

**SECURED ACQUISITION LOAN
AND AFFORDABLE
HOUSING AGREEMENT**

by and between

NEWMAN REDEVELOPMENT AGENCY

and

751 DRISKELL AVE., L.P.

**SECURED ACQUISITION LOAN
AND
AFFORDABLE HOUSING AGREEMENT
(Newman Redevelopment Agency – 751 Driskell Ave., L.P.)**

THIS SECURED ACQUISITION LOAN AND AFFORDABLE HOUSING AGREEMENT (this “**Agreement**”), dated, for identification purposes only, as of this ____ day of _____, 2008, is entered into by and between the **NEWMAN REDEVELOPMENT AGENCY**, a public body, corporate and politic (“**Agency**”), and **751 DRISKELL AVE., L.P.**, a California limited partnership (“**Developer**”). Agency and Developer are sometimes collectively referred to herein as the “**Parties**” or singularly as a “**Party**” or by their individual names.

RECITALS

- A.** Agency is a redevelopment agency duly established and acting under the California Community Redevelopment Law, Part 1 of Division 24, Community Housing and Development, of the Health and Safety Code, Section 33000 *et seq.* (the “**Redevelopment Law**”).
- B.** Agency is authorized and empowered pursuant to the Redevelopment Law to enter into agreements to expand, improve, and preserve the community’s supply of affordable housing.
- C.** Agency seeks to promote the development of additional affordable rental housing and to provide a greater variety of housing opportunities for low income families and individuals.
- D.** Developer is experienced in the development and operation, in compliance with applicable state and federal laws and regulations, of affordable housing projects.
- E.** Developer seeks to purchase a an approximately 1.58-acre parcel (the “**Parcel**”) commonly known as Stanislaus County Assessor’s Parcel Number 128-020-001, which is adjacent to property Developer already owns in the City of Newman, California, for the purpose of developing and operating a seventy-two unit residential apartment complex (each, individually, a “**Unit**”) that will include a specified number of rental dwelling units (collectively, “**Affordable Units**”) restricted to occupancy by families and individuals constituting “*Low Income Households*” and “*Very Low Income Households*” (as each is defined below) (such families and individuals referred to herein as, collectively, “**Qualified Tenants**”).
- F.** The Affordable Units proposed by Developer will further Agency’s goals and objectives under the Redevelopment Law to provide decent, safe, and affordable housing for Qualified Tenants.
- G.** The Parties contemplate that Developer may apply for Low Income Tax Credits in accordance with Section 42 of the Internal Revenue Code and/or Sections 17057.5, 17058, 23610.4 and 23610.5 of the California Revenue and Taxation Code and Section 50199, *et seq.* of the California Health and Safety Code (collectively, the “**Tax Credits**”).
- H.** Developer desires to borrow from Agency, and Agency desires to extend to Developer, a loan for the acquisition of the Parcel that will enable Developer to develop and operate

the Project inclusive of its affordable housing component, pursuant to the terms and subject to the conditions provided for herein.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Defined Terms. When used in this Agreement, and in all other Project Documents (*defined below*), the following terms shall have the meanings set forth below (all terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement):

“Affordable Rent” means rent at or less than the maximum restricted rent chargeable to a qualified low income person or family pursuant to the rent and income restrictions enumerated by the California Tax Credit Allocation Committee.

“Agency” means the Newman Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized under the Redevelopment Law, and any assignee of or successor to its rights, powers and responsibilities.

“Applicable Interest Rate” shall mean three percent (3%) simple interest or such other rate of interest rate as may hereafter be determined by mutual agreement of the Parties or in accordance with the terms of this Agreement.

“City” means the City of Newman

“County” means the County of Stanislaus.

“Developer” means 751 Driskell Ave., L.P., a California limited partnership, or its permitted assignee.

“Executive Director” means the Executive Director of Agency or his or her duly authorized designee or delegate.

“Improvements” means any and all of the necessary and applicable improvements to the Site (*defined below*), as more particularly enumerated and described, without limitation, in the Scope of Development (*defined below*).

“Loan” means that certain loan to be made, subject to prior satisfaction of all conditions precedent, by Agency to Developer in the amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00) to be used solely for the purchase of the Parcel inclusive of reasonable closing costs, further pursuant to the terms and subject to the conditions more particularly described herein.

“Low Income Households” means households earning not greater than sixty percent (60%) of **“Area Median Income”** as determined from time to time by the United States Department of Housing and Urban Development, as adjusted for family size.

“(Note)” means that certain note evidencing Developer’s obligation to repay the Loan, substantially in the form attached to this Agreement as Exhibit “A” and incorporated herein by this reference.

“(Prescribed Rent Levels)” means rent that is Affordable Rent for households at the income levels enumerated in the “**Projected Rent Roll**” attached hereto as Exhibit “B” and incorporated herein by this reference. The specific Units restricted as Affordable Units will be identified in the first report to the Agency as required by this Agreement.

“(Project)” means that certain new apartment complex consisting of seventy-two (72) Units and associated improvements as required by this Agreement to be: (i) constructed by Developer upon the Site, inclusive of related offsite improvements, as more particularly described in the Scope of Development (collectively, the “**Improvements**”), and (ii) operated in conformity with the Project Documents and in accordance with any and all applicable federal, state, and local requirements qualifying the Project as affordable and making the Project eligible for Tax Credits.

“(Project Documents)” means, collectively, this Agreement and all Exhibits and Attachments hereto, and any other agreement, document, or instrument, including, without limitation the Regulatory Agreement, the Note, and the Deed of Trust, that Agency requires from time to time in connection with the execution of this Agreement and disbursement and repayment of the Loan or as is otherwise necessary to effectuate the purposes of this Agreement.

“(Regulatory Agreement)” means that certain Affordable Housing Covenant, to be executed by Developer as a condition precedent to the disbursement of the Loan, that ensures that a minimum of forty-nine percent (49%) of Units are and remain Affordable Units to be occupied by **Qualifying Tenants** for the duration of the Required Covenant Period (*defined below*). The Regulatory Agreement shall be substantially in the form attached hereto as Exhibit “C” and incorporated herein by this reference. The Regulatory Agreement shall be recorded against the Site in the Official Records of Stanislaus County (the “**County**”). The Regulatory Agreement shall be in full force and effect from the date of its recordation through and including that date which is fifty-five (55) years following the date of recordation.

“(Required Affordable Units)” means those thirty-five (35) Units, at a minimum, of the Project restricted to Low Income Households and Very Low Income Households, which number shall not make up more than forty-nine percent (49%) of the total dwelling Units to be developed on the Site unless otherwise agreed to by the Parties in writing.

“(Required Covenant Period)” means a period of fifty-five (55) years from the date the Regulatory Agreement is recorded.

“(Schedule of Performance)” means the Schedule of Performance attached to this Agreement as Exhibit “D” and incorporated herein by this reference. The time for performance under the Schedule of Performance may, upon the request of Developer, be extended by the Executive Director, but in no event to beyond eighteen (18) months past the initial dates provided therein without the prior written approval of Agency.

“(Scope of Development)” means the Scope of Development attached to this Agreement as Exhibit “E” and incorporated herein by this reference.

“**Site**” means that certain real property, inclusive of the Parcel, depicted on the Site Map and described with greater particularity in the “**Legal Description of the Site**” attached hereto as Exhibit “F” and incorporated herein by this reference.

“**Site Map**” means the site map attached hereto as Exhibit “G” and incorporated herein by this reference.

“**Tax Credits**” shall mean Low Income Tax Credits granted pursuant to Section 42 of the Internal Revenue Code, and/or Sections 17057.5, 17058, 23610.4, and 23610.5 of the California Revenue and Taxation Code and Section 50199, *et seq.* of the California Health and Safety Code.

“**TCAC**” means the California Tax Credit Allocation Committee.

“**Unit**” means, individually, each of the dwelling units required to be developed and operated by Developer under this Agreement, inclusive of one (1) manager’s unit.

“**Very Low Income Households**” means households earning not greater than fifty percent (50%) of Area Median Income, adjusted for family size.

“**Year**” means the period commencing as of the last execution date of this Agreement and ending as of December 31 of that calendar year, then each succeeding calendar year thereafter during Required Covenant Period.

1.2 Exhibits Incorporated. All Exhibits and Attachments to this Agreement, as now existing and as the same may from time to time be modified by mutual written agreement of the Parties, are incorporated herein by this reference.

1.3 Term of Agreement. The term of this Agreement shall commence upon the date this Agreement is fully executed by Agency and Developer, and shall remain in full force and effect, and shall apply to the Site and the Project through and including the maturity date of the Note, unless terminated earlier pursuant to the terms of this Agreement or the Note.

ARTICLE II TERMS AND CONDITIONS OF THE LOAN

2.1 The Loan. Expressly conditioned on the prior fulfillment of each and every one of the Conditions Precedent (*defined below*), Agency hereby agrees to make to Developer, and Developer hereby agrees to borrow from Agency, a loan pursuant to the terms and subject to the following (the “**Loan**”):

(a) **Amount.** The principal amount of the Loan shall be Three Hundred Thousand and No/100 Dollars (\$300,000.00) (the “**Principal**”), and shall be evidenced by and be repaid in accordance with the terms and conditions of the Note.

(b) **Term.** The Principal and all interest accrued thereon shall be due and payable (i) consistent with the terms of the Note, (ii) in full upon the date the Site is transferred, conveyed or sold except as otherwise provided for herein, or (iii) in full upon the Default (*defined below*) of Developer that has not been cured as provided for herein.

(c) **Interest.** Subject to the provisions of Subsection 2.1(d) below, the Note shall bear simple interest at the rate of three percent (3.00%) per annum, or such other rate as provided for in the Note or mutually agreed to by the Parties in writing (the “**Interest**”).

(d) **Default Interest.** In the event of a Default by Developer of any of its obligations under this Agreement or the other Project Documents, Developer shall pay to Agency, from the date of such Default until (i) the date such Default is cured to the satisfaction of Agency or (ii) the Loan is repaid in full with Interest in accordance with the terms this Agreement and the other Project Documents, “**Default Interest**” on the Principal balance then owing at an annual rate equal to the lesser of (i) ten percent (10%) or the highest interest rate allowed by applicable law, such Default Interest to be used by Agency to defray its costs related to the Default and its actions taken, although not required, to cure the same.

(e) **Use of Funds.** The Loan proceeds shall be used solely for the acquisition of the Parcel, inclusive of reasonable closing costs, such costs to be preapproved by Agency, and for no other purpose whatsoever. Developer acknowledges and agrees that it will not use the proceeds of the Loan, directly or indirectly, to obtain any funds under any federal program without the prior written approval of Agency.

(f) **Security.** Developer shall secure its obligation to repay the Loan as provided herein and in the other Project Documents by executing a deed of trust, in recordable form, secured against the Property in favor of Agency, substantially in the form attached hereto as Exhibit “H” and incorporated herein by this reference (“**Deed of Trust**”).

(g) **Prepayment.** Developer may prepay the Loan or any part thereof prior to the maturity of the Note or when otherwise due, as applicable, without penalty; provided, however, any such prepayment shall not affect Developer’s obligations under the Regulatory Agreement. Any amounts prepaid may not be re-borrowed.

(h) **Subordination of Partnership Debt.** Agency agrees that the Deed of Trust may be subordinated to the deeds of trust securing the construction loan and permanent loan for the Project; provided, however, that the conditions set forth in the Addendum to the Deed of Trust are satisfied. Under no circumstances shall the Deed of Trust be subordinated to any other indebtedness or encumbrances not related to the development or operation of the Project except with prior approval of Agency.

(i) **Agency Not Liable for Funding Delay.** In no event shall Agency be liable to Developer for any damage whatsoever claimed or resulting, in whole or part, from any action or inaction by Agency hereunder, including, without limitation, failure or delay in funding or disbursing the Loan.

ARTICLE III CONDITIONS PRECEDENT TO DISBURSEMENT OF LOAN PROCEEDS

3.1 **Agency’s Conditions to Disbursement of the Loan.** Neither this Agreement nor any Exhibit or Attachment hereto shall be of any force or effect whatsoever unless and until each and every one of the following conditions precedent (individually, a “**Condition Precedent**” and, collectively, the “**Conditions Precedent**”) has been fully satisfied, as determined in good faith by the Executive Director (any of such Conditions Precedent, if requiring action by Developer, shall also be

a covenant of Developer), except to the extent a given Condition Precedent is expressly waived, in writing, by Agency:

(a) **Commitment of Construction Financing.** Developer shall have provided evidence satisfactory to Agency of a written commitment by a reputable lender(s) to provide a construction loan sufficient to construct the Project (the “**Primary Lender**”);

(b) **Commitment of Permanent Financing.** Developer shall have provided evidence satisfactory to Agency of the written commitment for the provision of permanent financing for the Project (the “**Permanent Loan**”);

(c) **Title Insurance.** Developer shall have provided Agency with a lender’s policy of title insurance, acceptable to Agency in its reasonable discretion, containing those endorsements reasonably requested by Agency that will insure the Deed of Trust as a valid lien on the Site, subject only to those exceptions to title approved, in writing, by Agency, in the amount of the lien;

(d) **Complete Execution and Delivery.** Developer shall have executed and delivered to Agency (i) this Agreement and the Note, (ii) the Deed of Trust and the Regulatory Agreement, both in recordable form, and (iii) and such other documents, instruments, and policies as are required under the Project Documents or reasonably necessary, as determined by Agency, to carry out the transaction contemplated herein;

(e) **Insurance.** Agency shall have been provided evidence, satisfactory to the Executive Director, that all of the insurance policies and requirements of Article VII, below, are in full force and effect;

(f) **Authorizing Resolution.** Developer shall have provided to Agency (i) a copy of the resolution of Developer approving and authorizing its execution of this Agreement, the other Project Documents, and all other documents contemplated by this Agreement and reasonably necessary to execute the transaction contemplated herein, and (ii) such other documentation as reasonably required by Agency regarding Developer’s creation, status, and authority to enter into this transaction;

(g) **Certificate of Good Standing.** Developer shall have provided Agency with a current certificate of good standing under the laws of the State of California;

(h) **No Default.** There shall not exist at the time of disbursement any Event of Default on the part of Developer nor any act, failure, omission, or condition that, with the giving of notice or passage of time, would constitute an Event of Default by Developer;

(i) **Fee Interest Title.** Developer shall have acquired or will, concurrently with the distribution of the Loan proceeds, acquire fee interest in the Parcel;

(j) **Other Deposits with Agency.** Developer shall have made any and all other deposits with Agency as required by this Agreement, the other Project Documents, or otherwise;

(k) **Representations and Warranties.** Each and every one of the representations and warranties made by Developer in herein is valid, true and correct up to and including the date of distribution of the Loan proceeds and Developer has otherwise satisfied all of the terms and conditions applicable to Developer as set forth in the Project Documents; and

(l) **Recordation of Documents.** The Deed of Trust, inclusive of the Addendum to the Deed of Trust, and the Regulatory Agreement shall have been recorded in the official records of County.

ARTICLE IV REPRESENTATIONS, WARRANTIES, AND COVENANTS

4.1 Agency Representations and Warranties. Agency hereby represents and warrants to Developer as follows:

(a) **Authority.** Agency is redevelopment agency validly existing pursuant to the Redevelopment Law, which has been authorized to transact business pursuant to an action of the City. Agency has full right, power and lawful authority to execute, perform, and deliver this Agreement and to undertake all actions required of it hereunder. The parties who have executed this Agreement on behalf of Agency are authorized to bind Agency by their signatures hereto.

(b) **Conflict.** To the best of Agency's knowledge, Agency's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

(c) **No Agency Bankruptcy.** Agency is not the subject of a bankruptcy proceeding.

4.2 Developer Representations, Warranties, and Covenants. Developer hereby represents, warrants, and covenants to Agency as follows:

(a) **Compliance with the Redevelopment Plan.** Developer has reviewed and is familiar with the Redevelopment Plan adopted by City as Ordinance No. 92-14 on September 22, 1992 (the "**Redevelopment Plan**"), and the redevelopment project area defined therein. Developer hereby agrees to perform in accordance with the terms and conditions of the Project Document and in complete conformity with the Redevelopment Plan.

(b) **Scope of Project.** Developer shall complete the Project, inclusive of all necessary and appropriate improvements related thereto, in accordance with the Scope of Development and such other plans and specifications required by City and approved by Agency.

(c) **Authority.** Developer, and each and every entity general partner thereof, is duly organized, validly existing, and in good standing under the laws of the State of California. Developer has full right, power and lawful authority and has been fully authorized by all requisite actions on the part of Developer to (i) accept title to and

possession of the Parcel, (ii) execute, perform and deliver this Agreement and the other Project Documents, and (iii) undertake and perform all obligations required by Developer herein. The parties who have executed this Agreement on behalf of Developer are authorized to bind Developer by their signatures hereto.

(d) **No Litigation or Violation of Laws.** To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or proceedings of any other kind pending or threatened against Developer or any general partner thereof, at law or in equity, before any court or governmental agency, domestic or foreign, that would affect or impair Developer's financial condition or ability to repay the Loan, and neither Developer nor any general partner thereof in violation of any federal, state or local law, regulation, rule or ordinance.

(e) **No Conflict.** To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer or any general partner thereof is a party or by which they are bound.

(f) **No Default or Bankruptcy.** Neither Developer nor any general partner thereof is in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation, except as otherwise previously disclosed in writing to Agency, nor is Developer or any general partner thereof the subject of a bankruptcy proceeding or has the same made any assignment for the benefit of its respective creditors.

(g) **No Other Liens.** Developer will not create, assume or allow any security interest or lien, including judicial liens, on or against the Site or the Project, except:

- (1) Liens and security interests in favor of Agency;
- (2) Liens for taxes not yet due;
- (3) Liens outstanding on the date of this Agreement that were previously disclosed in writing to, and approved by, Agency; and
- (4) Except as otherwise provided for herein, such other liens and security interests as are fully disclosed in writing and pre-approved by Agency.

(h) **No Material Change in Ownership or Management.** Developer will not cause, permit or suffer any change in its (i) general partner(s) or (ii) its capital ownership such that there is more than a twenty percent (20%) change in direct or indirect capital ownership from the ownership existing as of the date of this Agreement except as such change relates to the sale of Tax Credits and the repurchase rights related thereto nor shall Developer make any substantial change in its present executive or management personnel without providing prior notice of such change(s) to Agency in writing (collectively, a "**Change in Control**"). Agency may treat any of the foregoing changes that jeopardize the affordability limitations applicable to the Affordable Units, at its sole discretion, as a Default hereunder.

(i) **Additional Negative Covenants.** Developer shall not, without Agency's prior written consent: (1) enter into any consolidation, merger or other combination; (2) become the guarantor of any unsecured loan or other indebtedness; (3) acquire or purchase a business or its assets; (4) engage in any business activities substantially different from its present line of business; (5) liquidate its assets or dissolve the partnership other than as a result of the acquisition of Developer's assets by a general partner thereof; (6) voluntarily suspend its business activities for any period; or (7) undertake any action that in any way jeopardizes the affordability restrictions placed on the Affordable Units.

(j) **Notices to Agency.** Notwithstanding any other obligation provided for herein, Developer shall, without limitation, immediately notify Agency in writing of: (1) any arbitration, administrative proceedings, or lawsuit filed or threatened against it or any general partner thereof; (2) any substantial dispute with any governmental agency or the issuance of any notice; (3) any Event of Default under this Agreement, or any event which, with notice or lapse of time or both, would constitute an Event of Default; (4) any material adverse change in Developer's financial condition, properties or prospects, or its ability to repay the Loan, (5) any environmental condition or claim relating to the Site, or (6) any change in Developer's name, legal structure or place of business. Any notice delivered under this subsection shall be accompanied by a statement of Developer that sets forth the details of the event or development requiring the notice and any action taken or proposed to be taken by Developer with respect to that event or development.

(k) **Books and Records.** Developer shall at all times maintain adequate Records (*defined below*) in accordance with Generally Accepted Accounting Principles, and shall make the same available to Agency and Agency's agents for examination and audit at any reasonable time upon reasonable notice. If Developer's Records are in the possession of a third party, Developer hereby authorizes that third party to permit Agency or its agents to have such reasonable access to perform inspections and audits.

(l) **No Material Adverse Change.** Developer represents and warrants that there has been no material adverse change in its financial condition or in the business, assets, operations, prospects or condition, financial or otherwise, since its execution of this Agreement and the disbursement of the Loan proceeds.

Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 4.2 not to be true at any time prior to the maturity date of the Note, immediately give written notice of such fact or condition to Agency. Such exception(s) to a representation or warranty shall not be deemed a breach by Developer hereunder, but shall constitute an exception which Agency shall have a right to approve or disapprove if such exception would have a materially adverse effect on the value and/or operation of the Project. Notwithstanding any other obligations or requirements contained herein, each representation and warranty made by Developer in this Article IV shall be an express condition precedent to Agency's obligation to consummate the Loan transaction contemplated herein.

ARTICLE V
SCOPE OF DEVELOPMENT

5.1 Design and Supervision. The architectural and engineering design of the Improvements shall be subject to City and Agency standards and all work on the Improvements shall be subject to such supervision as Agency deems appropriate or necessary.

5.2 Scope of Development. Consistent with Section 5.1 above, Developer shall develop and complete the Project and Improvements in accordance with the Scope of Development, and the final approved plans, drawings, specifications, and documents for the same (the “**Approved Plans**”). In the event of any inconsistency between the Scope of Development and the Approved Plans for the Improvements which have been approved by the Agency and/or City, the Approved Plans shall control.

5.3 Design Review and City Approval. Before commencement of construction of the Improvements or other works of improvement upon the Site, Developer shall submit to the City such plans and drawings (collectively, the “**Design Development Drawings**”) that may be required by the City with respect to any permits and entitlements that are required to be obtained to develop the Improvements. Within ten (10) days after the City’s disapproval or conditional approval of the Design Development Drawings, Developer shall revise those portions of such Design Development Drawings identified by the City as requiring revisions, and resubmit the revised versions to the City for final approval.

5.4 Time of Performance. Developer shall submit all Design Development Drawings, commence and complete all construction of the Improvements, and satisfy all other obligations and conditions of this Agreement within the times established in the Schedule of Performance or as otherwise provided for herein.

5.5 Cost of Development. The cost of planning, designing, developing, and constructing the Improvements shall be borne solely by Developer.

5.6 Assurance of Completion. Developer shall provide such security that adequately ensures completion of the Project by furnishing to Agency performance and payment bonds in the form and amount acceptable to Agency in Agency’s reasonable discretion.

5.7 Rights of Access. Representatives of Agency shall have the right to access the Site during normal construction and operational hours. Agency representatives shall attempt, except in emergency situations, to notify Developer twenty four (24) hours in advance of exercising its entry rights hereunder.

5.8 Compliance With Laws. Developer shall carry out all of its activities related to the Site and the Project, including, without limitation, the design, construction, and operation of the Improvements, in conformity with all applicable federal, State and local laws (collectively, the “**Laws**”). Developer shall further cause all of its employees, agents, subcontractors, and all others working for or on behalf of Developer, to observe and comply with all Laws, including, without limitation, those Laws related to construction, health and safety, labor, fair employment practices, and equal opportunity.

5.9 Use Covenants. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that Developer shall devote the Site to the uses specified herein and shall operate in conformity with this Agreement and the Regulatory Agreement, whichever is the more restrictive in each case unless expressly provided to contrary effect herein. All uses conducted on the Site, including, without limitation, all activities undertaken by Developer pursuant to this Agreement, shall conform to the Redevelopment Plan and all applicable provisions of the City Municipal Code. This Agreement shall, to the greatest feasible extent, be interpreted in a manner consistent with the Regulatory Agreement; provided that in the event of express conflict between the two, the Regulatory Agreement shall control.

5.10 Affordable Housing Requirements and Number of Affordable Units. Developer agrees to make available, restrict occupancy to Low Income Households and Very Low Income Households, and rent all of the Required Affordable Units at Affordable Rent, as more particularly described in the Regulatory Agreement. Subject to minor modification if mutually approved by the Parties, the Project shall consist of the following Unit breakdown:

- (a) **Total Units.** Seventy-two (72) total Units (inclusive of one (1) manager Unit);
- (b) **Required Affordable Units.** A minimum of thirty-five (35) Required Affordable Units consisting of at least sixteen (16) one-bedroom Units, seven (7) two-bedroom units, and twelve (12) three-bedroom Units; and
- (c) **Affordability Level.** The Required Affordable Units shall be provided in the following numbers and categories:
 - (1) **Low Income Households:** eight (8) one-bedroom Units; (2) two-bedroom Units; and five (5) three-bedroom Units; and
 - (2) **Very Low Income Households:** eight (8) one-bedroom Units; (5) two-bedroom Units; seven (7) three-bedroom Units.

Notwithstanding any other provision herein, each and every Unit of the Project shall be rented at the Prescribed Rent Levels and the entire Project shall comply with all TCAC requirements irrespective of whether the Project is developed as a Tax Credit project.

5.11 Duration of Affordability Requirements. The Required Affordable Units shall at all times during the Required Covenant Period be maintained as rental units available at and rented to Very Low Income Households and Lower Income Households as provided for above, regardless of the date the Loan is repaid.

5.12 Determination of Affordable Rent for the Housing Units. Each Required Affordable Unit shall be rented at as "Affordable Rent" as established by the TCAC.

5.13 Maintenance of Site. Developer agrees for itself and its successors in interest to maintain the Improvements and the Site in conformity with the City Municipal Code and the conditions set forth in this Agreement and the other Project Documents.

ARTICLE VI GENERAL REQUIREMENTS

6.1 Project Management. Developer shall maintain the Project in compliance with all local codes and requirements, as the same may be amended from time to time, for the extent of the Required Covenant Period.

6.2 Occupancy Procedures. With respect to the Affordable Units, Developer shall obtain and remit all income and recertification documentation and related evidence satisfactory to Agency in accordance with Chapter 1 of Title 26 of the Code of Federal Regulations, as amended. Developer shall further adopt written tenant selection policies and criteria for the Units that are consistent with the purpose of providing affordable housing to Low Income Households and Very Low Income Households.

6.3 Security Deposits. Any security deposits collected by Developer or its agents related to the Project shall be kept separate and apart from all other funds of the Project, in a trust account with a depository insured by the Federal Deposit Insurance Corporation or other comparable federal deposit insurance program, and such funds shall otherwise be held and disbursed in accordance with California law. The balance of such funds shall at all times equal or exceed the aggregate of all outstanding obligations under said account, inclusive of any interest accrued thereon.

6.4 Annual Report. Developer shall, at its sole expense, prepare and file with Agency or its designee an annual report, commencing in the year the Certificate of Completion is issued and thereafter no later than one hundred and twenty (120) days following the end of each calendar year during the Required Covenant Period, that contains a certification by Developer as to that information Agency may then require regarding the prior calendar year, including, without limitation, the following:

(a) **Defects.** A listing of all substantial defects in the Project, inclusive of a description any major repair or maintenance work undertaken or needed in the previous and current fiscal years. This statement shall further describe what steps Developer has undertaken in order to maintain the Project in a safe and sanitary condition in accordance with applicable housing and building codes, regulations, and other applicable requirements;

(b) **Occupancy Statistics.** The current occupancy information for each Unit, including the verified income of each household, the current rent charged and whether such rent includes utilities, and a summary of any information received from the recertifications of Qualified Tenant's incomes;

(c) **Other Information.** Such (1) reports as are required to be submitted under the Redevelopment Law and in accordance with Chapter 1 of Title 26 of the Code of Federal Regulations, as amended; and (2) other reasonably available information required by Agency from time to time, including, without limitation: (i) information regarding the fiscal condition of Developer in the form of a financial statement for the previous fiscal years that includes a balance sheet and profit and loss statement indicating any surplus or deficit in operating accounts; (ii) a detailed, itemized listing of income and expenses; (iii) the amount of any fiscal reserves and Developer's total cash flow received. All reports and financial information shall be prepared in accordance with the requirements and form specified by Agency, and Agency shall have the right to require that any financial statements be audited at

Developer's expense by an independent certified public accountant, or other person designated by Agency, acceptable to Agency. Developer shall promptly comply with all Agency requests to provide any other information that Agency, in its discretion, deems necessary to monitor compliance with the terms and requirements of this Agreement and the other Project Documents.

6.5 Review and Inspections. Agency may at time during the Required Covenant Period, upon reasonable prior notice to Developer, enter and inspect the physical premises of the Project and inspect all books, records and accounts pertaining to the development or operation of the Project. Developer shall, upon Agency request, notify Unit occupants of upcoming inspections of their respective Units in accordance with state law.

6.6 Books and Records; Audit. Developer shall keep all books, records, accounts, documentation and all other materials related to the Project in accordance with the requirements of Chapter 1 of Title 26 of the Code of Federal Regulations, as amended (collectively, the "**Records**") for not less than six (6) years from the end of the Required Covenant Period. Agency shall have the right to inspect any and all of the Records upon reasonable prior notice to Developer.

(a) **Inspection.** The Records and all other materials deemed by Agency as relevant to the development or operation of the Project shall be accessible at any time to Agency's authorized representatives for the purpose of examination or audit; and

(b) **Unauthorized Expenditures.** Any expenditure made with Loan proceeds that is not properly documented or authorized in accordance with this Agreement shall be disallowed and must be reimbursed by Developer to Agency or Agency's designee immediately. Notwithstanding the foregoing, an expenditure of Loan proceeds for work not authorized by this Agreement or the other Project documents shall be deemed authorized if the performance of such activity(ies) is approved in writing by Agency prior to the commencement of such otherwise unauthorized work. Absent fraud or mistake on the part of Agency, an Agency determination of the allowability of any expenditure shall be final.

6.7 Restriction on Sale, Encumbrance, and Other Acts. Developer expressly acknowledges and agrees that:

(a) **No Encumbrances.** Developer shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance or transfer, unless directly related to the lawful sale of Tax Credits or the repurchase thereof, in any form of all or any part of, or any interest in, the Project or the Site, except with the prior written approval of Agency, which approval shall not be unreasonably withheld. Agency agrees that the Deed of Trust may be subordinated to the deeds of trust securing the construction loan and permanent loan for the Project; provided, however, that the conditions set forth in the Addendum to the Deed of Trust are satisfied.

(b) **No Other Uses.** Developer shall not permit the Project or the Site to be used for any purpose other than that permitted by this Agreement without the prior written approval of Agency.

(c) **Sale or Transfer.** Agency must approve the sale, transfer or conveyance of the Site and Project, with such approval to not be unreasonably withheld; provided, however,

that all conditions and requirements reasonably required by Agency are met, including, without limitation:

(1) **Developer Not In Default or Violation**. Developer is not in Default hereunder and is otherwise in compliance with all the terms and conditions of this Agreement and the other Project Documents, or the proposed sale, transfer or conveyance will result in the cure of any Default or existing violation of this Agreement or the other Project Documents;

(2) **Successor In Interest Bound**. The successor-in-interest to Developer shall agree, in writing, to and assume all obligations and responsibilities under this Agreement, the other Project Documents, and the Redevelopment Law;

(3) **Experienced and Capable**. The successor-in-interest demonstrates to the satisfaction of Agency that it can own and operate the Project in full compliance with the Agreement, the other Project Documents, and the Redevelopment Law; and

(4) **No Unacceptable Terms**. The terms of the sale, transfer or conveyance shall not in any way threaten Agency's security interest or limit the ability of the successor-in-interest to comply with this Agreement or the other Project Documents.

(d) **Compliance Required**. Agency shall condition its approval for the sale, transfer or conveyance subject to such terms and conditions as may be necessary in its discretion to ensure compliance with this Agreement and the other Project Documents.

6.8 Assignment of Agency Rights. Agency retains the right to assign all or part of its rights under this Agreement, including for the purpose of ensuring compliance with the Redevelopment Law and enforcement of Developer's duties and obligations hereunder. Agency may additionally designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

6.9 Commencement and Completion of the Improvements. Developer hereby acknowledges and agrees that:

(a) **Commencement of Construction**. Developer shall commence construction within thirty (30) days of the recordation of the Deed of Trust or the date provided in the Schedule of Performance, whichever is later, and Developer shall continue such construction diligently to completion.

(b) **Completion of Construction**. Developer shall have completed construction of the Project substantially in accordance with the final plans submitted to Agency (the "**Final Plans**"), free and clear of all liens, no later than fourteen (14) months following the commencement of construction or as otherwise provided for in the Schedule of Performance (the "**Completion Date**"). As contemplated herein, completion of the Project shall include, without limitation, completing construction of the structural components, operating systems, and all other material elements of the Project. Unless otherwise agreed to in writing by Agency, the Project shall only be deemed complete for all purposes under this Agreement

when: (i) the Project has been substantially completed in accordance with the approved Final Plans for the Project, as evidenced by the written certification of the Project architect and/or contractor in a form satisfactory to Agency; (ii) Developer has provided Agency with a Certificate of Occupancy, Notice of Completion, or affidavit of completion, if applicable, and such other evidence as is satisfactory to Agency that the Project is complete and free of all liens; (iii) all periods for the filing of any mechanic's liens related to the construction of the Project have expired, and (iv) the Project has been inspected by and received final approval of the appropriate governmental authorities.

(c) **In Service.** By the Completion Date, Agency shall have received evidence satisfactory to Agency that the buildings making up the Project have been "placed in service" within the meaning of Section 42 of the Internal Revenue Code.

6.10 Work Standards. Notwithstanding any other requirements imposed by the Project Documents, Developer shall construct the Project in a good and workmanlike manner in accordance with sound building practices, as well as substantially in accordance with the approved Final Plans. Developer shall comply with all existing and future laws, regulations, orders, building codes, restrictions and requirements of, and all permits and approvals from, and agreements with and commitments to, all governmental, judicial or legal authorities having jurisdiction over the Site and the Project, including, without limitation, those pertaining to ownership, construction, marketing, sales, leasing, and financing of the Improvements, and with all recorded covenants and restrictions and other title encumbrances affecting the Site and the Project.

ARTICLE VII INSURANCE AND INDEMNITIES

7.1 Insurance Requirements. Commencing upon the execution of this Agreement and continuing throughout the Required Covenant Period, Developer shall cause the Site and Project to be insured with, at Developer's sole cost and expense and with insurers reasonably approved by Agency, the following policies of insurance in form and substance reasonably satisfactory to Agency, and such other policies and forms of insurance as Agency may reasonably require from time to time:

(a) **Workers' Compensation.** Workers' compensation insurance, and any other insurance required by law in connection with the construction and operation of the Improvements or other work performed on the Site;

(b) **Construction All-Risk Casualty Policy.** Upon commencement of construction of the Improvements and at all times during the course of construction up to and until the final approval of the Improvements by Agency, a builder's "all-risk" casualty policy(ies) that covers one hundred percent (100%) of the replacement cost of all of the Improvements (including those offsite and the materials related to the same), including, without limitation loss or damage from fire, lightning, windstorm, vandalism, earthquake, malicious mischief, and any and all other risks normally covered by such "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood);

(c) **Post-Construction All-Risk Casualty Policy.** Following completion of the Improvements, and approval by Agency, such fire and hazard "all risk" casualty insurance that covers one hundred percent (100%) of the replacement cost of the Improvements,

including, without limitation, loss or damage from fire, lightning, windstorm, vandalism, earthquake, malicious mischief, and all other risks normally covered by “all risk” coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood); and

(d) **Liability Insurance.** Public liability insurance against risk or loss from public liability and property damage claims for personal injury, death or property damage occasioned by the use and operation of the Site and the Improvements in such amounts as reasonably required by the Executive Director from time to time, provided, however, in no event shall such liability coverage be less than One Million Dollars (\$1,000,000.00) for a “single occurrence” with respect to bodily injury or death, and property damage coverage such in amounts reasonably required by the Executive Director from time to time, provided, however, in no event shall such property damage coverage be less than Two Million Dollars (\$2,000,000); and such other policies protecting against fire, flood (as required pursuant to 24 CFR 92.358), and other hazards and casualties, liabilities, and contingencies, in such amounts and for such periods as are reasonably acceptable to Agency. Developer shall also, at its sole cost and expense, maintain automobile bodily injury and property damage insurance, including all owned, hired, and non-owned equipment, with combined bodily injury and property damage liability of not less than One Million Dollars (\$1,000,000.00).

7.2 Insurance Proceeds; Forms of Policies. Agency shall be named as an additional insured and payee on all insurance policies required herein and each such policy shall provide that all proceeds thereunder shall be payable to Agency’s loss payable endorsement substantially in the form approved by Agency. Further, each such insurance policy shall require that Agency be given a minimum of thirty (30) days’ notice of any intended cancellation, reduction or major change in coverage provided thereby. Developer shall file with Agency a certified copy of the required new or renewal policy(ies) and certificates for such policy(ies).

7.3 Insurance Advance. In the event Developer fails to maintain the full insurance coverage required herein, Agency, after a minimum of seven (7) days’ notice to Developer, may, but shall be under no obligation to, take out and or bring current the lacking policies of insurance. Any amount so advanced by Agency, together with interest thereon from the date of such advance at a rate equal to of the Applicable Interest Rate provided for in the Note (except to the extent such rate of interest is contrary to applicable law in which case such rate applied shall be the highest rate then allowed by applicable law), shall become an additional obligation of Developer to Agency and shall be secured by the Deed of Trust.

7.4 Use of Insurance Proceeds. Any proceeds Developer receives under an insurance policy issued to Developer related to the Site or the Project, and any proceeds received from any governmental agency due to a partial or complete condemnation of the Site or the Project, shall be applied as follows: If Developer collects insurance proceeds arising from a fire or other casualty, the insurance proceeds shall be applied to restore, repair, or rebuild the damages to the Project caused by such casualty if such restoration, repair or rebuilding is economically feasible. If such insurance proceeds shall be insufficient for such purposes, Developer shall make up the deficiency at its sole expense. If the Project is subject to partial condemnation or taking, then the proceeds received therefrom shall be applied to restore that portion of the Project taken, provided Agency determines that such restoration is economically feasible and no Default exists under the Loan, this Agreement, or the other Project Documents, following the expiration of all applicable cure periods. If the Project is subject to total condemnation, or if Agency determines that restoration of the Project is not feasible

following a partial condemnation, or if a Default exists, then the proceeds from any condemnation award or claim for damages shall be used first to repay the Loan, with the excess, if any, paid to Developer.

7.5 No Agency Official or Agent Liability. No elected or appointed official, employee, officers, representative, volunteer or agent of Agency shall be personally liable to Developer for any obligation created under the terms of this Agreement or the other Project Documents except in the event of actual fraud or willful misconduct by such individual.

7.6 Environmental Matters. Developer shall ensure it is and has been in compliance with all environmental laws and environmental approvals applicable to it and its general partners where the failure to do so is reasonably likely to have a material adverse effect or result in liability for Agency or the City. Developer shall provide Agency with copies of all environmental reports obtained or commissioned by Developer related to the Site as soon as reasonably practicable. Developer shall promptly remediate any environmental contamination or condition on the Site disclosed in any such report or otherwise discovered.

7.7 Indemnity. Developer and each general partner thereof (collectively, the "**Indemnifying Party**"), shall indemnify, defend and hold Agency and City, and Agency's and City's respective appointed and elected officials, employees, officers, agents, attorneys, volunteers, and representatives, and each of them (collectively, the "**Indemnified Party**"), harmless, from and against any and all claims, litigation, liabilities, obligations, losses, damages, penalties, judgments, demands, costs and expenses of any kind (including attorneys' and other professionals' fees and costs) (the foregoing, collectively, "**Claims**") that may be imposed or threatened, incurred or asserted, against any of them by any source, regardless of whether or not such Claim is filed in any court, in any way related to or arising from: (a) the execution, delivery or performance of or under the Project Documents, (b) the funding or use of the Loan, including, without limitation, from and against any claim, demand or lien for the payment by any of the architects, engineers, consultants, contractors or subcontractors engaged by Developer to perform any work on or related to the Project or the Site, (c) any environmental liability related to the Site, (d) any Default, (e) any action taken by Developer or any agent, employee, or representative thereof (including any contractor or subcontractor) under this Agreement or the other Project Documents, (f) the development or operation of Project or the Site, or (g) any exercise or enforcement by Agency of its rights or remedies hereunder, including, but not limited to, such liability, cost, damage, loss, claim or expense arising from death or injury to any person or property on or adjacent to the Site; provided, however, the Indemnifying Party shall not be liable to the Indemnified Party to the extent any liability results directly from the Indemnified Party's gross negligence or willful misconduct. The duty of the Indemnifying Party to indemnify as provided herein includes the duty to defend, or at the Indemnified Party's choosing, to pay the Indemnified Party's reasonable costs of defense in any court action, administrative action, or other proceeding brought by any third party arising from or related to any act or omission enumerated in (a) through (g) of this Section. The Indemnifying Party's duty to indemnify the Indemnified Party shall survive the full repayment of the Loan and the reconveyance of the Deed of Trust, and distribution of the Loan proceeds shall not be a condition precedent to the Indemnifying Party's obligations under this indemnity.

ARTICLE VIII
DEFAULT

8.1 Default. Notwithstanding any other provision of this Agreement, each of the following constitutes, interchangeably, an “**Event of Default**” or “**Default**” by Developer which entitles Agency to take, without limitation, such actions as are outlined below:

- (a) **False or Misleading Representation.** Any material false or misleading representation or warranty made or given by Developer in any Project Document, or the failure or delay by Developer to perform any covenant, condition or provision of this Agreement, the other Project Documents, or any other document affecting the Project or the Site.
- (b) **Non-Payment.** Failure to pay the Principal or any accrued Interest when due and payable in accordance with the terms of this Agreement or the Note, as applicable.
- (c) **Breach of Obligations.** Failure to comply with any term or condition of this Agreement or any other Project Document, unless such failure (i) can be remedied and (ii) is remedied as provided for in this Section.
- (d) **Mortgage Default.** Default by Developer or any general partner thereof on any mortgage or line of credit or as to any obligations to which Developer or a general partner thereof is a guarantor on a mortgage of deed of trust.
- (e) **Misrepresentation.** A representation or warranty made or repeated by or on behalf of Developer in any Project Document or any report, financial statement or other document delivered on behalf of Developer under this Agreement or any other Project Document that is incorrect in any material respect when made or deemed to be repeated.
- (f) **Judgments.** One or more judgments for the payment of money is rendered against Developer or any general partner thereof, which remains undischarged for a period of thirty (30) days during which execution shall not be effectively stayed, or any action is legally taken by a judgment creditor to attach or levy upon any assets of Developer or any general partner thereof to enforce any such judgment.
- (g) **Environmental Claims.** A reasonable basis shall exist to assert, or there shall be asserted, against Developer or any general partner thereof, or any respective predecessor in interest thereof, an Environmental Claim that, in the sole judgment of Agency, is reasonably likely to be determined adversely to Developer and or one or more general partners thereof and the liability of any of the foregoing arising as a result of that environmental claim is reasonably likely to have a material adverse effect on Developer’s ability to perform its obligations under this Agreement or any other Project Document or impact the validity or enforceability of any Project Document.
- (h) **Change in Control.** Developer undertakes or is subject to a Change in Control.
- (i) **Insolvency.** Any of the following occurs with respect to Developer or any general partner thereof: (i) inability to pay debts as the same become due; (ii) insolvency;

(iii) voluntary or involuntary case or proceeding under the United States Bankruptcy Code that is not controverted within thirty (30) days or is not dismissed or stayed within ninety (90) days after commencement; (iv) an assignment for the benefit of its creditors; or (v) the petition or filing for winding up, administration or dissolution. In the Event of Default under this Section, all amounts outstanding under the Project Documents shall be immediately due and payable.

(j) **Insurance.** Failure to maintain the insurance policies and coverages required herein.

(k) **Cessation of Business.** Developer or any general partner thereof is dissolved or ceases, or threatens to cease, to carry on business or the same ceases construction of the Improvements or operation of the Project.

(l) **Developer Failure to Obtain Adequate Financing.** Developer's failure to obtain adequate financing to construct the Project or the Improvements.

8.2 Notice of Default and Opportunity to Cure. Upon the occurrence or happening of an Event of Default by Developer, Agency shall give written notice to Developer that specifies: (a) the nature of the event or deficiency giving rise to the Default; (b) the action required to cure the Default, if an action to cure is practical or possible; and (c) the date, which shall not be less than thirty (30) calendar days from the date of the receipt of the notice or the date that delivery of the notice was refused, by which such action to cure must be taken or, if a cure is not possible within the thirty (30) days, to begin such cure and diligently prosecute such to completion which shall, in any event, not exceed ninety (90) days from the date of receipt or refusal. Agency shall determine, at its reasonable discretion, what additional time, if any, is reasonably needed to cure.

8.3 Agency Remedies. Upon the occurrence or happening of an Event of Default by Developer and Developer's failure to cure such Event of Default within the manner and/or time provided for in Section 8.2 above, Agency may (but is not required), in addition to any and all other rights and remedies provided for in the Project Documents and under applicable law, proceed with any or all of the following remedies in any order or combination as Agency may, in its sole discretion, choose to:

(a) **Terminate Agreement.** Terminate this Agreement, in which event the entire Principal balance then outstanding and all accrued Interest thereon, as well as any other monies advanced to or owing from Developer under the Project Documents, inclusive of administrative costs, shall immediately become due and payable;

(b) **Action for Equitable Relief.** Bring an action for equitable relief that seeks: (1) specific performance by Developer of the terms, conditions, obligations and requirements of the Project Documents, and or (2) the enjoinder, abatement, or prevention of any violation of such terms, conditions, obligations and requirements, and or (3) declaratory relief;

(c) **Accelerate Loan.** Accelerate the Loan and demand immediate and full payment of the Principal balance then outstanding and all accrued Interest thereon, as well as any other monies advanced to or owing from Developer under the Project Documents;

EXHIBIT "B"

PROJECTED RENT ROLL

[TO BE ADDED]

EXHIBIT "C"

REGULATORY AGREEMENT

RECORDING REQUESTED BY AND
AFTER RECORDATION, MAIL TO:

Newman Redevelopment Agency
1162 Main Street
Newman, California 95360
Attention: Redevelopment Director

NO FEE FOR RECORDING PURSUANT TO GOVERNMENT CODE SECTION 27383

**AFFORDABLE HOUSING COVENANT
(DRISKELL)**

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, this **AFFORDABLE HOUSING COVENANT** (the "**Regulatory Agreement**") is entered into as of this _____ day of _____, 2008, by and between (i) **NEWMAN REDEVELOPMENT AGENCY** ("**Agency**"), acting to carry out the obligations under the California Health and Safety Code to expand, improve, and preserve the availability of affordable housing for the CITY OF NEWMAN, and (ii) **751 DRISKELL AVE., L.P.**, a California limited partnership ("**Developer**"), with respect to that certain real property commonly known as Stanislaus County Assessor's Parcel Numbers 128-020-001, 128-020-002, and 128-020-003 (collectively, the "**Site**") and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

Agency and Developer hereby covenant and agree that the Site, inclusive of all improvements to be constructed thereon or related thereto, shall be, without limitation, subject to the following conditions, restrictions, reservations, covenants, and rights:

1. **Use.** Developer hereby covenants and agrees, for itself, its lessees, successors and assigns, and each of them, as follows:

A. **Development.** Developer shall promptly commence and diligently construct seventy-two (72) apartment units ("**Units**") and all applicable related improvements, including, without limitation, recreational, parking, and landscaping improvements (collectively, the "**Project**"), of which a minimum of thirty-five (35) Units shall be restricted as affordable units as more particularly described below ("**Affordable Units**"). The Project shall be developed in accordance with that certain Secured Loan and Affordable Housing Agreement entered into between the Parties and dated _____, 2008, which is fully incorporated herein by this reference (the "**Loan Agreement**").

B. **Rent and Income Restrictions.** The Affordable Units shall at all times be rented to persons and families that qualify as Very Low Income Households and Low Income Households (*as defined below*) as follows:

(1) **Low Income Households.** Fifteen (15) of the Affordable Units shall be rented to and occupied by households whose gross monthly income is at or below sixty percent (60%) of the Area Median Income (*defined below*) ("**Low Income Households**"). The rents for these Affordable Units to be occupied by

Low Income Households shall not exceed thirty percent (30%) of the adjusted income of a household whose gross income equals sixty percent (60%) of the Area Median Income. The Low Income Households shall consist of eight (8) one-bedroom Units, two (2) two-bedroom Units, and five (5) three-bedroom Units.

(2) Very Low Income Households. Twenty (20) of the Affordable Units shall be rented to and occupied by households whose gross monthly income is at or below fifty percent (50%) of the Area Median Income ("**Very Low Income Households**"). The rents for these Affordable Units to be occupied by Very Low Income Households shall exceed thirty percent (30%) of the adjusted income of a household whose gross income equals fifty percent (50%) of the Area Median Income.

For purposes of this Regulatory Agreement, "**Area Median Income**" shall mean the median income for households in Stanislaus County, California, adjusted for family size, as published from time to time by the United States Department of Housing and Urban Development ("**HUD**") in a manner consistent with the determination of median gross income under Section 8 of the United States Housing Act of 1937, as amended. In the event that such income determinations are no longer published by HUD, or are not updated for a period of at least eighteen (18) consecutive calendar months, Agency shall provide Developer with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

C. Manager Unit. Developer may set aside the one (1) Unit (other than an Affordable Unit) for use as a "**Manager's Unit**", which Manager's Unit shall be occupied by a person (or household) employed as an on-site resident manager, assistant manager, and/or maintenance worker for the Project.

D. Reporting Requirements. Annual reports (*or as often as are required by the terms of the Developer's financing for the Project*) and annual income recertifications must be submitted to Agency. The foregoing shall include, at a minimum, the following information:

- (1) The number of persons per Unit;
- (2) Tenant names;
- (3) The initial occupancy date;
- (4) Rent paid per month (and whether it include utilities);
- (5) Gross income of the tenants per year; and
- (6) Percent of rent paid in relation to income.

Annual income recertifications shall also contain those documents used to certify eligibility. Agency may, from time to time during the term of this Regulatory Agreement, request additional or different information and Developer shall promptly supply such additional or different information in the reports required hereunder. Developer and its general partners shall maintain all necessary books and records, including property, personal, and financial records, in accordance with requirements prescribed by Agency with respect to all matters covered by this Regulatory Agreement (collectively, "**Books and Records**"). Developer, at such time and in such forms as Agency may require, shall furnish to Agency all statements, Books and Records, reports, data, and information pertaining to

matters covered by this Regulatory Agreement (collectively, "**Records**"). Upon request for examination by Agency or its designee, Developer or its third party keeper of the Records, at any time during normal business hours, shall make available all of the Records with respect to all matters covered by this Regulatory Agreement. Developer shall permit Agency and its designee to audit, examine, and make excerpts or transcripts from the Records. Developer shall use the tenant income certification form approved by the California Tax Credit Allocation Committee, or such other form approved by Agency.

2. **Maintenance.** Developer agrees that its shall, pursuant to agreements to be reviewed and approved by Agency, maintain the Project in a clean and orderly condition and in good condition and repair and keep the Site free from accumulation of debris and waste materials.

3. **No Transfer.** Except as set forth in Section 6.7 of the Loan Agreement, Developer shall not sell, transfer, convey, encumber, assign or lease the whole or any part of the Project or the Site without the prior approval of Agency, which shall not be unreasonably withheld. Developer shall request approval by written notice at least ninety (90) days prior to any proposed transfer of the Project or the Site. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site or the Project or to prohibit or restrict the leasing of Units when the Project is complete.

4. **Management.** Any agreements between Developer and a property management company to manage and maintain the Project on Developer's behalf shall explicitly name Agency as a third-party beneficiary of such agreements and shall permit and authorize Agency to enforce such agreements. Developer shall submit a copy of any such agreements to Agency; provided, however, that Agency shall not have the right to approve or disapprove such agreements except to ensure compliance of such agreements with the provisions of this Paragraph 4. Developer shall promptly notify Agency in the event there is any change in the property management company managing the Project on Developer's behalf.

5. **No Discrimination.** Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, source of income, sexual preference or orientation, physical disability, medical condition, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project or the Site, nor shall Development itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project or the Site.

6. **Nondiscrimination and Nonsegregation Clauses.** All deeds, leases, subleases and contracts made relative to the Project and the Site, and all improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

A. **Deeds:** *"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, and each of them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, source of income, sexual preference or orientation, physical disability, medical condition, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein*

conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed.” The foregoing covenants shall run with the land.

B. Leases: “The lessee/sublessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease/sublease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, source of income, sexual preference or orientation, physical disability, medical condition, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased or subleased, nor shall the lessee/sublessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased/subleased.”

C. Contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, source of income, sexual preference or orientation, physical disability, medical condition, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land.”

7. No Impairment of Lien. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Regulatory Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Developer to the Project or the Site shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. Duration. The covenants contained in Paragraphs 1, 2, 3, and 4, inclusive, of this Regulatory Agreement shall run with the Site, and each and every part thereof, and shall remain in effect for a period of not less than fifty-five (55) years from the date of recording of this Regulatory Agreement. The covenants against discrimination contained in Paragraphs 5 and 6, inclusive, of this Regulatory Agreement shall be deemed to run with the Site, and each and every part thereof, and shall remain in effect in perpetuity.

9. Successors and Assigns. The covenants contained in this Regulatory Agreement shall be binding for the benefit of Agency and its successors and assigns and any successor in interest to the Site or the Project, or any part thereof, and such covenants shall run in favor of Agency and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether Agency is or remains an owner of any land or interest therein to which such covenants relate. Agency and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain

any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach. The covenants contained in this Regulatory Agreement shall be for the benefit of and shall be enforceable only by Agency and its respective successors and such aforementioned parties.

10. Subordination. Agency may at its sole discretion, upon the written request of Developer, agree to have the terms and conditions of this Regulatory Agreement subject to and subordinate to the terms and conditions of financing obtained by Developer for the development and operation of the Project; provided that if such financing is not provided pursuant to an adopted federal or state program, the lender of such financing shall agree to include in its deed of trust the following conditions: (i) Agency shall receive any notices of default issued by lender to Developer; (ii) Agency shall have the right to cure any default by Developer within forty-five (45) days after receipt by Agency of a notice of default; (iii) if Agency takes title to the Site or Project and cures any such default, the lender shall not exercise any right it may have to accelerate its debt by reason of the transfer of title to Agency; and (iv) Agency shall have the right to transfer the Site or Project to a nonprofit corporation that shall own and operate the same as an affordable rental housing project with the consent of such lender, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, Agency and Developer have caused this Regulatory Agreement to be executed on their behalf by their respective duly authorized officers as of the date first written above.

“DEVELOPER”

“AGENCY”

751 DRISKELL AVE.,, L.P.,
a California limited partnership

NEWMAN REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: Corporation for Better Housing,
a California non-profit public benefit
corporation, its Managing General Partner

By: _____
Executive Director

ATTEST

By: _____
David Sclafani, Sr. Vice President

By: _____
Secretary

EXHIBIT "A"

LEGAL DESCRIPTION OF THE SITE

The real property referred to herein is situated in: City of Newman, County of Stanislaus, State of California, more particularly described as follows:

Stanislaus County Assessor's Parcel Number: 128-020-001: ("**PARCEL**")

Brief Description: PORTION SE4 SD SEC 16

Stanislaus County Assessor's Parcel Numbers: 128-020-002 and 128-020-003

Brief Description: PORTION SE4 SD SEC 18

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me the undersigned, a notary public, personally appeared

() personally known to me, or
() proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me the undersigned, a notary public, personally appeared

() personally known to me, or
() proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

SCHEDULE OF PERFORMANCE

The Executive Director may extend by not more than one hundred and eighty (180) days the time under this Schedule of Performance by which any obligation of Developer shall be performed.

1. Obtain Zoning and Project approvals from the City Not later than February 15, 2008
2. Purchase the Project Property Not later than June 2008.
3. Developer shall satisfy the Conditions Precedent to Closing Not later than June 2008.
4. The Developer shall have obtained allocation by TCAC for a preliminary reservation of 9% tax credits for the Development. Not later than October 2008
5. Commencement of Construction. The Developer shall have commenced construction of the Improvements. Not later than February 1, 2009.
6. Completion of Construction. Developer shall complete construction of the Improvements. Within fourteen (14) months after the earlier of (i) the commencement of construction or (ii) the time established in this Schedule of Performance for the commencement of construction of the Improvements.
7. Rental Units Occupied. Developer causes the Required Affordable Units to be occupied using the Prescribed Rent Levels in conformity with the Agreement. Within one hundred (100) days after the earlier of (i) the time established for completion of construction in this Schedule of Performance.

EXHIBIT "E"

SCOPE OF DEVELOPMENT

[TO BE ADDED]

EXHIBIT "F"

LEGAL DESCRIPTION OF THE SITE

The real property referred to herein is situated in: City of Newman, County of Stanislaus, State of California, more particularly described as follows:

Stanislaus County Assessor's Parcel Number: 128-020-001: ("**PARCEL**")

Brief Description: PORTION SE4 SD SEC 16

Stanislaus County Assessor's Parcel Numbers: 128-020-002 and 128-020-003

Brief Description: PORTION SE4 SD SEC 18

EXHIBIT "G"

SITE MAP

[TO BE ADDED]

EXHIBIT "H"

DEED OF TRUST

[TO BE ADDED]

(d) **Enter the Site.** Enter the Site and take any actions Agency deems necessary in its sole discretion to complete the Project, including, without limitation, (1) making changes in the Scope of Development or other work or materials with respect to the Project, (2) entering into, modifying, or terminating any contractual arrangements (subject to Agency's right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that Agency deems necessary to comply with applicable laws to render the Site suitable for occupancy;

(e) **Receiver.** Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete the Project as needed to preserve Agency's interest in ensuring the Project is developed in a timely manner (inclusive of the authority to take any remedial action with respect to Hazardous Materials that Agency or the receiver deems necessary to comply with applicable law or to render the Site suitable for occupancy);

(f) **Foreclosure.** Initiate and pursue any private and or judicial foreclosure action allowed under applicable law and the power of sale provision of the Deed of Trust;

(g) **Hazardous Materials.** With respect to a Default related to "**Hazardous Materials**" as the same is defined under State or federal law, pursue any rights and remedies permitted under California Civil Code Section 2925.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and or

(h) **Other Remedies.** Pursue any other remedy allowed at law or in equity.

No action taken hereunder shall preclude Agency from proceeding with a nonjudicial foreclosure under the power of sale provided for in the Deed of Trust. Further, Agency's exercise of any right or remedy under this Section shall in no way relieve Developer of any indemnity obligations under this Agreement. Except as otherwise provided herein, the rights and remedies of Agency are cumulative; the exercise by Agency of any right or remedy under this Agreement or the other Project Documents shall not preclude the exercise by Agency, at the same or different times, of any other rights or remedies for the same default or any other default of Developer. Notwithstanding any other remedies provided for herein, in the event of a mortgage or deed of trust default or breach by Developer, whether prior to or after the completion of the construction of any of the Improvements or any part thereof (continuing until full repayment of the Loan), Developer shall immediately deliver to Agency a copy of any mortgage holder's notice of default. If the holder of any such mortgage or deed of trust has not exercised its option to construct, Agency shall have the right but no obligation to cure the default. In such event, the Agency shall be entitled to full reimbursement from Developer of all proper costs and expenses incurred by Agency in curing such default. Developer further agrees to provide any documentation evidencing the relinquishment of any and all rights to the Site, the Project, and under this Agreement in such event; provided that the failure to provide such documentation shall not be construed to mean that Developer retains any rights under the Agreement or the Loan.

ARTICLE IX MISCELLANEOUS

9.1 Governing Law. All of the Project Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the

County in which the Project is located or the United States District Court of the Eastern District of California. Assuming proper service of process, Developer also waives any objection regarding personal or in rem jurisdiction or venue.

9.2 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted successors and assigns. Developer acknowledges and agrees that it may not assign this Agreement or the other Project Documents without Agency's prior consent, which consent shall not be unreasonably withheld. Developer acknowledges and further agrees that any permitted assignment shall not release Developer of its liability and obligations under this Agreement or the other Project Documents and that Developer shall be responsible for any and all costs incurred from the assignment. In the event of an assignment hereunder, each such borrower and/or assignee shall be jointly and severally liability to Agency for the payment and performance of all obligations under this Agreement and the other Project Documents. Whenever the term "Developer" is used in this Agreement, such term shall also include any permitted successors and assigns. Agency shall allow the lawful sale of tax credits to investor limited partners of Developer that are in the business of syndicating or buying such tax credits at a market price.

9.3 Conflict of Interest. No employee, agent, consultant, officer, elected or appointed official or member of Agency has or may obtain a personal or financial interest in or benefit from Developer or the Project, or any contract, subcontract or agreement related thereto, or the proceeds thereof, relating to the Project either for themselves or for anyone related to them or with whom they have business ties, during their tenure with Agency or for a period of not less than one year after separation therefrom. Developer shall incorporate, or cause to be incorporated, in all contracts and subcontracts related to the development and operation of the Project a provision prohibiting such an interest.

9.4 Relationship Between Agency and Developer. It is hereby acknowledged and agreed that the relationship of the Parties is solely that of a lender and borrower and not that of a partnership or joint venture, and that the Parties shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, including the Attachments hereto, neither Agency nor the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project.

9.5 Nondiscrimination. Developer shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease or rental of any part of the Project on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual preference, marital status, family status, source of income, physical or mental disability, or on account of any other arbitrary characteristic or basis. Developer shall comply with all applicable local, state, and federal laws concerning discrimination in housing.

9.6 Attorneys' Fees. In any action among the Parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

9.7 Modification or Amendment. This Agreement may only be modified or amended upon the prior written approval of the Parties. Developer hereby expressly agrees to enter into all

amendments hereto and take any such other actions which, in the opinion of Agency, are reasonably necessary for maintaining compliance under any applicable law.

9.8 Signage. During the period of construction on the Project, Agency may place or require to be placed on the Site signage stating that Agency is providing financing to the Project. Any such signage shall indicate in a typeface commensurate with the funding provided that Agency is a source of funding.

9.9 Refinance. Developer may only refinance the Project upon the prior written approval of Agency.

9.10 Non-recourse Liability of Developer. Except to the extent otherwise provided for in this Agreement and the other Project Documents, neither Developer nor any of its general partners shall be personally liable for any default, loss, claim, damage, expense or liability to any person and the sole remedy against Developer hereunder shall be limited to its interest in the Project.

9.11 Notices. All notices under this Agreement shall be effective (i) when personally delivered to the other Party or its representative, as the case may be, (ii) when sent by facsimile on a business day between the hours of 8 a.m. and 5 p.m. (with written confirmation of successful transmission) to the receiving Party and its respective representative(s), as the case may be, at the numbers set forth below, provided a copy is also mailed to the address of the recipient(s), or (iii) three (3) business days after deposit in the United States mail, registered or certified, postage prepaid, and addressed to the respective Party and its representatives, as follows:

If to Developer: Corporation for Better Housing
15303 Ventura Boulevard, Suite 1100
Sherman Oaks, California 91403
Telephone: (818) 905-2430
Telecopier: (818) 905-2440

If to Limited Partner(s): _____

If to Agency: Newman Redevelopment Agency
1162 Main Street
Newman, California 95360
Attn: Executive Director

or such other addresses or facsimile number as the Parties may from time-to-time designate in writing. As a matter of convenience, however, communications between the Parties shall, to the extent feasible, be conducted orally by telephone or in person, with such communications to be confirmed and made effective in writing as set forth above, provided no such oral notice or communication shall be effective unless so confirmed in writing.

9.12 Counterparts. Any Project Document may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

9.13 **Severability of Provisions.** If any provision of any Project Document is held by a court of competent jurisdiction to be unenforceable or invalid, such unenforceable or invalid provision shall be severed and the remaining provisions of such Project Document shall remain in full force and effect, and to this end all provisions of the Project Documents are hereby declared to be severable.

9.14 **Conflicts.** In the event of any conflict between the provisions of this Agreement and those of any other Project Document, this Agreement shall prevail; provided, however, that with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

9.15 **Time of the Essence.** Time is of the essence of all of the Project Documents.

9.16 **Further Action.** The Parties agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate, or desirable to carry out the purposes of this Agreement.

9.17 **Force Majeure.** Notwithstanding any other provisions herein, performance by either Party hereunder shall not be deemed in default where a delay or default results from war, acts of terrorism, insurrection, strikes, lock-outs, riots, floods, earthquakes, major fires, quarantine restrictions, freight embargoes, lack of major transportation or any similar causes beyond the control or without the fault of the party seeking an extension of time to perform. An extension of time for any cause set forth in this Section 9.17 will be deemed granted if notice by the Party claiming such extension is sent to the other Party within ten (10) business days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) business days of receipt of such notice.

9.18 **Other Time Extensions.** Notwithstanding any other provisions herein, any time for performance required herein may be extended by the mutual written agreement of the Parties. The Agency Executive Director shall have the authority to approve extensions on behalf of Agency not to exceed a cumulative total of one hundred and eighty (180) days. Notwithstanding any provision of this Agreement to the contrary, the inability to obtain an allocation by TCAC or the lack of a preliminary reservation of tax credits, for any reason, or the lack of funding to complete the Project shall not constitute adequate grounds for delay pursuant to this Section 9.18 unless Developer can show to establish to the satisfaction of Agency, in its sole discretion, that such delay was due to no fault of Developer and Developer is actively pursuing applicable administrative or legal remedies to resolve such delay.

9.19 **Cumulative Rights; Waiver.** The failure or delay by either Party to exercise any rights available to it under this Agreement shall not be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by either Party preclude any other or future exercise thereof or the exercise of any other right. Any waiver of any provision or of any breach of any provision of this Agreement must be in writing, and any waiver by either Party of any breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Agreement.

9.20 Pronouns; Statutory References. All pronouns and all variations thereof used in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the context in which such pronouns are used may require. Any references to statutes or laws include all amendments, modifications, and replacements of the specific sections and provisions so referenced.

9.21 Interpretation. In the event any claim is made by a Party or otherwise relating to any conflict, omission, or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Party or its counsel.

9.22 Headings. All headings contained herein are inserted only for convenience and ease of reference and shall not be considered in the construction or interpretation of any provision of this Agreement.

9.23 Survival and Indemnity. Except as otherwise provided for in this Agreement, notwithstanding the repayment of the Loan, the Parties acknowledge and agree that the respective representations, warranties, covenants, indemnities, and agreements made by each Party pursuant to this Agreement shall survive, and each Party agrees to indemnify, defend, and hold the other Party harmless from and against any and all claims, demands, losses, obligations, damages, liabilities, causes of action, costs, and expenses (including, without limitation, reasonable attorneys' and other professionals' fees and costs) arising out of or in connection with a breach by the indemnifying Party of any such representation, warranty, covenant, indemnity or agreement.

9.24 Entire Agreement. This Agreement and the items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any matter contained herein shall be effective for any purpose related hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

"DEVELOPER"

751 Driskell Ave., L.P.,
a California limited partnership

By: Corporation for Better Housing,
a California nonprofit public benefit
corporation, its Managing General Partner

By: _____
David Sclafan, Sr. Vice President

"AGENCY"

NEWMAN REDEVELOPMENT AGENCY, a
public body, corporate and politic

By: _____
Executive Director

ATTEST:

Secretary

EXHIBIT "A"

NOTE

EXHIBIT "A"

PROMISSORY NOTE

Principal Sum: _____, 2008

\$ 300,000.00

Newman, California

FOR VALUE RECEIVED, the undersigned 751 DRISKELL AVE., L.P., a California limited partnership, ("**Maker**"), having its principal place of business at 15303 Ventura Boulevard, Suite 1100, Sherman Oaks, California 91403, promises to pay to the order of **NEWMAN REDEVELOPMENT AGENCY**, a public body, corporate and politic ("**Holder**"), at 1162 Main Street, Newman, California 95360, or at such other place as the holder of this promissory note ("**Note**") from time to time may designate in writing, the principal sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) ("**Principal**"), together with simple interest on the unpaid Principal at the rate of three percent (3%) per annum (the "**Applicable Interest Rate**") in lawful money of the United States of America.

1. Loan. This Note evidences the obligation of Maker to Holder for the repayment of funds ("**Loan**") borrowed pursuant to that certain Secured Acquisition Loan and Affordable Housing Agreement entered into by and between Maker and Holder and dated _____, 2008 (the "**Agreement**"). The terms and conditions of the Agreement are incorporated herein by this reference. All capitalized terms not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. Payments of Principal and Interest. From the date of this Note until the Principal and all outstanding interest accrued thereon is paid in full, Maker shall make payments hereunder in the amounts and at the time "**Residual Receipts**" rent (as defined in Exhibit "A" attached hereto and incorporated herein by this reference) is payable. This Note shall be payable from the Agency's percentage of **Residual Receipts**. Payments may, at the option of Holder, be accelerated and shall be due and payable hereunder in the event of the occurrence of any Default under the Agreement, the Deed of Trust, or any other Project Agreement. All payments made hereunder shall be credited first to any interest due and owing and then to Principal. Interest not paid current shall accrue and shall not be compounded. In any event, the entire outstanding balance of Principal and interest owing under this Note shall be due and payable in full fifty-five (55) years from the date hereof.

In addition, and notwithstanding any contrary portion of this Section 2 to the contrary, in the event that Maker has developed all the Improvements and has operated the Project in conformity with the Agreement throughout the Required Covenant Period, then, within thirty (30) days following the expiration of the term of the Agreement, upon receipt of the written request therefore by Maker, Holder shall cancel this Note. No partial credit shall be made available under this portion of Section 2.

Except in the event of a transfer of Developer's interest in the Site (or the Improvements) contrary to the provisions of the Agreement or hereunder, Maker's payments to Agency hereunder shall not be deemed in default hereunder so long as Maker makes payments to Agency of fifty percent (50%) of Residual Receipts, if any, for the corresponding Year such payment is due.

3. Deed of Trust. Payment of this Note is secured by that certain Deed of Trust executed by Maker for the benefit of Holder, which is recorded against and encumbers the real property described in the Deed of Trust (the "Site").

4. Prepayment. Maker shall have the right to prepay any amounts owing under this Note at any time without any penalty. Notwithstanding the foregoing, any prepayments deemed unauthorized by the Department Housing and Urban Development shall be the responsibility of Maker to return to the Project and the prepayment of any or all amounts hereunder will in no way release Maker or Maker's successors and assigns from its obligations under the Regulatory Agreement.

5. Default. The occurrence of any of the following shall constitute an event of default under this Note: (i) Transfer: Maker makes any Transfer of the Site, or any portion thereof or interest therein; as used herein, the term "**Transfer**" means and includes the direct or indirect sale, transfer, conveyance, mortgage, further encumbrance, assignment, or other alienation of the Site, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract, sales agreement or similar instrument affecting all or a portion of the Site, granting of an option to purchase any portion of or interest in the Site or any interest therein, or the lease of all or substantially all of the Site or of all or substantially all of the improvements located thereon. Transfer shall not include the sale, transfer, assignment, pledge, hypothecation or encumbrance by Maker's limited partner(s) of their partnership interest to a tax credit investor as provided under the Agreement nor shall Transfer include the removal of any general partner of Developer by the limited partner for cause so long as the replacement of such removed general partner by another person or entity is in accordance with the terms of Maker's partnership agreement to the extent permitted by the Agreement. Transfer shall not include the leasing of individual dwelling Units on the Site so long as Maker complies with the provisions of the Agreement relating to such leasing activity. Failure of Holder to exercise its option to declare all sums secured hereby immediately due and payable upon a Transfer will not constitute a continuing waiver of the right to exercise its option to declare all sums immediately due and payable for that Transfer or in the event of any subsequent Transfer; (ii) Payment: Maker fails to pay any amount due hereunder within fifteen (15) days of its due date; (iii) Other Default: Any other default by Maker under this Note, or any default by Maker under the Deed of Trust, the Agreement or the Regulatory Agreement after the expiration of applicable notice and cure periods; (iv) Other Loans: Any default by Maker under any other loan document affecting the Site or Project after the expiration of applicable notice and cure periods provided therein; (v) Refinance: The refinance of any senior loan without Holder's prior written consent; (vi) Insolvency: Maker becomes insolvent or the filing or initiation of bankruptcy or insolvency proceedings by or against Maker, whether voluntary or involuntary, that are not dismissed within thirty (30) days of initiation, or if Maker makes a general assignment for the benefit of creditors or states its inability to pay its debts as the same mature; or (vii) Dissolution: Maker dissolves or liquidates other than a general partner acquisition of the partnership assets.

Upon the occurrence of any event of default, or at any time thereafter, at the sole option of Holder hereof and without prior demand or notice, the entire unpaid Principal and all interest owing on this Note shall become immediately due and payable. However, this option may be exercised at any time following such event, and the acceptance of one or more payments hereunder shall not constitute a waiver of Holder's option. Holder's failure to exercise such option shall not constitute a waiver of such option with respect to that or any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement that secures the indebtedness hereunder

or is otherwise related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof. Holder agrees that in the event any such default is cured by a general partner or limited partner of Maker within the times set forth herein, it shall accept such cure as a cure of the default under this Note.

6. Default Interest. At all times when Maker is in default hereunder by reason of Maker's failure to pay Principal due under this Note or any amounts due under any loan documents securing this Note, the interest rate on the sums as to which Maker is in default (including Principal, if Holder has elected to declare it immediately due and payable), shall be the lower of the highest rate then allowed by law or ten percent (10%), as of the date of default.

7. Waiver of Presentment. Maker and any endorsers hereof and all others who may be liable for all or any part of the obligation hereunder, hereby severally waive presentment for payment, demand, and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

8. Payment of Costs and Expenses. Maker agrees to immediately pay upon demand all costs and expenses of Holder, including, without limitation, reasonable attorneys' fees and costs incurred: (i) if after default this Note is submitted to an attorney(s) for collection; (ii) if after default hereunder or under the Deed of Trust, the Agreement, the Regulatory Agreement or any loan document referred to herein, Holder finds it necessary or desirable, in its discretion, to secure the services or advice of an attorney(s) with regard to the collection of this Note against Maker, any guarantor thereof, or any other party liable therefore, or for the protection of its rights under this Note, the Deed of Trust, the Agreement, the Regulatory Agreement or any other loan document referenced herein; or (iii) if Holder seeks to have the Project or the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust, Agreement, Regulatory Agreement, or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

9. Reimbursement. If Holder shall be made a party to or shall reasonably intervene in any action or proceeding affecting the Site (including, without limitation, any form of condemnation or eminent domain proceeding), title thereto, Holder's interest in the Deed of Trust, or the Project, whether in court or before any governmental agency, Maker shall immediately reimburse Holder upon demand for all costs, charges, and attorneys' fees and costs incurred by Holder in any such matter, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Site.

10. Subordination to Construction and Permanent Notes. Maker and Holder each makes the following representations and warranties to Trustee of the construction loan and permanent loan for the Project:

"The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by the Subordination Agreement."

11. Miscellaneous.

(a) Governing Law. All questions with respect to the construction of this Note and the rights and liabilities of the parties to this Note shall be governed by the laws of the State of California.

(b) Binding on Successors. This Note shall inure to the benefit of Holder, and shall be binding upon Maker, and their respective successors and assigns as applicable.

(c) Attorneys' Fees. The nonprevailing party shall reimburse the prevailing party for all reasonable attorneys' fees, costs, and expenses, the prevailing party incurred in connection with the enforcement of rights under this Note, including, without limitation, reasonable attorneys' fees, costs, and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements or for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys' fees, costs, and expenses incurred to protect the attorneys' fees, costs, and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) seeking relief from stay in a bankruptcy proceeding. The term "expenses" means any expenses incurred by the prevailing party in connection with any of the out-of-court, or state, federal or bankruptcy proceedings referred to above, including, without limitation, the fees and expenses of any appraisers, consultants, and expert witnesses retained or consulted by the prevailing party in connection with any such proceeding.

(d) Entire Agreement. This Note and the relevant provisions of the Agreement and other Project Documents constitute the entire agreement and understanding between and among the parties in respect of the subject matter of such agreements and supersede all prior agreements and understandings with respect to such subject matter, whether oral or written.

(e) Time of the Essence. Time is of the essence with respect to every provision hereof.

(f) Invalidity. If any provision of this Note shall be deemed invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining part of that provision and the rest of the Note shall remain in full force and effect.

(g) Waivers by Maker. Except as otherwise provided in any agreement executed in connection with this Note, Maker waives: presentment; demand; notice of dishonor; notice of default or delinquency; notice of acceleration; notice of protest and nonpayment; notice of costs, expenses or losses and interest thereon; and diligence in taking any action to collect any sums arising under this Note or in any proceeding against any of the rights or interests in or to properties securing payment of this Note.

(h) Non-waivers. No previous waiver and no failure or delay by Maker in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Note, the Deed of Trust or the obligations secured thereby. A waiver of any term of this Note, the Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by this Note, the terms of this Note shall prevail.

(i) Non-recourse Liability of Developer. Notwithstanding anything to the contrary of this Note, neither Developer nor any of its partners shall be personally liable for any default, loss, claim, damage, expense or liability or any person and the sole remedy against Developer hereunder shall be limited to its interest in the Site and the Project.

(j) Maker Liability. Notwithstanding any limitation of liability provided for herein, Maker and each of its general partners shall be jointly and severally liable for each and every one of the following:

(i) Taxes. Failure to pay taxes, assessments, and any other charges that could result in liens against the Site or the Project, or any portion of either, or any other collateral pledged, encumbered, or otherwise covered by the Project Documents; provided, however, that if Maker is contesting the taxes, assessments or other charges, any delay in payment of such items shall not be a default hereunder;

(ii) Mechanics' Liens. Failure to pay and discharge any mechanics' liens, materialmans' liens, or other liens against any portion of the site or any other collateral pledged, encumbered, or otherwise covered by the Project Documents;

(iii) Fraud. Fraud or intentional misrepresentation with respect to any representation, warranties, or certifications made in the Project Documents, or otherwise made by Maker in connection with the Loan;

(iv) Improper Retention. Retention by Maker of any rental income or other income arising with respect to the Site or Project or any other collateral pledged, encumbered, or otherwise covered by the Project Documents subsequent to the date of any notice of default from Holder to Maker, or which, under the terms of the Project Documents, should otherwise have been paid to Holder;

(v) Insurance Proceeds. Retention by Maker of any insurance proceeds, condemnation awards, or other similar funds or payments attributable to the Site or Project that, by its terms, should have been paid to Holder or used in a manner contrary to the use made by Maker;

(vi) Failure to Maintain or Repair. Waste of the Site, or any failure to maintain, repair or restore any portion of the Site or Project in accordance with the terms of the Agreement.

Nothing in this section shall affect or limit the rights of Holder to enforce any of Holder's rights and remedies with respect to any portion of the Site described in the Deed of Trust or any other collateral pledged, encumbered or otherwise covered by the Project Documents.

[Signature on next page.]

“Maker”

751 DRISKELL AVE., L.P.,
a California Limited Partnership

By: Corporation for Better Housing,
a California nonprofit public benefit corporation,
its Managing General Partner

By: _____
David Sclafani, Sr. Vice President

EXHIBIT "A"

"**Residual Receipts**" for a particular Year means "**Gross Revenues**" (*defined below*) for the corresponding Year less (i) "**Debt Service**" (*defined below*) payments made during such Year on the Primary Construction Loan or the Primary Permanent Loan in amounts not in excess of the amounts due and payable during such Year (and not including prepayments), and (ii) the sum of "**Operating Expenses**" (*defined below*) and, to the extent funded, "**Chargeable Reserves**" (*defined below*) made during the corresponding Year, and (iii) less the "**Management Fee**" (*defined below*). All calculations of Residual Receipts shall be made annually, on or before May 15 for the preceding Year, and the components thereof shall be subject to verification and approval, on an annual basis, based upon conformity with the terms of this Agreement by Agency.

"**Operating Expenses**" means actual, reasonable and customary costs, fees and expenses directly incurred and for which payment has been made and which are attributable to the operation, maintenance, and management of the Project, excluding the "**Capital Replacement Reserve**" (*defined below*) and consisting of only the following (and such additional items, if any, as to which the prior written approval of the Executive Director is first obtained. Such approval shall be granted, granted subject to conditions, or refused at the sole and absolute discretion of the Executive Director): painting, cleaning, repairs and alterations; landscaping; utilities; rubbish removal; sewer charges; costs incurred to third parties in connection with generating laundry charges (but in no event to exceed the laundry charges); real and personal property taxes and assessments; insurance premiums; security; advertising, promotion and publicity; office, janitorial, cleaning and building supplies; actual and customary salary payable to an on-site manager which directly and exclusively benefits residents of the Project; the actual and customary salary paid for one assistant manager, one on-site maintenance manager and such other on-site management personnel, if any, which directly and exclusively benefit residents of the Project, subject to the prior written approval of the Executive Director at his or her sole and absolute discretion; a management fee ("**Management Fee**") (excluding any on-site management personnel) of not to exceed six and one-half percent (6 ½%) of Gross Revenues; purchase, repairs, servicing and installation of appliances, equipment, fixtures and furnishings; reasonable and customary fees and expenses of accountants, attorneys, consultants and other professionals as incurred commencing after the completion of the Improvements (as evidenced by the issuance by City of a certificate of occupancy for the corresponding building developed as part of the Improvements) in connection with the operation of the Project; tenant improvements that are not included in the costs of the Improvements, and payments made by Developer to satisfy indemnity obligations and other payments by Developer pursuant to this Agreement other than to Developer, partners or other related persons; provided, however, that payments to parties related to Developer for Operating Expenses must not exceed market rates. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation. The Operating Expenses shall be reported in the "**Audited Financial Statement**" (*defined below*) submitted to Agency and shall be broken out in line item detail.

"**Gross Revenues**" means the total rental income and all other revenues or income received by the Project or its successors or assigns in connection with the Project, including without limitation "**Housing Rent**" (*defined below*), laundry charges, cable income, and interest earnings, but, except for any interest earned thereon, does not include (i) the proceeds of the sale of Tax Credits to finance the Project, (ii) refinancing proceeds (provided the refinancing is permitted by and is accomplished in accordance with this Agreement) or (iii) insurance proceeds applied to reconstruct or repair the Improvements.

“Audited Financial Statement” means an audited financial statement, including, without limitation, a profit and loss statement, generated by a third party certified public accountant acceptable to Agency in its reasonable discretion, showing, for the previous Year, on a monthly basis and in an easily readable format, Gross Revenues, Operating Expenses, Debt Service, Operating Reserve, Capital Replacement Reserve, Partner Loan Payments, Deferred Developer Fee and Residual Receipts.

“Debt Service” means required debt service payments for the primary construction loan and/or the primary permanent loan for the Project, including the funding obligations in respect of all reserves or escrows required thereunder.

“Chargeable Reserves” means each of the following, within the respective parameters otherwise set forth in the Agreement: (i) Capital Replacement Reserve, and (ii) Operating Reserve.

“Capital Replacement Reserve” means a Capital Replacement Reserve by any approved construction and/or permanent lender for the Project, which Developer shall maintain in compliance with such approved construction and/or permanent lenders’ capital replacement reserve requirements.

“Housing Rent” shall mean the total of monthly payments by the tenants of a Unit for (a) use and occupancy for the Unit and facilities associated therewith, (b) any separately charged fees or service charges assessed by Developer that are required of all tenants of the Units, other than security deposits, (c) a reasonable allowance for utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity and gas, as determined by regulation of the Housing Authority of Stanislaus County and otherwise pursuant to 24 C.F.R. Part 813, and (d) possessory interest, taxes or other fees or charges assessed for the use of the Units and facilities associated therewith by a public or private entity other than Developer.

AGENDA
NEWMAN CITY COUNCIL, SPECIAL MEETING
APRIL 8, 2008
6:30 P.M.
CITY HALL CONFERENCE ROOM
1162 MAIN STREET

1. Call To Order.
2. Roll Call.
3. Items From The Public.
4. Adjourn To Closed Session
 - a. Public Employment - Police Chief - G.C. 54957.
 - b. Return To Regular Session.
5. Adjournment.

AGENDA
NEWMAN CITY COUNCIL/REDEVELOPMENT AGENCY
REGULAR MEETING OF APRIL 8, 2008
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. **Call To Order.**
2. **Pledge Of Allegiance.**
3. **Invocation.**
4. **Roll Call.**
5. **Declaration Of Conflicts Of Interest.**
6. **Ceremonial Matters.**
7. **Items from the Public - Non-Agenda Items.**
8. **Consent Calendar**
 - a. Waive All Readings Of Ordinances And Resolutions Except By Title.
 - b. Approval Of Warrants.
 - c. Approval Of Minutes Of The March 25, 2008 Regular Meeting.
9. **Public Hearings**
 - a. Adopt Resolution No. 2008- , A Resolution Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4. (Public Works).
10. **Regular Business**
 - a. Report On Relocation Of Waterline For Underground Utility District No. 5 And Bid Award.
 - b. Second Reading And Adoption Of Ordinance No. 2008- , An Ordinance Approving Zone Change No. 2007-02 (Hardin Road).
 - c. Bid Award For Elevator At The City Of Newman Museum.
 - d. Adopt Resolution No. 2008- , A Resolution A Resolution Reserving And Setting Aside RDA Housing Funds.
 - e. Report On Proposed Projects Within StanCOG Transportation Tax Expenditure Plan.
11. **Items From The City Manager And Staff.**
12. **Items From City Council Members.**

13. Adjourn To Closed Session

- a. Public Employee Personnel Evaluation (City Manager) G.C. 54957.
- b. Return To Open Session.

14. Adjournment.

Calendar of Events

April 8 - City Council - 7:00 p.m.
April 9 - Baseball Board Meeting - 7:00 p.m.
April 10 - Recreation Commission - 7:00 p.m.
April 14 - NCLUSD Board Meeting - 7:15 p.m.
April 17 - Planning Commission - 7:00 p.m.
April 21 - Two On Two Meeting With The School Board 4:30 p.m.
April 22- City Council - 7:00 p.m.

May 8 - Recreation Commission - 7:00 p.m.
May 12 - NCLUSD Board Meeting - 7:15 p.m.
May 13 - City Council - 7:00 p.m..
May 14 - Baseball Board Meeting - 7:00 p.m.
May 15 - Planning Commission - 7:00 p.m.
May 25 - Fun Run
May 27 - City Council - 7:00 p.m.

Date.: Mar 28, 2008
Time.: 12:23 pm
Run by: EMILY M. FARIA

CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

Page.: 1
List.: NEW1
Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
033839	03/21/08	3457.50	YANCEY LUMBER COMPANY	BUDG SUPPLIES/PAINTING SUPPLIES/SAND/COMBO PACK
033840	03/20/08	80.00	CITY OF MODESTO/ C/O KATHY ESP	LCC QUARTLY DINNER/HOLLAND/ULIBARRI/KATEN/FANTAZIA
033841	03/25/08	60.00	ROGER SOUTHARD (NT)	PER DIEM/WASTEMATER CERT REVIEW/SOUTHARO
033842	03/26/08	683.21	UNITED STATES POSTMASTER	UTILITY BILL MAILING/MARCH-2008

Sub-Total: 4280.71

Grn-Total: 4280.71
Count: 4

Date.: Apr 2008
Time.: 3:1
Run by: BECK, GOMEZ

CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

Page.: 1
List.: NEW1
Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
033843	04/03/08	216.65	HARD DRIVE GRAPHICS	BALANCE ON AQUATIC CENTER SIGN/CC
033846	04/04/08	.00	VOIDED CHECK	
033847	04/04/08	.00	VOIDED CHECK	
033848	04/04/08	.00	VOIDED CHECK	
033849	04/04/08	.00	VOIDED CHECK	
033850	04/04/08	.00	VOIDED CHECK	
033851	04/04/08	.00	VOIDED CHECK	
033852	04/04/08	.00	VOIDED CHECK	
033853	04/04/08	.00	VOIDED CHECK	
033854	04/04/08	.00	VOIDED CHECK	
033855	04/04/08	144.03	AT&T	PD EMERGENCY LINE/3-7 TO 4-6-08
033856	04/04/08	.00	VOIDED CHECK	
033857	04/04/08	79.87	AT&T/MCI	TELEPHONE SERVICE/SENIOR CENTER/MARCH 2008
033857	04/04/08	624.80	AT&T/MCI	MONTHLY TELEPHONE SERVICE/MARCH 2008
033858	04/04/08	17.29	AT&T LONG DISTANCE	LONG DISTANCE PHONE SERVICE/FEB 2008
033859	04/04/08	48246.41	BERTOLOTTI DISPOSAL	GARBAGE SERVICE/MARCH 2008
033860	04/04/08	1118.15	BERTOLOTTI DISPOSAL	LANDFILL FEES/MARCH 2008
033861	04/04/08	345.59	BIGELOW CHEVROLET, INC	REPLACE CENTER CONSOLE/FD
033862	04/04/08	2808.38	BOYLE ENGINEERING CORPORATION	PROFESSIONAL SERVICES/JAN 26 TO FEB 29-2008
033863	04/04/08	100.00	JEFF CARTER	PARKING LOT RENT/APRIL 2008
033864	04/04/08	50.00	CARL J. COELHO (CHUCK)	Veh Operation FIRE/APRIL 2008
033865	04/04/08	778.38	CORBIN WILLITS SYS, INC.	SERVICE & ENHANCEMENT FEES/APRIL 2008
033866	04/04/08	350.00	CRWA	REGISTRATION/WW CERTIFICATION/PERRY

Date.: Apr 4, 2008
Time.: 3:27
Run by: BEC JMEZ

CITY OF NEWARK
CASH DISBURSEMENTS REPORT

Page.: 2
List.: NEW1
Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
033867	04/04/08	30082.00	CSJVRMA	LIABILITY INS/WORKERS COMP/4TH QTR 2007-2008
033868	04/04/08	395.65	CURTIS & SONS	BADGES/FD
033869	04/04/08	480.66	DAVE PIRES	PLUMBING WORK AT WESTSIDE THEATER
033870	04/04/08	294.00	DELTA WIRELESS, INC	INSTALLED CDM1250 RADIO/FD
033871	04/04/08	5819.54	DHS-OCF/DEPT HEALTH SERV	AB2995 WATER SYSTEM FEES/7-1-07 TO 12-31-07
033872	04/04/08	318.85	DIVERSIFIED RISK INSURANC	LIABILITY INSURANCE/MEM BLOG/MARCH 2008
033873	04/04/08	23360.75	ECO:LOGIC, INC	PROFESSIONAL SERVICES/1-1 TO 2-29-08
033874	04/04/08	1190.68	JOHN FANTAZIA (NT)	PER DIEM/LODGING/MILIAGE/FEB-MAR/PER DIEM/FANTAZIA
033875	04/04/08	940.80	FOUR POINTS SHERATON	LODGING/POST ICI CORE COURSE/SHORT
033876	04/04/08	693.13	GARTON TRACTOR	SERVICE LAWNMOWER/PARKS
033877	04/04/08	147.40	GOLDEN STATE IRRIGATION	NOZZLE ADJ/HOSE MENDER/SHANK/COUPLER/GLOVES/PRIMER
033878	04/04/08	18275.00	JOE'S LANDSCAPING &	CLEANUP-1222 Q/1133 T/1041&1029 GRACKLE/1932 LESLI
033879	04/04/08	581.00	KAISER PERMANENTE	HEALTH INSURANCE PREMIUM/LEMUS/MAY 2008
033880	04/04/08	3285.00	KOFF & ASSOCIATES, INC	DATA COLLECTION/ANALYSIS ON COMPENSATION STUDY
033881	04/04/08	182.68	LEAGUE OF CA CITIES	CENTRAL VALLEY DIV DUES/2006-2007 & 2007-2008
033882	04/04/08	86.55	LEHR AUTO ELECTRIC	TRANSFER KIT/BUE UPPER OUTB/PD
033883	04/04/08	200.00	BERENICE MACIAS	REFUND MEM BLDG DEPOSIT/SUAREZ/3-29-08
033884	04/04/08	89.59	MIKE MAIER (NT)	MILEAGE/LUNCH/RMA MEETING IN FRESNO/MAIER
033885	04/04/08	140.00	MCAULEY FORD (NT)	TOW AND STORAGE/PD
033886	04/04/08	99.23	RAY MOJICA	OVERPAYMENT OF COLLECTIONS ACCOUNT/MOJICA
033887	04/04/08	1965.91	NBS	ADMIN FEES/4-1-08 TO 6-30-08/LTNG & LANDSCAPE
033888	04/04/08	642.91	NEWMAN ACE HARDWARE/JACT, INC	GARBAGE BAGS/BATTERIES/MISC HOWR/BLADES/GLOVES
033889	04/04/08	845.89	NEXTEL COMMUNICATIONS	CELL PHONE USE/MARCH 2008

Date.: Apr 4, 2008
Time.: 3:22 PM
Run by: BEC OMEZ

CITY OF NEWMAN
CASH DISBURSEMENTS REPORT

Page.: 3
List.: NEW1
Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
033890	04/04/08	78.85	NOB HILL	TIMER/PLATES/ICE/SODA/COOKIES/COFFEE SUPPLIES
033891	04/04/08	187.73	NORMAC, INC.	MODULAR CONTROL/NOZZLE/ROTOR/PARKS
033892	04/04/08	380.00	NSI-SYSTEMS, INC.	SERVICE SONY PTZ CAMERA/PD
033893	04/04/08	310.21	STEPHANIE OCASIO	MILEAGE & PARKING REIMB/MARCH 2008/OCASIO
033894	04/04/08	1439.00	OPERATING ENGINEERS/	HEALTH INSURANCE PREMIUMS/MARCH 2008
033895	04/04/08	2089.50	OTTMAN FARMS, INC	SPRAYING FALLOW GROUND/WWTP
033896	04/04/08	70.00	PAPA	REGISTRATION/PESTICIDE APPL/MAY 2008/PERRY
033897	04/04/08	815.00	CITY OF PATTERSON	CITYGATE ANALYSIS/FIRE PROT. SVCS/FD
033897	04/04/08	660.00	CITY OF PATTERSON	VIDEO REIMBURSEMENT/APRIL 2008
033898	04/04/08	.00	VOIDED CHECK	
033899	04/04/08	30410.02	P G & E	GAS & ELECTRIC/2-5-08 TO 3-18-08
033900	04/04/08	524.72	PIONEER PRODUCTS, INC.	TOWELS/CORDLESS SCREWDRIVER/HAND SANITIZER/PD
033901	04/04/08	8061.57	PRECISION INSPECTION, INC	Bldg Reg Inspec BLDG REGU/PW INSP/MARCH 2008
033902	04/04/08	80.00	RANDHAWA MEDICAL GRP, IN	SKIN TEST/TUBERCULOSIS/DUARTE/FD
033903	04/04/08	184.58	RICHARD & CHAMBERS	RECEIPT BOOK/COMPUTER PAPER/HI-LITERS
033904	04/04/08	200.00	YVONNE RODRIGUEZ	CANCELLED MEM BLDG/REFUND/RODRIGUEZ
033905	04/04/08	2458.62	RRM DESIGN GROUP, INC.	PROFESSIONAL SERVICES/DOWNTOWN PLAZA
033906	04/04/08	281.47	SAFE-T-LITE	STREET SIGNS/CUSTOM SIGN FOR PARKS/ST MAINT
033907	04/04/08	500.00	BRETT SHORT (NT)	PER DIEM/POST ICI CORE COURSE/SHORT
033908	04/04/08	151.00	STANISLAUS COUNTY	HAZARDOUS MATL/CUPA GEN PROGRAM/
033908	04/04/08	203.00	STANISLAUS COUNTY	GENERATOR/HAZARDOUS MATL/CUPA GEN PROG/
033909	04/04/08	865.63	STAPLES CREDIT PLAN	WRIST WRAP/ENVELOPES/TYLENOL/DVD/CASE/POST-ITS
033910	04/04/08	311.46	TRAVIS BORRELLI	PORTABLE RESTROOM RENTAL & SERVICE/PARKS

Date.: Apr 4, 2000
Time.: 3:22
Run by: BEC OMEZ

LIST OF NEWMAN
CASH DISBURSEMENTS REPORT

Page.: 4
List.: NEW1
Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
033911	04/04/08	165.00	BARBARA J. TOSTA	YOUNG AT HEART INSTRUCTOR/MARCH 2008
033912	04/04/08	571.06	VALLEY PARTS SERVICE	TUBE/GAS DELUXE/WASHER FLUID/BATTERY/ANTIFREEZE
033913	04/04/08	50.00	GEORGE VARGAS	MONTHLY GAS ALLOWANCE/APRIL 2008
033914	04/04/08	14053.46	WESTERN FARM SERVICE, INC	FC SPREDR/CREDIT 2.5 GA/SHARK EW/ALFALFA S&W/WWTP
033915	04/04/08	9.14	BENITEZ, KENNY	MQ CUSTOMER REFUND FOR BEN0018
033916	04/04/08	7.25	RIVERA, MELISA	MQ CUSTOMER REFUND FOR RIV0017
033917	04/04/08	3.31	THACKER, DIPALI	MQ CUSTOMER REFUND FOR THA0007
033918	04/04/08	16.89	TRAN, NGOC	MQ CUSTOMER REFUND FOR TRA0009
033919	04/04/08	14.04	VILLANUEVA, ELIELVIRA	MQ CUSTOMER REFUND FOR VIL0019
Sub-Total:		210149.28		
Grn-Total:		210149.28		
Count:	78			

MINUTES
NEWMAN CITY COUNCIL/REDEVELOPMENT AGENCY
REGULAR MEETING OF MARCH 25, 2008
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. **Call To Order** – Mayor Fantazia 7:04 p.m.
2. **Pledge Of Allegiance.**
3. **Invocation** – Council Member Mayor Fantazia
4. **Roll Call PRESENT:** Katen, Kelly, Crinklaw, Martina and Mayor Fantazia
ABSENT: None

5. **Declaration Of Conflicts Of Interest**

Council Member Crinklaw And Mayor Fantazia Declared That They Had A Conflict With Item 8.c., As They Both Live Near The Project Site.

6. **Items from the Public**

Kirk Jensen, 2237 Spring Court, Spoke To The Council Regarding Community Service Officer And The Abatement Process. Jensen Stated That The City Removed Bicycles, Tools, Paint, And Other Items From The Side Of His House. Jensen Mentioned That He Is Making An Effort To Remove The Cars From His Front And Back Yards. Jensen Commented That Other Homes In Newman Are Worse Than His And Have Yet To Be Abated. Jensen Requested A List Of Items That Were Initially Removed From His House, As Well As More Time To Resolve His Current Issue. He Agreed To Set A Meeting With The Chief To Discuss These Matters.

7. **Consent Calendar**

- a. Waive All Readings Of Ordinances And Resolutions Except By Title.
- b. Approval Of Warrants.
- c. Approval Of Minutes Of The March 11, 2008 Regular Meeting And March 18, 2008 Special Meeting.

ACTION: On Motion By Katen Seconded By Kelly And Unanimously Carried, The Consent Calendar Was Approved.

8. **Public Hearings**

- a. Second Reading And Adoption Of Ordinance No. 2008-3, An Ordinance Establishing New Water And Wastewater Rates.

Mayor Fantazia Opened The Public Hearing At 7:07 P.M.

There Being No Public Comment The Hearing Was Declared Closed At 7:08 P.M.

Action: Ordinance # 2008-3, Had Its Second Reading By Title Only. A Motion By Crinklaw Seconded By Martina Dispensed With Further Reading Of Said Ordinance. Ordinance Was Unanimously Adopted Upon Roll Call Vote.

- b. Consider For Approval The Stanislaus County Annual Action Plan (Fiscal Year 08-09) And Close The 30 Day Public Comment Period.

Mayor Fantazia Opened The Public Hearing At 7:09 P.M.

There Being No Public Comment The Hearing Was Declared Closed At 7:10 P.M.

ACTION: On Motion By Kelly Seconded By Katen And Unanimously Carried, Council Approved The Stanislaus County Annual Action Plan (Fiscal Year 08-09), And Closed The 30 Day Public Comment Period.

- c. Introduction Of Ordinance No. 2008- , An Ordinance Approving Zone Change No. 2007-02 (Hardin Road).

Mayor Fantazia And Council Member Crinklaw Stepped Down From The Dais And Left The Chambers.

Assistant Planner, Stephanie Ocasio Provided A Brief Background Regarding The Project.

Mayor Pro Tem Robert Martina Opened The Public Hearing At 7:11 P.M.

There Being No Public Comment The Hearing Was Declared Closed At 7:12 P.M.

ACTION: Ordinance No. 2008- , An Ordinance Approving Zone Change No. 2007-02 Was Introduced By Council Member Katen. Ordinance Had Its First Reading By Title Only.

9. Regular Business

- a. Report On New Role For Council Members In The Audit Process.

Accountant Sonya Silva Explained The New Role For Council Members In The Audit Process. Silva Informed The Council That Statement Of Accounting Standards Rule No. 114 Requires One Council Member To Overlook Management And Attend At Least Three Audit Meetings.

ACTION: On Motion By Fantazia Seconded By Crinklaw And Unanimously Carried, Ted Kelly Was Selected To Serve As The Council's Representative To Oversee The Audit Process.

- b. Report On The City Council Travel Budget.

ACTION: On Motion By Katen Seconded By Kelly And Unanimously Carried, The Council Approved A Budget Augmentation, Appropriating Additional Funds To The Council's Travel Budget.

- c. Approve Request From Newman Fun Run Committee To Hold Fund Raising Event .

ACTION: On Motion By Katen Seconded By Crinklaw And Unanimously Carried, Council Approved The Request From Newman Fun Run Committee To Hold A Fund Raising Event.

11. Items From The City Manager And Staff.

City Manager Holland Commented The Community Service Officer Video Has Been Airing On The Local Cable Channel Both Before And After The Council Meeting Broadcasts. Holland Mentioned That The City Would Be Interviewing Seven Applicants On April 2nd For The Community Services Officer Position. Holland Reminded The Council Of The Up Coming League Of California Cities Central Valley Division Quarterly Meeting On March 27, 2008 , And The Fire Study Meeting In Patterson On April 3, 2008.

Chief Ulibarri Reported That The Juveniles Who Were Responsible For The Graffiti In The Ranchwood (Stephens Ranch) Subdivision Were Apprehended. Ulibarri Explained That The Police Department Had Recently Conducted A Sex Registrant Audit And That All The Registrants Were Accounted For And Residing In The Appropriate Locations. Ulibarri Also Commented That A Resident That Was Missed In A Previous Audit Was Arrested During The Current Audit When She Was Found To Be In Possession Of Methamphetamines.

Public Works Director Garza Presented Pictures Of The Continuing Effort To Renovate The Landscape Maintenance Areas. Garza Explained That The Process Of Drilling For Monitoring Well At The Waste Water Treatment Plant Had Begun, And Notified The Council That PG&E Will Be Refurbishing The Street Lights That They Maintain.

12. Items From City Council Members.

Mayor Fantazia Asked If A Date Had Been Set For The Next Two On Two Meeting With The City of Patterson. Fantazia Also Notified The Council That His Trip To Washington D.C. Had Gone Well, And That They Had Asked For \$800,000 To Finish Orestimba Creek Studies.

13. Adjourn To Closed Session 7:43 P.M.

- a. Public Employment Chief Of Police (G.C. 54957).
- b. Return To Open Session 7:59 P.M.

No Reportable Action Was Taken.

14. Adjournment.

ACTION: On Motion By Katen Seconded By Martina And Unanimously Carried, The Meeting Was Adjourned At 8:01 P.M.

Honorable Mayor and Members
of the Newman City Council

Agenda Item: **9. a.**
City Council Meeting
of April 8, 2008

REPORT ON NUISANCE ABATEMENT
(PUBLIC WORKS)

RECOMMENDATION:

Adopt Resolution No. 2008-XX, Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4.

BACKGROUND:

Abatement notices for property maintenance were sent to several properties in accordance with Ordinance 95-4, Chapter 2, Title 8-2-3.

ANALYSIS:

This notice informs property owners of all nuisance abatement procedures, option and their right to object at a public hearing. It is anticipated that many property owners will comply with the abatement notices prior to the hearing date. A final compliance survey will be done on Tuesday, April 8, 2008. A list of properties that have not complied with the abatement notice will be handed out at the council meeting prior to the public hearing.

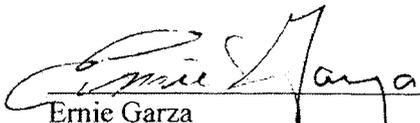
FISCAL IMPACT:

None

CONCLUSION:

This staff report is submitted for City Council consideration and possible future action.

Respectfully submitted,


Ernie Garza
Director of Public Works

REVIEWED/CONCUR:


Michael E. Holland
City Manager

City of Newman
October 09, 2007 Abatement List

	Location		APN	Owner Information	Mailing Address	Violation	Notice Sent
1	1951	Prince Street	128-050-025	Woodland Hills Mortgage	C/O Richard M Ardi Et Al 21777 Ventura Blvd. STE 201 Woodland Hills, CA 91364	Tall weeds on property	3/17/2008
2	808	Southington Way	049-057-036	SCM Homes	1920 Standiford Ave., #1 Modesto, CA 95350	Tall weeds in subdivision lots	3/17/2008
3	1405	S Street	128-003-027	Pamela Castleman	1840 Prospect Street, National City, CA 91950	Tall weeds on property	3/17/2008
4	2011	L Street	128-024-009	Todd & Tina Rocha	P.O. Box 225, Newman, CA 95360	Tall weeds on property	3/17/2008
5	0	L Street	128-023-002	Five J's Trucking	1240 Brentwood Ave., Gustine, CA 95322	Tall weeds on property	3/17/2008
6	1908	L Street	128-023-005	Madd Enterprises, LLC	1308 W. Linwood Ave., Turlock, CA 95380	Tall weeds on property	3/17/2008
7	0	Inyo Avenue	128-061-020	Steinpress Development	2800 Hunt Road, Farmington, CA 95230	Tall weeds on property	3/17/2008
8	691	Inyo Avenue	128-022-023	F & A Dairy	P.O. Box 19127, Irvine, CA 92623	Tall weeds on North side of property	3/17/2008
9	1446	L Street	128-022-021	Jaime & Maria Nunez	1446 L St., Newman, CA 95360	Tall weeds on property	3/17/2008
10	1415	Eucalyptus Avenue	128-022-016	Vicente Sandoval	P.O. Box 783, San Juan Bautista, CA 95045	Tall weeds in back lot of property	3/17/2008
11	1281	Marapole Lane	049-064-002 to 049-064-020	Envision Homes	360 e. Yosemite, STE 200, Merced, CA 95340	Tall weeds in subdivision lots	3/17/2008
12	660	Hardin Road	026-070-042	Charles & Marissa Marquez	1508 Stanislaus Dr., Chula Vista, CA 91913	Tall weeds on property	3/17/2008
13	562	Marquez Street	026-070-001 to 026-070-044	Del Valle Capitol Corp.	1012 10th St., Modesto, CA 95354	Tall weeds in subdivision lots	3/17/2008
14	673	Fig Lane	026-041-004	Peter & San Leu	673 Fig Lane, Newman, CA 95360	Tall weeds in empty lot around trees	3/17/2008
15	0	Driskell & M Street	128-020-002	Ricky McCoy Et Al	C/O Jeff McCoy 1936 Reseda Lane, Modesto, CA 95350	Tall weeds on property	3/17/2008
16	1904	Pine Street	128-050-019	Evelyn Rocha	1124 Strawbridge Dr., Newman, CA 95360	Tall weeds on property	3/17/2008
17	1927	Prince Street	128-050-022	Raul Escatel	1939 Prince St., Newman, CA 95360	Palm Leaves in alley and across street	3/17/2008

**City of Newman
October 09, 2007 Abatement List**

	Location		APN	Owner Information	Mailing Address	Violation	Notice Sent
18	1121	N Street	128-014-003	Don & Darlene Cose	P.O. Box 326, Tracy, CA 95378	Tall weeds on property	3/17/2008
19	1208	Merced Street	128-008-078	Lex & Sherry Dias	8411 Wren Ave., Gilroy, CA 95020	Tall weeds on property	3/17/2008
20	1562	P Street	128-009-092	Fernando Rivas	1562 P St., Newman, CA 95360	Tall weeds on property	3/17/2008
21	1432	R Street	128-008-068	Maria Garcia	1432 R St., Newman, CA 95360	Tall weeds on property	3/17/2008
22	1516	R Street	128-008-024	Thomas Duarte	1516 R St., Newman, CA 95360	Tall weeds on property	3/17/2008
23	0	Inyo Ave. & N St.	128-009-013	Lloyd & Katherine Bigelow	1905 N St., Newman, CA 95360	Tall weeds on lot	3/17/2008
24	1014	Inyo Avenue	128-060-012	Donald & Jo Ann Degraff	1518 P St., Newman, CA 95360	Tall weeds on lot	3/17/2008
25	920	N Street	128-013-015	Isaias & Amanda Guzman	805 Foxglove Court, Newman, CA 95360	Tall weeds on property	3/17/2008
26	1223	Merced Street	128-008-050	Eva & Randolph Ferguson	25625 Raleigh Ct., Turlock, CA 95382	Tall weeds on property	3/17/2008
27	0	Driskell & M Street	128-020-002	Roxanne Martinez	115 Rue-De Yoe, Modesto, CA 95354	Tall weeds on property	4/1/2008

Honorable Mayor and Members
of the Newman City Council

Agenda Item: **10.a.**
City Council Meeting
of April 8, 2008

**REPORT ON RELOCATION OF WATERLINE FOR UNDERGROUND UTILITY
DISTRICT No. 5**

BACKGROUND:

On August 24, 2007, Council adopted Resolution No. 2007-48 revising the boundaries of Underground Utility District No. 5 and established Underground Utility Districts Nos. 5A, 5B and 5C. By December 1, 2008, all poles, overhead wires and associated overhead structures supplying electric, communication or similar or associated service are to be removed from Underground Utility District 5, commonly known as the Plaza area. To meet this schedule, the utility companies will need to begin under grounding work around July 1, 2008.

According to PG&E and AT&T there needs to be a minimum clear horizontal distance of 5 feet between their utilities and any "wet utilities". After reviewing the alley improvements, it was determined based upon present utility layout, there is insufficient space for under grounding.

ANALYSIS:

To create an under grounding corridor of sufficient width to meet PG&E and AT&T's requirements one of following must occur:

1. Additional right of way will need to be acquired.
2. The sanitary sewer line will need to be relocated.
3. The waterline will need to be relocated.

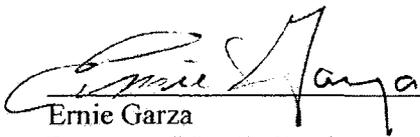
Of these three options, relocating the water main in the alley was determined to have the smallest fiscal impact on the City. Relocation work is scheduled to begin around the end of March 2008.

FISCAL IMPACT: \$100,000.00

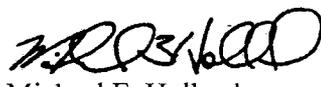
CONCLUSION:

This staff report is submitted for City Council consideration and possible future action.

Respectfully submitted,


Ernie Garza
Director of Public Works

REVIEWED/CONCUR:


Michael E. Holland
City Manager

1120 West "I" Street, Suite C
Los Banos, CA 93635
TEL: (209)826-5155
FAX: (209)826-3307
www.boyleengineering.com

Employee Owned

April 1, 2008
21440.02-0001-000

CITY OF NEWMAN
1162 Main Street
Post Office Box 787
Newman, California 95360

Plaza Waterline Replacement

Ladies and Gentlemen:

Bids for the above referenced project were opened at 2:00 p.m. on April 2, 2008. The low bid totaling \$66,500 was submitted by Mid Cal Pipelines & Utilities, Inc., of Merced. The Engineer's Estimate was \$103,700.

Since we have never worked with Mid Cal Pipeline & Utilities, we requested references from them for similar projects. Mid Cal provided us three references, one for the City of Turlock, one for the City of Merced and one for Cuttone & Company. We contacted both the cities of Turlock and Merced and received very favorable recommendations. Based on their recommendations, we did not contact Cuttone & Company.

We recommend the project be awarded to Mid Cal Pipelines & Utilities, Inc.

A complete Abstract of Bids received has been enclosed herewith.

Very truly yours,

Boyle Engineering Corporation



Gary W. Rogers
Managing Engineer/Principal

Enclosures: Abstract of Bids

DOCUMENT9

**ABSTRACT OF BIDS FOR
CITY OF NEWMAN
PLAZA WATERLINE REPLACEMENT
Bid Opening: April 1, 2008; 2:00 p.m.**

Item No.	Item	MidCal Pipeline & Utilities, Inc. P.O. Box 2406 Merced, California 95344			Clyde Wheeler Pipeline, Inc. 509 Hi-Tech Parkway Oakdale, California 95361		Fagundes & Son, Inc. 650 Armstrong Way Oakdale, California 95361		Allen A. Waggoner Const., Inc. 1012 S. Arcacia Avenue Ripon, California 95366	
		Quantity and Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Furnish and Install 10-inch Class 200 PVC Waterline	700 LF	30.00	21,000.00	57.50	40,250.00	42.30	29,610.00	64.00	44,800.00
2	Furnish and Install 10-inch Gate Valves	7 EA	1,500.00	10,500.00	1,575.00	11,025.00	2,400.00	16,800.00	1,745.00	12,215.00
3	Furnish and Install 6-inch Gate Valves	2 EA	800.00	1,600.00	1,500.00	3,000.00	1,600.00	3,200.00	900.00	1,800.00
4	Furnish and Install 1-inch Water Services with New Meter Boxes	14 EA	1,200.00	16,800.00	700.00	9,800.00	690.00	9,660.00	687.00	9,618.00
5	Connection to Existing Water Main	3 EA	1,300.00	3,900.00	1,350.00	4,050.00	1,800.00	5,400.00	3,225.00	9,675.00
6	Furnish and Place Aggregate Base	60 CY	50.00	3,000.00	32.00	1,920.00	74.00	4,440.00	40.30	2,418.00
7	Furnish and Place Asphalt Concrete	620 CF	10.00	6,200.00	22.00	13,640.00	10.00	6,200.00	18.60	11,532.00
8	Remove and Relplace a Portion of Existing Concrete Alley Approaches	Lump Sum	2,000.00	2,000.00	2,500.00	2,500.00	3,500.00	3,500.00	3,525.00	3,525.00
9	Sheeting, Shoring and Bracing	Lump Sum	1,500.00	1,500.00	500.00	500.00	9,000.00	9,000.00	1.00	1.00
TOTAL BID				\$66,500.00		\$86,685.00		\$87,810.00		\$95,584.00

Item No.	Item	Mozingo Construction, Inc. 751 Wakefield Court Oakdale, California 95361			Phase 1 Construction P.O. Box 665 Atwater, California 95301		Lawrence Backhoe Service 1338 Norfolk Court Atwater, California 95301		Granite Construction Company P.O. Box 50085 Watsonville, California 95077	
		Quantity and Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Furnish and Install 10-inch Class 200 PVC Waterline	700 LF	72.00	50,400.00	71.00	49,700.00	70.00	49,000.00	92.00	64,400.00
2	Furnish and Install 10-inch Gate Valves	7 EA	1,600.00	11,200.00	2,000.00	14,000.00	1,440.00	10,080.00	2,350.00	16,450.00
3	Furnish and Install 6-inch Gate Valves	2 EA	800.00	1,600.00	950.00	1,900.00	2,242.00	4,484.00	1,700.00	3,400.00
4	Furnish and Install 1-inch Water Services with New Meter Boxes	14 EA	1,200.00	16,800.00	600.00	8,400.00	935.36	13,095.04 *	1,000.00	14,000.00
5	Connection to Existing Water Main	3 EA	2,000.00	6,000.00	2,650.00	7,950.00	4,350.00	13,050.00	1,000.00	3,000.00
6	Furnish and Place Aggregate Base	60 CY	35.00	2,100.00	120.00	7,200.00	70.00	4,200.00	38.00	2,280.00
7	Furnish and Place Asphalt Concrete	620 CF	8.00	4,960.00	14.00	8,680.00	20.10	12,462.00	16.00	9,920.00
8	Remove and Relplace a Portion of Existing Concrete Alley Approaches	Lump Sum	4,400.00	4,400.00	5,400.00	5,400.00	6,600.00	6,600.00	5,000.00	5,000.00
9	Sheeting, Shoring and Bracing	Lump Sum	2,400.00	2,400.00	1,000.00	1,000.00	2,000.00	2,000.00	2,000.00	2,000.00
TOTAL BID				\$99,860.00		\$104,230.00		\$114,971.04 *		\$120,450.00

Item No.	Item	Delta Excavating, Inc. P.O. Box 400 Antioch, California 94509			Viking General Contractors, Inc. P.O. Box 1423 Atwater, California 95301		Preston Pipelines, Inc. 133 Bothelo Avenue Milpitas, California 95035		Engineer's Estimate	
		Quantity and Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Furnish and Install 10-inch Class 200 PVC Waterline	700 LF	75.00	52,500.00	60.00	42,000.00	80.00	56,000.00	80.00	56,000.00
2	Furnish and Install 10-inch Gate Valves	7 EA	3,500.00	24,500.00	2,600.00	18,200.00	2,700.00	18,900.00	2,000.00	14,000.00
3	Furnish and Install 6-inch Gate Valves	2 EA	2,500.00	5,000.00	3,000.00	6,000.00	1,850.00	3,700.00	800.00	1,600.00
4	Furnish and Install 1-inch Water Services with New Meter Boxes	14 EA	2,400.00	33,600.00	2,500.00	35,000.00	1,550.00	21,700.00	500.00	7,000.00
5	Connection to Existing Water Main	3 EA	1,400.00	4,200.00	6,000.00	18,000.00	8,700.00	26,100.00	2,000.00	6,000.00
6	Furnish and Place Aggregate Base	60 CY	85.00	5,100.00	100.00	6,000.00	42.00	2,520.00	80.00	4,800.00
7	Furnish and Place Asphalt Concrete	620 CF	14.00	8,680.00	21.00	13,020.00	25.00	15,500.00	15.00	9,300.00
8	Remove and Relplace a Portion of Existing Concrete Alley Approaches	Lump Sum	7,500.00	7,500.00	6,000.00	6,000.00	7,500.00	7,500.00	3,000.00	3,000.00
9	Sheeting, Shoring and Bracing	Lump Sum	3,000.00	3,000.00	2,000.00	2,000.00	3,000.00	3,000.00	2,000.00	2,000.00
TOTAL BID				\$144,080.00		\$146,220.00		\$154,920.00		\$103,700.00

* Corrected Amount

Honorable Mayor and Members
of the Newman City Council

Agenda Item: **10.b.**
City Council Meeting
of April 8, 2008

REPORT ON ORDINANCE APPROVING ZONE CHANGE #07-02

RECOMMENDATION:

1. Conduct Second Reading of Ordinance #2008-XX Approving Zone Change #07-03.

BACKGROUND:

On March 20, 2008, the Planning Commission held a public hearing, approved the Vesting Tentative Tract Map with amended conditions of approval and reviewed and recommended the proposed Zone Change to the Council. One public comment was received during the public hearing.

On March 25, 2008, a public hearing and the first reading of Ordinance #2008-XX was held by the City Council.

ANALYSIS:

The applicant (Valley Oaks Properties) has applied for a Vesting Tentative Tract Map and Zone Change (from R-2 to P-D) for a 23 unit duplex/townhouse project. The project's units will be three bedrooms in size. The proposed project will be located on the east side of Hardin Road, approximately 60 feet south of Stephens Avenue, more specifically described as Assessor's Parcel Number 026-041-060. This site is currently under construction and is designated at Medium Density by our General Plan.

Upon review by staff, the proposed project has been determined to be categorically exempt under Class 32, Article 19 of CEQA.

FISCAL IMPACT:

None

CONCLUSION:

The proposed project is compatible with and will not have a negative impact upon the immediate neighborhood. The project design has been approved by the Architectural Review Committee and been recommended for approval by the Planning Commission. In addition to providing market-rate housing, it will also provide three units of much needed affordable housing for the community.

ATTACHMENTS:

1. Exhibit A – Ordinance #2008-XX

Respectfully submitted,


Stephanie Ocasio
Assistant Planner

REVIEWED/CONCUR


Michael Holland
City Manager

ORDINANCE NO. 2008-XX

**AN ORDINANCE AMENDING THE GENERAL ZONING ORDINANCE AND
ACCOMPANYING ZONING MAPS OF THE CITY OF NEWMAN.**

WHEREAS, the Newman 2030 General Plan was adopted on April 10, 2007 designating the project site as Medium Density Residential; and

WHEREAS, the Planning Commission has recommended approval of a zone change in a certain territory known as Assessors Parcel Number 026-041-060; and

WHEREAS, it is the desire to rezone the said territory from R-2 to P-D; and

WHEREAS, the Planning Commission has conducted a public hearing on the proposed zone change and recommended approval of the proposed Zone Change (CZ #07-03); and

WHEREAS, it has been determined that the zone change will not have a significant adverse environmental effect.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWMAN DOES ORDAIN
AS FOLLOWS:

Section 1.

That certain real property situate in the City of Newman, County of Stanislaus, State of California, more articulately described above, is hereby changed and rezoned from R-2 Duplex Residential to P-D Planned Development.

Section 2.

This ordinance shall be published in full by one insertion in the West Side Index the official newspaper of the City of Newman and shall take effect and be in full force and operation from and after 30 days after its passage.

Introduced at a regular meeting of the City Council of the City of Newman held on the 25th day of March, 2008 by Councilmember Katen, and adopted at a regular meeting of said City Council held on the 8th day of April, 2008 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

Mayor of the City of Newman

ATTEST:

Deputy City Clerk

Honorable Mayor and Members
of the Newman City Council

Agenda Item: **10.c.**
City Council Meeting
of April 8, 2007

BID AWARD FOR ELEVATOR AT THE CITY OF NEWMAN MUSEUM

RECOMMENDATION:

It is recommended that the City Council:

1. Award bid in the amount of \$16,578.50 to CNE Certified Maintenance Company Inc. for Museum Elevator and Installation.

BACKGROUND:

The Newman Historical Society had previously approached the City about the installation of an elevator at the Newman Museum to accommodate disabled Historical Society Members and Museum Patrons. The Council agreed to include this project in this fiscal year's budget. The Historical Society made several calls to numerous companies requesting bids for an elevator at the Museum. Despite The Historical Society's attempt to locate contractors and solicit bids, only one bid for the elevator was received

ANALYSIS:

Only one bid for this phase of this project was submitted. The bidder and the bid amount is as follows:

1. CNE Certified Maintenance Company Inc. for Elevator and Installation \$16,578.50.

The Total for both bids is \$16,578.50 and the approved budgeted amount for this project is \$65,000.00. Additional construction will be required to accommodate the elevator and staff will provide the results of that bid process at the April 22, 2008 Council Meeting. Staff is anticipating the additional construction to costs will range from \$30,000.00 to \$40,000.00, keeping this project under budget.

FISCAL IMPACT:

Total Bid amounts \$16,578.50 2007/08 budgeted amount \$65,000.00

CONCLUSION:

Staff recommends that the Council award the bid to CNE Certified Maintenance Company Inc. for Museum Elevator and Installation.

Respectfully submitted,



Michael E. Holland
City Manager

FAX COVER SHEET

DATE: 2/4/2008

TO: City of Newman

Attention: Mary Moore

Fax# 1-209-862-3199

**FROM: C N E CERTIFIED MAINTENANCE COMPANY
3060 SYLMAR AVE.
CLOVIS, CA. 93612
(559) 430-4690 (Ellen)
(559) 292-4253 FAX#**

SENT BY:

Ellen Gillespie

PAGES SENT: (2)

**To follow is the proposal for installation of wheel chair lift located @
The Newman Museum. Please forward a copy to Mary Moore.**

**If you should have any questions or need any further information please
feel free to contact me directly @ (559) 430-4690.**

Thanks & Have a great day!!!

C N E Certified Maintenance Company

3060 Sylmar Ave. Clovis, CA. 93612 (559)367-4045 (559)292-4253 Fax# Contractor Lic. #887601

.....

Proposal

February 4, 2008

City of Newman
Fax# 209-862-3199
Attention: Mary Moore

Proposal to furnish, install, and inspect wheel chair lift located at Newman Museum prices as follows:

HCDE 120 – Installed @ North side of building \$\$21,868.00

HCDE Three Level System – Installed outside behind building \$23,792.10

HBC 120 – Installed through closet - \$16,578.50

Terms to be: 50% - required upon ordering machine.
40% of balance upon installation.
10% Final due upon State Inspection.

****Proposal good for 30 days from date above. ****

If you need any further information please feel free to contact me @ (559) 367-4045.

Proposed By: 
Carl Gillespie-Owner

Date: 2/4/08

Approved By: _____
City of Newman

Date: _____

Honorable Chair and Members
of the Newman Redevelopment Agency

Agenda Item: **10.d.**
Redevelopment Agency Meeting
of April 8, 2008

RESOLUTION RESERVING AND SETTING ASIDE HOUSING FUNDS

RECOMMENDATION:

Approve Resolution #2008-XX reserving and setting aside Low and Moderate Housing Funds for future Secured Loan and Affordable Housing Agreement.

BACKGROUND:

In July 2007, the Newman Redevelopment Agency approved the Implementation Plan 2007-2012. The Plan includes Newman's housing requirement according to California Redevelopment Law. In addition, CA Redevelopment Law requires agencies to set aside 20% of the revenues to assist with development of affordable housing.

ANALYSIS:

The adopted Implementation Plan requires a minimum of 45 affordable units be constructed within the boundaries of the Newman Redevelopment Agency prior to the close of 2008/09 fiscal year. The Driskell Avenue project would provide 35 units towards this requirement.

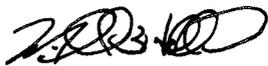
FISCAL IMPACT:

\$300,000. Approval will set aside monies within the Redevelopment Agency Housing Fund.

CONCLUSION:

Staff is nearing completion of a Secured Loan and Affordable Housing Agreement with the project applicants. A complete and final agreement, with summary, will be presented to the Agency Board for review prior to approval.

Respectfully submitted,



Michael Holland
Executive Director

REDEVELOPMENT AGENCY

RESOLUTION NO. 2008-
RDA RESOLUTION NO. 2008-

A RESOLUTION RESERVING AND SETTING ASIDE RDA HOUSING FUNDS

WHEREAS, On January 17, 2008 the City of Newman Planning Commission approved an application Corporation for Better Housing (751 Driskell Ave., L.P., a California limited partnership) to build a residential housing project consisting of seventy-two (72) units, of which thirty-five (35) units will be restricted to individuals and families qualifying as Low Income and Very Low Income Households, and

WHEREAS, The Newman Redevelopment Agency and 751 Driskell Ave., L.P. are finalizing a Secured Loan and Affordable Housing Agreement, and

WHEREAS, The Newman Redevelopment Agency anticipates that said Agreement will be approved at the April 22, 2008 meeting, and

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Newman that The Newman Redevelopment Agency hereby reserves and sets aside Three Hundred Thousand and No/100 Dollars (\$300,000.00) for the purpose of a secured loan to 751 Driskell Ave., L.P., a California limited partnership, for use in the development of residential housing project consisting of seventy-two (72) units, of which thirty-five (35) units will be restricted to individuals and families qualifying as Low Income and Very Low Income Households for a period of not less than fifty-five (55) years, subject to the prior execution of a Secured Loan and Affordable Housing Agreement, inclusive of an Affordable Housing Covenant, on terms mutually agreeable to both parties.

The foregoing resolution was introduced at a special meeting of the Redevelopment Agency of the City of Newman held on the 8th day of April 2008, by Board Member _____, who moved its adoption, which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following roll call vote:

AYES:
NOES:
ABSENT:

APPROVED:

Chairperson of the Newman RDA

ATTEST:

Executive Director\Secretary

Honorable Mayor and Members
of the Newman City Council

Agenda Item: **10.e.**
City Council Meeting
of April 8, 2008

**REPORT ON PROPOSED PROJECTS WITHIN STANCOG
TRANSPORTATION TAX EXPENDITURE PLAN**

RECOMMENDATION:

Review and provide guidance on local capital projects.

BACKGROUND:

In February 2008, the Council endorsed a proposal by StanCOG to move forward with a Countywide ½ cent transportation tax on the November 2008 ballot.

ANALYSIS:

Attached please find the list of projects that City staff has assembled to be included within the Expenditure Plan. The proposal includes approximately \$1.5 million in flexible spending and matching funds that will be used at Council discretion.

FISCAL IMPACT:

N/A

CONCLUSION:

Staff is requesting Council concurrence with the proposed list.

Respectfully submitted,



Michael Holland
City Manager

<u>Project</u>	<u>Description</u>	<u>Total</u>
Inyo Avenue L Street to Canal School	Complete Right of Way improvements	\$300k
L Street Merced to Inyo	Reconstruction	\$300k
Hwy33/Inyo	Traffic Signal	\$300k
Safe Routes to Schools	Construct network of sidewalks, bike routes and other improvements	\$300k
Pavement management	Improve and maintain local roadways	\$4M
Local Match	Provide local match monies for State And Fed programs	\$1M
Flexible spending	Future projects to be identified by Council	\$500k