


## AGENDA REPORT

TO: Mayor & City Commission  
FROM: Ken Hibl, City Manager   
DATE: September 2, 2009  
RE: Brownfield Reimbursement Agreement

For the Agenda of September 8, 2009

Background. By adoption of its Resolutions 2009-069 and 2009-081 (*copies att'd*), the Clare City Commission approved a Brownfield Redevelopment Plan and an amendment to the Plan to facilitate the implementation of tax increment financing to assist in the development of the Fourth Street Senior Housing Project and to reimburse the developer of that project for eligible environmental costs (a total of \$14,500 – *see att'd copy of extract of the Plan outlining the total costs associated with implementation of the Plan*) that he either has or will expend during the process of completing the project.

As a step in the process of implanting the provisions of the Plan, an agreement (*copy att'd*) is required outlining the method and means of reimbursement of the eligible costs accrued by the developer. While the actual reimbursement costs will be paid from taxes captured by the Brownfield Redevelopment Authority, the City Commission is the approval authority of the agreement. The Commission is asked to approve the required agreement.

***Note: The Clare Brownfield Redevelopment Authority is scheduled to meet on September 4, 2009 to review and formulate a recommendation for the Clare City Commission regarding the Reimbursement Agreement.***

Issues & Questions Specified. Should the City Commission approve the proposed Brownfield Reimbursement Agreement?

Alternatives.

1. Approve the agreement.
2. Approve the agreement with conditions, changes, or stipulations.
3. Do not approve the agreement.
4. Set aside decision regarding this matter to a later date.

Financial Impact. If the Reimbursement Agreement is approved in its present form, the Brownfield Redevelopment Authority will reimburse the developer a total of \$14,500 (plus applicable interest, which is stipulated in the Agreement as the greater of 4% or prime for the unpaid balance, over the next ten-year period). This reimbursement will be made from taxes captured as outlined in the Brownfield Redevelopment Plan.

Recommendation. I recommend that the City Commission, contingent upon a recommendation of approval by the Brownfield Redevelopment Authority, approve the proposed Reimbursement Agreement by adoption of Resolution 2009-092(*copy att'd*).

Attachments.

1. Resolutions 2009-069 & 081.
2. Extract of Plan.
3. Reimbursement Agreement.
4. Resolution 2009-092.

**RESOLUTION 2009-069**

**A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A BROWNFIELD REDEVELOPMENT PLAN FOR THE FOURTH STREET SENIOR HOUSING LDHA PROJECT.**

**WHEREAS**, the City of Clare Brownfield Redevelopment Authority has submitted a proposed Brownfield Redevelopment Plan for the Fourth Street Senior Housing Project in the City of Clare in accordance with the provisions of Michigan Act 381 of 1996 (The Michigan Brownfield Redevelopment Financing Act, as amended) ; and

**WHEREAS**, the Clare City Clerk has completed notices to taxing jurisdictions and public requisite notices advising the public and taxing jurisdictions of a public hearing of the Clare City Commission set for July 6, 2009 at 6pm at Clare City Hall in conjunction with a scheduled Clare City Commission meeting at which time the City Commission shall accept any and all comments from all interested parties regarding said proposed Plan; and

**WHEREAS**, the Clare City Commission duly held said public hearing at said date, time, and location and heard and considered all comment offered at said public hearing; and

**WHEREAS**, the City Commission, subsequent to said public hearing, considered said Plan and determined that said Plan meets a public purpose; and

**WHEREAS**, the City Commission further determined that said Plan meets the requirements of Act 381; that the proposed method of financing the costs of eligible activities is feasible and the Authority has the ability to arrange the financing; that the costs of eligible activities proposed are reasonable and necessary; that the amount of captured taxable value estimated to result from adoption of the Plan is reasonable;

**WHEREAS**, the City Commission has determined that approval of the Plan is in the best interests of the City of Clare and its residents.

**NOW THEREFORE BE IT RESOLVED THAT**, the Clare City Commission hereby approves the proposed Brownfield Redevelopment Plan for the Fourth Street Senior Housing LDHA, LP, as submitted.

**BE IT FUTHER RESOLVED THAT** the procedure, adequacy of notice, and findings with respect to purpose and captured taxable value shall be presumptively valid unless contested in a court of competent jurisdiction within 60 days after adoption of this resolution approving the Plan.

**ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.**

**The Resolution was introduced by Commissioner Bill Horwood and supported by Commissioner John Koch. The Resolution declared adopted by the following roll call vote:**

**YEAS: Bill Horwood, John Koch, Tom Koch, Jean McConnell and Pat Humphrey**

**NAYS: None**

**ABSENT: None**

Resolution approved for adoption on this 6<sup>th</sup> day of July 2009.

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Diane Schmidt, City Clerk

**RESOLUTION 2009-081**

**A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING AN AMENDMENT TO AN APPROVED BROWNFIELD REDEVELOPMENT PLAN FOR THE FOURTH STREET SENIOR HOUSING LDHA PROJECT.**

**WHEREAS**, the City of Clare Brownfield Redevelopment Authority submitted a proposed Brownfield Redevelopment Plan for the Fourth Street Senior Housing Project in the City of Clare in accordance with the provisions of Michigan Act 381 of 1996 (The Michigan Brownfield Redevelopment Financing Act, as amended) ; and

**WHEREAS**, by adoption of its Resolution 2009-069, the Clare City Commission, subsequent to a duly noticed public hearing, approved said Brownfield Redevelopment Plan at a regularly scheduled public meeting on July 6, 2009; and

**WHEREAS**, the City of Clare Brownfield Redevelopment Authority has submitted a proposed Amendment to said approved Brownfield Redevelopment Plan, said Amendment listing the site for brownfield redevelopment as a “facility” rather than an obsolete site as stipulated in the Plan previously approved by the Clare City Commission; and

**WHEREAS**, the Clare City Clerk has completed notices to taxing jurisdictions and public requisite notices advising the public and taxing jurisdictions of a public hearing of the Clare City Commission set for August 3, 2009 at 6pm at Clare City Hall in conjunction with a scheduled Clare City Commission meeting at which time the City Commission shall accept any and all comments from all interested parties regarding said proposed Plan Amendment; and

**WHEREAS**, the Clare City Commission duly held said public hearing at said date, time, and location and heard and considered all comment offered at said public hearing; and

**WHEREAS**, the City Commission, subsequent to said public hearing, considered said Plan Amendment and determined that said Amended Plan meets a public purpose; and

**WHEREAS**, the City Commission further determined that said Plan Amendment meets the requirements of Act 381; that the proposed method of financing the costs of eligible activities is feasible and the Authority has the ability to arrange the financing; that the costs of eligible activities proposed are reasonable and necessary; that the amount of captured taxable value estimated to result from adoption of the Plan Amendment is reasonable;

**WHEREAS**, the City Commission has determined that approval of the Plan Amendment is in the best interests of the City of Clare and its residents and the developer of said project.

**NOW THEREFORE BE IT RESOLVED THAT**, the Clare City Commission hereby approves the proposed Brownfield Redevelopment Plan Amendment for the Fourth Street Senior Housing LDHA, LP, as submitted.

**BE IT FUTHER RESOLVED THAT** the procedure, adequacy of notice, and findings with respect to purpose and captured taxable value shall be presumptively valid unless contested in a court of competent jurisdiction within 60 days after adoption of this resolution approving the Plan Amendment.

**ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.**

**The Resolution was introduced by Commissioner Bill Horwood and supported by Commissioner Tom Koch. The Resolution declared adopted by the following roll call vote:**

**YEAS: Jean McConnell, Bill Horwood, John Koch and Tom Koch**

**NAYS: None**

**ABSENT: Pat Humphrey**

Resolution approved for adoption on this 3<sup>rd</sup> day of August 2009.

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Diane Schmidt, City Clerk

by December 31, 2009. This Plan is being prepared to authorize use of Tax Increment Financing to reimburse the Developer for certain eligible costs to be incurred as part of the project.

**Evidence of Eligible Property as "Functionally Obsolete"**

Section 2 of Act 381 (MCL 125.2652) provides the definition of a *functionally obsolete* property as "unable to be used to adequately perform the function for which it was intended due to a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself or the property's relationship with other surrounding property". The structure at 144 West Fourth Street is proposed for designation as *functionally obsolete*, and Section 13 of Act 381 (MCL 125.2663) requires an affidavit supporting designation of functional obsolescence be executed by a State of Michigan certified Level 3 or 4 assessor. An affidavit signed by the Clare City Assessor and certifying the property's qualifying factors is found in Appendix B. Therefore the subject parcel meets the definition of "eligible property".

**Summary of Eligible Activities & Description of Costs to be Paid with Tax Increment Revenues**

Eligible activities which shall be conducted as part of this Plan include (1) conducting an ASTM Phase II Environmental Site Assessment, and (2) brownfield plan preparation. A summary and the estimated costs of the eligible activities to be reimbursed under this Plan are presented in the table below:

<b>ITEM</b>	<b>ESTIMATED COST</b>
ASTM Phase II ESA	\$12,000.00
Plan Preparation	\$2,500.00
<b>Eligible Activity Subtotal</b>	<b>\$14,500.00</b>
Financing Costs	\$1,246.00
BRA Administrative Expenses	\$33,972.00
Local Remediation Fund Deposit	\$34,000.00
<b>TOTAL COSTS</b>	<b>\$83,718.00</b>

**6.2 An estimate of the captured taxable value and tax increment revenues for each year of the plan from each parcel of eligible property and in aggregate.**

1	<u>Captured Taxable Value</u>	
	Initial Taxable Value	\$ -0-
	Estimated Taxable Value after Improvements	\$ 336,778
	Estimated Captured Taxable Value	\$ 336,778

The estimated true cash value of the property with improvements will be \$2,150,000. A payment-in-lieu-of-taxes (PILOT) arrangement has been approved by the City of Clare for the residential portion, thus making only the commercial portion, land and land improvement value is assessable and estimated at \$673,557. The captured taxable value is the difference between the initial taxable value before improvements and the taxable value after improvements, which is estimated at \$336,778. Personal property

## BROWNFIELD REIMBURSEMENT AGREEMENT

THIS AGREEMENT (the "Agreement") dated \_\_\_\_\_, 2009, is entered into between the CITY OF CLARE (the "City"), a Michigan municipal corporation, whose address is 202 West Fifth, Clare, Michigan, 48617; and FOURTH STREET SENIOR LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP, (the "Developer"), a Michigan domestic limited partnership, whose address is 1574 East Washington Road, Farwell MI 48622.

### RECITALS

A. In accordance with Act 381, the City of Clare Brownfield Redevelopment Financing Authority (the "Authority") has prepared the City of Clare Brownfield Redevelopment Authority Brownfield Plan for Fourth Street Senior Housing Limited Dividend Housing Association Limited Partnership (the "Plan") that was duly approved by the Authority and the City Commission of the City of Clare (the "City Commission").

B. The Developer owns property in the City located at 144 West Fourth Street, Clare, Michigan, which is legally described as follows:

T17N, R4W, Section 34, 144 West Fourth Street, West 61 feet of South 92 feet of Lot 11 AND Lots 12-13-14 AND South 55 feet of Lots 1 & 2, all of Block 21, Clare, Michigan.

Property Address: 114 West Fourth Street, Clare MI 48617'

Tax Parcel No.: 18-051-065-011-60

The Property is included in the Plan as a "facility" and "eligible property" because certain hazardous substances are present on the Property as described in the Plan.

C. The Developer plans to redevelop the Property by constructing a new mixed-use residential and commercial building with associated parking with a total estimated value with improvements will be \$2,150,000.00 (the “Improvements”). The Improvements are expected to create temporary construction jobs and new full time jobs, increase the tax base within the City, and otherwise enhance the economic vitality and quality of life within the City.

D. Act 381 permits the Authority to reimburse a developer or property owner for the costs of certain “eligible activities” on “eligible property” using Tax Increment Revenues generated by the redevelopment of the property. Act 381 also permits the Authority to reimburse the Michigan Economic Growth Authority’s costs to review a Work Plan in accordance with Act 381 (the “Work Plan Costs”).

E. To make the Improvements on the property, the Developer will incur costs associated with “eligible activities” – including site preparation, public infrastructure, additional response activities, and the reasonable costs to prepare a Work Plan and an amendment to the Plan – each of which will require the services of various contractors, engineers, environmental consultants, attorneys and other professionals (the “Eligible Costs”). The Eligible Costs, including contingencies and interest, are estimated to be \$14,500.00.

F. The Plan authorizes the use of Tax Increment Revenues that are generated by the Improvements on the Property to reimburse the

Eligible Costs and the Work Plan Costs and to fund a local site remediation revolving fund in accordance with Act 381.

G. The parties are entering into this Agreement to establish the procedure for reimbursing the Eligible Costs and the Work Plan Costs using Tax Increment Revenues in accordance with Act 381 and the Plan.

NOW, THEREFORE, the parties agree with each other as follows:

1. The Plan

The Plan is attached as Exhibit B and incorporated herein. To the extent provision of the Brownfield Plan conflict with this Agreement, the terms and conditions of this Agreement control. To the extent provisions of the Brownfield Plan or this Agreement conflict with Act 381, Act 381 controls.

2. Term of Agreement

In accordance with the Plan, the Authority shall capture the Tax Increment Revenues generated by the Improvements on the Property to reimburse the Eligible Costs and the Work Plan Costs until the earlier of December 31, 2018, or the date that all the Work Plan Costs and Eligible Costs plus interest are fully reimbursed under this Agreement. If this Agreement ends before all the Work Plan Costs and Eligible Costs plus interest are reimbursed, the last tax payment by the Authority shall be the summer and winter taxes distributed during the final year of this Agreement.

3. Eligible Activities

The Authority shall reimburse the Developer for Eligible Costs identified in the Plan that were incurred before the City Commission approved the Plan if permitted under Act 381. The Developer shall diligently pursue completion of the Eligible Activities set forth in the Plan.

4. Reimbursement Source

During the term of this agreement, the Authority shall capture the Tax Increment Revenues generated by the Improvements from local taxes, including personal property taxes, imposed on the property and use those Tax Increment Revenues to reimburse the Work Plan costs and Eligible Costs in accordance with this Agreement. Taxes levied for school operating purposes from the property shall not be captured. The Authority shall permit all Tax Increment Revenues generated from local taxes to be used to pay or reimburse all costs approved by the Authority hereunder, regardless of whether any particular cost item is approved by the Michigan Department of Environmental Quality or other authorities for payment using Taxes Levied for School Operating Purposes, if the cost item is eligible for reimbursement under Act 381.

5. Reimbursement Process

(a) The City shall advance funds to pay for the Work Plan Costs when it receives an invoice from the Developer for those costs and send proof of that payment to the Authority. At any time after the Developer incurs Eligible Costs, the Developer may submit to the Authority

requests for cost reimbursement for those Eligible Costs. These requests shall be in the form attached as Exhibit C (“Petition”). The Petition shall identify whether the Eligible Activities are: (1) Additional Response Activities; (2) Eligible Activities permitted under Section 2(m)(iv) of Act 381; or (3) reasonable costs of developing and preparing the Plan and Work Plan permitted under Section 2(m)(viii) of Act 381. The Petition shall describe each individual activity claimed as an Eligible Activity and the associated costs of that activity. Documentation of the costs incurred shall be included with the Petition including proof of payment and detailed invoices for the costs incurred sufficient to determine whether the costs incurred were for Eligible Activities. The Petition shall be signed by a duly authorized representative of Developer, and the representations, facts and documentation included therein shall be sworn to as accurate in the presence of a notary.

(b) The Authority shall review a Petition within 30 days after receiving the Petition. The Developer shall cooperate in the Authority’s review by providing information and documentation to supplement the Petition as deemed reasonable and necessary by the Authority. The Authority shall identify in writing to Developer any costs deemed ineligible for reimbursement and the basis for the determination. The Developer then has 45 days to provide supplemental information or documents in support of any costs deemed ineligible by the Authority. Thereafter, except as otherwise agreed to in writing by the Developer and

the Authority, the Authority shall make a decision on the eligibility of the disputed cost and inform the Developer in writing of its determination.

Developer shall have the right to appeal the Authority's decision.

(c) Twice a year, after the summer and winter taxes are collected on the Property, the Authority shall capture the Tax Increment Revenues in accordance with the Plan and use those Tax Increment Revenues to reimburse the Developer for approved Eligible Costs, including accrued interest, and the City for approved Work Plan Costs. The Authority is not obligated to reimburse the Developer for any approved Eligible Costs during any period of time that the Developer is delinquent in the payment of real or personal property taxes imposed on the Property.

(d) The Authority shall reimburse interest on the balance of the Developer's unreimbursed Eligible Costs at the rate of the greater of prime or four (4.0%) percent per annum, as the case may be, from the Tax Increment Revenues generated by the Property. Interest shall begin to accrue for unreimbursed Eligible Costs on the date that the Developer submits a Petition for those Eligible Costs to the Authority. Interest shall not accrue on any unreimbursed Eligible Costs during any period that the Developer is delinquent in the payment of real or personal property taxes imposed on the Property.

(e) If there are insufficient funds available from Tax Increment Revenues captures under subparagraph (c) at any given time to pay all

the Developer's unreimbursed Eligible Costs, the Authority is not required to reimburse the Developer from any other source. The Authority shall, however, make additional payments toward the Developer's remaining unreimbursed Eligible Costs in accordance with this Agreement as Tax Increment Revenues become available under subparagraph (c).

(f) The Authority shall reimburse the Developer for Eligible Costs as follows:

Checks shall be payable to:  
Fourth Street Senior Limited Dividend Housing Association Limited Partnership

Delivered to the following address:  
1574 East Washington Road, Farwell MI 48622

## 6. Legislative Authorization

This Agreement is governed by and subject to the restrictions set forth in Act 381. If there is legislation enacted in the future that alters or affects the terms of this Agreement, including, but not limited to, the amount of Tax Increment Revenues subject to capture or the definitions of Eligible Property or Eligible Activity, then the Developer's rights and the City's obligations under this Agreement may be modified accordingly by agreement of the parties.

## 7. Freedom of Information Act

The Developer stipulates that all Petitions and documentation submitted by Developer are open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being MCLA

15.231, and the Developer shall not bring any claim of trade secrets or other privilege or exception to the Freedom of Information Act related to Petitions and documentation submitted under this Agreement.

8. Plan Modification.

The Plan and this Agreement may be modified to the extent allowed under Act 381 by mutual agreement of the parties.

9. Notices

All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown above. Either party may change the address by written notice sent by registered or certified mail to the other party.

10. Assignment

The interest of any party under this Agreement shall not be assignable without the other party's written consent, which shall not be unreasonably withheld, except that the Developer may assign this Agreement for purposes of securing financing for the Improvements without the prior consent of the City.

11. Entire Agreement

This Agreement supersedes all agreements previously made between the parties relating to the subject matter. There are no other understandings or agreements between them.

12. Definitions.

Unless otherwise defined in this Agreement, the following terms have the definitions given to them by Act 381:

“Additional Response Activities” is defined by Section 2(a) of act 381;

“Baseline Environmental Assessment Activities” is defined by Section 2(d) of Act 381;

“Brownfield Plan” is defined by Section 2(g) of Act 381;

“Due Care Activities” is defined by Section 2(k) of Act 381;

“Eligible Activities” is defined by Section 2(l) of Act 381;

“Eligible Property” is defined by Section 2(m) of Act 381;

“Local Taxes” is defined by Section 2(v) of Act 381;

“Tax Increment Revenues” is defined by Section 2(aa) of Act 381;

“Taxes Levied for School Operating Purposes” is defined by Section 2(gg) of Act 381;

“Work Plan” is defined by Section 2(hh) of Act 381.

### 13. Non-waiver

No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

### 14. Headings

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

15. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17. Binding Effect

The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, legal representatives, successors, and assigns.

The parties have executed this Agreement on the dates set forth below.

CITY OF CLARE

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BY: PAT HUMPHREY  
ITS: MAYOR

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BY: DIANE SCHMIDT  
ITS: CITY CLERK

FOURTH STREET SENIOR LIMITED DIVIDEND HOUSING ASSOCIATION  
LIMITED PARTNERSHIP

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BY: GARY W. GILBERT  
ITS: AGENT

PREPARED BY:  
JAYNIE SMITH HOERAUF  
JAYNIE SMITH HOERAUF P.C.  
601 BEECH, BOX 67  
CLARE MI 48617

EXHIBIT A

Brownfield Request for Cost Reimbursement For Eligible Activities

Date: \_\_\_\_\_

List below the eligible cost being submitted for reimbursement and indicate the eligible activity area for each reimbursement cost: Additional Response Activities, Eligible Activities permitted under Section 2(l)(iv) of Act 381, or costs to prepare and develop the Brownfield Plan Amendment and the Work Plan.

	Reimbursement Cost Item	Eligible Activity Area	Eligible Cost
1.			
2.			
3.			
4.			
5.			
6.			
7.			

I certify that the information submitted on and with this Request for Cost Reimbursement is accurate and is an eligible cost described in the amendment to the Brownfield Plan for this project approved by the City Commission of the City of Clare.

Developer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

STATE OF MICHIGAN )  
 )ss.  
COUNTY OF )

Subscribed and sworn to before me a notary public this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, MI  
My Commission Expires:  
Acting in \_\_\_\_\_ County, Michigan

Each reimbursement cost item must have documentation that is attached to this request form. This documentation shall include proof of payment and detailed invoices.

**RESOLUTION 2009-092**

**A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A BROWNFIELD REIMBURSEMENT AGREEMENT.**

**WHEREAS**, by adoption of its Resolutions 2009-069 and 2009-081, the Clare City Commission approved a Brownfield Redevelopment Plan and an amendment to the Plan, respectively, to facilitate the implementation of tax increment financing to assist in the development of the Fourth Street Senior Housing Project and to reimburse the developer of that project for eligible environmental costs (a total of \$14,500) that he either has or will expend during the process of completing said project; and

**WHEREAS**, a step in the process of implanting the provisions of said Brownfield Plan, an agreement is required outlining the method and means of reimbursement of the eligible costs accrued by said developer; and

**WHEREAS**, said reimbursement agreement has been prepared by the Clare City Attorney and reviewed and duly considered by the Clare City Commission.

**NOW THEREFORE BE IT RESOLVED THAT**, the Clare City Commission hereby approves the Brownfield Reimbursement Agreement between the City of Clare and the Fourth Street Senior Limited Dividend Housing Association Limited Partnership, the terms and conditions of said Agreement as outlined therein.

**ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.**

The Resolution was introduced by Commissioner \_\_\_\_\_ and supported by Commissioner \_\_\_\_\_. The Resolution declared adopted by the following roll call vote:

**YEAS:**

**NAYS:**

**ABSENT:**

Resolution approved for adoption on this 8<sup>th</sup> day of September 2009.

\_\_\_\_\_  
Diane Schmidt, City Clerk