHEREAS, as provided in the Bond Ordinance, the authorization to issue each series of Bonds is subject to the further approvals and authorizations set forth in this Resolution; and

WHEREAS, at the request of the Petitioner, the County proposes to issue and sell an initial series of the Bonds (the “Series 2022 Bonds”) in an aggregate principal amount not to exceed \$14,425,000; and

WHEREAS, in connection with the proposed issuance and sale of the Series 2022 Bonds, there have been presented at this meeting forms of (a) the Indenture (the “Indenture”) between the County and U.S. Bank Trust Company, National Association, as trustee, pursuant to which the Series 2022 Bonds and any future series of Bonds are to be issued, (b) the Preliminary Limited Offering Memorandum (the “Preliminary Limited Offering Memorandum”) to be disseminated to potential investors in connection with the marketing of the Series 2022 Bonds, (c) the Bond Purchase Agreement (the “Bond Purchase Agreement”) pursuant to which the Series 2022 Bonds will be sold, and (d) the respective Continuing Disclosure Agreements of the County and the Developer (each, a “Disclosure Agreement”) relating to the requirements of Rule 15c2-12 of the Securities and Exchange Commission; and

WHEREAS, the Council of the County intends hereby to approve the proposed issuance and sale of the Series 2022 Bonds and certain matters pertaining to such issuance and sale; now, therefore

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I that the issuance and sale of up to \$14,425,000 aggregate principal amount of Series 2022 Bonds is hereby approved, such Series 2022 Bonds to be issued and sold at such time and upon such terms as shall be determined by the Director of Finance in accordance with the Bond Ordinance, the Indenture and the Project Funding Agreement; provided that (i) the Series 2022 Bonds shall finally mature not later than May 15, 2052, (ii) the true interest cost of the Series 2022 Bonds shall not exceed 9% per annum, (iii) the maximum redemption price for the Series 2022 Bonds shall not exceed 103% of the principal amount thereof, and (iv) the maximum underwriting discount at which the Series 2022 Bonds are sold by the County shall not exceed 3%. It is expressly understood that the Bonds, including the Series 2022 Bonds, shall be limited obligations of the County payable solely from, and secured solely by, the

Special Tax levied on properties within the District and certain funds and accounts established under the Indenture, and that the full faith and credit of the County shall not be pledged for payment of the principal or redemption price of or interest on such Bonds.

BE IT FURTHER RESOLVED that (i) the forms of the Indenture, the Preliminary Limited Offering Memorandum, the Bond Purchase Agreement and the Disclosure Agreements, as presented at this meeting, are hereby approved and (ii) the Director of Finance is hereby authorized to execute and deliver the Indenture, the Bond Purchase Agreement and the County's Disclosure Agreement, to approve the final form and execution of the Petitioner's Disclosure Agreement and to deem final and authorize the dissemination of the Preliminary Limited Offering Memorandum, all in substantially the forms presented at this meeting, with such modifications as the Director of Finance may approve, such approval to be conclusively evidenced by such County official's execution of the Indenture.

BE IT FURTHER RESOLVED that the maximum aggregate principal amount of Series 2022 Bonds specified above is hereby authorized in reliance on confirmation received by the County from its designated appraiser, Integra Realty Associates (the "Appraiser"), that the appraised value of the land subject to the Special Tax is not less than \$43,280,000, which is not less than three times the maximum aggregate principal amount of Series 2022 Bonds so authorized, as required under Section 32-57(c). At the County's direction, the Appraiser is currently preparing an appraisal report with respect to such appraisal in connection with the issuance and sale of the Series 2022 Bonds. The issuance and sale of the Series 2022 Bonds, in an amount not to exceed \$14,425,000, shall be subject to delivery of the appraisal report, in form and substance satisfactory to the Director of Finance, which report is hereby directed to be appended to the Preliminary Limited Offering Memorandum to be disseminated to potential investors.

BE IT FURTHER RESOLVED that the Director of Finance and other appropriate officials of the County are hereby authorized to take or to direct or authorize the taking of such other actions as may be necessary or appropriate in connection with the issuance and sale of the Series 2022 Bonds and the performance of the County's covenants and responsibilities with respect to the Series 2022 Bonds and the District, including without limitation the performance of administrative services contemplated by the Ordinance of Formation, the Bond Ordinance, this Resolution and the Indenture and the retention of staff or consultants to perform such services, all in accordance with the Ordinance of Formation, the Bond Ordinance, this Resolution and the Indenture.

BE IT FINALLY RESOLVED that the County Clerk shall transmit a copy of this Resolution to the Mayor, the Director of Environmental Management, the Director of Finance and Corporation Counsel.

Dated at Kona, Hawai'i, this 16th day of November, 2022.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAI'I

COUNTY COUNCIL
County of Hawai'i
Hilo, Hawai'i

ROLL CALL VOTE

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on November 16, 2022.

ATTEST:

	AYES	NOES	ABS	EX
CHUNG	X			
DAVID	X			
INABA	X			
KĀNEALI'I-KLEINFELDER	X			
KIERKIEWICZ	X			
KIMBALL	X			
LEE LOY			X	
RICHARDS				
VILLEGAS			X	
	6	0	2	0




COUNTY CLERK CHAIRPERSON & PRESIDING OFFICER

Reference: C-1109/Waived FC
RESOLUTION NO. 618 22