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OFFICE OF THE  
CITY TREASURER

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City Council  
Sacramento, California

Honorable Members in Session:

**SUBJECT: RESOLUTION APPROVING THE SHORT TERM LOAN OF REPAYED PACKARD BELL FUNDS AND AUTHORIZATION TO EXECUTE ALL LOAN DOCUMENTS RELATED TO THIS LOAN TO THE SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY.**

**LOCATION & COUNCIL DISTRICT:** District 3, North and South sides of L Street between 18<sup>th</sup> and 19<sup>th</sup> streets.

### RECOMMENDATION

This report recommends adoption of the attached resolution which authorizes the City Manager to execute all Loan Documents in connection with this short-term loan.

- Lend \$1.6 million of the City Packard Bell loan funds until 10/31/00 for the 18<sup>th</sup>/L Street Project;
- Execute all required legal documents pertaining to the City Packard Bell loan funds;
- Recommend adoption of attached City resolution authorizing the City to lend \$1.6 million of Packard Bell funds to the Redevelopment Agency.

### CONTACT PERSONS

Lydia Lara, Deputy City Treasurer, (916) 264-7746

**FOR COUNCIL MEETING OF:** May 9, 2000

### SUMMARY

This report recommends that the City loan \$1.6 million from the City's Packard Bell Repayment Funds to finance the acquisition of land for the 18<sup>th</sup>/L Street project. The report also recommends authorizing the City Manager to execute all loan documents related to this transaction for disbursement of loan funds for land acquisition.

## **BACKGROUND**

On March 10, 2000, Packard Bell NEC repaid the City's loan. Bond counsel has determined that these funds may be used for any capital need identified and approved by the City Council. These monies are a part of the 1991 Revenue Bonds lent to Packard Bell in 1995 for private activity use. As private activity monies are difficult to obtain, it is to the advantage of the City and the Agency to use these monies to facilitate the short term financing of this project under the following general terms:

The Agency will borrow the loan funds from the City, and then lend the funds to the Developer in the form of a first deed of trust. The loan repayment to the City of \$1.6 million plus accrued interest will be paid by the Agency on October 31, 2000. The source of repayment for the loan will either be the Agency's tax increment and downtown housing funds currently committed to the project or developer funds.

If the Developer can finance the construction without Agency funds, the Agency will use Developer funds to pay off the City loan, and the Agency housing funds committed to the project will be available for other housing projects in the Central City. If the Developer cannot repay the Agency loan with interest by October 15, 2000, the City loan will be repaid on October 31, 2000 with Agency funds currently committed to the project. At that time a regulatory agreement will be recorded on the property restricting the affordability of 51 units to low and moderate income families, and prevailing wage requirements will be enforced. If the developer defaults on the schedule of performance, the Agency will have recourse through its first deed of trust on the land.

## **FINANCIAL CONSIDERATIONS**

This report recommends that the City loan to the Agency \$1.6 million from the City's Packard Bell Loan Fund. The Agency will repay the City \$1.6 million plus accrued interest on October 31, 2000. The Agency will lend these funds to the Developer for acquisition of land. The Agency will charge the developer a 1 percent loan origination fee for the land acquisition loan. The loan term will be until October 15, 2000. The loan will be in first position and secured by a deed of trust, and will not exceed 83 percent of loan to value.

If by October 15, 2000, the Developer requires the use of Agency funds for the project, an OPA and regulatory agreement will be recorded on the property with a specific schedule for performance that will allow Agency to foreclose or charge monthly interest payments for default on the schedule of performance.

## **POLICY CONSIDERATIONS**

The recommendation is consistent with the action taken on May 2, 2000 whereby the Sacramento Housing and Redevelopment Agency requested the borrowing of these funds for the described purpose.

**ENVIRONMENTAL REVIEW**

The proposed actions do not constitute a project under CEQA per Guidelines Section 15378(b)(3), and NEPA does not apply.

**ESBD CONSIDERATIONS**

There are no ESBD considerations contemplated with this requested action.

Respectfully submitted,



Thomas P. Friery  
City Treasurer

RECOMMENDATION APPROVED,



ROBERT P. THOMAS  
City Manager

## LOAN AGREEMENT

Loan Amount: \$1,600,000.00

May \_\_\_\_, 2000  
Sacramento, California

THIS AGREEMENT (this "Agreement") is made as of the date first written above, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter referred to as "City" or "Lender"), and the SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY, a public body corporate and politic created under the laws of the State of California (hereinafter referred to as "SHRA" or "Borrower").

### RECITALS:

1. SHRA is a public body corporate and politic formed to address issues relating to housing and redevelopment in the greater Sacramento area, including, without limitation, the planning, financing, and construction of housing and redevelopment projects.
2. SHRA has identified property located at 18th and L Streets in Sacramento (the "Project Property") for the development of a 176-unit mixed use, mixed income project (the "Project").
3. SHRA seeks temporary and interim financial assistance from the City to finance the acquisition of the Project Property by the developer of the Project, Sotiris Kolokotronis (the "Developer") and has requested that the City lend to it the sum of \$1,600,000 for such purpose. SHRA intends to lend said sum to the Developer in consideration of which the Developer will execute a note secured by a first position deed of trust in favor of SHRA ("Developer Note") to complete the acquisition. The term of the note executed by the Developer shall expire prior to the time of repayment of the within loan from the City to SHRA.
- D. SHRA heretofore has committed the sum of \$4,000,000 in tax increment and downtown housing funds for completion of the Project. Said commitment has not been rescinded by SHRA and the funds stand ready for use in furtherance of the Project ("SHRA Committed Funding"). Notwithstanding the existence of SHRA Committed Funding, the Developer may proceed with the Project utilizing its own funding sources.
- E. SHRA intends to repay the loan either from proceeds of the repayment of the Developer Note, or failing timely repayment of the Developer Note, then from SHRA Committed Funding.
- F. The City has agreed to provide financing to SHRA on a temporary, interim basis, pursuant to the terms and conditions of this Agreement, to allow SHRA and the Developer to further the Project, in the form of a loan of \$1,600,000. Said financing provided by the City shall be secured by certain assets as set forth herein.

- G. The parties agree that the primary, but not exclusive sources of repayment of amounts borrowed by SHRA shall be the proceeds of the repayment of the Developer Note and the SHRA Committed Funding.

## AGREEMENT

NOW, THEREFORE, based upon the Recitals stated above, which Recitals are agreed to by the parties and made conditions to this Agreement, and for good and valuable consideration, the parties hereto agree as follows:

### 1. ACQUISITION FINANCING

#### 1. Loan.

- (a) City Loan. City shall loan to SHRA under the terms and conditions of this Agreement and related documents, the sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00) ("Loan").
- (b) Promissory Note. Borrower's obligation to repay the Loan shall be evidenced by a promissory note substantially in the form of Exhibit "A" attached hereto ("City Note"), all terms of which are incorporated herein by this reference. Said note shall be secured the assignment of the Developer Note and its underlying deed of trust.
- (c) Time for Repayment. Payment of the outstanding amounts due under this Agreement and the City Note, including, without limitation, all unpaid principal and accrued interest, shall be due and payable to City on or before October 31, 2000.
- (d) Prepayment. SHRA may prepay all or any portion of the outstanding amounts due under the City Note prior to the due date set forth in subsection (c) of this Section I.1. without penalty.

2. Collateral. In consideration of the Loan pursuant to this Agreement and as security for the payment of all indebtedness of Borrower to City arising under the Loan Documents, Borrower hereby grants and transfers to City security interest of first priority in, and assigns to City, all present and future right, title and interest in rights to payment of principal, interest, monies, and proceeds due or to become due Borrower from the Developer pursuant to the Developer Note and the deed of trust securing the same, together with all proceeds thereof (collectively, the "Collateral"). Borrower shall execute documents as the City may reasonably require, including, without limitation, an assignment of the Developer Note and its deed of trust, and shall take actions as requested by the City to perfect City's interests in the Collateral, all terms of which are incorporated herein by this reference. Borrower shall reimburse City, immediately upon demand,

for all costs and expenses incurred by City in connection with any of the foregoing security, including, without limitation, filing and recording fees and costs of appraisals, audits and title insurance.

## 2. INTEREST

1. Interest. The outstanding principal balance of the City Note shall bear interest at the rate of Six and Fifty-Three Hundredth Percent (6.53%) per annum.

2. Computation and Payment. Interest shall be computed on the basis of a 360-day year, actual days elapsed. Interest shall be payable at the times and place set forth in the City Note. Interest shall accrue from May 3, 2000 until the City Note is paid in full. It is anticipated that the total accrued interest as of October 31, 2000 will be the approximate sum of \$52,240.00.

## 3. CONDITIONS

1. Conditions of the Loan. The obligation of City to extend the Loan is subject to fulfillment to City's satisfaction of all of the following conditions:

- (a) Loan Documents. Borrower shall have executed, or caused to be executed, and delivered to City this Agreement, the City Note, an assignment of the Developer Note and its underlying deed of trust, and any and all other contracts, instruments and documents deemed necessary by City to evidence City's extension of credit to Borrower and perfection of its interests in the Collateral, pursuant to the terms and conditions hereof. All of the foregoing, together with any other promissory notes, contracts, instruments and documents at any time hereafter delivered to City in connection with the Line of Credit, shall be referred to herein collectively as the "Loan Documents".
- (b) Financial Condition. There shall have been no material adverse change, as determined by City, in the SHRA Committed Funding, the financial condition or business of the Borrower or Developer, nor any material decline, as determined by City, in the market value of a substantial or material portion of the Project Property.

## 4. REPRESENTATIONS AND WARRANTIES

Borrower makes the following representations and warranties to City, which representations and warranties shall survive the execution of this Agreement and shall continue in full force and effect until the full and final payment, and satisfaction and discharge, of all obligations of Borrower to City arising under or related to this Agreement.

1. Legal Status. Borrower is a public body corporate and politic duly organized and existing and in good standing under the laws of the State of California.

2. Validity of SHRA Committed Funding. By duly authorized actions and approvals, Borrower heretofore has committed the approximate sum of \$4,000,000 for the Project from its revenue sources. Such actions and approvals remain valid and binding upon Borrower and the approximate sum of \$4,000,000 are available as of the date hereof to cover Project expenditures, including the repayment of the Loan.

3. Authorization and Validity. All of the Loan Documents have been duly authorized, and upon their execution and delivery in accordance with the provisions hereof will constitute legal, valid and binding agreements and obligations of Borrower or the party which executes the same, enforceable in accordance with their respective terms.

4. Authority of Signers. The officers or representatives of the Borrower executing this Agreement and each of the Loan Documents are duly and properly in office or acting as duly appointed representatives and are fully authorized to execute and bind the Borrower to the same.

5. No Violation. The execution, delivery and performance by Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or contravene any provision of the documents governing the Borrower or the By-Laws or other rules relating to the Borrower, or result in a breach of or constitute a default under any contract, obligation, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

6. Litigation. There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operation of Borrower other than those heretofore disclosed by Borrower to City in writing.

7. No Subordination. There is no agreement, indenture, contract or instrument to which Borrower is a party or by which Borrower may be bound that requires the subordination in right of payment of any of Borrower's obligations subject to this Agreement from the SHRA Committed Funding to any other obligation of Borrower.

## 5. COVENANTS

Borrower covenants that so long as the Loan remains outstanding pursuant to the terms of this Agreement and until payment in full of all obligations of Borrower subject hereto, Borrower shall, unless City otherwise consents in writing:

1. Use of Borrowed Funds. Borrower shall use the funds borrowed under this Agreement solely to facilitate the acquisition of the Project Property by the Developer.

2. Punctual Payment. Punctually pay the interest and principal of the Loan at the times and place and in the manner specified therein, and any fees or other liabilities due under any of the Loan Documents at the times and place and in the manner specified therein.

3. Extensions and Amendments of Developer Note. Not to extend the term of or agree to any amendment of the Developer Note or the deed of trust securing the same without the express written consent of the City.

## 6. DEFAULT, REMEDIES

1. Default, Remedies. Upon the violation of any term or condition of any of the Loan Documents, or upon the occurrence of any default or defined event of default under any of the Loan Documents, (a) any indebtedness of Borrower under each of the Loan Documents, any term thereof to the contrary notwithstanding, shall at City's option and without notice become immediately due and payable without presentment, demand, protest or notice of dishonor, all of which are expressly waived by Borrower; (b) the obligation, if any, of City to permit further borrowing hereunder shall immediately cease and terminate; and (c) City shall have all rights, powers and remedies available under each of the Loan Documents, or accorded by law, including, without limitation, the right to resort to any or all security for any credit extended by City to Borrower under this Agreement or any of the Loan Documents, and to exercise any or all of the rights of a beneficiary or secured party pursuant to the applicable law. All rights, powers and remedies of City in connection with each of the Loan Documents may be exercised at any time by City and from time to time after the occurrence of any such breach or default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

2. No Waiver. No delay, failure or discontinuance of City in exercising any right, power or remedy under any of the Loan Documents shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by City of any breach of or default under any of the Loan Documents must be in writing and shall be effective only to the extent set forth in such writing.

3. Powers of the City. Borrower appoints City its true attorney in fact to perform any of the following powers, which are coupled with an interest, are irrevocable until termination of this Agreement, and may be exercised from time to time by City's officers and employees, or any of them, whether or not Borrower is in default: (a) to perform any obligation of Borrower hereunder in Borrower's name or otherwise; (b) to give notice of City's rights in the Collateral, enforce the same and make extension agreements with respect thereto; (c) to release persons liable on the Collateral and to give receipts and acquittance and compromise disputes in connection therewith; (d) to release security; (e) to resort to security in any order; (f) to prepare, execute, file, record or deliver notes, assignments, schedules, designation statements, financing statements, continuation statements, termination statements, statements of assignment, applications for registration or like papers to perfect, preserve or release City's interest in the Collateral; (g) to receive, open and read mail addressed to Borrower; (h) to take cash, instruments for the payment of money and other property to which City is entitled; (i) to verify facts concerning the Collateral

by inquiry of obligors thereon, or otherwise, in its own name or a factitious name; (j) to endorse, collect, deliver and receive payment under instruments for the payment of money; (k) to make withdrawals from and to close deposit accounts or other accounts with any financial institution, wherever located, into which the portions of the Collateral which are the right to payments may have been deposited, and to apply funds so withdrawn to payment of the Indebtedness; (l) to prepare, adjust, execute, deliver and receive payment under insurance claims, and to collect and receive payment of and endorse any instrument in payment of loss or returned premiums or any other insurance refund or return, and to apply such amounts received by City, at City's sole option, toward repayment of the Indebtedness or replacement of the Collateral; (m) to exercise all rights, powers and remedies which Borrower would have, but for this Agreement, under all Collateral subject to this Agreement; and (n) to do all acts and things and execute all documents in the name of Borrower or otherwise, deemed by City as necessary, proper and convenient in connection with the preservation, perfection or enforcement of its rights hereunder.

4. Borrower's Waivers. In the event of default, Borrower waives any right to require City to: (a) proceed against any other person; (b) proceed against or exhaust any security held by Borrower or any other person; (c) give notice of the terms, time and place of any public or private sale of personal property security held from Borrower or any other person, or otherwise comply with Section 9504 of the California Uniform Commercial Code; (d) pursue any other remedy in City's power; or (e) make any presentments or demands for performance, or give any notices of nonperformance, protests, notices of protest or notices of dishonor in connection with any obligations or evidences of indebtedness held by City as security, or in connection with any obligations or evidences of indebtedness which constitute in whole or in part the indebtedness secured hereunder, or in connection with the creation of new or additional indebtedness.

## 7. MISCELLANEOUS

1. Costs, Expenses and Attorneys' Fees. Borrower shall pay to City immediately upon demand the full amount of all costs and expenses including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of City's in-house counsel), incurred by City in connection with (a) the negotiation and preparation of this Agreement and each other of the Loan Documents, City's continued administration hereof and thereof, and the preparation of amendments and waivers hereto and thereto, (b) the enforcement of City's rights and/or the collection of any amounts which become due to City under any of the Loan Documents, and (c) the prosecution or defense of any action in any way related to any of the Loan Documents, including without limitation any action for declaratory relief.

2. Notices. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at its address set forth below, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or five (5) days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by facsimile, upon receipt.

CITY OF SACRAMENTO  
City Manager's Office  
915 I Street, Room 101  
Sacramento, California 95814  
Fax No. (916) 264-7618

SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY  
926 J Street, Suite 424  
Sacramento, California 95814  
Fax No. (916) 440-8289

3. Successors, Assignment. This Agreement shall be binding on and inure to the benefit of the administrators, legal representatives, successors and assigns of the parties; provided however, that Borrower may not assign or transfer its interest hereunder without the prior written consent of City. City reserves the right to sell, assign, transfer, negotiate or grant participation in all or any part of, or any interest in, City's rights and benefits under each of the Loan Documents. In connection therewith City may disclose all documents and information which City now has or hereafter may acquire relating to any credit extended by City to Borrower hereunder, Borrower or its business, or any item of Collateral required hereunder.

4. Entire Agreement, Amendment. This Agreement and each of the Loan Documents constitute the entire agreement between Borrower and City with respect to any extension of credit by City subject hereto and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. This Agreement may be amended or modified only in writing signed by each party hereto.

5. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their respective permitted successors and assigns, and no other person or entity shall be a third party beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any other of the Loan Documents to which it is not a party.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

ATTEST:

CITY OF SACRAMENTO,  
a Municipal Corporation

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
ROBERT P. THOMAS, City Manager

SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY

ANNE M. MOORE, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
DEPUTY CITY ATTORNEY

\_\_\_\_\_  
DANA PHILLIPS  
Agency Counsel

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**PROMISSORY NOTE**

**\$1,600,000.00**

May \_\_\_\_, 2000  
Sacramento, California

**FOR VALUE RECEIVED**, the undersigned **SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY** ("Borrower") promises to pay to the order of **CITY OF SACRAMENTO** ("City") at 915 I Street, Room #104, Sacramento, California 95814, or at such other place as the holder hereof may designate, in lawful money of the United States of America and in immediately available funds, the principal sum of One Million Six Hundred Thousand and no/100 Dollars (\$1,600,000.00), with interest thereon at a rate of Six and Fifty-Three Hundredth Percent (6.53%) per annum and computed on the basis of a 360-day year, actual days elapsed, by or before October 31, 2000. This Note is excuted by Borrower pursuant to that certain Loan Agreement, bearing a date on or about the above-date, executed by Borrower and City ("Loan Agreement").

1. The outstanding principal balance and accrued interest, shall be due and payable to the holder hereof on or before October 31, 2000.
2. The Borrower may prepay all or any portion of the outstanding amounts due under this Note without penalty.
3. This note is secured pursuant to the provisions of the Loan Agreement.
4. The occurrence of any of the following shall constitute an "Event of Default" under this Note:
  - (a) The failure to make any payment of principal or interest when due under this Note or to pay any fees or other charges when due under any contract or instrument executed in connection with this Note.
  - (b) The filing of a petition by or against Borrower under any provision of federal bankruptcy laws under Title 11 of the United States Code, as amended or recodified from time to time, or under any similar or other law relating to bankruptcy, insolvency, reorganization or other relief for debtors; the appointment of a receiver, trustee, custodian or liquidator of or for any part of the assets or property of Borrower; Borrower becomes insolvent; Borrower makes a general assignment for the benefit of creditors; Borrower is generally not paying its debts as they become due; or any attachment or like levy on any property of Borrower.
  - (c) The dissolution or termination of Borrower.
  - (d) Any default in the payment or performance of any obligation, or any defined event

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of default, under any provision of any contract or instrument pursuant to which Borrower has incurred any obligation for borrowed money, any purchase obligation, or any other liability of any kind to any person or entity, including the holder.

- (e) Any violation or breach of any provision of, or any defined event of default under, this Note, any addendum to this Note, or other contract or instrument executed in connection with this Note or securing this Note, including, without limitation, the Loan Agreement.

- 5. Upon the occurrence of any Event of Default, the holder of this Note, at holder's option, may declare all sums of principal and interest outstanding hereunder to be immediately due and payable without presentment, demand, protest or notice of dishonor, all of which are expressly waived by Borrower, and the holder shall have no obligation to make any further advances hereunder. Borrower shall pay to City the full amount of all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of City's in-house counsel), incurred by the holder in connection with the enforcement of the holder's rights and/or the collection of any amount which becomes due to City under this Note or the prosecution and defense of any action in any way related to this Note, including, without limitation, any action for declaratory relief. If Borrower fails to meet any of the obligations set forth in this Note, the Holder hereof may exercise all rights and remedies set forth in this Note and the Loan Agreement, and any rights and remedies accorded to the holder hereof under applicable law.

"Borrower"

**SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY**

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ANNE M. MOORE, Executive Director



**RESOLUTION NO. 2000-217**

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SACRAMENTO APPROVING A LOAN MADE BY AND BETWEEN THE CITY OF SACRAMENTO AND THE SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY**

WHEREAS, the Sacramento Housing and Redevelopment Agency (the "Agency") has approved the borrowing of the sum of \$1,600,000.00 from the City of Sacramento (the "City") on May 2, 2000, in connection with that project known as the 18<sup>th</sup>/L Street Project, Agency Resolution No. \_\_\_\_\_ (the "Loan"); and

WHEREAS, the source of funds for such loan is the City's funds from the repayment of certain loans it previously made to Packard Bell; and

WHEREAS, the Sacramento City Council (the "Council") has been requested to consider and approve the Loan and has determined it in its best interest to make the Loan.

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:**

1. The Loan is hereby approved, subject to the terms and conditions of the Loan Agreement attached hereto as Exhibit A and incorporated herein by this by this Agreement (the "Loan Documents").
2. The City Manager is authorized to execute all Loan Documents in connection with the Loan in substantially the form as the attached Exhibit A.
3. The City Treasurer is authorized to disburse funds and to take other actions in order to implement the Loan pursuant to the executed Loan Documents.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

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