

**AGENDA**  
**NEWMAN CITY COUNCIL/REDEVELOPMENT AGENCY**  
**REGULAR MEETING JULY 26, 2011**  
**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
  - a. Recognition Of Corporal Borden's Receipt Of The Civitan 2011 Officer Of The Year Award.
  - b. Badge Pinning Of Reserve Officer Ashley Williams.
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 July 12, 2011 Regular Meeting.
  - d. Adopt Resolution No. 2011- , A Resolution Authorizing Ed Katen As Mayor, And Michael Holland As City Clerk To Record A Notice Of Completion For Phase 2 Of The City Of Newman PQRST/Fresno/Merced/West Avenue Infrastructure And Street Reconstruction Project.
9. Public Hearings
  - a. Adopt Resolution No. 2011- , A Resolution Declaring The Existence Of A Public Nuisance Under Ordinance No. 95-4.
10. Regular Business
  - a. Designation Of Voting Delegate And Alternate Voting Delegate For League Of California Cities Annual Conference.
  - b. Adopt Resolution No. 2011- , Approving And Authorizing The Execution Of A Funding Agreement Between The Agency And SCM Hearthstone, LLC.

☞ Adopt Resolution No. 2011- , A Resolution Approving The Purchase Of 938 Fresno Street, Amending The 2011-12 Budget To Reflect Said Purchase, And Authorizing Michael E. Holland, As City Manager, To Execute All Documents Necessary To Complete The Transaction.

11. **Item S** From District Five Stanislaus County Supervisor.
12. **Item S** From The City Manager And Staff.
13. **Item S** From City Council Members.
14. **Adjournment**.

### Calendar of Events

- July 26 - City Council - 7:00 P.M.
- July 28 - Coffee Hour With Senator Anthony Canella- 1335 Main Street - 7:30 A.M. To 8:30 A.M.
- August 8 - NCLUSD Board Meeting - 6:00 P.M.
- August 9 - City Council - 7:00 P.M.
- August 11 - Recreation Commission - 7:00 P.M.
- August 12 - City Furlough Day - City Offices Closed
- August 16 - Two-On-Two Meeting With The School Board - 4:00 P.M.
- August 18 - 2011 Healthier Choices Summit And Biggest Loser Contest - 11:00 A.M.
- August 18 - Planning Commission - 7:00 P.M.
- August 23 - City Council - 7:00 P.M.

# Accounts Payable

## AP Check Register for Council



City of Newman  
 1162 MAIN ST  
 PO BOX 787  
 NEWMAN, CA 95360

User: efaria

Printed: 07/19/2011 - 12:41 PM

Check D	Check Nu	Vendor	Name	Account	Description	Amount
7/19/2011	100048	AME9J	AMERICAN MOBILE SHF	10-21-620	2 BIN SHRED SERV/JULY 2011/PD	50.00
7/19/2011	100049	BEL04	BELL JAMES J.	10-21-620	EVIDENCE CLERK 7-1 TO 7-15-11/BELL	491.75
7/19/2011	100050	BLU07	BLUE SHIELD OF CALIF	10-00-226	HEALTH INS PREM/AUG 2011	10,911.00
7/19/2011	100051	SUN9B	BORRELLI TRAVIS	10-44-620	PORTABLE RESTROOM RENTAL-SERVICE/JULY 11	155.73
7/19/2011	100052	CEN11	CENTRAL SANITARY SU	10-44-666	pinisol disinfectant and antibacterial soap	75.30
7/19/2011	100052	CEN11	CENTRAL SANITARY SU	10-44-667		37.65
7/19/2011	100052	CEN11	CENTRAL SANITARY SU	10-07-630		18.83
7/19/2011	100052	CEN11	CENTRAL SANITARY SU	10-21-630		18.82
7/19/2011	100052	CEN11	CENTRAL SANITARY SU	10-07-666		9.41
7/19/2011	100052	CEN11	CENTRAL SANITARY SU	10-22-630		9.42
7/19/2011	100052	CEN11	CENTRAL SANITARY SU	10-44-630		9.41
7/19/2011	100052	CEN11	CENTRAL SANITARY SU	10-46-630		9.41
7/19/2011	100053	CITB0	CIT TECHNOLOGY FIN S	71-21-710	MS GSA OFFICE PRO PLUSJUL 2011/PD	162.87
7/19/2011	100054	CIT01	CITY OF TRACY	10-14-669	CSMFO LUNCHEON MEETING REGIST/HUMPHRIES	18.00
7/19/2011	100055	CSJ01	CSJVRMA	10-15-663	EMP PRACTICES/LIABILITY/PROPERTY	9,236.33
7/19/2011	100055	CSJ01	CSJVRMA	60-50-663	EMP PRACTICES/LIABILITY/PROPERTY	9,236.33
7/19/2011	100055	CSJ01	CSJVRMA	63-56-663	EMP PRACTICES/LIABILITY/PROPERTY	9,236.34
7/19/2011	100055	CSJ01	CSJVRMA	10-15-663	CRIME SHIELD/AUTO/PROPERTY/ADMIN/EMP ASSISTANCE	8,815.33
7/19/2011	100055	CSJ01	CSJVRMA	60-50-663	CRIME SHIELD/AUTO/PROPERTY/ADMIN	7,233.33
7/19/2011	100055	CSJ01	CSJVRMA	63-56-663	CRIME SHIELD/AUTO/PROPERTY/ADMIN	7,233.34
7/19/2011	100055	CSJ01	CSJVRMA	10-00-229	WORKERS COMP 11/12 1ST QUARTER	21,217.00
7/19/2011	100056	ESR00	ENVIRONMENTAL SYST	10-06-620	ARCVIEW SINGLE USE PRIMARY MAINTENANCE 1	138.25
7/19/2011	100056	ESR00	ENVIRONMENTAL SYST	60-50-620	ARCVIEW SINGLE USE PRIMARY MAINTENANCE 1	138.25
7/19/2011	100056	ESR00	ENVIRONMENTAL SYST	63-56-620	ARCVIEW SINGLE USE PRIMARY MAINTENANCE 1	138.25
7/19/2011	100057	NEW46	GARCIA CRYSTAL	10-22-653	4 NEW TIRES MOUNTED AND BALANCED/2002 CROWN VIC.	444.39
7/19/2011	100058	IKO03	IKON OFFICE SOLUTION	10-21-620	COPIER LEASE 6-25-11 TO 7-24-11/PD	325.36
7/19/2011	100059	MAL26	MALLARD EXPRESS AU	10-21-653	OIL & FILTER CHANGE/REPAIRED BROKEN SHIFT CABLE O	192.60
7/19/2011	100059	MAL26	MALLARD EXPRESS AU	10-21-653	OIL AND FILTER CHANGE ON UNIT 506	55.43
7/19/2011	100059	MAL26	MALLARD EXPRESS AU	10-21-653	OIL AND FILTER CHANGE ON UNIT 502	54.66
7/19/2011	100059	MAL26	MALLARD EXPRESS AU	10-21-653	REPLACED ELECTRIC FAN MOTOR & ELECTRIC FAN RELAY	918.67
7/19/2011	100060	MEN9F	MENEZES SALES	63-56-615	WORK BOOTS FOR C. CANTU	170.00
7/19/2011	100060	MEN9F	MENEZES SALES	10-44-615	WORK BOOTS FOR R. ROCHA	127.50
7/19/2011	100060	MEN9F	MENEZES SALES	10-44-615	WORK BOOTS FOR J. SOTELO	85.00
7/19/2011	100060	MEN9F	MENEZES SALES	69-47-615	WORK BOOTS FOR J. SOTELO	42.50
7/19/2011	100060	MEN9F	MENEZES SALES	10-33-615	WORK BOOTS FOR J. SOTELO	42.50
7/19/2011	100060	MEN9F	MENEZES SALES	63-56-630	WORK BOOTS FOR D. MCWATERS	170.00
7/19/2011	100060	MEN9F	MENEZES SALES	60-50-615	WORK BOOTS FOR D. MUTOZA	42.50
7/19/2011	100060	MEN9F	MENEZES SALES	63-56-615	WORK BOOTS FOR D. MUTOZA	76.50
7/19/2011	100060	MEN9F	MENEZES SALES	10-33-615	WORK BOOTS FOR D. MUTOZA	51.00
7/19/2011	100060	MEN9F	MENEZES SALES	63-56-630	WORK BOOTS FOR L. EMMONS	170.00
7/19/2011	100060	MEN9F	MENEZES SALES	60-50-615	WORK BOOTS FOR R. ROCHA	42.50
7/19/2011	100061	MIDA3	MID VALLEY IT, INC	10-21-620	IT CONTRACT/PD AUGUST 2011	613.74
7/19/2011	100061	MIDA3	MID VALLEY IT, INC	10-14-620	IT CONTRACT/FIN	306.86
7/19/2011	100061	MIDA3	MID VALLEY IT, INC	63-56-620	IT CONTRACT/WATR	306.87
7/19/2011	100061	MIDA3	MID VALLEY IT, INC	60-50-620	IT CONTRACT/SEWR	306.87

Check D	Check Nu	Vendor	Name	Account	Description	Amount
7/19/2011	100062	OCA00	OCASIO (NT) STEPHANI	10-06-662	TUITION REIMBURSEMENT/OCASIO	375.00
7/19/2011	100063	OPE02	OPERATING ENG/UNION	10-00-235	UNION DUES	532.00
7/19/2011	100064	OPE01	OPERATING ENGINEERS	10-00-226	HEALTH INS PREMIUM/AUGUST 2011	2,599.00
7/19/2011	100065	POL01	POLLARDWATER CORPC	63-56-710	HOSE MONSTER	859.00
7/19/2011	100065	POL01	POLLARDWATER CORPC	63-56-710	5"X10" HOSE ALUM LUG COUPLING	436.00
7/19/2011	100065	POL01	POLLARDWATER CORPC	63-56-710	REMOTE READER ASSEMBLY	31.00
7/19/2011	100065	POL01	POLLARDWATER CORPC	63-56-710	GAUGE 4 106 PSI	206.24
7/19/2011	100066	PRE02	PRECISION INSPECTION,	26-48-792	HQS INSPECTION/1306 BLUE TEAL DR	85.00
7/19/2011	100067	RAN02	RANDHAWA MEDICAL G	10-21-623	PRE-EMPLOYMENT PHYSICAL/WILLIAMS	370.00
7/19/2011	100068	RES00	RESERVE ACCOUNT	10-14-633	RESET POSTAGE METER	333.33
7/19/2011	100068	RES00	RESERVE ACCOUNT	60-50-633	RESET POSTAGE METER	333.33
7/19/2011	100068	RES00	RESERVE ACCOUNT	63-56-633	RESET POSTAGE METER	333.34
7/19/2011	100069	SAN08	SAN JOAQUIN VALLEY A	63-56-667	ANNUAL GENERATOR PERMIT/WELL #8	479.00
7/19/2011	100069	SAN08	SAN JOAQUIN VALLEY A	63-56-667	ANNUAL GENERATOR PERMIT/WELL #1R	240.00
7/19/2011	100070	STA13	STANISLAUS COUNTY	10-01-663	CITY'S CONTRIBUTION TO LAFCO 11/12	3,403.89
7/19/2011	100071	STAA0	STAPLES ADVANTAGE	10-21-630	CORRECTION TAPE/PD	10.83
7/19/2011	100072	VAR01	VARGAS JOAN	10-00-284	REFUND MEMORIAL BLDG DEPOSIT/VARGAS	200.00

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99,972.76

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Date.: Jul 22, 2011  
Time.: 8:40 am  
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
039470	07/22/11	3800.00	KD ANDERSON & ASSOCIATES, INC	TRAFFIC ENGINEERING CONSULTANT/AUTO ZONE
039471	07/22/11	563.79	ARAMARK UNIFORM SERVICES	UNIFORM CLEANING/MAT RENTAL/MOP HEADS/TOWELS/JUN11
039472	07/22/11	162.22	ARROWHEAD MOUNTAIN SPRING	BOTTLED WATER DELIVERED/JUNE 2011
039473	07/22/11	406.74	AT&T MOBILITY	WIRELESS ACCESS 6/3/11 TO 7/2/11/PD
039473	07/22/11	1114.85	AT&T MOBILITY	CELL PHONE MONTHLY SERVICE 6-6-11 TO 7-5-11
039474	07/22/11	81.66	AT&T	MONTHLY TELEPHONE SERVICE FOR 668-3946
039474	07/22/11	73.20	AT&T	MONTHLY TELEPHONE SERVICE FOR 634-0508
039475	07/22/11	878.13	BERTOLOTTI DISPOSAL	LANDFILL FEES/JUNE 2011
039476	07/22/11	21.02	B G AUTO	SPARK PLUG WIRE SET FOR 65-2 DUMP TRUCK
039476	07/22/11	25.02	B G AUTO	MASTER DISCONNECT SW/FD
039476	07/22/11	6.26	B G AUTO	MOTOR OIL
039477	07/22/11	6272.01	BURTON'S FIRE, INC	VACUUM TEST/SERVICE ENGINE/CLEANED RADIATOR/E-27
039478	07/22/11	50.19	BUSINESS CARD	LUNCH MTG/TURLOCK PW WITH GARNER & MICHAEL H
039478	07/22/11	740.00	BUSINESS CARD	TROUBLESHOOT ENGINE/REPLACED 2 BATTERIES/#28
039478	07/22/11	995.16	BUSINESS CARD	DEPOSIT ON SHED/CORP YD/TV/MEMORY CARD/CAMERA
039479	07/22/11	82.80	CALIF BUILDING STANDARDS COMMI	SB1473 FEES PAYABLE APRIL-JUNE 2011
039480	07/22/11	662.45	CENTRAL SANITARY SUPPLY	BOWL CLEANER/CANLINERS/DEOD BLOCKS/GLOVES/TOWELS
039481	07/22/11	3500.00	COGDILL & GIOMI, INC	APPRAISAL SERVICE AT 938 FRESNO ST
039482	07/22/11	24.02	ELAINE COLLISON (NT)	REIMBURSEMENT FOR FRAMES/PAINT
039483	07/22/11	3297.49	CONTRACT SWEEPING SERVICES, IN	CONTRACT SERVICES/STREET SWEEPING/JUNE 2011
039484	07/22/11	272.16	CROP PRODUCTION SERVICES	15 GALLONS AMINE/WWTP
039485	07/22/11	187.50	DAVE PIRES	DRAIN CLEANING SERVICE/BARRINGTON PARK
039486	07/22/11	50.15	DEPART. OF CONSERVATION	SMOT FEES APRIL-JUNE 2011
039487	07/22/11	2322.21	DENNIS BORRELLI	DUST-OFF APPLICATION/WWTP

Date.: Jul 22, 2011  
Time.: 8:40 am  
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CITY OF NEWMAN  
CASH DISBURSEMENTS REPORT

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List.: NEW1  
Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
039488	07/22/11	98.06	E&M ELECTRIC, INC.	MATERIAL USED FOR CAMERA BOX & CIRCUITS/PLAZA
039488	07/22/11	700.79	E&M ELECTRIC, INC.	INSTALLED PLYWOOD CAMERA BOX/CIRCUITS/PLAZA
039488	07/22/11	238.75	E&M ELECTRIC, INC.	REPAIRS TO STREET LIGHT POLE #750
039488	07/22/11	4200.00	E&M ELECTRIC, INC.	PO #11-65
039489	07/22/11	30.00	ECONOMIC TIRE SHOP	ROTATION AND BALANCE
039489	07/22/11	217.86	ECONOMIC TIRE SHOP	2 NEW TIRES FORD TRACTOR
039490	07/22/11	70.00	FRANKLIN PET CEMETERY & CREMAT	2 ANIMAL DISPOSAL CLINICS
039491	07/22/11	2299.33	GEOANALYTICAL LAB, INC.	BODD/TSS/WEEKLY BACTI/QUARTERLY WELL TESTING
039492	07/22/11	2828.09	HACH COMPANY	PO #11-57
039493	07/22/11	392.78	IMAGE UNIFORMS	UNIFORM & SUPPLIES FOR RONIL SINGH
039494	07/22/11	1695.95	INFOSEND, INC	UTILITY BILL & LATE NOTICE MAILING/JUNE 2011
039494	07/22/11	1092.71	INFOSEND, INC	PRINTING OF 2010 CCR'S & INSERTION
039495	07/22/11	9605.00	JOE'S LANDSCAPING & CONCRETE,	LIGHTING & LANDSCAPE DIST LANDSCAPING SERV/JUNE 11
039496	07/22/11	785.12	JORGENSEN & COMPANY	ANNUAL FIRE EXTINGUISHER SERVICE/PW
039496	07/22/11	97.00	JORGENSEN & COMPANY	ANNUAL FIRE EXTINGUISHER MAINTENANCE/THEATER
039496	07/22/11	45.00	JORGENSEN & COMPANY	FIRE EXTINGUISHER MAINTENANCE/WWTP
039497	07/22/11	9448.14	MID VALLEY IT, INC	SECURITY CAMERA SOFTWARE/LICENSE & ANALOG ENCODER
039498	07/22/11	686.00	GEORGE OSNER	PLANNING SERVICES/AREA 3 MAST PLAN/JUNE 2011
039499	07/22/11	726.00	OTTMAN FARMS, INC	SPRAYING GLYFOS ON CORN @ WWTP
039500	07/22/11	58111.00	PERMA-GREEN HYDROSEEDING, INC	PLAZA BATHROOM PROJECT CONSTRUCTION
039501	07/22/11	290.39	P G & E	NATURAL GAS PURCHASES 6-8 TO 7-8-11
039501	07/22/11	435.53	P G & E	ELECTRICITY 10-10-10 TO 6-8-11
039501	07/22/11	28.54	P G & E	ELECTRICITY 5-18-11 TO 6-16-11/INDUSTRIAL WAY
039502	07/22/11	200.00	JOSE PICENO	REFUND MEMORIAL BLDG DEPOSIT/PICENO

Date.: Jul 22, 2011  
Time.: 8:40 am  
Run by: EMILY M. FARIA

CITY OF NEWMAN  
CASH DISBURSEMENTS REPORT

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Group: PYCPDP

Ck #	Check Date	CK Amount	Vendor Name	Description
039503	07/22/11	16663.03	PRECISION INSPECTION, INC	Bldg Reg Inspec BLDG REGU
039503	07/22/11	80.08	PRECISION INSPECTION, INC	CODE ENFORCEMENT SERVICES/INSPECTION @ 907 FIG
039504	07/22/11	5770.48	SHELL FLEET PLUS	GAS AND DIESEL PURCHASES JUNE 2011
039505	07/22/11	1740.23	SPRINGBROOK SOFTWARE	TRAVEL EXPENSE 5-16 TO 5-20-11/FINANCE & PAYROLL
039505	07/22/11	1796.44	SPRINGBROOK SOFTWARE	TRAVEL EXPENSES 6/13/11 TO 6/17/11/FIN AND PAYROLL
039505	07/22/11	2356.89	SPRINGBROOK SOFTWARE	TRAVEL EXPENSE 6-13 TO 6/17/11/BUSINESS LICENSE
039506	07/22/11	556.00	STATE OF CALIFORNIA	FINGERPRINT APPS/CHILD ABUSE INDEX/PEACE OFFICER
039507	07/22/11	10.00	STANISLAUS COUNTY	SANITATION CHARGES/JUNE 2011
039507	07/22/11	2897.00	STANISLAUS COUNTY	PUBLIC FACILITY FEES/JAN-MAR 2011
039508	07/22/11	2.16	STAPLES ADVANTAGE	3 VOLT LITHIUM BATTERY/PD
039509	07/22/11	180.00	BARBARA J. TOSTA	YOUNG AT HEART INSTRUCTOR/JUNE 2011
039510	07/22/11	6.45	VALLEY PARTS SERVICE	MOTOR OIL/WASHER FLUID
039510	07/22/11	10.45	VALLEY PARTS SERVICE	LUG NUTS FOR FORD TRACTOR
039511	07/22/11	3049.23	WESTSIDE THEATER FOUNDATI	LOAN PROCEEDS TO WESTSIDE THEATER IMPROVEMENTS #3
039512	07/22/11	1172.34	YANCEY LUMBER COMPANY	CONCRETE/LUMBER/BATTERIES/POSTS/PROPANE/SPRAYER
039513	07/22/11	1953.60	ZAM COMM	PO #11-31
039513	07/22/11	360.00	ZAM COMM	PO #11-32
Sub-Total:		----- 158515.45		
Grn-Total:		----- 158515.45		
Count:	65			

MINUTES  
NEWMAN CITY COUNCIL/REDEVELOPMENT AGENCY  
REGULAR MEETING JULY 12, 2011  
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. **Call To Order** - Mayor Katen 7:01 P.M.
2. **Pledge Of Allegiance.**
3. **Invocation** - Council Member Hutchins.
4. **Roll Call PRESENT:** Hutchins, Candea, Martina And Mayor Katen.  
**ABSENT:** Davis (Excused).
5. **Declaration Of Conflicts Of Interest** - None.
6. **Ceremonial Matters**

- a. **Badge Pinning Of Reserve Officer Ronil Singh.**

Chief Richardson Introduced Officer Ronil Singh And Presided Over His Badge Pinning Ceremony.

Officer Singh Stated That He Was Very Happy And Thanked The City Council, City Staff And Several Friends.

- b. **Civility Presentation By Tom Changnon, Stanislaus County Superintendent Of Schools.**

Tom Changnon, Stanislaus County Superintendent, Noted That He Is Part Of A Campaign To Increase Civility And Mutual Respect. Superintendent Changnon Asked The City And The Community To Become Partners In The Choose Civility Campaign.

- c. **Proclamation Recognizing Tom Applegate's Service To The Community.**

Mayor Katen Read The Proclamation Recognizing Tom Applegate's Service To The Community.

7. **Items from the Public - Non-Agenda Items.** Vicki Lucas-July 28<sup>th</sup> Senator Canella meet and greet.

Wayne Philbrook Introduced Himself As The New Branch Manager Of The Newman Library And Reviewed Some Of The Free Summer Programs Being Offered By The Newman Library.

Vicki Lucas, President Of The Newman Chamber Of Commerce Reminded Everyone That The Chamber Would Be Hosting A Meet And Greet Coffee Hour With State Senator Anthony Canella At The State Farm Insurance Office Located 1335 Main Street On July 28<sup>th</sup> From 7:30 A.M. To 8:30 A.M.

8. **Consent Calendar**

- a. **Waive All Readings Of Ordinances And Resolutions Except By Title.**

- b. Approval Of Warrants.
- c. Approval Of Minutes Of The June 28, 2011 Regular Meeting.

Council Member Hutchins Requested That Warrant No. 10017 Be Pulled From The Consent Calendar.

**ACTION:** On A Motion By Hutchins Seconded By Candea And Unanimously Carried, The Consent Calendar Minus Warrant No. 10017 Was Approved.

**ACTION:** On A Motion By Martina Seconded By Candea And Unanimously Carried, Warrant No. 100017 Was Approved With Council Member Hutchins Not Participating.

## 9. Public Hearings - None.

## 10. Regular Business

- a. Appointment Of Members To Fill Vacancies On Parks And Recreation Commission.

The Council Agreed To Remove Austin Ramos' Name From Consideration Because He Was Not Present.

**ACTION:** On Motion By Candea Seconded By Martina And Unanimously Carried, The Council Appointed Sebastian Rangel To The Recreation Commission.

- b. Report On Newman Chamber Of Commerce Request To Hold Event In The Downtown Plaza.

Council Member Hutchins Asked That The Downtown Standards Could Be Re-Evaluated By The City Council In The Future.

**ACTION:** On Motion By Candea Seconded By Martina And Unanimously Carried, The Council approved the requests of the Chamber of Commerce as submitted.

- c. Report On 2011 Newman Fall Festival.

**ACTION:** On Motion By Hutchins Seconded By Candea And Unanimously Carried Council Approved Requests As Submitted By The Festival Committee.

- d. Acceptance Of Appraisal For 938 Fresno Street.

Mayor Katen Noted That He Had Found Some Mistakes In The Appraisal But That He Fully Supported The Purchase Of The Building. Katen Went On To Stress That He Thought It Was Important To Have City Staff Available To The Public And That It Is Imperative To Have A Pay Center Downstairs. He Requested That The Appraisal Be Corrected.

Council Member Hutchins Echoed Mayor Katen's Comments About The Mistakes In The Appraisal And Asked About The Building's Potential Accessibility Issues.

**ACTION:** On Motion By Martina Seconded By Candea And Unanimously Carried, The Council Accepted The Appraisal Of 938 Fresno Street And Requested That Mistakes On Page 15 Of The Appraisal Be Corrected.

## **11. Items From District Five Stanislaus County Supervisor - None.**

## **12. Items From The City Manager And Staff.**

City Manager Holland Notified The Community That There Were Vacancies On Both The Recreation And Planning Commissions. Holland Asked Council Members To Inform Staff If They Were Interested In Attending The League Of California Cities Annual Conference In September. He Informed The City Council That The City Of Oakdale Had Sent Them A Thank You Basket For The HOME Funds That Newman Allocated To Oakdale. Holland Reported That The Newman Family Apartment Project Was Now Open And That The Grant Application For The Pool Had Been Submitted. He Reminded Everyone That The City Would Be Hosting Two Upcoming Movie Nights, Yogi Bear On July 23<sup>rd</sup> And Despicable Me On August 6<sup>th</sup>.

Chief Richardson Informed The Council That A Second Reserve Officer Named Ashley Williams Will Be Sworn In Next Council Meeting. Richardson Invited The Community To Visit The Police Department's Facebook Page And Encouraged People To Adopt A Pet From The Newman Shelter.

Public Works Director Reynolds Noted That The Plaza Restrooms Were Almost Complete And That They Would Soon Be Open To The Public During The Day On A Trial Basis. Reynolds Mentioned That The Construction Along "S" And "T" Streets Was Complete.

Finance Director Humphries Reported That The Governor Signed Two Bills Regarding Redevelopment Agencies On June 29<sup>th</sup>. Humphries Noted That One Of The Bills That The Governor Signed Eliminated Redevelopment Agencies While The Other Allows Them To Continue If They Agree To Make Monetary Payments To The State. He Explained That In Order For The Redevelopment Agency To Be Allowed To Continue The City Must Pay The State Approximately \$344,000.00 Initially And \$76,6000 A Year Thereafter. Humphries Informed The City Council That Springbrook Software Conversion Was Almost Complete.

## **13. Items From City Council Members.**

Council Member Hutchins Noted That The Redistricting Boundaries Are Being Changed And That The Revised Boundaries Would Be Released On July 28<sup>th</sup>. Hutchins Noted That He Had Been A Member Of The Interview Panel For The New School Superintendent And Stated That They Had Some Outstanding Candidates.

Council Member Martina Commended The Chamber For Moving Forward With Their Proposed Event And Mentioned That He Thought The Plaza Was The Perfect Venue.

Mayor Katen Echoed Council Member Martina's Comments Regarding The Chamber Of Commerce's Planned Downtown Event. Katen Thanked Council Member Hutchins For Sitting In On The School Superintendent Interview Panel And For Attending The Redistricting Meeting On Behalf Of The City.

## **14. Adjournment.**

**ACTION:** On Motion By Katen Seconded By Hutchins And Unanimously Carried, The Meeting Was Adjourned At 8:42 P.M.

Honorable Mayor and Members  
of the Newman City Council

**APPROVE THE PQRST/FRESNO/MERCED/WEST AVENUE INFRASTRUCTURE AND STREET RECONSTRUCTION PROJECT PHASE 2 AND AUTHORIZING ED KATEN AS MAYOR, AND MICHAEL E. HOLLAND AS CITY CLERK TO RECORD A NOTICE OF COMPLETION**

**RECOMMENDATION:**

It is recommended that the City of Newman City Council adopt Resolution No. 2011- , approving the PQRST/Fresno/Merced/West Avenue Infrastructure and Street Reconstruction Project Phase 2 as complete and authorizing Ed Katen as Mayor, and Michael E. Holland as City Clerk to record a Notice of Completion for the City of Newman PQRST/Fresno/Merced/West Avenue Infrastructure and Street Reconstruction Project Phase 2.

**BACKGROUND:**

The City received grant funding from the Stanislaus County CDBG Consortium for infrastructure improvements in the City's income-eligible area bordered by Yolo Street, "N" Street, Inyo Avenue and the western city limit line. Known as the Street Reconstruction and P, Q, R, S, T, Fresno, Merced and West Avenue Projects, the first phase was completed in 2010 and consisted of the installation of curb, gutter, and sidewalks and related street repairs around the Howard B. Hill Jr. Park site (Fresno Street, Merced Street and West Avenue). This phase, Phase 2, consisted of the removal of approximately 47 trees, removal and replacement of 4,900 lineal feet of curb and gutter, 2,700 square feet of sidewalks and walkways, 2,300 square feet of driveways and incidental paving on S and T Streets from Inyo Road to Yolo Avenue. The replacement of the trees is being planned as part of the Urban Forestry Grant Application that was approved by City Council on January 11, 2011.

**ANALYSIS:**

On March 22, 2011 City Council awarded a contract to the lowest responsible bidder for the project, Gregg Opinski Construction, for \$315,745.69 and construction for this project was completed on July 6, 2011. There was one change order approved for the project decreasing the quantities, which resulted in a decrease in the total cost of construction in the amount of \$11,306.01. Therefore, the total project cost is \$304,438.99. A final inspection of the project was performed by the Public Works Department, and the Project has been determined to be constructed in accordance with the approved plans and specifications.

**FISCAL IMPACT:**

Original Project Bid	\$315,745.69		
Change Order #1	<\$11,306.01>		
<b>Total Project Cost</b>	<b>\$304,438.99</b>	<b>Total Funding Amount</b>	<b>\$304,438.99</b>

**CONCLUSION:**

The PQRST/Fresno/Merced/West Avenue Infrastructure and Street Reconstruction Project Phase 2, constructed by Gregg Opinski Construction, has been completed in compliance with the plans and specifications with a final construction cost of \$304,438.99. Therefore, staff recommends that the City Council adopt Resolution No. 2011- , approving the PQRST/Fresno/Merced/West Avenue Infrastructure and Street Reconstruction Project Phase 2 as complete and authorizing Ed Katen as Mayor, and Michael E. Holland as City Clerk to record a notice of completion for the PQRST/Fresno/Merced/West Avenue Infrastructure and Street Reconstruction Project Phase 2.

**ATTACHMENTS:**

1. Resolution No. 2011-

Respectfully Submitted.



Garner Reynolds  
Director of Public Works

**REVIEWED/CONCUR:**



Michael E. Holland  
City Manager

**RESOLUTION NO. 2011-**

**A RESOLUTION APPROVING THE CITY OF NEWMAN PQRST/FRESNO/MERCED/WEST AVENUE INFRASTRUCTURE AND STREET RECONSTRUCTION PROJECT PHASE 2 AS COMPLETE AND AUTHORIZING ED KATEN AS MAYOR, AND MICHAEL E. HOLLAND AS CITY CLERK TO RECORD A NOTICE OF COMPLETION**

WHEREAS, on the 7<sup>th</sup> day of April, 2011, agreements were entered into between the CITY OF NEWMAN, herein after referred to as "CITY" and Gregg Opinski Construction, herein after referred to as "CONTRACTOR" for the making of certain improvements in the City of Newman, County of Stanislaus, State of California, known as the CITY OF NEWMAN DOWNTOWN PQRST/FRESNO/MERCED/WEST AVENUE INFRASTRUCTURE AND STREET RECONSTRUCTION PROJECT PHASE 2; and

WHEREAS, the improvement security referred to in said agreement was duly executed and filed by Contractor;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman as follows:

1. That the improvements referred to in said agreement and the maps and other matters referred to therein be, and the same hereby are, approved and accepted.
2. That Ed Katen, as Mayor and Michael E. Holland as City Clerk, are hereby authorized and directed to execute and record a Notice of Completion of said improvements.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 26<sup>th</sup> day of July, 2011 by Council Member \_\_\_\_\_, who moved its adoption which motion was duly seconded and it was upon roll call carried and the resolution adopted by the following vote:

AYES:  
NOES:  
ABSENT:

APPROVED:

\_\_\_\_\_  
Ed Katen, Mayor

ATTEST:

\_\_\_\_\_  
Michael E. Holland, City Clerk



Honorable Mayor and Members  
of the Newman City Council

Agenda Item: **9.a.**  
City Council Meeting  
of July 26, 2011

**REPORT ON NUISANCE ABATEMENT**

**RECOMMENDATION:**

Adopt Resolution No. 2011- , 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 Monday, July 25, 2011. 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.

**ATTACHMENTS:**

1. Resolution No. 2011- , a resolution declaring the existence of a public nuisance
2. Exhibit A – Abatement List

Respectfully submitted,



Randy Richardson, Chief of Police

**REVIEWED/CONCUR:**



Michael Holland, City Manager

**RESOLUTION NO. 2011-**

**A RESOLUTION DECLARING THE EXISTENCE OF A PUBLIC NUISANCE UNDER  
ORDINANCE NO. 95-4**

WHEREAS, the Chief of Police has reported a nuisance as outlined in Section 8-2-2 of the Newman Municipal Code located and existing upon property in the City of Newman in violation of Ordinance No. 95-4 of the City of Newman, a description of said property being attached hereto and made a part of this resolution by this reference; and,

WHEREAS, the Chief of Police caused notice to be mailed to the respective owners of the subject properties as in said Ordinance provided, said notice giving notice to abate said nuisance and setting a time and place for hearing objections to the proposed abatement; and,

WHEREAS, said hearing was held on July 26, 2011, at 7:00 p.m., as in said notice provided; and,

WHEREAS, no objections to the proposed abatement were received at said hearing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newman that said City Council of the City of Newman finds that a condition exists with regard to the properties in said City which is dangerous to life, limb and property, and to the public health, safety and morals, in that weeds, rubbish, dirt and rank growth are growing, located and existing upon said property in violation of the provisions of Ordinance No. 95-4 of the City of Newman, which endangers and may injure neighboring property and endangers and injures the welfare of residents in the vicinity of said property, and which is a fire hazard; that a description of said properties is attached hereto and made a part of this resolution by this reference.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 26th day of July, 2011 by Council Member \_\_\_\_\_, who moved its adoption, which motion was duly seconded and was adopted upon roll call vote.

AYES:  
NOES:  
ABSENT:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

**City of Newman**  
Abatement list

**1. 1208 Merced Street**

Tall grass and weeds throughout the front and backyards of the property

**2. 1075 T Street**

Tall grass and weeds throughout the front and backyards of the property

**3. 721 Orestimba Peak Drive**

Tall grass and weeds throughout the front and backyards of the property

Honorable Mayor and Members  
of the Newman City Council

**DESIGNATION OF VOTING DELEGATE FOR THE  
LEAGUE OF CALIFORNIA CITIES CONFERENCE**

**RECOMMENDATION:**

It is recommended that the City Council:

1. Designate a Voting Delegate for the League of California Cities 2011 Annual Conference.

**BACKGROUND:**

An important part of the League of California Cities Annual Conference is the Annual Business Meeting. At this meeting, the League membership considers and takes action on resolutions that establish League policy. The League's bylaws stipulate that each city is entitled to one vote on matters affecting municipal or League policy. The League requires that voting delegates and alternates for its Annual Conference must be designated by City Council action

**ANALYSIS:**

A Voting Delegate is requested of each city that plans to be represented at the Conference. The voting representative will be issued a voting card for use at the Annual Business Meeting on Friday, September 23, 2011. Currently, only Mayor Katen is registered to attend the 2011 League of California Cities Conference in September. Both the Mayor and Council Members have been designated as the City's representative in the past.

**FISCAL IMPACT:**

There is no fiscal impact of this Council Action.

**CONCLUSION:**

The League of California Cities requires that voting delegates and alternates for its Annual Conference must be designated by City Council action. The City of Newman will be represented at the 2011 League of California Cities Conference in September by Mayor Katen. This staff report is submitted for City Council consideration and action.

**ATTACHMENTS:**

1. Letter from the League of California Cities regarding designation of voting delegates and alternates.
2. 2011 Annual Conference Voting Procedures.
3. 2011 Annual Conference Voting Delegates and Alternates Form.

Respectfully submitted,



Mike Maier  
Deputy City Clerk

**REVIEWED/CONCUR:**



Michael E. Holland  
City Manager

**Council Action Advised by August 26, 2011**

June 9, 2011

**TO: Mayors, City Managers and City Clerks**

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES  
League of California Cities Annual Conference – September 21–23, San Francisco**

The League's 2011 Annual Conference is scheduled for September 21-23 in San Francisco. An important part of the Annual Conference is the Annual Business Meeting (*at the closing General Assembly*), scheduled for 2:30 p.m., Friday, September 23, at the San Francisco Moscone West Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

**Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, August 26, 2011. This will allow us time to establish voting delegate/alternates' records prior to the conference.**

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: [www.cacities.org](http://www.cacities.org). In order to cast a vote, at least one person must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up

-more-

the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the San Francisco Moscone West Convention Center, will be open at the following times: Wednesday, September 21, 8:30 a.m. – 6:00 p.m.; Thursday, September 22, 7:30 a.m. – 4:00 p.m.; and September 23, 7:30–10:00 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but not during a roll call vote, should one be undertaken.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Friday, August 26th. If you have questions, please call Mary McCullough at (916) 658-8247.

Attachments:

- 2011 Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



1400 K Street, Suite 400 • Sacramento, California 95814  
Phone: 916.658.8200 Fax: 916.658.8240  
[www.cacities.org](http://www.cacities.org)

## Annual Conference Voting Procedures 2011 Annual Conference

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: \_\_\_\_\_

2011 ANNUAL CONFERENCE  
VOTING DELEGATE/ALTERNATE FORM

Please complete this form and return it to the League office by Friday, August 26, 2011. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

**Please note:** Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: \_\_\_\_\_

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

2. VOTING DELEGATE - ALTERNATE

Name: \_\_\_\_\_

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

3. VOTING DELEGATE - ALTERNATE

Name: \_\_\_\_\_

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

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

**ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).**

Name: \_\_\_\_\_ E-mail \_\_\_\_\_

Mayor or City Clerk \_\_\_\_\_ Phone: \_\_\_\_\_  
(circle one) (signature)

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

Please complete and return by Friday, August 26 to:

League of California Cities  
ATTN: **Mary McCullough**  
1400 K Street  
Sacramento, CA 95814

**FAX: (916) 658-8240**  
E-mail: [mccullom@cacities.org](mailto:mccullom@cacities.org)  
(916) 658-8247

Honorable Chairman and Members  
of the Newman Redevelopment Agency

**APPROVING AND AUTHORIZING THE EXECUTION OF A FUNDING  
AGREEMENT BETWEEN THE AGENCY AND SCM HEARTHSTONE**

**RECOMMENDATION:**

Approval of Resolution No. 2011- , approving and authorizing the execution of a funding agreement between the Agency and SCM Hearthstone, LLC.

**BACKGROUND:**

In September 2004, the Planning Commission reviewed a proposed Development Agreement for the Sherman Ranch subdivision. (The original project was approved by the Planning Commission in 1999.) Following the recommendation of the Planning Commission, the City County adopted Ordinance No. 2004-03 approving the Sherman Ranch Development Agreement in October 2004. Subsequent to these actions, the City adopted a Substitute Reimbursement and Settlement Agreement (SRSA) to settle ‘complete and full satisfaction of ... the total amounts for which Developer remains eligible to receive reimbursement...’

In January 2010, the Developer filed a lawsuit in Stanislaus County Superior Court alleging Breach of Contract, Unjust Enrichment, Common Counts, Conversion and Breach of Fiduciary Duty. While the City remained confident in its legal position, settlement talks to end the lawsuit were initiated. Through diligent work and mutual cooperation, both sides agreed to a settlement agreement in December 2010. Upon the Developer dismissing the complaint, the City/Agency agreed to establish a Fee Offset Fund. We have received confirmation from our legal advisors that the lawsuit has been dropped. The City has received confirmation from our legal advisors that the lawsuit has been dropped.

**ANALYSIS:**

In accordance with the Settlement Agreement, the City would hereby establish a Fee Offset Fund for Sherman Ranch ‘Classics’ or ‘Heritage’ developments. The City’s obligation to maintain said fund “shall terminate upon the earlier of (i) the use of all monies in the Fee Offset Fund; or (ii) December 31, 2013.” The City’s obligation to use the Fee Offset Fund shall be expressly conditioned upon the City receiving from Developer evidence reasonably satisfactory to City certifying the income level of any proposed Qualified Buyer, and that the proposed sales price of any Affordable Unit does not exceed the affordable housing cost, as defined by Health and Safety Code. Developer covenants and agrees that the deed fro each Affordable Unit for which the City has paid fees from the Fee Offset Fund shall include the language in Section 3.4 (attached). The Fee Offset Fund is established through the approval and execution of the Agency Funding Agreement attached heretofore.

**FISCAL IMPACT:**

Neutral. While the City/Agency is agreeing to establish a Fee Offset Fund, the Agency monies will be used to pay City Impact and Connection Fees.

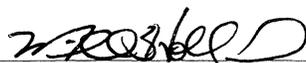
**CONCLUSION:**

The proposed Fee Offset Fund creates a ‘Win-Win’ opportunity for both the City and Developer. The Fund provides financial incentive for the developer to construct new housing opportunities for Qualified Buyers and the City would experience additional assessed value for property tax consideration. The terms of the Fund were originally negotiated as part of the Settlement Agreement. Approval will constitute completion of our obligations under the terms of said agreement.

**ATTACHMENTS:**

1. Resolution
2. Settlement Agreement (w/o exhibits)
3. Agency Funding Agreement

Respectfully submitted,



Michael Holland  
City Manager

**REDEVELOPMENT AGENCY**

**RESOLUTION NO. 2011-**  
**RDA RESOLUTION NO. 2011-**

**RESOLUTION OF THE NEWMAN REDEVELOPMENT AGENCY APPROVING AND  
AUTHORIZING THE EXECUTION OF A FUNDING AGREEMENT BETWEEN THE  
AGENCY AND SCM HEARTHSTONE, LLC (SHERMAN RANCH DEVELOPMENT)**

**WHEREAS**, the Newman Redevelopment Agency (the "Agency") is carrying out the Redevelopment Plan (the "Redevelopment Plan") for the Newman Redevelopment Project (the "Redevelopment Project") pursuant to the Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) ("CRL"); and

**WHEREAS**, as required under the CRL, the Agency has set aside a portion of the tax increment revenues allocated to the Agency from the Redevelopment Project Area in a separate Low and Moderate Income Housing Fund (the "Housing Fund"), to be used to increase, improve and preserve the community's supply of low and moderate income housing; and

**WHEREAS**, SCM Hearthstone, LLC, a California limited partnership (the "Developer") is in the process of developing certain real property located in the City of Newman (the "Property") as part of a larger subdivision known as the Sherman Ranch Development, which will include some low density residential units, generally referred to as the "Classics" Development, and medium-density residential units, generally referred to as the "Heritage" Development; and

**WHEREAS**, pursuant to a Settlement Agreement between the City of Newman ("City") and Developer, dated December 16, 2010 (the "Settlement Agreement"), the Agency desires to use a portion of its Housing Fund, in the amount of \$125,000 (the "Agency Assistance"), to assist Developer with payment of City fees due at the time of final inspection for a portion of the Units (the "Affordable Units") developed in the Classics and Heritage Developments, which Affordable Units shall be sold to qualified low income persons and families ("Qualified Buyers"); and

**WHEREAS**, pursuant to Section 33071 of the California Health and Safety Code, the provision of very low- and low-income housing is a fundamental purpose of redevelopment; and

**WHEREAS**, the Agency and Developer have cooperated in the preparation of a proposed Agency Funding Agreement (the "Agreement") setting out the terms and conditions for payment of the Agency Assistance, and the recordation of affordability restrictions against the Affordable Units;

**NOW, THEREFORE, THE NEWMAN REDEVELOPMENT AGENCY DOES HEREBY  
RESOLVE AS FOLLOWS:**

**Section 1.** The Agency hereby finds that the use of monies from the Housing Fund, as provided for under the Agreement, to assist with the payment of certain City fees due at the time of final inspection of the Affordable Units, is consistent with the objectives of the Redevelopment Plan, is consistent with the Agency's Five Year Implementation Plan adopted by the Agency pursuant to Health and Safety Code Section 33490 and is a fundamental redevelopment purpose.

**Section 2.** The Agency hereby approves and authorizes execution of the Agreement in substantially the form currently on file with the Agency Secretary, subject to any minor, technical, clarifying or conforming changes as the Executive Director of the Agency and Agency Counsel shall approve. The Executive Director and the Agency Secretary are hereby authorized and directed to execute, acknowledge and deliver to the Developer the Agreement, and to take such further actions and execute such documents as are necessary and appropriate to carry out the Agreement on behalf of the Agency, including without limitation funding of the Agency Assistance to pay the City fees, all in accordance with the Agreement.

**Section 3.** The Agency hereby finds and determines that the subordination of the Agency's Affordable Housing Covenant to be recorded against each of the Affordable Units to the lien of a Qualified Buyer's mortgage lender(s) for any permanent mortgage financing obtained by a Qualified Buyer to acquire the Affordable Unit, is necessary because an economically feasible alternative method of financing, refinancing, or assisting the Affordable Units on substantially comparable terms and conditions, but without subordination, is not reasonably available.

The foregoing resolution was introduced at a regular meeting of the Board of Directors of the Newman Redevelopment Agency held on the 26<sup>th</sup> day of July, 2011 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:

ATTEST:

\_\_\_\_\_  
Chairperson Of The RDA

\_\_\_\_\_  
Secretary

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into this 16<sup>th</sup> day of December, 2010 (the "Effective Date"), by and between SCM HEARTHSTONE, LLC, a California limited liability company (hereinafter "Developer" or "Plaintiff"), and the CITY OF NEWMAN, a municipal corporation (hereinafter "City" or "Defendant") in the Superior Court of California, County of Stanislaus, Case Number 650066. The Plaintiff and the Defendant will herein be referred to collectively as "the Parties."

### R E C I T A L S

A. To ensure the timely, efficient, orderly, and proper development of the Project known as Sherman Ranch, on November 12, 2004, Developer and City entered into that certain Development Agreement for the Sherman Ranch development ("Development Agreement"), attached hereto as **Exhibit A** and incorporated herein by this reference, pursuant to which City granted Developer a vested right to develop the Project.

B. Developer has substantially constructed all of the infrastructure and the improvements as agreed to under the terms of the Development Agreement as more particularly enumerated and described in *Exhibit G* to the Development Agreement, entitled "*Reimbursement For Backbone Infrastructure Sherman Ranch*" (the Sherman Ranch Reimbursement Schedule").

C. Section 6.10 of the Development Agreement contemplates that Developer will "*be reimbursed for up-front construction costs of 'Backbone Infrastructure' improvements, beyond Developer's pro rata fair share*" constructed for Sherman Ranch (the "Sherman Ranch Reimbursable Costs").

D. On or about October 7, 2003, Developer and City entered into the First Amendment Subdivision Improvement Agreement Hearthstone Ranch ("Improvement Agreement"), attached hereto as **Exhibit B** and incorporated herein by this reference.

E. Developer has substantially constructed all of the infrastructure and other improvements in Hearthstone Ranch as agreed to under the terms of the Improvement Agreement as more particularly enumerated and described in *Exhibit D* to the Improvement Agreement, entitled *Reimbursement for Backbone Infrastructure* (the "Hearthstone Reimbursement Schedule").

F. Section 17 of the Improvement Agreement contemplates that Developer will be "*reimbursed for up-front construction costs of 'Backbone Infrastructure' improvements, beyond Developer's pro rata fair share*" constructed for Hearthstone Ranch (the "Hearthstone Reimbursable Costs").

G. On May 1, 2007, the Parties entered into a Substitute Reimbursement and Settlement Agreement (the "Reimbursement Agreement"), attached hereto as **Exhibit C** and incorporated herein by this reference, that superseded all outstanding prior reimbursement agreements and obligations related to Hearthstone Ranch or Sherman Ranch (collectively, the "Projects"), including, without limitation, the Hearthstone Reimbursement Schedule and the Sherman Ranch Reimbursement Schedule, and provided the character, methods, and reimbursables of any and all outstanding Hearthstone Reimbursable Costs, Sherman Ranch Reimbursable Costs and any and all other outstanding reimbursement obligations of City due to Developer in relation to the Projects. The Reimbursement Agreement contains a seven year period of reimbursement to Developer that commenced as of May 1, 2007, the Effective Date of the Reimbursement Agreement.

H. As of the Effective Date of this Agreement, Plaintiff contends and City disputes that there are still Hearthstone Ranch Reimbursable Costs and Sherman Ranch Reimbursable Costs that have yet to be paid by the City pursuant to the terms of the Reimbursement Agreement.

I. The Improvement Agreement required Developer to deposit funds with the City for inspection fees in the amount of three percent of the engineers' cost estimate and for plan check fees in the amount of two percent of the engineer's cost estimate. The Plaintiff contends and the City disputes that the City had to hold these fees in trust and any unused balance of these funds was to be refunded to Developer. The City also contends and the Plaintiff disputes that the Reimbursement Agreement conclusively resolves all claims, including those pertaining to inspection and plan check fees.

J. The Development Agreement required Developer to deposit funds with the City for inspection fees in the amount of three percent of the engineer's cost estimate and for plan check fees in the amount of two percent of the engineer's cost estimate. The Plaintiff contends and the City disputes that the fees had to be held in trust and any unused balance of these funds was to be refunded to Developer. The City also contends and the Plaintiff disputes that the Reimbursement Agreement conclusively resolves all claims, including those pertaining to inspection and plan check fees.

K. In accordance with the terms of the Improvement Agreement, Developer deposited \$440,936.07 with City for payment of the inspection and plan check fees for the Hearthstone Ranch Development. In accordance with the terms of the Development Agreement, Developer deposited \$530,152.20 with the City for payment of the inspection and plan check fees for the Sherman Ranch Development. The total deposit for both developments was \$971,088.27 ("Deposited Funds").

L. In accordance with Section 6.08 of the Development Agreement, the City is required to provide cost and supporting documents to verify the inspection services City provided, and the fees it charged, for the Sherman Ranch Development. The City also contends and the Plaintiff disputes that the Reimbursement Agreement conclusively resolves all claims, including those pertaining to inspection and plan check fees.

M. A dispute has arisen between the City and Developer regarding the verification of the inspection and plan check services the City provided and the fees it charged for the Hearthstone Ranch Development and the Sherman Ranch Development.

N. Developer alleges that it made several requests for a refund of the unused balance of the Deposited Funds.

O. On or about July 16, 2009, Developer presented to City, a claim under Government Code section 900 et seq., for loss of revenues, consequential damages and attorneys' fees arising from City's failure to refund to Developer the unused balance of the Deposited Funds.

P. By letter dated July 29, 2009, City gave notice to Developer that the claim was rejected on July 28, 2009.

Q. On January 29, 2010, Developer filed a Complaint against City for Declaratory Relief, Breach of Contract, Unjust Enrichment, Common Counts, Conversion and Breach of Fiduciary Duty (the "Complaint") seeking, among other things, a declaration that Developer was entitled to a refund from the City of the unused balance of the Deposited Funds, an order providing immediate and exclusive possession of the converted funds, damages, and attorney's fees.

R. Without admission or waiver by either party, Developer and City desire to conclusively settle and resolve any and all actual and potential claims and disputes arising out of or concerning the reimbursement of the Hearthstone Ranch Reimbursable Costs, Sherman Ranch Reimbursable Costs and the Deposited Funds.

NOW, THEREFORE, the Parties to this agreement do hereby agree, voluntarily, and with the advice of counsel, as follows:

1. Dismissal of Complaint. Developer shall file a Request for Dismissal to dismiss the Complaint, with prejudice as provided in Section 2, below. If the court requires dismissal before the amendment to the Development Agreement becomes effective pursuant to Section 2 or an amendment of the Development Agreement does not occur within twelve (12) months of execution of this Agreement, Developer shall file a Request for Dismissal, without prejudice, and the Parties will cooperate in executing a Tolling Agreement to preserve any and all of Developer's causes of action in the Complaint as well as the City's defenses.

2. Development Agreement. The City shall, in good faith, process and consider an amendment to the Development Agreement consistent with the provisions of this Section 2. The amendment to the Development Agreement shall comply with the amendment provisions of the Development Agreement and the California development agreement statutes (Government Code Section 65864 et seq.). Developer shall bear the application fee related to amendment of the Development Agreement.

2.1 Term. The parties hereby mutually agree to use best efforts to extend the term of the Development Agreement for an additional three (3) years. The term of the Development Agreement shall commence upon the Effective Date of the Development Agreement, November 12, 2004, and shall extend thirteen (13) years from the Effective Date of the Development Agreement or until the "Project Buildout," as defined in the Development Agreement, whichever is earlier.

2.2 Provisions. The terms and provisions of the proposed amendment to the Development Agreement shall be in the form attached hereto as **Exhibit D**. The extension of the term of the Development Agreement and the amendment of the terms and provisions of the Development Agreement collectively shall be referred to as the "Amendment." City staff, in good faith, shall recommend adoption of the Amendment to the City Planning Commission within sixty (60) days of Developer filing a complete application requesting such amendment, and shall recommend approval at the next available City Council meeting following the Planning Commission recommendation.

### 2.3 Dismissal of Complaint.

2.3.1 Amendment Successful. If the Amendment is successfully adopted by the Planning Commission and the City Council within twelve (12) months of execution of this Agreement, then Developer shall, within ten (10) calendar days following the passage of the referendum period as provided for in subsection (ii) below, dismiss the Complaint with prejudice subject to the following conditions:

(i). The ordinance approving and adopting the Amendment shall have become effective due to the passage of thirty (30) days after enactment of the ordinance as provided in Government Code Section 36937; and

(ii) The ordinance has not been challenged by referendum within the applicable time periods permitted by law.

2.3.2 Amendment Unsuccessful. If the Amendment is not adopted by the Planning Commission and the City Council, for any reason, within twelve (12) months of execution of this Agreement, Developer shall not be required to dismiss the Complaint. Both parties shall retain all rights, claims and defenses they otherwise would have in the Complaint.

2.4 Parties Rights and Obligations. The provisions of this Agreement with the exception of Section 5, shall only become effective upon successful amendment of the Development Agreement and dismissal of the Complaint as provided in this Section 2. Section 5 shall become effective immediately upon execution of this Agreement. Should the Amendment not be successfully adopted with 12 months of execution of this Agreement, Section 5 shall be null and void.

3. Fee Offsets. City agrees that it shall establish a Fee Offset Fund, as set forth herein.

3.1 Fee Offset Fund. City agrees that it shall reserve an amount equal to TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) ("Fee Offset Fund") to be used to pay for a portion of certain City fees, as specified in **Exhibit E** of this Settlement Agreement, for the Sherman Ranch Development, and as such fees may be adjusted for inflation by City. ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) of the Fee Offset Fund shall consist of federal HOME funds allocated to City (the "HOME Fee Offset Fund") and ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) of the Fee Offset Fund (the "Agency Fee Offset Fund") shall consist of funds from the Low and Moderate-Income Housing Fund of the Redevelopment Agency of the City of Newman (the "Agency"). The sole purpose of the Fee Offset Fund is to pay for City fees due at the time of final inspection for those housing units (the "Affordable Units") being sold to Qualified Buyers, as defined below.

The Sherman Ranch Development consists of three models of housing development: (i) the "Classics" homes are low-density units; (ii) the "Heritage" homes are medium-density units; and (iii) the "Villas" homes are high-density units. The HOME Fee Offset Fund shall only be used to pay the fees for up to twelve (12) units within the Villas development. The Agency Fee Offset Fund may be used to pay the fees for units within either the Classics or Heritage developments. The City's obligation to maintain the Fee Offset Fund, in whole or in part, for the uses specified in this Section 2.1 shall terminate upon the earlier of (i) the use of all monies in the Fee Offset Fund; or (ii) December 31, 2013. The City may, in its sole discretion, request that the Agency provide additional funds to be deposited in the Agency Fee Offset Fund, prior to December 31, 2013, so that additional Affordable Units may be sold to Qualified Buyers.

3.2 Qualified Buyers. A Qualified Buyer shall be a person or family of low or moderate income, as defined in Health and Safety Code section 50093, as may be adjusted by the California Department of Housing and Community Development ("HCD"). For purposes of this Settlement Agreement, "area median income" shall mean the median income for households in Stanislaus County, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD"). A 2010 schedule of low and moderate income limits for Stanislaus County is attached hereto as **Exhibit F** and incorporated herein by this reference.

The City's obligation to use the Fee Offset Fund shall be expressly conditioned upon the City receiving from Developer evidence reasonably satisfactory to City certifying the income level of any proposed Qualified Buyer, and that the proposed sales price of any Affordable Unit does not exceed the affordable housing cost, as defined by Health and Safety Code section 50052.5, for such Qualified Buyer. The maximum sales prices of any Affordable Unit to a Qualified Buyer must comply with the regulations promulgated by HCD.

3.3 Payment of Fees. City shall pay to Developer, upon the sale of each Affordable Unit to a Qualified Buyer, the amount of fees attributable to such Affordable Unit from either the HOME Fee Offset Fund or the Agency Fee Offset Fund, as the case may be. Such payment may be made either directly to Developer, upon the close of escrow, or through escrow, as the parties may determine.

3.4 Recorded Covenants. Developer covenants and agrees that the deed for each Affordable Unit for which the City has paid fees from the Fee Offset Fund shall include the following nondiscrimination provision:

"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, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code 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."

In addition, any Affordable Unit for which money from the HOME Fee Offset Fund has been used to pay City fees shall have recorded against it such covenants as may be required by HCD and/or HUD.

4. First Time Home Buyer Down Payment Assistance. Subject to available funds from third parties and at no expense to the City, City shall make available funds in First Time Home Buyer ("FTHB") down payment assistance for Qualified Buyer's who purchase a home on a lot identified on **Exhibit G**, Section C (Heritage Lots) and Section D (Villas Lots). All allocations of FTHB down payment assistance shall be subject to compliance with the City's program requirements in effect at the time a Qualified Buyer applies for such funds, including that funds cannot be set aside and are applied on a first come, first serve basis.

5. Building Permits.

5.1 Applications. For all building permit applications submitted by Developer to the City on or prior to December 31, 2010, for any of the lots identified on **Exhibit G** (Sections A-D), attached hereto and incorporated herein by this reference, the City hereby agrees that such application shall be valid for two years. For purposes of applying building standards, conditions, and/or regulations, and/or permit fees, a building permit shall be deemed effective upon the application date. Any failure of Developer to pursue an application, once filed, shall not be grounds for revocation by abandonment under the California Building Code.

5.2 Timing of Payment of Fees. For purposes of applying permit fees for the lots identified on Exhibit G, all fees identified on Exhibit F of the Development Agreement that are due and payable at the time a building permit is issued shall be due and payable as stated on **Exhibit H**.

5.3 Indemnity. Developer agrees to defend, indemnify and hold City harmless from any and all claims, costs and liabilities as a result of any legal action or proceeding brought against the City arising from, or in anyway relating to, Section 5 of this Agreement.

6. Reimbursement Agreement.

6.1 Term. The parties hereby amend the term of the Reimbursement Agreement for an additional three (3) years. The term of the Reimbursement Agreement shall commence upon the Effective Date of the Reimbursement Agreement, May 1, 2007, and shall extend ten (10) years from the Effective Date of the Reimbursement Agreement.

6.2 Provisions. The parties hereby mutually agree to amend the Reimbursement Agreement as set forth on **Exhibit I**, attached hereto and incorporated herein by this reference. The amendment shall become effective upon successful amendment to the Development Agreement as stated in Section 2.4.

7. Sales Office Use Permit. The City agrees to process in good faith, at Developer's request and expense, three consecutive extensions of one year each of the use permit for the Sherman Ranch sales office.

8. Representation. The Parties are represented in the preparation of this Settlement Agreement by legal counsel of their own choosing. Developer is represented by Neumiller & Beardslee by and through Clifford W. Stevens. City is represented by Abbott & Kindermann, LLP by and through William W. Abbott. The Parties represent that they have read this Settlement Agreement and that they are fully aware of its content and its legal effect.

9. Indemnification. The parties, and each of them, represent that there has been no assignment, sale, transfer, or disposition of any interest in any claim or demand which is the subject matter of this Settlement Agreement, and the Parties agree to indemnify and hold each other harmless and free from any liability, demands, damages, costs, expenses, and attorneys' fees incurred by such other party hereto as a result of any assertion by anyone of any such assignment, sale, or other transfer or disposition of any such claim or demand.

The Parties, and each of them, will indemnify and hold each other harmless from any claims asserted against the other as a result of or in connection with any action or proceeding brought by them or prosecuted for their benefit contrary to the provisions of this Agreement and except as to any rights specifically reserved herein. The Parties further agree that in the event of a dispute or any legal action taken to enforce the terms of this Agreement, the prevailing party in such dispute or legal action shall be entitled to reasonable attorneys' fees, subject to Section 13 below.

10. Mediation and Arbitration of Disputes. The Parties agree to mediate any dispute or claim arising between them out of this Agreement or any resulting transaction before resorting to arbitration.

10.1 *Mediation.* In the event that a dispute arises that cannot be settled by the Parties within 30 days, the parties agree to submit the dispute to a mediator within fourteen days thereafter to resolve the dispute. Mediation fees, if any, shall be divided equally among the parties involved. If any party commences an arbitration or court action based on a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such arbitration or court action.

10.2 *Arbitration.* The Parties agree that any dispute or claim in law or equity arising between them out of this Agreement or any resulting transaction which is not settled through mediation, shall be decided by neutral, binding arbitration and not by court action. The arbitration shall be conducted by a retired judge or justice, or an attorney with not less than five (5) years substantial experience with real estate law, unless the Parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure section 1283.05.

  
Plaintiff

\_\_\_\_\_  
Defendant

10.3 *Effective Upon Amendment to Development Agreement.* This Section 10 shall not take effect until amendment of the Development Agreement as described in Section 2 of this Agreement.

11. No admissions. It is understood and agreed that this is a compromise and settlement of disputed claims, that the execution of this Settlement Agreement shall not constitute or be deemed or construed as an admission of liability on the part of any of the Parties. This Agreement may not be introduced in any court for purposes of demonstrating admission of liability.

12. Attorneys Fees and Costs. Each party to this Agreement shall bear its own costs, including attorneys' fees and expenses, incurred in the preparation and review of this Agreement.

13. Severability. In the event that any provisions of this Agreement, or any portion thereof, is held by a court of competent jurisdiction to be unenforceable or invalid, the validity and enforceability of the enforceable portions of any such provisions and of remaining provisions shall not be adversely affected.

10. Mediation and Arbitration of Disputes. The Parties agree to mediate any dispute or claim arising between them out of this Agreement or any resulting transaction before resorting to arbitration.

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\_\_\_\_\_  
Plaintiff

MBN  
Defendant

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13. Severability. In the event that any provisions of this Agreement, or any portion thereof, is held by a court of competent jurisdiction to be unenforceable or invalid, the validity and enforceability of the enforceable portions of any such provisions and of remaining provisions shall not be adversely affected.

14. Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

- Exhibit "A": Development Agreement
- Exhibit "B": Improvement Agreement
- Exhibit "C": Reimbursement Agreement
- Exhibit "D": Amendment of Development Agreement
- Exhibit "E": Fee Offset Fund
- Exhibit "F": 2010 Stanislaus County Income Limits
- Exhibit "G": Lots Subject to Agreement
- Exhibit "H": Timing of Payment of Fees
- Exhibit "I": Amendment to Reimbursement Agreement

15. Miscellaneous.

15.1 The persons executing this Agreement on behalf of each party hereby represent and warrant that they have been duly authorized to do so.

15.2 This Agreement shall inure to the benefit of the Parties and each of them, and their agents, representatives, heirs, partners, directors, officers, attorneys, employees, servants, affiliates, subsidiaries, stockholders, predecessors, successors and assigns, if any.

15.3 This Agreement and any other documents referred to herein shall in all respects be interpreted, enforced and governed by and under the internal laws of the State of California. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties.

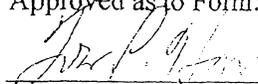
15.4 If any judicial or quasi-judicial proceeding is brought to enforce this Agreement or any provision hereof, the successful or prevailing Party in such proceeding shall be entitled to reasonable costs and attorneys' fees in addition to any other relief to which it may be entitled.

15.5 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, agreements or correspondence, whether written or oral. This Agreement may not be altered or amended except by an instrument in writing executed by all of the Parties hereto.

15.6 This Settlement Agreement may be executed in counterpart which when so executed shall be deemed an original, and this Settlement Agreement and all its signed counterparts shall constitute one in the same instrument.

WHEREFORE, the undersigned have executed this Agreement.

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

CITY

CITY OF NEWMAN, a municipal  
corporation

By \_\_\_\_\_  
City Manager

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

Approved as to Form:

NEUMILLER & BEARDSLEE

DEVELOPER

SCM Hearthstone, LLC

By: \_\_\_\_\_  
Clifford W. Stevens  
Attorneys for Developer

By: \_\_\_\_\_  
Steve C. Mothersell, Sr.  
President

WHEREFORE, the undersigned have executed this Agreement.

Approved as to Form:

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\_\_\_\_\_  
City Attorney

CITY OF NEWMAN, a municipal  
corporation

By \_\_\_\_\_  
City Manager

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

Approved as to Form:

DEVELOPER

NEUMILLER & BEARDSLEE

SCM Hearthstone, LLC

By:   
\_\_\_\_\_  
Clifford W. Stevens  
Attorneys for Developer

By: \_\_\_\_\_  
Steve C. Mothersell, Sr.  
President

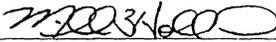
WHEREFORE, the undersigned have executed this Agreement.

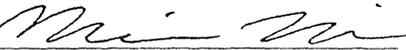
Approved as to Form:

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\_\_\_\_\_  
City Attorney

CITY OF NEWMAN, a municipal  
corporation

By   
City Manager

By   
City Clerk

Approved as to Form:

DEVELOPER

NEUMILLER & BEARDSLEE

SCM Hearthstone, LLC

By: \_\_\_\_\_  
Clifford W. Stevens  
Attorneys for Developer

By: \_\_\_\_\_  
Steve C. Mothersell, Sr.  
President

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City Attorney

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corporation

By \_\_\_\_\_  
City Manager

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

Approved as to Form:

DEVELOPER

NEUMILLER & BEARDSLEE

SCM Hearthstone, LLC

By: \_\_\_\_\_  
Clifford W. Stevens  
Attorneys for Developer

By:  \_\_\_\_\_  
Steve C. Mothersell, Sr.  
President *Rec.*

**AGENCY FUNDING AGREEMENT**  
**By and Between**  
**NEWMAN REDEVELOPMENT AGENCY**  
**and**  
**SCM HEARTHSTONE, LLC**

This Agency Funding Agreement (the "Agreement") is entered into as of \_\_\_\_\_, 2011, by and between the NEWMAN REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency"), and SCM HEARTHSTONE, LLC, a California limited liability company (the "Developer"), with reference to the following facts:

A. The Agency is a community redevelopment agency, established under the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (the "CRL"), and is carrying out the Redevelopment Plan ("Redevelopment Plan") for the Newman Redevelopment Project (the "Redevelopment Project"). As required under the CRL, the Agency has set aside a portion of the tax increment revenues allocated to the Agency from the Redevelopment Project Area in a separate Low and Moderate Income Housing Fund (the "Housing Fund"), to be used to increase, improve and preserve the community's supply of low and moderate income housing.

B. Developer is in the process of developing certain real property located in the City of Newman, County of Stanislaus, State of California, as more particularly described in Exhibit A (the "Property") as part of a larger subdivision known as the Sherman Ranch Development. Developer intends to construct on the Property low density residential units, generally referred to as the "Classics" Development, and medium-density residential units, generally referred to as the "Heritage" Development (all, collectively, the "Units", and individually a "Unit"). Pursuant to a Settlement Agreement between the City of Newman ("City") and Developer, dated December 16, 2010 (the "Settlement Agreement"), the Agency will use a portion of its Housing Fund, in the amount set forth below in this Agreement, to assist Developer with payment of City fees due at the time of final inspection for a portion of the Units (as further defined below, the "Affordable Units"), which Affordable Units shall be sold to qualified low income persons and families, as more fully set forth below. The construction of the Classics and Heritage Units will be referred to as the "Development" in this Agreement.

C. The Housing Fund monies are being made to assist with financing the City fees portion of the development costs associated with the Affordable Units in order to help achieve financial feasibility and to increase the supply of affordable housing in the community.

NOW, THEREFORE, the Parties agree as follows:

**ARTICLE 1 DEFINITIONS AND EXHIBITS**

**Section 1.1 Definitions.**

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) “Affordable Housing Covenant” shall mean the Affordable Housing Covenant to be executed by the Agency and the Developer and recorded against the Property, in the form of the attached Exhibit B.

(b) “Affordable Units” shall mean those Units to be sold to Qualified Buyers, and which shall be subject to the Affordable Housing Covenant.

(c) “Agency” shall mean the Newman Redevelopment Agency, a public body, corporate and politic, organized and existing under the CRL.

(d) “Agreement” shall mean this Agency Funding Agreement.

(e) “Approved Lender” shall mean the bank, mortgage company, financial institution or other holder of a deed of trust recorded against an Affordable Unit, approved by the Agency.

(f) “CRL” shall mean the California Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.*

(g) “City” shall mean the City of Newman, a municipal corporation.

(h) “City Fees” shall have the meaning set forth in Section \_\_\_ below.

(i) “Default” shall have the meaning set forth in Section 6.1 below.

(j) “Developer” shall mean SCM Hearthstone, LLC, a California limited liability company.

(k) “Development” shall mean the Property and the residential Units to be constructed and maintained thereon as part of the Classics and Heritage Developments, including without limitation the Affordable Units and attendant site improvements serving the Units.

(l) “Hazardous Materials” shall have the meaning set forth in Section 4.5 below.

(m) “Hazardous Materials Claim” shall have the meaning set forth in Section 4.5 below.

(n) “Hazardous Materials Law” shall have the meaning set forth in Section 4.5 below.

(o) “Housing Funds” shall mean monies from the Agency’s Low and Moderate Income Housing Fund, in the amount set forth below, to be disbursed on behalf of the Developer pursuant to Section 2.1 hereof, to pay the City Fees associated with the Affordable Units.

(p) “Loan Documents” shall mean, collectively, this Agreement, the Affordable Housing Covenant and the Notice of Affordability Restrictions.

(q) “Notice of Affordability Restrictions” shall mean the Notice of Affordability Restrictions on Transfer of Property, to be executed by the Agency and Developer and recorded

against the Property in compliance with Health and Safety Code Section 33334.3(f)(3), in the form of the attached Exhibit C.

(r) "Parties" shall mean the Agency and Developer.

(s) "Property" shall mean the real property consisting of approximately \_\_\_\_\_ acres of undeveloped land, located generally \_\_\_\_\_, in the City of Newman, County of Stanislaus, California, and more particularly described in the attached Exhibit A.

(t) "Settlement Agreement" shall have the meaning set forth in Recital B.

(u) "Term" shall mean the term of the Affordable Housing Covenant, commencing on the date of this Agreement and continuing for forty-five (45) years from the date of the Affordable Housing Covenant.

(v) "Transfer" shall have the meaning set forth in Section 4.12 below.

(w) "Unit" means one of the residential units to be constructed on the Property as part of the Classics and/or Heritage Developments.

### **Section 1.2 Exhibits**

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Form of Affordable Housing Covenant

EXHIBIT C: Form of Notice of Affordability Restrictions

## **ARTICLE 2 HOUSING FUNDS; AFFORDABLE UNITS**

### **Section 2.1 Housing Funds.**

The Agency shall provide financial assistance to the Developer in the total amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) (the "Housing Funds") from the Agency's Low and Moderate Income Housing Fund. The Housing Funds shall be used to pay Developer for those City fees that are due at the time of final inspection for the Affordable Units to be sold to Qualified Buyers, as more fully described in the Settlement Agreement (the "City Fees"). The Housing Funds shall not be used for any other purpose without the prior express written consent of the Agency.

The Housing Funds shall be reserved in a separate Fee Offset Fund, and the Agency shall pay, or cause to be paid, to the Developer, upon the sale of each Affordable Unit to a Qualified Buyer, the amount of City Fees attributable to such Affordable Unit. Such payment may be made either directly to Developer, upon the close of escrow for sale to a Qualified Buyer, or

through escrow, as the parties may determine; provided all of the following conditions have been satisfactorily completed:

- (i) Developer has executed and delivered this Agreement to the Agency, and this Agreement has been approved and executed by the Agency, and is in full force and effect;
- (ii) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement or the Settlement Agreement;
- (iii) The Developer has obtained all approvals and permits required for, and completed construction of the applicable Affordable Unit, and obtained a certificate of occupancy from the City for such Affordable Unit;
- (iv) Developer has provided to the Agency all evidence and documents reasonably requested by the Agency to determine that the purchaser(s) of the Affordable Unit meet the qualifications of and are Qualified Buyers in accordance with this Agreement;
- (v) Developer and the Qualified Buyers have completed all acts and executed and delivered all documents required for, and are ready to close or have closed escrow for the sale of the Affordable Unit to the Qualified Buyer;
- (vi) The Developer has delivered to the Agency evidence of the amount of City Fees paid by the Developer as applicable to the Affordable Unit;
- (vii) Developer shall have executed in recordable form and delivered to the Agency the Affordable Housing Covenant and the Notice of Affordability Restrictions, and the Affordable Housing Covenant and Notice of Affordability Restrictions shall be recorded against the Affordable Unit prior to or concurrently with delivery of payment of the applicable Housing Funds to Developer, and prior to close of escrow for sale of the Affordable Unit to a Qualified Buyer; and
- (viii) The Qualified Buyer shall have executed and delivered to the Agency the Disclosure Statement (Exhibit B to the Affordable Housing Covenant).

## **Section 2.2 Affordable Units.**

Pursuant to the Settlement Agreement, the Agency, in cooperation with the City, will provide the Housing Funds to pay the City Fees for a portion of the Units to be developed on the Property. Each Unit for which Housing Funds are used to pay for all or any portion of the City Fees applicable to such Unit shall be designated as an Affordable Unit, and shall be sold to a Qualified Buyer (as defined below) at an Affordable Housing Cost (as defined below). The Developer may designate which of the Units shall be designated and sold as Affordable Units.

The parties anticipate that, given the amount of the Housing Funds provided under this Agreement and the estimated City Fees applicable to individual Units, up to twelve (12) of the Units may be designated and sold as Affordable Units; provided, however, the actual number of Affordable Units provided in the Classics and Heritage Developments will depend on the model

and size of the Units that are designated by the Developer as Affordable Units, and the amount of City Fees paid by the Developer for such Units.

As used herein:

"Affordable Housing Cost" shall be as defined in and adjusted for family size in accordance with Health and Safety Code Section 50052.5 or any successor statute thereto. If the statute is no longer in effect and no successor statute is enacted, the Agency shall establish the Affordable Housing Cost for purposes of this Agreement.

"Qualified Buyer" shall mean a low income household, and include a person or household whose annual gross income does not exceed 80% of the Median Income, as defined below (which percentage shall be adjusted as provided in Title 25, Section 6932 of California Code of Regulations). Each Qualified Buyer shall occupy the Affordable Unit as its principal place of residence.

"Median Income" shall mean the area-wide median gross yearly income in Stanislaus County, adjusted for household size appropriate to the unit, as established from time to time by the U.S. Department of Housing and Urban Development ("HUD"), or by the California Department of Housing and Community Development ("HCD") if HUD ceases to establish such income standards. In the event that neither HUD nor HCD are establishing such income standards, or such income standards have not been updated for a period of at least 18 months, the Agency shall provide Developer (or subsequent owner) with income standards which are determined in a manner reasonably similar to the methods of calculation previously used by HUD or HCD.

The income levels and maximum housing cost of each Qualified Buyer must comply with the regulations promulgated by the California Department of Housing and Community Development sections 6910-6932 of Title 25 of the California Code of Regulations (to the extent applicable).

Prior to any proposed sale or other transfer of an Affordable Unit, the Developer (or Qualified Buyer or subsequent owner, as applicable of the Affordable Unit) shall submit to the Agency a copy of the prospective purchaser's/transferee's income certification and a list of all assets owned by the prospective purchaser/transferee or other financial information in a form approved by the Agency along with the income certification to be provided to any lender making a loan on the Affordable Unit, together with the sale price of the Affordable Unit and evidence that the sale will be at an Affordable Housing Cost. The Agency may require documentation evidencing and supporting the income and other financial information contained in the certifications. Within ten (10) business days from receipt of the income certifications, the Agency shall render a decision of eligibility or noneligibility. If the prospective purchaser/transferee does not qualify as a Qualified Buyer, the Agency shall notify the Developer (or owner, as applicable) and the Developer (or owner, as applicable) shall be obligated to locate another purchaser/transferee who qualifies as a Qualified Buyer. The requirements of, and the information to be provided to the Agency under, this Section 1.2 are separate from and in addition to any requirements or information required to be provided for permanent loan financing from any lender to be secured by the prospective purchaser for the

purchase of the Affordable Unit. The Agency may designate another governmental entity or nonprofit organization to qualify prospective purchasers as a Qualified Buyer. Any attempt by Developer (or a Qualified Buyer or any subsequent owner) to transfer title or any interest therein of an Affordable Unit in violation of the Affordable Housing Covenant shall be void and deemed a prohibited transfer.

In designating a Qualified Buyer, the Developer shall be responsible for:

1. Providing complete disclosure to each Qualified Buyer of the terms and conditions for its purchase of an Affordable Unit (including without limitation the 45-year resale restrictions to be recorded against such Affordable Unit). All such disclosure materials shall be in a form provided and approved by the Agency.
2. Verifying income and other eligibility criteria of prospective borrowers and maintaining required documentation of eligibility in accordance with all applicable federal, state and local laws, regulations and policies; and
3. Facilitate the signature of loan documentation, including all disclosure forms and other materials, all in the form provided and approved by the Agency.

### **Section 2.3 Affordable Housing Covenant**

An Affordable Housing Covenant containing owner occupancy and resale covenants and restrictions ("**Affordable Housing Covenant**") establishing the criteria for resale of the Affordable Units to Qualified Buyers, and a Notice of Affordability Restrictions on Transfer of Property ("**Notice of Affordability Restrictions**") shall be recorded against each of the Affordable Units upon completion of each of the Affordable Units and prior to close of escrow for conveyance of an Affordable Unit by the Developer to a Qualified Buyer. Each Affordable Unit shall remain affordable for not less than forty-five (45) years from the date of the Affordable Housing Covenant applicable to such Affordable Unit. The Affordable Housing Covenant shall be in substantially the form attached hereto as Exhibit B; the Notice of Affordability Restrictions shall be in substantially the form attached hereto as Exhibit C.

In connection with the close of escrow for each Affordable Unit, each Qualified Buyer shall execute a Disclosure Statement in the form attached as Exhibit B to the Affordable Housing Covenant (Exhibit B hereto).

If the Qualified Buyer sells the Affordable Unit prior to the expiration of the forty-five (45) year period, any subsequent purchaser approved by the Agency shall be subject to the Affordable Housing Covenant pursuant to its terms. The Agency agrees to subordinate the Affordable Housing Covenant to the lien of the Qualified Buyer's mortgage lender(s) for any permanent mortgage financing obtained by a Qualified Buyer to acquire the Affordable Unit.

## ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT

### Section 3.1 Permits and Approvals.

Before commencement of construction of any improvements or other works of improvement upon the Property, Developer shall, at its expense, secure or cause to be secured any and all land use and other entitlements, including but not limited to all permits and approvals which may be required by the Agency and any other governmental agency affected by such construction or work, and including any additional environmental review documentation and analysis under the California Environmental Quality Act (“CEQA”) or the National Environmental Protection Act (“NEPA”) that may be required for the Housing Project. Agency staff will work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all necessary permits, entitlements and approvals. However, the execution of this Agreement does not constitute the granting of, or a commitment to obtain, any required land use permits, entitlements or approvals required by the Agency or City.

### Section 3.2 Construction of Project.

(a) The Property, and each of the Affordable Units, shall be developed as generally established in the construction plans, drawings and related documents and specifications approved by the City through its normal plans check and approvals process.

(b) The Developer shall commence and complete construction of the Development in accordance with any schedule and phasing plans that may be approved by the Agency.

### Section 3.3 Prevailing Wages.

(a) Developer shall cause all work performed in connection with the Development to be performed in compliance with (i) all applicable laws, ordinances, rules and regulations of federal, state, city or municipal governments or agencies now in force or that may be enacted hereafter; (ii) if applicable, the wage provisions of the federal Davis-Bacon Act, and implementing rules and regulations, (iii) the HUD quality standards set out in 24 CFR 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 CFR 39, and (iv) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Developer shall be responsible to the Agency for the procurement and maintenance thereof, as may be required of Developer and all entities engaged in work on the Development.

(b) To the extent it is determined applicable, Developer shall and shall cause the contractor and subcontractors to pay prevailing wages (residential wage rates) in the construction of the improvements on the Property, as those wages are determined pursuant to Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations. In such event, Developer shall and shall cause its contractor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. Developer shall

indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations in connection with construction of the improvements or any other work undertaken in connection with the Development. The foregoing indemnity shall survive any termination of this Agreement

**Section 3.4 Equal Opportunity.**

During the construction of the Development there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

**Section 3.5 Progress Reports.**

The Developer shall provide the Agency with periodic progress reports as and when requested by the Agency regarding the status of the construction and designation of the Affordable Units.

**Section 3.6 Construction Responsibilities.**

The Developer shall be solely responsible for all aspects of Developer's conduct in connection with the development of the Units, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the Agency with reference to the Units is solely for the purpose of determining whether Developer is properly discharging its obligations to the Agency, and should not be relied upon by Developer or by any third parties as a warranty or representation by the Agency as to the quality of the design or construction of the Units.

**Section 3.7 Inspections.**

Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Housing Project by the Agency and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

**ARTICLE 4 FUNDING PROVISIONS**

**Section 4.1 Information.**

Developer shall provide any information reasonably requested by the Agency in connection with the Development, including (but not limited to) any information and reports required in connection with the Agency's use of the Housing Funds.

#### **Section 4.2 Records.**

(a) Developer shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the Agency to inspect and copy records. Such records shall include all invoices, receipts, and other documents related to expenditures from the Housing Funds. Records must be kept accurate and current.

(b) The Agency shall notify Developer of any records it deems insufficient. Developer shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the Agency in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Developer shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

#### **Section 4.3 Audits.**

Developer shall make available for examination at reasonable intervals and during normal business hours to Agency all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit Agency to audit, examine, and make excerpts or transcripts from such records. Agency may make audits of any conditions relating to this Agreement.

#### **Section 4.4 Housing Fund Requirements.**

Developer shall comply with all applicable laws and regulations governing the use of the Housing Funds, including but not limited to the requirements of the Affordable Housing Covenant. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the Housing Funds, the applicable laws and regulations shall govern.

#### **Section 4.5 Hazardous Materials.**

(a) Developer shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Developer shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential property of this type.

(b) Developer shall immediately advise the Agency in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Developer or the Property pursuant

to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Developer or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The Agency shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer. Developer shall indemnify and hold harmless the Agency and its board members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the Agency in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

(d) Without the Agency's prior written consent, which shall not be unreasonably withheld, Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Agency's reasonable judgment, impair the value of the Agency's security hereunder; provided, however, that the Agency's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the Agency's consent before taking such action, provided that in such event Developer shall notify the Agency as soon as practicable of any action so taken. The Agency agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Developer will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Developer establishes to the reasonable satisfaction of the Agency that there is no reasonable alternative to such remedial action which would result in less impairment of the Agency's security hereunder; or (iv) the action has been agreed to by the Agency.

(e) Developer hereby acknowledges and agrees that (i) this Section is intended as the Agency's written request for information (and Developer's response) concerning the

environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an “environmental provision” for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Property is determined to be “environmentally impaired” (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an “affected parcel” (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Agency's or the trustee's rights and remedies under the Deed of Trust, the Agency may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Developer to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Agency's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Developer shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Developer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Agency in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Agency upon its demand made at any time following the conclusion of such action.

#### **Section 4.6 Maintenance and Damage.**

(a) During the course of both construction and operation of the Development, Developer shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Developer has not cured such condition within thirty (30) days after receiving an Agency notice of such a condition, then in addition to any other rights available to the Agency, the Agency shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of Approved Lenders and Developer's investors, and if economically feasible in the Agency's reasonable judgment after consultation with the Developer, if any improvement now or in the future on the Property is damaged or destroyed, then Developer shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the Agency with such changes as have been approved by the Agency. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the

Agency in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then Developer shall make up the deficiency.

**Section 4.7 Fees and Taxes.**

Developer shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Developer, and shall pay such charges prior to delinquency. However, Developer shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the Agency, Developer deposits with the Agency any funds or other forms of assurance that the Agency in good faith from time to time determines appropriate to protect the Agency from the consequences of the contest being unsuccessful.

**Section 4.8 Notice of Litigation.**

Developer shall promptly notify the Agency in writing of any litigation materially affecting Developer or the Property and of any claims or disputes that involve a material risk of such litigation.

**Section 4.9 Nondiscrimination.**

The Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (except as permitted under fair housing laws for senior housing developments), in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developer or any person claiming under or through the Developer 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 Property. The foregoing covenant shall run with the land.

**Section 4.10 Transfer.**

(a) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Developer retains title. The term "Transfer" shall include any transfer of ownership or management of the Development, or transfer of control of the Developer. "Transfer" shall exclude the sale of individual Units to buyers, including sale of Affordable Units to Qualified Buyers in compliance with the Affordable Housing Covenant.

(b) The rights and interest of the Developer under this Agreement are personal to the Developer, and shall not be sold, assigned or otherwise transferred to any other person or entity without the prior written consent of the Agency.

(c) In the event of any Transfer hereunder, this Agreement may be terminated by the Agency, and the Agency shall have no obligation to disburse the Housing Funds, or any portion thereof not previously disbursed in accordance with this Agreement.

#### **Section 4.11 Insurance Requirements.**

The Developer shall maintain the following insurance coverage throughout the Term of this Agreement, subject to requirements of senior Approved Lenders and Developer's investors:

(a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage.

(b) Comprehensive General Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Developer does not possess or acquire company owned automobiles, the "Owned" Automobile Liability Coverage is not required.

(d) Property insurance covering the Development, in a form appropriate for the nature of such property and any improvements, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the Agency, naming the Agency as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

The Developer shall cause any general contractor, agent, or subcontractor working on the Development to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for comprehensive general liability insurance for subcontractors shall be One Million Dollars (\$1,000,000), and shall require that such insurance shall meet all of the general requirements of subsections (f), (g), and (h) below, including, without limitation, the requirement of subsection (g). Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insureds the Agency, its officers, agents, employees and members of the Agency Board.

(e) The required insurance shall be provided under an occurrence form, and Developer shall maintain the coverage described in subsections (a) through (d) continuously during the term of this Agreement. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or

legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(f) Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as an additional insured the Agency and its officers, agents, employees and members of the Agency Board.

(g) All policies and bonds shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the Agency.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

### Section 5.1 Representations and Warranties.

Developer hereby represents and warrants to the Agency as follows:

(a) Organization. Developer is a duly organized limited liability company, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Affordable Housing Covenant and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement, the Affordable Housing Covenant, the Notice of Affordability Restrictions and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Affordable Housing Covenant, and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Affordable Housing Covenant, and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Affordable Housing Covenant or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of

any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Developer, materially affect Developer's ability to carry out its obligations under this Agreement.

## ARTICLE 6 DEFAULT AND REMEDIES

### Section 6.1 Events of Default.

Each of the following shall constitute a "Default" by Developer under this Agreement:

(a) Failure to Construct. Failure of Developer to commence and complete construction of the Development within the times provided for in any City approvals for the Development;

(b) Breach of Covenants. Failure by Developer to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Agreement or the Affordable Housing Covenant, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Agency to the Developer or, if the breach cannot be cured within thirty (30) days, the Developer shall not be in breach so long as Developer is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(c) Default Under Other Loans. A default is declared under any other loan secured by the Development which is not cured within any applicable notice or cure period.

(d) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Developer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Developer or seeking any arrangement for Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Developer, if any such decree or order described in clauses (i) to (iv),

inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) Developer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.

(e) Assignment; Attachment. Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution.

(f) Suspension; Termination. Developer shall have voluntarily suspended its business or the corporation or partnership, as the case may be, shall have been dissolved or terminated.

(g) Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the Agency) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of any loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the Agency.

(h) Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development.

(i) Unauthorized Transfer. Any Transfer not previously approved in writing by the Agency.

(j) Representation or Warranty Incorrect. Any Developer representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Agency in connection with this Agreement, proving to have been incorrect in any material respect when made. After issuance of the certificates of occupancy for the Development, Default may be declared under this subsection only if the failure of representation or warranty also has a material adverse effect on the operation of the Development.

## **Section 6.2 Remedies.**

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Agency or automatically where so specified, relieve the Agency of any obligation to make or continue funding of the Housing Funds and shall give the Agency the right to proceed with any and all remedies set forth in this Agreement and the Affordable Housing Covenant, including but not limited to the following:

(a) Specific Performance. The Agency shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Developer to perform its obligations and covenants under this Agreement and the Affordable Housing Covenant or to enjoin acts on things that may be unlawful or in violation of the provisions of the this Agreement or the Affordable Housing Covenant.

(b) Right to Cure at Developer's Expense. The Agency shall have the right (but not the obligation) to cure any monetary default by Developer under a loan. The Developer agrees to reimburse the Agency for any funds advanced by the Agency to cure a monetary default by Developer upon demand therefore, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

### **Section 6.3 Right of Contest.**

Developer shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Agency or the rights of the Agency hereunder.

### **Section 6.4 Remedies Cumulative.**

No right, power, or remedy given to the Agency by the terms of this Agreement or the Affordable Housing Covenant is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Agency by the terms of any such instrument, or by any statute or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the Agency to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Agency of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

## **ARTICLE 7 GENERAL PROVISIONS**

### **Section 7.1 Relationship of Parties.**

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Agency and Developer or its agents, employees or contractors, and Developer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Developer has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the construction and operation of the Development, Developer shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Developer shall be solely responsible for its own acts and those of its agents and employees.

### **Section 7.2 No Claims.**

Nothing contained in this Agreement shall create, or serve as the basis for, any claim against the Agency by any person that Developer may have employed or with whom Developer

may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or operation of the Development, and Developer shall include similar requirements in any contracts entered into for the construction or operation of the Development.

**Section 7.3 Amendments.**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

**Section 7.4 Indemnification.**

The Developer shall indemnify, defend and hold the Agency harmless against all claims made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with the development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the Agency, its agents, and its employees. The provisions of this Section 7.4 shall survive the expiration of the Term of this Agreement.

**Section 7.5 Non-Liability of Agency Officials, Employees and Agents.**

No member, official, employee or agent of the Agency shall be personally liable to Developer in the event of any default or breach by the Agency or for any amount that may become due to Developer or its successor or on any obligation under the terms of this Agreement.

**Section 7.6 No Third Party Beneficiaries.**

There shall be no third party beneficiaries to this Agreement.

**Section 7.7 Discretion Retained By Agency.**

The Agency's execution of this Agreement in no way limits the discretion of the Agency in the permit and approval process in connection with development of the Development.

**Section 7.8 Conflict of Interest.**

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.8(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Developer shall exercise due diligence to ensure that the prohibition in this Section 7.8(a) is followed.

(b) The conflict of interest provisions of Section 7.8(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the Agency, or any person related within the third (3rd) degree of such person.

**Section 7.9 Notices, Demands and Communications.**

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

Agency:

Newman Redevelopment Agency  
1162 Main Street  
P. O. Box 787  
Newman, CA 95360  
Attention: Agency Executive Director

Developer:

SCM Hearthstone, LLC

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable). Copies of notice, sent to Developer shall also be sent to any limited partner of Developer who requests such notice in writing and provides its address to the Agency.

**Section 7.10 Required Changes.**

To the extent that any Lender to, or equity investor in, the Development shall require any changes to this Agreement or any of the Exhibits to this Agreement, the Agency agrees to consent to such changes, and the parties shall cooperate to effect such changes within a reasonable time.

**Section 7.11 Applicable Law.**

This Agreement shall be governed by California law.

**Section 7.12 Parties Bound.**

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

**Section 7.13 Attorneys' Fees.**

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

**Section 7.14 Severability.**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

**Section 7.15 Force Majeure.**

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Developer or Developer's inability to finance the construction of the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the Agency be required to agree to cumulative delays in excess of one hundred eighty (180) days.

**Section 7.16 Agency Approval.**

Whenever this Agreement calls for Agency approval, consent, or waiver, the written approval, consent, or waiver of the Agency Executive Director shall constitute the approval, consent, or waiver of the Agency, without further authorization required from the Agency Board. The Agency hereby authorizes the Agency's Executive Director to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Agency. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The Agency Executive Director is also hereby authorized to approve, on behalf of the Agency, requests by Developer for reasonable extensions of time deadlines set forth in this Agreement. The Agency shall not unreasonably delay in reviewing and approving or disapproving any proposal by Developer made in connection with this Agreement.

**Section 7.17 Waivers.**

Any waiver by the Agency of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Agency to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Agency to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Agency's written consent to future waivers.

**Section 7.18 Title of Parts and Sections.**

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

**Section 7.19 Entire Understanding of the Parties.**

This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Housing Funds. If there is any conflict between this Agreement and any other agreement relating to the project, then this Agreement shall control.

**Section 7.20 Multiple Originals; Counterpart.**

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

AGENCY:

NEWMAN REDEVELOPMENT AGENCY,  
a public body, corporate and politic

By: \_\_\_\_\_  
Michael E. Holland, Executive Director

DEVELOPER:

SCM HEARTHSTONE, LLC, a California limited liability  
company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**COMPLETE PURCHASE OF 938 FRESNO STREET**

**RECOMMENDATION:**

Adopt Resolution 2011- , approving the purchase of 938 Fresno Street, amending the 2011-12 budget to reflect said purchase, and authorizing Michael E. Holland, as City Manager, to execute all documents necessary to complete the transaction.

**BACKGROUND:**

In May, the City was approached by a local realtor regarding the availability of the I.O.O.F. building (938 Fresno Street) and its desire to purchase said building. After meeting in closed session, the Council directed staff to submit an offer based upon the terms identified within said session. On June 8<sup>th</sup>, a final agreement was completed by and between the City of Newman and the Grand Lodge of California. The final purchase price of \$980,000 was subject to the property appraising equal to or greater than the accepted price.

At the July 12<sup>th</sup> meeting, the City Council accepted the appraisal and directed staff to proceed forward with preparation of the final documents. In addition, staff has been working with businesses that provide office furnishings to assist in developing a moving/furnishing budget for the new building.

**ANALYSIS:**

The proposed purchase of 938 Fresno Street would allow the City to consolidate most City services under a single-roof. Representatives from Administration, Finance, Planning, Water, Sewer, and Storm Drainage would be housed at the new location. This allows the City to provide better and more efficient customer service. In addition, the new building provides an area to relocate the City Council chamber into a larger space that could accommodate more persons. Purchase of 938 Fresno Street would provide sufficient space for the foreseeable future.

**FISCAL IMPACT:**

Purchase price of the building:	\$980,000
Technology/Security:	\$120,000
Audio/Video Chamber:	\$ 25,000
Generator:	\$ 50,000
Closing costs:	\$ 5,500
Furnishing offices:	\$100,000
Furnishings chamber:	\$ TBD

The cost for the building and the necessary tenant improvements will be share equally between Government Buildings Impact Fees, the Water Enterprise Fund and the Sewer Enterprise Fund.

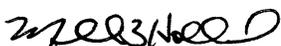
**CONCLUSION:**

In conclusion, the purchase of 938 Fresno Street will provide the City a long term solution for housing non public safety employees. The configuration and size of the building allows the City to consolidate services under one roof; providing better and more efficient customer service to Newman constituents. Staff recommends the Council approve the purchase of 938 Fresno Street, amend the budget to reflect the purchase price and closing costs, and authorize the City Manager to execute the necessary documents.

**ATTACHMENTS:**

1. Resolution

Respectfully submitted,



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Michael Holland  
City Manager

**RESOLUTION NO. 2011-**

**A RESOLUTION APPROVING THE PURCHASE OF 938 FRESNO STREET, AMENDING THE 2011-20112 FISCAL YEAR BUDGET TO REFLECT SAID PURCHASE AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO COMPLETE THE TRANSACTION**

WHEREAS, the City of Newman desires to purchase the property described as 938 Fresno Street and/or Stanislaus County APN 128-09-030 for use as a new City Hall; and

WHEREAS, the purchase of said property will allow the City to consolidate most City services under a single roof thereby providing more efficient customer service; and

WHEREAS, the purchase of said property will provide sufficient space for the foreseeable future; and

WHEREAS, the cost of said purchase will be shared equally between Government Building Impact Fees, the Water Enterprise Fund and the Sewer Enterprise Fund; and

WHEREAS, this purchase will require a budget adjustment equal to the total purchase price of \$980,000.00 with an additional \$5,500.00 for closing costs; and

WHEREAS, the purchase of said property will allow the City to consolidate most City services under a single roof; and

WHEREAS, the City and the Grand Lodge of California have reached an agreement on the terms of such purchase; and

WHEREAS, the City hired an independent land appraiser and the purchase price is based upon that appraisal; and

WHEREAS, the City Council of the City of Newman has determined it would be in the best interest to purchase said property, and

NOW, THEREFORE BE IT RESOLVED that the City of Newman does hereby approves the purchase of 938 Fresno Street, amends the 2011-20112 Fiscal Year Budget to reflect said purchase plus closing costs and authorizes the City Manager to execute all documents necessary to complete the transaction.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Newman held on the 26<sup>th</sup> day of July, 2011 by Council 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:

ATTEST:

\_\_\_\_\_  
Mayor

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