

AGENDA ITEM NO.

COUNCIL MEETING 01/15/08

APPROVED BY

DEPARTMENT DIRECTOR 

CITY MANAGER

January 15, 2008

FROM: NICK YOVINO, *Director*
Planning and Development Department

SUBJECT: AUTHORIZE THE DIRECTOR OF PLANNING AND DEVELOPMENT DEPARTMENT TO ENTER INTO AGREEMENTS RELATED TO THE ISSUANCE BY THE CITY OF BUILDING PERMITS FOR MODEL HOMES ON PROPERTY SUBJECT TO ANNEXATION PROCEEDINGS.

KEY RESULT AREA:

One Fresno.

RECOMMENDATION

Council adopt a resolution authorizing the Director of Planning and Development to:

1. Execute the County/City Pre-Annexation Building Permit Agreement as attached in Exhibit "A" related to Tentative Tract No. 5600.
2. Execute the Model Home Agreement with Lennar related to Tentative Tract No. 5600 as attached in Exhibit "B."
3. Execute in the future agreements in a form substantially similar to those provide in Exhibit "A" and Exhibit "B" for the purpose of issuing building permits for model homes for developments subject to annexation proceedings for any property that meets County ordinance standard.

EXECUTIVE SUMMARY

The Director of Planning and Development is requesting Council adopt a resolution authorizing the Director to enter the attached project specific agreements, and in the future, agreements in a form substantially similar to those provide in Exhibits "A" and "B" for the purpose of issuing building permits for model homes for developments subject to annexation proceedings. The Subdivision Map Act permits a property owner/developer to construct model homes after the approval of a tentative map, prior to recordation of the final map. The County of Fresno has a provision in its ordinance which would permit the City to issue building permits for model homes on projects yet to be annexed, provided certain criteria are met, including the execution of an agreement between the City and the County in the form attached as Exhibit "A." Specifically, Lennar, a residential home builder, is requesting the City issue building permits for model homes at Tract Map 5600 which has not yet been annexed but is expected to be approved by LAFCo on February 6, 2008, with the Final Map being approved and recorded in March 2008.

KEY OBJECTIVE BALANCE

Council action regarding this request optimizes the three key objectives of Customer Satisfaction, Employee Satisfaction, and Financial Management. Affirmative Council action will allow for the timely commencement of this project. Prudent financial management is demonstrated because the applicant has paid City processing fees for this project. The fees fund Planning and Development Department operations. Employee Satisfaction

results because staff work has been done in a professional manner, thereby enhancing the sense of accomplishment.

BACKGROUND

Government Code Section 66499.30 of the Subdivision Map Act allows building permits to be issued for model homes after approval of a tentative map, prior to recordation of the final map. Ordinarily, when a tentative map is within the City's boundaries, upon request of the developing party, the Director of Planning and Development will enter an Early Model Home Agreement with the developing party, thereby permitting the developing party to construct model homes consistent with the provisions of the Subdivision Map Act. The developing party agrees to indemnify the City and if a final map is not recorded, the City has the authority to direct the developing party to remove any structures constructed.

Often times, tentative maps are approved by the City for projects within the City's sphere of interest, but not yet annexed into the City. The County of Fresno has provision in its ordinance at Section 15.04.140 which allows the City to issue building permits prior to annexation provided:

1. The City of Fresno has adopted a resolution to commence annexation proceedings;
2. The Building Official of the City of Fresno certifies the proposed structures and the property comply with all City ordinances; and,
3. The City has executed an agreement agreeing to the provisions of Section 15.04.140.

Similar to the City's Early Model Agreements, the County's Agreement provides that structures are at risk and if property is not annexed within 180 days, inclusive of extensions, the structures can be ordered removed. The County's agreement further requires the City of Fresno to indemnify County.

On December 6, 2006, the City of Fresno approved Lennar's Tentative Tract Map 5600 south of Barstow Avenue between Grantland and Garfield Avenues within the City's sphere of influence, but not yet annexed into the City of Fresno. On December 11, 2007, the City of Fresno adopted a resolution initiating annexation of Tract Map 5600;

The Fresno County LAFCo has set February 6, 2008 as the hearing date for the Barstow and Grantland Area Annexations, which includes Tract Map 5600. The City, County and LAFCO staff expect that the annexation will be approved.

The City Building Official finds that all plans for model homes have been properly submitted by Lennar and comply with the Uniform Building Code and the Fresno Building Code. The City Building Official finds that City could issue building permits but for the property still being within the County of Fresno.

Lennar is desirous of obtaining building permits from the City to build model homes. Lennar has agreed to indemnify the City of Fresno for its risks of issuing model home building permits, including the City's indemnity of County.

FISCAL IMPACT

None

MIW/JVM/CGP/DHC/ems./NY-1-09-08

Attachments:

- 1) Exhibit A
- 2) Exhibit B
- 3) Resolution

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AGREEMENT FOR EXEMPTION FROM PROVISIONS OF TITLE 15

THIS AGREEMENT is made and entered into this ____ day of _____ 2007 by and between the County of Fresno, a political subdivision of the State of California, hereinafter referred to as the "County" and the City of Fresno a municipal corporation of the State of California, hereinafter referred to as the "City".

WITNESSETH

WHEREAS, the City has filed with the County a request for exemption from provisions of the Fresno County Ordinance Code Title 15, as allowed by Fresno County Ordinance Code § 15.04.140, for the proposed development and construction of permanent improvements hereinafter specified for the following described parcel of land:

See Exhibit "A" attached

WHEREAS, pursuant to Fresno County Ordinance Code § 15.04.140, the County Building Official has determined that all of the following conditions exist:

1. *Any City in the County has commenced by the adoption of an appropriate resolution, annexation proceedings of the property upon which the structure or structures are to be erected;*
2. *That the Building Official of the City shall certify that the proposed structure and its location on the property will meet all City ordinances and that said City will enforce the provisions thereof.*

NOW, THEREFORE, in consideration of approval of said exemption the City and the County hereby mutually agree as follows:

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- I. The property described in Exhibit "A" is exempt from the provisions of Fresno County Ordinance Code Title 15. The City agrees to hold the owner accountable to construct the improvements on the property to meet all City ordinances and that the City will enforce the provisions of its ordinances.
- II. The County Building Official, upon receipt of a written request from the City Building Official prior to the expiration period, may grant up to two (2) individual extensions not to exceed thirty (30) days each.
- III. Should the annexation not be consummated within the specified time frame of the extensions mentioned above, any additional requests for extensions shall be submitted by the City Building Official to the Board of Supervisors. Such requests must be made prior to the expiration of the exemption period or the exemption will expire.
- IV. The City agrees that it will only allow construction of model homes, site grading and site utilities prior to the annexation of the property. No homes (other than model homes as permitted in the Subdivision Map Act) shall be constructed on the site until annexation of the property is completed.
- V. Indemnity.

The City agrees to indemnify, save, hold harmless and at the County's request defend its officers, agents and employees, from and against any and all costs, expenses, demands, liabilities, claims, loses, or damages of any nature whatsoever occurring or resulting to County, including, but not limited to, an award of

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attorney's fees and costs to any person, organization, entity, firm, or corporation bringing the cause of action, or their officers, employees, agents, contractors, subcontractors, or anyone directly or indirectly employed by either of them arising from, or in connection with, the County action to grant or approve City's request for exemption from Fresno County Ordinance Code Title 15.

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COUNTY OF FRESNO

BY: _____
JUAN DIAZ, CHIEF BUILDING INSPECTOR
Department of Public Works and Planning

CITY OF _____ FRESNO _____

BY: _____

WHEN RECORDED MAIL TO:

City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3603

NO FEE-Government Code 6103

CITY OF FRESNO
Planning and Development Department

P.W. File No. 11214

JAF: 5402, 5414, 5426, 5438 North Maruyama Avenue

7020, 4032, 7044, 7056 West San Madele Avenue

**AGREEMENT FOR EARLY ISSUANCE OF MODEL
HOME BUILDING PERMITS TRACT NO. 5600**

THIS AGREEMENT is made this 10th day of October, 2007, by and between the **CITY OF FRESNO**, a Municipal Corporation, hereinafter referred to as the "City," and **LENNAR FRESNO INC., a California Corporation** hereinafter referred to as the "Developer," without regard for number or gender.

RECITALS

A. The Developer owns real property situated in the County of Fresno, State of California, hereinafter referred to as the "Subject Property" and more particularly described in EXHIBIT "A," attached hereto and made a part of this Agreement, which is generally located on the south side of West Barstow Avenue between North Garfield and North Grantland Avenues. The Subject Property is in the City's Sphere of Influence and the Council has adopted a resolution to initiate annexation proceedings.

B. The Developer hereby warrants that any and all parties having record title interest in the Subject Property which may ripen into a fee have subordinated to this instrument; and all such instruments of Subordination, if any, are attached hereto and made apart of this instrument.

C. The Developer has filed and the City of Fresno has approved Tentative Map No. 5600 on the Subject Property. Additionally, the Developer has filed a Final Map of Tract No. 5600, hereinafter referred to as the "Final Map" pursuant to said Tentative Map, which will be presented for City Council action.

D. The Developer is requesting the issuance of building permits to construct model homes on the Subject Property prior to the approval and recording of the Final Map.

E. The County of Fresno Code Section 15.04.140 authorizes the issuance of building permits by the City for the construction of model homes provided:

1. The City of Fresno has adopted a resolution to commence annexation proceedings;
2. The Building Official of the City of Fresno certifies the proposed structures and the property comply with all City ordinances; and,
3. The City has executed an agreement agreeing to the provisions of Section 15.04.140.

This agreement requires the City to agree to indemnify the County for liability arising from the agreement.

F. The Developer has filed building plans and has requested that the City issue building permits for model homes on the portion of the Subject Property which correspond to the lots to be created by the Final Map as follows:

Lot 73, 7056 West San Madele Avenue	Lot 79, 5438 North Maruyama Avenue
Lot 74, 7044 West San Madele Avenue	Lot 80, 5426 North Maruyama Avenue
Lot 75, 7032 West San Madele Avenue	Lot 81, 5414 North Maruyama Avenue
Lot 76, 7020 West San Madele Avenue	Lot 72, 7044 North Maruyama Avenue.

G. The City is unwilling to permit such construction or inspect same without assurance that no vested rights or entitlements will be conferred by the early issuance of such model home building permits or by the acceptance of such construction upon inspection.

H. The Developer acknowledges that such improvements will be accepted by the City only if they comply with all applicable City standards, codes, and ordinances, provided, and in no case shall acceptance of such improvements be complete until the Final Map is approved by the Fresno City Council and duly recorded.

I. Developer understands and acknowledges that the improvements described herein shall be subject to acceptance or rejection by the City upon inspection thereof, and upon the terms and conditions contained herein.

J. It is extremely important to the Developer that the building permits for the model homes be issued as soon as possible.

K. The action for the approval of the Final Map by the City of Fresno is not expected to be finalized for up to one hundred twenty (120) days.

L. The City will not enter into the County agreement pursuant to Section 15.04.140 without Developer indemnifying the City.

AGREEMENT

In consideration of the foregoing, the early issuance of building permits for the model homes and the promises and covenants herein contained, the undersigned agree:

1. Should the City of Fresno fail to approve the Final Map for any reason within one hundred twenty (120) days of the execution of this Agreement, the Developer shall, within ten (10) days after written notice from the Director of the Planning and Development Department of the City of Fresno, remove from the Subject Property any improvements or construction placed or constructed pursuant to the building permits issued for the model homes; and Developer shall restore the Subject Property to its prior condition.

2. Should the Developer fail to comply with the provisions of Paragraph 1 above, the City of Fresno, or any of its duly authorized officers, employees or agents, are unconditionally permitted to enter upon the Subject Property and accomplish such removal and restore the Subject Property to its prior condition.

3. Should the City of Fresno cause such removal under the provisions of Paragraph 2 hereof, the Developer shall hold harmless and defend the City, its officers, employees and agents from any claims, lawsuits, costs, liability, damages or expenses, including costs of suit and fees and expenses for legal services, on account of any damages claimed by any reason to have occurred by reason of such removal.

4. To assure the promises herein contained, the Developer shall deliver to the City of Fresno the sum of One-Thousand (\$1,000) per model home for a total amount of Eight Thousand Dollars (\$ 8,000) evidenced by a Certificate of Deposit made payable to the City of Fresno. This deposit may be

used by the City to defray all or part of the costs and expenses of removal with any balance to be returned to the Developer. After the action by the City approving the Final Map and the recording of that Final Map, the deposit will be returned to the Developer.

5. Any costs and expenses of removal exceeding the above stated amount of security, which are stated in writing with a description of the Subject Property by an officer of the City, and recorded in the County Recorder's office, shall be a lien on the Subject Property and appurtenances running in favor of the City of Fresno.

6. The Developer has paid the fees and charges due as a condition of approval of this Agreement for the model homes as follows:

Wastewater Facilities Charge

8 Lots @ \$ 2,119 /Lot \$ 16,952.00

Service Connection Charges - Water Meters per Lot

Lots 73-76, 79-82 8 - 1½" Meters @ \$455.00 /each \$ 3,640.00

Total Fees and Charges Due \$ **20,592.00**

7. The obligations of the Developer provided in this Agreement are joint and several.

8. This Agreement shall in no way whatsoever be construed as the granting by the City of any rights to the Developer to trespass upon land rightfully in the possession of, or owned by, another, whether such land be privately or publicly owned.

9. No vested rights or entitlements are conferred by the issuance of this early construction permit or by acceptance of any improvements constructed thereunder.

10. Indemnification. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any

and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement, the agreement entered into with the County pursuant to Fresno County Code Section 15.04.140 or the performance of any or all work to be done in and upon the street rights-of-way in said subdivision and upon the premises adjacent thereto pursuant to this Agreement. Developer's obligations under the preceding sentence shall apply regardless of whether Developer or any of its officers, officials, employees or agents are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of City or any of its officers, officials, employees, agents or volunteers.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraphs.

This section shall survive termination or expiration of this Agreement.

11. Throughout the life of this Agreement, Developer shall pay for and maintain in full force and effect all policies of insurance described in this section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by CITY'S Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and

advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$5,000,000 aggregate for products and completed operations.

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 – Any Auto), with combined single limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

(iii) POLLUTION LIABILITY insurance with limits of liability of not less than \$5,000,000.

(iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(v) EMPLOYERS' LIABILITY with minimum limits of liability of not less than 1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Subdivider shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. **In the event any policies are due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable

endorsements for such policy(ies).

The General Liability, Automobile Liability and Pollution Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. **Developer shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of the Agreement.** Developer shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the life of the Agreement or any extension, Developer fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees and agents in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the subcontractor.

12. The foregoing shall burden the Subject Property described and constitute a covenant running with the land in favor of and for the benefit of the City of Fresno and its property; be enforceable

Agreement for Early Issuance
of Model Home Building Permits
Tract No. 5600
Page 9

by the City by any legal or equitable means; and shall be binding upon the successor, assigns, transferees, and heirs of the Developer. In the event the City Council approves the Final Map and the Final Map is duly recorded, the foregoing deposit shall be returned to the Developer and this Agreement shall be of no further force and effect.

* * * *

Agreement for Early Issuance
of Model Home Building Permits
Tract No. 5600
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CITY OF FRESNO,
a Municipal Corporation

Planning and Development Department
Nick P. Yovino, Director

By: _____
Keith Bergthold, Assistant Director

DEVELOPER:

LENNAR FRESNO, INC., a California Corporation

By: _____
Steve Lutton, Vice-President

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

(Attach Notary Acknowledgment)

By: _____
Kathryn C. Phelan, Deputy City Attorney

Date: _____

CLERK'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

On _____ before me, _____, Deputy
City Clerk personally appeared _____ personally known
to me (or provided to me on the basis of satisfactory evidence) to be the persons(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument(s) the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

REBECCA E. KLISCH, CMC
CITY CLERK

By _____

DEPUTY

Agreement for Early Issuance
of Model Home Building Permits
Tract No. 5600
Page 12

EXHIBIT A

Agreement for Early Issuance of Model Home Building Permits for Tract No. 5600

SUBORDINATION

The undersigned as holder of the beneficial interest in and under that certain Deed of Trust recorded on _____, in the office of the Fresno County Recorder as Document No. _____ of which the Deed of Trust in by and between:

_____, as Trustor,
_____, as Trustee,
and _____, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the foregoing Agreement For Early Issuance of Model Home Building Permits .

DATED: _____, 20____

BENEFICIARY

By: _____

BY: _____

(Beneficiary to print/type document information, Name, Title and attach Notary Acknowledgment)

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, TO AUTHORIZING DIRECTOR OF
PLANNING AND DEVELOPMENT TO ENTER AGREEMENT
WITH COUNTY REGARDING CONSTRUCTION OF MODEL
HOMES WITHIN THE COUNTY

WHEREAS, On December 6, 2006, the City of Fresno approved Lennar's Tentative Tract Map 5600 south of Barstow Avenue between Grantland and Garfield Avenues within the City's sphere of influence, but not yet annexed into the City of Fresno;

WHEREAS, Government Code Section 66499.30 of the Subdivision Map Act allows building permits to be issued for model homes after approval of a tentative map prior to recordation of a final map;

WHEREAS, Lennar is desirous of obtaining building permits from the City to build model homes;

WHEREAS, the City of Fresno Building Official finds that City could issue building permits but for the property still being within the County of Fresno;

WHEREAS, the County of Fresno has provision in its ordinance at Section 15.04.140 which allows the City to issue building permits prior to annexation provided:

1. The City of Fresno has adopted a resolution to commence annexation proceedings;
2. The Building Official of the City of Fresno certifies the proposed structures and the property comply with all City ordinances; and,
3. The City has executed an agreement agreeing to the provisions of Section 15.04.140.

WHEREAS, such County/City agreement would require that buildings are at risk if property is not annexed within 180 days, inclusive of extensions;

WHEREAS, the County agreement requires the City of Fresno to indemnify county; and

WHEREAS, on December 11, 2007, the City of Fresno adopted a resolution initiating annexation of Tract Map 5600;

WHEREAS, LAFCo has set February 6, 2008, as the hearing date for the Barstow and Grantland Area Annexations, which includes Tract Map 5600;

WHEREAS, annexation is expected by City, County and LAFCO staff to be approved;

WHEREAS, the City of Fresno Building Official finds that all plans for model homes have been properly submitted by Lennar and comply with the Uniform Building Code and the Fresno Building Code;

WHEREAS, Lennar has agreed to indemnify the City of Fresno for its risks of issuing model home building permits, including the City's indemnity of County.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The Director of the Planning and Development is authorized to execute the County/City Pre-Annexation Building Permit Agreement as attached in Exhibit "A."
2. The Director of Planning and Development is authorized to enter the Model Home Agreement with Lennar as attached in Exhibit "B."
3. Further, for other developments that meet the requirements of Fresno County Code Section 15.04.140, the Director of Planning and Development is authorized to execute agreements in a form substantially similar to those provide in Exhibit "A" and Exhibit "B" on behalf of the City for the purpose of issuing building permits for model homes for developments

that are subject to annexation proceedings. The Director is only authorized to execute an agreement with the County similar to the agreement in Exhibit "A" if the Director has an executed agreement with the developer indemnifying the City as provided in Exhibit "B."

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, California, at a regular meeting held on the ___ day of _____, 2008.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2008

Mayor Approval/No Return: _____, 2008

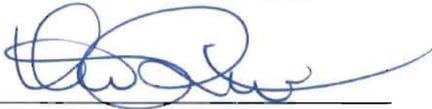
Mayor Veto: _____, 2008

Council Override Vote: _____, 2008

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: 
Kathryn C. Phelan, Deputy

Date: 11/9/08

KCP:eb/sz [43614eb/reso] 1/9/08