



REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: February 17, 2009

SUBJECT: ARCO Service Station Development Impact Fee Payment Agreement

Report in Brief

The owner/developer (Bob Takhar) of a proposed new ARCO Service Station and Mini Mart on the corner of North West and Barnard Streets, north of Woodland (See Attachment A - Location Map) is requesting approval of a Development Impact Fee payment agreement. This agreement has been developed after several discussions between City and County staff, Mr. Takhar and his representative, James Thorne, AIA.

Staff recommends that the City Council approve the development impact fee deferral payment schedule as outline in the attached letter dated December 12, 2008.

Background

The proposed development is located in the Yolo County and in accordance with the pre annexation agreement of 1971 between the City and property owner, the property owner has requested City water and sewer services. The proposed development is also subject to the City Urban Development Policy, requiring the proposed development to comply with both County and City's development standards and pay City development impact fees.

Prior to the developer's most recent efforts to complete this project, the application was stalled in mid 2007 as City staff initially declined to process the work. The source of the City's concern was the fact that the County would realize the benefit of the sales and property tax generated by the project. In order to resolve this delay, Mr. Takhar has verbally agreed to support the City's future annexation at the "appropriate" time. The "appropriate" time will be based on the future annexation of the land between the City's current incorporation limit and the ARCO station/mini-mart development which is within the Urban Limit Line. This land includes the Knaggs property; the owners of this property have indicated some interest in developing the property and annexation into the City although no timetable has been established for such action. The eventual annexation of this property is among the many land use issues under discussion by the City and the County.

The proposed ARCO Service Station has received site plan and design review approvals from both the County and the City. The applicant became aware of the requirement to pay the City's development impact fees only after arrangements were made for the financing of the project, and has difficulty raising additional capital. The development impact fees for the project amounts to \$108,626.54.

On December 1, 2008, the City Manger and Assistant City Manager met with the property owner and the owner's representative, Mr. Thorne and tentatively agreed that the City would provide water and sewer if there was an agreement on the payment of fees and related issues (See attachment B - letter dated December 12, 2008). It was expressed that any possible payment schedule would need to be approved by the City Council.

Discussion

On December 16, 2008, the City Council approved the Development Impact Fee Deferral Program. The proposed Development Impact Fee payment agreement is similar in concept to this program. This property is unable to take advantage of this program because the property is outside of the City limits. A development impact fee payment schedule was put forth with the following stipulations:

- Paid 20% of the total payment at the time that construction of the ARCO Service Station begins (\$21,725.31).
- Monthly payments of \$4,000 per month following the completion and occupancy.
- Interest payments on the unpaid balance equal to the City's customary investment rate of approximately 3%.
- Commitment to support annexation at the appropriate time following the annexation of adjacent lands between the current city limits and the project site.
- The loan shall be secured by allowing the City to place a lien on the property until such time that the fees on paid in full (See Attachment C - Promissory Note).

The approval of a development impact fee agreement would allow the ARCO Service Station to begin construction with the assurance that when the station is completed, the owner will be able to hook up the City services. Without the agreement the project could be jeopardized, resulting in the service station not being constructed or delayed or being constructed and sitting unused until all the development impacts fees are paid in full.

Fiscal Impact

Similar to the Fee Deferral Program, there would be no fiscal impact as the City would collect interest on the unpaid fees. Approval of the agreement will enable the City to collect \$108,624.54 in development impact fees. The estimated annual sales and property taxes that will be collected by the County and not accrue to the City until annexation is completed is \$30,000.

Public Contact

Posting of the City Council agenda

Alternative Courses of Action

1. Approve the development impact fee deferral payment schedule as outline in the attached letter dated December 12, 2008.
2. Direct staff to modify the agreement to require all fees be paid prior to hooking up to City Services.

Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1.

Prepared by: Paul L. Hanson, AICP
Senior Planner

Reviewed by: Barry Munowitch, AICP
Assistant City Manager

Mark G. Deven
City Manager

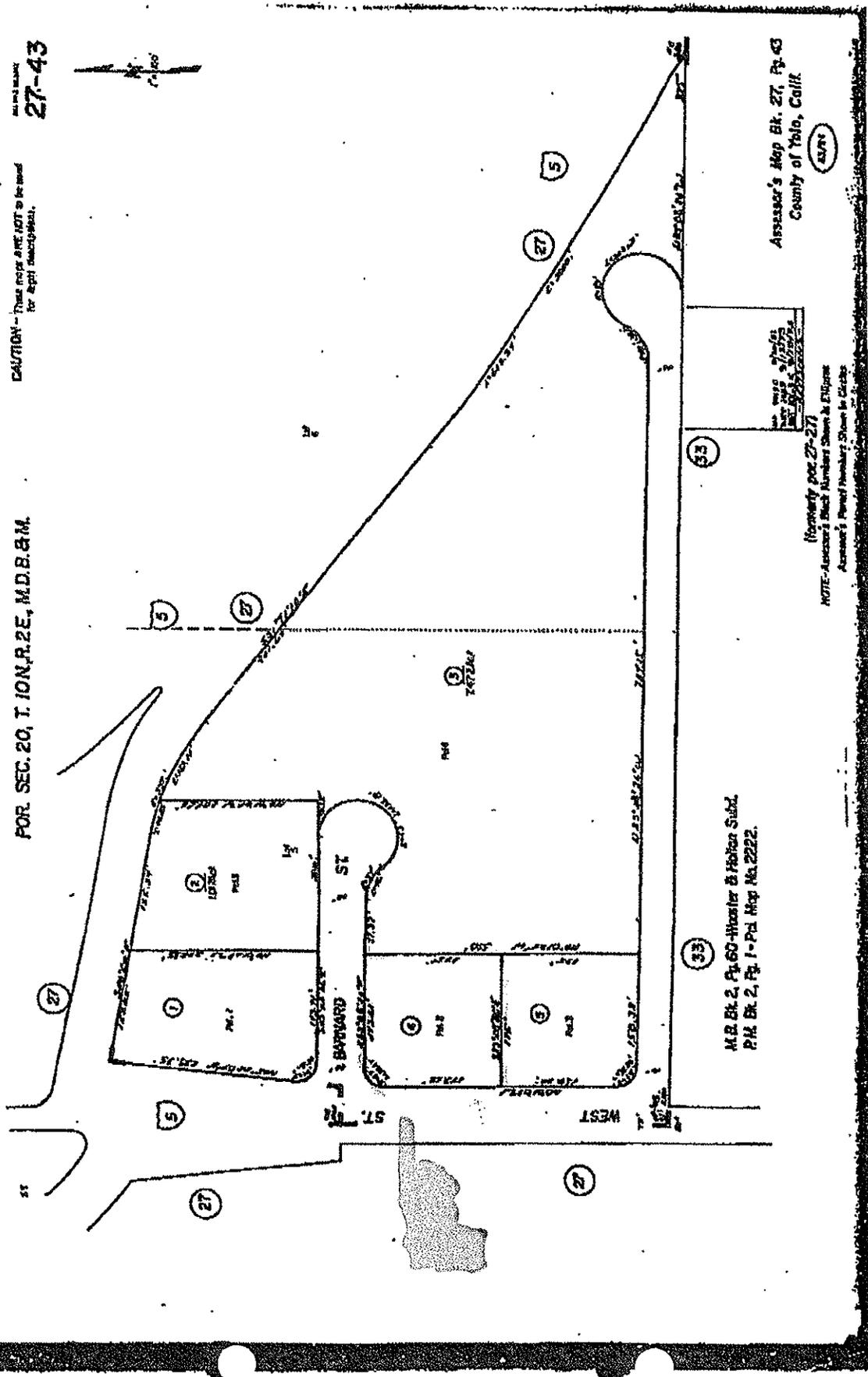
Attachment(s): A – Location Map
B – Letter dated December 12, 2008
C – Promissory Note

ATTACHMENT A

FOR SEC. 20, T. 10N, R. 2E, M.D.B. & M.

CAUTION - These notes are NOT to be used for legal interpretations.

ASSASSIN'S MAP No. 27-43



M.B. Bk. 2, Pg. 60 - Hester & Fisher Subd.
P.M. Bk. 2, Pg. 1 - P.M. Map No. 2222.

Assassin's Map Bk. 27, Pg. 43
County of Yolo, Calif.

(Normally per 27-27)

NOTE - Assessor's Block Numbers Shown in Circle
Assessor's Parcel Numbers Shown in Circle

M.B. Bk. 2, Pg. 60 - Hester & Fisher Subd.
P.M. Bk. 2, Pg. 1 - P.M. Map No. 2222.

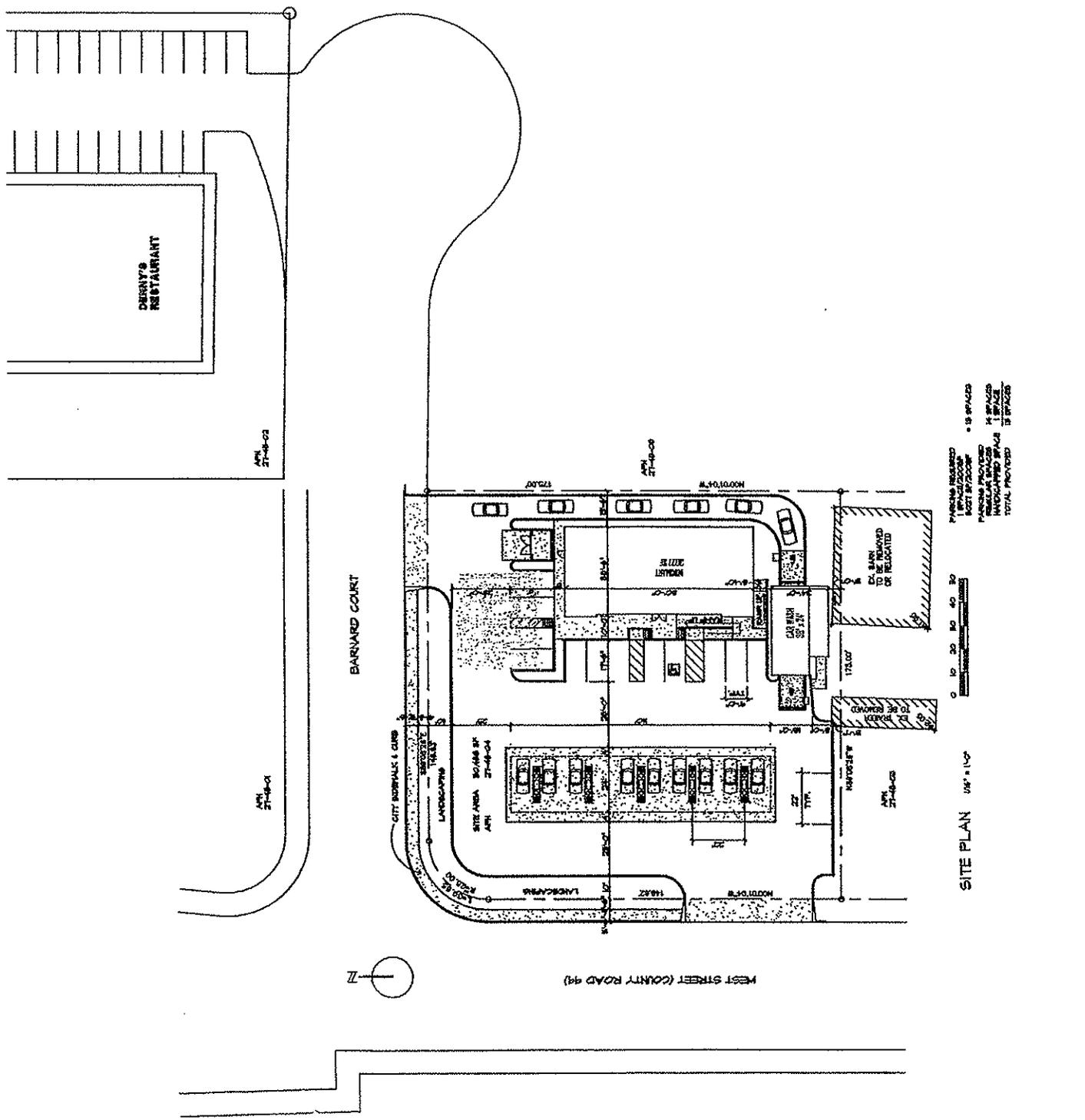
James M. Thome, a.i.a., architect
 1834 Longbranch Drive
 Draper, Utah 84020
 Fax (801) 816-0432
 (801) 801-8201



MR. BOB TAKHAR
 PROJECT SERVICE STATION HIGHWAY & CARWASH FOR
 BARBER & WEST STREET, WOODLAND, CA

NO.	REVISION	DATE

ARCO SERVICE STATION/MINIMART/CARWASH FOR:
BOB TAKHAR
 18344 GADWALL STREET, WOODLAND, CA
 (530) 635 3167



LOCATION PLAN

DERBY'S RESTAURANT



WEST STREET (COUNTY ROAD 99)

BARBER COURT

APN 27-48-03

APN 27-48-03

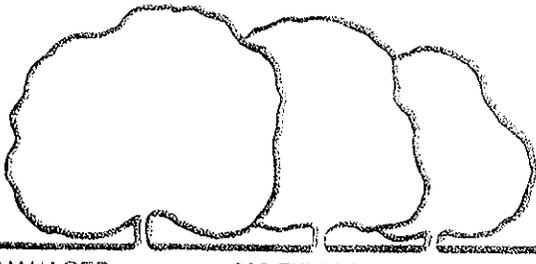
APN 27-48-03

APN 27-48-03

APN 27-48-03

APN 27-48-03

ATTACHMENT B



FILE COPY
City of Woodland

CITY MANAGER

300 FIRST STREET

WOODLAND, CALIFORNIA 95695

(530) 661-5800

FAX: (530) 661-5813

December 12, 2008

Mr. James M. Thorne, AIA
1894 Longbranch Drive
Draper, UT 84020

Re: ARCO Service Station at West Street and Barnard Court

Dear Mr. Thorne:

Thank you for meeting with Barry Munowitch and myself on December 1, 2008. The purpose of this letter is to summarize the results of the meeting and move forward in a manner that will enable an agreement to be considered by the City Council that will resolve this matter.

It is important that this matter be clarified from the City's perspective. The City of Woodland is under no obligation to provide the ARCO service station with utility service as this proposed facility is not within the Woodland city limits. In addition, the development of this facility outside of the city limits with no immediate expectation of annexation would suggest that the City should withhold utility service. However, in the interest of fairness and in recognition of our previous discussions, the City will agree to provide water and wastewater utility service if there is agreement on the payment of development impact fees and related issues.

Regarding the development impact fees, the City and the County agreed that the development of the ARCO service station could proceed if the development was consistent with City standards. This included standards for infrastructure such as streets, curbs, gutter and sidewalks as well as the application of development impact fees. These conditions were clearly transmitted in the letter of October 24, 2007 which is enclosed for your reference. Apparently, the County failed to inform you of this requirement. As a result, the application of development impact fees for the City came as a surprise to you and Mr. Takhar and significantly after the arrangement of the financing for your project. This fact was acknowledged during our December 1 meeting.

During the December 1 meeting, it is the City's understanding that there was an agreement to pay the City development impact fees currently estimated at \$126,159.10 in the following manner:

- 20% of total paid at the time that construction of the ARCO Service Station is initiated
- Monthly payments of \$4,000 per month following completion and occupancy
- Interest payments on the unpaid balance equal to the City's customary investment rate of approximately 3% . . .
- Commitment to support annexation at the appropriate time following the annexation of adjacent lands between the current city limits and the project site
- Security by allowing the City to place a lien on the property until such time that the loan is paid off

Please note that the City Council will be considering a recommendation to reduce the development impact fees that would be applied to this project by approximately 20% on December 16. If the City Council approves this recommendation, the **reduced fees** would be applied in the same manner as described above.

As stated previously, the conditions described herein must be approved by the City Council through a special agreement. These conditions represent a significant deviation from the standard practice of applying development impact fees. The conditions represent the last, best and final offer from the City of Woodland. Please notify me at (530)661-5800 if the conditions are acceptable so we proceed with preparing an agreement for consideration by the City Council.

Sincerely,



Mark G. Deven
City Manager

cc: Mayor and City Council
Andrew Morris, City Attorney
Barry Munowitch, Assistant City Manager
Mr. Bob Takhar

ATTACHMENT C

PROMISSORY NOTE
SECURED BY DEED OF TRUST

Woodland, California

February 17, 2009

For value received, the undersigned (herein "Borrower", whether one or more), promises to pay to the CITY OF WOODLAND, a municipal corporation ("Lender"), to the attention of the City Engineer at 300 First Street, Woodland, California 95695, or at any other place that may be designated in writing by Lender, the principal sum of one hundred eight thousand six hundred twenty six dollars and fifty four cents (\$108,626.54) with interest from the date hereof on unpaid principal at the per annum rate of three percent (3.00%). In no event shall this interest rate exceed the rate allowed under the usury law then in effect in the State of California. Any delinquent payments shall bear interest at the same rate. All sums due are payable in lawful money of the United States of America.

This Promissory Note ("Promissory Note") is secured by a Deed of Trust of the same date as this Note, executed by Borrower, as Trustor, in favor of Lender, as Beneficiary ("Deed of Trust"), and encumbering the real property described in the Deed of Trust ("Property"). The holder of this Note will be entitled to the benefits of the security provided by the Deed of Trust and will have the right to enforce the covenants and agreements of Borrower contained in the Deed of Trust.

Borrower shall pay to Lender the principal amount of this Promissory Note in one initial down payment of \$21,725.31 and twenty three successive monthly principal and interest payments of four thousand dollars and no cents (\$4,000.00), commencing thirty (30) days from the certificate of occupancy above and continuing on the first of each month until the debt is paid

in full in accordance with the attached amortization schedule, at which time the entire outstanding principal balance of this Promissory Note, together with all accrued and unpaid interest, shall be due and payable.

If Borrower fails to make any required payment on or before ten (10) days following the date upon which it becomes due, Borrower shall pay a late charge equal to ten percent (10%) of the amount of the unpaid payment. All payments on this Promissory Note will be applied first to the payment of any costs, fees, late charges, or other charges incurred in connection with the indebtedness evidenced by this Promissory Note; next, to the payment of accrued interest; then to the reduction of the principal balance.

If:

- (a) Borrower fails to pay when due any sum payable under this Promissory Note; or,
- (b) Borrower fails to pay any indebtedness secured by, or fails to perform any covenant or agreement under, the Deed of Trust; or,
- (c) Borrower agrees to or actually sells, conveys, transfers, disposes of, or further encumbers the Property, or any part thereof, or any interest therein, without first obtaining the written consent of the holder of this Promissory Note,

then Borrower shall pay to Lender all sums owing under this Promissory Note without deduction, offset, or counterclaim of any kind. The relationship of Borrower and Lender under this Promissory Note is solely that of borrower and lender, and the loan evidenced by this Promissory Note and secured by the Deed of Trust will in no manner make Lender the partner or joint venturer of Borrower.

In the event of a dispute arising under this Promissory Note, the prevailing party shall be entitled to reasonable attorneys fees and costs in accordance with California Civil Code § 1717. For purposes of this Promissory Note, a dispute shall be construed as arising under this Promissory Note if its subject matter pertains to one or more terms of the Promissory Note, the Deed of Trust, or any other document(s) pertaining to the indebtedness that is evidenced by this Promissory Note. Should either party be entitled to attorneys fees as the result of a dispute arising under this Promissory Note or the Deed of Trust, that party shall also be entitled to interest at a rate of ten percent (10%) per annum which shall begin to accrue as of the date of the demand and shall continue until paid.

No previous waiver, failure or delay by Lender in acting with respect to the terms of this Promissory Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Promissory Note or the Deed of Trust. A waiver of any term of this Promissory Note or the Deed of Trust must be made in writing and will be limited to the express written terms of the waiver. All notices required or permitted in connection with this Promissory Note will be in writing and will be given at the place provided in the Deed of Trust for the giving of notices.

Borrower may make principal prepayments on any installment due date in addition to the regularly scheduled payment mentioned above with no penalty for such prepayment.

If any term or provision of this Promissory Note is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provision or part thereof shall be stricken from this Promissory Note and such provision shall not affect the legality, enforceability, or validity of the remainder of this Promissory Note.

If any provision or part of this Promissory Note is stricken in accordance with the provisions of this paragraph, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

Time is of the essence with respect to every provision of this Promissory Note. This Promissory Note will be construed and enforced in accordance with California law, except to the extent that Federal laws preempt State law, and all persons and entities in any manner obligated under this Note consent to the jurisdiction of any Federal or State Court within California having proper venue and also consent to service of process by any means authorized by California or Federal law.

Borrower acknowledges that this Promissory Note and the Deed of Trust have been prepared by Best Best & Krieger, LLP (“BBK”) and that BBK has acted solely as Lender’s counsel in preparing the Promissory Note and Deed of Trust and negotiating the transactions evidenced thereby.

Borrower further acknowledges that Borrower has been informed of and has waived its right to be represented by separate, independent counsel in the negotiation and preparation of the Promissory Note and Deed of Trust and that the contents and effect of those instruments are acknowledged, understood, and accepted in full by Borrower.

Dated: _____, 2009

Need Name here

By: _____

By: _____

Compound Period: Monthly

Nominal Annual Rate: 3.000%

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	1/16/2009	86,901.23	1		
2 Payment	2/16/2009	4,000.00	21	Monthly	10/16/2010
3 Payment	11/16/2010	4,000.00	1		
4 Payment	12/16/2010	1,463.06	1		

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	1/16/2009				86,901.23
1	2/16/2009	4,000.00	217.25	3,782.75	83,118.48
2	3/16/2009	4,000.00	207.80	3,792.20	79,326.28
3	4/16/2009	4,000.00	198.32	3,801.68	75,524.60
4	5/16/2009	4,000.00	188.81	3,811.19	71,713.41
5	6/16/2009	4,000.00	179.28	3,820.72	67,892.69
6	7/16/2009	4,000.00	169.73	3,830.27	64,062.42
7	8/16/2009	4,000.00	160.16	3,839.84	60,222.58
8	9/16/2009	4,000.00	150.56	3,849.44	56,373.14
9	10/16/2009	4,000.00	140.93	3,859.07	52,514.07
10	11/16/2009	4,000.00	131.29	3,868.71	48,645.36
11	12/16/2009	4,000.00	121.61	3,878.39	44,766.97
2009 Totals		44,000.00	1,865.74	42,134.26	
12	1/16/2010	4,000.00	111.92	3,888.08	40,878.89
13	2/16/2010	4,000.00	102.20	3,897.80	36,981.09
14	3/16/2010	4,000.00	92.45	3,907.55	33,073.54
15	4/16/2010	4,000.00	82.68	3,917.32	29,156.22
16	5/16/2010	4,000.00	72.89	3,927.11	25,229.11
17	6/16/2010	4,000.00	63.07	3,936.93	21,292.18
18	7/16/2010	4,000.00	53.23	3,946.77	17,345.41
19	8/16/2010	4,000.00	43.36	3,956.64	13,388.77
20	9/16/2010	4,000.00	33.47	3,966.53	9,422.24
21	10/16/2010	4,000.00	23.56	3,976.44	5,445.80
22	11/16/2010	4,000.00	13.61	3,986.39	1,459.41
23	12/16/2010	1,463.06	3.65	1,459.41	0.00
2010 Totals		45,463.06	696.09	44,766.97	
Grand Totals		89,463.06	2,561.83	86,901.23	