

Terms Completed

ORDER SUMMARY – Case Number: C-07-263

Name(s): Home Capital Funding
Torrey L. Larsen
Marritt R. Barber
Tyler L. Larsen

Order Number: C-07-263-08-CO01

Effective Date: June 5, 2008

License Number: DFI: 28780 & 22747 -Home Capital Funding
Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
 If applicable, you must specifically note the ending dates of terms.

License Effect: n/a

Not Apply Until: n/a

Not Eligible Until: _____

Prohibition/Ban Until: n/a

Investigation Costs	\$1,380	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 6.5.08
Fine	\$30,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 6.5.08
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$134,176.67	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 6.5.08
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments: _____

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

NO. C-07-263-08-CO01

HOME CAPITAL FUNDING, and
TORREY L. LARSEN, Chief Executive
Officer and Co-Owner, and
MERRITT R. BARBER, Senior Vice President
and Co-Owner, and
TYLER L. LARSEN, Treasurer and Co-Owner,

CONSENT ORDER

Respondents.

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COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Home Capital Funding, Inc., Torrey L. Larsen, Chief Executive Officer and Co-Owner, Merritt R. Barber, Senior Vice President and Co-Owner, and Tyler L. Larsen, Treasurer and Co-Owner (hereinafter collectively Respondents), by and through their attorneys, Foster Pepper, and finding that the issues raised in the captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.04 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

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AGREEMENT AND ORDER

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The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-07-263-08-SC01 (Statement of Charges), entered March 4, 2008, (copy attached hereto). Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act) and RCW 34.05.060 of the Administrative Procedure

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CONSENT ORDER
C-07-263-08-CO01
HOME CAPITAL FUNDING, and
TORREY L. LARSEN, and
MERRITT R. BARBER, and
TYLER L. LARSEN

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 Act, Respondents hereby agree to the Department's entry of this Consent Order and further agree that the
2 issues raised in the above captioned matter may be economically and efficiently settled by entry of this
3 Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges and agree
4 that Respondents do not admit any wrongdoing by its entry. Respondents are agreeing not to contest the
5 Statement of Charges in consideration of the terms of this Consent Order.

6 Based upon the foregoing:

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8 A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter
9 of the activities discussed herein.

10 B. **Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to
11 a hearing before an administrative law judge, and that they have waived their right to a hearing and any
12 and all administrative and judicial review of the issues raised in this matter, or of the resolution reached
13 herein. Accordingly, Respondents agree to withdraw their appeal and to inform the Office of
14 Administrative Hearings in writing of their withdrawal.

15 C. **Fine.** It is AGREED that Respondents shall pay to the Department a fine of \$30,000 in
16 the form of a cashier's check made payable to the "Washington State Treasurer," upon entry of this
17 Consent Order.

18 D. **Restitution.** It is AGREED that prior to the entry of this Consent Order Respondents
19 shall pay restitution in the aggregate amount of \$134,176.67 to the borrowers more specifically identified
20 in the Restitution Schedule attached to the Statement of Charges and to the borrower identified in
21 Complaint 25510 and provide the Department with a copy of each payment check. Respondents agree to
22 include a letter with each check notifying the borrower that the check is a refund and that they have 30
23 days to cash the check or it will be turned over to the State Department of Revenue as unclaimed
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1 property. Respondents agree that all checks which have not been returned as undeliverable, but which
2 have not been cashed within 30 days of mailing, will be immediately turned over to the State
3 Department of Revenue as unclaimed property. Respondents agree that all checks which are returned
4 as undeliverable will be immediately turned over to the State Department of Revenue as unclaimed
5 property.

6 E. **Investigation Fee.** It is AGREED that Respondents shall pay to the Department an
7 investigation fee of \$1,380, in the form of a cashier's check made payable to the "Washington State
8 Treasurer," upon entry of this Consent Order. Respondents may pay the fine and investigation fee
9 together in one cashier's check made payable to the "Washington State Treasurer" upon entry of this
10 Consent Order.

11 F. **Records Retention.** It is AGREED that Respondents shall maintain records in
12 compliance with the Act and provide the Director with the location of the books, records, and other
13 information relating to Respondents' consumer loan company business, and the name, address, and
14 telephone number of the individual responsible for maintenance of such records in compliance with the
15 Act.

16 G. **Authority to Execute Order.** It is AGREED that the undersigned Respondents have
17 represented and warranted that they have the full power and right to execute this Consent Order on behalf
18 of the parties represented.

19 H. **Non-Compliance with Order.** It is AGREED that Respondents understand that failure
20 to abide by the terms and conditions of this Consent Order may result in further legal action by the
21 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director
22 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

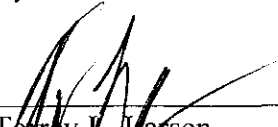
1 I. **Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily
2 entered into this Consent Order, which is effective when signed by the Director's designee.

3 J. **Completely Read, Understood, and Agreed.** It is AGREED that Respondents have
4 read this Consent Order in its entirety and fully understand and agree to all of the same.

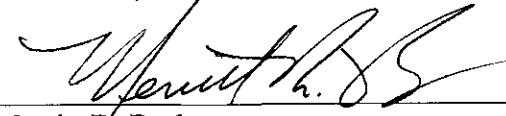
5 **RESPONDENTS:**

6 **Home Capital Funding, Inc.**


7 By:

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9 _____
10 Torrey L. Larsen
11 Individually and as CEO and Co-Owner

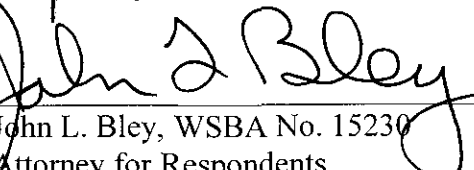
6-4-08
Date

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13 _____
14 Merritt R. Barber
15 Individually and as Vice President and Co-Owner

6-4-08
Date

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17 _____
18 Tyler L. Larsen
19 Individually and as Treasurer and Co-Owner

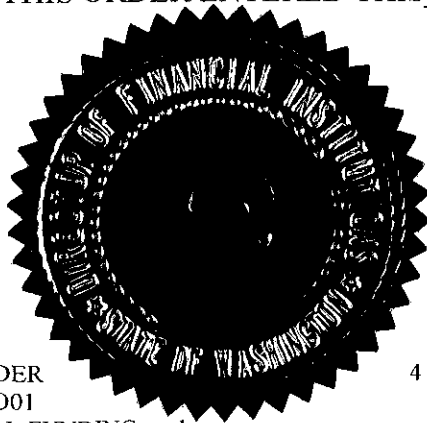
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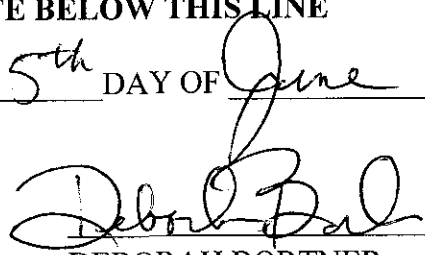
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21 _____
22 John L. Bley, WSBA No. 15230
23 Attorney for Respondents

6-5-08
Date

24 **DO NOT WRITE BELOW THIS LINE**

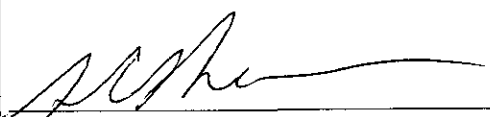
25 THIS ORDER ENTERED THIS 5th DAY OF June, 2008.



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27 _____
28 DEBORAH BORTNER
29 Director
30 Division of Consumer Services
31 Department of Financial Institutions

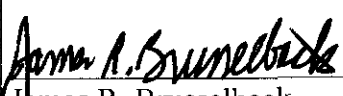
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Presented by:



Steven C. Sherman
Financial Legal Examiner

Approved by:



James R. Brusselback
Enforcement Chief

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

NO. C-07-263-08-SC01

HOME CAPITAL FUNDING, and
TORREY L. LARSEN, Chief Executive
Officer and Co-Owner,
MERRITT R. BARBER, Senior Vice
President and Co-Owner, and
TYLER L. LARSEN, Treasurer and Co-
Owner,

STATEMENT OF CHARGES AND
NOTICE OF INTENTION TO ENTER
AN ORDER TO PROHIBIT FROM INDUSTRY,
COLLECT RESTITUTION, IMPOSE FINE,
AND COLLECT COSTS OF INVESTIGATION

Respondents.

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INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Collect Restitution, Impose Fine, and Collect Costs of Investigation, the Director, by and through his designee Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

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I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. **Home Capital Funding** (Respondent Home Capital Funding) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on or about October 19, 2005.

1 Respondent Home Capital Funding surrendered its license on or about September 9,
2 2007.

3 B. **Torrey L. Larsen** (Respondent Torrey Larsen) is Chief Executive Officer and a Co-
4 Owner of Respondent Home Capital Funding.

5 C. **Merritt R. Barber** (Respondent Barber) is Senior Vice President and a Co-Owner of
6 Respondent Home Capital Funding.

7 D. **Tyler L. Larsen** (Respondent Tyler Larsen) is Treasurer and a Co-Owner of
8 Respondent Home Capital Funding.

9 **1.2 Licensed Locations.** Respondent Home Capital Funding was licensed to conduct the business
10 of a Consumer Lender from its main office located at 3131 Camino Del Rio N, Ste 400, San Diego,
11 California, and from fourteen (14) branches in Washington and one (1) branch office in Oregon.

12 **1.3 Examination.** In July 2007, the Department conducted an examination of the Respondents'
13 business practices for the period of October 19, 2005, through July 31, 2006. The Department
14 reviewed sixty (60) mortgage loan files, consisting of thirty three (33) first lien mortgage loans and
15 twenty seven (27) subordinate lien mortgage loans.

16 **1.4 Unauthorized Fees.**

17 A. In eighteen (18) of the subordinate lien mortgage loans reviewed, Respondents charged
18 administrative fees and underwriting fees which are not authorized by the Act.

19 B. In two (2) of the subordinate lien mortgage loans reviewed, Respondents charged a loan
20 origination fee that exceeded the amount authorized by the Act.

21 C. In one (1) of the total mortgage loans reviewed, Respondents collected an underwriting
22 fee for a loan it brokered to another lender.

1 D. In six (6) of the total mortgage loans reviewed, Respondents collected a rate discount
2 fee for loans it brokered to other lenders.

3 E. In two (2) of the total mortgage loans reviewed, Respondents collected a mortgage
4 broker fee when Respondents were also the lender.

5 **1.5 Untimely Disclosures.**

6 A. In twelve (12) of the total mortgage loans reviewed, Respondents failed to provide
7 within three (3) business days following receipt of a loan application a written disclosure containing
8 an itemized estimation and explanation of all fees and costs that the borrower is required to pay in
9 connection with obtaining a loan from the licensee and an estimate of the annual percentage rate on
10 the loan and a disclosure of whether or not the loan contains a prepayment penalty.

11 B. In ten (10) of the total mortgage loans reviewed, Respondents failed to disclose within
12 three business days that a loan carried a variable rate.

13 C. In twelve (12) of the twenty seven (27) subordinate lien mortgage loans reviewed,
14 Respondents failed to provide within three (3) business days disclosures specific to home equity lines
15 of credit.

16 **1.6 PrePayment Penalty.** In one (1) of the subordinate lien mortgage loans reviewed,
17 Respondents imposed a prepayment penalty on a subordinate lien mortgage.

18 **1.7 Unregistered Trade Name.** In six (6) of the total mortgage loans reviewed, Respondents
19 originated the loan using a trade name which had not been registered with or approved by the
20 Department.

21 **1.8 Increased Mortgage Broker Fees.** In eleven (11) of the total mortgage loans reviewed,
22 Respondents failed to redisclose to the borrower an increase in mortgage broker fees.

1 **1.9 Yield Spread Premium.** In twelve (12) of the total mortgage loans reviewed, Respondents
2 failed to disclose prior to closing that it was receiving a Yield Spread Premium from the lender.

3 **1.10 False Representations to Borrowers.** In four (4) of the total mortgage loans reviewed,
4 Respondents had represented to the borrower that Respondents were authorized to make VA and FHA
5 loans, when Respondents were not so authorized. Respondents brokered these loans to VA and FHA
6 authorized lenders and collected mortgage broker fees and yield spread premium fees.

7 **1.11 Unlicensed Activity.** Respondents made thirteen (13) of the total mortgage loans reviewed
8 from four (4) unlicensed locations; one (1) in Arizona and three (3) in Oregon.

9 **1.12 Inaccurate HUD 1.** In three (3) of the total mortgage loans reviewed, Respondents
10 improperly listed mortgage broker fees on line 801 of the HUD 1 settlement statement.

11 **1.13 Understatement of Finance Charges.** In one (1) of the mortgage loans reviewed,
12 Respondents understated finance charges by more than \$100.

13 **1.14 On-Going Investigation.** The Department's investigation into the alleged violations of the
14 Act by Respondents continues to date.

15 II. GROUNDS FOR ENTRY OF ORDER

16 **2.1 Unauthorized Fees.** Based on the Factual Allegations set forth in Section I above,
17 Respondents are in apparent violation of RCW 31.04.027(1), (2), and (3), RCW 31.04.105(2) and (4),
18 WAC 208-620-515, and WAC 208-620-560 for charging and collecting fees which are not authorized
19 by the Act.

20 **2.2 Untimely Disclosures.** Based on the Factual Allegations set forth in Section I above,
21 Respondents are in apparent violation of RCW 31.04.027(2), (6), and (10), and RCW 31.04.102(2)
22 and (3) for failing to make timely disclosures.

1 **2.3 PrePayment Penalty.** Based on the Factual Allegations set forth in Section I above,
2 Respondents are in apparent violation of RCW 31.04.027(2) and WAC 208-620-560(7)(b) for
3 imposing a prepayment penalty on a subordinate lien mortgage loan.

4 **2.4 Unregistered Trade Name.** Based on the Factual Allegations set forth in Section I above,
5 Respondents are in apparent violation of RCW 31.04.027(2) and WAC 208-620-420 for operating
6 under an unregistered trade name.

7 **2.5 Increased Mortgage Broker Fees.** Based on the Factual Allegations set forth in Section I
8 above, Respondents are in apparent violation of RCW 31.04.027(1), (2), (3), (6), and (10), and RCW
9 31.04.102(2) for failing to properly disclose an increase in mortgage broker fees.

10 **2.6 Yield Spread Premium.** Based on the Factual Allegations set forth in Section I above,
11 Respondents are in apparent violation of RCW 31.04. 027(1), (2), (3), (6), and (10), and RCW
12 31.04.102(2) for failing to properly disclose yield spread premium fees.

13 **2.7 False Representations to Borrowers.** Based on the Factual Allegations set forth in Section I
14 above, Respondents are in apparent violation of RCW 31.04.027(1), (2), (3), and (7) for falsely
15 representing to borrowers that Respondents were authorized to make VA and FHA loans.

16 **2.8 Unlicensed Activity.** Based on the Factual Allegations set forth in Section I above,
17 Respondents are in apparent violation of RCW 31.04.075 for making consumer loans from unlicensed
18 locations.

19 **2.9 Inaccurate HUD 1.** Based on the Factual Allegations set forth in Section I above,
20 Respondents are in apparent violation of RCW 31.04.027(2), (6), and (10), and RCW 31.04.102(2) for
21 recording mortgage broker fees on line 801 of the HUD 1 settlement statement.

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1 **2.10 Understatement of Finance Charges.** Based on the Factual Allegations set forth in Section I
2 above, Respondents are in apparent violation of RCW 31.04.027(2), (6), and (10), and RCW
3 31.04.102(2) for understating finance charges in violation of Regulation Z, 12 CFR §226.18(d)(1)(i).

4 **III. AUTHORITY TO IMPOSE SANCTIONS**

5 **3.1 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6)(e), the Director
6 may issue an order removing from office or prohibiting from participation in the affairs of any
7 licensee, or both, any officer, principal, employee, or loan originator, or any person subject to the Act,
8 for any violation of RCW 31.04.027.

9 **3.2 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
10 up to one hundred dollars per day upon the licensee for any violation of the Act.

11 **3.3 Authority to Order Restitution.** Pursuant to RCW 31.04.093(5), the Director may issue an
12 order directing a licensee, its employee or loan originator, or other person subject to the Act to make
13 restitution to a borrower or other person who is damaged as a result of a violation of the Act.

14 **3.4 Authority to Charge Investigation Fees.** Pursuant to RCW 31.04.145(3), WAC 208-620-
15 180(1), WAC 208-620-190(2), and WAC 208-620-191, every licensee investigated by the Director or
16 the Director's designee shall pay for the cost of the investigation, calculated at the rate of sixty-nine
17 dollars (\$69) per staff hour for time incurred, plus expenses.

18 **IV. NOTICE OF INTENTION TO ENTER ORDER**

19 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as
20 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
21 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW
22 31.04.205. Therefore, it is the Director's intention to ORDER that:

1 4.1 Respondent Home Capital Funding be prohibited from participation in the conduct of the affairs
2 of any consumer loan company licensed or required to be licensed, in any manner, for a period of
five (5) years; and

3 4.2 Respondent Torrey L. Larsen be prohibited from participation in the conduct of the affairs of any
4 consumer loan company licensed or required to be licensed, in any manner, for a period of five (5)
years; and

5 4.3 Respondent Merritt R. Barber be prohibited from participation in the conduct of the affairs of any
6 consumer loan company licensed or required to be licensed, in any manner, for a period of five (5)
years; and

7 4.4 Respondent Tyler L. Larsen be prohibited from participation in the conduct of the affairs of any
8 consumer loan company licensed or required to be licensed, in any manner, for a period of five (5)
years; and

9 4.5 Respondent Home Capital Funding pay restitution to injured borrowers in the amount of
\$120,812.67 as set forth in appendix A; and

10 4.6 Respondent Home Capital Funding pay a fine of \$30,000; and

11 4.7 Respondent Home Capital Funding pay an investigation fee in the amount of \$1,380, calculated at
12 \$69 per hour for twenty (20) staff hours devoted to the investigation to date; and

13 4.8 Respondent Home Capital Funding maintain records in compliance with the Act and provide the
14 Director with the location of the books, records and other information relating to Respondent
Home Capital Funding's consumer loan company business, and the name, address and telephone
15 number of the individual responsible for maintenance of such records in compliance with the Act.

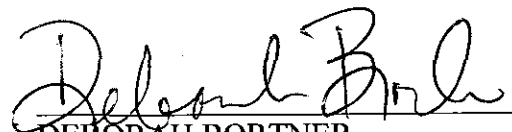
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V. AUTHORITY AND PROCEDURE

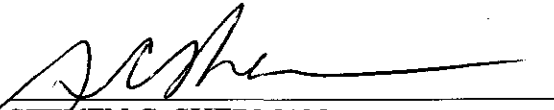
This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Collect Restitution, Impose Fine, and Collect Costs of Investigation (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 4th day of March, 2008.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented By:



STEVEN C. SHERMAN
Financial Legal Examiner

Approved By:



JAMES R. BRUSSELBACK
Enforcement Chief

